



## **Ideas for how the Commission could approach its work to produce reports**

**December 2023**

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# 1. Introduction to the approach to producing reports

## Introduction

- 1.1 The Independent Commission for Reconciliation and Information Recovery (ICRIR) will, when asked to do so by victims, survivors and/or family members (requesters) and certain public office holders, conduct investigations into deaths and other harmful conduct related to the Troubles. In each case, the Chief Commissioner will be required to compile and produce a report of its findings.
- 1.2 This publication builds on the proposals outlined in the design considerations paper published on 6 October 2023<sup>1</sup>. The purpose of publishing is to set out ideas about how the Commission could consider operating when carrying out its duties to provide reports and to seek views, opinions and feedback. The feedback and discussions this paper generates will help to inform the Commission as it develops and agrees its operating practices. These proposals are not finished and no decisions have yet been taken by the Commission.
- 1.3 This publication takes account of the results of the recent first *Have Your Say* survey and the responses and feedback received on the previous design considerations paper. It also considers the draft design principles raised in the separate paper published on 10 November 2023<sup>2</sup> and draws on learning from the past few months of engagement by the Chief Commissioner-designate.
- 1.4 If you wish to provide thoughts, comments and feedback on this publication, please email [info@icrir.independent-inquiry.uk](mailto:info@icrir.independent-inquiry.uk) or write to ICRIR at its PO Box addressed to 'Freepost ICRIR'.

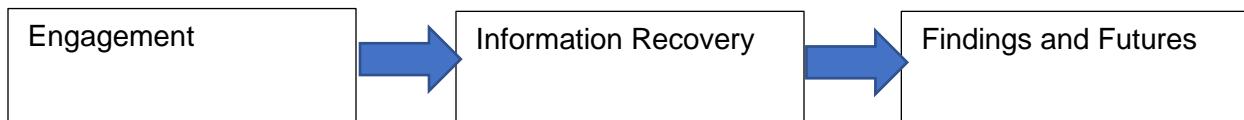
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<sup>1</sup> [\*Ideas for how the Commission could approach its work to provide information recovery for families\*](#)

<sup>2</sup> [\*Possible principles for design of ICRIR investigations\*](#)

## 2. Overview

2.1 There are three phases in the journey that individuals will take through the Commission's information recovery process:



2.2 Production of a report will be the key output from the third of these phases, *Findings and Futures*.

2.3 Reports are the product on which the Commission will be judged. It will be essential that they are produced to a high standard and deliver an outcome that is of value to those who make requests. They will need to set out the manner in which the investigation was carried out and answer, to the extent practicable, the questions that have been asked. Where it is not practicable to answer the question, the report will contain a statement of that outcome and if possible, explain why. The report will need to include findings in relation to the circumstances of the death or harmful conduct. Reports will be publicly available and the Commission's principal objective of promoting reconciliation should underpin the design and approach to its reports.

2.4 At the point that the Commissioner for Investigations begins to present evidence from the investigation to the Chief Commissioner for findings to be made, the process of preparing the report should also begin. Under the Northern Ireland Troubles (Legacy and Reconciliation) Act ('the Act') the Chief Commissioner is required to produce a final report. In practice the Chief Commissioner may wish to consider a scheme of delegation to members of the findings unit who will support him in this work. The Chief Commissioner will remain responsible and accountable and so references in this paper to the Chief Commissioner refer to that office and those working in the findings unit. Similarly, the Commissioner for Investigations will be supported by the investigation team and they will also act under a degree of delegated authority, and again references in this paper to the Commissioner for Investigations refer to both that office and those working in the investigation teams.

2.5 It is anticipated this process will consist of the following stages:

- 1) **Presentation of evidence and materials** – The Commissioner for Investigations will present the evidence and material collected to the Chief Commissioner. The Commissioner for Investigations should also provide an account of how the

investigation has been conducted, for inclusion within the report<sup>3</sup>. The Chief Commissioner should independently consider the evidence presented and may request further clarification or for additional investigative work to be carried out. In practice this may begin during the investigation and be iterative so that the Commissioner for Investigations can be challenged and consider developing lines of enquiry during the investigation. A lead member from the findings unit could be assigned, on behalf of the Chief Commissioner, to work with the Commissioner for Investigations and the investigation team from early on in their work. This might be similar to the arrangements between the CPS and investigators in complex case work, where the prosecutor will work with the investigative team from an early stage.

- 2) **Assessment of findings** – The Chief Commissioner should then assess what findings can be made in the report from the evidence and materials provided. This must be an independent assessment but should take careful account of how evidence was gathered and tested throughout the investigation including with technical and/or subject matter experts. It will be important to ensure that requesters understand the assessment of findings, the basis on which findings have been made and how they relate to the work carried out during the investigation and the updates they have previously received. Particular consideration should be given to dealing with theories of events and addressing the questions in the request made. In cases where there is the potential, a decision on whether or not a referral is made to prosecutors should also take place at this point.
- 3) **Report writing** – This should be an iterative process in which the overall structure of the report is considered before the relevant findings are recorded, written up and progressively agreed with the Chief Commissioner over several stages.
- 4) **Quality assurance** – As part of the drafting of a report, it should be subject to checks and assured by officers of the Commission who have not been directly involved in previous stages of the investigation or preparation of the report. This should include consideration of whether any of the content may engage the duties under section 4 of Act and the requirements for permission to release sensitive information. At this stage, the Chief Commissioner may wish to consider if he requires expert advice so that he can consider how those requirements might be properly discharged.
- 5) **Sensitive information review** – The Chief Commissioner should carefully consider the risks and benefits of disclosing any potentially sensitive information in the report and consider approaches to drafting which will enable key points to be brought out, summarised or paraphrased without disclosing sensitive information. If the report will disclose ‘sensitive information’ or ‘protected international information’ there is a process set out in the Act which must be followed before the disclosure can be

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<sup>3</sup> To meet the requirements of section 15(4) of the Act

made. The Commissioner for Investigations must notify the Secretary of State for Northern Ireland of the proposed disclosure. The Secretary of State has 60 days to notify the Commission as to whether the disclosure is prohibited or permitted. Where disclosure is not permitted, the Secretary of State must explain the reasons for this to the Commissioner for Investigations and where possible the reasons must be set out in the report. The requester is able to challenge the Secretary of State's decision within 28 days of publication of the report. In addition, the Commission will need to give consideration to whether it would also want to be able to challenge prohibitions on disclosure such as by judicial review or making a public statement.

- 6) **Representations** – Where a report includes significant criticism of an individual or public authority, the Commission must provide an advance notice of the criticism and a copy of the critical material, and provide them with the opportunity to respond to before the report is published. The Chief Commissioner will need to consider the drafting of the report in light of any responses.
- 7) **Family/requester engagement** – The Commission must provide a draft report to the requester and relevant family members before publication and give them the opportunity to make representations on the report. The Chief Commissioner will need to consider the drafting of the report in light of any responses.
- 8) **Publication** – Where an investigation 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. Any personal statements that have been submitted should be published at the same time. Publication could take a number of forms.
- 9) **Requester support** – Following publication, the Commission will liaise with the requester to answer any final questions they may have and provide or point to further sources of support as may be required.

2.6 This paper focuses in particular on stages 1-7 of this process. Depending on the type of investigation carried out and the facts of each case, these stages will not necessarily proceed strictly in the order set out above or take place entirely separately from each other. For example:

- Sensitive information will likely be identifiable at the outset of the process. The Chief Commissioner will need to consider the most appropriate way of using this information where it is of relevant substance to ensure that each report provides an account of the circumstances of the event and address requesters' questions, while meeting any justifiable concerns in respect of national security.
- The Commission will be under a specific duty to provide the requester with the proposed report and to consider their representations. The Commission will also

need to stay in contact with the requester throughout this phase of its work, ensuring that appropriate support is available at any point for those who would like to take it up.

- Ahead of publication, the Commission will need to consider any representations relating to the draft report received from requesters as well as representations in relation to significant criticisms.

## Legal framework

2.7 At all stages the Commission will need to ensure that its approach supports the principal objective to promote reconciliation<sup>4</sup> and meets other clear legal requirements set out in the Act. These requirements include:

- Discharging the duty not to:
  - put or risk putting life or safety of any person at risk;
  - prejudice or risk prejudicing the UK's national security interests;
  - have or risk having a prejudicial effect on criminal proceedings in the UK;<sup>5</sup>
- Ensuring reports include, to the extent practicable, a response to requester questions or a statement explaining that it has not been practicable to respond;<sup>6</sup>
- Publishing any eligible personal statement provided where the person who provided it wishes it to be published.<sup>7</sup>
- Ensuring all reports contain a statement of the manner in which the Commission carried out its review;<sup>8</sup>
- Providing a draft report to the requester and relevant family members and giving them an opportunity to make representations on the report;<sup>9</sup>
- Ensuring that individuals and authorities are provided with any material which, in the view of the Commissioner, constitutes significant criticism of a living individual who was involved in the conduct forming part of the Troubles, or a public authority, and giving them an opportunity to make representations in the applicable response period;<sup>10</sup>

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<sup>4</sup> Section 2(4) of the Act

<sup>5</sup> Section 4(1) of the Act

<sup>6</sup> Section 15(3) of the Act

<sup>7</sup> Section 24 of the Act

<sup>8</sup> Section 15(4) of the Act

<sup>9</sup> Section 16(1)-(3) of the Act

<sup>10</sup> Section 16(4)-(5) of the Act

- Operating within the Commission’s powers to disclose information powers<sup>11</sup>, for example through following data protection legislation;
- If the Commission wishes to disclose sensitive or protected international information, the Commissioner for Investigations will need to notify the UK Secretary of State for Northern Ireland<sup>12</sup>, who then must notify the Commission as to whether the disclosure is prohibited or permitted;<sup>13</sup>
- If the Secretary of State decides to prohibit the disclosure of sensitive 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 UK<sup>14</sup>, the reasons for doing so will be included<sup>15</sup>. The Commission may also make a public statement in relation to a decision to prohibit disclosure;
- 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;<sup>16</sup> and

2.8 The Commission will also need to have regard to and operate in accordance with wider legal and statutory requirements including:

- The Belfast/Good Friday Agreement and the Northern Ireland Act 1998;
- The European Convention on Human Rights (the ECHR) and the Human Rights Act 1998 – in particular ensuring that an effective review is carried out;<sup>17</sup>
- Section 149 of the Equality Act 2010 and Section 75 of the Northern Ireland Act 1998 – ensuring that the Commission is compliant with its public sector equality duties;
- The Data Protection Act 2018 and the General Data Protection Regulation (GDPR); and
- Common public law principles of legality, fairness and reasonableness.

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<sup>11</sup> Section 30(2) of the Act

<sup>12</sup> Schedule 6, Part 1, para 4(1) of the Act

<sup>13</sup> Schedule 6, Part 1, para 4(2) of the Act

<sup>14</sup> Schedule 6, Part 1, para 4(4)(a) of the Act

<sup>15</sup> Schedule 6, Part 1, para 8 of the Act

<sup>16</sup> Section 17(2) of the Act

<sup>17</sup> See also [Possible principles for design of ICRIR investigations](#)

### 3. Objectives and principles for making and reporting findings

- 3.1 The Chief Commissioner will make an assessment of findings which decides between different accounts or theories of the events through considering and weighing the evidence on its merits. This assessment is separate from the conclusions of the work carried out by the Commissioner for Investigations and must be made impartially. The Chief Commissioner should view and take into account all relevant material in full and unredacted form and exclude irrelevant material in order to make their findings.
- 3.2 Reports are the record of the work that has been carried out and the findings that have been made, based on the evidence assembled through the investigation. The process of coming to those determinations about what the evidence means and of – where possible – explaining how and why those judgements are being reached, is just as important as the final report itself. Consistent with the principal objective of the Commission to promote reconciliation, the recently published paper<sup>18</sup> outlines a number of potential objectives specifically in relation to report writing:
  - development of a consistent report format that is in line with the Commission’s duties and objectives;
  - written in clear language to avoid misunderstanding;
  - management of the different competing requirements while ensuring that reports are of value and meaningful; and
  - providing a template that sets out how findings should be presented and ensures they are supported by robust consideration and assessment.

These points were explored further in the recent *Have Your Say* survey and the Commission will need to consider the responses carefully.

- 3.3 Underpinning these objectives, the paper suggests four high-level principles of clarity, accessibility, consistency and accuracy. The Commission will need to consider and agree a final approach which balances these principles and ensures that they complement each other.

Clarity

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<sup>18</sup> [Ideas for how the Commission could approach its work to provide information recovery for families](#)

3.4 A report will be clear if it is transparent and easy to understand, both in terms of the content and the style it is written in. The Commission will want to consider precedents and good practice from reports published in other contexts, including other public inquiries, inquests, reports from the Police Ombudsman of Northern Ireland and the PSNI Historical Enquiries Team. The primary audience for a report will be the requester who in most cases will be the victims/survivors and their families. Above all else reports should therefore be clear and understandable with these people in mind. They should answer their questions as best the Commission can, using plain, unambiguous and clear language. Reports will also be public documents with a wider audience who will have a range of views on what makes for a clear report.

3.5 In general, a long, detailed, technical and/or overly legalistic report would likely not be clear or transparent for most non-expert readers. The victim should be central to the work. The Commission should therefore consider adopting a narrative approach to the content of its reports. This means that reports would set out the story of the events in each particular case. That story would be based on an analysis of the evidence the Commission has considered through its examination and any other matters relating to the events or case. Reports written in this way should be straightforward to understand even for somebody who has no previous knowledge or background.

3.6 Reports should set out a theory or description of what happened while also explaining the wider context. They should set out the who, when, where and how of the death or serious harm. They should make conclusions or recommendations where these are supported by or based on the evidence and information the Commission has identified. They should note any previous investigation that was carried out and, if the Commission considers this appropriate, say something about how this is similar to or different from the conclusions the Commission has drawn itself.

3.7 Reports must, to the extent practicable, provide an answer to specific questions asked by the requester. Where a report does not answer those questions it must include a statement explaining that it has not been practicable to respond – and if possible why that is the case. Answers could be provided at the most appropriate place in the narrative of the report itself and/or in a separate section. The Commission should therefore consider the views of requesters on the approach they would find most valuable.

3.8 The Commission should agree a recognisable and consistent style for its reports in terms of the language and tone used and this should complement the narrative approach to content. The Commission should use plain language, avoiding jargon and a neutral tone so that its reports are clear, coherent, concise and compelling for both the requester and the wider general public. In doing this it should also avoid language that is cold or ‘clinical’ and make sure that the feelings and emotions around the incident are sympathetically reflected.

## Accessibility

3.9 A report will be accessible if it is made available in ways which meet the diverse needs of different users. The Commission will therefore need to adopt an approach which ensures that reports are made available in a wide variety of formats including (for example) large print and braille, as well as in both electronic and hard copy. The Commission's approach must meet minimum public sector quality duty requirements and comply with all legal obligations on accessibility.

3.10 Ahead of publication of each report the Commission should consider consulting with the requester in respect of issues which may arise on publication. Subject to this the Commission should be prepared to hold events at which reports (or extracts/key findings from reports) are read aloud, potentially alongside any personal statements submitted. Where this happens, the Commission should consider how such events can be broadcast and recorded so they remain accessible in future, consistent with the principal objective of promoting reconciliation. The Commissioner for Investigations and the Chief Commissioner should consider how they can engage directly with the requester and wider families to explain the work and findings and answer questions, and also provide the opportunity for wider public scrutiny where appropriate.

## Consistency

3.11 Reports will be consistent if the Commission adopts a broadly similar or comparable approach in certain key respects. The Commission will undertake a range of different investigations and the facts of each individual case will inevitably mean that reports could not and should not seek to rigidly follow too prescriptive a format. The Commission should however seek to ensure overarching consistency is achieved across the suite of its reports as follows:

- **Designing and publishing a report template.** This should include standard sections such as the manner of the investigation, background or context leading up the incident, a factual and neutral description of the incident, a summary of the material evidence and information the Commission has identified, an analysis or evaluation of what this evidence shows and the theory or description of the events based on this, summary conclusions or recommendation, and answers to the specific questions asked by the requester (to the extent practicable), and any personal statement(s) that have been provided.
- **Designing and publishing a report style guide.** This should set out clearly the guidance that will be followed by officers of the Commission responsible for drafting and

agreeing reports. It should cover the Commission's approach on language, tone and format of reports.

- **Approach to findings.** The Commission should ensure that the conclusions it reaches in different cases are consistent and that it explains these with sufficient reference to the considerations it has made.
- **Families and requesters.** The Commission should consistently ensure that it takes account of and, wherever possible, seeks to prioritise the views of those who made the request. The Commission should not (for example) prioritise delivering a blanket approach to publication events which disregards the preferences of the requester.

### Accuracy

- 3.12 A report will be accurate if it fairly summarises and weighs the key evidence and information that has been found during the information recovery phase, including dealing with circumstances in which no evidence has been found. The Chief Commissioner should work closely with the Commissioner for Investigation but must carry out his own assessment of the evidence and reach his own conclusion on the findings.
- 3.13 During the information recovery phase the Commission must ensure that the full, wider circumstances of the event and connected other harmful conduct are looked into. The Commission will have a full range of powers to ensure that all relevant information is identified and recovered. The Chief Commissioner will be able to refer to and/or include that information or evidence in final reports and should ensure that these include or refer to relevant information which will be of value to requesters. The Chief Commissioner is not however required to include all underlying evidence identified during the investigation and will need to ensure that the Commission discharges its duties under the HRA and ECHR and its duties not to risk a person's life or safety or risk prejudicing the UK's national security interests or criminal proceedings.
- 3.14 The Commission should therefore consider an approach in which reports generally set out a summary of the critical evidence and information identified and points of fact where the report is making findings. The Commission will need to carefully consider drafting and the specific form of words used on a case-by-case basis. It will also need to take into account the extent to which information or material has already been disclosed.
- 3.15 The Commission will also need to carefully consider its approach towards naming alleged perpetrator(s) and other individuals (including witnesses) within its reports. It should seek to name those that it has determined were responsible where possible, recognising the significant value that many requesters are likely to place on this. The Commission will however need to adopt an approach that also takes into account the

views and concerns which might be raised by such individuals, including in respect of their rights under the ECHR. The Commission should therefore consider adopting an approach of carrying out a careful case-by-case consideration of the potential threats to individuals it intends to name in reports and the extent of these, taking into account an expert assessment from those who are able to provide it as well as any national security issues. As part of this, consideration should also be given to where information has already been disclosed.

- 3.16 The content of the report must undergo a rigorous process of testing and review throughout the process of drafting. In the process of preparing a report an internal quality assurance process must be conducted. The Commission must also put in place clear, consistent and robust processes for handling personal data, sensitive information and considering representations from those who might be criticised in reports, alongside the representations of the person who requested the report.
- 3.17 The following sections of this paper set out in more detail proposals for how the Commission could manage these processes.

#### **Areas for consideration**

- **What overarching principles should the Commission consider adopting to guide its approach to making findings and producing reports?**
- **What factors should the Commission take into account and prioritise when considering naming individuals in reports?**
- **How can the Commission best keep requesters informed throughout the process of making findings and producing a report?**

## 4. Presentation of evidence and assessment of findings

4.1 The Commissioner for Investigations will be responsible for conducting the investigation in each case. The Chief Commissioner will be responsible for assessing the evidence and making findings, recording these in a report for publication. The Commission will therefore need to put in place clear arrangements between these two offices which ensure they are able to work well together while maintaining independence.

4.2 The Commission should consider adopting an approach which facilitates and enables a smooth flow between the work of the two offices before, at and after the point of handover of a case. This will however be particularly important at the stages of the process where evidence is presented and an assessment of findings is made. The Commission should consider adopting arrangements to facilitate a smooth flow of work which include:

- From the point the Commissioner for Investigations begins the investigation, a member of the Chief Commissioner's findings unit should be assigned to that team to ensure that, as the investigation progresses, hypotheses are fully tested and lines of enquiry followed to be able to support findings to be made.
- Likewise, the Commissioner for Investigations needs to be sighted on the emerging findings and the emerging report to assist in ensuring that it accurately reflects and summarises the findings of the investigation carried out and so they can feed back and act on any requests for further investigative work.
- The Commissioner for Investigations should develop a clear format and style for the information provided to the Chief Commissioner. In all but the simplest of cases a number of formal presentations and meetings to set out and test the evidence will likely be required to support the process of making findings. Further investigative work may be required. At the point at which evidence is formally presented, the Commissioner for Investigations should set out and explain the manner in which the investigative work has been undertaken, including how the investigation was carried out, details of individuals who provided them with information, where information was not provided or not available, any new lines of enquiry that were identified and pursued, any lines of enquiry that were not pursued and why, their approach to considering any specific questions put by requesters, a summary of their findings and conclusions, what standard these are based on and what consideration they have given to potential prosecution.

4.3 The Chief Commissioner should robustly test the outputs of the investigation. Where this testing identifies a potential need for further investigative work to be carried out, the Chief Commissioner team should be able to ask the Commissioner for Investigations to carry this out. The final assessment of findings which informs the content of the report should be made by the Chief Commissioner.

4.4 In some cases, the Commission will need to make a decision on whether or not a referral is made to prosecutors. This decision will be for the Commissioner for Investigations based on their consideration of the evidence and in coming to this view they should involve the Chief Commissioner. Where a referral is made, the Commission should be careful not to do anything which could prejudice or be seen as risking prejudicing the decision of the prosecutors. The Commission should therefore not seek to prepare or publish an interim report in these circumstances but will need to ensure that it continues to engage with and provide support to the requester.

#### **Areas for consideration**

- **How should evidence be presented and tested?**

## 5. Preparing and finalising the report

- 5.1 The Chief Commissioner is responsible for producing final reports on the findings of investigations carried out by the Commissioner for Investigations. In practice they will be supported in carrying out this function by a dedicated findings unit headed up by a senior officer of the Commission.
- 5.2 The findings unit will be responsible for multiple overlapping stages and steps as described in more detail below.

### Report writing

- 5.3 In order to ensure that reports are prepared and finalised in a way which delivers clarity, accessibility, consistency and accuracy, the Commission should consider putting in place a process for drafting which is based on an iterative approach, alongside the process by which it is making findings from the evidence, so that these are properly recorded.

### Quality assurance

- 5.4 As the report is being developed, the Commission should conduct rigorous internal quality assurance. This should include reviewing both the content and style of the report, ensuring that it is in line with the Commissions agreed policies and standards. This process must also ensure that the report addresses questions from requesters to the extent practicable while meeting all key legal requirements, including the Commission's duties under the Act, HRA / ECHR, and in respect of personal data and sensitive information.
- 5.5 From the earliest point and throughout the drafting process as it proceeds, the Commissioner for Investigations and Chief Commissioner should be alive to any potentially sensitive information, prejudicial information and protected international information which could be disclosed or referred to in the report. They should consider the risks and benefits of disclosing such information, including taking into account where that information has previously been disclosed (whether fully or in part) and any links to information that may have been disclosed or included within previous reports published by the Commission. They should consider whether and how it might be possible to present the relevant substance from the information in such a way as to enable key points to be brought out or summarised or paraphrased without directly including details, information or evidence which would risk prejudicing UK national security or breaching data protection principles. The Commission should consider the precedent from established judicial and coronial processes where similar issues arise as Judges will need to see all relevant material and evidence and weigh up a number of duties in

making and reporting their findings. Where appropriate, the Chief Commissioner may want to consider expert advice from relevant authorities on the national security implications of a disclosure.

#### **Sensitive information**

- 5.6 In some instances the Commission may nevertheless conclude that it should disclose potentially sensitive information. In these instances, the Commission must notify the UK Secretary of State for Northern Ireland who must in turn notify the Commission as to whether the disclosure is permitted or prohibited. The Commission should consider carefully any such decision and how it wishes to respond. It would be open, for example, to the Commission to challenge any such decision through the courts if it considered this necessary. The family can also independently appeal against the Secretary of State's decision<sup>19</sup> In any event, the final report should include the Commission's own view of the Secretary of State's decision.
- 5.7 The Commission should give careful consideration to the best point in the process to provide the Secretary of State with a formal notification which is likely to vary from case to case and may come clearer during the report writing phase. This will need to balance considerations around avoiding undue late delays to publication of the report against avoiding risking engaging the Secretary of State earlier than necessary and in advance of consultation with requesters on the wider draft report.

#### **Representations**

- 5.8 From the earliest point and throughout the process of making the assessment of findings and drafting the report, the Chief Commissioner should consider whether these might include material constituting significant criticism of individuals and/or authorities. It will however only become certain what material falls within this category after findings have been tested and are being firmed up. Moreover, by this stage the report will have undergone a thorough assurance process which ensures its findings and conclusions are robust and justified.
- 5.9 Individuals and authorities facing significant criticism are likely to have been spoken to at an earlier stage in the investigation. The Commission should however consider adopting a process in which formal letters setting out proposed significant criticisms are only issued later in the process. The Commission is not obliged to – and should not – provide those it intends to criticise with a full draft of the report. Rather, the Commission should only sets out the criticism and any relevant context to enable an informed response to be provided.

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<sup>19</sup> Schedule 6, Part 2, para 9 of the Act

- 5.10 Those individuals or authorities who are provided with the material constituting criticism will be entitled to make representations within the applicable 30 day response period from when they are provided with the material. The Commission is not obliged to modify or remove critical material or drafting from the report in response to any representation received. In some instances the Commission may receive multiple and conflicting representations in response to the same material.
- 5.11 Once all applicable response periods have concluded, the Chief Commissioner should consider all representations received and whether to exclude, or modify such criticism from the report.

#### **Family/requester engagement**

- 5.12 As set out above, the Commission should ensure that a process is in place to provide regular updates to requester on progress throughout the exercise of making findings and preparing the report. In addition to this regular engagement, the Commission must also ensure that it provides a draft of the report to the requester and any relevant family members and allows those persons to formally make representations and this must be done so in an accessible way. This should happen alongside meetings and explanations to the requester about work that has been undertaken and emerging findings.
- 5.13 The Commission will need to manage this family/requesters representations process separately from the process of seeking representations from those to who it will be providing material constituting significant criticism. The Commission should therefore only provide the report and formally seek representations from requesters and relevant family members after it has considered representations from individuals and public authorities facing significant criticism and has taken account of all legal requirements in doing so. However, it should look to provide areas of reports where such steps are not required or have been completed, in parallel with other steps being carried out on other areas of the report, rather than wait for the full report to be ready.
- 5.14 The Commission may receive multiple representations from different family members and these may conflict with each other. To enable the Commission to properly manage and reach balanced decisions on the final drafting of the report, all representations should therefore be considered in the round and where considered appropriate the drafting amended to reflect these.
- 5.15 Following the allocated time period for representations and consideration of those representations, preparations should begin for publication of the report during which the Commission will need to engage particularly closely with the requester. Proposals on how the Commission should consider approaching these final stages of the process will be developed.

#### **Areas for consideration**

- **How should the Commission manage the competing statutory processes?**

- **How should the Commission quality assure its reports?**
- **How should the Commission come to decisions on disclosing information while discharging its duties under section 4 of the Act (not to risk any person's life or safety, prejudicing the UK's national security interests or having a prejudicial effect on criminal proceedings in the UK)?**
- **How should the Commission stay in close contact with requesters throughout the drafting process before the report is available?**
- **What additional steps or measures should the Commission consider putting in place during the process of preparing and finalising the report?**

## Annex - 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.

**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 Legacy 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 significantly 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 Legacy Act.

**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.