



Ideas for how the Commission could approach its work to provide information recovery for families

October 2023

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Introduction to the Operating Model for the Commission

Introduction

- 1.1 This publication sets out the early proposals for how the Commission might operate to recover information for victims, survivors and their families, what the journey might look like and how those victims/survivors and families might be involved at every step.
- 1.2 The purpose of publishing it is to provide people with early thoughts about how the Commission might develop its approach and to seek views, opinions and feedback on the phases and steps. The feedback and discussions this paper generates will help to inform the Commission as it makes firmer proposals for its operating practices. These thoughts and ideas are not finished and no decisions have yet been taken. Decisions will only be made when the Commissioners are in place.
- 1.3 This publication reflects the results of the recent first *Have Your Say* survey which is being published alongside this document, and specific results are highlighted below to demonstrate how they are reflected. It also draws on learning from the past few months of engagement by the Chief Commissioner-designate. In particular, both early engagement with a range of groups, and the survey responses highlighted that the Commission should seek to learn from other relevant initiatives and especially from victims, survivors and families of the Troubles. This is something the Commission will continuously need to do during its development.

Q1: As the Commission prepares to start its official work (from the summer of 2024), we're committed to learning from others and avoiding mistakes of the past. Where do you feel the Commission should look to learn positive lessons about what has worked well? (multiple response question) ¹									
Base = 218	Operation Kenova	The Historical Enquiries Team	Talking and listening to victims and survivors of the Troubles and their families	Northern Ireland Legacy Inquests	Independent Commission for the Location of Victims' Remains	Overseas examples	Independent public inquiries such as COVID-19 or the Hillsborough Inquiry	Don't know	Troubles Permanent Disablement Payment Scheme
%									
All respondents	14	34	70	32	35	42	23	6	18

¹ HYS Tables - September 23 P1

- 1.4 The Chief Commissioner-designate and the Commissioner for Investigations-designate are committed to putting people at the core of everything the Commission delivers. The end-to-end journey is all about the people who will eventually benefit from information recovery. There are, however, many aspects that this paper does not cover. Over the coming months, further papers about design of the Commission will be set out and feedback and comments sought on an iterative basis.
- 1.5 The second Have Your Say survey, which will ask about elements of this paper, as well as about future areas of work under development will be launched shortly.
- 1.6 If you wish to provide thoughts and feedback on this publication, please email info@icrir.independent-inquiry.com or write to ICRIR at its PO Box addressed to 'Freepost ICRIR'.

Glossary of Terms

- 1.7 The following is a glossary of terms to provide clarity around some of the terminology used in this publication.
 - 1.7.1 **The Commission** – The Independent Commission for Reconciliation and Information Recovery (ICRIR) is being set up to provide information to families, victims and survivors of Troubles-related deaths and serious injury and to promote reconciliation.
 - 1.7.2 **Chief Commissioner** – will have overall responsibility for leading and setting the strategic direction of the Commission to enable it to achieve its overarching aims and objectives. Sir Declan Morgan has been identified to be appointed as the first Chief Commissioner.
 - 1.7.3 **Commissioner for Investigations** – will be an executive member of the Commission's Board. They will have operational control over the conduct of cases that the Commission is working on. They are designated with the full powers and privileges of a constable and be able to designate ICRIR officers with the same powers and privileges. They may delegate their responsibilities and will have a number of senior, experienced homicide investigators working for them.
 - 1.7.4 **Examination** – the information recovery activity that the Commission will undertake, with three different types of examination to address different types of request.
 - 1.7.5 **Historical record** – the Commission's record of deaths that were caused by conduct forming part of the Troubles.

- 1.7.6 **Personal Statement** - a statement by a family member about the way in which, and degree to which, the Troubles-related events have affected and continue to affect them and others.
- 1.7.7 **Phase** – the three parts of the journey which individuals take through the information recovery process: Engagement, Information Recovery and Findings & Futures. Within each phase there will be a number of stages.
- 1.7.8 **Requesters** – this document has been developed with a focus on victims and families making requests for information from the Commission and so references to requesters should be taken in this context. Under the Act, there are other public offices that can make requests and further consideration will be needed for any different approaches that might apply in such a case.
- 1.7.9 **Representations** – statements made to the Commission about material they have been provided from a draft report that criticises an individual or public authority.
- 1.7.10 **Sensitive information** – information which has been supplied by a defined list of organisations (for example the Security Services). When the Commission is considering placing sensitive information into the public domain, there will be a process in place to understand the risks and merits of doing so, and to seek permission from the Secretary of State as required by the Act.
- 1.7.11 **Stage** – the elements which which make up each phase, in which different activities occur. Within each stage there will be a number of steps.
- 1.7.12 **Step** – the detailed processes for the Commission to follow and events which need to happen.
- 1.7.13 **Trauma informed approach** – seeks to understand how trauma has impacted people in different ways, then adapts the organisation’s approach based on that understanding, with the aim of reducing the risk that the organisation will cause people harm or retraumatisation. It is based on principles of creating safety, empowerment, collaboration and choice.

2. The approach to information recovery arising from requests from the public

- 2.1 The Independent Commission for Reconciliation and Information Recovery (ICRIR) will, when asked to do so by victims, survivors and/or family members (requesters), conduct examinations into deaths and other harmful conduct related to the Troubles. In each case, the Commission will produce a report of its findings.
- 2.2 The ambition is to create an organisation that not only responds to individual requests for information but respects, listens to and supports victims, survivors and families through a process that leads towards reconciliation.

General approach

- 2.3 The principal objective of the Commission is to promote reconciliation². Therefore, in the exercise of all its activities, it needs to keep in its approach and decision making the consideration of how it is acting to promote reconciliation.
- 2.4 The Commission's functions include:³
- carrying out reviews of deaths and other harmful conduct forming part of the Troubles;
 - producing reports on the findings of these reviews and, where assessed to be appropriate, making referrals to prosecutors;
 - determining whether to grant conditional immunity from prosecution for serious or connected Troubles-related offences;
 - producing a record of deaths that were caused by conduct forming part of the Troubles
- 2.5 To assist it to carry out those functions, the Commission's powers include:
- designating Commission officers as having the powers and privileges of a constable⁴;
 - exercising all the powers and privileges of a constable when undertaking criminal investigations;
 - requiring relevant authorities to provide information to the Commission⁵;
 - requiring individuals to attend the Commission for questioning⁶;
 - issuing individuals with notices to provide material⁷, with a penalty for non-compliance of a fine of up to £5,000⁸;
 - deciding (through the Commissioner for Investigations) how a request for a review should be made and how a request is to be dealt with⁹;

² Section 2(4) of the Act.

³ Section 2(5) of the Act.

⁴ Section 6 of the Act

⁵ Section 5(1) of the Act.

⁶ Section 14(2) of the Act.

⁷ Section 14(3) of the Act.

⁸ Schedule 4, Part 1, Paragraph 1(2) of the Act

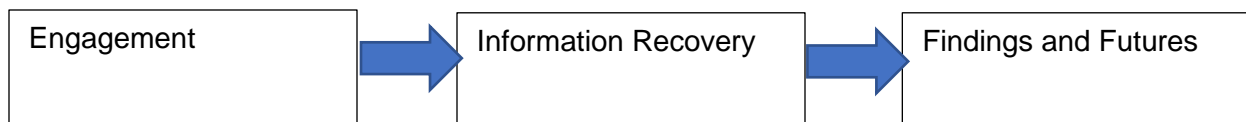
⁹ Section 11 of the Act.

- making a referral to the prosecutor;¹⁰
- disclosing, except in certain circumstances, information held by the Commission to any other person¹¹

2.6 The Commission is also under a number of legal duties, which include:

- the duty to have regard to the general interests of persons affected by Troubles-related deaths and serious injuries¹²;
- the Human Rights Act 1998;
- Section 75 of the Northern Ireland Act 1998 and Section 149 of the Equality Act 2010;
- the duty to give families the opportunity to provide a personal statement to the Commission about the way in which Troubles-related events have affected, and continue to affect them,¹³ and;
- that it must not do anything which:¹⁴
 - would put or risk putting the life or safety of any person at risk;
 - would prejudice or risk prejudicing the UK's national security interests;
 - would have or risk having, a prejudicial effect on criminal proceedings in the UK.

2.7 The Commission will need to develop a range of policies and processes for progressing information recovery. There are three main phases in the journey individuals take through the information recovery process:



2.8 At every stage within these phases, victims, survivors and families must be able to understand what progress is being made and input to the work of shaping the Commission. The first survey results conveyed a strong message to seek advice and input from victims and survivors of the Troubles. That is how this work will be taken forward – through talking and listening to people and communities.

2.9 The work the Commission will be conducting may be deeply traumatic for individuals engaging with it. Many people have campaigned for justice for many years and have been met with numerous obstacles. It could be very distressing for people to engage with the Commission and to retell their stories and this will not be taken lightly.

2.10 The Commission will need to implement a trauma-informed approach to shape how it operates. This will mean things like considering how trauma impacts people and designing how the Commission operates in light of what people need. Hearing directly

¹⁰ Section 25 of the Act.

¹¹ Section 30 of the Act.

¹² Section 2(6) of the Act.

¹³ Section 23 of the Act.

¹⁴ Section 4 of the Act.

Q11 To support our independent approach, we're thinking about how the Commission can have robust policies, procedures and processes in place ahead of starting to act on requests from the summer of 2024. How do you feel this can best be achieved? (multiple response question) ¹⁵						
Base = 218	Through the Commissioners being given the role of independent reviewers	By undertaking public road shows to explain our plans to the public	By asking for public input into proposals for how the Commission can work	By setting up independent groups made up of external specialists	By commissioning independent external reviews and reports into the proposals for the Commission	None of these
						%
All respondents	29	29	38	43	34	12

from people will be important in helping to get this right. Specific expertise will be needed for this.

- 2.11 The following sections set out more detail about each phase. It sets out some of the issues that will need to be considered and some of the potential choices and trade-offs. It does not present final proposals or definitive answers. Comments and feedback will be welcome to inform the development of this approach.

Q20 We will be developing and designing the principles, operations and mechanisms by which the Commission will operate once it is launched. How would you like to participate in this work? ¹⁶						
Base = 217	Contribution via online surveys	Hearing from the Commission via video updates published on its website	Having the opportunity to attend face to face events where you can hear directly from the Commission and have the opportunity to contribute to key areas of development	Join video conferences to hear updates from the Commission and have the opportunity to contribute your perspective on key decisions	I wouldn't attend a live face to face event but I would like the opportunity to contribute confidentially	None of these
						%
All respondents	56	22	33	22	20	18

¹⁵ HYS Tables - September 23 P25

¹⁶ HYS Tables - September 23 P65

3. Phase One – Engagement

Overview of the Engagement phase



3.1 The aim of this phase would be to ensure that people who want the Commission to undertake information recovery work for them have a clear and supportive series of interactions that help them make decisions that are right for them about the course of action they want to take. This phase may also help the Commission obtain the information it needs to progress the case, if a request is made and accepted, and inform planning of future workload. Some potential objectives of the Engagement phase for the Commission could include:

- ensuring early engagements with the Commission are accessible, responsive, efficient and tailored to individual circumstances;
- supporting people to make informed decisions about submitting any request for a review;
- ensuring that the Commission is clear with people about what it can and cannot do;
- providing clarity about the process and potential range of outcomes to potential requester;
- ensuring people are provided with information about a comprehensive range of outcomes, including those that may not involve the Commission;
- allowing the Commission to obtain the necessary information to progress a request;
- enabling the Commission to understand the caseload pipeline and plan its resources accordingly.

Finding out about the Commission

3.2 The Commission will need to make sure that information is available so that potential requesters can easily find out about its work, understand the range of its work, see what it has achieved in other cases and understand how it might provide help to them.

3.3 This approach should include an accessible and user-friendly website that provides comprehensive information about how the Commission operates and what work it has already undertaken and delivered. The website needs to be jargon-free, easy to understand, simple to navigate and it must take account of diverse user needs.

3.4 However, the approach needs to be more than that. The Commission could regularly engage with a range of groups and individuals through mailing lists, direct communications and media articles, outreach events, update meetings and other activities. The Commission could also look to work with existing networks and forums

and could also consider the approach that Operation Kenova follow for a Victims Focus Group as a structure to input directly to the Commission.

- 3.5 The Commission will need to work with victims' groups and understand with them what information and support they can be given so that they can in turn help their members. It will be important to be very mindful that many have concerns about the legislation. Challenge to the legislation should not prevent people – if they wish – from engaging separately with the Commission about how it operates. These groups can provide access to victims, survivors and families who may otherwise not benefit from the Commission's work. They are also a key intermediary when it comes to communicating with victims, survivors and families.

First contact

- 3.6 The Commission will offer a range of ways for members of the public to make contact with it. The Have Your Say survey indicated that people should have the opportunity to engage directly and in person with the Commission (89%). Therefore, in addition to the website, email and postal correspondence routes, the Commission should have a dedicated public telephone line, answered by trained staff.
- 3.7 The Commission should operate on a default that – should people chose it – a face to face meeting is offered at the requester's convenience, either at the requester's home, the Commission offices or another convenient location, as appropriate. The Commission should also give significant consideration to the professional support it can offer as this was another area respondents to the survey felt was important.
- 3.8 The Commission would continually monitor its service, assess what is working for those who engage with its services and adapt in response.

Q8 How should people be able to engage with the Commission? (multiple response question) ¹⁷							
Base = 218	Directly, in person	With access/ direction to support before and after	Supported by professionals	Via intermediaries, anonymously	Supported by friends/ family	Via representatives	With someone trusted in the Commission who is paid to be on their side
%							
All respondents	89	34	38	21	34	26	12

¹⁷ HYS Tables - September 23 P19

Exploring and listening

- 3.9 This process may be emotionally wearing and could potentially trigger past trauma. The Commission will do all it can to support people and reduce the risk of retraumatisation through engaging with it. Commission officers will need to be well trained in creating a space where people feel respected and heard as they explain their experiences and what they need from the Commission. Officers will take time to listen to what the requester says they want from the process, allowing as much time as the individual needs to tell their story and explain their perspective. People should not feel rushed and should be confident that they can ask the questions they need to, in order to inform their decision about whether to formally request that the Commission takes their case. The Commission could also offer professional emotional support with trained trauma support staff to help people navigate the difficult emotions that their engagement with the Commission may inevitably prompt.
- 3.10 The Commission will give anyone who makes contact a clear understanding of how the Commission works, the powers it has at its disposal and what that work might lead to. The stages, steps and decision points should be clearly explained. Commission officers will set out the full range of options available, but also explain how decisions will be made, how the victim, survivor or family may be involved in those decisions, and based on their circumstances, what the more likely approach will be in their case. Openness and clarity scored highly through the survey and this particular stage will aim to provide that.

Q3 In carrying out our work, we will want to hold ourselves to high standards but what is most important to you about our approach? ¹⁸ (multiple response question)						
Base = 218	That we are open about what we do and how we do it	That we support those who initiate cases or help us with our enquiries and keep them informed	That we demonstrate that we are fair in how we conduct our investigations and reviews	That we conclude cases as quickly as possible	That we engage with the wider public about our work	That we work with others to promote reconciliation
%						
All respondents	86	43	74	40	39	40

- 3.11 In support of this, the Commission's officers will talk to potential requesters to enable them to ask questions, set out any needs they may have and start to frame any specific questions they would like a review to answer. There will be no prescriptive definition this stage about how many of these conversations will be needed, as this step will need to be responsive to individual need. Commission officers will need to be careful to talk in plain language and be able to offer clear, easy to understand descriptions and

¹⁸ HYS Tables - September 23 P5

explanations so that it is not necessary for requesters to have to engage expert advisers just to understand how the Commission works.

- 3.12 At this stage, the Commission will also need to make sure the request falls within its remit, including checking the incident raised was during the time period covered by its establishing legislation and that the requesters meet the definition of who can request a review. In particular, the Commission will consider wider family engagement where there may be a range of views about a request and explore how this might be managed during the process.¹⁹
- 3.13 To undertake these conversations, actively listen, and explain sensitively, the Commission will need to recruit and train officers who are excellent communicators – able to deliver messages that may be difficult to hear, recognise and respond helpfully to trauma and distress and gather information to check any request meets its criteria and ensure the Commission can scope any potential review.
- 3.14 Further work is needed to scope out this role in detail and explore what career path and accredited professional development the Commission can offer to ensure it is staffed effectively in this crucial area.

Refining requests

- 3.15 While the Commission is engaging with and listening to potential requesters, it will be important to work with them and those supporting them to be realistic about what the Commission can offer. During the initial information-gathering process, requesters will be able to refine the areas on which they want information to be recovered and reach a more informed view about whether and how the Commission can help them.
- 3.16 This will allow the Commission to make an initial assessment of the potential review case along with an early (but not definitive) assessment of size, scale, and complexity.
- 3.17 At this stage, Commission officers will also remind potential requesters of their right to make a personal statement about their or their families' experiences of the Troubles so that they can begin to think about this aspect. It will be important to make sure that the process for publication and sight of draft investigation reports is clear to individuals before they make this choice.
- 3.18 Through this process, the Commission and the requesters can arrive at a mutual understanding about what is required from each during the process – this could include:
- that the Commission should maintain the role and involvement of the requester at every stage and that it should explain how this will be done;
 - ways in which the Commission should make contact to meet the requester's needs;

¹⁹ Sections 1, 9, 10 of, and Part 1 of Schedule 3 to, the Act.

- how the Commission will listen to concerns, especially where a proposed course of action is questioned;
- any internal mechanisms to review decisions;
- that the requester should understand the sensitivity of the information they might be provided with during the process and the impact of breaking any confidentiality.

Making a request

- 3.19 The final step in this phase is to formalise the request and the questions that the requesters would like to be answered (although in some circumstances it may be possible to amend these later²⁰) and for the Commissioner for Investigations (or someone to whom he has delegated authority) to make a decision on whether to accept the request.
- 3.20 In its design work, the Commission will consider whether this is the right stage to support the requester in providing an initial personal statement²¹. Other close family members will also need to be given this opportunity once a request is accepted and the Commission will ensure they are aware of this option, should they choose to take it.
- 3.21 The Commission's decision will be subject to establishing:
- that the requester is a close family member²² of the deceased/the person who suffered serious physical or mental harm²³;
 - or that it is appropriate for **any** family member of the deceased to make a request where there are no close family members²⁴;
 - that the serious harm or death was directly related to the Troubles²⁵.
- 3.22 The Commission will need to determine the level of verification that is needed at this stage. Its processes should not make requesters feel that they need to prove their statements, but at the same time, it will be essential for the Commission to have verifiable information on which it can base its decisions. In particular, where a request is made by another member of the family on the basis that there are no close family members, consideration will need to be given to how this is tested, in case there are different views within the family.²⁶ Following the decision to accept a request, the Commission is then under a duty to carry out an examination²⁷.

²⁰ Section 11(2)(b) of the Act.

²¹ Section 23 of the Act.

²² As defined in Part 1 of Schedule 3 to the Act.

²³ Sections 1(6) and 10(1) of the Act.

²⁴ Section 9(2) of the Act.

²⁵ As defined in Section 1(3) of the Act.

²⁶ Under section 9(2) of the Act, where there are no close family members of the deceased, any family member may make a request, but only where it is appropriate for that family member to do so.

²⁷ Section 13(4) of the Act.

- 3.23 The Commission will need to consider different options for how to communicate the Commission's decisions to requesters. In most cases, face to face meetings are likely to be more appropriate than correspondence unless requested otherwise, although some form of written record should be provided at the time of or following any meeting. The discussion should cover likely next steps and the next decision points, so requesters have a clear understanding of what is likely to happen next before confirming they would like to proceed. If the Commission does not expect to agree to a request, this should be discussed with the requester and a clear explanation of the issues should be provided, where possible allowing the requester the opportunity to submit more information. In its design work, the Commission will need to explore whether to create an appeal process to function when a request is not accepted and the requester wants this to be looked at again.
- 3.24 A request for a review may not always be the right route. In some cases, what the requester seeks may be beyond what the Commission can offer. In other instances, having understood the process and the likely next steps, the requester may not feel equipped to proceed at that time. The Commission will want to consider the need to signpost the requester to other forms of support and will work with other organisations already working in this space to consider what could be offered.
- 3.25 This may be an opportunity to ensure that the information recovery work of the Commission can support and underpin opportunities for individuals to move towards the wider aims of reconciliation.

Further areas for development:

- 3.26 There are many aspects still to consider. Your input would be most welcome (but not limited to) the following areas:
- How the Commission can best support people through this initial phase of engagement. Key considerations will be the attributes of Commission staff who will manage the initial conversations – what skills they will need, how the Commission should recruit them and how to ensure they are professionally developed.
 - In what ways the Commission can set out and explain its processes so they are easy to understand and navigate for all – and how this exploratory stage can take people easily to the process for formally submitting a request/application²⁸.
 - How this initial engagement phase provides a platform for ongoing support to the requester throughout the process – whether this involves developing a key point of contact, and/or meeting the potential investigation team and the Commissioners.
 - How the importance of confidentiality (61% of survey respondents said this was important) and openness (86% of survey respondents said this was important) can both be reflected in the Commission's process for reviewing and deciding whether to accept requests.

²⁸ Section 11(2)(a) of the Act.

- How to create spaces where potential requesters can meet with the Commission and how to ensure they are accessible and responsive to individual needs – whether these are at the Commission’s offices or at a neutral third-party location, or at home.
- How best to work with stakeholders who already provide support for victims, survivors and their families. The Commission will need to learn from what is already in place and avoid duplication of service.

4. Phase two – Information recovery

Overview of the Information Recovery phase



- 4.1 The aim of this phase is to plan and carry out the information recovery work in the most appropriate way to get results and to ensure that the requester is kept informed and involved during these stages.
- 4.2 The Commissioner for Investigations will ensure that all the circumstances of the death and connected other harmful conduct are looked into²⁹. The work must also, to the extent practicable, seek to identify information on which a response to any specific questions can be provided³⁰. This phase will need to scope, prioritise and assign work to the most appropriate type of examination. It will also need to consider if a criminal investigation should form part of the work and whether or not information obtained will be or is likely to be provided to a prosecutor³¹.
- 4.3 The requester will need to be kept updated of progress regularly and involved decision making at the various points. This is important whether or not a request engages rights under the Human Rights Act 1998 such as Articles 2 or 3 of the European Convention on Human Rights.
- 4.4 Some possible objectives for this phase for the Commission include:
- giving proper consideration to how relevant rights under the European Convention on Human Rights might be engaged and how they can be discharged through the Commission's work;
 - considering whether a criminal investigation should form part of the examination³² and whether it is necessary to duplicate any aspect of any previous investigation³³;
 - determining the steps necessary to carry out the work, so there is clear, transparent process³⁴;
 - setting out clear criteria and processes for selecting the most appropriate methodology for each examination and for how the case might be prioritised and whether it should be grouped with other cases³⁵;
 - effective completion cases from the current criminal justice systems that the Commission is requested to look at, such as legacy inquests. This work should aim to offer an

²⁹ Section 13(5) of the Act.

³⁰ Section 15(3) of the Act.

³¹ Section 13(9)(d) of the Act.

³² Section 13(5) of the Act.

³³ Section 13(8)(b) of the Act.

³⁴ Section 13(6)(b) of the Act.

³⁵ Section 13(6)(a) of the Act.

approach similar to aspects of an inquest in respect of testing evidence and findings being made by a judge.

Scoping

- 4.5 The scoping stage will identify other work previously undertaken relating to the events the Commission is looking at³⁶ and consider initial information that has been gathered, including what has been provided by the requester. Previous work undertaken by the relevant police force will be examined for new lines of enquiry. Where further work was under way by another organisation, such as the Office of the Police Ombudsman Northern Ireland or the Legacy Inquests Branch (although see below at 4.26 where work may move straight into an examination stage), this work will also be obtained and examined.
- 4.6 The Commission officers leading the case will need to build a picture about key areas of focus – for example, the likely existence of documentary records, further evidence such as forensics, the potential location(s) of additional material to be checked, any potential state involvement, connections to other events and the range of witnesses.
- 4.7 The current best practice approaches to cold case review for homicides form a potential model on which this stage could be based.
- 4.8 The requester should be kept up to date with progress and involved appropriately in decisions on how to proceed at relevant points. The Commissioner for Investigations, or the office leading the case on his behalf, will be responsible for final decisions and need to determine if it is necessary (in line with a published policy) to duplicate previous work³⁷ - relevant factors could include, for example, opportunity for additional information recovery, evidence of incomplete examination, evidence of malpractice, and scientific / investigative advances against viable material.

Terms of Reference

- 4.9 Following the scoping stage, terms of reference for an examination will need to be developed so that the work covers all the necessary information that will be required to produce the final report³⁸. It should cover, amongst other things, the requester's questions, lines of enquiry and areas not previously investigated and aspects where there could be insufficient evidence from existing work to make findings. It should also set out what has been agreed with the requestor about how they will be kept informed and involved.

³⁶ Section 13(8)(a) of the Act.

³⁷ Section 13(8)(b) of the Act.

³⁸ Section 13(5) of the Act requires that work looks into all the circumstances and section 15(3) requires that, where practicable, reports respond to the questions asked in the request.

- 4.10 The requester should be involved in developing the Terms of Reference. This will help them to understand the likely direction of the work and may also present them with a first opportunity to change particular questions³⁹.
- 4.11 If a personal statement has not already been taken, this could now inform the work and help the officers leading the case to understand how best to answer requesters questions.

Triage Decision

- 4.10 This is the stage at which the Commissioner for Investigations, or a Commission officer on his behalf, will determine which type of examination will be conducted. There will need to be a published policy and a range of criteria will be relevant:
- any investigation that has previously been carried out⁴⁰;
 - whether duplication of any aspect of any previous investigation is necessary⁴¹;
 - whether a criminal investigation is to form part of the work⁴²;
 - whether information obtained through the work is likely to be provided to a prosecutor⁴³;
 - any of the requester's questions included in a request⁴⁴;
 - the wishes and views of requesters;
 - the wishes and views of other close family members.
- 4.11 Both the policy to operate this stage and the individual decisions under this policy will be difficult matters. Different families and members of the community will have different perspectives about the right way forwards, and even within families there may be disagreement. The Commission will need to discuss proposals openly and consider the needs and views of a wide range of potential requestors. It will also need to keenly consider how its principal objective to promote reconciliation will feature in the decision making at this stage.
- 4.12 At the point that the triage decision is being considered, how the policy is being applied will need to be explained to the requester, so they can understand what is being considered, what the likely outcome is and provide input and commentary on the relevant factors. The Commission will need to develop clear, supportive processes to communicate the decision to requesters. The Commission will also need to consider whether there should be a mechanism to review decisions and whether this could/should be triggered by the Commission itself as well as by the requester.

³⁹ Section 11(2)(b) of the Act.

⁴⁰ Section 13(8)(a) of the Act.

⁴¹ Section 13(8)(b) of the Act.

⁴² Section 13(7) of the Act.

⁴³ Section 13(9)(d) of the Act.

⁴⁴ Section 13(9)(a) of the Act.

Prioritisation Decision

- 4.13 Once the type of examination is decided in the previous stage, the Commission will also need to decide to how to prioritise the case. Again, a clear methodology will be needed and the Commission will need to consider current approaches in Operation Kenova and the PSNI to assess their applicability. In particular, the Commission will consider whether different requests should be carried out in conjunction with each other⁴⁵ and whether any new request relating to the same death or other harmful conduct should be joined to the existing work⁴⁶. Other criteria for prioritising cases could include factors such as when the event took place, the age of the requester, the age of others involved and when the request was made. The Commission will need to develop a process for how it works with the requester to ensure they understand this aspect of decision-making and how it is being taken, as this will be crucial to their expectations for the next stage. The most important reason for prioritization identified in the Have Your Say survey was looking at the oldest cases (43%), followed by cases that have a good chance of getting answers quickly (36%). While the order that requests are made of the commission was lower, the fact that the Commission cannot itself initiate cases means that the order a request was made will have some impact if the next stage is already underway for a previous case.

Q17 Which of these reasons matter most when we are prioritising our case load? ⁴⁷					
Base = 218	In the order they come to us	Cases that are the oldest	Cases that are most recent	Cases that have a good chance of getting answers quickly	Cases where a prosecution is most likely
%					
All respondents	28	43	3	36	34

Undertaking the Examination

- 4.15 The next stage is for the specific information recovery work to begin, using the full range of powers that the Commission has at its disposal. Three types of examination could be deployed. The Commission will need to consider the flexibility to deploy different approaches and want to ensure that different needs can be met in different ways. It will be vital to ensure an appropriate and considerate approach to each individual case.

⁴⁵ Section 13(6)(a) of the Act.

⁴⁶ Section 11(4) and (5) of the Act.

⁴⁷ HYS Tables - September 23 P59

Family answer-focused examination

- 4.16 The family answer focused examination would aim to address the questions that requesters have raised and put its primary effort into recovering information that answers or addresses them as far as is practicable.
- 4.17 This may be most appropriate where work has already been undertaken to look into the circumstances of the death / serious injury. There may already have been a (successful) prosecution and there will be existing work from fact-finding and determination processes to rely on to set out many of the circumstances of the incident.
- 4.18 The Commission will seek answers to requesters questions by examining all existing material, including that which might not have been disclosed or made public during any previous fact-finding and determination processes. In addition, new evidence and information may be generated through targeted requests for information to witnesses and subjects of interest and, when appropriate, other investigative work, such as forensic examinations. The Commission's statutory information retrieval powers⁴⁸ will be used to obtain records as well as additional evidence from witnesses and subjects of interest. The Commission also has the ability to apply sanctions where co-operation is refused⁴⁹. Requesters will be kept regularly updated and given the opportunity to input into direction and further work to pursue as part of the examination.
- 4.19 This approach would not be able to be used to support a subsequent prosecution, but there are a number of circumstances where prosecution would not be appropriate or viable in any event, such as where a prosecution has already occurred; where a decision has been taken not to prosecute which still remains valid/justifiable; or where the alleged perpetrator is deceased.
- 4.20 The report will give an account of all the circumstances of the death or other harmful conduct, which can be drawn from previous work, although it may be added to or altered as a result of new evidence that has been obtained. The requester's questions will have been the focus of new investigative effort and where practicable and possible, these questions will be addressed by findings on the balance of probabilities.

Liability-focused examination

- 4.21 The liability focused examination would aim to establish all the circumstances of the death and collect evidence to a standard that would support prosecution, as well as aiming to answer any specific questions raised by requesters.
- 4.22 This type of examination will be most appropriate where a right under the European Convention on Human Rights is engaged, especially where there is a realistic possibility of state involvement, or where it is likely that examination could lead to a successful prosecution and this is in the interests of reconciliation.

⁴⁸ Sections 5 and 14 of the Act.

⁴⁹ Part 1 of Schedule 4 to the Act.

- 4.23 The work will be carried out in accordance with good practice, such as College of Policing approved methodology, be undertaken by properly qualified and experienced investigating officers and evidence will be secured to standards required for prosecution wherever practicable. Along with the Commission's statutory information retrieval powers⁵⁰, the powers of a constable may also be exercised⁵¹ where considered necessary and by a duly designated officer of the Commission.
- 4.24 The Commission will also gather information to address any family questions raised, although it will not be possible to finalise a report until after a decision is made on prosecution and if a decision is made to prosecute until after a trial has concluded.
- 4.25 There will be some cases where, following the initial investigative work, the Commission will conclude through formal assessment that it is appropriate for an inquisitorial process to be carried out to further examine and test the material that has been gathered in order to make findings. The Commission will need to identify the appropriate test and criteria upon which a formal assessment is made.
- 4.26 As a transitional measure, inquests where evidence has started to be prepared or heard but the current process has not finished by 1 May 2024 may be continued through this process (where a request is made). This could involve transferring material obtained so far to the Commission and, where possible, the engagement or secondment of inquest staff as officers of the Commission to complete the work. In its meetings with victims, survivors and families, the Commission has heard very real concerns about the desire to complete inquests which have been started and the Commission will be keen to work with those affected to ensure as smooth a transition as possible.

Culpability-focused examination

- 4.27 The culpability focused examination will aim to establish all the circumstances of the death or other harmful conduct as well as to answer any specific questions raised by the requester.
- 4.28 This type of examination will be most appropriate where little previous investigative work has been carried out or where it is considered that there are grounds to duplicate such work (as set out in policy). Lines of enquiry will be examined and the Commission's statutory information retrieval powers⁵² will be used to obtain any records as well as additional evidence from witnesses and subjects of interest. This includes the ability to apply sanctions where an individual refuses to co-operate⁵³. The requester will be updated as the examination progresses and given the opportunity to input into what and how further work should be undertaken.

⁵⁰ Sections 5 and 14 of the Act.

⁵¹ Section 6 of the Act.

⁵² Sections 5 and 14 of the Act.

⁵³ Part 1 of Schedule 4 to the Act.

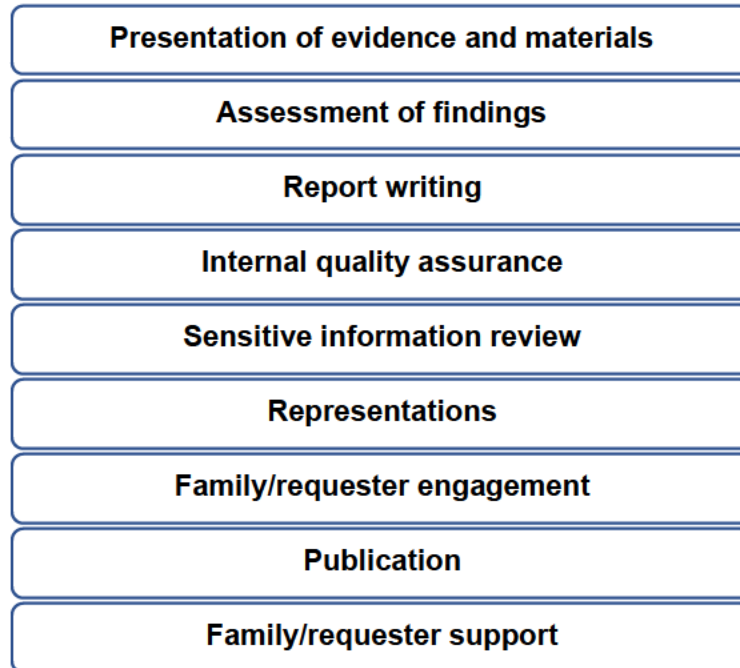
- 4.29 It will not be considered appropriate to pursue a prosecution – instead, the examination will focus on establishing the balance of probabilities as to identity(ies) of the perpetrator(s) of the death or other harmful conduct.
- 4.30 The Commission's report will give an account of all the circumstances of the death or harmful conduct, drawn from any existing work as well as fresh investigation. Its focus will be establishing the circumstances on the balance of probabilities, including the perpetrator(s), and where practicable and possible, it will also answer the requester's questions through findings on the balance of probabilities.

Further areas for development:

- 4.31 There are many aspects still to consider. Your input would be most welcome (but not limited to) the following areas:
- Whether the scoping and terms of reference stages of this phase can overlap with the earlier phase to help inform the requestor about how a case may be handled before they have to make the formal request;
 - How to identify and link connected cases and how to handle multiple requests, potentially at different times, relating to the same case;
 - How to ensure information recovery powers are used fully and that relevant authorities provide all necessary information to the Commission;
 - The right skill sets to navigate old, dispersed and disorganised archives to seek all the relevant information;
 - Whether cases can change the type of examination once it has begun and if so, on what basis and in what circumstances;
 - Whether these are the right types of examination that provide a broad route to meet different needs and different circumstances;
 - How to define and give agency to the role of the requester in each step, so that there is proper involvement but also respects that the responsibility for decisions rests with the Commission and cannot just be based on the requester's preferences.

5. Phase three - Findings and Futures

Overview of the Findings and Futures phase



- 5.1 The aim of this phase is to produce a report that sets out the findings of the information recovery work and, where practicable, addresses the requesters specific questions. The work of the team carrying out the examination (under the Commissioner for Investigations) will need to be presented to a team responsible for writing the final report (under the Chief Commissioner). During this final phase, the Commission will need to design how it is in regular contact with the requester. This is likely to be a challenging time for those most closely linked to the incidents and the Commission will need to recognise the need to ensure appropriate support for those that would like to take it up (even if they have not done so in previous phases).
- 5.2 Reports are the product on which the Commission will be judged and it will be essential that they are produced to a high standard and deliver an outcome that is of value to those making the request. The Commission will also have to balance competing duties and requirements, such as responsibilities not to risk putting life or safety of any person at risk and not to risk prejudicing national security interests.⁵⁴ It will also need to ensure that any criticism it intends to make is supported in evidence and the person being criticised has had the opportunity to comment.⁵⁵ This phase will involve significant interface between the teams of the Chief Commissioner and the Commissioner for Investigations as well as drawing on significant legal advice and consideration to ensure that the report meets all these competing requirements.

⁵⁴ Section 4(1) of the Act.

⁵⁵ Section 16(4) of the Act.

Q2 The principal objective of the Commission is to promote reconciliation. Which of the following aspects of the Commission's work do you feel could have the biggest positive impact?
(multiple response question)⁵⁶

Base = 218	Retrieving information for families	Setting out an authoritative and factual account of the circumstances of a death or serious injury	Obtaining new information about the past in return for granting specific immunity	Undertaking referrals to prosecution where appropriate	Providing a platform for reconciliation to move forward in the future	Providing the opportunity for individuals to make personal statements	Producing and publishing reports setting out the findings of reviews	Producing a record of deaths that were caused by incidents during the Troubles
%								
All respondents	62	59	19	40	46	40	28	33

- 5.2 Reports are the product on which the Commission will be judged and it will be essential that they are produced to a high standard and deliver an outcome that is of value to those making the request. The Commission will also have to balance competing duties and requirements, such as responsibilities not to risk putting life or safety of any person at risk and not to risk prejudicing national security interests.⁵⁷ It will also need to ensure that any criticism it intends to make is supported in evidence and the person being criticised has had the opportunity to comment.⁵⁸ This phase will involve significant interface between the teams of the Chief Commissioner and the Commissioner for Investigations as well as drawing on significant legal advice and consideration to ensure that the report meets all these competing requirements.
- 5.3 Some potential objectives for the Commission from this phase could include the following:
- development of a consistent report format that is in line with the Commission's duties and objectives;
 - clarity of language to avoid misunderstanding;
 - management of the different competing requirements while ensuring that reports are of value and meaningful;
 - providing a template that sets out how findings should be presented and ensures they are supported by robust consideration and assessment.
- 5.4 The Commission has a separate statutory function to keep a historical record of all deaths that are identified as being caused by conduct forming part of the Troubles and will publish this information⁵⁹.

⁵⁶ HYS Tables - September 23 P3

⁵⁷ Section 4(1) of the Act.

⁵⁸ Section 16(4) of the Act.

⁵⁹ Sections 28 and 29 of the Act

Presentation of evidence and materials

- 5.5 As the examination stage i.e. nearing completion, the information recovery team will hold a range of different types of evidence and material that has been collected. This material will need to be presented to those responsible for supporting the Chief Commissioner in making findings and producing a final report. The evidence presented may need to be tested and this stage might overlap with the examination stage, where further lines of enquiry or work to discover information or test the absence of information is undertaken. The Commission will need to consider an appropriate process for this and how to ensure there is challenge independent from the officers under the Commissioner for Investigations who have undertaken the examination. It will consider how enough of the wider context and background can be provided and how this needs to vary for different types of evidence and material (e.g. the Commission may need a different approach for witness statements as opposed to forensics evidence). Sensitive material presented at this stage will need to be subject to special handling arrangements and the Commission will need to think about to what extent it can be relied upon in any final report.
- 5.6 It will also be important to consider how material and evidence should be presented to the Chief Commissioner, and whether this should be undertaken neutrally or through putting forward a specific theory of events that the investigative team consider is supported by the evidence. If the Commission adopts this latter approach, it would need to ensure the officers also set out any information that could undermine or does not support the theory they set out. Independent testing will need to be carried out within the Commission on how material is translated into findings and it will need to ensure it has the right structures and skills (especially legally qualified officers) to support this work.
- 5.7 Where information recovery work has been carried out through the further process set out in para [4.25] above, some of these matters may be addressed through the work undertaken at that step.

Assessment of findings

- 5.8 The Chief Commissioner and those working on his behalf will need to assess what findings can be made in the report from the evidence and materials. Building on the previous stage, there will need to be a process by which evidence is analysed and accorded weight. The Commission may need to consider if there is scope for further examination to be undertaken and raise this with the Commissioner for Investigations and his officers. The Commission may need to consider the role and potential value in subject matter experts being asked at this stage to provide their view on the validity of material, in addition to any advice that may have been sought during the information recovery phase. The Commission will need to ensure consistency across reports on the level of evidence and material that is considered necessary to underpin a finding. It is likely to be at this step that the Commissioner for Investigations will, when appropriate,

make a decision on referral to prosecutors and a policy will need to be set out about how such a decision will be taken.⁶⁰

Report writing

- 5.9 The drafting of the Commission's final reports will be an important stage. Reports will need to be written in a clear, accessible and consistent style so that they provide information clearly to victims, survivors and families and contribute to the overall picture of the Troubles that the Commission will be compiling. The Commission will ensure a rigorous process is implemented to ensure that final reports are accurately based on the evidence and information that has been found by the examination stage. This process will need to be thorough and iterative to ensure accuracy.
- 5.10 The Commission should consider a range of styles of report, such as those issued in coroners' inquests, those produced by the Historical Enquiries Team and those from public inquiries and produced in other relevant fields to consider the most appropriate approach. There will be a balance to be struck between maintaining the integrity and sensitivity of the evidence-gathering process, especially where sensitive material is involved, while being able to provide clear findings supported by that evidence that are set out publicly. The format is a key question on which the views and needs of potential requesters should be sought.

Internal quality assurance

- 5.11 Each report will be thoroughly checked to ensure it is in accordance with the Commission's policies and standards. This will require an internal quality assurance process led by officers who have not been directly involved in the examination or assessment of findings stages and are therefore able to provide an objective assurance. This work will overlap with the considerations in the two steps above. A full legal consideration of how the content of the reports does not contravene any individuals rights under the European Convention on Human Rights and statutory responsibilities will be important.
- 5.12 Areas of particular importance might include assuring that findings that are made in the report are robust and ensuring that the clarity of the language means it is unlikely to lead to misunderstanding. Application of the Commission's principal objective of reconciliation could mean that the Commission will need to have an eye to whether systemic or wider recommendations are also included.
- 5.13 This stage should also be used to test the Commission's work against requester expectations and the Commission will consider how best to do this. Material that needs

⁶⁰ Section 25 of the Act

to be specifically scrutinised during the following steps for sensitive information review. Individuals and public authorities that will have a right to make representations as they are being criticised should also be identified and the report tested to ensure the Commission considers such criticisms defensible and necessary.

Sensitive information review

- 5.14 The Commission has a responsibility to ensure that information in final reports does not risk prejudicing the national security interests of the United Kingdom. If the Commission wishes to disclose sensitive information, the Commissioner for Investigations will need to notify the UK Secretary of State⁶¹ for Northern Ireland, who then must notify the Commission as to whether the disclosure is prohibited or permitted⁶².
- 5.15 If the Secretary of State decides to prohibit the disclosure of the information, the affected report will include a statement that the Secretary of State has done so and, unless it is against the national security interests of the UK⁶³, the reasons for doing so will be included⁶⁴. The Commission will need to robustly consider any decision by the Secretary of State and whether it wishes to challenge this publicly, setting out its view of the decision, including in the final report. It will also be open for the Commission to challenge a decision in the courts if necessary and it will need to consider how it can ensure a consistent approach to doing this, including discussing the matter as appropriate with the family. The family can also independently appeal against the Secretary of State's decision⁶⁵.

Representations

- 5.16 Where a draft report includes material criticising an individual or public authority, the Commission is required to give an advance copy of that material to the individual or public authority in question and allow them to make representations in the applicable response period.⁶⁶ The representations process will provide an opportunity for a person or public authority who faces criticism in a public report to respond to this criticism before publication of the report and the Commission will need to consider its drafting in light of any response. It may decide to maintain the drafting, modify or remove it.
- 5.17 The Commission will need to put in place a smooth process to undertake these consultations concurrently and allow it to consider responses effectively while minimising

⁶¹ Schedule 6, Part 1, Section 4 (1)

⁶² Schedule 6, Part 1, Section 5 (2)

⁶³ Schedule 6, Part 1, Section 4 (4) (a)

⁶⁴ Schedule 6, Part 1, Section 8 (1) and (2)

⁶⁵ Schedule 6, Part 2, Section 9

⁶⁶ Section 16(4) and (5) of the Act.

delays to the final report. This step may begin concurrently with the sensitive information review where there is not an overlap in the material. The Commission will need to consider how best it can provide the material making the criticism and whether any further additional context or supporting information is needed to demonstrate why the Commission proposes to make such a criticism.

Family / requester engagement

- 5.18 The Commission will need to provide a draft of its report to the requester and relevant family members and give them an opportunity to make representations on the report.⁶⁷ Throughout the three phases of the process, dedicated officers of the Commission will be in regular contact to support the requester. That engagement will be particularly important before and immediately after the issue of the draft report (during the applicable response period) and the final report. The Commission will need to consider how information can be provided gradually throughout the process so that the requester is neither overloaded with information nor are they likely to be surprised by the conclusions.
- 5.19 In reviewing drafting in the quality assurance stage, the Commission should think about how the requester might respond when they receive the draft report and what support might be needed. How the draft report is explained will also be crucial - Should there be a meeting to discuss and read through at the point the draft is provided, or should that only follow once the draft has been digested? Could this engagement be structured over several meetings? This will ensure that requesters are given appropriate support, especially in cases where the report will contain difficult elements. The Commission will also be responsible for identifying and taking action to manage any safeguarding issues that could arise through publication of the report. Respondents to the survey felt strongly (70%) that individuals and families connected with cases should be given more regular and detailed information that the wider public and the Commission will need to consider this in all phases of the work.
- 5.20 The Commission will develop mechanisms to hear feedback on the report – on language, tone and how the questions have been addressed. In addition, the Commission will need to consider how it reminds those in receipt of the draft report of the importance of confidentiality until a final version is arrived at.
- 5.21 This step will also be the final opportunity to update and confirm the personal statement that – if individuals wish – will be published alongside the report.

⁶⁷ Section 16(1) – (3).

Publication

- 5.22 Where a review was carried out in response to a request, the Chief Commissioner will give the final version of the report to the person who requested the review and publish the report.⁶⁸ Consideration should be given carefully to the forum in which publication occurs – should there be an event to read and explain the findings, could personal statements be read aloud and recorded, are there some families who will want minimal public comment? As expanded on below, the Commission will need to recognise that the findings set out in reports may be difficult for some to hear and will take steps to manage the publication, ensuring that individuals have input into how and when publication occurs and can access appropriate support during that time.

Requester support

- 5.23 This step in the process will be liaison-led and will manage any final conversations required to address any remaining questions a requester may have in light of the report having been published. At this stage, archiving of materials will also be initiated.
- 5.24 As will be the case throughout a journey with the Commission, victims' groups and other support organisations will have an important role to play at the end of the process when victims, survivors and their families receive the report. The publication of the report will be the end of the individual's engagement with the Commission, but there is a limit to what any report can do. It will be important that the Commission considers the extent to which expectations have been met and ensure that support provided takes account of this. Individuals and their families will need to be supported to work through the information contained in the reports, particularly in instances where that information is new, unexpected or difficult to hear.
- 5.25 The Commission will pay particular attention to this step of the journey to ensure it is trauma-informed and linked to whatever other sources of help or support victims, survivors and their families have access to.
- 5.26 The Commission will seek feedback on its work during and after each phase of the process. This might include follow-up in future years to understand how the Commission's information recovery work has affected the requester and other family members. The Commission is committed to designing strong continuous improvement processes and to ensuring that its approach is humble and responsive where it has not worked as best it could, so that it can learn and provide better support.

⁶⁸ Section 17(2) of the Act.

Further areas for development:

5.27 There are many aspects still to consider. Your input would be most welcome (but not limited to) the following areas:

- What's the most appropriate format or style for reports?
- How much source evidence should be contained and how are confidentiality and a need for openness to be balanced?
- Should there just be a single approach, or could there be different types of report?
- How is the duty not to risk life applied when considering whether to name individual who is judged to be the perpetrator?
- How would report drafting and preparation for a prosecution interact and could there be an interim report in cases where a prosecution was being considered?
- How can the requester, representation and sensitive information stages be managed concurrently to avoid delay?
- How can the confidentiality of the draft report be maintained until publication?