

Addressing the Legacy of Northern Ireland's Past

Advice Paper, January 2019



Foreword

The Good Friday Agreement states that;

"The participants believe that it is essential to acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation."

Research by the Commission indicates that approximately 500,000 people (almost one in three people in Northern Ireland) are victims and survivors of the Troubles. This includes up to 200,000 with mental health problems, 40,000 suffering with injuries and 3,720 families who were bereaved. In 2017 an Omnibus survey found that one in four of the population in Northern Ireland said that either they or a family member continued to be impacted by a conflict-related event.

In the twenty years that have passed since the Belfast Agreement there have been a number of substantial attempts to address the harm that was caused during decades of conflict and on each occasion it has proved too difficult to secure the political agreement needed. The cost of this failure has been very evident during consultation on the current proposals. For the many individuals, families and communities affected across Northern Ireland, Great Britain and the Republic of Ireland there is still pain and loss which is now accompanied by a strong sense that they have been ignored for decades by those with the power to act. This is true across the very different constituencies affected and it must be a key consideration in determining how these measures are taken forward.

The fact is that bereaved families who wish to access normal judicial processes, who come from every part of society, are told that they must wait in a queue, often for another decade or more, before a case can be progressed. This has had a growing cost to justice organisations in Northern Ireland in terms of loss of trust and confidence. Judicial Reviews and other legal actions have also a growing financial cost; in 2013 the cost of dealing with the past in Northern Ireland was estimated by the Criminal Justice Inspectorate as £30 million per year and we have been spending this every year for decades. It is almost universally accepted that the current system is not able to address this situation; it was not designed to do so. In fact, it is more expensive in the medium and long term to leave things as they are than it would be to try to introduce new institutions that would deliver better outcomes for victims and survivors and indeed all of Northern Ireland's society.

This is why 'dealing with' the legacy of the past cannot be done by measures which fail to fully address the many complex and difficult issues. It is also very clear that in the context of the high levels of disillusionment and low levels of trust which exist across different political constituencies in Northern Ireland, any approach must be balanced, transparent, must operate within the rule of law and above all be victim-centered. People who suffered harm have waited too long for effective organisations to be established to address their rights and needs. This must be the focus of any legislation and of the way we implement it.

The purpose of investigations, however, should not be defined narrowly in terms of the number of prosecutions envisaged. It is evident from previous and ongoing investigations that new information and evidence can be uncovered and that families who want answers can be better served than they have been, even if the evidence is likely in most cases to be insufficient to secure a conviction. The critical issues for many families and communities are of access to information about the circumstances leading to the death of people they loved and acknowledgement of harm. I have sought in our advice to draw out what the implications of this focus on families should be for the objectives, structure, staffing and processes of the proposed Historical Investigations Unit.

This advice is underpinned by five principles agreed by the Victims and Survivors Forum. Firstly, that our new institutions must be co-designed with people who suffered harm. Secondly, that they are victim-centred and victim-led; they must be focused on the needs and rights of victims and survivors. Thirdly, that they are inclusive of all those who suffered harm. Fourthly, that they are independent and impartial; the importance of fairness, balance and transparency cannot be underestimated in the context of what is often a contested narrative. Finally, that they are fit for purpose; we cannot afford to set up institutions which do not have the time or resources to deliver on their commitments. This advice makes recommendations as to how these principles can be designed into the proposed institutions.

It is often pointed out that different people have different wishes and needs; it is right, therefore, that the proposed package of measures offers choices and options to individuals and families. However, those choices and options must be accompanied by support and information in order that people are enabled to make the decisions that are right for them.

Advocacy services are needed for people when they engage with legacy institutions, and health and wellbeing support must be available before, during and after they do so. My recommendations seek to ensure that these services build on what currently exists and are designed into the way institutions operate.

When talking to people affected by the conflict across Northern Ireland, Great Britain and the Republic of Ireland, it is clear that their experiences and needs are very much the same. We believe that these needs must be addressed in an inclusive way and that this means that choices and options open to those who live in Northern Ireland should also be open to those who live elsewhere. We have therefore, for the first time, shared the advice in this paper with the Government of the Republic of Ireland as well as offering advice to the Secretary of State for Northern Ireland.

Most importantly of all, the aim of addressing the legacy of the past must be to build a better future. At a civic and political level there continues to be a war of words about the harm inflicted on different individuals and communities during the Troubles which in itself is often to the detriment of those who suffered. My recommendations seek to ensure that the combined impact of this package of measures is to offer what is achievable in terms of truth, justice, acknowledgement and reparation to people who were harmed and to do this in a way that is victim-centred and respectful of all those who suffered.

This proposed mechanisms are designed to address the outstanding impact of the conflict upon the people, communities and institutions of Northern Ireland. This is a difficult process which is uncomfortable for us all but it will deliver outcomes which have been sought for many years and without which civil society in Northern Ireland will continue to be anchored to the trauma and division which the Troubles wrought.

Judith Thompson

Commissioner for Victims and Survivors

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Abbreviations

DoJ	Department of Justice
HET	Historical Enquires Team
HIU	Historical Investigations Unit
ICIR	Independent Commission for Information Retrieval
ICLVR	Independent Commission for the Location of Victims' Remains
IRG	Implementation and Reconciliation Group
NIO	Northern Ireland Office
PRONI	Public Record Office of Northern Ireland
PSNI	Police Service of Northern Ireland
OHA	Oral History Archive
OPONI	Office of Police Ombudsman for Northern Ireland
TEO	The Executive Office
VSF	Victims and Survivors Forum

1. Executive Summary and Recommendations

1.1. The Commission for Victims and Survivors Northern Ireland (the Commission) recognises that victims and survivors are a diverse group and that many people have unmet needs that must be addressed in relation to dealing with the past. The Commission also recognises the scale of the task that is to be undertaken in order to address legacy issues. The lasting impact of the Troubles on society in Northern Ireland has been profound:

- In 2017, 26% of the Northern Ireland population said either they or a family member continue to be affected by a conflict-related incident¹;
- Between 1966 and 2006, 3,720 conflict-related deaths occurred leaving these families mourning the loss of a loved one²;
- 40,000 people have been left injured³; and
- 213,000 are experiencing significant mental health problems.⁴

1.2. Previous advice by the Commission on dealing with the legacy of the past, submitted in 2014, highlighted four key areas that need to be addressed:

- Truth;
- Justice;
- Acknowledgement; and
- Reparation.⁵

1.3. This policy advice paper seeks to build further on these key areas for all victims and survivors, regardless of their geographical location. It also seeks to make recommendations on how each of the four mechanisms proposed in the Northern Ireland Office's (NIO) public consultation on Addressing the Legacy of Northern Ireland's Past can be implemented in line with the 'Key Guiding Principles for Existing and Proposed Organisations and Processes Dealing with the Past' as developed by members of the Victims and Survivors Forum (VSF) in 2016.⁶ These key principles were agreed by the VSF as follows:

- Co-design and collaboration;
- Victim-centred and victim-led;
- Inclusive;

¹ NISRA (2017) *Commission for Victims and Survivors Module of the September 2017 Northern Ireland Omnibus Survey*, Belfast: NISRA.

² McKitterick et al (2007) *Lost Lives*, Edinburgh: Mainstream Publishing.

³ Smyth et al (1999) *The Cost of the Troubles Study – Final Report*, Londonderry: INCORE, p.37.

⁴ CVSNI (2015) *Towards a Better Future: The Trans-generational Impact of the Troubles on Mental Health*, Belfast: CVSNI.

⁵ CVSNI (2014) *Advice on Dealing with the Past: A Victim-Centred Approach*, 27 March 2014, Belfast: CVSNI.

⁶ CVSNI (2017) *Key Guiding Principles for Existing and Proposed Organisations and Processes Dealing with the Past*, Belfast: CVSNI.

- Independent and impartial; and
 - Fit for purpose.
- 1.4. The VSF's principles are used by the Commission when reviewing the adequacy and effectiveness of law, practice and services, and have informed and shaped this policy advice paper.
 - 1.5. In the NIO consultation document, the Secretary of State has clearly detailed that any proposals must, first and foremost, meet the needs of victims and survivors, that they must seek to promote reconciliation and that they must also reflect broad political consensus and follow the rule of law. The Commission welcomes these broad principles.
 - 1.6. The Commission is of the view that whilst these proposals offer the best opportunity to address the legacy of the past at present, there are significant changes that need to take place to make sure they meet with the VSF's five principles outlined above.
 - 1.7. This policy advice paper sets out the Commission's views in relation to the four proposed mechanisms with recommendations for the UK Government on what measures should be implemented to ensure they meet the needs of victims and survivors.
 - 1.8. This policy advice paper also provides comments for consideration by the Irish Government on how to ensure the needs of victims and survivors are met in the Republic of Ireland.
 - 1.9. The recommendations in this policy advice paper have been made after extensive engagement with the VSF, individual victims and survivors, strategic partners, elected representatives, policy makers, and organisations funded to deliver services and wider civic society. Our engagement process has been carried out across Northern Ireland, Great Britain and the Republic of Ireland.
 - 1.10. This paper examines the impact these proposed legacy mechanisms would have on existing services for victims and survivors. The Commission has also included consideration of the measures that were included in the Stormont House Agreement but were outside the scope of the NIO's consultation and draft Bill.

1.11. The Commission recommends the following:

Legacy Mechanisms Contained in the NIO's Consultation	Paragraph
Historical Investigations Unit (HIU)	
1) The Commission recommends that learning from the work of Operation Kenova is considered during the design of the HIU to ensure that victims and survivors are aware of, and able to exercise, their rights;	5.10
2) The Commission recommends that a Victims and Survivors Steering Group is established and is involved in the process of co-designing and advising on policies and procedures that relate to the rights, needs and interests of victims and survivors;	5.18
3) The Commission recommends that a well-resourced Family Liaison Unit is established within the HIU and that it should have dedicated officers to provide high quality, empathetic and specifically tailored support for families;	5.23
4) The Commission recommends that the Family Liaison Unit should develop protocols for engagement and shared understanding of roles and responsibilities between the investigation and existing Victims and Survivors Service funded advocacy services and Department for Justice funded witness support services;	5.24
5) The Commission recommends that a pathway is created for victims and survivors that will allow access to both advocacy and health and wellbeing support before, during and after engagement with the HIU;	5.33
6) The Commission recommends the consideration of a joint strategy to be developed that would allow for a sharing of expertise in relation to navigating the criminal justice system, providing support to witnesses and assisting those specifically affected by conflict-related incidents;	5.34
7) It is the Commission's view that service provision must be nuanced to meet the specific needs of victims and survivors of conflict-related incidents and recommends that there is bespoke and accredited training for HIU Officers;	5.42
8) The Commission recommends that the HIU must operate in as transparent a manner as possible to demonstrate commitment to developing trust with victims and survivors;	5.46
9) The Commission has concerns regarding the full disclosure of information into the HIU. If the intention of the HIU is to provide clarity and build confidence, then it is paramount that information is not seen to be withheld by any government or institution. The Commission therefore recommends that a process is developed to ascertain and clarify what the HIU can 'reasonably require' from a relevant authority;	5.48

<p>10) In order for the HIU to be as inclusive as possible, the Commission recommends that the HIU should include a review of all deaths, including those which have already been subject to a Historical Enquires Team review. On the basis of this, and in consultation with family members, a decision should be made by the HIU Director as to whether a further investigation would enable more or better information for families and/or evidence to be uncovered;</p>	<p>5.52</p>
<p>11) The Commission recommends that those who died at the scene of an incident should also be eligible to be included in the remit of the HIU. This would provide the families of these individuals with an HIU family report and access to the support mechanisms that will underpin the work of the HIU;</p>	<p>5.54</p>
<p>12) The Commission believes that victims and survivors should be entitled to access justice regardless of where a death happened. Therefore, it is imperative that both the UK and Irish governments provide the necessary resources to allow all conflict-related deaths to be fully investigated and have parity with investigations that will be undertaken by the HIU. The Commission recommends that either the HIU or a centralised police unit is empowered to investigate conflict-related deaths in Great Britain. This should be coupled with a commitment from the UK Government to adequately fund and resource both investigations and the provision of advocacy and support services to victims and survivors;</p>	<p>5.58</p>
<p>13) The Commission requests that the Irish Government establish a mechanism whereby Troubles related deaths within the Republic of Ireland are investigated;</p>	<p>5.59</p>
<p>14) The Commission recommends that the Governments establish separate mechanisms that will provide access to truth and/or justice for victims and survivors who have been injured;</p>	<p>5.63</p>
<p>15) It is the Commission's view that the allocated funding, of £150 million, will not allow the HIU to fully deliver on all responsibilities. This view has also been echoed by stakeholders with an interest in the HIU's work in order for it to be fit for purpose. The Commission recommends that the Government needs to adequately fund the HIU and other mechanisms; and</p>	<p>5.64</p>
<p>16) The expansion of the HIU caseload to include cases reviewed by the HET would make the timeframe of five years unachievable. Whilst there are provisions within the legislation to extend, the Commission recommends that the Government provides more time to allow the HIU and other institutions to be established and successfully complete their allocated case load.</p>	<p>5.65</p>

Independent Commission for Information Retrieval (ICIR)

17) The Commission recommends that a Victims and Survivors Steering Group should be established to ensure the work the ICIR meets the needs of victims and survivors. In addition, the Commission believes the same structures that we have recommended to support victims and survivors through the HIU should be replicated in the ICIR; this includes a Family Liaison Unit within the ICIR with clear processes for communication with organisations providing support and advocacy for families. The Commission believes that this should be stipulated in legislation;	5.72
18) The Commission recommends that ICIR interlocutors should engage with families, to assist them in deciding what questions should be asked regarding the death of their loved one;	5.78
19) The Commission recommends that a proactive outreach strategy should be developed and delivered to reach out to those individuals who otherwise may not have enough information to make a decision as to whether to engage with the ICIR;	5.84
20) The Commission recommends that the UK Government establish an appeals process, similar to the HIU process, which will allow victims and survivors to appeal decisions to redact information on national security grounds. The Commission requests that the Irish Government also gives this consideration;	5.87
21)The Commission recommends that the timeframe for the ICIR is coterminous with the HIU;	5.89
22)The Commission recognises that the danger of information ‘leaking’ between the ICIR and the HIU must be removed. At the same time the Commission is concerned that sequencing the HIU and ICIR would effectively remove the option of the ICIR from family members who are ageing and may not feel they have time to wait. The Commission therefore recommends all alternatives are explored;	5.91
23)One of the key issues to be addressed is the impact of incomplete or incorrect information about the death of a loved one. To minimise the risk of this, the Commission recommends adequate testing of the veracity of information by using other sources;	5.92
24)The Commission recommends that clarity is provided on how the ICIR would work in relation to the Official Secrets Act (1989) and if this would mean that members of the security forces and ex-security forces personnel would be unable to contribute to the ICIR; and	5.93
25) The Commission recommends that there is an extension to the proposed timeframe for the ICIR and that this is included in the draft Bill; experience from the Independent Commission for the Location of	5.95

<p>Victims Remains indicates that this process takes time to deliver results.</p>	
<p>Oral History Archive (OHA)</p>	
<p>26) It is the Commission’s view that the Steering Group should represent the needs and aspirations of victim and survivors. Its composition must reflect not only the expertise that will be required to manage such a project, but also the empathy and understanding of experiences that will be collated. The Commission therefore recommends that victims and survivors are represented on the OHA Steering Group;</p>	<p>5.100</p>
<p>27) Similar to the HIU and the ICIR, the Commission recommends that a pathway is created for victims and survivors that will allow access to both advocacy and health and wellbeing support before, during and after engagement with the OHA;</p>	<p>5.101</p>
<p>28)The Commission recommends that existing community-based oral history/storytelling projects should be involved in the collation process;</p>	<p>5.105</p>
<p>29)The Commission recommends that both Governments clarify whether any individuals who have signed the Official Secrets Act can give information to the OHA. There is a perception that those who have signed the Official Secrets Act, in both jurisdictions, will be unable to engage and that this may impact on the balance of narratives collected;</p>	<p>5.106</p>
<p>30)The Commission recommends that the Public Records Office of Northern Ireland produces clear guidance regarding record retention and disposal to provide clarity on how it will manage different types of records;</p>	<p>5.110</p>
<p>31) The Commission recommends the OHA have the same timeframe as the other proposed legacy mechanisms to allow for consistency in reporting to the Implementation and Reconciliation Group;</p>	<p>5.111</p>
<p>32) The Commission recommends that the OHA is adequately resourced to allow it to deliver its intended outputs; and</p>	<p>5.114</p>
<p>33)The Commission believes that there is merit in establishing a factual timeline which would be a helpful tool for those working with victims and survivors and anyone with an interest in legacy matters. Further, the Commission would imagine that such a resource would be utilised as an education tool for informing our children and young people. Whilst the Commission is supportive of the proposal, the purpose is unclear and recommends that clarity is provided regarding the purpose of this timeline and any related research projects.</p>	<p>5.117</p>

Implementation and Reconciliation Group (IRG)	
34) The Commission recommends that the membership of the IRG should include an individual who can represent the voice of victims and survivors;	5.121
35) The Commission recommends that clear criteria are developed for the nomination of an individual to the IRG. In addition to this there should be clear guidance on the circumstances in which an individual can or should be removed from their duties as a member of the IRG;	5.125
36) The Commission recommends that the IRG develops and uses clearly defined parameters to allow for the assessment and evaluation of how the HIU, ICIR and OHA impact on the lives of victims and survivors and promote reconciliation and anti-sectarianism in order to secure public confidence;	5.130
37) The Commission recommends that accurate timescales need to be developed as to when the IRG will be able to conduct its work. Closer examination of the HIU highlights that the allocated five years will not be enough for the originally planned 1,700 cases to be investigated and this will have an impact on how the IRG will report; and	5.131
38) The Commission recommends that when the work of the IRG is completed it should be used to inform a new government strategy for building reconciliation, anti-sectarianism and ending paramilitarism. This strategy should be interdepartmental to ensure that the delivery of other relevant programmes are aligned to its work and will create positive impact.	5.134
Matters Outside the Consultation's Scope	
39) The need to make provision for a pension payment to the severely injured is of paramount importance. Not least because this group of victims and survivors are an ageing population with increasing financial and welfare needs. The Commission would recommend that consultation and legislation be progressed at Westminster (in the absence of the Northern Ireland Assembly) to address this as a matter of priority;	5.141
40) While important work is ongoing in developing the new Regional Trauma Network, it can only continue to do so and become an effective trauma service if it is appropriately funded. The Commission recommends that while funding has been provided to assist the development of the service, a significant increase in resources will be required in the years ahead to meet expected high demand as legacy mechanisms are implemented;	5.146
41) The need for advocacy and health and wellbeing support has been a key requirement of any proposals to deal with the past. In anticipation of legacy matters being consulted upon the Victims and Survivors	5.150

<p>Service secured PEACE IV funding for Advocacy and Wellbeing support in community-based organisations across Northern Ireland, Great Britain and the Republic of Ireland. Given the lead in time for establishing new institutions it is likely that funding for these key support posts will be coming to an end in March 2021 just as the new bodies are being established. The Commission would recommend that funding discussions with both governments takes place to ensure these key posts are sustained throughout the lifetime of the new legacy bodies; and</p> <p>42) Legacy inquests are not an explicit measure within the Stormont House Agreement, however the legal right to have inquest heard in the Coroners Courts is a critical element of addressing legacy of the past. The backlog accrued of 50 outstanding legacy inquests into 94 deaths, some of which date back over 40 years requires urgent attention. The Commission recommends that sufficient resources should be committed to legacy inquests to ensure that victims and survivors are able to exercise their legal right to review the circumstances which lead to the death of a loved one. The Commission believes that it is also an opportunity to develop better information management systems and techniques that could be transferred to the new HIU;</p> <p>43) It is the Commission's view that approaches, such as amnesties and a statute of limitations, would take away opportunities for victims and survivors from all sides to seek the truth, justice or acknowledgement that they feel an investigation would bring. The Commission therefore recommends that alternative approaches to addressing the past, outside of the proposed mechanisms contained in the Stormont House Agreement, are not considered by Government.</p>	<p>5.153</p> <p>5.159</p>
<p>Impact on Existing Services</p>	
<p>44) The Commission recommends that any new mechanisms build upon the established service provision and networks for services to victims and survivors; and</p> <p>45) The Commission recommends that in the design stages of establishing mechanisms, responsible bodies take account of the resources required to support those engaging in legacy processes. The Commission believes that this can be best achieved through a process of partnership and collaborative working.</p>	<p>6.4</p> <p>6.8</p>

Accessing Services Outside Northern Ireland	
<p>46) The Commission welcomed the arrangements for support services outside of Northern Ireland being facilitated by PEACE IV funding. It needs to be noted that this support is limited and only guaranteed to 2021. Individuals outside of Northern Ireland can access support from the Victims and Survivors Service through the Individual Needs Programme. However, victims groups outside Northern Ireland cannot access funding in a way that is open to groups within Northern Ireland. The Commission views this as an inconsistency in the current policy and recommends this be addressed; and</p>	7.5
<p>47) The Victims and Survivors (Northern Ireland) Order 2006 contains no legal impediment to engaging and supporting victims and survivors outside Northern Ireland. The Commission understands there are both resource and administrative constraints that need to be considered further. The Commission recommends that the Government engages as a matter of priority with relevant stakeholders regarding how best to progress. The Commission would suggest engagement with the Victims and Survivors Service and the Executive Office in order to discuss practical approaches. Importantly, conversations with appropriate stakeholders in Great Britain are essential, for example with the Victims' Commissioner and those with an interest in delivering support. Equally, with the cross-border nature of the proposed mechanisms, conversations with the Irish Government will be required.</p>	7.20

2. Policy Context and Background

- 2.1. The Commission for Victims and Survivors for Northern Ireland (the Commission) was established in June 2008 under the Victims and Survivors (Northern Ireland) Order 2006, as amended by the Commission for Victims and Survivors Act (2008).
- 2.2. The Commission is a Non-Departmental Public Body of the Executive Office (TEO). The principal aim of the Commission is to promote awareness of the interests of victims and survivors of the Northern Ireland conflict. It has a number of statutory duties that include:
- Promoting an awareness of matters relating to the interests of victims and survivors and of the need to safeguard those interests;
 - Keeping under review the adequacy and effectiveness of law and practice affecting the interests of victims and survivors;
 - Keeping under review the adequacy and effectiveness of services provided for the victims and survivors by bodies or persons;
 - Advising the Secretary of State, the Executive Committee of the Assembly and any Body or person providing services for victims and survivors on matters concerning the interests of victims and survivors;
 - Ensuring that the views of victims and survivors are sought concerning the exercise of the Commission's functions; and
 - Making arrangements for a forum for consultation and discussion with victims and survivors.⁷
- 2.3. In November 2009, the Office of First and deputy First Minister (now TEO) introduced a ten-year strategy for victims and survivors. This strategy provides a comprehensive approach for taking forward work on a range of issues relating to victims and survivors. The strategy acknowledges the uniqueness of our circumstances and need for a victim and survivor centred approach:
- The pain and suffering which has occurred;
 - The long-term impact of violence on victims and survivors;
 - That victims and survivors are individuals and therefore there is no single approach which will suit everyone; and
 - The need for victims and survivors to be invited to play a part in building a more peaceful future, but that as people who have suffered

⁷ The functions of the Commission relate to those set out in the Victims and Survivors (Northern Ireland) Order 2006 as amended by the Commission for Victims and Survivors Act (Northern Ireland) 2008.

most they should feel safe, should be treated with dignity and should move at their own pace.⁸

- 2.4. The strategy's aim to put in place comprehensive arrangements to ensure that the voice of victims and survivors is represented and acted upon at a governmental and policy level continues to shape the landscape for service delivery.

Ongoing legacy

- 2.5. It is recognised that many years of violence have created a society where much work needs to be done to deal with the legacy issues. This is most evidenced when addressing the needs of victims and survivors; those whose lives have been disproportionately affected by conflict-related incidents.
- 2.6. The impact of the Troubles on society cannot be underestimated:
- 26% of the Northern Ireland population have been affected or a family member continues to be affected by a conflict-related incident⁹;
 - 3,720 conflict-related deaths between 1966 and 2006¹⁰;
 - 40,000 injured¹¹; and
 - 213,000 experiencing significant mental health problems.¹²
- 2.7. Behind statistics are individuals; many impacted through bereavement, physical and/or psychological injury or by providing care for a loved one. This applies to all victims and survivors, regardless of geographical location.

Advice on Dealing with the Past: a Victim-Centred Approach, 2014

- 2.8. Dealing with the legacy of the past is a complex and multi-faceted subject for victims and survivors. As a minimum, victims and survivors expect that any process is victim-centred. This means addressing issues from their perspective and focussing on what victims and survivors want to see implemented.

⁸ Office of the First Minister and deputy First Minister (2009) *Victims and Survivors Strategy*, Belfast: The Stationery Office, p.2.

⁹ NISRA (2017).

¹⁰ McKitterick et al (2007).

¹¹ Smyth et al (1999), p.37.

¹² CVSNI (2015).

2.9. In March 2014 the Commission submitted advice to the First and deputy First Ministers on addressing the legacy of the past.¹³

2.10. The advice highlighted that when dealing with the past, there are four areas that need to be addressed, namely:

- Acknowledgement;
- Truth;
- Justice; and
- Reparation.

2.11. In our advice, the Commission recommended the implementation of those parts of the Haass/O’Sullivan report in relation to dealing with the past where agreement existed between the political parties and are of benefit to victims and survivors.¹⁴

2.12. Additionally, the Commission recommended the following:

2.12.1. **Acknowledgement:** The Commission recommended that an Acknowledgement Unit should be established jointly by the British and Irish Governments in order to make the appropriate arrangements so that an official apology can be issued to all victims and survivors individually as required.

2.12.2. **Truth:** The Commission recommended that an Independent Commission is established with the remit to compile a composite narrative of the Northern Ireland Troubles. The Commission also recommended that further thought should be given to the extensive proposals outlined in the Haass/O’Sullivan report in relation to the Independent Commission for Information Retrieval (ICIR) as the basis for progressing the recovery of truth for victims and survivors.

2.12.3. **Justice:** The Commission recommended the establishment of one overarching organisation, under the remit of the Department of Justice (DoJ), with the powers to investigate, co-ordinate and report on the provision of justice for all historical cases in relation to the conflict. The Commission recommended that this body should encompass the roles of the current organisations involved with policing the past.

¹³ CVSNI (2014).

¹⁴ Northern Ireland Executive (2013) *An agreement Among the Parties of the Northern Ireland Executive on Parades, Select Commemorations, and Related Protests; Flags and Emblems; and Contending with the Past*, Belfast: Northern Ireland Executive.

The Commission welcomed many of the aspects of the Historical Investigations Unit, as proposed within the Haass/O’Sullivan report, and requested that consideration be given to implementing these proposals as soon as possible in relation to delivering meaningful justice for victims and survivors.

- 2.12.4. **Reparation:** The Commission recommended that a comprehensive process is put in place for the provision of reparations for all victims and survivors. The Commission advised that the bereaved, injured and carers should all be eligible for a programme of high quality services, financial assistance and a pension for the severely injured.

This policy advice

- 2.13. The Commission believes that the legacy mechanisms, as detailed in the Stormont House Agreement, represent the best opportunity to provide individuals and families with processes to address legacy-related matters.
- 2.14. The current system of dealing with legacy issues is not capable of delivering outcomes for victims and survivors. It is the Commission’s view that twenty years after the Belfast/Good Friday Agreement, this is not acceptable. The Commission therefore welcomed the Government’s consultation on Addressing the Legacy of Northern Ireland’s Past in May 2018.
- 2.15. The Commission responded to the NIO’s consultation following a period of extensive engagement with individual victims and survivors, service deliverers and wider civic society.¹⁵
- 2.16. With the closing of the consultation, and with the continued absence of a Northern Ireland Executive, the Commission believes it is appropriate to issue advice to the Secretary of State. This advice will include commentary and recommendations on the proposed mechanisms contained in the NIO’s consultation and other legacy-related matters.
- 2.17. The recommendations in this advice paper have been made after extensive engagement with the VSF, individual victims and survivors, strategic partners, elected representatives, policy makers, organisations funded to deliver services and wider civic society. Our engagement process has been carried out across Northern Ireland, Great Britain and the Republic of Ireland.

¹⁵ Full details of the Commission’s engagements are detailed in section 4.

3. Key Guiding Principles for Existing and Proposed Organisations and Processes Dealing with the Past

- 3.1. It is the Commission's view that service provision should be nuanced to the needs of those impacted by conflict-related incidents.
- 3.2. It should be recognised that service providers have been to the fore in developing a model of support that is victim-centred and holistic. This approach has enabled an empathy and understanding of the impact of the Troubles and demonstrated the continued need for appropriate health and wellbeing and social support.
- 3.3. It is therefore essential that any new mechanisms ensure that support is victim-centred and mindful of the unique needs of those impacted by the conflict.
- 3.4. In March 2015, members of the VSF agreed a series of principles that reflected their views and aspirations for the legacy proposals contained in the Stormont House Agreement. These were refreshed by the VSF in June 2017 to recognise and include existing organisations and processes.¹⁶
- 3.5. Detailed below are the VSF's five principles that are required to deliver effective and appropriate truth, justice, acknowledgement and reparation processes:

- 3.5.1. **Co-design and collaboration:** Members of the VSF advise that there is a need for a co-design and collaborative approach between victims and survivors and the relevant department/stakeholders in order to build confidence. Confidence in legacy processes is critical for victims and survivors and those who support them.

A partnership approach is essential to ensure that the knowledge, skills and experience of all stakeholders is utilised in current provision and in shaping the design of proposed legacy mechanisms.

- 3.5.2. **Victim-centred and victim-led:** A victim-centred and victim-led approach ensures that the needs, interests, views and wishes of the individual takes priority.

For operational delivery, this means there is an empathy and understanding of the impact of the Troubles on victims and survivors and that an emotionally intelligent approach is taken in detailing the

¹⁶ CVSNI (2017).

competencies and skills required from those delivering services. Relevant and specific training and induction should develop these skills. This should enable a recognition and acknowledgment of the unique nature of conflict-related incidents.

Service delivery approaches must enshrine the principle of choice for victims and survivors of whether to engage with mechanisms or not.

Victims and survivors have a right to be given good information so that from initial engagement right through to completion, they are aware what is deliverable and achievable.

A holistic programme of support, nuanced to the needs of victims and survivors, is essential to ensure the health and wellbeing of anyone engaged with organisations and processes.

- 3.5.3. **Inclusive:** There are many victims and survivors who have previously been excluded from the scope of legacy processes.

Given the ageing population of victims and survivors, there should be consultation and clarity around the prioritisation of cases; particularly for investigatory processes.

Action is required to acknowledge victims and survivors outside of Northern Ireland. This is due to the sense of isolation and inequality felt by victims and survivors outside of Northern Ireland, resulting in low awareness levels regarding entitlement, access to support and general assistance.

- 3.5.4. **Independent and impartial:** Trust is paramount for victims and survivors.

It is critically important that trust exists between victims and survivors and those delivering truth, justice, acknowledgment and reparation measures.

Institutions and processes should be free from any type of political interference and should be impartial.

- 3.5.5. **Fit for purpose:** All mechanisms, existing and proposed, require an appropriate and realistic budget to deliver an effective service.

For example, VSF members are not convinced that a realistic budget was allocated to take on the high volume of cases already held by

Legacy Investigation Branch and the Office of Police Ombudsman for Northern Ireland (OPONI). As a result, VSF members would equally have concerns regarding adequate resourcing for any new organisations or processes. It is imperative that budgets are realistic, and if it is not possible to deliver realistic and achievable processes, the expectations of victims and survivors and wider civic society should be managed.

There needs to be transparency around operational plans for the structure and staffing levels associated with existing and proposed processes.

Timeframes for delivery should be appropriate and realistic. This transparency in information and effective communication will help manage the expectations of victims and survivors and their families.

Informing our advice

- 3.6. It is the Commission's view that the principles of co-design and collaboration, victim-centred and victim-led, independent and impartial, inclusivity and fit for purpose provide an approach for ensuring that institutions can command support and confidence.
- 3.7. The VSF's principles are used by the Commission when reviewing the adequacy and effectiveness of law, practice and services and have informed and shaped this policy advice paper.

4. Communications and Engagement Activity

- 4.1. Following the launch of the NIO's Addressing the Legacy of Northern Ireland's Past consultation document and draft Bill, the Commission devised a communications and engagement plan in order to seek the views of individual victims and survivors, policy makers, service deliverers and wider civic society to inform our response to the proposals.
- 4.2. In order to ascertain the views of victims and survivors, and to inform this policy advice paper, the Commission held a total of 158 engagements between May and November 2018 throughout Northern Ireland, Great Britain and the Republic of Ireland.
- 4.3. The Commission were mindful that any engagements with victims and survivors were to be conducted in an ethical manner and that took into consideration the pain, distress and suffering that had been endured by individuals in the room. Sessions were structured with feedback and an opportunity to engage in questions/answers in order to encourage discussion about the proposals.
- 4.4. The communications and engagement strategy included meetings, focus groups, seminars, media activity and involved meeting a wide range of stakeholders:

Stakeholder types	
Media outlets	26
General public	18
Victim Support Programme-funded organisations	18
Government body (Westminster)	14
Political Representatives (Northern Ireland)	11
Individuals (one-to-ones)	10
Government body (Northern Ireland, departmental)	9
Government body (Northern Ireland, non-departmental)	9
Third sector	7
Government body (Republic of Ireland)	5
Collaborative Design partners	4
Community partnerships	4
International engagements	4
Judiciary and legal bodies	5
Academic research projects	4

Clerical organisations	3
Educational institutions	3
Political representatives (Republic of Ireland)	2
Political representatives (Great Britain)	2

- 4.5. Engaging with the media during the period of the NIO’s public consultation was crucial in raising awareness of the proposed legacy mechanisms and reaching as many of those impacted as possible.
- 4.6. As the consultation was open to the public, the Commission sought to directly engage with victims, survivors and wider civic society to outline the detail of the proposals and invite considerations as to what the process should look like for those potentially engaging with them. For this reason, the Commission held a number of focus group sessions which were publicly advertised and invited anyone with an interest in the mechanisms to attend. To convene these sessions in an ethical manner and provide all in an attendance with an opportunity to speak, focus group numbers were limited to 20 per session with as many sessions convened as needed.
- 4.7. Some victims, survivors and other individuals had expressed interest in providing their input to the proposed mechanisms but were unable to attend focus group sessions due to either jurisdictional issues or mobility and health limitations. The Commission accommodated their input by convening one-to-one telephone calls, guiding them through the proposals and gathering their feedback.
- 4.8. It was also appropriate for the Commission to open discussions on the service provision that would be needed across statutory agencies and community based organisations for supporting individuals and families who choose to access the mechanisms. The Commission therefore engaged with various community-based organisations and third sector organisations across Northern Ireland.
- 4.9. Throughout many years of engagements, research and fulfilling the statutory duty of keeping service delivery under review, the Commission has become increasingly aware of the inequity in meeting the needs of victims and survivors outside the jurisdiction of Northern Ireland, most notably in Great Britain and the Republic of Ireland. In order to capture the experiences of these individuals, the Commission held meetings, focus groups and seminar sessions in Birmingham, London, Warrington, Dublin and Donegal. The representation of stakeholders from these various jurisdictions is outlined below:

Engagement jurisdiction	
Northern Ireland	130
Great Britain	23
Republic of Ireland	7
International	4

- 4.10. During the formation of this policy advice, the Commission met with policy makers and government departments in Northern Ireland, Great Britain and the Republic of Ireland. The proposed mechanisms will be established in Northern Ireland, therefore the Commission's engagements focused on ensuring that the voice of victims and survivors was clearly heard by those who would be integral to their design and implementation.

5. Legacy Mechanisms

Historical Investigations Unit (HIU)

- 5.1. Historical investigations are a significant part of acknowledging and dealing with the legacy of the past.
- 5.2. It is the Commission's position that there should be one overarching organisation, under the remit of the DoJ, with the powers to investigate, co-ordinate and report on the provision of justice for all historical cases in relation to the conflict.¹⁷
- 5.3. The Commission therefore welcomed the Stormont House Agreement's commitment to the creation of an HIU to take forward investigations into outstanding Troubles-related deaths.
- 5.4. It is recognised that the current system for addressing the issues of the past, through legacy inquests, the Police Service Northern Ireland (PSNI) and OPONI investigations, only enables a small number of victim and survivors to access justice mechanisms.
- 5.5. Reviewing the outstanding caseloads of the PSNI and OPONI, there are around 1,700 cases currently awaiting investigation. The resources do not exist within the current system, and the impact on victims and survivors is that many have waited decades for truth and justice. The vast majority of victims and survivors awaiting investigation will not see their case examined and with approximately 1,700 cases, there is no real prospect of this happening.
- 5.6. Victims and survivors have also informed the Commission that the existing approach often means that those who are attempting to access justice must deal with various agencies at the same time, which can be confusing, frustrating and isolating.
- 5.7. Whilst the proposed HIU is intended to work within a justice framework, it is anticipated that its primary output will be reports to families, with the aim of providing information where they wish to have it.
- 5.8. Ensuring that investigations are compliant with Article 2 of the European Convention of Human Rights is important, however, they must also be sensitive to the needs of victims and survivors whilst working towards building reconciliation. This is why the VSF's Guiding Principles for Existing and Proposed Organisations and Processes Dealing with the Past are required in

¹⁷ CVSNI (2014), p.19.

the design and implementation of the HIU. They embody a victim-centred approach whilst providing the best chance of acknowledging harm and ensuring that the needs of victims and survivors are met.

5.9. The Commission would highlight the ongoing work of Operation Kenova as an example of a live conflict-related investigatory process. From the design, through to the beginning of the process, the need to have a transparent victim-centred approach to the investigation was paramount. From the Commission's perspective there are three key areas within the investigation which have supported and provided reassurance to victims, survivors and those representing them:

- The practical/operational support of the investigation conducted by the investigation team. The Operation Kenova website provides an explanation of what information, support and protection is available and how to access those rights;
- The Independent Steering Group that advises and supports the Chair of the Investigation across all areas of the Operation Kenova investigation; and
- A Victims Focus Group has been established, which is independent of the investigation. This is impartial and made up of independent international experts in victims' rights. Members utilise their experience to bring best practice on victims' rights and make recommendations to the investigation in relation to victims' needs and interests.

5.10. The Commission **recommends** that learning from the work of Operation Kenova is considered during the design of the HIU to ensure that victims and survivors are aware of, and able to exercise, their rights.

Recognising rights

5.11. It is the Commission's view that victims and survivors have the right to expect high quality services, tailored to their individual needs, during any interaction with criminal justice service providers.

5.12. The Commission believes that families engaged with investigatory processes have an interest in knowing how the system operates and the rights that they have under the EU Directive establishing minimum standards on the rights, support and protection of victims of crime. This includes being proactively provided with information about how a case is progressing and obtaining appropriate help and support as they move through the criminal justice system. These rights should be central to any investigatory process.

- 5.13. Those engaging with the HIU are entitled to appropriate information, support and protection, as with all current criminal justice processes. With the creation of a new mechanism there will be an opportunity for adherence to good practice to be enshrined in the workings of the body. The Commission would therefore highlight the obligations of the Victim Charter and its requirements on how individuals should be treated in terms of advice, support and practical information they can expect to receive.¹⁸
- 5.14. Given the sense of frustration, isolation and low levels of trust that many victims and survivors have, it is essential that those engaging with the HIU are informed of their rights and entitlements from the beginning of the investigatory process.

Victims and Survivors Steering Group

- 5.15. Confidence in legacy processes is critical for victims and survivors and those who support them. The Commission is clear that there is a need for a co-design and collaborative approach between victims and survivors and relevant stakeholders in order to build confidence.
- 5.16. If this purpose is to be achieved then it is critically important that families feel they are treated with respect and that investigators and Family Liaison Officers employ a victim-centred approach.
- 5.17. The Inspection of the Police Service of Northern Ireland Historical Enquiries Team (HET) highlighted the lack of quality assurance or review processes and recommended an independent oversight panel should be established to oversee and scrutinise in the public interest all aspects of the work of the HET.¹⁹ The Commission would agree with Her Majesty's Inspectorate of Constabulary's principle that, as a publicly funded body, operating in an area of significant public interest, appropriate levels of independent oversight and inspection are necessary. Indeed, the approach used by Operation Kenova provides a level of informed oversight.
- 5.18. The Commission **recommends** that a Victims and Survivors Steering Group is established and is involved in the process of co-designing and advising on policies and procedures that relate to the rights, needs and interests of victims and survivors.

¹⁸ The Victim Charter is issued by the Department of Justice under section 31 of the Justice Act (Northern Ireland) 2015. It implements relevant provisions of the EU Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU) and Directive 2011/92/EU combatting the sexual abuse and sexual exploitation of children.

¹⁹ HMIC (2013) *Inspection of the Police Service of Northern Ireland Historical Enquiries Team*, London: HMIC, p.14.

5.19. In particular, the HIU Director should engage with the Victims and Survivors Steering Group in the design and implementation of:

- Policies and procedures relating to HIU engagement with victims and survivors and families;
- Caseload management;
- Ethical considerations;
- The design and content of family reports; and
- The design and analysis of a victim satisfaction survey.

5.20. The Commission welcomes the intention that the HIU Director must consult with the Commissioner for Victims and Survivors when issuing a statement or changes to a statement to family members about giving support and assistance. However, Operation Kenova provides an excellent model for how this can be added to in a victim-centred way through consulting more widely with a Victims and Survivors Steering Group that also includes international representation.

Support for families

5.21. Commission research into historical investigations and information recovery, then referring to the operation of the HET, highlighted good practice with regards to supporting individuals through investigatory processes²⁰:

- Tailored approach - for example at the start of an investigation, the HET allowed the family concerned to choose how they want to be communicated with throughout the process, ranging from not participating at all to being given regular updates on progress;
- Personal touch - praise was given to the first Police Ombudsman because she came across as very personal and would have contacted families herself. This made the families feel that they could trust her and the service she was providing. While not universal, there was also some praise for HET team members in terms of their empathy, listening and in terms of how accommodating they were in communication and meeting. Again this created rapport and confidence, particularly at the start of processes;
- The HET process offered two elements of 'flexibility' which were considered family friendly in nature. First they encouraged families to ask questions which the process would subsequently seek to answer.

²⁰ In 2012 Deloitte was commissioned by the Commission to research the current historical enquiries and information recovery services to assess how effectively they met the needs of victims and survivors, what worked well and what could be improved. This research was used to help to inform the Commission's views for appropriate and accessible services in the future.

Second, the report they first provided to families could be read, reviewed, questioned and amended. This can be compared with other processes where the remit is tightly prescribed (and hence additional questions cannot be asked) and the report is 'final'; and

- Family Liaison Officer – services had family liaison officers in post and they were there to support them through the process. Families were generally aware of these and the minority who availed of their support were positive about their involvement.²¹

- 5.22. Whilst this research was conducted during the operation of the HET, the informed insights are appropriate and applicable to the design and operation of the proposed HIU.
- 5.23. The Commission **recommends** that a well-resourced Family Liaison Unit is established within the HIU and that it should have dedicated officers to provide high quality, empathetic and specifically tailored support for families.
- 5.24. The Commission also **recommends** that the Family Liaison Unit should develop protocols for engagement and shared understanding of roles and responsibilities between the investigation and existing Victims and Survivors Service (VSS) funded advocacy services and DoJ funded witness support services.
- 5.25. A victim-centred and victim-led approach ensures that the needs, interests, views and wishes of the individual take priority. For operational delivery this means there is an empathy and understanding of the impact of the Troubles on victims and survivors and that an emotionally intelligent approach is taken in detailing the competencies and skills required from those delivering services.
- 5.26. It is the Commission's view that family liaison should be one of the most important considerations throughout an investigatory process. The HIU Director should be mindful that families have been traumatised and therefore should be treated appropriately, professionally, with respect and according to their diverse needs. This principle should be reflected at all levels within the HIU.
- 5.27. It is the Commission's view that a fit-for-purpose Family Liaison Unit should:
- Analyse the needs, concerns and expectations of family members to identify all the relevant and realistic action that should be taken in the context of their rights; and

²¹ CVSNI (2012) *Research on Historical Investigations and Information Recovery: Prepared for the Commission for Victims and Survivors by Deloitte*, Belfast: Deloitte, p.10.

- Work with the family in order to comply with their right to receive all the relevant information connected with the investigation, subject to its needs, while gathering material from them that assists the investigation in a way that is proportionate to their fundamental right to privacy and family life.
- 5.28. Key to the delivery of the HIU's work will be the role of the Family Liaison Officer. Whilst the primary purpose of the Family Liaison Officer is that of an investigator, they also provide support and information, in a sensitive and compassionate manner, securing confidence and trust of families.
- 5.29. Working from a position of low trust and confidence, it is therefore essential that the needs of families are central to the work of Family Liaison Officers. Ensuring that the family understand the process, are provided with as much detail as can be shared regarding the progress of the investigation and help through the process of receiving the report, is therefore crucial to the whole HIU process.

Support for victims and survivors

- 5.31. The Commission has worked extensively with the VSF in developing advice on how the proposed mechanisms should be established and one very clear recommendation was to ensure victims and survivors have access to advocacy and health and wellbeing support.
- 5.32. The purpose of this support and advocacy would be to enable an individual to make informed choices about if and/or how they would engage with the HIU, to provide them with support should they decide to receive a family report and to provide after care following receipt of the report is vital.
- 5.33. The Commission **recommends** that a pathway is created for victims and survivors that will allow access to both advocacy and health and wellbeing support before, during and after engagement with the HIU.
- 5.34. The Commission is aware that the DoJ and TEO both fund victim support services. The Commission **recommends** the consideration of a joint strategy to be developed that would allow for a sharing of expertise in relation to navigating the criminal justice system, providing support to witnesses and assisting those specifically affected by conflict-related incidents.

Oversight and governance

- 5.35. Both the development and operationalisation of police accountability in Northern Ireland have gone hand-in-hand with the complex reform process set in motion after the Belfast/Good Friday Agreement.
- 5.36. The Commission welcomes the intention for the Northern Ireland Policing Board to have oversight of the HIU, along with arrangements for inspection by the Criminal Justice Inspection Northern Ireland and Her Majesty's Inspectorate of Constabulary, the latter on the invitation of the DoJ or the Secretary of State, depending if Her Majesty's Inspectorate of Constabulary are asked to look at devolved and non-devolved matters.
- 5.37. It is the Commission's view that the Northern Ireland Policing Board is a well-established policing oversight body with experience of local policing, and importantly, contextual understanding of investigating the past. The Commission would, have concerns regarding adequate resources to ensure that this oversight role is supported throughout the lifespan of the HIU.

HIU Director

- 5.38. The position of HIU Director will play a major role in how the HIU exercises its functions. It is of the utmost importance that the individual selected can command the confidence of victims and survivors and perform their role in a robust and independent way.
- 5.39. It is the Commission's view that the HIU must embed a victim-centred approach, therefore the Commission welcomes the recommendation for the Commissioner for Victims and Survivors to be included in the recruitment process, ensuring there is representation for victims and survivors.

Training for HIU officers

- 5.40. The Victim Charter clearly sets out the standard required for professional and trained staff working with victims.²²
- 5.41. It is essential that any organisation delivering services to individuals affected by conflict-related incidents ensure that support is mindful of the unique

²² The Victim Charter states that service providers must ensure that officials likely to come into contact with victims receive both general and specialist training to a level appropriate to their duties and the nature and level of contact with victims of crime (including those who carry out needs assessments). This training should increase their awareness of the needs of victims and enable them to recognise victims as well as deal with you and provide services in an impartial, respectful, sensitive, tailored, professional and non-discriminatory manner: DoJ (2015) *Victim Charter: A Charter for victims of crime*, Belfast: DoJ, p.20.

nature of violence inflicted upon society in Northern Ireland. This is particularly important in the context of legacy-related investigatory processes.

- 5.42. It is the Commission's view that service provision must be nuanced to meet the specific needs of victims and survivors of conflict-related incidents and **recommends** that there is bespoke and accredited training for HIU Officers.

Independence, trust and the issue of national security

- 5.43. It is critically important that trust exists between victims and survivors and those delivering truth, justice and acknowledgment processes.
- 5.44. The Commission noted that during all engagements with individuals and their representatives, there was an acknowledgement for the requirement to keep people safe.
- 5.45. The Commission is aware that many victims and survivors do not trust any government and have a lack of confidence in how current systems enable them to access truth, justice and acknowledgment. Many believe they have been let down time and time again and have concerns that national security will be used by both Governments to hide embarrassment or manage uncomfortable issues when the HIU is established.
- 5.46. The Commission **recommends** that the HIU must operate in as transparent a manner as possible to demonstrate commitment to developing trust with victims and survivors.
- 5.47. This means that clear parameters must be set and adhered to in relation to how both Governments provide sensitive information to the HIU. It also means that the maximum transparency possible must be applied to the onward disclosure of information to families, with an effective appeals process in relation to appeals against a decision to withhold information.
- 5.48. The Commission has concerns regarding the full disclosure of information into the HIU. If the intention of the HIU is to provide clarity and build confidence, then it is paramount that information is not seen to be withheld by any government or institution. The Commission therefore **recommends** that a process is developed to ascertain and clarify what the HIU can 'reasonably require' from a relevant authority.

5.49. The purpose of this process would be to increase transparency, provide an independent and impartial process that will seek to build confidence and reduce the potential for judicial reviews.

Cases previously reviewed by the Historical Enquiries Team (HET)

5.50. The Commission notes that the draft bill proposes that cases that fall within the HIU remit are the only cases that the HIU would be permitted to investigate. The HIU remit, as specified, does not include completed HET cases, unless a number of criteria have been met.

5.51. The Commission would take this opportunity to highlight that the HET process and proposed HIU process are not similar and can therefore not be viewed in the same context. The differences between the HET's review process and the proposed HIU's investigatory approach are widely acknowledged.

5.52. In order for the HIU to be as inclusive as possible, the Commission **recommends** that the HIU should include a review of all deaths, including those which have already been subject to an HET review. On the basis of this, and in consultation with family members, a decision should be made by the HIU Director as to whether a further investigation would enable more or better information for families and/or evidence to be uncovered.

Individuals who died at the scene of an incident

5.53. The Commission is conscious that a small number of individuals have died at the scene of an incident and died as a direct result of that incident.²³

5.54. The Commission **recommends** that those who died at the scene of an incident should also be eligible to be included in the remit of the HIU. This would provide the families of these individuals with an HIU family report and access to the support mechanisms that will underpin the work of the HIU.

²³ Sudden deaths, due to a heart problem at a conflict-related incident, have been catalogued in Malcolm Sutton (1994) *Bear in mind these dead: An Index of Deaths from the Conflict in Ireland 1969-1993*, Belfast: Beyond the Pale Publications.

Jurisdictional issues

- 5.55. Whilst the vast majority of conflict-related incidents took place in Northern Ireland, there were a number of incidents in other locations; particularly in Great Britain and the Republic of Ireland.
- 5.56. The Stormont House Agreement contained a commitment to taking steps to ensure that victims and survivors have access to high quality services, with a specific reference to those who do not live in Northern Ireland. The Commission welcomed this commitment, as it echoed the Commission's policy position that there should be an equitable approach to dealing with victims and survivors, regardless of where they live.²⁴ It is the Commission's view that this principle should apply to investigatory processes.
- 5.57. There were 3,720 conflict-related deaths between June 1966 and November 2006. Of that figure, 267 deaths took place outside Northern Ireland, the majority in Great Britain and the Republic of Ireland²⁵. Further, it is estimated more than 300,000 military personnel served in Northern Ireland as part of Operation Banner, the majority of those who served were from regiments based in Great Britain. In addition to UK security force personnel, 12 members of An Garda Síochána were killed, together with 1 member of the Irish Army.²⁶
- 5.58. The Commission believes that victims and survivors should be entitled to access justice regardless of where a death happened. Therefore, it is imperative, that both the UK and Irish Governments provide the necessary resources to allow all conflict-related deaths to be fully investigated and have parity with investigations that will be undertaken by the HIU. The Commission **recommends** that either the HIU or a centralised police unit is empowered to investigate conflict-related deaths in Great Britain. This should be coupled with a commitment from the UK Government to adequately fund and resource both investigations and the provision of advocacy and support services to victims and survivors.
- 5.59. The Commission also **requests** that the Irish Government should establish a mechanism whereby Troubles related deaths within the Republic of Ireland are investigated.

²⁴ CVSNI (2014) *Assessing Funding and Services for Victims and Survivors Outside of Northern Ireland*, Belfast: CVSNI.

²⁵ Figures indicate that 128 deaths took place in Great Britain, 121 in the Republic of Ireland and 18 in Europe. Source: McKittrick, D. et al (2007), p.1556-1557.

²⁶ Ibid.

Those injured during the Troubles

- 5.60. The Commission is aware that there are over 40,000 people who were injured in conflict-related incidents, and whilst they did not die, they sustained physical and psychological injuries that would impact on the rest of their lives.²⁷
- 5.61. The HIU's focus is solely on deaths and although there are proposals that family reports relating to a death can be provided to injured persons if it can be established that they were injured in the same incident as the death occurred, the Commission does not believe this goes far enough.
- 5.62. Whilst the draft Bill clearly states that it is committed to being human rights compliant, it is only in relation to Article 2 of the ECHR, and does not take into consideration other acts that might have contravened human rights legislation.
- 5.63. The Commission **recommends** that the Governments establish separate mechanisms that will provide access to truth and/or justice for victims and survivors who have been injured.

Resourcing

- 5.64. It is the Commission's view that the allocated funding, of £150 million, will not allow the HIU to fully deliver on all responsibilities. This view has also been echoed by stakeholders with an interest in the HIU's work in order for it to be fit for purpose. The Commission **recommends** that the Government needs to adequately fund the HIU and other mechanisms.
- 5.65. The expansion of the HIU caseload to include cases reviewed by the HET would make the timeframe of five years unachievable. Whilst there are provisions within the legislation to extend, the Commission **recommends** that the Government provides more time to allow the HIU and other institutions to be established and successfully complete their allocated case load.

²⁷ Smyth et al (1999), p.37.

Independent Commission for Information Retrieval (ICIR)

- 5.66. Victims and survivors have the right to hear the truth of what happened to their loved one and should be entitled to as much information as possible in relation to the incident, where it still exists or where it is still available.
- 5.67. It is widely acknowledged that a piecemeal approach has operated in Northern Ireland to date in relation to information recovery. For some families this has helped achieve a sense of completion, but for others it has resulted in more questions than answers.
- 5.68. It is the Commission's position that there should be a process in place to offer the recovery of truth for victims and survivors.²⁸ The Commission therefore welcomed the agreement between the UK and Irish Governments to establish the ICIR.

Victims and Survivors Steering Group

- 5.69. Confidence in legacy processes are critical for victims and survivors and those who support them. As with the HIU, the Commission is clear that there is a need for a co-design and collaborative approach between victims and survivors and relevant stakeholders in order to build confidence regarding information retrieval.
- 5.70. The Commission noted there was no reference to ensuring the needs of victims and survivors are central to its creation, either in the draft Bill or the draft Treaty between the UK and Irish Governments.
- 5.71. The VSF worked with the Commission in informing this policy advice. Members were very clear that for the ICIR to deliver its intended purpose, it must establish a Victims and Survivors Steering Group that will provide guidance on various areas, including:
- How interlocutors should engage with families, in helping them to decide what questions should be asked and understanding the process;
 - Ensuring information provided is verified and credible;
 - Developing a family liaison function that will work with the existing network of advocate counsellors and health and well-being workers; and

²⁸ CVSNI (2014), p.15.

- Production of family reports so they are structured in a way that delivers the information families need.

5.72. The Commission **recommends** that a Victims and Survivors Steering Group should be established to ensure the work the ICIR meets the needs of victims and survivors. In addition, the Commission believes the same structures that we have recommended to support victims and survivors through the HIU should be replicated in the ICIR; this includes a Family Liaison Unit within the ICIR with clear processes for communication with organisations providing support and advocacy for families. The Commission believes that this should be stipulated in legislation.

Cross-contamination/sequencing

5.73. The ICIR must be to be hermetically sealed for it be effective. However, once information is provided to families, there is no way of enforcing confidentiality.

5.74. The Commission is aware there is concern that ICIR family reports could give rise to potential new evidential leads for deaths being investigated by the HIU.

5.75. The Commission is also aware that there is the chance that information from families' reports, if made public, could prejudice any potential prosecution. The combined efforts of these doubts, however realistic or otherwise is:

- Reduced confidence from individuals and organisations to come forward to provide information to the ICIR, due to the fear that information provided in family reports could be used to identify new evidential leads for investigation. If this is the case, it will render the ICIR as ineffective; and
- Concern that ICIR family reports could potentially become public and compromise prosecutions.

5.76. Therefore the Commission understands how sequencing the HIU and ICIR looks like a solution. However, for some victims and survivors this closes down options. It is a concern that victims and survivors are an ageing demographic and some will not have five to ten years to wait until the HIU completes its work before they can access the ICIR.

5.77. The VSF suggested that the ICIR should work with the Victims and Survivors Steering Group in the design of family reports. A further suggestion from the VSF was that families should frame the specific questions to be asked of the ICIR and interlocutors should work to source this information. Beyond this, it

was suggested that information which might constitute or lead to the discovery of evidence should be gisted.

- 5.78. The Commission **recommends** that ICIR interlocutors should engage with families, to assist them in deciding what questions should be asked regarding the death of their loved one.

Advocacy support for victims and survivors

- 5.79. The VSF were very clear that support throughout the ICIR process is essential, from initial outreach and helping individuals make the decision to engage with the ICIR, through actual engagement, receiving the report and providing aftercare once the process has completed.
- 5.80. As recommended for the HIU, this should be fully integrated with VSS funded services and should work in partnership with an ICIR Family Liaison function.

Family Liaison Unit

- 5.81. Unlike the proposals for establishing the HIU, the draft Bill does not make any reference as to what support should be provided to individuals either accessing or providing information to the ICIR.
- 5.82. A Family Liaison Officer employed by the ICIR could provide timely updates (even if there is no new information available) on the status of cases and/or signpost families to the most suitable form of support for them during the process and for when the family report is delivered. The Family Liaison Officer would need to work closely with the existing advocacy and health and wellbeing networks to ensure support and information is provided in a consistent manner.

Outreach strategy

- 5.83. In order for the ICIR process to work, it is essential that efforts are made to highlight and promote an awareness of the ICIR's work. This is particularly important considering that all engagement with the ICIR would be voluntary.
- 5.84. The Commission **recommends** that a proactive outreach strategy should be developed and delivered to reach out to those individuals who otherwise may not have enough information to make a decision as to whether to engage with

the ICIR. Discussion with Independent Commission for the Location of Victims' Remains (ICLVR) indicated that a proactive outreach strategy will also need to reach out to those individuals who have information that the ICIR is seeking.

- 5.85. It is therefore essential that a comprehensive outreach communication strategy needs to be developed and delivered from the outset of the ICIR.

Appeal process

- 5.86. Unlike the draft HIU legislation, there are no provisions for any appeal process within the ICIR and it is not clear whether or not families would be notified if redaction had taken place.

- 5.87. The Commission **recommends** that the UK Government establish an appeals process, similar to the HIU process, which will allow victims and survivors to appeal decisions to redact information on national security grounds. The Commission requests that the Irish Government also gives this consideration.

Timeframe

- 5.88. There is concern that that the remit of the ICIR only extends to 1998, unlike the timeframe of the HIU. This will mean there are victims and survivors that will be unable to, or do not want to, access the HIU but will not have the option to access the ICIR. This removes choices from victims and survivors in whether they want to access truth or justice.

- 5.89. The Commission **recommends** that the timeframe for the ICIR is coterminous with the HIU.

Issue of credibility

- 5.90. For victims and survivors, and wider civil society, to have confidence in this mechanism, a robust and trusted system needs to be developed to ensure any information passed to it is credible and reliable.

- 5.91. The Commission recognises that the danger of information 'leaking' between the ICIR and the HIU must be removed. At the same time the Commission is concerned that sequencing the HIU and ICIR would effectively remove the option of the ICIR from family members who are ageing and may not feel they

have time to wait. The Commission therefore **recommends** that all alternatives are explored.

- 5.92. One of the key issues to be addressed is the impact of incomplete or incorrect information about the death of a loved one. To minimise the risk of this, the Commission **recommends** adequate testing of the veracity of information by using other sources. This will depend on having appropriately trained staff with experience of handling sensitive information and making judgements about the credibility of information.

Impact of Official Secrets Act

- 5.93. The Commission **recommends** that clarity is provided on how the ICIR would work in relation to the Official Secrets Act (1989) and if this would mean that security forces and ex-security forces personnel would be unable to contribute to the ICIR.

Extension to timeframe for ICIR

- 5.94. The draft Bill proposes that the ICIR is a passive entity waiting for individuals to engage with it, yet the experience of the ICLVR shows that for it to be effective, it will need proactive engagement with families and those individuals and organisations with information. The Commission met with representatives from the ICLVR in 2018 to ascertain how the process of information sharing worked and was informed that initially it was a passive and slow process, waiting for information to be forwarded.²⁹
- 5.95. The Commission **recommends** that there is an extension to the proposed timeframe for the ICIR and that this is included in the draft Bill; experience from the ICLVR indicates that this process takes time to deliver results.

²⁹ The Commission met with representatives of the ICLVR on 24/01/2018 to discuss parallels with proposed legacy mechanisms and ICLVR current work.

Oral History Archive (OHA)

- 5.96. There is an acceptance that the challenges society continues to experience arise, in large part, from our separate and dividing narratives of the past and consequently, those narratives need to be given attention. There have been many examples of storytelling projects and they play an important element of helping society understand the impact of the past.
- 5.97. The Commission therefore welcomed the inclusion of an OHA as mechanism to assist with addressing the legacy of the past.
- 5.98. For it to be the mechanism for people from all backgrounds to share their experience of the Troubles, it must be co-designed, victim-centred, independent and impartial, inclusive and fit-for-purpose.

Representation on the Steering Group

- 5.99. The Commission welcomes the proposal to establish a Steering Group. The Commission is concerned that the Deputy Keeper is not required to ensure that there is representation from either a victim and survivor or appropriate representative body.
- 5.100. It is the Commission's view that the Steering Group should represent the needs and aspirations of victims and survivors. Its composition must reflect not only the expertise that will be required to manage such a project, but also the empathy and understanding of experiences that will be collated. The Commission therefore **recommends** that victims and survivors are represented on the OHA Steering Group.

Support and advocacy for victims and survivors

- 5.101. Similar to the HIU and the ICIR, the Commission **recommends** that a pathway is created for victims and survivors that will allow access to both advocacy and health and wellbeing support before, during and after engagement with the OHA.
- 5.102. Victims and survivors must be made fully aware before they engage with the OHA what the implications may be. Advocacy support during this process will be vital to ensure any potential contributor is made fully aware of the various stages of contributing, ensuring they can provide informed consent, and being made aware what will happen to their contribution once it has been recorded.

Partnership working with existing oral history projects

- 5.103. The Commission welcomes the intention that the OHA will attempt to draw together and work with existing oral history projects.
- 5.104. Partnership working and developing contractual arrangements with existing oral history projects is the best method of ensuring the collation of oral histories is conducted in a victim-centred manner. This can also be carried out at a community level and in partnership with the academics appointed. Existing community-based oral history projects have extensive experience of capturing storytelling and understand the difficulties people can face when contributing.
- 5.105. The Commission **recommends** that existing community-based oral history/storytelling projects should be involved in the oral history collation process.

Official Secrets Act

- 5.106. The Commission **recommends** that both governments clarify whether any individuals who have signed the Official Secrets Act can give information to the OHA. There is a perception that those who have signed the Official Secrets Act, in both jurisdictions, will be unable to engage and that this may impact on the balance of narratives collected.
- 5.107. The Commission has engaged with the Public Record Office of Northern Ireland (PRONI) and is aware that prior to any oral history contribution being published, it will be reviewed to ensure that personal information will not be shared that would result in harm to the contributor or any other person. Oral histories will also be screened to ensure they do not contravene the European Convention of Human Rights (specifically Articles 2, 3 and 8), the Data Protection Act or is potentially offensive.

Record retention and disposal

- 5.108. Victims and survivors expressed concern that if they made a contribution to the OHA which subsequently was deemed not to be of lasting historical significance then it would be destroyed or discarded.

5.109. The Commission met with PRONI to discuss this issue and was informed that the reference to record retention and disposal was in relation to holding on to records that were either duplicates or that cannot be analysed/deciphered. It was emphasised that this is not in relation to any individual who makes a contribution to the OHA.

5.110. PRONI did highlight as an archive, it must have a process to dispose of these types of records and the inclusion in the draft Bill was an attempt at being transparent. Therefore the Commission **recommends** that PRONI produces clear guidance regarding record retention and disposal to provide clarity on how it will manage different types of records.

Timeframe

5.111. The Commission **recommends** that the OHA have the same timeframe as the other proposed legacy mechanisms to allow for consistency in reporting to the Implementation and Reconciliation Group.

5.112. The draft Bill states the OHA will have the function of organising an oral history archive which relates to Northern Ireland or Ireland from 1 January 1966 up to 10 April 1998. The Commission is also encouraged that the Bill also makes provision for the inclusion of incidents that have the required connection with Northern Ireland, meaning that people who have been impacted by incidents which took place after 10 April 1998 are not excluded.

5.113. The Commission believes that in order for the IRG to have the capacity to report in a consistent manner, all legacy mechanisms should work to the same timeframes.

Resourcing

5.114. The OHA will be a labour intensive mechanism and will require highly skilled staff including historians and archivists. The draft Bill does not make reference to how it will be funded, or what the amount from the projected £150 million for the four proposed mechanisms will be allocated to it. The Commission **recommends** that the OHA is adequately resourced to allow it to deliver its intended outputs.

Factual historical timeline and statistical analysis

- 5.115. The Commission recognises the potential of a factual historical timeline and statistical analysis of the Troubles.
- 5.116. The opportunity for those affected by conflict-related incidents to share narratives should be welcomed. Equally, the opportunity to acknowledge and detail conflict-related incidents should also be welcomed. Ensuring that individuals have the opportunity to share their experiences, and for incidents to be acknowledged, provides additional choices and options for those who may be excluded from, or not wanting, to engage with other legacy mechanisms.
- 5.117. Further, the Commission would imagine that such a resource would be utilised as an education tool for informing our children and young people. Whilst the Commission sees merit in the proposal, we **recommend** that the legislation should clarify the purpose of this timeline and any related research projects.

Implementation and Reconciliation Group (IRG)

- 5.118. The Commission welcomed the Stormont House Agreement's commitment, as part of the transition to long-term peace and stability, that an approach to dealing with the past is necessary which also promotes reconciliation. The Commission sees this as the key aim of the IRG.

Membership and political representation

- 5.119. The VSF has expressed concern that whilst the draft Bill proposes that political nominations cannot be elected representatives, it still proposes to use what is essentially the D'Hondt system to allocate the amount of representation each party will have within the IRG. Given the current political impasse the Northern Ireland Executive finds itself in, it is clear that this system could experience the same difficulties and has the potential to create a situation where political stalemates are allowed to impact on its work.
- 5.120. It is imperative that the IRG should not be set up in such a way that it would be allowed to reach a political deadlock. This risk could be mitigated by including members who can represent other interests, including those of victims and survivors.

5.121. The Commission **recommends** that the membership of the IRG should include an individual who can represent the voice of victims and survivors.

Criteria for nomination

5.122. In line with the overarching principles of the Stormont House Agreement the IRG must deliver an approach that is ‘balanced, proportionate, transparent, fair and equitable’. It must also be independent; this principle is critical to building trust with victims and survivors.

5.123. Clear and unambiguous criteria should be included regarding the competencies required of individuals nominated as representatives on the IRG. Victims and survivors want to see this mechanism as robust and independent. Without this nomination procedure, it currently lacks transparency.

5.124. During the Commission’s engagements, concerns were also raised regarding the ability of political parties to withdraw their representatives at short notice. The absence of clear criteria as to what would constitute the proper grounds on which an individual can be withdrawn undermines the independence of this mechanism.

5.125. The Commission **recommends** that clear criteria are developed for the nomination of an individual to the IRG, and in addition to this that there should be clear guidance on the circumstances in which an individual can or should be removed from their duties as a member of the IRG.

Statements of acknowledgement

5.126. The Stormont House Agreement envisaged the IRG as the mechanism for statements of acknowledgements to be considered by the UK and Irish Governments and the expectation of others to do the same. It is recognised that the purpose of the academic-led report into themes and patterns could also be to highlight where statements of acknowledgement should be made.

Clearly defined parameters

- 5.127. The IRG is described as the mechanism to promote reconciliation and anti-sectarianism, however neither the draft Bill nor the consultation document provides any clarity on how it defines these concepts.
- 5.128. To enable the IRG to review and assess the out workings of the HIU, ICIR and OHA in promoting reconciliation and anti-sectarianism, it needs to include how it will measure it.
- 5.129. Hamber and Kelly provide a working definition of reconciliation, as used by the Community Relations Council, that determines how “reconciliation is a necessary process following conflict, however... it is a voluntary act and cannot be imposed”.³⁰ The working definition also defines how a shared vision of an interdependent and fair society needs to be developed, how acknowledgement and dealing with the past must also happen, how building positive relationships to address trust and prejudice issues are important and that there needs to be significant shifts in culture and attitudes coupled with substantial social, economic and political change.
- 5.130. The Commission **recommends** the IRG develops and uses clearly defined parameters to allow for the assessment and evaluation of how the HIU, ICIR and OHA impact on the lives of victims and survivors and promote reconciliation and anti-sectarianism in order to secure public confidence.

Timescales

- 5.131. The Commission **recommends** that the timeframe for the IRG is reviewed.
- 5.132. It is envisaged that if the number of cases to be reviewed by HIU is extended as we have recommended, then the ICIR will require an extension to allow victims and survivors equity of access. Therefore, the difference in the proposed conclusion for each of the mechanisms will also impact on the work of the IRG. The draft Bill calls for the HIU to be extended to 2004, yet the ICIR will aim to conclude after five years (without extension).
- 5.133. This will create a difficult undertaking for the independent academic report to be completed in the timescale and then allow the IRG to move on the task of identifying themes and patterns, which will then enable statements of acknowledgements. For many victims and survivors, this will simply come too late.

³⁰ Brandon B. & Kelly, G (2004), *A Working Definition of Reconciliation*, Belfast: Democratic Dialogue.

Other government programmes

5.134. The Commission **recommends** that when the work of the IRG is completed it should be used to inform a new government strategy for building reconciliation, anti-sectarianism and ending paramilitarism. This strategy should be interdepartmental to ensure that the delivery of other relevant programmes are aligned to its work and will create positive impact.

Matters outside the consultation's scope

5.135. There are a number of other legacy issues, many of which were included in the Stormont House Agreement, that were not included in the NIO's consultation. Many of these issues have been considered devolved matters and have therefore have not been progressed sufficiently in the absence of a Northern Ireland Executive. It is the Commission's view that the other measures included within the Stormont House Agreement are part of a holistic package specifically designed to meet the needs of victims and survivors.

5.136. A summary of the status on the other issues is provided below along with key considerations for the Government.

Pension for the Severely Injured (Stormont House Agreement)

5.137. The Stormont House Agreement made the following commitment to victims and survivors:

“Seeking an acceptable way forward on the proposal for a pension for the severely physically injured victims in Northern Ireland.”

5.138. The need to make provision for a pension payment to the severely injured is of paramount importance. Not least because this group of victims and survivors are an ageing population with increasing financial and welfare needs.

5.139. This is the only other measure in Stormont House Agreement that requires legislation. The Commission submitted policy advice for the First and deputy First Minister in 2014 which, unfortunately because of eligibility, did not receive sufficient political consensus to progress.³¹

³¹ CVSNI (2014) *A Pension for people severely injured in the Troubles, Commission Advice Paper, 11th June 2014*, Belfast: CVSNI.

- 5.140. The Secretary of State asked the Commissioner to update this policy advice in May 2018 and agreed the scope of this update in August 2018. With funding confirmed by TEO, this update is underway with advice to be submitted in two phases, the severely physically injured element by completed in December 2018 and the severely psychologically injured element to be submitted by March 2019.
- 5.141. The Commission would **recommend** that consultation and legislation be progressed at Westminster (in the absence of the Northern Ireland Assembly) to address this as a matter of priority.

Mental Trauma Service (Stormont House Agreement)

- 5.142. The Stormont House Agreement made the following commitment to victims and survivors:

“Implementing a comprehensive Mental Trauma Service.”

- 5.143. In recent years, the Commission has continued to highlight the inequitable provision of trauma-related services for victims and survivors within the health and social care system in Northern Ireland. Given the significant level of conflict-related mental health needs among many individuals and families affected by their exposure to Troubles-related violence, there remains a very clear need for the implementation of a region-wide coordinated evidence based response to the mental health needs of victims and survivors. The Commission therefore welcomed the inclusion of the recommendation for the establishment of a 'Mental Trauma Service' by local politicians in the Stormont House Agreement and the 2015 decision by the then Health Minister to develop the new service.
- 5.144. An important part of the new Regional Trauma Network currently under development will be the partnership arrangement between trauma-focussed psychological therapy services based within the Northern Ireland health and social care system and the VSS funded organisations presently delivering health and wellbeing support to individuals and families. This process is being supported by the appointment of PEACE IV-funded Health and Wellbeing Case Managers located within the VSS and Health and Wellbeing Caseworkers based within the funded victims and survivors organisations in community settings across Northern Ireland and the Border Region of Ireland. This collaborative, cross-sectoral partnership arrangement can provide the required resources, expertise and capacity to effectively address the mental and physical health legacy of the Troubles on individuals and families throughout Northern Ireland.

5.145. While important work is ongoing in developing the new Regional Trauma Network, it can only continue to do so and become an effective trauma service if it is appropriately funded.

5.146. The Commission **recommends** that while funding has been provided to assist the development of the service, a significant increase in resources will be required in the years ahead to meet expected high demand as legacy mechanisms are implemented.

Advocate-counsellor assistance (Stormont House Agreement)

5.147. The Stormont House Agreement made the following commitment to victims and survivors:

“Providing access to advocate-counsellor assistance.”

5.148. The need for advocacy and health and wellbeing support has been a key requirement of any proposals to deal with the past. In anticipation of legacy matters being consulted upon the VSS secured PEACE IV funding which was used to employ 5 Health and Wellbeing Managers within the VSS, as well as 21 Health and Wellbeing Caseworkers, 6 Advocacy Managers and 18.5 Advocacy workers in community-based organisations across Northern Ireland, Great Britain and the Republic of Ireland.

5.149. Given the lead in time for establishing new institutions it is likely that funding for these key support posts will be coming to an end in March 2021 just as the new bodies are being established.

5.150. The Commission would **recommend** that funding discussions with both Governments takes place to ensure these key posts are sustained throughout the lifetime of the new legacy bodies.

Legacy inquests

5.151. The Stormont House Agreement made the following commitment to victims and survivors:

“Taking appropriate steps to improve the way the legacy inquest function is conducted to comply with European Convention on Human Rights Article 2 requirements.”

- 5.152. Legacy inquests are not an explicit measure within the Stormont House Agreement, however the legal right to have an inquest heard in the Coroners Courts is a critical element of addressing legacy of the past. The backlog accrued of 50 outstanding legacy inquests into 94 deaths, some of which date back over 40 years requires urgent attention.
- 5.153. The Commission **recommends** that sufficient resources should be committed to legacy inquests to ensure that victims and survivors are able to exercise their legal right to review the circumstances which lead to the death of a loved one. The Commission believes that it is also an opportunity to develop better information management systems and techniques that could be transferred to the new HIU.

Alternative approaches

- 5.154. In April 2017 the Defence Committee published their report into Investigations into fatalities in Northern Ireland involving British military personnel. The Committee's report included a number of options, with a recommendation of enacting a statute of limitations.³²
- 5.155. The Commission welcomed the Defence Committee's interest in this area and efforts to engage evidence from legal practitioners, academics and officials in order to inform their options and recommendation.
- 5.156. It is the Commission's position that the legacy proposals, as agreed and detailed in the Stormont House Agreement, provide the best approach to address the legacy of the past.
- 5.157. In all of the Commission's work around legacy-related matters, the majority view has been opposed to any form of amnesty that would undermine the rule of law or the opportunity to pursue justice through the courts. Through the recent legacy consultation the concept of a statute of limitations that legally would have to apply to all actors in the conflict was strongly opposed with many victims and survivors citing the 'On the Run' letters and the adverse impact this has had on them and their families.
- 5.158. Victims and survivors have waited for long enough and been patient with various attempts to deliver truth, justice and acknowledgement over the past twenty years since the Belfast/Good Friday Agreement.

³²Defence Committee (2017) *Investigations into fatalities in Northern Ireland involving British military personnel*, London: House of Commons, p.17.

5.159. It is the Commission's view that approaches, such as amnesties and a statute of limitations, would take away opportunities for victims and survivors from all sides to seek the truth, justice or acknowledgement that they feel an investigation would bring. The Commission therefore **recommends** that alternative approaches to addressing the past, outside of the proposed mechanisms contained in the Stormont House Agreement, are not considered by Government.

6. Impact on Existing Services

- 6.1. Support services for individual victims and survivors are primarily delivered or funded by the VSS.³³
- 6.2. The VSS provides direct assistance to over 6,000 individual victims and survivors. They also fund 56 community-based organisations to deliver a range of support services to more than 12,000 individuals.
- 6.3. It is the Commission's view that the VSS and the VSS funded organisations continue to offer the best avenue of support for addressing the needs of victims and survivors. This network of service deliverers has been to the fore in developing a model of support that is victim-centred, holistic and nuanced to victims and survivors of conflict-related incidents.
- 6.4. The Commission therefore **recommends** that any new mechanisms build upon the established service provision and networks for services to victims and survivors. This view has been echoed by the VSS in their response to the NIO's consultation.³⁴
- 6.5. In August 2016 the Commission submitted advice on a new service delivery model for the VSS over the 2017-2020 period. The advice highlighted that a key issue of concern facing the victims and survivors sector was that of sustainability, with the biggest challenge being the quantum of individuals presenting for services and support to the VSS and funded groups. The Commission's advice made a number of recommendations that have informed the current needs-based service delivery model.³⁵
- 6.6. It has been acknowledged that if legacy mechanisms are implemented, there will be an inevitable increase in demand for support services. This will not necessarily be solely in relation to advocacy support, but across all areas of health and wellbeing and social support. Indeed, it is reasonable to anticipate that established mechanisms could also lead to an increase in demand for statutory services as a result of individuals engaging with legacy mechanisms.
- 6.7. The Commission would also highlight that the VSS cannot be expected to fill the needs left by the absence of measures such as a pension for the severely injured, a fully operational Regional Trauma Network and broader forms of

³³ Whilst the VSS is the primary service delivery body, other support mechanisms are delivered through charities and NGOs. This is particularly the case for victims and survivors outside Northern Ireland due to differences in the funding landscape (explored further in this advice).

³⁴ VSSNI (2018) *VSS Response to the Northern Ireland Office Public Consultation: addressing the Legacy of Northern Ireland's Past*, Belfast: VSSNI, p.7.

³⁵ CVSNI (2016) *Policy Advice Paper – Victims and Survivors Delivery Model for 2017-2020*. Belfast: CVSNI.

acknowledgement and reparation offered through the proposed legacy institutions.

- 6.8. The Commission **recommends** that in the design stages of establishing mechanisms, responsible bodies take account of the resources required to support those engaging in legacy processes. The Commission believes that this can be best achieved through a process of partnership and collaborative working.

7. Accessing Services outside Northern Ireland

- 7.1. It is widely acknowledged that the Troubles had a profound impact on people's lives; those injured, bereaved and witnesses of traumatic events. This impact is long lasting and permeates through to the present day for these individuals as well as the next generation. This applies to all, regardless of geographical location.
- 7.2. Whilst the vast majority of conflict-related incidents took place in Northern Ireland, there were a number of incidents in other locations, particularly in Great Britain and the Republic of Ireland. Further, there are a number of individual victims and survivors residing outside of Northern Ireland who have been impacted by the Troubles.
- 7.3. The Stormont House Agreement contained a commitment to taking steps to ensure that victims and survivors have access to high quality services, with a specific reference to those who do not live in Northern Ireland. The Commission welcomed this commitment, as it echoed the Commission's policy position that there should be an equitable approach to dealing with victims and survivors, regardless of where they live.
- 7.4. In February 2014, the Commission submitted advice to Ministers on accessing funding and services for victims and survivors outside of Northern Ireland. This advice made a number of recommendations, including that groups should be able to apply and be considered under the criteria and competition that applies to all other groups in the application and assessment process and that geographical location is not considered a barrier to applying.³⁶ This position was echoed in August 2016, when the Commission recommended to TEO that organisations from outside the jurisdiction should be eligible to apply to both the Victim Support Programme and PEACE IV Programmes simultaneously.
- 7.5. The Commission welcomed the arrangements for support services outside of Northern Ireland being facilitated by PEACE IV funding. It needs to be noted that this support is limited and only guaranteed to 2021.³⁷ Whilst individuals outside of Northern Ireland can access support from the VSS through the Individual Needs Programme, organisations outside Northern Ireland cannot access funding in a way that is open to groups within Northern Ireland. The Commission views this as an inconsistency in the current policy and **recommends** this be addressed.

³⁶ CVSNI (2014) *Accessing Funding and Services for Victims and Survivors Outside of Northern Ireland*. Belfast: CVSNI.

³⁷ CVSNI (2016).

Analysis

- 7.6. There were 3,720 conflict-related deaths between June 1966 and November 2006. Of that figure, 267 deaths took place outside Northern Ireland, the majority in Great Britain and the Republic of Ireland³⁸:

Location	Deaths
Belfast	1,687
Armagh	520
Tyrone	359
L/Derry	358
Antrim	211
Down	206
Fermanagh	112
Great Britain	128
Republic of Ireland	121
Europe	18
Northern Ireland total	3,453
Outside Northern Ireland total	267

- 7.7. Further examination of these figures show the distribution of civilian deaths outside Northern Ireland as England (70), Republic of Ireland (67), Holland (4), Germany (1) and France (1).³⁹
- 7.8. It is estimated more than 300,000 military personnel served in Northern Ireland as part of Operation Banner. The majority of those who served during the period from August 1969 to July 2007 were from regiments based in Great Britain and losses are accounted for as 'Army' in the below table:

Agency	Deaths
Army	503
Ulster Defence Regiment/Royal Irish Regiment	206
Royal Ulster Constabulary/Royal Ulster Constabulary Reserve	303
Total	1,012

- 7.9. In addition to the major agencies listed above there were a number of deaths of personnel in other services including 4 members of the Royal Air Force, 1

³⁸ McKittrick, D. et al (2007).

³⁹ Ibid.

Royal Navy officer and 6 members of police forces in Great Britain. In addition to UK security force personnel, 12 members of An Garda Síochána were killed, together with 1 member of the Irish Army.⁴⁰

- 7.10. Research conducted in this area has traditionally only referred to those affected in Northern Ireland. There has been no similar extensive studies conducted for those impacted outside of Northern Ireland. In 2003 the Tim Parry Jonathan Ball Trust collated a chronology of incidents that have impacted upon residents of Great Britain. This analysis detailed incidents which people in Great Britain had been bereaved, injured or affected as a result of the conflict. This piece of work stated that 245 incidents took place between October 1971 and November 2011 in Great Britain and of that figure 88 incidents resulted in deaths or casualties.⁴¹
- 7.11. In November 2018, Survivors Against Terror published a survey detailing the experiences of attacks. Its findings advised that survivors of attacks rated the support they received highly, with most services being rated by 80% of respondents as good, very good or exceptional. The report also highlighted that 76% of respondents highlighted mental health services as requiring improvement.⁴² Whilst the report covers all incidents, and not specific to Northern Ireland-related incidents, it does provide an insight into the experiences of victims and survivors living in Great Britain.

Accessing support

- 7.12. The Commission highlights the fact that geographical location does not deem an individual ineligible to apply for support under the Individual Needs Programme. The VSS has advised the Commission that the total number of clients awarded support under the Individual Needs Programme since April 2018 are as follows⁴³:

⁴⁰ Ibid.

⁴¹ Tim Parry Jonathan Ball Trust (2003) *The Legacy: A study of the needs of GB victims and survivors of the Northern Ireland 'Troubles'*. Warrington: Tim Parry Jonathan Ball Trust, p.99-120.

⁴² Survivors Against Terror (2018) *Giving Voice to Survivors: a survey of the views of survivors of terrorist attacks*, London: Survivors Against Terror.

⁴³ Figures provided by the Victims and Survivors Service (information correct as of 07/12/2018).

Location	Individuals
England	148
Scotland	22
Wales	4
Guernsey	1
Jersey	2
Isle of Man	1
Republic of Ireland	105
USA	7
Canada	3
France	1
Netherlands	1
Germany	1
Spain	2
Total	298

- 7.13. A total of 298 individuals accessing support reside outside of Northern Ireland; the majority resident in Great Britain and the Republic of Ireland. It should be stressed that the above figures only relate to individuals that have received support through the Individual Needs Programme.
- 7.14. The Commission is pleased that PEACE IV-funded support has provided additional capacity within the sector to address advocacy support alongside the proposed legacy institutions and also provide care and support to protect the health and wellbeing of victims and survivors engaged in these processes. This is particularly welcome for individuals residing in Great Britain and the Republic of Ireland, who continue to experience a different level of service provision to victims and survivors in Northern Ireland.
- 7.15. It needs to be acknowledged that many individual victims and survivors access support outside of VSS arrangements. These would include accessing support through charities or directly through the statutory sector. The use of the third sector, or charities that also receive government funding to deliver services, would be particularly evident regarding former Service personnel.⁴⁴

⁴⁴ Some of these organisations include the Royal British Legion, Combat Stress and SSAFA. These support groups operate nationwide and also deliver support to former personnel living in the Republic of Ireland.

Supporting victims and survivors

- 7.16. Despite the above, the Commission's engagement with individual victims and survivors, and their representatives, outside Northern Ireland has consistently indicated that there is a sense of isolation and inequality and that awareness levels are very low regarding entitlement, access to support and general assistance. Recent engagement has highlighted particular concern regarding appropriate mental health support and the impact of legacy-related judicial processes.
- 7.17. In August 2016 the Commission recommended to TEO that organisations from outside the jurisdiction should be eligible to apply for this funding stream thus to both the Victim Support Programme and PEACE IV Programmes simultaneously. The Commission therefore welcomed the arrangements for support services outside of Northern Ireland being facilitated by PEACE IV funding, but this is limited and only guaranteed to 2021. Further, it remains policy that applications from outside Northern Ireland cannot be accepted for the Victims Support Programme.
- 7.18. Despite this the Commission remains concerned that victims and survivors outside of Northern Ireland continue to experience a different level of service provision. This sense of disparity will be accentuated if legacy mechanisms are established.
- 7.19. The Commission acknowledges that no recognition or practical support can ever compensate for the loss of a loved-one or the devastation of the past. However, an equitable approach to dealing with victims and survivors in need of health and wellbeing and social support, regardless of where they reside, should be of primary importance.
- 7.20. The Victims and Survivors (Northern Ireland) Order 2006 contains no legal impediment to engaging and supporting victims and survivors outside Northern Ireland. The Commission does understand there are both resource and administrative constraints that need to be considered further. The Commission **recommends** that the Government engages as a matter of priority with relevant stakeholders regarding how best to progress. The Commission would suggest engagement with the VSS and TEO in order to discuss practical approaches. Importantly, conversations with appropriate stakeholders in Great Britain are essential, for example with the Victims' Commissioner and those with an interest in delivering support. Equally, with the cross-border nature of the proposed mechanisms, conversations with the Irish Government will be required.

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