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When life becomes cheap: Statutory compensation for conflict-related bereavement

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Introduction:

Good morning everyone. I'd like to begin by thanking you for giving me the opportunity to make a very small contribution to today's important discussion. Today I will be discussing some preliminary research undertaken along with Luke Moffett and Daniela Suarez-Vargas on compensation for conflict-related bereavement in Northern Ireland. While the issue of compensation has been in the headlines recently, our analysis of dozens of the earliest cases points to a statutory compensation system that not only lacked any semblance of consistency but was utterly devoid of compassion too. Given the natural sensitivities around the subject, today I will be relying on cases that have been discussed in existing studies, open access sources and archived accounts.

Caveats:

It is necessary to acknowledge some important caveats before we begin. Firstly, as debates around the pension for the severely injured and the earlier Eames/Bradley proposals have shown, compensation can regrettably become enmeshed in politically toxic debates about victimhood. Different perspectives on this have been well rehearsed elsewhere, and I see little need to or value in revisiting such a divisive issue today. Secondly, critically examining compensation for conflict-related bereavement is not to fallaciously suggest that it is a panacea; I feel little need to point out to those among us today with lived experience that bereavement creates a range of complex needs for victims and survivors, not all of which can, or indeed *should*, be addressed through monetary compensation. Finally, we must frankly acknowledge that no amount of money can ever truly reflect the enormity of the loss caused by conflict-related bereavement; it is worth recounting here the words of one victim's son following a recent award:

Today's settlement doesn't bring back our loved ones. The hurt, the loss is felt every day. Today and every day we think of our family members who can't be with us'.¹

Context to compensation:

As political violence worsened in the North of Ireland, the human and financial cost began to escalate. Official figures indicate that by as early as August 1972 £17.4 million had been paid out to various victims, with a further £15 million being paid out for property damage.² By the time of the Good Friday Agreement, £26 million had been paid out to those bereaved by the conflict.³ Yet the anomaly is that despite these headline figures many families received little for their loss; some victims rejected compensation offers as 'blood money' - others were not in a position to reject it despite their misgivings; for some families bringing a civil case was about getting the truth about, rather than money for, their loved one's death⁴; and in other cases still it was suspected that compensation payments were being used to avoid criminal justice accountability for state violence.⁵

Statutory compensation:

Compensation for conflict-related bereavement was initially addressed under the terms of the Criminal Injuries to Persons (Compensation) Act Northern Ireland (1968). Under this provision, anyone who was injured as a result of what was classified as a 'criminal act' could seek compensation upon application to the county court. By 1976, approximately 90% of claims brought under this provision were conflict-related.⁶ However, judicial discretion led to inconsistencies in the amounts awarded to different families, with a multitude of factors ranging from gender to access to legal representation

¹'Ballymurphy victims' families to receive significant damages', *BBC News NI*, 13 June 2022, available online at <https://www.bbc.co.uk/news/uk-northern-ireland-61781663> (accessed 30 June 2022).

²'Compensation statistics', *The Troubles*, Issue 16, p. 13.

³ Kenneth Bloomfield, *We Will Remember Them* (Belfast: Northern Ireland Office, 1998), para. 5.3.

⁴ Bill Rolston, *Unfinished Business: State killings and the quest for truth* (Belfast: Beyond the Pale, 2000), 79.

⁵ Brice Dickson, *The European Convention on Human Rights and the conflict in Northern Ireland* (Oxford: Oxford University Press, 2010), 249.

⁶ Greer & Mitchell (1978 supplementary booklet).

proving relevant here. Increased financial pressures and other factors led to reform of the system.⁷ Accordingly, compensation for injury sustained on or after 9th August 1977 would now be dealt with under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977. This established a new administrative scheme overseen by civil servants, though notably the NI Secretary of State retained the discretionary power to reduce or refuse compensation where a victim had been engaged in illegal activity (Art 6(3)) or did not fully co-operate with the police to identify and apprehend their assailant (Art 3 (2) (d)) – in a context where some sections of society had little to no confidence in the formal criminal justice system and the police force, and where the exact circumstances surrounding certain deaths were deeply contested, this was obviously problematic.

Themes:

Employment status:

In terms of major factors that influenced compensation, one of the most significant was the income of the deceased – which is, of course, naturally tied to other factors like employment status, gender and age. In the context of a conflict where *most* of those killed were working class people from socio-economically deprived areas,⁸ basing compensation on income, rather than need, naturally placed a significant number of families at a distinct disadvantage.

A cursory glimpse at some of the earliest cases exposes the inequality and inconsistency at the heart of statutory compensation. For example, the widow of a leading cancer specialist killed in a 1975 IRA bomb in London was awarded £40,000 compensation. This payment, along with the proceeds of the sale of the family home, allowed her to secure her children's financial future, yet she would still protest that:

⁷ These other factors included debates over compensation for security force widows and debates over compensation for those allegedly involved in illegal activity. Ibid.

⁸ Marie Fay et al, *The cost of the Troubles Study: Report of the Northern Ireland Survey: the experience and impact of the Troubles* (Belfast: INCORE, 1999).

Nothing will bring my husband back. The pain gets worse but I have not changed my resolve to make the best possible of it... with inflation it is difficult. You cannot win in this situation - you are grateful for what you receive, but people could quite easily say you were greedy if you said it was not very much. I suppose we are lucky that the state gives us anything. Compared with some of the awards for accidents, it might be very low, but I do not know if we are entitled to expect anything anyway.⁹

By contrast, families whose loved ones were employed in poorly paid manual labour jobs, or who were temporarily laid off work or who were in receipt of other state benefits received far less generosity.

For example, the widow of a man killed by the British Army in 1971 was awarded £350 compensation for herself and her nine children. Most problematically, the case heard prior to this had seen the owner of a prized greyhound being awarded £700. Reflecting on this, the victim's daughter later asked 'where, in any land, is the price of a dog more important than my Daddy?'.¹⁰ In a similarly disturbing case, a widowed mother of 12 was informed that because her husband was on sick benefit when he was killed she was now actually one shilling a week better off on a state widow's pension.¹¹ In other cases, compensation payments offset benefits payments that victims' families were otherwise entitled to; an instructive example here being the parents of a teenage girl killed in 1981 having their supplementary benefit payments stopped by the DHSS.¹²

Gender:

Gender was also a significant factor in terms of how families struggled to cope with financial hardship following bereavement and how the lives of women were undervalued by the compensatory system.

⁹ '£40,000 for widow of murdered specialist', Irish Press, 21 October 1976, 3.

¹⁰ BBC News NI (2022).

¹¹ Relatives for Justice, *Submission to Special Rapporteur of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, Pablo De Greiff November 2015 (Belfast: RfJ, 2015), 39.

¹² David McKittrick et al, *Lost Lives: The stories of the men, women and children who died as a result of the Northern Ireland Troubles* (Edinburgh: Mainstream, 1999), 861.

One victim whose mother was awarded £12,000 following the killing of their father captured the reality of this:

My mother had to bring up two children and had to give up work. She was bad with her nerves and had post-traumatic stress disorder after being shot at herself. The whole thing took a toll on her. That money that she got was ludicrous. Life was very difficult for us growing up. We had no money. We lived for my mother's widow's pension coming in every week and we didn't have a fridge until I was 11 years old.¹³

Rarely, however, was such a reality acknowledged within the compensatory system. In one particularly insensitive and nakedly sexist example a young widow was told by the judge that she was a young attractive woman who could marry again.¹⁴

Echoing the shortcomings of basing the system on income rather than need, unpaid work within the family home was often looked on much less favourably than paid employment, which naturally placed the families of women victims at a disadvantage. Indeed, some of the payments that we have come across for women victims go as low as £84 and £149. Although the NIO made some attempt to address the gender gap in 1975, the following remarks from the husband of an Omagh bomb victim suggest that gender imbalance still persisted:

Because she was a housewife, she had no monetary value, as opposed to someone who worked 80 hours a week. She looked after our children, she was their mother. If she had been a solicitor, or a teacher, they would have given money out from she was 39 years old until she was 65 years old, for what she would have earned. But because

¹³ Leona O'Neill, 'What's the price of a life? Troubles relatives on the inequalities of compensation', *Belfast Telegraph*, 6 October 2018, available online at <https://www.belfasttelegraph.co.uk/life/features/whats-the-price-of-a-life-troubles-relatives-on-the-inequalities-of-compensation-37389526.html> (accessed 4 July 2022).

¹⁴ McKay (2009), 69.

she was a housewife, she was treated like garbage. At the end of the day, it is not about money - it is about fairness for all.¹⁵

Age:

Likewise, the families of children killed during the conflict were also disadvantaged by a system that premised itself on income over need. One case relating to the deaths of 3 children and the injury of their mother when an IRA getaway vehicle veered out of control under security force gunfire in 1976 is particularly instructive. Initially, the family had a claim for an unspecified sum for the loss of their children refused; they were informed at this time that they were only entitled to funeral expenses. A subsequent compensation offer of £3,500 from the NIO in 1977 was rejected by the family,¹⁶ with their mother commenting that 'I am utterly disgusted with the offer and I am obviously going to fight it. I have broken up my home, lost my children and they have the cheek to offer me £3,500'.¹⁷ It should be noted that in other cases awards as low as £56 for child victims have been recorded.¹⁸

There is a tension here between sufficiently recognising the human aspect that the loss of a child in such circumstances can be particularly devastating with, from the bureaucratic perspective at least, some acceptance that they were not economically active nor had they dependents at the time of their deaths. Further friction is also evident in how the cold and detached bureaucratic way of seeing the child victim as they were at the time of their death fails to correspond with the tendency of families to see the unmet potential inherent in the child.

Perhaps this is best captured in the following remarks of the brother of a young girl who was killed in a bomb attack in the 1990s:

¹⁵ Leona O'Neill (2018).

¹⁶ David McKittrick, 'Mother found dead', Irish Times, 22 January 1980.

¹⁷ 'Offer of £3,500 disgusts Ulster victim', 12 October 1977.

¹⁸ Joe Duffy & Freya Clements, *Children of the Troubles: The untold story of the children killed in the Northern Ireland Conflict* (Dublin: Hachette, 2019). A slightly higher figure of £58 is, however, recorded for this death in McKay (2009).

My mum got around £5,000 when [sister] died. They didn't know what [sister] would have grown up to be... Compensation should be the exact same for everyone. Everyone should get a decent amount of money... My sister was a young girl — she had her whole life in front of her. Who knows what she would have grown up to be?... A life is a life, no matter what age.¹⁹

Legal representation:

Access to legal representation was also a significant factor, especially for victims killed by the state. Commentary at the time,²⁰ and indeed more recent archival work by NGOs, suggest that there was a deliberate policy of hard balling victims. This involved the Crown solicitor denying any wrongdoing right up until the courtroom door before finally settling claims before they reached the courtroom floor. The stark choice in this situation was to either accept a derisory offer or reject it with a view to renegotiating with the NIO or taking the case to the county court for adjudication. In many cases low offers were accepted because victims and survivors were often unaware of their rights, were in dire financial straits and did not have access to the necessary legal representation advising them against acceptance. For others, acceptance meant avoiding the added trauma of a long drawn out legal process. As Kenneth Bloomfield noted:

A critical moment comes when an applicant has to decide whether to accept an offer made to him/her. Some felt that they had faced an invidious choice between acceptance of an unsatisfactory award and the consequences of further delay, perhaps leading to a court appearance and the prospect of adversarial cross-examination.²¹

¹⁹ Leona O'Neill (2018).

²⁰ Conor O'Clery, 'Compensation is eventually paid, despite long denials', *Irish Times*, 14 June 1975.

²¹ Kenneth Bloomfield, *We will remember them: Report of the Northern Ireland Victims Commissioner, Sir Kenneth Bloomfield* (Belfast: NIO, 1998), para. 5.9.

Those who could afford legal advice were better placed to contest initial offers, often resulting in a significantly improved offer. The disparity between initial offers and revised offers was notable, as can be seen in the case of a man who was injured in an attack by the Shankill Butchers in the 1970s. Having rejected an initial offer of £750, he was subsequently awarded £5,000 a year later.²²

Conclusion:

To conclude then, in light of our discussions today about devising reparation programmes and processes that are truly victim centric and premised on the buy-in and input from victim and survivors, what can we say about the compensatory system for conflict-related bereavement in the North? Well, it would seem fairly obvious that a system that values the life of a greyhound as twice that of a working-class father or that sees remarriage as a solution for financial difficulties faced by young widows is *not* a model of best practice – and that is putting it mildly! Instead, it represents an invidious system that: set victim against victim by creating material hierarchies of worth among the bereaved; that compounded emotional trauma by failing to alleviate financial hardship; and that allowed sexism, ageism, classism and abled-bodiedism to ensure that life became not only figuratively, but also *literally*, cheap during the conflict. Recent significant payouts in high-profile cases must not allow our discussion around compensation for conflict-related bereavement to lazily slip into kneejerk reaction that further exacerbates division among victims and survivors. Instead, we should use these recent cases to engage in a more nuanced examination of the fundamental problems that rendered the statutory compensation system unfit for purpose across the board.

²² '£5,000 award for 'butchers' victim', Irish Times, 11 January 1980.