



**The Commission for
Victims & Survivors**

**Commission for Victims and Survivors
Response to the Northern Ireland Affairs
Committee Inquiry on Addressing the Legacy
of Northern Ireland's Past: the UK
Government's New Proposals**

May 2020

Background

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. 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.*¹

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.

¹ 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.

4. 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 most they should feel safe, should be treated with dignity and should move at their own pace.²*

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

6. Following advice from the Commission November 2019, the Strategy was extended to ensure the continuation of service delivery and facilitate the development of a new strategy.³ The Commission is currently engaged in a consultation process to inform advice on a future strategy for victims and survivors.⁴

7. The Commission welcomes the opportunity to respond to the Northern Ireland Affairs Committee's inquiry on the Government's new legacy proposals.

8. The Commission acknowledges the Committee's continued interest in legacy-related matters and appreciates the opportunity to provide political representatives with an insight into our perspective on how best to address the legacy of our past.

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

³ CVSNI (2019) *Extension to the Strategy for Victims and Survivors (2009-19) and Programme Funding, Policy Advice Paper*, CVSNI.

⁴ On the 4 May 2020, the Commission started an engagement process to inform the Commissioner's advice to TEO on a new strategy for victims and survivors. More information can be accessed here: <https://bit.ly/2ZmSB42>

Contextual understanding

9. It is recognised that many years of violence have created a society where much work needs to be done to deal with the legacy of our past.

10. The impact of the Troubles on society cannot be underestimated:
 - In 2017, 26% of the Northern Ireland population said either they or a family member continue to be affected by a conflict-related incident⁵;
 - Between 1966 and 2006, 3,720 conflict-related deaths occurred leaving these families mourning the loss of a loved one⁶;
 - 40,000 people have been left injured⁷; and
 - 213,000 are experiencing significant mental health problems.⁸

11. 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.

The Commission's policy position

12. It has been almost universally accepted that the current system is not able to address the legacy of our past; therefore, it is necessary to introduce new mechanisms that would deliver better outcomes for victims and survivors.

13. It is also very clear that in the context of the high levels of disillusionment and low levels of trust which exist across the different political constituencies in Northern Ireland, that any approach must be balanced, transparent and operate within the rule of the law.

14. It is the Commission's view that service provision should be nuanced to the needs of those impacted by conflict-related incidents. 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 Troubles.

⁵ NISRA (2017) *Commission for Victims and Survivors Module of the September 2017 Northern Ireland Omnibus Survey*, NISRA.

⁶ McKitterick et al (2007) *Lost Lives*, Edinburgh: Mainstream Publishing.

⁷ Smyth et al (1999) *The Cost of the Troubles Study – Final Report*, INCORE: 37.

⁸ CVSNI (2015) *Towards a Better Future: The Trans-generational Impact of the Troubles on Mental Health*, CVSNI.

15. In March 2015, members of the Victims and Survivors Forum 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 Victims and Survivors Forum in June 2017 to recognise and include existing organisations and processes.⁹

16. Detailed below are the five principles that are required to deliver effective and appropriate truth, justice, acknowledgement and reparation processes:

- Co-design and collaboration;
- Victim-centred and victim-led;
- Inclusive;
- Independent and impartial; and
- Fit for purpose.

17. These principles are used by the Commission when reviewing the adequacy and effectiveness of law, practice and services. It is the Commission's view that these principles provide an approach for ensuring that any new legacy mechanisms can command support and confidence.

18. The Commission welcomed the Government's consultation on Addressing the Legacy of Northern Ireland's Past in May 2018. The Commission responded to the consultation following a period of extensive engagement with individual victims and survivors, service deliverers and wider civic society.¹⁰

19. With the closing of the consultation, and the then continued absence of a Northern Ireland Executive, the Commission felt it appropriate to issue advice to the Secretary of State. This advice included commentary and recommendations on the proposed mechanisms contained in the Northern Ireland Office's consultation and other legacy-related matters.¹¹

⁹ CVSNI (2017) *Key Guiding Principles for Existing and Proposed Organisations and Processes Dealing with the Past*, CVSNI.

¹⁰ CVSNI (2018) *CVSNI Response to the NIO's Consultation on Addressing the Legacy of Northern Ireland's Past*, CVSNI.

¹¹ CVSNI (2019) *Addressing the Legacy of Northern Ireland's Past, Advice Paper*, CVSNI.

20. The recommendations in the Commissioner's advice paper were made after extensive engagement with the Victims and Survivors Forum, individual victims and survivors, strategic partners, elected representatives, policymakers, organisations funded to deliver services and wider civic society. The Commission's engagement process was carried out across Northern Ireland, Great Britain and the Republic of Ireland.

What we advised Government

21. 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.¹²

22. The Commission's 2019 advice paper sought to build further on these key areas, with specific reference to the proposals Government consulted on in 2018.

23. The advice paper set out the Commission's views in relation to the four proposed mechanisms with recommendations for Government on what measures should be implemented to ensure they meet the needs of victims and survivors. The Commission's advice also provided comments for consideration by the Irish Government on how to ensure the needs of victims and survivors are met in the Republic of Ireland.

24. The Commission advised the Secretary of State that the proposals offer the best opportunity to address the legacy of the past at present, adding there are significant changes that need to take place to make sure they meet with the Victims and Survivors Forum's five principles.

¹² CVSNI (2014) *Advice on Dealing with the Past: A Victim-Centred Approach*, 27 March 2014, CVSNI.

25. The Commission made a total of 47 recommendations;

- Historical Investigations Unit (16);
- Independent Commission for Information Retrieval (9);
- Oral History Archive (8);
- Implementation and Reconciliation Group (5);
- Matters outside the consultation's scope (5);
- Impact on existing services (2); and
- Accessing services outside Northern Ireland (2).

26. The Commission's recommendations were detailed and provided solutions to ensure that the proposed mechanisms would effectively meet the needs of victims and survivors.

27. The Commission's recommendations can be read in Annex A.

The Government's new proposals

28. The Commission welcomed the Government's commitment to implement the legacy elements of the Stormont House Agreement within 100 days as part of the agreement to re-establish the Northern Ireland Executive.

29. It was the Commission's view that this commitment represented an opportunity to take forward a range of mechanisms to deliver truth, justice and acknowledgement processes for victims and survivors.

30. The Commission is concerned that the Secretary of State's written Ministerial statement of 18 March 2020 appears to signal a change of direction from the legacy mechanisms which the Government consulted on in 2018.¹³

31. The approach appears to abandon the structures contained in the Stormont House Agreement in favour of a process wherein the bulk of outstanding conflict-related investigations would be accelerated.

¹³ Secretary of State for Northern Ireland, Addressing Northern Ireland Legacy Issues: Written statement - HLWS163 (18 March 2020) <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2020-03-18/HLWS163/> (accessed 27 May 2020).

32. The Commission would be concerned that this approach may result in yet more legal challenges, hurt, frustration and distrust.
33. Much of the narrative regarding legacy-related proposals concentrate on ongoing and potential investigatory processes. It is the Commission's view that the purpose of investigations, however, should not be defined narrowly in terms of the number of prosecutions that are 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.
34. The critical issues for many families and communities are of access to information about the circumstances leading to the death of a loved one and acknowledgement of harm. During the Commission's engagement with those 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. These needs must be addressed in an inclusive way and this means that options open to those who live in Northern Ireland should be open to those who live elsewhere. The Commission remains concerned that efforts to seriously look at the needs of victims and survivors outside Northern Ireland remain unaddressed.
35. Keeping victims and survivors informed, and those who represent them, is crucial for any process to work. The Commission would highlight that there has been no further public consultation on the detail of the envisaged changes and no schedule for legislative processes have been announced.
36. The Commission's concern is that victims and survivors may now be faced with legislation being rushed through to suit a Westminster-based agenda that does little for victims and survivors across these islands.

Conclusion

37. The Commission welcomes the opportunity to submit a response to the Northern Ireland Affairs Committee's inquiry on the Government's new proposals.
38. It is evident that there are clearly different views on the proposed legacy mechanisms, which the Government consulted on in 2018. However, it is almost universally accepted that the current system cannot address the legacy of our past.
39. Conversations on legacy cannot simply be framed around ongoing investigations or potential processes. There are a range of matters that should inform how we effectively deal with the legacy of our past. These include appropriate service provision and how best to support victims and survivors, regardless of where they live. This is best articulated by the ongoing delay and uncertainty in relation to the implementation of the Victims Payment Scheme. Whilst these matters are outside the terms of reference of this inquiry, the Commission would highlight the interconnected nature of truth, justice, acknowledgement and reparations.
40. The Commission welcomes the Committee's continued interest in legacy-related matters. The Commission looks forward to continued engagement with the Committee and the Commissioner for Victims and Survivors looks forward to discussing the Government's new proposals, and other related matters, during her appearance on 29 June 2020.

Ends

**Commission for Victims and Survivors Northern Ireland
recommendations contained in *Addressing the Legacy of Northern
Ireland's Past, Advice Paper (January 2019)***

Legacy Mechanisms Contained in the NIO's Consultation

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;
- 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;
- 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;
- 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) 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;
- 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;
- 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;
- 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;
- 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;

- 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;
- 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;
- 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;
- 13) The Commission requests that the Irish Government establish a mechanism whereby Troubles related deaths within the Republic of Ireland are investigated;
- 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;
- 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
- 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.

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;
- 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;
- 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;
- 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;
- 21) The Commission recommends that the timeframe for the ICIR is coterminous with the HIU;
- 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;
- 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;
- 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
- 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 Victims Remains indicates that this process takes time to deliver results.

Oral History Archive (OHA)

- 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;
- 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;
- 28) The Commission recommends that existing community-based oral history/storytelling projects should be involved in the collation process;
- 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;
- 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;
- 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;
- 32) The Commission recommends that the OHA is adequately resourced to allow it to deliver its intended outputs; and
- 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.

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;
- 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;
- 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;
- 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
- 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.

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;
- 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;
- 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 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

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;

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.

Impact on Existing Services

44) The Commission recommends that any new mechanisms build upon the established service provision and networks for services to victims and survivors; and

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.

Accessing Services Outside Northern Ireland

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

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.