Victims and Survivors Pension Arrangement (VASPA) Advice Paper

May 2019

Foreword

On 4 March 1972 Jennifer and her sister had been shopping in Belfast. They debated for a moment and decided to get a cup of coffee and a slice of cake in the Abercorn before they went home. At 4.30pm a no-warning bomb went off in the restaurant where they were sitting.

Jennifer is one of the inspirational individuals who has campaigned for the Victims and Survivors Pension Arrangement (VASPA) and who agreed to share their experiences to illustrate the real and urgent reason why the government should implement it without further delay:

"I was 21 years of age. I not only lost my legs but my future dreams and aspirations as well. Losing my legs was devastating and following an enduring rehabilitation process I was back into the real world, a place with no disability access and no disability legislation to support and protect me. I was totally reliant on the compensation I received at the time. In the 1970s compensation levels were derisory and also a humiliating process to go through. In retrospect insulting. No disability legislation meant I was unable to return to my employment.

By the latter 1980s, I found myself reduced to relying on the Welfare State which resulted in me losing the home I had adapted to my needs. Furthermore, I was unable to secure a work-related pension and for the past thirty-nine years have been dependent on State Benefits.

It is now 2019 and I believe it is imperative that a pension, for the permanently injured, is put in place. Surely there is a moral responsibility on our political leaders to address the past, to put things right. This pension would relieve a lot of stress and worry about the future. It would give me security and a sense of dignity in my old age. I am now sixty-eight years of age."

This is simply wrong and the fact that no action has yet been taken to address the situation is shameful. This advice gives a simple message, as did the Commission's previous advice in 2014; work on the legislation for a VASPA for the seriously injured needs to start now and it needs to be implemented without further delay.

The VASPA must be designed with an empathy and understanding of the experiences that Jennifer and others like her have had. Jennifer lost the opportunity

to generate a work-based pension and her compensation was based on an assumption that her life would be short. Therefore, the award of a VASPA must be guaranteed for life and must not result in the loss of other benefits.

While there is a compelling reason to implement the VASPA there are also significant ethical issues that are addressed in this advice and must be considered in implementing the VASPA. The September 2017 Omnibus survey revealed that 26% of the population in Northern Ireland stated that they or a family member continued to be affected by a conflict-related incident. Of this figure, 6% stated that they had been psychologically affected and 3% had been physically injured by a conflict-related incident.[1]

The VASPA must address specifically the particular needs of those people who are most seriously injured both physically and psychologically. Those whose injuries are permanent, severe and impact significantly on their daily lives. There will be many who suffered injury who will not meet this threshold but can nevertheless be offered services through the VSS and other statutory agencies to meet their needs. It is an uncomfortable reality that the most seriously injured are the tip of the iceberg when the number of people who were harmed during decades of violence is considered.

In this advice an integrated approach to physical and psychological injury is recommended. The psychological impact of physical injury, of pain, and of medication required as a consequence of physical injury is evident. Many people with severe physical injuries will therefore have suffered psychological injury also, often with long lasting impact. Conversely there is also evidence that psychological injury can result in physical symptoms. If there were to be two discrete assessment systems for physical and psychological injury many people would have to go through both, and a way of aggregating the outcome would need to be developed. There is therefore a strong research and pragmatic argument for an integrated assessment model, which we have illustrated with reference to the Armed Forces Compensation Scheme (AFCS), War Pension Scheme (WPS) and the Industrial Injuries Disablement Scheme (IIDS) as relevant case studies.

In order to target the VASPA effectively on those in the most need it will be necessary to have a process for determining the level and nature of an applicant's injury. The first principle that is applied in this advice is that all existing medical and other related evidence is reviewed and an additional clinical assessment is conducted only where this is required. People like Jennifer should not be put through an assessment process when her injuries are obvious and she has medical evidence of her suffering over decades.

[1] NISRA (2018) *Northern Ireland Omnibus Survey* (October/November 2017) - Commission for Victims and Survivors Module.

There is also a serious ethical issue concerning the impact of an assessment process itself on people who are injured, traumatised, and who can find that any assessment process triggers thoughts and feelings connected to the harm that they have suffered. It is essential therefore that support and advice is available to individuals who wish to be assessed for the VASPA. It is also essential that any expert assessment is of benefit to the applicant, regardless of whether the VASPA is awarded. Therefore, applicants must be assured that any recommendations for medical or psychological interventions emerging from the assessment will be followed up.

It is essential that feedback from applicants and recipients is built into the process of administering the VASPA. It is recommended that the VASPA is subject to a one year review and continues to learn from the feedback of victims, survivors and carers. While a lot is known about the impact of physical injury the diagnosis of conflict related trauma on mental health is an evolving area and there is a need for ongoing research and evaluation to be built into the implementation of the VASPA.

I would like to acknowledge the significant contribution of a range of important stakeholders who assisted Commission staff in formulating this policy advice. First and foremost, members of the Victims and Survivors Forum and the Commission's Pension and Need Working Group met on a number of occasions in recent months to provide their valuable insight around a range of issues related to the provision of a pension. Further, I would like to express my gratitude to Dr Ciaran Mulholland in providing expert advice relating to assessment of psychological injury. As part of this work, Dr Mulholland and Commission staff met with a number of individuals with significant clinical expertise including members of the Independent Medical Expert Group (IMEG) of the Armed Forces Compensation Scheme (AFCS). I would like to express sincere thanks to all those individuals who met with Dr Mulholland and Commission staff in assisting the formulation of this advice. Spence were once again engaged to provide updated specialist actuarial advice relating to the potential costings associated with the provision of the VASPA. I am grateful for this recent advice and the previous substantive report produced by Spence and RSM McClure Watters in 2014.

Extensive research conducted by the WAVE Trauma Centre and more recently the work produced by Stuart Magee on behalf of WAVE were significant reference points for the Commission in drafting this advice paper. I am grateful for the considerable work and continued advice from colleagues at WAVE in drafting this advice.

The Victims and Survivors Service (VSS) has provided access to important data which has been fundamental in the development of this advice paper. I am grateful also for the learning that VSS colleagues have offered on the basis of their knowledge and experience.

People who have been severely and permanently injured as a consequence of the Troubles/Conflict and their carers have suffered for decades without proper recognition of the harm they have suffered and without the financial security they deserve. It is also important to note that people were severely injured as a consequence of the Troubles/Conflict in incidents that occurred across the UK, Ireland and beyond, and they should be able to avail of the VASPA regardless of where they live.

The concept of a pension arrangement for the severely injured has been developed largely as a consequence of the work of the WAVE Injured Group. Their determination, resilience and endurance in the face of the most adverse circumstances is inspirational and the implementation of the VASPA is the tribute they deserve. Work on the legislation for a VASPA for the seriously injured needs to start now and it needs to be implemented without further delay.

Judith Thompson
Commissioner for Victims and Survivors

Contents

Executive Summary 7

Introduction 15

Background 17

Addressing the request from the Secretary of State for Northern Ireland to update the Victims and Survivors Pension Arrangement advice 19

- *Purpose* 19
- *Qualifying Criteria* 19
- *Assessment* 26
- *Continuity* 37
- *Numbers and Costs* 38
- *Delivery Mechanism* 40
- *Other Considerations* 42

Conclusion 43

Appendices 45

- *SoSNI Letter of Request*
- *Spence Report*
- *Psychologically Injured Pension Advice Project Report*
- *CVSNI 2014 Victims and Survivors Pension Arrangement (VASPA) Advice Paper*

1. Executive Summary

1.1. The primary **aim** of the Victims and Survivors Pension Arrangement (VASPA) is to acknowledge the acute and enduring harm suffered by individuals who have sustained a severe and permanent physical and/or psychological injury linked to the Conflict/Troubles. The VASPA should contribute to providing recipients with a degree of financial security and support a better quality of life. It should also consider the impact on carers, usually family members who have and continue to devote their lives providing care and support to their loved ones.

1.2. From the Commission's perspective, the qualifying criteria as set out in the 2014 Advice Paper remain largely unchanged. According to that advice paper the VASPA should:

- Operate on a defined benefits basis;
- Operate on a statutory basis;
- Be non-contributory; and
- Pay benefits for the life of the qualifying recipient and for their carer thereafter.

This will ensure that qualifying recipients of the VASPA and their carers thereafter will have a guaranteed income amount for the remainder of their lives that they do not have to contribute towards.

1.3. This updated advice paper and in particular the research conducted by Dr Mulholland enhances understanding and further defines criteria and approaches to assessment relating to psychological injury. On the basis of this specialist advice, examination of relevant pension schemes and stakeholder engagement, the Commission has reviewed and revised aspects of the qualifying criteria for the VASPA.

1.4. Individuals who are **severely and permanently** physically or psychologically injured as a consequence of a conflict-related incident should qualify for the VASPA. In the Commission's 2014 advice a threshold of 40% disablement was recommended. In consulting on this updated advice we have heard victims and survivors express the view that this threshold is too high. In line with the recommendation put forward by the WAVE Trauma Centre, a threshold of between 14-20% under a prescribed degrees of disablement could be adopted instead. A number of existing pension schemes that operate a graded assessment system including the prescribed degrees of disablement are examined in this advice paper. Further substantive work will be required

to design a set of graded levels of injury and specific descriptors in the areas of physical and psychological injury.

1.5. In establishing the level of impact of conflict-related physical or psychological injury on individuals who apply for the VASPA, the categories of severity, permanence and impact on functioning should be applied. This advice draws on case studies from other schemes that employ this approach. The physical and/or psychological impairment must be deemed to have a severe and permanent adverse effect on an individual's ability to carry out normal day to day activities.

1.6. In relation to assessment and potential thresholds, the Commission recommends that the UK Government examines examples of good practice including those contained within the Industrial Injuries Disablement Scheme (IIDS), War Pension Scheme (WPS) and the Armed Forces Compensation Scheme (AFCS). These pension and compensation schemes assess a range of single and multiple conflict-related physical and psychological injuries and grades those injuries according to the impact on disablement and personal functioning. The AFCS assessment processes are well established in practice with descriptors across a range of injuries defined in legislation. The legislation underpinning the AFCS includes the Mental Disorders Table of Injury (see Table 4) and is a useful reference in defining the severity and permanency of conflict-related mental disorders.

1.7. The Commission recommends that government should consider the adoption of a **graded or tiered approach to assessment** determining the level of impact of conflict-related physical and/or psychological injury on personal functioning and disablement. This would be aligned to the integration of a **system of graduated payment award** based on the severity of impact of an individual's conflict-related injury.

1.8. A **mainly desk-based exercise** forms an important part of the assessment process of the AFCS. In recognising the chronic and severe level of physical and psychological injuries by potential applicants of the VASPA it is expected that these individuals will have accessed statutory mental health services and other related services within UK health systems and elsewhere. Therefore, a similar desk-based application process could form part of the VASPA.

1.9. An important component of the administration of the VASPA should be the development of a **comprehensive information retrieval process**. This process should be developed by the lead agency (administering the VASPA) and a range of statutory and other public agencies based in the health, justice, welfare provision sectors and elsewhere to ensure all relevant information including medical records are accessed.

1.10. In the event that there are challenges to accessing sufficient information to support an application, access to an **independent medical assessment** must also form part of the assessment process. This raises ethical issues about the potential impact on individuals of an assessment process itself.

1.11. Access to the assessment process should only occur following assessment of all available supporting information from the applicant and the comprehensive information retrieval process if required.

1.12. To address ethical concerns it is essential to ensure that **support** is available to individuals who wish to be assessed for the VASPA. People need to be informed of the nature and threshold for award of the VASPA and of what the assessment process will involve. If they decide to proceed then they must be supported during and after the assessment process. It should be considered whether this support could be provided by existing specialist community and voluntary sector organisations.

1.13. It is also essential that any expert assessment is of benefit to the applicant, regardless of whether the VASPA is awarded. Applicants must be assured that any recommendations for medical or psychological interventions emerging from the assessment will be followed up by the appropriate statutory and/or non-statutory services.

1.14. **Integrated approach to delivery**. As part of the Secretary of State's request for advice the Commission were asked to examine the possibility of implementing a 'two-phased approach' to the delivery of the pension scheme. This would involve the initial implementation of the VASPA focussing on applicants with a physical injury followed by processing applications from individuals with a psychological injury.

1.15. In developing this advice the close relationship between conflict-related physical and psychological injury has become very clear. The WAVE Injured Report[2] highlighted the interdependency of the impact of physical injury on the psychological state of the individual and their ability to function. The study also refers to how the continued debilitating experience of pain management can have a negative effect on psychological wellbeing which can result in alcohol and/or drug dependency. Further, feedback from a substantial number of injured individuals and their families throughout the research reflected how many are concerned about their future economic and financial wellbeing,

[2] Breen-Smyth, M. (2012) *The needs of individuals and their families injured as a result of the Troubles in Northern Ireland*, produced on behalf of the WAVE Trauma Centre, WAVE Trauma Centre.

causing significant psychological stress that has been exacerbated by ongoing welfare benefit reform.

1.16. Many people with severe physical injuries will have suffered psychological injury also, often with a long lasting impact. If there were to be two discrete assessment systems for physical and psychological injury many people would have to go through both, and a way of aggregating the outcome would need to be developed. There is therefore both a strong research and pragmatic argument for an integrated assessment model, which we have illustrated with reference to the Industrial Injuries Disablement Scheme (IIDS), the War Pension Scheme (WPS) and the Armed Forces Compensation Scheme (AFCS) as useful and relevant case studies.

1.17. A concern has been raised that adopting an integrated assessment model would require a new assessment process and may therefore delay access to the VASPA for those severely physically injured people whose injuries are evidently over the threshold. In order to avoid this the Commission recommends that those who already have medical evidence which demonstrates the severity, permanence and impact of their injuries (physical and/or psychological) are reviewed by the panel as soon as it is formed on the basis of the existing evidence and do not need to await an assessment.

1.18. The Commission recommends the **adoption of an integrated/composite approach** that involves the establishment of a multi-disciplinary team/panel that would be responsible for assessing the impact of conflict-related physical and psychological injury. Panel members should be drawn from a number of relevant disciplines including psychiatry and psychology (Consultant Grade), physiotherapy and/or occupational therapy. All panel members should be trauma trained and ideally have had therapeutic experience of working with individuals and families whose health and wellbeing has been affected by the legacy of the Troubles/Conflict. All panel members should receive special training on the administration of the VASPA (similar to training received by those responsible for assessing applications).

1.19. There is a clear need for an **appeals mechanism** as part of the VASPA assessment process. The Commission recommends that **a two tier approach to appeals** be adopted. In the first instance, applicants should have the right to request a 'reconsideration' where they are dissatisfied with the initial outcome of their claim. During reconsideration (by a different assessment officer) the original decision can be maintained, or the award can be increased. The original award should not be reduced or removed.

1.20. Where an applicant remains unhappy following a reconsideration, there must be a clear avenue of recourse for claimants who feel their VASPA application

has been unfairly denied or assessed. Consideration of the system akin to the Disability Living Allowance (DLA) / Personal Independence Payment (PIP) procedure linked to decisions to the Pensions Appeals Tribunals and the considerable body of case law surrounding Social Security Tribunals, would be of clear benefit in developing the VASPA. Integrating learning from the DLA/PIP appeals procedure and associated case law would provide significant certainty to the VASPA process from the outset and potentially reduce the number of legal challenges.

1.21. The Commission's 2014 advice recommended that the VASPA should pay benefits for the life of the qualifying recipients and potentially after their death, for a spouse, dependents and/or carers.

1.22. To enable a transparent process around this recommendation, the Commission recommends that the VASPA should be transferred once to a nominated person for a specified amount of time. The nominated person should be **limited to someone who is a registered care and/or spouse**.

1.23. Feedback from applicants and recipients must be built into the process of implementing the VASPA. The Commission recommends the initiation of a **one year review** of the scheme following implementation so that learning from the feedback of victims, survivors and carers and wider stakeholders is considered and integrated into the future administration of the VASPA.

1.24. To support the continued implementation of the VASPA the Commission recommends the establishment an **independent research and evaluation process** that can advise government on all medical aspects of the scheme and related matters.

1.25. **Date parameter**. The assumption in the Commission's 2014 advice was that the date parameter for the VASPA would be the Belfast Agreement in 1998. However there have been discussions as to whether the cut-off point for accessing the VASPA should be extended to the date of the Stormont House Agreement or further to the present day. The legislation that underpins the work of the Commission provides interpretation that a "conflict related incident meaning an incident appearing to the Commissioner to be a violent incident occurring in or after 1966 in connection with the affairs of Northern Ireland"[3] and therefore does not have a defined cut-off date. Therefore the Commission recommends that any individual that presents with a "conflict related" injury, should be assessed and if they qualify, awarded the VASPA, regardless of when the injury took place, post 1966.

[3] The Victims and Survivors (Northern Ireland) Order 2006. The order can be accessed here: https://www.legislation.gov.uk/nisi/2006/2953

1.26. **Means testing**. The Commission recommends that the **VASPA is not means tested**. However, there is an understanding that this could mean that recipients of a pension connected to their Troubles related injury could also qualify to receive the VASPA. To ensure equity of access, the Commission recommends that if an individual is already in receipt of a pension arising from their Troubles related injury that is greater than the amount that would be paid by the VASPA, they will not qualify under this scheme. However, if a potential recipient is in receipt of a pension that is not equal to the amount they would receive through the VASPA, the difference will be paid through this scheme.

1.27. **Numbers and Costs.** Spence have based a costing model on the following assumptions - the retirement rate (period of payment of pension) is 30 years[4], a future inflation rate is 2.7%, recipients receive on average £5,000 per annum (based on the assumption that benefits will increase in line with the Consumer Price Index) and that an unfunded (pay as you go) model is adopted.

1.28. The Commission recommends the adoption of an assessment process that includes a **graduated payment system** determined by the assessed impact of conflict-related physical and psychological injury on disablement or functioning. Therefore, individuals who qualify for the VASPA may be in receipt of different annual awards based on the assessed severity of their injuries. It is important to note that the average £5,000 per annum figure contained in the latest data provided by Spence was for cost purposes only. Table 3 usefully illustrates the operation of graduated payment system with reference to the War Pension Scheme.

1.29. The Commission recommends that an actuarial specialist is engaged once there is greater certainty around the assumptions and numbers to provide a more accurate estimate of the scheme costs.

1.30. The Commission further recommends that consideration be given to the cost of administering the scheme over its estimated life span.

1.31. **One off payment versus ongoing payments**. The Commission was asked to consider whether or not payments of the VASPA should be made as an ongoing payment or as a one off 'lump-sum' payment. Consultation with the Victims and Survivors Forum, WAVE and other stakeholders has highlighted the need to recognise those individuals who have been waiting for the VASPA to be put in place since it was discussed in the Stormont House Agreement in

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[4] In the report coproduced by Spence and RSM McClure Watters, the decision to adopt the assumed retirement rate of 30 years was 'chosen as a reasonable middle ground assumption, assuming an average age to state retirement age of 65/67.' See RSM McClure Waters and Spence (2014) Pension for the Severely Injured Project – Final Report, Commission for Victims and Survivors: 4.

2014 and who are now ageing without a definitive answer on when this will proceed.

1.32. The Commission, therefore, recommends that those individuals who qualify for the VASPA should be given the **option of a lump sum payment or a regular payment**.

1.33. **Backdating**. The Commission heard from a range of views including those expressed by members of the Victims and Survivors Forum and Pension and Need Working Group on the issue of backdating. The Commission recommends that the VASPA is backdated to the Stormont House Agreement from 2014. This is the first instance where the need for a pension for the most severely injured is recognised formally by government and the five main political parties.

1.34. **Jurisdiction.** It is important to note that qualifying applicants do not live only in Northern Ireland. People were severely injured as a consequence of the Troubles/Conflict in incidents that occurred across the UK, Ireland and beyond. Others, injured in Northern Ireland, now live elsewhere. The Commission recommends that a scheme is developed that will enable qualifying individuals to avail of the VASPA regardless of where they now live.

1.35. **Further work to be conducted.** Further consideration will need to be given to the specific design and implementation of an independent medical assessment as part of the VASPA. The development of an assessment process remains a focus of Dr Mulholland's work that will report at the end of May 2019.

1.36. **Legal advice**. Given the limited budget and time allocated for this review of the Commission's 2014 advice on the provision of a pension, the Commission recommends that further work must be undertaken to ascertain the legal position in relation to qualifying assessment, backdating of payments and the likelihood of discrimination arguments and appeals.

1.37. **Equality Impact Assessment**. The Commission also recommends that a full Equality Impact Assessment (EQIA) is conducted as part of any consultation process. An EQIA will assist the Northern Ireland Office (NIO) to take into account the needs and effects of the VASPA on people within the Section 75 equality groups. This will enable openness, transparency and early engagement in the policy development process.

1.38. **Communications Strategy**. The Commission is aware of the need to manage expectations of stakeholders, particularly in relation to the level of payable benefit, qualifying criteria and who the potential beneficiaries will be.

1.39. The Commission recommends that a full communications strategy and action plan is developed and agreed with all key stakeholders. This should outline the objectives, direction and intended outcome of the VASPA fund. This should be used by all relevant stakeholders in order to ensure continuity of message across all applicable platforms.

2. Introduction

2.1. The purpose of this paper is to provide updated advice to the Secretary of State for Northern Ireland (SoSNI) relating to the provision of a pension for individuals severely injured by their traumatic experiences of the Troubles/Conflict. The paper specifically addresses the different parts of the request for advice contained in the formal letter from the SoSNI to the Commissioner for Victims and Survivors in August 2018.

2.2. The Commission would like to acknowledge the following organisations for their ongoing work in relation to the Victims and Survivors Pension Arrangement and in the development of this policy advice paper;

- Victims and Survivors Forum;
- Pension and Need Working Group;
- Victims and Survivors Service;
- Wave Trauma Centre;
- Wave Injured Group; and
- Members of the Independent Medical Expert Group (IMEG) of the Armed Forces Compensation Scheme (AFCS)

2.3. Specialist actuarial data relating to the potential future cost of a pension was obtained from Spence and expert clinical advice was sought from Dr Ciaran Mulholland to aid the Commission in updating the pension advice.

2.4. The Commission has also engaged with the five main political parties throughout the formation of this policy advice paper.

2.5. The Commission believes there is a moral obligation on government to ensure the VASPA is introduced as quickly as possible to allow those people who are entitled to access it.

2.6. The Commission has worked with a number of individuals who have campaigned for the provision of a VASPA both through the Pension and Need Working Group and the WAVE Injured Group. Some of these individuals have permitted us to include their stories to illustrate how much of a positive impact the VASPA would make on their lives.

For those of us left with life changing injuries our pain and hurt has not gone away. We still live with it every day. We are not asking for massive amounts of recognition payments, but enough to maintain an independent lifestyle into old age, enough to keep us out of nursing homes, money that will pay for everyday house tasks we can't do ourselves like cut hedges, paint rooms, repair storm damage and pay for a home help to clean the house.

As I live on benefits those jobs are impossible to finance at present and cause me to be fearful for my independence in the coming years. I think the government has a moral responsibility to help us.
Peter Heathwood; injured in 1979, aged 26

3. Background

3.1. The Commission met with and engaged the support and advice of a range of stakeholders to help inform this paper. In early 2019, meetings were held with the five main political parties in Northern Ireland and members of the Pension and Need Working Group to establish levels of support and commitment towards the VASPA. The Pension and Need Working Group comprised of members of the Victims and Survivors Forum and the WAVE Injured Group. In facilitating these meetings with local political representatives, members were able to convey the importance and significant contribution that a VASPA would make to their lives and to their carers.

3.2. In updating the Commission's policy advice relating to the provision of a VASPA for the severely injured, specialist actuarial and clinical advice was obtained. Having previously engaged specialist actuarial advice that formed the basis of the Commission's 2014 advice paper, Spence were again approached to specifically update the economic modelling and funding data relating to the future potential cost of VASPA provision.

3.3. In updating the advice relating to psychological injury the Commission engaged the clinical expertise and experience of Dr Ciaran Mulholland. Dr Mulholland is a Consultant Psychiatrist based within the Northern Health and Social Care Trust in Northern Ireland.

3.4. Part of the focus of Dr Mulholland's research conducted on behalf of the Commission was to clinically review relevant assessment models that form the basis of existing pension and compensation schemes. Specifically, the Schemes include assessment of conflict-related physical and psychological injury and the grading of injury through impact on disability and personal functioning and potential loss of earnings. These schemes included the UK-based War Pension Scheme (WPS) and the Armed Forces Compensation Scheme (AFCS).

3.5. In supporting the work of Dr Mulholland, Commission staff facilitated meetings with a range of individuals with expertise and experience in the areas of clinical psychiatry, designing and implementing functional assessment models and advising government on the administration of existing pension and compensation schemes. This involved meeting with a number of key members of the Independent Medical Expert Group that is responsible for providing evidence-based advice to the UK Government relating to the Armed Force Compensation Scheme.

3.6. The production of this update paper represents a response from the Commissioner for Victims and Survivors to a request from the Secretary of

State for Northern Ireland to update previous 2014 advice relating to the provision of a VASPA. The letter issued by the Secretary of State for Northern Ireland was received in August 2018 (see Annex A).

3.7. Since the production of the previous VASPA advice paper the Commission notes the significant commitment of the main political parties in Northern Ireland to the issue of a pension in the Stormont House Agreement 2014. The Agreement states that '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.'[5] In producing this latest advice paper on the VASPA the Commissioner is of the view that this paper represents a significant contribution to supporting government to progress the implementation of the VASPA as quickly as possible.

[5] Northern Ireland Office (2014) *Stormont House Agreement,* NIO: 6.

4. Addressing the request from the Secretary of State for Northern Ireland to update the VASPA advice

Purpose

4.1. The primary **aim** of the Victims and Survivors Pension Arrangement (VASPA) is to acknowledge the acute and enduring harm suffered by individuals who have sustained a severe and permanent physical and/or psychological injury linked to the Conflict/Troubles. The VASPA should contribute to providing recipients with a degree of financial security and support a better quality of life. It should also consider the impact on carers, usually family members who have and continue to devote their lives providing care and support to their loved ones.

> ***People like me survived, only just, but survive we did. But this has meant a life of struggle. I have lived in chronic pain ever since. I need round the clock care from my family. I have been plagued with infections. Tortured by phantom pains and spasms. Hospital visit after hospital visit. An Injured Pension would help secure my present and my future. I have been unable to secure full time employment since that day in January 1994. I want to work but my broken body has been an obstacle.***
> *Paul Gallagher; injured in 1994, aged 21.*

Qualifying Criteria

4.2. Part of the request for advice asked the Commission to review the recommended qualifying criteria for individuals who may receive an award under the VASPA. These include the following considerations:

- Those who were physically injured as a result of the Troubles (and to what extent);
- Those who were psychologically injured as result of the Troubles (and to what extent);
- The date parameters within which the injuries needed to have taken place;
- Inclusion or otherwise of the families of those who would have qualified and are now deceased (in accordance with the recommended purpose); and
- Any other consideration of qualifying criteria which Commission deems relevant.[6]

4.3. From the Commission's perspective, the qualifying criteria as set out in the 2014 Advice Paper remains largely unchanged. This updated advice paper in

[6] SoSNI (2018) *Letter from Secretary of State for Northern Ireland (NI) to Commissioner for Victims and Survivors requesting advice on a pension for severely injured victims of the Troubles*, 6th August.

particular the research conducted by Dr Mulholland enhances understanding and further defines criteria and approaches to assessment relating to psychologically injury. This includes further clarity, from a clinical perspective around a definition of 'severity' of injury in the context of individuals exposed to traumatic incidents linked to the Troubles/Conflict. On the basis of this specialist advice and stakeholder engagement the Commission have reviewed and revised aspects of the qualifying criteria for the VASPA.

Physically Injured

4.4. The qualifying criteria for a pension for individuals severely physically injured by the Troubles/Conflict has been largely established and reaffirmed in ongoing work involving the Commission, the Victims and Survivors Service and colleagues at the WAVE Injured Group over recent years. The analysis and recommendations included in the Commission's 2014 advice were informed by the WAVE Injured Report in 2012[7], a comprehensive research study including a series of in-depth interviews with injured people, their carers and service providers that contributed to a more detailed understanding of the complex, enduring and changing needs of the severely physically injured.

4.5. The WAVE Injured Report provided a broader understanding of the causation and nature of the impact of the Troubles/Conflict on physical disability. According to the report,

> *Physical disability in Northern Ireland as a result of the Troubles takes on particular forms. Those who lost limbs in the Troubles, many during the bombing campaigns of the 1970s and 1980s, not only lost full function but the longer-term impact of such loss is attritional on general health, identity, life chances, employment and financial status as well as on family and community.*
>
> *Some others have suffered paralysis or damage to limbs, necessitating the use of braces, walking aids or wheelchairs. Another cohort of injured people suffered brain injury due to gun or bomb attacks. Gunshot wounds have caused particular forms of neurological damage that pose acute challenges for physicians in terms of pain management. Yet others were injured by missiles, fire or baton rounds in riot situations or street disturbances throughout the Troubles and this is a continuing feature of life in Northern Ireland.*[8]

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[7] Breen-Smyth, M. (2012) *The needs of individuals and their families injured as a result of the Troubles in Northern Ireland*, produced on behalf of the WAVE Trauma Centre, WAVE Trauma Centre.

[8] Breen-Smyth, M. (2012) *The needs of individuals and their families injured as a result of the Troubles in Northern Ireland*, produced on behalf of the WAVE Trauma Centre: 47.

4.6. In recent years data has been compiled on individuals who have registered with the Victims and Survivors Service (VSS) having suffered a physical injury. Table 1 provides a breakdown of the 849 physically injured individuals (as of March 2019) who have registered with the VSS and the types of Troubles-related injury they have sustained.

Table 1: Individuals registered with a physical injury with the Victims and Survivors Service[9]

Type of physical injury	Female	Male	Total
Visual Impairment	1	9	10
Groin Injury	0	4	4
Gunshot Wound	40	254	294
Gunshot Wound/Head Injury	0	1	1
Gunshot Wound / Scarring	0	1	1
Head Injury	7	40	47
Hearing Loss	10	28	38
Loss of Eye	6	12	18
Loss of Limb	10	31	41
Other	38	220	258
Paralysis	2	16	18
Psoriasis	0	2	2
Paramilitary Style Attack	4	34	38
Respiratory Problems	0	2	2
Scarring	5	18	23
Shrapnel in body	6	7	13
Spinal Injury	4	37	41
TOTAL	**133**	**716**	**849**

4.7. Previous research and the ongoing collection of VSS data provide a good description of the nature and types of serious physical injuries linked to the individual conflict-related incidents. To establish the extent of the injury and the impact on the individual, a graded system like the prescribed degree of disablement was recommended previously as an important element of the assessment model that could be used in the administration of the VASPA. Further consideration of the assessment process for the VASPA will be outlined in the section below.

Psychologically Injured

4.8. The September 2017 Omnibus survey revealed that 26% of the population in Northern Ireland stated that they or a family member continued to be

[9] Information provided by the Victims and Survivors Service.

affected by a conflict-related incident. Of this figure, 6% stated that they had been psychologically affected and 3% had been physically injured by a conflict-related incident.[10] This finding is aligned with previous population-based research studies indicating that while a significant proportion of the local population have had a conflict-related experience, most individuals did not develop an adverse mental health difficulty. However, a significant minority of those who have been exposed to conflict-related trauma have subsequently developed a mental health disorder and/or sustained a conflict-related physical injury. At the population level, the 2011 Troubled Consequences Report revealed that an estimated 8.8% of the Northern Ireland population had met the criteria for posttraumatic stress disorder (PTSD) at some point in their life while 5.1% met the criteria in the previous 12 months. The study also discovered high prevalence rates of other mental health disorders including clinical depression, complex grief, self-harm and substance dependency.

4.9. The WAVE Injured Report[11] highlighted the interdependency of the impact of physical injury on the psychological state of the individual and their ability to function. The study also refers to how the continued debilitating experience of pain management can have a negative effect on psychological wellbeing which can result in alcohol and/or drug dependency. Further, feedback from a substantial number of injured individuals and their families throughout the research reflected how many are concerned about their future economic and financial wellbeing, causing significant psychological stress that has been exacerbated by ongoing welfare benefit reform.

4.10. RSM-Spence[12] highlighted the challenge of determining criteria relating to severe injury in particular conflict-related psychological injury. Given the considerable exposure of the population in and around Northern Ireland to conflict-related trauma over many decades, a significant proportion of the population have gone on to develop a range of psychological difficulties linked to their experiences. The challenge has remained around how to assess and verify psychological impact and the attribution of Troubles-related traumatic experiences and the diagnosis of a trauma-related psychological disorder including PTSD and co-morbid conditions including anxiety and clinical depression.

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[10] NISRA (2018) *Northern Ireland Omnibus Survey* (October/November 2017) - Commission for Victims and Survivors Module.

[11] Breen-Smyth, M. (2012) *The needs of individuals and their families injured as a result of the Troubles in Northern Ireland*, produced on behalf of the WAVE Trauma Centre, WAVE Trauma Centre.

[12] RSM McClure Waters and Spence (2014) Pension for the Severely Injured Project – Final Report, Commission for Victims and Survivors.

Defining Psychological Injury / Trauma

4.11. Given the focus of the VASPA is to recognise and address individual suffering from severe conflict-related injuries an important determination surrounds defining what we mean by 'severe psychological injury.' In his paper submitted to Commission, Dr Mulholland defines ‘psychological injury (also called a psychiatric injury) as a concept with both legal and medical meanings. It equates to the development of a mental health problem (a psychological or psychiatric condition) after a traumatic event or series of events[13]. From a legal perspective, psychological injury would include mental harm, suffering, damage, impairment or dysfunction caused to a person as a direct result of some action or failure to act by some individual. Additionally, the psychological injury must reach a degree of disturbance of the pre-existing psychological/psychiatric state such that it interferes in some significant way with the individual's ability to function[14]

4.12. Mulholland points out that in order to initially determine whether an individual has suffered a psychological injury it is necessary to identify a significant psychological trauma or trauma in their personal history. Referring to the Diagnostic Statistical Manual of Mental Disorders, Fifth Edition (DSM V), psychological trauma is defined as ‘exposure to actual or threatened death, serious injury, or sexual injury, or sexual violence. Exposure may occur in one or more ways: directly experiencing the event; witnessing the traumatic event in person; learning that the event happened to a close person; or experiencing first hand repeated or extreme exposure to aversive details of the traumatic event.’[15]

Psychological Injury and Diagnosis

4.13. An important requirement in determining whether an individual has sustained a psychological injury, according to Mulholland is to reach a clinical diagnosis. Normally a psychiatrist will undertake a clinical assessment to reach a diagnosis of a psychiatric disorder using the internationally recognised medical classification systems – DSM V and The International Classification of Diseases, Eleventh Revision (ICD 11). Common conditions that can be diagnosed associated with exposure to trauma include PTSD and Complex PTSD, Prolonged Grief Disorder or Persistent Complex Bereavement Disorder, other anxiety disorders and clinical depression. Mulholland explains that as part of the standardised diagnosis process a psychiatrist conducts a clear assessment of signs and

[13] Mulholland, C. (2019) *Victims and Survivors Pensions Arrangement (VASPA) – Initial Advice Paper on Psychological Injury, April: 8.*
[14] Mulholland, C. (2019) *Victims and Survivors Pensions Arrangement (VASPA) – Initial Advice Paper on Psychological Injury, April: 8.*
[15] Mulholland, C. (2019) *Victims and Survivors Pensions Arrangement (VASPA) – Initial Advice Paper on Psychological Injury, April: 8.*

symptoms, based on assessing psychological processes. Signs are generally abnormalities which are visible to an observer (such as marked weight loss) and the symptoms that a person will complain of (for example, sadness). When symptoms and signs are recognised they are then grouped together to make a particular diagnosis.[16]

Determining Severity and Permanence of Mental Health Conditions

4.14. In determining qualifying criteria for accessing the VASPA, Mulholland indicates that while an individual may receive a diagnosis for a conflict-related mental disorder, it may not necessarily constitute a psychological injury. Further, Mulholland reaffirms the point that in many cases individuals applying for the VASPA will present with a range of symptoms linked to their mental disorders combined with other co-morbid conditions including physical health problems.

4.15. In developing qualifying criteria relating to psychological injury Mulholland contends that,

> *It is probable that we will proceed on the basis of a constellation of symptoms, which are sufficiently severe, persistent and impacting on function, to meet criteria as opposed to the necessity to meet defined clinical diagnosis, in order to qualify for the proposed pension. However, the starting point will often be diagnostic "case-ness". To explain further, most individuals who apply will meet criteria for one of the conditions above but not all will do so.*[17]

4.16. In establishing the level of impact of conflict-related psychological injury on individuals who may decide to apply for the VASPA, developing an assessment framework focussing on the interrelated categories of severity, persistence and functioning could be mapped on to assessment processes currently operating in the administration of other pension schemes (including the Armed Forces Compensation Scheme). Mulholland provides the following commentary relating to how to determine the degree of impact across these categories.

Severity

- Using Depression, by way of example, this mental health condition which is prevalent among the injured population Mulholland highlights

[16] Mulholland, C. (2019) *Victims and Survivors Pensions Arrangement (VASPA) – Initial Advice Paper on Psychological Injury, April: 10.*

[17] Mulholland, C. (2019) *Victims and Survivors Pensions Arrangement (VASPA) – Initial Advice Paper on Psychological Injury, April: 10.*

how the NICE guidelines (on depression) represent 'the most clinically useful definitions based on the categories of 'mild', 'moderate' and 'severe''. According to the NICE guidelines on Depression:

- 'Mild' depression is when a person has a small number of symptoms that have a limited effect on their daily life.
- 'Moderate' depression is when a person has more symptoms that can make their daily life much more difficult than usual.
- Severe depression is when a person has many symptoms that make their daily life extremely difficult.[18]

Persistence

- Adopting the DSM V diagnostic criteria for persistent depressive disorder (Dysthymia) 300.4 (F34.1) is recommended in defining major and persistent depressive illnesses.
- Criteria for Persistent Depressive Disorder is as follows:
    a) Depressed mood for most of the day, for more days than not, as indicated by either subjective account or observation by others, for at least 2 years.
    b) Presence, while depressed, of two (or more) of the following:
        i) Poor appetite or overeating.
        ii) Insomnia or hypersomnia.
        iii) Low energy or fatigue.
        iv) Low self-esteem.
        v) Poor concentration or difficulty making decisions.
        vi) Feelings of hopelessness.
    c) During the 2-year period of the disturbance, the individual has never been without the symptoms in Criteria A and B for more than 2 months at a time.
    d) Criteria for a major depressive disorder may be continuously present for 2 years.
    e) The symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.[19]

Impact on Functioning

- In measuring the impact of a conflict-related psychological disorder on personal functioning, Mulholland recommends consideration of the Global Assessment of Function (GAF). The GAF is an internationally recognised assessment tool for determining the degree of social and

[18] Mulholland, C. (2019) *Victims and Survivors Pensions Arrangement (VASPA) – Initial Advice Paper on Psychological Injury, April: 13.*
[19] Mulholland, C. (2019) *Victims and Survivors Pensions Arrangement (VASPA) – Initial Advice Paper on Psychological Injury, April: 14.*

occupational functioning on ‘a hypothetical continuum of mental health-illness.’[20]

4.17. The corollary of Mulholland’s analysis is that across the likely conditions diagnosed linked to conflict-related trauma, including PTSD, depression, psychosis, clinically measurable categories of severe, persistent and impact on functioning are established within internationally recognised classification systems (i.e. DSM V and ICD 11). Designing an assessment process focussed on these interrelated categories and considering diagnostic criteria contained within these classification systems should be used to determine severity of psychological injury in applications for the VASPA.

Assessment

4.18. Under the scope of the SoSNI request for pension advice in the area of assessment, the Commission were asked to provide ‘recommended options on how (what factors should be taken in consideration) and by whom’. The Commission were asked to comment on how assessments would be made (in accordance with the recommended purpose of a pension) and whether an assessment is required.[21]

4.19. The Commission believes there may be a role for the VSS funded organisations to provide advocacy and health and well-being support for individuals going through assessment. This needs to be explored in partnership with the VSS, the funded organisations and any other relevant stakeholders.

Prescribed Degrees of Disablement (PDD)

4.20. An important recommendation contained in the Commission’s 2014 pension advice paper was that in assessing individuals with severe physical and psychological injuries, the Prescribed Degrees of Disablement (PDD) should be considered in the administration of the VASPA[22]. Based on a review of several grading systems operating in the UK, the RSM-Spence Report concluded that the Prescribed Degrees of Disablement was potentially an ‘optimum choice’ for use in the VASPA. This recommendation drew on research produced by the WAVE Injured Group in 2013. Recently, the WAVE Trauma Centre have revisited the original research and reflected on the utility of using the PDD to assess

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[20] Mulholland, C. (2019) *Victims and Survivors Pensions Arrangement (VASPA) – Initial Advice Paper on Psychological Injury, April: 14.*

[21] SoSNI (2018) *Letter from Secretary of State for Northern Ireland (NI) to Commissioner for Victims and Survivors requesting advice on a pension for severely injured victims of the Troubles*, 6th August.

[22] CVSNI (2014) *A Pension for People Severely Injured in the Troubles – Commission Advice Paper, 11 June.*

the extent of disablement caused by severe conflict-related injury. These include the following:

- Allows for assessment to be graded, reflecting various levels of injury in the injured cohort;
- Provides a way of assessing multiple injuries;
- Scheme assesses the same type of injuries commonly found in the injured population;
- [PDD] scales are well established, still in use and the legal principles applicable are well established as a consequence; and
- The PDD has been in operation as part of the assessment process for the Industrial Injuries Disablement Scheme and has also been used within the War Pension Scheme.[23]

Table 2: Prescribed degrees of disablement – selection of injuries per degrees of disablement[24]

Description of Injury	Degree of Disablement (%)
Loss of both hands or amputation at higher rates	100
Loss of a hand and a foot	100
Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot	100
Very severe facial disfiguration	100
Amputation through shoulder joint	90
Loss of hand or of the thumb and 4 fingers of one hand or amputation from 11.5 centimetres below tip of olecranon	60
Amputation below knee with stump exceeding 13 centimetres	40
Loss of four fingers of one hand	40
Loss of one eye, without complications, the other being normal	40
Loss of all toes of one foot through the metatarso-phalangeal joint	20
Loss of all toes of both feet distal to the proximal inter-phalangeal joint	20

[23] Magee, S (2019) *Advice Paper from WAVE Trauma Centre to the Northern Ireland Office regarding a proposal for a pension for those severely and permanently injured as a results of the Troubles*, WAVE Trauma Centre: 8.
[24] *The Social Security (General Benefit) Regulations 1982*: 4353.

Industrial Injuries Disablement Scheme

4.21. The PDD is a central element in the administration of the Industrial Injuries Disablement Scheme (IIDS). Under the scheme multiple physical injuries can be assessed and total impact can be aggregated. The scheme assesses for the loss of both physical and mental faculty where there is a loss of power or function of an organ of the body.[25] Were the assessment determines an impact of 14%, a weekly pension will be allocated. Further, if disablement is calculated at between 14% and 19% the applicant will receive the pension rate of 20% - at a weekly payment rate of £33.60. Subsequent 10% increments are calculated to a maximum of 100% as outlined in Table 2, with a weekly payment rate of £168. The Commission notes the recommendation from WAVE that the threshold established under the IIDS of 14% degrees of disablement to access the IIDS pension represents an appropriate threshold for the VASPA.[26]

War Pension Scheme

4.22. RSM-Spence highlighted that the War Pension Scheme could provide a good foundation for the development of the VASPA. The WPS provides compensation for any injury, illness or death which occurred before 5 April 2005, while the Armed Forces Compensation Scheme (AFCS) provides compensation for any injury, illness or death that is caused by service on or after 6 April 2005 (AFCS considered further below).

4.23. Conflict and non-conflict-related injuries that can be claimed for under the WPS range from minor fractures to amputations to a range of mental disorders. The scheme operates an assessment process that is based on the Prescribed Degrees of Disablement scale (PDD) and where a claim involves a medical question a doctor is appointed to assess the impact of conflict-related injury on disablement. The impact of physical and psychological injuries (single and multiple injuries) on the extent of disablement is measured as a percentage (see Table 2). If the combined assessment of disablement based on claimant information reviewed by 'lay officers' with the assistance of doctors referred to as 'medical advisers' is at 20% or more, a regular pension will be awarded. Meanwhile, if disablement is assessed at less than 20%, a lump sum gratuity payment is awarded which is dependent on the extent and likely duration of the disablement.

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[25] Department for Work and Pensions (2018) *Guidance – Industrial Injuries Disablement benefits: technical guidance*, DWP (information updated as of 28th September 2018). Information available electronically at: https://bit.ly/2Y3v9Zv

[26] Magee, S (2019) *Advice Paper from WAVE Trauma Centre to the Northern Ireland Office regarding a proposal for a pension for those severely and permanently injured as a results of the Troubles*, WAVE Trauma Centre: 8.

Table 3: Rates of pension payment under the War Pension Scheme (as of April 2019)[27]

Assessment	Weekly Rates	Yearly Rates
100%	£185.40	£9,674
90%	£166.86	£8,707
80%	£148.32	£7,739
70%	£129.78	£6,772
60%	£111.24	£5,805
50%	£92.70	£4,837
40%	£74.16	£3,870
30%	£55.62	£2,902
20%	£37.08	£1,935

4.24. The WPS scheme is accessible to former members of the Armed Services including the Ulster Defence Regiment and its successor, the Royal Irish Regiment. In this regard, given the number of potential applicants to the WPS who served in Northern Ireland and sustained a conflict-related physical and/or psychological injury, the WPS represents an important case study that could be considered in the design and delivery of the VASPA.

Armed Forces Compensation Scheme (AFCS)

4.25. The AFCS operates a no-fault, tariff-based system that measures the impact of injuries and illnesses including conflict-related physical and psychological injuries on functional limitation or restriction.[28]

4.26. Key elements of the AFCS include the following:[29]

- All injuries/illnesses are considered under one of nine 'tariff of injury tables' that surround the payment of compensation;

[27] Ministry of Defence (2019) *Rates of War Pension and allowances 2018-19*, MoD: 2.
[28] According to the AFCS Order 2011, 'functional limitation or restriction is to be assessed by (a) taking account of the primary injury and its effects; and (b) making a comparison between the limitation and restriction of the claimant and the capacity of a healthy person of the same age and sex who is not injured or suffering a health condition' (p6).
[29] Ministry of Defence (2018) 'Background Quality Report – Armed Forces Compensation Scheme Annual Statistics: 6 April 2005 to 31 March 2018, MoD.

- Areas covered in the 9 tariff of injury tables include: Mental Disorders, Physical Disorders, Musculoskeletal Disorders, Amputations, Neurological Disorders and Burns (See Figure 1);

Figure 1: AFCS '9 tariff of injury tables' and 15 tariff levels for awarded injury/illness[30]

Claimants' injuries/illnesses considered to be Service-attributable are awarded under the AFCS in line with one of **nine tariff of injury tables**: Table 1 - Burns Table 2 - Injury, Wounds and Scarring Table 3 - Mental Disorders Table 4 - Physical Disorders Table 5 - Amputations Table 6 - Neurological Disorders Table 7 - Senses Table 8 - Fractures and Dislocations Table 9 - Musculoskeletal Disorders. The full list of tariff of injury tables can be found online: http://www.infolaw.co.uk/mod/docs/AFCS-2016-05-31.pdf	Within each of the nine tariff of injury tables, there are **15 tariff levels** for awarded injury/illness claims, each with a corresponding level of lump sum payment. The more severe the injury/illness, the lower the tariff level and the higher the lump sum award: **1-4:** Individuals are so seriously injured they will be unable to work again. **5-6:** Individuals will be able to work but at a significantly reduced earnings capacity. **7-8:** Individuals will be able to work but their earning capacity will be reduced by around half. **9-11:** Individuals will be able to work but will experience a lower level of earnings due to their injury. **12-15:** Individuals' future civilian earning capacity will be unaffected by their injury as it does not have any significant permanent effects.

- 15 tariff levels operate under which claimants are awarded, each reflecting the severity of the injury or illness. The lower numerical tariff levels (i.e. 1-4) reflect the more severe injuries/illnesses;

- Where a lump sum award has been made at tariff levels 1-11 (reflecting a more serious injury/illness), the claimant will also be awarded a tax-free, index-linked income stream or pension known as a 'Guaranteed Income Payment' (GIP);

- The GIP will be paid for life on leaving service to recognise the long-term loss of earnings;

- Claimants can request a 'reconsideration' where they are unhappy with initial outcome of their claim. During reconsideration (by a different assessment officer) the original decision can be maintained, or the award can be increased. The original award cannot be reduced or removed; and

- Where a claimant remains unhappy following a reconsideration, the claimant can lodge an appeal with the independent tribunal. The Tribunal is held by the HM Courts and Tribunals Service (in England, Scotland and Wales) and the Northern Ireland Courts and Tribunals

[30] Ministry of Defence (2018) 'Background Quality Report – Armed Forces Compensation Scheme Annual Statistics: 6 April 2005 to 31 March 2018, MoD.

Service and is independent of the Ministry of Defence (MoD). Tribunal decision are legally binding on both the appellant and the MoD[31].

Table 4: Mental Disorders[32] The Armed Forces and Reserve Forces Compensation Scheme Order (AFCS) 2011[33]

Item	Level	Description of injury and its effects ('descriptor')
1	6	Permanent mental disorder, causing severe functional limitation or restriction.
2	8	Permanent mental disorder, causing moderate functional limitation or restriction.[34]
3	10	Mental disorder, causing function limitation or restriction, which has continued, or is expected to continue for 5 years.
4	12	Mental disorder, which has caused, or is expected to cause functional limitation or restriction at 2 years from which the claimant has made, or is expect to make, a substantial recovery within 5 years.
5	13	Mental disorder, which has caused, or is expected to cause, functional limitation or restriction at 26 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 2 years.
6	14	Mental disorder, which has caused, or is expected to cause, functional limitation or restriction at 6 weeks, from which the claimant has made, or is expected to make, a substantial recovery within 26 weeks.

[31] Ministry of Defence (2018) 'Background Quality Report – Armed Forces Compensation Scheme Annual Statistics: 6 April 2005 to 31 March 2018, MoD.

[32] Mental disorders must be diagnosed by a clinical psychological or psychiatrist at consultant grade.

[33] HM Government (2016) The Armed Forces and Reserve Forces Compensation Scheme Order (AFCS) 2011 in force from 31 May 2016, HM Government: 67-68.

[34] Functional limitation or restriction is severe where the claimant is unable to undertake work appropriate to experience qualifications and skills at the time of onset of the illness and over time able to work only in less demanding jobs.

Functional limitation or restriction is moderate where the claimant is unable to undertake work appropriate to experience, qualifications and skills at the time of onset of the illness but able to work regularly in a less demanding job.

Permanence

4.27. The legislation underpinning the AFCS that includes the Mental Disorders Table of Injury (See Table 4) is a useful reference in defining the severity and permanency of conflict-related mental disorders. The set of descriptors within the table provide a graded or tiered approach to the level of impact of the mental disorder on functional limitation or restriction. The term "function limitation or restriction" in relation to a descriptor as defined in the AFCS Order 2011 means that, as a result of an impairment arising from the primary injury or its effects, a person:

a. Has difficulty in executing a task or action; or
b. Is required to avoid a task or action because of the risk of recurrence, delayed recovery, or injury to self or others.[35]

4.28. The table also provides legal definitions that assist the determination on whether the impact of a mental disorder is permanent and causing either a severe or moderate impact on functional limitation or restriction. Moving down the scale, the table makes a determination on the assessment duration of the impact of the mental disorder on functional limitation or restriction and assessed capacity for recovery. According to the AFCS Order 2011 functional limitation or restriction is

c. "permanent" where following appropriate clinical management of adequate duration:
   i) An injury has reached steady or stable state at maximum medical improvement; and
   ii) No further improvement is expected; and
d. "significant" where the functional limitation or restriction has an extensive effect.[36]

4.29. It is worth noting that the meaning relating to permanency defined within the AFCS Order 2011 was reviewed in 2017 by the Independent Medical Expert Group (IMEG). The Group concluded that the concept was 'medically valid and in line with contemporary best practice clinical management and approaches to disability...[and that] no legislation amendment is required from the medical perspective.'[37]

[35] HM Government (2016) The Armed Forces and Reserve Forces Compensation Scheme Order (AFCS) 2011 in force from 31 May 2016, HM Government: 6.
[36] HM Government (2016) The Armed Forces and Reserve Forces Compensation Scheme Order (AFCS) 2011 in force from 31 May 2016, HM Government: 6.
[37] The Independent Medical Expert Group (2017) *Report and recommendations on medical and scientific aspects of the Armed Forces Compensation Scheme*, IMEG: 5.

4.30. It is important to note that under the AFCS Order 2011, 'mental disorders must be diagnosed by a clinical psychologist or psychiatrist at consultant grade.'[38]

Thresholds

4.31. Setting a qualifying threshold for to access a pension for individuals severely injured, physically and/or psychologically as a result of the Troubles/Conflict presents a number of challenges. Both the IIDS and WPS represent two important case studies using the prescribed degrees of disablement with aggregated thresholds of between 14% and 20% to allow access to an injured pension. Meanwhile, the AFCS based on a no-fault, tariff based system similarly provides an aggregated approach to grading injuries and determining levels of award. Under the AFCS, the Guaranteed Income Payment (GIP) or pension is awarded where assessment has determined severe injury or illness and the claimant falls between tariff 1 and 11.

4.32. The assessment process also includes determination of serious and permanent conflict-related mental disorders that involves diagnosis by a consultant psychiatrist or psychologist. A similar graded approach could be developed with the required numbers of descriptors to assess for permanency of mental disorders under the VASPA. Equally, and in line with the recommendation put forward by the WAVE Trauma Centre, a threshold of between 14-20% under a prescribed degrees of disablement could be adopted under the VASPA. In either case, further substantive work would be required to design a set of graded levels of injury and specific descriptors in the areas of physical and psychological injury.

Considerations for assessment

4.33. The Industrial Injuries Disablement Scheme, War Pension Scheme and Armed Forces Compensation Scheme provide useful relevant case studies in the development of an assessment process for the VASPA. It is important to note that the Commission have examined these examples solely for the purpose of informing the development of advice relating the proposed VASPA including the assessment process.

4.34. Both the WPS and AFCS pension/compensation schemes assess a range of single and multiple conflict-related physical and psychological injuries and grades those injuries according to the impact on disablement and personal functioning. The 9 tariff of injury tables and 15 tariff levels that

[38] HM Government (2016) The Armed Forces and Reserve Forces Compensation Scheme Order (AFCS) 2011 in force from 31 May 2016, HM Government: 68.

are central features of the AFCS assessment process are well established in practice with descriptors across a range of injuries defined in legislation.

4.35. Both schemes consider applications from former and serving armed forces personnel and are administered by Veterans UK. Under the AFCS information provided by claimants is reviewed by lay assessment officers with access where required to medical advisers to support judgements. The burden of proving any issue under the AFCS lies on the claimant but where records have been lost there is a presumption in favour of the claimant. Further, there is a provision for the production of evidence with the Secretary of State who is required to produce relevant medical or other records which are in the Department's possession. Lastly, the AFCS operates on the basis that the standard of proof is on a balance of probabilities.[39]

4.36. Access to medical records and other supporting information could prove to be problematic for potential applicants to the VASPA especially where incident reports (linked to particular Troubles-related activity) are having to revert back to events that occurred over 40-50 years ago. Therefore, while there would remain a level of responsibility with the claimant to the VASPA to provide as much supporting information as possible including medical reports, there would equally be a responsibility on state agencies to retrieve as much supporting information as possible. An important component of the administration of the VASPA would involve the development of a comprehensive information retrieval process. This process would be developed by the lead agency (administering the VASPA) and a range of statutory and other public agencies based in the health, justice, welfare provision sectors and elsewhere to ensure all relevant information including medical records are accessed.

4.37. The assessment process administered by Veterans UK (on behalf of the MoD) as part of the AFCS is mainly a desk-based exercise with access to a range of information provided by the MoD and other government departments and public agencies. A similar desk-based application process could form part of the VASPA. In many instances, given both the chronic and severe level of physical and/or psychological injuries sustained by potential applicants who would have accessed statutory mental health and other services within health systems across the UK and elsewhere access to and provision of supporting information should be reasonably straightforward. In these cases where assessment of the level of award under the VASPA based on the supporting information should be

[39] HM Government (2016) The Armed Forces and Reserve Forces Compensation Scheme Order (AFCS) 2011 in force from 31 May 2016, HM Government: 94.

all that is required. However, in the event where there are challenges to accessing sufficient information to support an application, access to an independent medical assessment must also form part of the VASPA scheme.

4.38. Further consideration will need to be given to the specific design and implementation of an independent medical assessment as part of the VASPA. The development of an assessment process remains a focus of Dr Mulholland's work that will report at the end of May 2019. At this point there are a number of possible features of an independent medical assessment process that can be put forward for consideration:

- Access to the process should only occur following assessment of all available supporting information from the applicant and information retrieval process if required;

- Adoption of an integrated/combined approach involving a multi-disciplinary team/panel assessing the impact of conflict-related physical and psychological injury; and

- Panel members should be drawn from a number of relevant disciplines including psychiatry/psychology (Consultant Grade), physiotherapy and/or occupational therapy. All panel members should be trauma trained and ideally have had therapeutic experience of working with individuals and families whose health and wellbeing has been affected by the legacy of the Troubles/Conflict. All panel members should receive special training on the administration of the VASPA (similar to training received by those responsible for assessing applications).

- Assessment should be conducted in locations that are familiar and comfortable for individual applicants and preferably not within a clinical or statutory setting. An empathetic and flexible approach should be considered in deciding the location of individual medical assessments.

- Individuals should be given the opportunity to be accompanied by a representative to advocate on their behalf if required.

- Assessments should be conducted in a sensitive and empathetic manner, not seek to be unduly intrusive and mindful that such processes can re-traumatising.

Review of Assessment Process

4.39. It is essential that feedback from applicants and recipients is built into the process of implementing the VASPA. A review of the scheme one year into implementation is recommended so that learning from the feedback of victims, survivors and carers is implemented. While a lot is known about the impact of physical injury the diagnosis of conflict related trauma on mental health is an evolving area and there is a need for ongoing research and evaluation to be built into the implementation of the VASPA.

4.40. There may be a need for re-assessment to take place if an individual's physical or psychological health becomes worse over time. The Commission is clear that the purpose of this is not to reduce entitlement, but to ensure that the needs of recipients are adequately met by the VASPA. This could potentially mean that the award is increased if it is assessed that an individual's well-being has declined and further support is required.

Date parameters

4.41. The Commission has been asked to consider what the date parameters for the VASPA should be and whether the cut-off point for accessing the pension should be the 1998 Good Friday/Belfast Agreement.

4.42. The assumption in the previous advice was that the date parameter for the VASPA would be the Good Friday/Belfast Agreement. However there have been discussions as to whether the cut-off point for access to the VASPA should be extended to the date of the Stormont House Agreement or further to the present day.

4.43. The Victims and Survivors (Northern Ireland) Order 2006 provides interpretation that a "conflict related incident" means an incident appearing to the Commissioner to be a violent incident occurring in or after 1966 in connection with the affairs of Northern Ireland".[40]

4.44. Therefore the Commission recommends that any individual that presents with a "conflict related" injury, should be assessed and if they qualify, awarded the VASPA, regardless of when the injury took place, post 1966.

Appeals

4.45. There must be a clear avenue of recourse for claimants who feel their application for a VASPA has been unfairly denied or assessed. The adoption of a system similar to the DLA/PIP procedure linked into the

[40] The Victims and Survivors (Northern Ireland) Order 2006. Legislation can be accessed here: https://www.legislation.gov.uk/nisi/2006/2953/pdfs/uksi_20062953_en.pdf

decisions taken within the Pensions Appeals Tribunals process and the considerable body of case law surrounding Social Security Tribunals, could be considered.[41]

4.46. Placement of the VASPA within this appeal process and associated legal system would provide significant certainty to the process from the outset and seek to reduce the number of legal challenges.[42]

4.47. There is a clear need for an appeals process where the outcome of an assessment falls below the qualifying threshold. The Commission recommends that a two tier approach to appeals be adopted; firstly that applicants can request a 'reconsideration' where they are unhappy with initial outcome of their claim. During reconsideration (by a different assessment officer) the original decision can be maintained, or the award can be increased. The original award cannot be reduced or removed.

Continuity

4.48. The Commission's 2014 advice recommended that the VASPA should pay benefits for the life of the qualifying recipients and potentially after their death, for a spouse, dependents and/or carers.

4.49. To enable a transparent process around this recommendation, the Commission recommends that the VASPA should be transferred once to a nominated person for a specified amount of time. The nominated person should be limited to someone who is a registered care and/or spouse.

4.50. The rationale behind paying the recipients of VASPA is that they are assisted with the effect conflict-related disablement has had on their lives. The reason for providing access to the VASPA to a carer following the death of their loved one is recognition of the significant care and support provided over many years. It is also a measure of recognition that will ease financial hardship in the years ahead.

4.51. The Commission is aware that in instances where individuals are currently in receipt of a pension linked to their conflict-related injury, for example the War Pension Scheme, there may be legal implications relating to access to the VASPA. Further consideration will need to be given to this issue.

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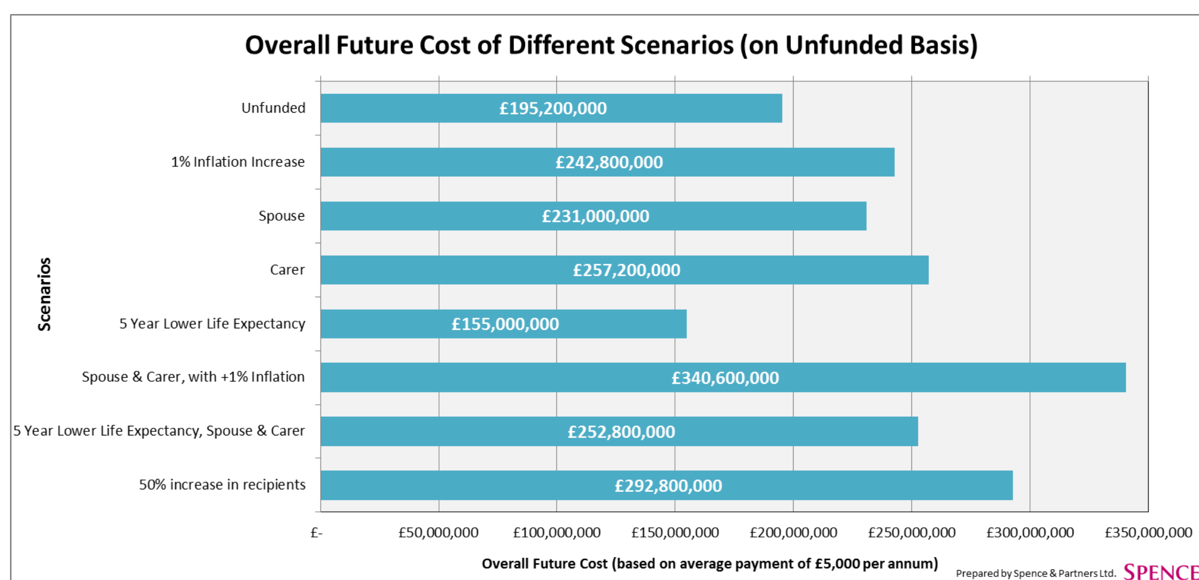
[41] RSM McClure Waters and Spence (2014) Pension for the Severely Injured Project – Final Report, Commission for Victims and Survivors.

[42] RSM McClure Waters and Spence (2014) Pension for the Severely Injured Project – Final Report, Commission for Victims and Survivors.

Figure 2 - Overall Costs of Different Scenarios[43]



Means testing

4.52. The Commission recommends that the VASPA is not means tested. There is an understanding that this may mean those individuals who are already in receipt of a pension connected to their Troubles related injury could also qualify to receive the VASPA.

4.53. To ensure equity of access, the Commission recommends that if an individual is already in receipt of a pension arising from their Troubles related injury that is greater than the amount that would be paid by the VASPA, they will not qualify under this scheme.

4.54. However if a potential recipient is in receipt of a pension that is not equal to the amount they would receive through the VASPA, the difference will be paid through this scheme.

4.55. The purpose of this approach is to ensure that those individuals who have already received a workplace pension due to their Troubles related injuries will not be paid over and above those individuals who have never received a guaranteed income payment.

Numbers and Costs

4.56. Part of the request from the Secretary of State to update the Commission's pension advice relates to the costs associated with the future provision of a VASPA. To assist the Commission in this area, Spence were again

[43] Spence (2018) CVS – Research into a Victims' and Survivors' Pension Arrangement ("VASPA") Update Assumptions.

engaged to procure specialist actuarial advice following initial calculations contained in their 2014 Report coproduced with RSM McClure Watters.

4.57. A subsequent report was produced by Spence on behalf of the Commission in December 2018. The main assumptions Spence used in making their calculations were as follows:

- The assumed retirement rate (period of payment of pension) is 30 years;
- A future inflation rate is 2.7%;
- Recipients receive on average £5,000 per annum. This is based on the assumption that benefits will increase in line with the Consumer Price Index; and
- That an unfunded (pay as you go) model is adopted.

4.58. It is important to note that the average £5,000 per annum figure contained in the latest data provided by Spence was for cost purposes only. Therefore individuals who qualify for the VASPA may be in receipt of different annual awards based on the assessed severity of their injuries. Table 3 usefully illustrates the operation of graduated payment system with reference to the War Pension Scheme.

4.59. The research outlines a number of different scenarios where the assumptions above can be varied and a new total cost can be estimated. For example, it is likely that the number of recipients could increase and these variable assumptions in turn alter the overall costs. See Table 5 below.

Table 5 - Impact of Additional Beneficiaries on Total Cost (on an unfunded basis)

Variations in the Number of VASPA Recipients	Overall Estimated Cost* (£)
1 Recipient	£230,200
250 Recipients	£57,500,000
500 Recipients	£115,100,000
750 Recipients	£172,600,000
1000 Recipients	£230,200,000
*Reflects future pension payment only and does not include back payments	

Delivery Mechanism

Integrated approach to delivery

4.60. The Commission was asked to examine the possibility of taking a two-phased approach to the delivery of the VASPA with a physical injury pension being rolled out first, followed by those with a psychological injury.

4.61. However in developing this advice the close relationship between physical and psychological injury has become very clear. The WAVE Injured Report[44] highlighted the interdependency of the impact of physical injury on the psychological state of the individual and their ability to function. The study also refers to how the continued debilitating experience of pain management can have a negative effect on psychological wellbeing which can result in alcohol and/or drug dependency. Further, feedback from a substantial number of injured individuals and their families throughout the research reflected how many are concerned about their future economic and financial wellbeing, causing significant psychological stress that has been exacerbated by ongoing welfare benefit reform.

4.62. Many people with severe physical injuries will therefore have suffered psychological injury also, often with long lasting impact. If there were to be two discrete assessment systems for physical and psychological injury many people may have to go through both, and a way of aggregating the outcome would need to be developed. There is therefore both a strong research and pragmatic argument for an integrated assessment model, which we have illustrated with reference to the IIDS, WPS and AFCS as useful and relevant case studies.

4.63. A concern has been raised that adopting an integrated assessment model would require a new assessment process and may therefore delay access to the VASPA for those severely physically injured people whose injuries are evidently over the threshold. To avoid this the Commission recommends that those who already have medical evidence which demonstrates the severity, permanence and impact of their injuries (physical and/or psychological) are reviewed by the panel as soon as it is formed. On the basis of substantive and validated available evidence they would not have to wait for assessment. This is consistent with the approach outlined to all assessments above.

[44] Breen-Smyth, M. (2012) *The needs of individuals and their families injured as a result of the Troubles in Northern Ireland*, produced on behalf of the WAVE Trauma Centre, WAVE Trauma Centre.

One off payment versus ongoing payments

4.64. The Commission was asked to consider whether or not payments of the VASPA should be made as an ongoing payment or as a one of 'lump-sum' payment.

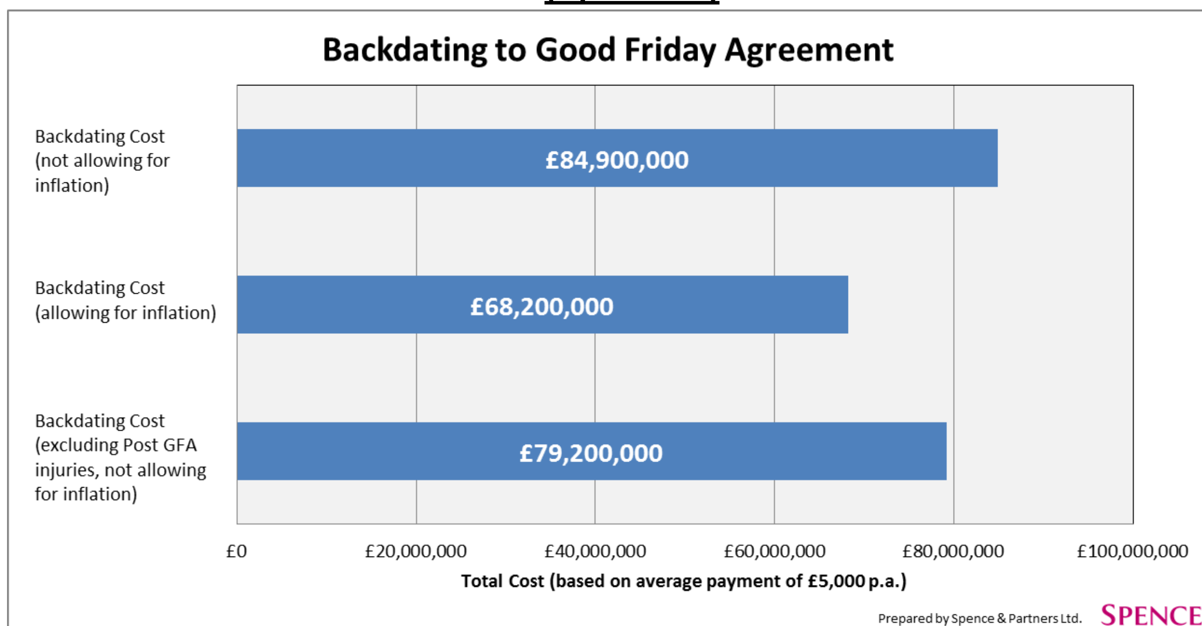
4.65. Consultation with the Victims and Survivors Forum, WAVE and other stakeholders have highlighted the need to recognise those individuals who have been waiting for the VASPA to be put in place since it was discussed in the Stormont House Agreement in 2014 and who are now ageing without a definitive answer on when this will proceed.

4.66. Therefore, the Commission recommends that those individuals who qualify for the VASPA should be given the option of a lump sum payment or a regular payment.

Backdating

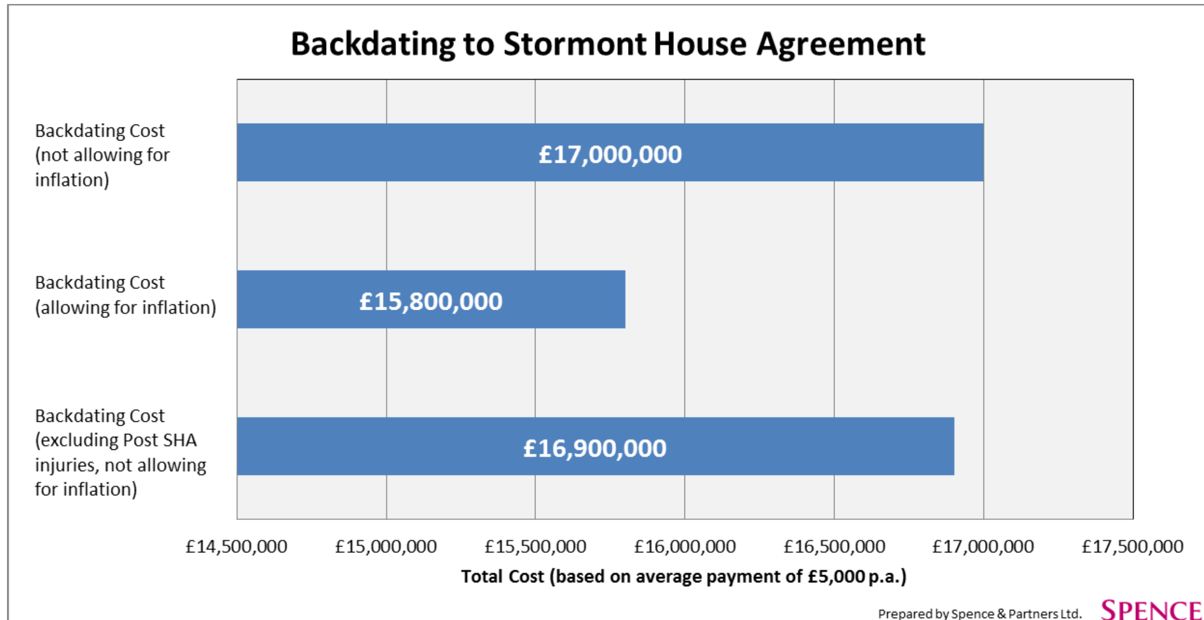
4.67. The Commission heard from a range of views including those expressed by members of the Victims and Survivors Forum and Pension and Need Working Group on the issue of backdating. The Commission recommends that the VASPA is backdated to the Stormont House Agreement from 2014. This is the first instance where the need for a pension for the most severely injured is recognised formally by government and the five main political parties.

Figure 3 - Impact of back dating to Belfast/Good Friday Agreement (April 1998)[45]



[45] Spence (2018) CVS – Research into a Victims' and Survivors' Pension Arrangement ("VASPA") Update Assumptions, Spence.

Figure 4 – Impact of back dating to Stormont House Agreement (December 2014)[46]



Other Considerations

Jurisdiction

4.68. While the vast majority of conflict-related incidents took place in Northern Ireland, there were a number of incidents in other locations; particularly in Great Britain and the Republic of Ireland.

4.69. The Stormont House Agreement contained a commitment to taking steps to ensure that victims and survivors have access to high quality services, with a specific reference to those who do not live in Northern Ireland. The Commission welcomed this commitment, as it echoed the Commission's policy position that there should be an equitable approach to dealing with victims and survivors, regardless of where they live.[47] It is the Commission's view that this principle should apply to the payment of the VASPA.

4.70. The Commission recommends that an actuarial specialist is engaged once there is greater certainty around the assumptions and numbers to provide a more accurate estimate of the scheme costs.

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[46] Spence (2018) CVS – Research into a Victims' and Survivors' Pension Arrangement ("VASPA") Update Assumptions.

[47] CVSNI (2014) *Accessing Funding and Services for Victims and Survivors Outside of Northern Ireland*, Belfast: CVSNI.

4.71. The Commission further recommends that consideration be given to the cost of administering the scheme over its estimated life span.

Limitation of this advice paper/Further work to be conducted

4.72. Given the limited budget and time allocated for this review of the 2014 advice, the Commission recommends that further work must be undertaken to ascertain the legal position in relation to qualifying assessment, backdating of payments and the likely incidents of discrimination arguments and appeals.

Equality Impact Assessment

4.73. The Commission also recommends that a full Equality Impact Assessment (EQIA) is conducted as part of any consultation process.

4.74. A full EQIA will assist the NIO to take into account the needs and effects of the VASPA on people within the Section 75 equality groups. This will enable openness, transparency and early engagement in the policy development process.[48]

Communications Strategy

4.75. The Commission is aware of the need to manage expectations of stakeholders, particularly in relation to the level of payable benefit, qualifying criteria and who the potential beneficiaries will be.

4.76. The Commission recommends that a full communication strategy and action plan is developed and agreed with all key stakeholders. This should outline the objectives, direction and intended outcome of the VASPA.

4.77. This should be used by all relevant stakeholders in order to ensure continuity of message across all applicable platforms.

5. Conclusion

5.1. The Commission firmly believes that the SoSNI and the UK Government has the relevant information needed to begin the process of drafting the VASPA legislation. People who have been severely injured as a consequence of the conflict and their carers have suffered for decades without proper recognition and receiving the financial security they deserve.

[48] Equality Commission for NI (2017) Effective Section 75 Equality Assessments: Screening and Equality Assessments, ECNI, July.

My wife and I have tried to live off Disability Living Allowance and Employment Support Allowance since [the car bomb explosion]. We have not been able to work ever since the bomb and she had to leave her job to become my full-time carer. This pension would give us back our dignity as we enter old age. The government needs to do this now. Before it is too late.

Alex Bunting; injured in 1991, aged 37.

5.2. The Commission now calls on the UK Government to move forward to introduce the VASPA as quickly as possible.

Annex

a. SoSNI Letter of Request (August 2018)

b. CVSNI 2014 VASPA Advice Paper (June 2014)

c. Psychologically Injured Pension Advice Project Report (April 2018)

d. Spence Report (December 2018)