**GUIDANCE NOTE (GN 06/22): THE PRINCIPLES OF NATURAL JUSTICE**

**MARCH 2022**

Where a person’s legal rights are concerned, the principles of natural justice are bolstered by Article 6 of the European Convention on Human Rights which is now incorporated into domestic law in Article 6 of the Human Rights Act 1998.

The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision-maker.

There are three well-known facets to the principle of natural justice:

1. no one should be a judge in their own cause;
2. a party should be informed of the allegations against it and be given an opportunity to answer those allegations; and
3. a party is entitled to have its case heard by an unbiased and impartial tribunal.

Every applicant to the Troubles Permanent Disablement Payment Scheme (the Scheme) is entitled to have their application considered in accordance with the principles of natural justice. In the context of determinations of entitlement under the Victims’ Payments Regulations 2020, that includes:

* the right to know the information upon which a decision is being made;
* the opportunity to comment upon any reports or documents being used in reaching the decision and to present his or her case;
* the right to know the reasons for any adverse decision;
* the right to have all relevant evidence considered and irrelevant evidence not taken into account;
* the right to have the decision made by an impartial person whose discretion has not been fettered;
* where it is necessary for a fair determination of the issues, the right to an oral hearing.

Every applicant who may be adversely affected by a decision of the Victims’ Payment Board must be informed of any statement or allegation so affecting his or her claim of which she or he was not aware and on which any unfavourable decision may be based, and must be given an opportunity to refute or comment before a decision is given in the matter.

If the Board has access to information which has not been shared with the applicant which is likely to result in an application being refused, the Board, before making a determination, should direct the applicant be provided with that information, be given time to comment on or provide a response to that information and, if judged appropriate, be able to attend an oral hearing before a determination is made in the matter.

This will have a twofold benefit of (i) ensuring that the principles of natural justice are applied in their full rigour to the processes under the Scheme and (ii) reducing the number of appeals based on the ground that the applicant did not have an opportunity to address material or issues which were considered by the Board and were considered relevant to the decision reached by the Board.

**Examples**

1. **Permanent Disablement**

Applicant A has applied to the Scheme in respect of physical injuries suffered as a result of a well-documented Troubles-Related Incident (TRI) and has satisfactorily evidenced his presence at the TRI. The issue for determination is the extent of Applicant A’s injuries. A person is entitled to victims’ payments in respect of injuries caused by a TRI if, in accordance with regulation 5 (1) (a), “the injury results in permanent disablement”. The medical report provided by a Health Care Professional confirms that the injury has not resulted in permanent disablement in accordance with the Victims Payments’ Regulations 2020 and the Guidance to Health Care Professionals Regarding the Assessment of the Degree of Relevant Disablement dated September 2021.

**Appropriate Action** - The Panel, before making a determination, should direct that the Applicant is provided with the medical evidence obtained and given the opportunity to provide a response to the material. If the Panel considers it appropriate, Applicant A should be given the opportunity to attend an oral hearing before a decision is made.

1. **Relevant Convictions**

The issue for determination is whether Applicant B is entitled to victims’ payments on the basis of relevant convictions which the Board considers makes victims’ payments inappropriate.

In accordance with regulation 6 (2):-

“A person is not entitled to victims’ payments where the Board considers that the person’s relevant conviction makes entitlement to victims’ payments inappropriate”.

A relevant conviction is defined as a conviction excluded from rehabilitation. These are generally convictions carrying sentences of longer than 30 months’ imprisonment and therefore cover the most serious crimes that have been committed.

A Criminal Record Viewer (CRV) check disclosed convictions which are deemed relevant convictions in accordance with regulation 6 (2) and, given the nature and circumstances of the convictions, are deemed by the Panel to make payments inappropriate in accordance with the Secretary of State Guidance dated 14 August 2020.

**Appropriate Action** - Applicant B should be given the opportunity to view and comment upon the CRV and the subject convictions which may be instrumental to an adverse decision being reached by the Panel. If the Panel considers it appropriate, Applicant B should be given the opportunity to attend an oral hearing before a decision is made.

1. **Presence at a TRI**

Applicant C has made an application for victims’ payments in respect of psychological injuries arising from a well-documented TRI. Applicant C has not provided any evidence of her presence at the TRI or her presence in the immediate aftermath of same. Evidence requested from PSNI and PRONI together with a Google search and CAIN search confirm the TRI occurred but this has not substantiated the presence of Applicant C at the TRI.

**Appropriate Action** - Applicant C should be provided with the evidence obtained and given the opportunity to comment on same. If the Panel considers it appropriate, Applicant C should be given the opportunity to attend an oral hearing before a decision is made.