

GUIDANCE NOTE (GN17/23): ORAL HEARING PROTOCOL

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Introduction

The Victims' Payments Board (VPB) was established in February 2021 under the Victims' Payments Regulations 2020 (the Regulations). These Regulations established the Troubles Permanent Disablement Payment Scheme (the Scheme) and govern the operation of the Board. The President of the VPB was appointed by the Lord Chief Justice. The Board comprises legal, medical and ordinary members appointed as judicial office holders by the Northern Ireland Judicial Appointments Commission. The Board administers applications made to the Scheme and determines entitlement to, and the amount of, payments in respect of injury caused by a Troubles-related incident/s.

The Protocol provides guidance to Board members, applicants, appellants and their representatives for oral hearing proceedings whether conducted in person or by virtual means. It applies equally to oral hearings directed in exceptional circumstances by a panel at a first instance decision; and to oral hearings directed by an appeal panel where the appellant reasonably requests an oral hearing or the panel considers it necessary in the interests of justice.

Acknowledging that applicants and appellants, whether represented or not, may find oral hearings difficult, the Protocol seeks to provide clarity and reassurance to all those taking part with regard to mutual expectations, standards of personal and professional conduct and a shared recognition the needs of victims come first.

The Protocol is underpinned by, and takes account of, the Scheme's guiding principles, namely:

- the need to prioritise, and be responsive to, the needs of victims of Troubles-related incidents;
- the need to be transparent and to communicate effectively with the public and victims of Troubles-related incidents;
- the need for the Scheme to be straightforward and simple to navigate;
- the need for applications to be determined without delay;
- the need for personal data to be handled sensitively.

While the Protocol has no statutory basis, it will inform and govern the conduct of Board members when fulfilling their duty to enable full and fair oral hearings. The Protocol also provides a framework of good practice for all parties in the spirit of working together to best serve victims.

The Protocol sets out clear procedures and high standards of conduct which require all those involved in oral hearings to:

- act in good faith at all times;
- uphold the highest standards of integrity, impartiality and objectivity;
- promote inclusivity and respect diversity;
- demonstrate respect and courtesy to everyone;
- use their best endeavours to deal with matters fairly, efficiently, promptly and sensitively;

- safeguard public funds;
- comply with statutory and administrative requirements of the Scheme.

It complements and should be read alongside:

- the Victims' Payments Regulations 2020 (the Regulations);
- the Northern Ireland (Executive Formation etc) Act 2019;
- Appeals Guidance;
- Procedural Guidance;
- Procedural Guidance Notes.

Notice period

In non-priority cases, the VPB will provide the applicant, appellant or their representative, with no less than six weeks' notice, or such shorter period as may be agreed, of the date, time and place of an oral hearing.

This notice period may be adjusted as necessary in priority cases.

Reasonable adjustments/Special requirements

First Instance Oral Hearings

Where an applicant or their representative is aware of any reasonable adjustments or special requirements owing to an applicant's physical or mental health, or other circumstances, the VPB should be advised within seven days of the applicant receiving the notice of oral hearing. Reasons for such adjustments or requirements should also be provided.

Oral Appeal Hearings

Section 5 of the Application to Appeal Form (the Application) gives the appellant or their representative the opportunity to provide details of any reasonable adjustments or special requirements needed, and these will be facilitated where possible. Subsequent to the Application being submitted, in the event further adjustments or requirements are needed, VPB should be notified at the earliest opportunity.

Although every effort will be made to proceed on the date notified to the applicant/appellant, occasionally, in order to facilitate a particular request or circumstance regarding a reasonable adjustment/special requirement, a short delay may be necessary. Should that be the case, the applicant/appellant will be informed and a new date arranged as soon as possible.

Evidence

VPB will compile a file of case papers to be considered by the panel at the hearing. The same file will be sent by recorded delivery or electronically to the applicant, appellant, or their representative (provided a form of authority has been signed).

VPB will provide the file no later than six weeks before the hearing. If there is a delay, VPB will advise the applicant/appellant of the reason/s. In the unlikely event, the file has not been received, VPB should be contacted as a matter of urgency.

Additional evidence and written submissions

Where an applicant or appellant wishes to rely on additional evidence and/or provide written submissions, these must be provided to the VPB at the earliest opportunity and no later than three weeks before the hearing. This is to provide panels with sufficient time to consider the additional evidence or submissions, and to avoid unnecessary delays in progressing the case.

Directions

The Chair of a panel may give, vary or revoke directions to ensure the efficient conduct and progress of the case, including the timely submission of any documents or evidence, and the adjustment of the timeframes within this Protocol as necessary.

Adjournments

To ensure applications and appeals are determined without delay, and to avoid unnecessary costs to the public purse, parties should be in a position to proceed to hearing on the first allocated date. Although a panel may adjourn a hearing at any time, either of its own accord or upon application by an applicant or appellant, it will only do so where considered necessary.

Where an applicant, appellant or representative becomes aware of an issue which may mean an oral hearing cannot proceed, VPB must be informed in writing at the earliest opportunity. The panel will then consider whether to grant an adjournment.

In the event a hearing is adjourned, applicants, appellants and representatives should ensure all directions issued by the panel are complied with in a timely manner. Where an adjournment is granted, the applicant/appellant will be provided with no less than three weeks' notice (or such shorter period as may be agreed) of the date, time and place of the resumed hearing.

When a hearing is adjourned prior to any evidence being heard, a reconvened oral hearing may be considered by a newly constituted panel appointed by the VPB. Where a hearing is adjourned after a case has been opened before a panel by way of evidence and/ or submissions, every effort will be made to reconstitute the same panel for the reconvened hearing.

Location and privacy of oral hearings

Oral hearings will be held in private at a location arranged and provided by VPB in as close proximity as practicable to the applicant or appellant's home address.

When hearings are conducted remotely, all those attending must ensure they are in a private location and cannot be overheard. Only those parties whose names and roles have been advised and approved in advance should be present during proceedings.

No audio or video recordings are to be made by any person attending an oral hearing.

Information about the application, the hearing and the names of any person attending must not be made public.

The VPB treats personal information confidentially, sensitively and in compliance with the UK GDPR.

[Privacy notice | Victims' Payments Board \(victimspaymentsboard.org.uk\)](https://victimspaymentsboard.org.uk)

Attendees at the hearing

In addition to witnesses, an applicant or appellant may be accompanied during the oral hearing by one representative and one person (or two where necessary) to provide moral support or physical assistance, such as a friend or family member. The panel is to be provided with a list of names of all persons attending the hearing and their role (i.e. in the capacity of a representative, supporter or witness). This list should be provided no later than two weeks before the hearing and will be subject to approval by the panel Chair. In exceptional circumstances, an amended list of attendees may be submitted for the consideration of the panel Chair in advance of the hearing.

Unless the applicant/appellant objects, or in exceptional circumstances the panel Chair directs otherwise, all approved witnesses will be entitled to be present throughout the hearing.

On occasion VPB may wish to admit observer/s to the proceedings for the purpose of training new members of the Board or the Secretariat. However, this will be subject to the agreement of all parties. Observers will have no role in proceedings or decision making.

The Hearing

Practical arrangements

In preparation for the hearing, the panel normally convenes at least 30 minutes prior to the allocated hearing time.

Attendees should use their best endeavours to be in attendance at least 15 minutes prior to the allocated hearing time. In the event an applicant, appellant or representative is unexpectedly delayed, the VPB should be informed at the earliest opportunity.

Where a hearing is held in person, attendees will be brought into the hearing room by a hearing clerk. Similarly, in virtual hearings attendees on the link will be admitted to the virtual hearing room by a clerk when proceedings are due to commence.

Water will be provided in the hearing rooms for all attendees.

Breaks will be afforded to applicants/appellants as required.

Procedure at the hearing

At the outset of the hearing, the Chair of the panel will make introductions, explain the various roles of those attending and the order of proceedings the panel proposes to adopt. The panel will take a victim-centred approach and, subject to the provisions set out below, will endeavour to avoid formality in the proceedings. The panel will conduct the hearing in the manner they consider suitable to clarifying the issues and dealing with the case justly and fairly.

During an oral hearing, applicants/appellants may provide oral submissions, give evidence or call witnesses previously notified to the panel. In order to obtain best evidence, applicants and appellants are encouraged, where possible, to provide direct evidence. It is acknowledged that evidence provided directly by a family member or a person attending in a supportive capacity may be of assistance, and this will be permitted by the panel as appropriate.

The role of those attending in a supportive capacity is mainly to provide moral support or physical assistance. They may also assist unrepresented applicants or appellants with the conduct of the case by quietly advising them, taking notes and helping with the case papers.

Where an applicant/appellant is represented, the representative may provide oral submissions, ask the applicant/appellant questions and call witnesses on their behalf. Representatives may also assist the applicant/appellant to present their case by directing the panel to any relevant matters of fact or law. Representatives should use their best endeavours to ensure all relevant evidence is provided to the panel, and to enable as full and fair a hearing as possible.

Panel members may ask applicants/appellants and witnesses questions to clarify aspects of the oral and written evidence provided. Applicants/appellants should be aware they may be asked questions of a sensitive nature e.g. pertaining to the incident, and/or physical/mental health issues. However, panels will remain mindful of the emotional, mental and physical well-being of applicants/appellants throughout the hearing.

During the hearing, applicants, appellants and representatives ought to address issues or questions to the panel Chair. Issues raised by applicants, appellants or representatives must relate directly to the subject matter of the hearing and/or practical issues arising on the day of hearing. Oral hearings are not the appropriate forum for raising complaints regarding the Scheme or the VPB in general. In the interests of all parties and of the effective progress of the case, any issues or concerns which have arisen before the hearing (e.g. outstanding information) ought to be raised with the VPB well in advance of the day of hearing.

Conduct at the hearing

Those attending hearings will be treated with courtesy and respect by the panel. It is expected panel members, clerks and administrators will be treated in the same manner by representatives, applicants/appellants and all those attending the hearing. Representatives are expected to act in accordance with accepted professional standards.

Foul and abusive language, intimidating behaviour, threats and/or acts of violence directed by attendees towards panel members or staff will not be tolerated under any circumstances and may result in an adjournment or a person/s being excluded from the hearing. Serious occurrences may be the subject of a report to the police and, in the case of a representative, to his/her employer, funding organisation and/or professional body.

Communicating panel decisions

At the conclusion of the oral hearing, the applicant, appellant and their representative and all other attendees will be asked to wait outside the hearing room (whether physical or virtual) to enable the panel to reach a decision. Where a decision is made, applicants/appellants and representatives will be brought back into the hearing room and notified verbally of the panel's decision. Such notification will not include the summary of reasons for the decision. These will be provided in writing as soon as reasonably practicable, and no later than 21 days after the hearing date or no later than 14 days in priority cases.

Should an applicant or appellant not wish to wait after the hearing, the decision and summary of reasons will be provided to them in writing within the same timeframe as set out in the paragraph above.

Where it is not possible to notify the outcome at the conclusion of a hearing, the reasons for this will be explained to the applicant, appellant and/or their representative. Once the determination has been made, the decision and summary of reasons will be provided in writing as soon as reasonably practicable, and no later than 21 days, and no later than 14 days in priority cases.

Should an application or appeal prove unsuccessful, it is acknowledged this can cause disappointment and upset. However, there can be no further oral representations or interventions subsequent to verbal notification of the panel's decision.

At the conclusion of a hearing, panel members, representatives and those attending in a supportive capacity should be mindful of ensuring, insofar as possible, the applicant/appellant's wellbeing.