23 November 23, 2023

**Information Note – Troubles Related Incidents and Paramilitary Style Attacks**

The President of the Victims’ Payments Board chaired a panel which heard an appeal in a matter arising out of an alleged attack by members of a paramilitary organisation. In the course of the decision, the following important general guidance was given on the interpretation of the relevant statutory provisions.

A TRI is defined in Section 10(11) of the Northern Ireland (Executive Formation etc) Act 2019 as “an incident involving an act of violence or force carried out in Ireland, the United Kingdom or anywhere in Europe for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there”.

In the context of alleged attacks by members of a paramilitary organisation, the following guidance was provided:

“Bearing in mind that there is a need to ensure consistency of approach between panels dealing with similar factual scenarios, this Appeal Panel which is chaired by the President of the Board takes this opportunity to provide additional guidance on what does and does not constitute a TRI for the purposes of this scheme.

It must be clearly understood that any such guidance must be treated as such. It is only guidance but it is intended to ensure consistency of approach by different panels set up to deal with applications and appeals. Each application and appeal must be decided on its own facts and merits, having due regard to any guidance issued by the Board, and paying close attention to the wording of the governing legislative provisions.

It must also be clearly understood that the guidance that is set out in this appeal determination is not exhaustive in terms of the identification of what is and what is not a TRI but is intended to set out in a principled manner the key issues that have to be considered when determining what is and what is not a TRI.

Examples of incidents which should be regarded as TRIs include the following.

1. An attack by members of a paramilitary grouping upon a person who was or who was perceived as being opposed to the cause espoused by that paramilitary grouping. This, in essence, is the case now being made out by the appellant and if the applicant’s case is accepted then he clearly would have described an incident which was a TRI. An act of violence perpetrated against a vocal opponent of paramilitarism by a paramilitary group during the Troubles is clearly an act of violence “for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there.” The act of violence is done to quell dissent in the community in which the paramilitary grouping is operating to ensure it can continue with its campaign of violence which is directly linked to “the constitutional status of Northern Ireland or to political or sectarian hostility between people there”.
2. An attack by members of a paramilitary grouping upon a person who was or who was perceived as being an informer or “tout” by that paramilitary grouping. An act of violence perpetrated against an actual or perceived informer or “tout” by a paramilitary group during the Troubles is clearly an act of violence “for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there.” The act of violence is done to ensure that the paramilitary grouping is not infiltrated and that it can go about its clandestine business relating to its campaign of violence which is directly linked to “the constitutional status of Northern Ireland or to political or sectarian hostility between people there” without interference from state agencies.
3. An attack by members of a paramilitary grouping upon a person who was or who was perceived to be fraternising with or in a close personal relationship with a member of the police, army, prison service or customs. This in essence is an example of an attack upon a person who is or is perceived to be fraternising with the enemy. The history of the early Troubles contains many examples of young women being tied to lamp posts and being tarred and feathered for associating with soldiers. An act of violence perpetrated against such a person by a paramilitary group during the Troubles is clearly an act of violence “for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there.” The act of violence is done to prevent cross community engagement, to reinforce the notion of us and them and to ensure the perpetuation of the use of violence in relation to “the constitutional status of Northern Ireland or to political or sectarian hostility between people there”.
4. An attack by members of a paramilitary grouping upon a person who was in premises that were being robbed for the purposes of obtaining money or materials necessary to fund or equip the said paramilitary grouping, thus enabling it to continue its campaign. An act of violence perpetrated against a shop keeper, pub owner or warehouse operative by a paramilitary group during the Troubles in order to steal money or materials in order to enable the grouping to continue to operate is clearly an act of violence “for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there.” The act of violence is done to ensure it can continue with its campaign of violence which is directly linked to “the constitutional status of Northern Ireland or to political or sectarian hostility between people there”.

An example of an incident which should not be regarded as a TRI.

1. The Panel wish to state clearly and unequivocally that there can be no excuse or justification for the fate that befell the appellant on *[redacted]*. This barbaric attack was morally repugnant, unquestionably unlawful and a crime and if it had been committed by a state agency would have clearly amounted to a flagrant breach of Article 3 ECHR. However, for the purposes of the present scheme an attack by members of a paramilitary grouping upon a person who was engaged in or was perceived as being engaged in “anti-social behaviour” or crime cannot per se and should not fall within the ambit of a TRI. In essence where the paramilitary grouping is exercising a vigilante function in a community this exercise of this function however repugnant and abhorrent cannot and should not be regarded as the use of violence “for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there.” This may seem harsh and insensitive to victims of such attacks but it is important for the integrity of the Scheme as a whole that a line is drawn somewhere in relation to the issue of what is and what is not a TRI and vigilantism in a community although it may have the indirect effect of suppressing overt opposition to paramilitarism in a community it cannot be said to be the use of violence “for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there.” It is the use of violence for the purpose of deterring anti-social activity or crime in a community where the ability of the police to act effectively and efficiently is stymied.

The central focus is and should be on the identification of the reason or reasons behind the use of violence or force rather than engaging in a speculative quest in the hope of identifying a collateral consequence of the violence or force which may advance the cause of the paramilitary group in question or assist it in achieving its aims. The adoption of any other approach to this question runs the risk of bringing the scheme into disrepute by reason of inconsistent decision making. It is only by the adoption of the recommended approach can the Board hope to identify what is a TRI on a consistent and principled basis.