
STATUTORY INSTRUMENTS

2020 No. 103

The Victims' Payments Regulations 2020

PART 7

Appeal, further assessment and review

Finality of decisions

32. Where the Board determines—

- (a) whether a person is entitled to victims' payments, or
- (b) the amount of victims' payments payable to a person,

subject to regulations 33, 34 and 43 the determination is final.

Further assessment where disablement worsens

33.—(1) A person may apply to have their degree of permanent disablement assessed again where—

- (a) the person's permanent disablement has become worse, and
- (b) the person reasonably believes that their assessed degree of permanent disablement ("the original assessment") does not provide a reasonable assessment of the degree of permanent disablement resulting from the relevant incident.

(2) An application under paragraph (1) must—

- (a) be made to the Board
- (b) be in writing;
- (c) be on a form approved for the purpose by the Board;
- (d) be signed by or on behalf of the claimant;
- (e) be made within the period of 12 months beginning with the date on which the worsening began;
- (f) specify the grounds on which the application is made;
- (g) include medical evidence that the applicant's disablement has become worse, and
- (h) include such information as the President of the Board may from time to time determine.

(3) On receipt of an application under paragraph (1), the Board must—

- (a) arrange for the applicant to be assessed by a health care professional, and
- (b) provide that health care professional with any relevant information obtained under regulation 29 or otherwise in the possession of the Board.

(4) The health care professional must—

- (a) assess the applicant's degree of permanent disablement in accordance with regulation 15(2) to (8), and

- (b) make a report to the Board—
 - (i) specifying the assessed degree of permanent disablement, and
 - (ii) reporting the reason for the assessment.
- (5) Where the assessed degree of permanent disablement specified under paragraph (4)(b)(i) (“the further assessment”) is higher than the original assessment—
 - (a) the Board must determine the amount of victims’ payments payable to the applicant in accordance with regulations 18(2) to (5), 19 and 20 by reference to the further assessment, and
 - (b) the applicant is entitled to the amount of victims’ payments determined under sub-paragraph (a) from the date of that determination.
- (6) Following the report made under paragraph (4)(b) or (in a case where paragraph (5) applies) following the determination made under paragraph (5)(a), the Board must as soon as reasonably practicable notify the applicant in writing of—
 - (a) the assessed degree of permanent disablement of the applicant;
 - (b) in a case where paragraph (5) applies, the amount determined under paragraph (5)(a), and
 - (c) the right to appeal.
- (7) A person may make an application under this regulation only once.

Appeals

- 34.—**(1) A person may appeal to the Board against—
- (a) a determination under regulation 10(4);
 - (b) a determination under regulation 12(3)(b);
 - (c) a determination under regulation 12(3)(c);
 - (d) an assessment of the degree of relevant disablement under regulations 13(3), 16(3) or 33(4);
 - (e) an interim assessment under regulation 14(1)(b);
 - (f) a determination of the amount of victims’ payments payable to a person.
- (2) An appeal must be brought before the end of—
- (a) the period of one year beginning with the date on which the determination or assessment was notified to the person, or
 - (b) such longer period as the President of the Board considers equitable having regard to the circumstances.
- (3) An application to appeal must—
- (a) be in writing;
 - (b) be on a form approved for the purpose by the Board;
 - (c) be signed by or on behalf of the claimant;
 - (d) be made within the period of 12 months beginning with the date on which the determination or assessment was notified to the applicant;
 - (e) include such information as the President of the Board may from time to time determine, and
 - (f) specify the grounds on which the application is made.
- (4) A person may appeal to the Board against a determination notwithstanding that the determination has been reviewed by the Board under regulation 43, and in such a case the period

mentioned in paragraph (3)(a) begins with the date on which the result of the review was notified to the appellant.

Appeal Panels

35.—(1) An appeal is to be determined on behalf of the Board by a panel appointed by the President for that purpose.

(2) An appeal panel must consist of three members and include—

- (a) in any case where the determination of the appeal requires the appeal panel to consider an assessment by a health care professional, one legal member, one medical member and one ordinary member, and
- (b) in any other case, one legal member, one ordinary member and one other member the President considers appropriate.

(3) An appeal panel may not consider a determination made by a panel which included any member of the appeal panel.

Determination of appeals

36.—(1) An appeal under regulation 34(1) is by way of reconsideration of the determination or assessment against which the appeal is brought, and accordingly—

- (a) on an appeal under regulation 34(1)(a), paragraphs (5) to (9) of regulation 10 apply as they do to a determination under regulation 10(4);
- (b) on an appeal under regulation 34(1)(b), the appeal panel must determine whether the appellant is entitled to victims' payments;
- (c) on an appeal under regulation 34(1)(c), the appeal panel must determine the Troubles-related incident or incidents in relation to which the applicant is entitled to victims' payments;
- (d) on an application under regulation 34(1)(d) or (e), the appeal panel must consider whether the assessed degree of disablement provides a reasonable assessment of the degree of disablement resulting from the relevant incident;
- (e) on an application under regulation 34(1)(f)—
 - (i) the appeal panel must determine the amount of victims' payments payable to the appellant, and
 - (ii) regulations 18(2) to (5) and 19 to 21 apply as they do to a determination under regulation 18(1), but with references to the applicant read as references to the appellant.

(2) An appeal panel is to determine the appeal by considering—

- (a) any material provided in support of an application;
- (b) any material obtained under regulation 29;
- (c) any evidence given in a hearing;
- (d) any report to the Board by a health care professional;
- (e) any advice from an advisor appointed under paragraph 13(1) of Schedule 1, and
- (f) any other material which the panel considers relevant.

Medical assessment on appeal

37.—(1) The appeal panel may, for the purpose of determining the appeal, require that the appellant is assessed by a health care professional.

(2) Following a requirement under paragraph (1), the health care professional must—

- (a) assess the degree of relevant disablement, and
- (b) make a report to the Board—
 - (i) specifying the assessed degree of relevant disablement, and
 - (ii) reporting the reason for the assessment.

(3) In its application in the case of an assessment carried out under paragraph (2), regulation 18 has effect as if the references to the applicant were to the appellant.

(4) The appeal panel may, if it considers it appropriate, direct that the assessment under paragraph (2) is carried out, or not carried out, by a particular health care professional.

Remedies

38.—(1) On determining an appeal, the appeal panel may—

- (a) confirm a determination;
- (b) make a new determination or vary a determination;
- (c) increase, decrease or confirm an assessment of the degree of relevant disablement;
- (d) exercise any function of a panel appointed by the President for any purpose under these Regulations.

(2) Following the determination of an appeal, the Board must as soon as reasonably practicable notify the appellant in writing of the following matters—

- (a) whether a determination was confirmed;
- (b) if a new determination was made, the new determination;
- (c) if a determination was varied, the determination as varied;
- (d) if the assessment of the degree of relevant disablement was changed, the new assessment, and
- (e) a summary of the reasons for the matters in sub-paragraph (a) to (d).

Hearings

39.—(1) An appeal panel may direct that an oral hearing is to be held if—

- (a) the appellant reasonably requests an oral hearing, or
- (b) the panel considers an oral hearing to be necessary in the interests of justice.

(2) An appeal panel may, if it considers it necessary in the interests of justice to do so, direct that evidence at an oral hearing is to be given on oath.

(3) An oral hearing is to be held in private but the panel may, if it considers that it would be in the interests of justice to do so, direct that the hearing is to be held wholly or partly in public.

(4) The appeal panel may direct that an oral hearing is to be held, wholly or in part, via video link, telephone conference or any other electronic means.

(5) The Board may, by notice in writing, require any person to attend a hearing convened by the panel and to give oral evidence on oath to the appeal panel.

(6) A notice under paragraph (4) must specify one or more dates on which the person must attend, the earliest of which must be at least 21 days after the date of the notice.

(7) A person to whom a notice under paragraph (1) is given may make a claim to the appeal panel that—

- (a) the person is unable to comply with the notice, or
 - (b) it is not reasonable in all the circumstances to require the person to comply with the notice.
- (8) On considering a claim under paragraph (7), the panel may confirm, revoke or vary the notice.

Representation

40. The appellant may appear in person at an oral hearing and may be represented by any person appointed for that purpose.

Case management

41. An appeals panel may—

- (a) adjourn or postpone a hearing;
- (b) transfer the appeal to a different appeals panel, and
- (c) give whatever other directions, and may take whatever other steps, it considers necessary for managing the appeal and securing its efficient determination.

Exercise of functions by the chair

42. The powers under regulations 39(1) to (5) and 41 may be exercised by the chair of the panel acting alone.

Review

43.—(1) The Board may at any time review a determination made by the Board if the Board is satisfied that—

- (a) the determination was made in consequence of the applicant having—
 - (i) provided information which the applicant knew to be false in a material particular;
 - (ii) recklessly provided information which was false in a material particular, or
 - (iii) knowingly failed to disclose a material fact;
- (b) the determination was made in consequence of—
 - (i) ignorance of, or a mistake as to, a material fact, or
 - (ii) a mistake as to the law, or
- (c) there has been a relevant change of circumstance.

(2) The Board may review a determination made under regulation 12(3)(b) or (c) where a person entitled to victims' payments is convicted of an offence such that regulation 6(1), (2) or (3) may apply.

(3) A review of a determination is to be carried out on behalf of the Board by a Panel appointed by the President of the Board for this purpose.

(4) A review panel must consist of three members and include—

- (a) in any case where the determination of the appeal requires the appeal panel to consider an assessment by a health care professional, one legal member, one medical member and one ordinary member, and
- (b) in any other case, one legal member, one ordinary member and one other member the President considers appropriate.

(5) A review panel may not review a determination made by a panel which included any member of the review panel.

(6) On reviewing a determination, the review panel may—

- (a) confirm a determination, or
- (b) make a new determination or vary a determination;

(7) Following the determination of an appeal, the Board must as soon as reasonably practicable notify the appellant in writing of the following matters—

- (a) whether a determination was confirmed;
- (b) if a new determination was made, the new determination;
- (c) if a determination was varied, the determination as varied;
- (d) a summary of the reasons for the matters in sub-paragraph (a) to (d), and
- (e) the right to appeal.