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Possible principles for design of ICRIR investigations

1. Introduction

1.1 The Commission will investigate deaths and any other harmful conduct forming part of the Troubles. These draft design principles will apply to all the Commission's investigations – from those which aim to answer a particular family focused question to those which will involve a criminal investigation utilising police powers (as set out in the paper [Ideas for how the Commission could approach its work to provide information recovery for families](#) published 6 October 2023).

1.2 This paper sets out draft design principles for investigations undertaken by the Independent Commission for Reconciliation and Information Recovery (the **Commission**). The paper does not represent final policy until ratified by the Commissioners and the purpose is for discussion and to set out publicly some of the early thinking about the approach the Commission could take.

2. General

2.1 We consider that these principles are aligned with key elements from Article 2 and Article 3 of the [European Convention of Human Rights](#) (ECHR) and requirements from the [Human Rights Act 1998](#). They also reflect and take account of the College of Policing Authorised Practice.

3. Article 2 of the ECHR

3.1 Everyone's right to life must be protected by law. No one must be deprived of their life intentionally save in the execution of a sentence of a court following their conviction for a crime for which this penalty is provided by law.

3.2 Deprivation of life must not be regarded as inflicted in contravention of Article 2 when it results from the use of force which is no more than absolutely necessary in defence of any person from unlawful violence, or in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, or in action lawfully taken for the purpose of quelling a riot or insurrection.

3.3 Article 2 imposes three duties on the state: a negative duty to refrain from taking life, (save in the circumstances envisaged in Article 2(2)), a positive duty to properly and openly investigate deaths for which the state may be responsible, and a duty to take positive steps in certain circumstances to take preventative measures to protect an



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individual whose life is at risk from another, where the state knows or ought to know that there is a real and immediate threat to the individual's life. The latter obligation extends to the protection of individuals from non-state actors.

3.4 The form of a compliant investigation will vary according to the circumstances but there are a number of required elements:

- the investigation must be independent;
- the investigation must be “effective” (conducted in a manner that does not undermine its ability to establish the relevant facts);
- the investigation must be reasonably prompt;
- there must be a sufficient element of public scrutiny to secure accountability; and
- the legitimate interests of the next-of-kin must be protected by an appropriate degree of involvement.

3.5 Article 2 was incorporated into domestic law by the Human Rights Act 1998 (HRA) on 2 October 2000. That incorporation is not retrospective so it does not apply to acts that took place before that date, but the investigative obligation in domestic law can apply to certain deaths occurring before then where the circumstances potentially engage the responsibility of the state. In such cases, it is possible that the state's obligation to investigate can apply to deaths which occurred up to 10 to 12 years before the HRA came into force.

4. Article 3 of the ECHR

4.1 Article 3 protects the rights of individuals not to be subject to torture or inhuman or degrading treatment or punishment. It imposes a negative obligation on states to refrain from inflicting serious harm on individuals within their jurisdiction. It also places positive obligations on states to put in place legal protections and in some circumstances, operational measures to protect specific individuals against a risk of torture or inhuman and degrading treatment or punishment.

4.2 Article 3 also imposes a positive procedural obligation on states to carry out an effective investigation into arguable claims of such treatment. The form of a compliant investigation will vary but there are a number of required elements, which are similar to those applicable to Article 2 investigations (see 3.4).

5. The Commission's Draft Design Principles for investigations

5.1 Whether or not a legal obligation arises to meet the requirements of the European Convention on Human Rights (and whether or not this arises in domestic law), we consider there is good practice from the elements of a Convention compliant



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investigation outlined above (see 3.4) which should inform the approach that the Commission takes to all of its investigations (ideas for three types of investigation were set out in the paper *Ideas for how the Commission could approach its work to provide information recovery for families* published on 6 October 2023).

5.2 The draft principles are as follows:

- 1. The Commission will investigate each case referred to it independently, thoroughly and fairly.**

The Commission and its officers leading and undertaking the investigation will be institutionally and practically independent from any interested party. The investigation will examine all relevant material, exercise its statutory and police powers as it sees fit to obtain what it reasonably needs and follow any reasonable lines of inquiry. The investigation will act fairly and impartially.

- 2. The Commission will undertake investigations promptly and proportionately.**

Following the referral of a request, the Commission will carry out the investigation promptly and in accordance with its case prioritisation principles. The Commission will take a proportionate approach to investigations, bearing in mind that in historical investigations, not all questions can be answered and not all evidence can be found.

- 3. The Commission will ensure those making a request are appropriately involved in the investigative process in order to protect their legitimate interests.**

Any person making a request to the Commission will be invited to make representations as to the scope of the investigation, the terms of reference and any reasonable lines of inquiry. This includes through using the provisions in the Act to set out specific questions they would like the investigation to address.

- 4. The Commission will make such factual determinations as are supported by the available material.**

The Commission will use its powers of information recovery to secure information from individuals and organisations that hold it, and to obtain information and witness statements from individuals who attend the Commission. It will assess evidence fairly and in a judicious manner, separate from the evidence gathering and investigative process, so that findings can be determined by the Chief Commissioner.

- 5. Findings expressed will always be at least to the civil standard of proof.**



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The Commission will reach findings that are supported by the available material. Where the Commission makes a finding of fact the starting point will be for the Commission to do so on the balance of probabilities (that the conclusion is more likely than not). Where the Commission is unable to reach a conclusion on the balance of probabilities, it may say that events have possibly occurred.

6. The Commission will compile and produce a report of its findings in relation to each investigation it carries out.

Reports will answer, as far as possible, the questions that have been asked by those making a request. The Commission's reports will also need to set out an account of all the circumstances of the death or harmful conduct, based on an analysis of the evidence the Commission has considered and set out in a way that is straightforward to understand. The reports will be public documents and the Commission will consider other activities, such as public press conferences and opportunities for individuals to read personal impact statements. The Commission will be as open as possible about the processes, policies and methodologies it adopts and information will be published online as well as explained and provided to each requester.



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Glossary of Terms

This glossary of terms explains some of the terminology used in this publication.

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.

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.

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. Peter Sheridan has been identified to be appointed as the first Commissioner for Investigations

Close family member – this is defined as a person who was, on the day of the death of the deceased, a spouse, civil partner, co-habitee, child or step-child, brother or sister (or half or step-brother or sister) parent or step-parent.

Coroner's Inquest – inquests are legal inquiries into the cause and circumstances of a death, and are limited, fact-finding inquiries; a Coroner will consider both oral and written evidence during the course of an inquest.

Culpability-focused investigations – these would 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. This option would obtain records as well as additional evidence from witnesses and subjects of interest, act at pace and present findings based on the balance of probabilities.

Family answer-focused investigations – these 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.

Historical record – the record of deaths the Commission will develop that were caused by conduct forming part of the Troubles.



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Investigation – the information recovery work that the Commission will undertake, which offers different types of approach to address different types of request. Proposals for the different types of investigation include family-focused, liability-focused and culpability-focused investigations.

Legacy Act – the [Northern Ireland Troubles \(Legacy and Reconciliation\) Act 2023](#) provides the enabling legislation for the Commission's work.

Legacy inquests – there is no formal or legislative definition of a legacy inquest case, but a legacy case is generally one which involves or is related to deaths arising out of the Troubles.

Liability-focused investigations – these 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. There may be some limited circumstances, (for example, where the Commission is asked to investigate cases related to inquests which were closed at an advanced stage), where a further inquisitorial process is needed in order to test the evidence further. This may include information gathered orally being tested through questioning.

Personal Statement – a statement by a family member about the way in which Troubles-related events have affected and continue to affect them and others.

Phase – the three parts of the journey which individuals may take through the Commission's information recovery process: Engagement, Information Recovery and Findings & Futures. Within each phase, there will be a number of stages.

Requesters – this document has been developed with a focus on victims and families who will make requests for information from the Commission – 'requesters'. Under the Act, there are other public offices which can make requests for information from the Commission and further consideration will be needed for any different approaches that might apply in such a case.

Representations – statements made to the Commission by individuals or organisations about material from a draft report which criticises them.

Sensitive information – information which has been supplied by a defined list of organisations (for example the security services). When the Commission is considering putting sensitive information in the public domain, it will follow a process to understand the risks and merits of doing so, and will seek permission from the Secretary of State as required by the Act.



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Stage – the elements which make up each phase of an information recovery investigation, in which different activities occur. Within each stage there will be a number of steps.

Step – the detailed processes for the Commission to follow and events which need to happen.

Trauma-informed approach – an approach in which an organisation seeks to understand how trauma has impacted people in different ways, then adapts its approach based on that understanding, with the aim of reducing the risk of causing people harm or re-traumatisation. A trauma-informed approach is based on principles of creating safety, empowerment, collaboration and choice.