

Independent Commission for Reconciliation and Information Recovery

Consultation on Operational Design

Context

In this consultation paper, the Independent Commission for Reconciliation and Information Recovery (the Commission) seeks feedback on aspects of design of its operational policies. The feedback received will inform decision making on the approach the Commission will take.

Audience

This paper will be of interest to victims, survivors and families who have been impacted directly by the Troubles in Northern Ireland (wherever that event occurred). Those people may currently reside in Northern Ireland, Great Britain, Ireland or elsewhere around the world. There may also be interest from victim and survivor representative bodies, both statutory and voluntary, and the wider population in Northern Ireland, Great Britain and Ireland.

Reconciliation as principal objective

Reconciliation is the principal objective of the Commission. By contributing to this consultation, you will help improve how the Commission delivers for all those across the community, thus helping to improve the basis for reconciliation.

Reason for consultation

While the legislation for this Commission is fixed there is wide flexibility about how it is designed and how it can support individuals. The Commission is seeking feedback from the public about key aspects and stages of the Commission's development. This consultation focuses on the Commission's operational delivery.

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Foreword

A Commission that serves all.

The Independent Commission for Reconciliation and Information Recovery is being set up to provide information for victims, survivors and families of Troubles-related deaths and serious injury, and to work towards reconciliation for all parties.

I accepted the role of Chief Commissioner because I believe this is worth doing. The people of Northern Ireland and all those affected by the Troubles need the legacy of the past to be properly dealt with. Previous attempts to address this have failed but that doesn't mean we can simply give up.

In addition to the principal objective of promoting reconciliation and the need to follow a trauma-informed approach, I and my fellow Commissioners have committed to three essential principles in how we undertake this serious task:

- Compliance with the European Convention on Human Rights
- Respect for the principles of the 1998 Belfast Good Friday Agreement; and
- Focus on providing useful information to those affected by the Troubles.

Our mission is for an independent Commission committed to serving victims, families and survivors by thoroughly investigating and establishing the facts of past events, to provide an acknowledgement of the wrongdoing, in a way that is sensitive to the trauma experienced and assists with the promotion of reconciliation.

We recognise the contested circumstances in which the Commission came into being and the hurt that many have felt as a result of the changes to approach to legacy cases. The litigation in the High Court has meant that the legislative framework has been tested, and we consider this is important because it provides answers about whether or not the Commission can meet its principle of compliance with the ECHR.

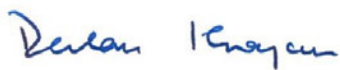
The Court's ruling that the Commission has the capability, through its independence, its powers, and its commitment to victim involvement, to carry out ECHR compliant investigations, means that we are now proceeding to put in place the next steps so that we can begin taking requests for investigations. From May we will be able to meet every individual who wants to discuss their case and whether the Commission can carry out an investigation.

The Court also found some aspects of the UK Government's Legacy Act to be in breach of the European Convention on Human Rights and removed those provisions

from the Act. This means that they are not legal requirements on the Commission. We will therefore not be subject to any obligation to determine requests for conditional immunity. The Commissioners do not consider that the loss of this additional means of securing information recovery affects our wide range of powers to obtain information through our investigations.

This consultation sets out the latest design for the Commission and how it will operate. While the overall stages and approach for how we carry out our work have been determined, there are still important elements of design where we want input from all those with an interest. We have sought to reflect on areas where the Court suggested the need for a greater articulation of our approach and where refinement would be helpful to secure compliance.

I want the new Commission to be designed in the way that best serves those who have been affected by the Troubles. I encourage all to respond to this consultation, to meet with us to share their views and feedback. This will help us make the most of this opportunity to establish the facts and acknowledge the wrongdoing and harm caused, as a means of assisting with the promotion of reconciliation.



Sir Declan Morgan

Chief Commissioner



Executive Summary

- 1.1 The Commission is a new and independent public body which has been set up to find answers to questions individuals and families have relating to deaths and serious injuries which occurred during the Troubles.
- 1.2 The Commission is not a traditional law-enforcement organisation, but it will be thorough and far-reaching as it carries out its work, as encapsulated in its vision and mission (Figure 1). The Commission is taking a trauma-informed approach to its work with a focus on the needs of victims, survivors and their families.
- 1.3 In addition to the principal objective of promoting reconciliation, the Commissioners have committed to three essential principles in how the Commission works:
 - Compliance with the European Convention on Human Rights
 - Respect for the principles of the 1998 Belfast Good Friday Agreement; and
 - Focus on providing useful information to those affected by the Troubles.
- 1.4 It is important to the Commission that people across Northern Ireland, Great Britain, and wider have the opportunity to provide input to the design of how the Commission works. The Chief Commissioner, Commissioner for Investigations and officers from the Commission have met with a wide range of individuals and groups to hear their views on the Commission. Two public surveys have been carried out, focus group and polling work has been done, and the Commission has openly set out much of its proposed thinking and design considerations to provide for scrutiny and feedback.
- 1.5 This public consultation builds on that open approach to design and, alongside setting out the proposed approach, invites views and opinions on policies that will apply at points during the Commission's investigations.
- 1.6 The Commission is already carrying out consultations about:
 - embedding its trauma-informed approach;
 - its proposed Disability Action Plan; and
 - its proposed Equality Scheme.

Figure 1: Vision and Mission of the Commission

Vision

A society that is more reconciled because the Commission has provided greater information to the public about deaths and serious injuries during the Troubles.

Mission

An independent Commission committed to serving victims, families and survivors by thoroughly investigating and establishing the facts of past events, to provide an acknowledgement of the wrongdoing, in a way that is sensitive to the trauma experienced and assists with the promotion of reconciliation.

- 1.7 The Commission is also working with other public authorities in the current justice system to learn from their current approach and put in place arrangements for transition to the new framework. This includes learning the lessons from and building on work undertaken by the Legacy Inquests Unit, Operation Kenova and the Police Ombudsman for Northern Ireland to improve the ability to retrieve information about deaths and serious injuries during the Troubles.
- 1.8 The Commission recognises its responsibilities under section 75 of the Northern Ireland Act 1998 and has recently published a draft Equality Scheme, in advance of its designation beginning from 1 June. Before then it is putting in place measures to deliver actions committed to under the scheme and will also carry out screening and impact assessment, where necessary, of policies that have been set out prior to that date. This consultation asks for any evidence about the impact or approach to the range of protected categories which could assist with informing such screening and assessment.
- 1.9 This consultation will be open until 10 May 2024. Once the public consultation has closed, the Commission will review the responses received and consider whether and how to reflect the feedback on the areas on which it has consulted. The Commission hopes to set out the final policies it is adopting and its response to the consultation in mid-May.
- 1.10 The Commission considered it appropriate to wait until after the High Court's ruling in the legal challenges to the UK Government's Legacy Act so that it could take into account matters from that Court's detailed consideration of the legal position. The Commission considers that an eight-week consultation is a proportionate approach to give time for proper consideration, while also recognising that the Commission will begin

discussing individual cases with potential requesting individuals and families from May. The response to the consultation will be an important aspect of the Commission's initial operational activities in May and the Commission's officers will discuss the response and policies adopted with all those who are in the process of making a request to the Commission.

- 1.11 In its judgment, the Court confirmed that the Commission is independent and is capable of carrying out investigations which are compliant with the European Convention on Human Rights.
- 1.12 The Commission is now focused on getting ready to begin receiving requests for investigations from May of this year. The Commission will be setting out more information from April, about how to make a request of the Commission and in May will begin meeting with those who want their case to be investigated.
- 1.13 The Commission has a wide range of powers and practices at its disposal in order to thoroughly investigate cases. In addition to police powers, where merited, it has statutory powers to require information – both from individuals and from public authorities. The Court endorsed the wide range of powers at the Commission's disposal and the Commission is confident it can use these to good effect to recover information.
- 1.14 The opportunity for conditional immunity from prosecution for specific offences was another tool that the Legacy Act provided for the Commission to maximise recovery of information by providing an additional incentive for co-operation in return for setting out information about the case being investigated. The fact that – as a result of the Court's judgment – this tool is not available does not stop the Commission from using the other range of powers and processes to carry out effective investigations.
- 1.15 The Commission has already adopted a Code of Conduct and this sets out the values and behaviours expected of all Commissioners and officers (Figure 2). It is the bedrock of the Commission's approach and underpins a number of important aspects of the Commission's independence and ability to operate fairly for all. For example, the thorough declaration and management of outside interests, as set out in policy, are important to ensuring that no conflicts of interest arise.

Figure 2: Code of Conduct Values and Behaviours

	<p>Integrity</p> <p>Putting the obligations of public service above your own personal interests. Acting in line with other applicable professional obligations and standards.</p>
	<p>Openness</p> <p>Being truthful and straightforward in your communications and your engagement while respecting confidences and keeping information safe.</p>
	<p>Respect</p> <p>Treating everyone with whom you interact with courtesy, irrespective of their background or beliefs. Engaging in constructive, respectful and professional dialogue even in the case of differing opinions.</p>
	<p>Impartiality</p> <p>Behaving in a fair and objective manner, treating all equally, remaining open minded and taking decisions based on evidence.</p>
	<p>Accountability</p> <p>Operating within legal requirements, including the European Convention on Human Rights, the Equality Act 2010 and equivalent equality legislation in Northern Ireland, the requirements of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, and within the objectives and policies of the Commission. Being willing to justify decisions, actions and omissions.</p>

Using the Commission for information recovery

- 1.16 The first aspect of using the Commission is having enough information to understand the Commission's approach and what it might be able to do in any individual case. This needs to be done in a number of different ways, reflecting that people build their understanding through different types of information. Chapter 2 sets out the Commission's approach to ensuring awareness of, and education about, the Commission.
- 1.17 The Commission will undertake its investigative work in three main stages, through three interlocking teams (Figure 3). Chapters 3, 4 and 5 set out more detail about each of these stages. It will cover what the objectives are, what the stage should feel like from the perspective of the requesting individual, including when and how they will be involved in each aspect of the investigation, and what the Commission will be doing at each stage. In particular, the Chapters set out draft proposals for some of the key operational policies which will be used to support decision making at crucial stages. These proposals are the focus of the consultation and the questions are set out in bold text.
- 1.18 Chapter 6 sets out some further matters about the Commission's wider remit that it is considering, such as how to develop its definition and understanding of reconciliation, and how to approach the development of an historical record. These are aspects of the Commission's work that focus on the potential wider positive impact that can be achieved.
- 1.19 While there is much infrastructure, policy and process which is important to be put in place to provide consistency and clarity of approach, it is vital to remember that at the heart of this endeavour are people. Individual and collective family stories, suffering, hurt, uncertainty. It is this human side that the Commission must honour and must make sure it never loses sight of in how it behaves and how it acts.

Figure 3: Investigation Stages

Stage 1: Support.

This is the start of an individual's journey with the Commission. Dedicated Case Support workers will help individuals and families better understand how the Commission may be able help them (and what it will not be able to do), the different options available to them and the information the Commission will need to move to the next stage. While this is the first stage of the journey, that support will be available throughout the entire process. The case support team will provide a single point of contact and consistent, objective support for the requesting individual and family throughout their time with the Commission. They will respond to any questions and provide people with the space, time and information to make decisions that are right for them and the information recovery outcomes they seek.

Stage 2: Information Recovery.

In this next stage, a team of investigators will gather information and evidence and seek to answer the questions the requesting individual and family have raised. The team will need a range of skill sets, to comb through archives, interview witnesses and secure evidence. Investigators will work across a range of different cases at any one time to maximise progress and efficiency. Each investigation will be overseen by a Senior Investigative Officer. Investigators will be able to require access to all material from any previous fact-finding and determination processes, as well as all material held by the state, no matter how sensitive. They may also undertake new investigative work. Investigative teams will follow defined terms of reference for each investigation, which will start with a scoping exercise, based on an approach to cold case reviews that follows with internationally recognised best practice. This will inform the Commissioner for Investigation's decision on which of three investigative routes will be most appropriate for the case. All three routes will embed the features required for an ECHR compliant investigation.

Stage 3: Findings.

The Chief Commissioner is responsible for the production of reports at the conclusion of investigations. In this work, they are supported by the Findings Team. A Findings Officer from the unit will be assigned to each investigation from an early stage and will independently challenge the direction of investigative work. As the investigation nears its conclusion, the Commissioner for Investigations and team will present their evidence to the Chief Commissioner who will assess and evaluate it to determine findings. Further investigative work may be requested. Reports will be produced to record the findings that have been made and to seek to address the requesting individual's questions.

2. Awareness

Overview and objective

- 2.1 In order to support a victim, family or survivor to take an informed view about whether the Commission can help them, they need factual information about what the Commission is, how it works and how it acts. The Commission will undertake a general programme of building awareness and education about the Commission's mission, approach, powers and what it has achieved. How the information is set out and conveyed is vital to connecting with the diverse and varied needs of those who might make requests from across Northern Ireland and beyond.
- 2.2 The Commission will also set out wider information so that the wider public and press can scrutinise its work. Plans, strategies, reporting and policies are all important elements to be provided so that citizens, journalists and politicians can understand and hold to account the Commission and its work.

What this means for you

- 2.3 You will be able to find out how Commission's investigation process works and how to contact the Commission. You will be able to get a sense of who the Commission are and how they work. You will be able to think about whether you might be able to trust the Commission with your story and what it might be able to do for you.
- 2.4 You will have a range of ways to absorb this information, from the Commission's website providing accessible and clear explainers, wider outreach events where the Commission talks about its work, to third parties such as existing support groups being able to provide information. The Commission will participate in wider civic meetings, explain its position in the media, and provide information to democratically elected representatives so that they can advise you, their constituents.
- 2.5 If you need an accessible version or translation of information provided by the Commission, you will be able to request this.
- 2.6 And if you then want to begin exploring whether the Commission can help in your specific case, you will know the ways that you can easily contact the Commission by telephone, email, free post or by visiting in person – whichever route you prefer.
- 2.7 If you have other reasons for wanting to know about the Commission – for instance you are supporting someone else who wants to make an

application, you are a journalist, or you work for an organisation which may need to provide information for the Commission, you will also be able to find information on our website.

What this stage means for the Commission

- 2.8 The Commission requires an up-to-date website, that is accessible and provides a range of information that different requesting individuals might want to understand about:
- Who the Commissioners and the Commission's officers are
 - The Commission's Mission, Vision and Values
 - How the Commission is funded and governed and its relationship with other parts of the public sector
 - How investigations will be carried out, including the different decision points and how the requesting individual will be involved
 - How a requesting individual will be supported during the investigation
 - How personal and other sensitive information is handled
 - Outcomes of previous investigations
- 2.9 Some of this material will also be included in downloadable fact sheets, which could also be provided in hard copy through other organisations. The design of this material will be regularly updated to make sure it is as understandable as possible and in plain language. Graphics and diagrams can be as effective, if not more so, than text. The Commission will use both digital and non-digital methods to make sure our information is available to as wide a range of people as possible, in keeping with our responsibilities under Equality and Disability legislation.
- 2.10 The Commission will adopt a continuing programme of outreach via a range of civil and third sector organisations, explaining its mission and its work. The details will be set out in its regular Annual Work Plan. It will also undertake focus groups and polling to gain regular feedback about the level of awareness. The Commission will consider whether public meetings and wider events would also be a useful way for people to hear about and ask questions of the Commission.
- 2.11 Over time the Commission will need to reflect the development of its salience and offer of its investigations in its language and engagement with victims, survivors and families and wider communities. Continued insight and

understanding of sentiment and views of the Commission will be important to inform this. How the Commission develops various themes could be an important aspect of this, for example through the impact of its reports and connections and thematic matters the Commission might draw from a number of cases.

- 2.12 Understandings of ‘justice’ are another aspect where, as the Commission develops its work and understanding of the general interests of persons affected by Troubles-related deaths and serious injuries, the Commission’s approach and communications may evolve. Justice holds different meanings (Figure 4) to those who have been affected by wrongdoing and is an area where the Commission wishes to develop its thinking in conjunction with communities across Northern Ireland.
- 2.13 The Commission will also work with the PSNI, Office of the Police Ombudsman for Northern Ireland, police forces in Great Britain and other public authorities who have been involved in investigation of cases within the Commission’s remit so that they can signpost appropriately to the Commission. And where cases do not fall within the Commission’s remit (for example if it is outside the Commission’s timeframe), then it will similarly sign post to others who may be able to take on the case.

Consultation questions

2.14 ***There will be a range of ways to find out about the Commission:***

- ***on the Commission’s website, including downloadable fact-sheets***
- ***Printed guidance available from our office***
- ***Printed leaflets and fact-sheets available in other places***
- ***General press/media coverage***
- ***Via local democratically elected representatives (MP/MLA)***
- ***Solicitor other legal representatives***
- ***Existing law enforcement body***

How would you prefer to find out about the Commission? Are there any other ways?

2.15 ***Accessibility of information is important to meet a range of needs. Thinking about your own circumstances, what support would you want?***

- ***Languages – Irish, Ulster Scots, other?***
- ***Braile / large print***
- ***Audio / talking book***

Are there other considerations?

Figure 4. Understandings of Justice

Traditional Justice Systems

Traditional justice approaches to justice in a legal system focus on disputes between individuals or corporate bodies with the courts playing an impartial role in adjudicating, or on the role of the state in identifying and punishing offenders following a fair and thorough process. This latter criminal justice process sees the state acting towards the perpetrator presenting evidence to prove guilt. While it is not always focused on the victims of the crime, the impact of the crime may be taken into account and the public acknowledgment of the harm with appropriate sanction is felt by some to be the delivery of justice.

Restorative Justice

The European Forum for Restorative Justice describes this as an ‘approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved’.

In 2021, the Ministers of Justice of the Council of Europe member States, noted in the Venice Declaration that restorative justice may take the form of a ‘dialogue between the victim and the offender, which presupposes the prior recognition of the criminal factors by the author, and can also involve, where appropriate, other persons affected by the crime, especially family and, where appropriate, the community to which they belong’.

Transitional Justice

The United Nations defines the concept of transitional justice as the ‘the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation’. The United Nations goes on to state that:

Based on States’ human rights obligations, a wider notion of justice has been advanced in the field of transitional justice, in which further elements of redress complement and reinforce processes of criminal accountability. This has crystallised into four interrelated dimensions: truth seeking, criminal justice, reparation and guarantees of non-recurrence.

The United Nations ultimately advocates for a ‘holistic approach to transitional justice, meaning that these four dimensions are part of a comprehensive policy’.

3. Support

Overview and stage objective

- 3.1 Embarking on a new journey with a new organisation can be daunting. The first step, beyond looking at the general information (see Chapter 2) and perhaps talking to the wide range of support groups out there, is victim, survivor or family to contact the Commission.
- 3.2 The objective of the Support stage of the investigation process is to ensure, from the moment of first contact, that anyone engaging with the Commission will feel listened to, heard and understood. This early engagement stage will take as long as required as we will need to build a sense of safety and trust with the person raising their case.
- 3.3 In light of feedback from the Commission for Victims and Survivors and its Forum, the Commission will refer to those victims, survivors and/or family members who are engaging with the Commission as 'requesting individuals or families'.
- 3.4 Work at this stage prepares the case for acceptance by the Commission so it can undertake information recovery work. Requesting individuals have the final decision on whether or not they want the case to proceed. They will be given time to understand the process and what it will mean for them so they can make an informed decision.
- 3.5 As a result of a trauma-informed approach, the Commission is intent on focussing on the people who come to the Commission by supporting them with information, building confidence in the processes available, building trust in the Commission's staff and creating a sense of safety for requesting individuals and families. The Commission is committed to offering as much control to the individual as possible throughout the period when they are deciding whether or not to proceed with their request for an investigation.
- 3.6 The relationship between the requesting individual and the Case Support Worker is pivotal and will need time to develop. It will also ensure continuity of contact and support throughout the remaining stages of the Commission's work.
- 3.7 The Commission's commitment to being trauma informed in its work draws on the common themes required to support a trauma informed approach. The Commission has adopted the framework set out by the Office for Health Improvement and Disparities (Figure 5) as the practice framework to be reflected throughout the development of its work. The Commission is

currently consulting to inform updates and developments to its framework for a trauma informed approach.

Figure 5. Key principles of trauma-informed practice¹

There are 6 principles of trauma-informed practice: safety, trust, choice, collaboration, empowerment and cultural consideration.

Safety

The physical, psychological and emotional safety of service users and staff is prioritised, by:

- people knowing they are safe or asking what they need to feel safe
- there being reasonable freedom from threat or harm
- attempting to prevent re-traumatisation
- putting policies, practices and safeguarding arrangements in place

Trustworthiness

Transparency exists in an organisation's policies and procedures, with the objective of building trust among staff, service users and the wider community, by:

- the organisation and staff explaining what they are doing and why
- the organisation and staff doing what they say they will do
- expectations being made clear and the organisation and staff not overpromising

Choice

Service users are supported in shared decision-making, choice and goal setting to determine the plan of action they need to heal and move forward, by:

- ensuring service users and staff have a voice in the decision-making process of the organisation and its services
- listening to the needs and wishes of service users and staff
- explaining choices clearly and transparently
- acknowledging that people who have experienced or are experiencing trauma may feel a lack of safety or control over the course of their life which can cause difficulties in developing trusting relationships

Collaboration

The value of staff and service user experience is recognised in overcoming challenges and improving the system as a whole, by:

- using formal and informal peer support and mutual self-help
- the organisation asking service users and staff what they need and collaboratively considering how these needs can be met
- focussing on working alongside and actively involving service users in the delivery of services

Empowerment

Efforts are made to share power and give service users and staff a strong voice in decision-making, at both individual and organisational level, by:

- validating feelings and concerns of staff and service users
- listening to what a person wants and needs
- supporting people to make decisions and take action
- acknowledging that people who have experienced or are experiencing trauma may feel powerless to control what happens to them, isolated by their experiences and have feelings of low self-worth

Cultural consideration

Move past cultural stereotypes and biases based on, for example, gender, sexual orientation, age, religion, disability, geography, race or ethnicity by:

- offering access to gender responsive services
 - leveraging the healing value of traditional cultural connections
 - incorporating policies, protocols and processes that are responsive to the needs of individuals served
- ¹ <https://www.gov.uk/government/publications/working-definition-of-trauma-informed-practice/working-definition-of-trauma-informed-practice#key-principles-of-trauma-informed-practice>

What this means for you

3.8 You will be able to contact us, confidentially and easily by:

- telephone;
- freepost;
- webform; or
- in person at our central Belfast HQ.

You will receive an initial response promptly arranging a time to meet in person or to discuss over the telephone or online link with a trained Case Support Worker. You will be able to arrange this at a time and place of convenience, usually within office hours. You will be able to choose from meeting at the Commission's dedicated family space at its HQ, or another suitable and agreed location.

3.9 You may choose to be accompanied by a relative, friend or other person unconnected with your case, for example a lawyer. That person will not be there to speak on your behalf, but to help you explain your perspective to the Commission. You will be able to build a relationship of trust with a Case Support Worker who will work with you throughout your time engaging with the Commission. You will be given information and an explanation about how the Commission carries out investigations and what happens at each stage, with the opportunity to ask questions. You will be able to explore what you want from the investigation and what possibilities the Commission can provide.

3.10 You will be able to discuss any concerns you have about engaging with the process and your Case Support Worker will explain how they and the Commission can provide you with help to navigate the demands of the process, including any additional support you might need. You will be given an understanding of what the demands of the process might be and you will be encouraged and enabled to ask questions to build your understanding and confidence. This will include how and when to share information about your case and what the implications of sharing such information might be.

3.11 You will not be asked to repeat your story unnecessarily. You will be informed when it might be necessary for aspects to be discussed further or more questions asked.

3.12 You will be able to raise specific questions that you want the investigation to try to answer. In the course of the engagement, when the time is right, you

will be able to meet the likely Senior Investigative Officer who would lead your investigation and, based on any initial scoping work from the information you have provided, you will be given an understanding of the possible timescales, handling and possible outcomes for your case. You will be able to take the time that you need to discuss with others and decide if you want the Commission to investigate your case.

What this stage means for the Commission

- 3.13 Anyone who wishes to talk to the Commission can make their initial approach, confidentially, through a range of channels – email, phone, letter or in person. The Commission will monitor those channels during business hours in the working week. Information will be handled securely, recognising that it may contain personal and other sensitive data. The Case Support Team will be responsible for handling all incoming messages. They will be trained to identify any potential safeguarding issues and seek assistance as necessary.
- 3.14 During or after the initial contact, potential requesting individuals or families will have an in-person meeting arranged to begin discussing their case. This will be within ten days of the initial contact unless the requesting individual would like longer. A named Case Support Worker will provide a single point of contact and consistent, objective support throughout their time with the Commission and will lead these meetings.
- 3.15 Meetings will be arranged at a location of choice or at the Commission's dedicated family meeting rooms. Where these are not at the Commission sufficient information will need to be obtained so that the safety of the Commission's officers can be maintained. Some meetings may also be over the telephone, or online, where preferred.
- 3.16 Meetings will not have a prescribed format or have a set number or timetable. The Case Support Worker will provide opportunities for potential requesting individuals or families to explain why they have come forward, ask questions and explain what they want from the Commission. The Case Support Worker will be responsible for explaining how the Commission's investigations operate from end to end, how the requesting individual will be involved at every stage, and what happens with information given.
- 3.17 At the right point in the series of meetings and discussions, the likely Senior Investigative Officer and Findings Officer from the next two stages will be introduced and can also answer questions.

3.18 The areas that the Commission will explain at the Support stage are:

- The purpose and role of the Commission, including what it can and cannot do;
- Who the teams in the Commission are;
- How the Commission operates from the submission of a request for an investigation through to the publication of a report;
- How the requesting individual will be involved during the stages of the investigation;
- What may be required of the requesting individual during various stages, including the potential for the provision of further information by them and how information provided to them should be treated;
- The support that will be available to the requesting individual and family from the Commission and elsewhere;
- How to give feedback, raise a question or concern, or make a more formal complaint or request for review

3.19 The areas that the Commission will need to understand from the requesting individual are:

- What they would like to achieve from the process;
- The ways (frequency and format) in which the requesting individual wants the Commission to contact them
- What particular needs they have, including any concerns about support to help navigate the impact of the investigation;
- Information to help determine whether the request is within the Commission's scope;
- Information to support some initial scoping work that the Commission will carry out to help support informed decision making by the requesting individual;

3.20 The Commission's Case Support Team, led by an Assistant Commissioner, will be made up of trained, empathetic staff who will ensure the journey is safe and trauma informed. Needs will be regularly reviewed by the Case Support Worker, in conjunction with senior team leaders, who will also be able to provide oversight and continuity to the case and offer additional emotional support where that would be helpful. The Case Support Team will also work closely with the Information Recovery Team so they can take basic information and recognise when members of the Information Recovery Team need to be brought into discussions.

Figure 6. Approach to whether an incident is ‘Troubles-related’

While not determinative, the Commission considers that the perpetrator (or suspected perpetrator) of any such incident must have been an active participant in the conflict for the incident to be Troubles-related. A non-exhaustive list includes: members of paramilitaries, members of the armed forces, other security personnel. The Commission does not require a paramilitary organisation to have been proscribed at the time of the incident. The Commission does not require the real or perceived community or political background of the victim(s) to be different from that of the perpetrator in order to qualify as Troubles-related.

The Commission recognises that paramilitaries not only undertook violent acts against the state, other paramilitaries, and members of other communities, but sought to implement community justice against individuals and groups within their own communities. Such incidents were enabled and went unpunished because of the status of these paramilitaries within communities as armed actors in the conflict, and the perceptions and operational realities of the efficiency and accessibility of the RUC during the conflict. However, not all incidents of community justice are automatically Troubles-related.

The central focus of the Commission’s decision-making where paramilitaries were the suspected perpetrator should consider the extent to which the violence was undertaken, or perceived to be undertaken, in relation to “(a) the constitutional status of Northern Ireland, or (b) political or sectarian hostility between people in Northern Ireland”.

In incidents where a state actor was the perpetrator of the violence, the Commission should consider the extent to which the violence was undertaken, or perceived to be undertaken, in relation to “(a) the constitutional status of Northern Ireland, or (b) political or sectarian hostility between people in Northern Ireland” and whether the perpetrator was acting, or perceived to be acting, in an official capacity.

Particular sensitivity should be shown when considering incidents of sexual violence, including when assessing the perceived or real power dynamic between the victim and the active participant in the conflict status of the perpetrator, and subsequent perceptions of impunity; as well as the rights of women during the conflict, and contemporary attitudes towards sexual violence.

- 3.21 The Commission will need to take some information to check that the case is within its scope. The case needs to cover a death or serious injury and meet the definition of being troubles related, including occurrence during the time period 1 January 1966 to 10 April 1998. A request to consider a case can only be brought by people with sufficient connection to the deceased, or by the person who suffered the serious injury (Figure 6). Consideration, in some cases may need to be given to if an incident is 'Troubles-related' (Figure 7).
- 3.22 The Commission will ask for information from the requesting individual and family so that it can take reasonable steps to confirm that these elements are met. If the Commission considers that elements cannot be confirmed as being met it will come back to the requesting individual to seek clarification and more information so that it can make a determination. This will inform the Commission's decision about the case, specifically determining if the basic eligibility criteria are met to take the case forward. A further assessment to take the final decision about whether to accept the request for an investigation will be made at the end of the Support stage.
- 3.23 While those who are eligible to make a request is a relatively limited category, a wider group of family members are entitled to receive the proposed report on the case towards the end of the investigation. This reflects the fact that the incident may have affected many people across a family. It will allow those wider family members to make representations about the document and understand what will be said in advance of it becoming public. With this in mind, the Commission considers it important to begin engagement with the wider family group early in the process. This should assist with the promotion of reconciliation.
- 3.24 The Commission recognises that there will be instances when the wider family circle actively disagree about making a request for an investigation. In order to handle a situation such as this as well as possible, the Commission therefore proposes to ask requesting individuals about family members and their likely views. It will facilitate meetings with wider family members if requested. The Commission will continue to take reasonable steps to identify wider family members with an entitlement to receive the report during the next stages too and to work to try to avoid further damage to those family relationships.

Consultation question

- 3.25 ***Do you agree that the Commission should begin work to identify wider family who would be entitled to receive a report at this initial stage? What further reasonable steps should the Commission take to identify and communicate with family members?***

Figure 7: Scope of the Commission's Remit

The Commission's remit covers deaths, and "other harmful conduct" caused by conduct forming part of the Troubles.

In order for a request for investigation to be accepted, consideration will need to be given to whether the case is within the Commission's remit. The Commission will use the information given to it by requesting individuals to inform its assessment. It will not ask for specific evidence or test an issue unless it has reason to do so as a result of an assessment of the information provided in the course of discussing the request. If the Commission concludes that the case is outside its remit, it will inform requesting individuals of the issue and consider any additional information provided.

"The Troubles" means the events and conduct that related to Northern Ireland affairs and occurred during the period beginning with 1 January 1966, and ending with 10 April 1998. The key factor is when the events and conduct occurred, not the outcome. For example, where the date of the incident occurred inside the relevant time frame but the death occurred afterwards.

"Other harmful conduct" means:

- Serious physical or mental harm (requests for investigation can be made by the victim / survivor)
- any conduct (act or omission) forming part of the Troubles which caused a person to suffer physical or mental harm of any kind (excluding death) (requests for investigation can only be made by the Secretary of State).

"serious physical or mental harm" means:

- paraplegia;
- quadriplegia;
- severe brain injury or damage;
- severe psychiatric damage;
- total blindness;
- total deafness;
- loss of one or more limbs;
- severe scarring or disfigurement

- 3.26 The requesting individual will be able to pose specific questions that they would like the Commission to answer. While the investigation will need to look into all the circumstances of the death or other harmful conduct to which it relates, the questions can help focus on what it is the requesting individual would like to know about the circumstances. They may do this at the outset and discuss and refine these with the Case Support Worker. This approach is to ensure that the Commission's work is focused on the people at the heart of each case.
- 3.27 Where further detail is taken about the case, this will support the Senior Investigative Officer to carry out initial scoping work regarding the case. This will not be to start the information recovery stage. But it will give the Commission a better understanding of the likely approach to the case, including how much time and resource may be required, and whether specific courses of action are or are not likely to be in contemplation (for example, the Commission is under a duty not to duplicate previous investigative work). The results of this initial scoping work will allow the Senior Investigative Officer to explain to the requesting individual more specifically what is likely to happen if they request their case is investigated. This will help to provide clearer expectations on timetable, potential outcomes and allow the requesting individual to refine or add to their questions. Most importantly, it gives the requesting individual more information on which to decide whether they would actually want to proceed with the case, or whether the potential impact of how their case may progress would be manageable and acceptable to them.
- 3.28 When the requesting individual decides they would like to formally submit their request, the Commissioner for Investigations, or officers acting on his behalf, will meet the requesting individual at a meeting facilitated by the Case Support Worker. At this point no formal request to proceed will have been made. In this face-to-face meeting the work to date will be reviewed along with discussion about what can be expected from any investigation. The content of this meeting forms part of the formal request for investigation. The requesting individual will have had the time to reflect on the information and background they have received, and the expectations about how their specific case may proceed as a result of the initial scoping work. If the Commission considers it is likely that it will reject a request, it needs to explain this at the meeting so that further information can be provided, or consideration given to the requesting individual's explanation. Following this meeting a formal decision will be communicated and explained.
- 3.29 At this point there will need to be a common understanding about what the Commission will do next and the immediate timescales. A shared agreement needs to be set out about how and when the requesting individual will be

involved in the key decision points, and what further may be required of the requesting individual. Discussion and agreement will be required about how to respond to any public commentary or questions about a case and how both the Commission and the requesting individual will treat information provided by the other party will be discussed. The Commission is considering how to document mutual expectations and agreements to foster trust and a shared understanding.

Consultation Questions

3.30 At what level of formality should the agreed expectations between the requesting individual and the Commission be documented?

- ***Formal contract signed by both parties***
- ***Mutual contract agreed by both parties***
- ***Personally drafted expectations and ways of working document, agreed by both parties***
- ***Verbal discussion with summary of what was agreed provided in writing***
- ***Discussion of topics in specific meeting***

Anything else?

3.31 What areas should the mutual expectations cover:

- **Regularity and frequency of contact**
- **How information each other provides should be treated**
- **How wider support and help will be provided or changed**
- **How the Commission's officers and the requesting individual will behave in interactions**

Anything else?

3.32 The Commission will have a policy about the circumstances in which a request can be withdrawn. The Support stage represents the point where the matter is solely within the hands of the requesting individual. If they decide, having had the information, engagement and time with the Commission's officers that they do not wish to proceed or that the process cannot provide what they require, this is a decision in their control.

- 3.33 The Commission will only hold information generated at this stage for a limited period of time, to in line with personal data requirements. Individuals will be informed how that data can be used and how information will be retained or disposed of. If there is no contact from an individual for a certain period, or they decide not to proceed, the information will not be retained. If individuals wish to return to the Commission after a period of time they may do so, but if they have not explicitly agreed that the information could be retained for longer, then the process would need to begin again, albeit from a position of greater general understanding.
- 3.34 In some specific circumstances, where there is already a live investigation which could lead to prosecution, or where there is sufficient evidence giving rise to an obligation to carry out an investigation under Article 2/3 ECHR, then the Commission may need to use information provided in those proceedings.

Figure 8: Case Support Team responsibilities

The Case Support Team's main responsibilities will include:

- listening to and understanding your concerns and request;
- explaining the end to end journey through the Commission, answering your questions and getting expert input on any bespoke or specific issues you raise;
- alerting you to any particularly emotionally challenging parts during the journey through the Commission;
- introducing you to those leading the work at each further step in the journey and maintaining regular contact with them to remind them of what you have asked for from the process;
- offering you emotional support and signposting you to other available sources of support or advice;
- providing the information you need to help you make informed decisions about using the Commission's investigation services;
- maintaining regular contact with you (based on your preferences) to ensure you understand the ongoing process, including how to provide feedback, raise questions and concerns, make a complaint or request a review of a decision;
- being with you as your case is concluded and helping you access further support if necessary following your case being completed.

Case support Workers will not routinely be involved in any investigation work and will not be in a position to provide live time updates on the detail of the investigation. They will be able to raise queries with the investigative team and pass on an answer or facilitate a discussion directly about the issue. In addition, the key function of this relationship is to ensure that requesting individuals and families always have someone to speak to in the Commission and are clear about options, processes and what happens next.

4. Information recovery stage

Overview and stage objective

- 4.1 In this stage, the Commission will plan and then carry out a thorough and effective examination of the case. This is with the aim of recovering information that seeks to address questions raised by the requesting individual as well as to establish the facts and all the circumstances of the case. During the scoping and assessment steps, information from existing records and archives will be sought to inform those decisions. Following these, investigative work will be undertaken using a range of the Commission's capabilities and powers, such as forensic testing, interviewing previous and new witnesses, and requiring public authorities to provide more information.
- 4.2 The material recovered and the approach used will be presented to the Chief Commissioner and the Findings Team, acting under his supervision, so that it can be tested and determinations made, on the balance of probabilities. In some cases, the material generated will be referred to the relevant prosecutor in order to inform a decision about whether a prosecution should be brought. From the outset of this stage an officer from the Findings Team will be assigned to the case.
- 4.3 The Case Support Worker will maintain their involvement in the case, remaining in contact with the requesting individual and explaining the next steps. They pass on routine updates from the Information Recovery Team and facilitate discussions with the Senior Investigative Officer and other members of the investigation team as appropriate for a direct explanation about progress in the case or as part of involvement in decisions about the investigation.
- 4.4 Every case involves a person at its heart, and no two cases will be alike. Therefore, the way in which cases are handled and progress cannot be set in a rigid template. However, for consistency and fairness, there are a number of steps which will allow expertise to be focused where it is needed and for similar categories of case to be treated similarly.
- 4.5 The Commission has a detailed policy on the Declaration and Management of Outside Interests in place for all staff. In addition, when any officer is assigned to a case they will be required to certify that they do not have any conflicts of interest in relation to that case. If any actual, potential or perceived conflicts arise, then an officer must be recused from the case.

- 4.6 All cases will be overseen by a Senior Investigative Officer. This officer will be responsible for the conduct of the case and for any decisions taken in the investigation. For the largest and most complex cases this role might be discharged by an Assistant Commissioner for Investigations. All decisions are taken under the delegated authority of the Commissioner for Investigations and the Commission will publish a scheme of delegated authorities.

What this means for you

- 4.7 Your case will move into the active information recovery stage. You may feel mixed emotions, worry, interest, a desire to understand what is happening.
- 4.8 You will be kept updated on what is happening to your case, even if there is not yet anything new, in line with the preferences you have agreed with your Case Support Worker. You will be able to draw on specialist emotional support as and when you need it in line with what you have agreed. You will be able to change those preferences, and ask for more or different emotional support if you feel you want this.
- 4.9 Your Case Support Worker will remain your single point of contact for information about your case throughout. They will arrange meetings with the Senior Investigative Officer and others in the investigations team where there are specific updates or aspects of your case to discuss. You will be reminded of the forthcoming decision points and helped to prepare for your role in them. Your Case Support Worker will be reminding the investigation team of what you wanted from the process and what your questions were. You will also meet the Findings Officer who will be working with the investigation team to challenge and test the material uncovered to produce the final report.
- 4.10 As your case moves through a number of steps during the information recovery stage, you will have a role in each key decision (Figure 9). While the role will depend on the specific step, you will be able to discuss how each stage works with your Case Support Worker, and after meeting with the investigation team you will have a chance to think about the issue further and meet again, including where appropriate, having asked others for advice.
- 4.11 As your case moves through a number of steps during the information recovery stage, you will have a role in each key decision. While the role will depend on the specific step, you will be able to discuss how each stage works with your Case Support Worker, and after meeting with the investigation team you will have a chance to think about the issue further and meet again, including where appropriate, having asked others for advice.

Figure 9: Key decisions

Key decisions where you'll be involved:

- The acceptance of the request
- Whether to link a case with any other existing case
- The terms of reference for an investigation, including the type of investigation
- Any changes to the investigation as it progresses
- Any decision to refer the case to a prosecutor for a decision as to whether to bring a criminal prosecution

- 4.12 You will be given information in a way that is easy to understand, without jargon, and you will be given time to think about what it means and to ask further questions or for clarification. Your Case Support Worker will be able to arrange follow up meetings or ask for more information on your behalf.
- 4.13 You may be given confidential information about how the case is progressing and some information about evidence that has been found so that your involvement in the conduct of the case can be properly informed. This may also be shared with your legal advisers if you wish but you will also be made aware of the importance of maintaining confidentiality and the possible impact of sharing information.
- 4.14 You will understand the progress of the information recovery work and how the work is being carried out so that you can have confidence in it and you will be able to ask for your questions to be updated in light of what emerges.
- 4.15 You will also be given tools and space to think about whether you wish to make a personal impact statement and what you would want to say in it. This will begin at a time that you feel ready, with support from your Case Support Worker.

Figure 10: ECHR Article 2/3 elements of good practice for all investigations

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 High Court has [confirmed](#) that the Commission's practice and policies achieve this. 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.

The Commission will undertake investigations promptly and proportionately. Following the acceptance of a request, the Commission will carry out the investigation promptly and in accordance with its case categorisation 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.

The Commission will ensure requesting individuals are appropriately involved in the investigative process in order to protect their legitimate interests. Any requesting individual will be able to make suggestions as to the scope of the investigation and reasonable lines of inquiry. This includes by using the provisions in the Act to set out specific questions they would like the investigation to address.

The Commission will make factual determinations that 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.

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

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 the requesting individual. 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 published and the Commission will also offer other arrangements to support the publication, such as public press conferences and opportunities for individuals to read personal statements. The Commission will be as open as possible about the processes, policies and methodologies it adopts. Information will be published as well as explained and provided to each requesting individual or family.

In *Dillon and Others*, the High Court held at paragraph 277; "these draft principles are clearly designed to align with, and are informed by, Articles 2 and 3 ECHR and the requirements of the Human Rights Act 1998.

What this stage means for the Commission

- 4.16 As progress is being made through the first stage, the Commissioner for Investigations will be assembling a bespoke team of investigators to carry out the information recovery work for each case. Additional skillset or expertise may be added to the team as necessary.
- 4.17 Each case will be overseen by a Senior Investigative Officer, reporting to an Assistant Commissioner for Investigations. Investigators assigned to the case must have the appropriate skills and experience. At the outset of each case, they will undertake a specific check for any conflicts of interest and all officers will be expected to certify that no actual, potential or perceived conflicts of interest exist. This is reviewed regularly during the course of the investigation, and subject to from auditing outside of the Investigations Directorate.
- 4.18 The Commission will identify what organisations or individuals may hold information or answers in order to address the questions raised by the requesting individual and look into all the circumstances of the case. New investigative opportunities, for example in speaking to witnesses or persons of interest or forensic re-testing, will need to be considered. The Commission will also need to observe its duties not to duplicate previous investigative work (by the Commission or others) unless necessary. It will need to progress timely and proportionate examinations across all of the cases brought to it. In line with best investigative practice for cold cases, planning and scoping is important to support and focus thorough examination and obtaining of information and evidence.

Issues to resolve on accepting a request for investigation

- 4.19 When a request for an investigation is accepted by the Commissioner for Investigations, it moves into the second stage of the investigation. When the request is being considered there are an initial number of issues that need to be resolved which may affect how the case is investigated by the Commission:
- Requests that relate to an event where the Commission is already carrying out an investigation, or is considering another request to carry out an investigation;
 - Requests that relate to an event that has already been the focus of an investigation by the Commission;

- Requests that relate to an event that has already been the focus of an investigation or examination by other public authority, such as the Office of Police Ombudsman for Northern Ireland, a coronial inquest, a criminal investigation by the Police Service Northern Ireland, or those on its behalf such as Operation Kenova.

Requests that relate to the same event

- 4.20 Many events during the Troubles resulted in the deaths and serious injury of more than one person. As a result, the Commission may receive requests from several individuals relating to the same event.
- 4.21 Where the Commission is already investigating a death or other harmful conduct, the Commissioner for Investigations has the power to join them to the earlier request. It is also open to the Commission to carry out a different, parallel investigation, where duplication is considered necessary, or to reject the request.
- 4.22 The Commission recognises that this could be a sensitive issue for everyone affected. The Commission will explain in the support stage if there are other investigations into the same case that have already been accepted. If another requesting individual is in discussion in the support stage, the fact of that will be shared unless there are good reasons not to. And with consent of the parties more information may be shared to explore whether the case could be joined. Requests for same case to be investigated will be considered in the order that the first meeting with the Case Support Team happened.
- 4.23 Both the original requesting individual and the subsequent requesting individual will be given an explanation of how the joining of the requests will be implemented (for example, whether their questions will be explored as part of the existing investigation) and given the opportunity to consider whether they wish to make any representations about the impact this may have on them.
- 4.24 The Commissioner for Investigations, or senior officers on his behalf, will consider the requests and be responsible for taking the decision on whether the cases should be joined. In advance of this decision they will discuss the application of the policy and potential approach with the requesting individual to understand their view and reflect it, as set out below in the criteria, in their decision making.
- 4.25 Following a decision, the outcome and reasons will be explained to the requesting individual and properly recorded on the case file.

4.26 Investigations may be linked if a high degree of certainty can be established that they are considering the same event that led to the death or incident of other harmful conduct. Factors that will be considered by the Commissioner for Investigations in deciding whether to join a request to an existing open investigation include:

- The views of the existing requesting individual and any adverse consequences for them, including delay in answering a request, that may follow a decision to join requests.
- The views of the subsequent requesting individual and any adverse consequences for them that may follow a decision to join requests.
- The type and progress of the open investigation, and the potential impact of joining a request on progress - with those investigations which have progressed further being less likely to accommodate a subsequent request.
- Whether a separate investigation would involve duplication of any on-going investigation, and whether that duplication is necessary.
- The proximity of the relationship between the existing and subsequent requesting individual and the deceased (where they are the same family).
- Any obligations on the Commission as a result of the engagement of Article 2 or 3 of the ECHR.
- Whether the Commission's principal objective of promoting reconciliation would be assisted by the outcome of the decision.

Consultation question

4.27 ***Should any criteria be added or removed from the proposed list and why? Should any criteria be given greater or lesser weight?***

Requests that relate to events that have already been investigated by the Commission

4.28 Where a death or other harmful conduct has already been investigated and reported on by the Commission and a new request is received, the Commissioner for Investigations will need to make an assessment of whether the case can be accepted.

- 4.29 The proposed list of factors that may be taken into account in these circumstances are set out below. This is a non-exhaustive list, and every case will be considered on its own facts.
- 4.30 The type of investigation that was undertaken by the Commission, whether a report has been published and to what extent it was able to address the questions of the subsequent requesting individual.
- 4.31 An assessment of whether there has been a significant change of circumstances in relation to the case (such as a new witness or suspect or the investigation can now be linked to other investigations).
- 4.32 The impact on the Commission's principal objective of promoting reconciliation.

Duplication of an investigation by a previous investigative body

- 4.33 When deciding whether to accept a request, the Commissioner for Investigations, or those acting on his delegated authority, must take into account any investigation that has already been carried out, and must not duplicate any aspect of that investigation, unless it is considered necessary.
- 4.34 In general, investigative practices and the maintenance of records were not as developed during the Troubles as they are today. Many investigations of that period would be judged unsatisfactory by today's standards. Due to the operational context of the conflict, many routine forensic procedures were not undertaken, in part because of the heightened security concerns that existed. This may mean that even if the case was subject to a police investigation or an inquest, new opportunities may be identified by the Commission during a scoping exercise (where the Commission reviews material that already exists in relation to a case).
- 4.35 Unless there are exceptional circumstances, the Commission will accept requests where there has been a previous investigation. This is so that questions raised by the requesting individual can be specifically considered and addressed.
- 4.36 Where the Commission identifies that its investigation would duplicate any aspect of that previous work, it may instead rely on that work in making findings. The Commission will focus its information recovery activities on areas where there would not be duplication, and on areas where questions could be addressed through extracting information from the previous investigation. The obligation to look into all the circumstances of the death or other harmful conduct will be met through drawing on previous investigative

work (where duplication was not considered necessary), and new investigative work (where there are gaps or re-investigation is considered necessary).

- 4.37 Whether duplication is considered necessary will need to be considered by the Commissioner for Investigations, or a senior officer on his behalf. The requirements will be explained to the requesting individual and their views, while not determinative, will be sought so that they can be given due regard in the decision. The main factor to be given significant weight is whether there are apparent defects in the previous investigation, for example due to lower historic standards or evidence of maladministration.

Consultation question

- 4.38 ***Are there any other factors that should be considered in the decision making for whether it is necessary to duplicate an aspect of a previous investigation? And why?***
- 4.39 Some cases have been subject to more contemporary investigation, such as by the Legacy Investigations Branch of the PSNI or by the Office of the Police Ombudsman for Northern Ireland. Where the Commission considers that an Article 2 compliant investigation has already taken place and there is no new investigative work that could be undertaken to answer the specific request and questions raised, without duplicating the previous investigation, the request may be rejected.

Scoping an investigation and setting terms of reference

- 4.40 All cases that have been accepted for investigation will begin with a scoping exercise. This will use the Commission's powers to obtain what original records of the incident can be recovered from the relevant police force as a starting point. Depending on the circumstances of the case this may be extensive material, or for very old cases of serious injury, obtaining material may be more challenging.
- 4.41 The methodology and approach that is used for cold case reviews for homicides forms the model that the Commission will apply. This will involve locating the original case files(s) and conducting a thorough review looking for opportunities to progress the case. This will conform to nationally recognised standards and will be thorough, conducted with integrity and objectivity and not overlook any investigative opportunities.

Figure 11: Cold Case Review Methodology

Scoping – Objective and Purpose

Scoping is to examine the documentation obtained from organisations who hold information about the incident that is the subject of a request. This material is likely to be predominantly from the original murder enquiries, and may also contain material generated by the Historic Enquiry Team (HET), from the Stevens Enquiry, from a Legacy Inquest and from the police Ombudsman.

Objective

- Review all the existing material held by organisations in relation to a request;
- Identify and highlight by way of recommendation any potential evidential opportunity;
- Set out lines of investigation for consideration by the Senior Investigating Officer; and
- Identify further actions for the investigation.

Strategy

The process will be conducted by dedicated investigating officers. The NPCC Major Crime Investigation Manual (Part 3) provides strategic guidance for Major Crime Reviews <https://library.college.police.uk/docs/NPCC/Major-Crime-Investigation-Manual-Nov-2021.pdf>

Any materials generated during the Scoping process are subject to the provisions of the Criminal Procedure and Investigations Act 1996. To ensure compliance with this and other material handling protocols (Official Secrets Act 1989) the Commission will make use of the nationally accredited CLUE Investigations IT system.

Scoping Report

A template based on the MPS Special Crime Review Group Major Crimes Review will be used to highlight issues, identify recommendations and create actions for consideration by the Senior Investigating Officer with responsibility for the case.

All documentation generated as a consequence of the Review process will be registered on CLUE and managed in accordance with MIRSAP principles https://library.college.police.uk/docs/NPCC/MIRSAP_V1_Nov_2021.pdf

Upon completion of the Scoping exercise, a Scoping report will be completed, and the case will be presented by the lead officer to a panel chaired by the Senior Investigative Officer.

- 4.42 The requesting individual will be updated on the progress of work to undertake scoping, including on timetables and potential volume of material in the initial scoping, and in particular if potential lines of enquiry are identified. The requesting individual may suggest new lines of enquiry they would like to see developed and these will be considered by the Senior Investigative Officer, who will explain to the requesting individual, with reasons, whether or not they will be included in the scope.
- 4.43 During the scoping work, the question of duplication of previous investigative work, as explained above, will need to be considered if it has not been possible to decide or finally determine at an earlier stage.
- 4.44 Based on the scoping work, terms of reference for the investigation will be developed. The draft terms of reference will be discussed with the requesting individual by the Senior Investigative Officer and the requesting individual will be asked for comments and proposals for consideration by the Senior Investigative Officer to ensure that the questions that were raised by the requesting individual are capable of being addressed through the terms of reference.
- 4.45 The terms of reference may be amended and updated during the course of the investigation. When this occurs the Senior Investigative Officer will explain the reasons for the proposals and the requesting individual will be given the opportunity to comment, and to explain their comments, before the changes are made.

Type of investigation

- 4.46 The scoping exercise and development of the terms of reference will inform the decision by the Commissioner for Investigations about how the information recovery work will proceed. The Commission has set out three proposed types of investigations to meet the different needs and circumstances of requesting individuals and their cases (Figure 12). All investigations will be thorough in their work and carried out by specialist, trained investigators. All investigators in the Information Recovery Team, from whatever investigative background will be deployed across all types of investigation.
- 4.47 The investigation types will have been explained to the requesting individual during the Support stage. From initial scoping work in that stage, a more detailed discussion about the more likely type or types of investigation that their case might follow should also have been held in advance of the requesting individual deciding to formally request the Commission to take the case.

Figure 12: The three types of investigation

Focused investigation (previously a Family answer focused investigation)

This type of investigation will aim to address the questions that requesting individuals have raised. The focus of investigative work will be to recover information that can help answers or addresses those questions. In these cases, the Commission will not be duplicating previous investigative work and will likely to draw on previous work in discharging its duty to look into all the circumstances of the case. It will use its full range of statutory powers to seek the answers in existing records, including accessing any sensitive material it requires. It may undertake targeted new investigative work, such as interviewing witnesses, where this will help to address the questions that requesting individuals have raised. Investigations will be carried out promptly and findings, based on the material presented, will be on the balance of probabilities.

Liability investigation

In addition to aiming to address the questions that requesting individuals have raised, this type of investigation will seek to establish all the circumstances of the death or other harmful conduct. Such an investigation would be capable of leading to a referral for prosecution as evidence would need to be obtained to a standard that would support prosecution. The Commission's statutory powers, as well as the powers of a constable, may be utilised by the Commission. Provision of substantive updates to the requesting individual will need to be balanced against the need to preserve the integrity of the ability to prosecute. Findings can only be made and a report issued after any subsequent decisions by the prosecutor not to prosecute or after a prosecution (failed or successful). Where it becomes apparent that the prospect of prosecution cannot be supported by the evidence a case is likely to transfer into an investigation that concludes on the balance of probabilities.

Culpability investigation

In addition to aiming to address the questions that requesting individuals have raised, this type of investigation will seek to establish all the circumstances of the death or other harmful conduct. The Commission will use its full range of statutory powers to seek the answers in existing records, including accessing any sensitive material it requires. There may be a need for significant new investigative work, or re-investigation where the Commission considers duplication necessary. Investigations will be carried out in a timely manner, proportionate to the scale and complexity of the event. Material will be presented to the Chief Commissioner for findings, including determining the acts of individuals and organisations to be made on the balance of probabilities.

- 4.48 This is important to minimise misunderstandings or mismatched expectations about what the Commission might be able to do in any specific case. The decision about which type of investigation will be for the Commission to make. The requesting individual may have input into the decision and their views will be given consideration, but they may not be determinative and other factors may carry more weight. This both insulates the individual from potential for any pressure to decide in a certain way and ensures consistency of approach in similar cases so that there is fair treatment for all.
- 4.49 Cases will be assigned an investigation type following decision by the Commissioner for Investigations, or a senior officer or panel on his behalf. The decision may only be taken once the scoping exercise has been completed satisfactorily and they are able to make a fully informed assessment of the likely impact of any lines of inquiry to be pursued. Once a case has been assigned as a Focused investigation or a Culpability investigation it will not be possible to change the investigation type unless exceptional circumstances apply. It may be necessary for a Liability focused investigation to move into consideration as a Culpability focused where the prospect of prosecution cannot be supported by the emerging evidence.
- 4.50 A decision to conduct or not to conduct any particular type of investigation does not mean that an individual has not been a victim of crime or that no criminal offence has been committed.
- 4.51 In preparation for the decision, the requesting individual will be able to meet with the Senior Investigative Officer, alongside their Case Support Worker to:
- remind themselves of the general process and criteria
 - discuss the specific characteristics of their case,
 - underline the questions they would like the investigation to answer
 - set out their concerns about any particular type of investigation; and
 - explain how they consider their case should be measured against the Commission's factors to be taken into account.
- 4.52 The factors listed below are not exhaustive, and not all may be relevant in every case. The weight to be attached to each of the factors identified will also vary according to the facts of each case. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction.
- **The nature of the request and any questions asked.** Answering the questions asked by the requesting individual is at the core of the work of the

Commission. The Commission will seek to conduct investigations that follow lines of inquiry that are necessary and proportionate in order to answer those questions.

- **Whether Article 2 or 3 ECHR is engaged.** An essential purpose of an investigation under Article 2 is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility. The state also has a duty under Article 2 and 3 to conduct an effective investigation into crimes which involve serious violence to an individual and this may involve an obligation to conduct a liability-focused investigation or a Culpability investigation.
- **The views of the requesting individual.** The Commission must take its own decisions independently of the views of any other person or body. If at the outset of the investigation requesting individuals were able to choose whether a case was capable of leading to prosecution, the Commission would be creating a significant risk to the requesting individuals. If suspects were aware that the decision to refer for prosecution rested with requesting individuals, those individuals could be placed under significant pressure to choose a particular type. The views of the requesting individuals may be a factor in deciding the type of investigation but is not a determinative one.
- **There are reasonable grounds to suspect that an identifiable, living person/s has committed an offence and that an investigation may be capable of obtaining evidence that is reliable, credible and admissible.** If it is likely that further evidence can be obtained to provide a reasonable/realistic prospect of conviction, Commission officers should consider the nature, extent and admissibility of any likely further evidence and the impact it will have on the case.
- **There is a linked investigation assigned to an investigative type.** Where the conduct that is the subject of an existing investigation by the Commission formed part of the same event as that death or other harmful conduct then investigations may need to be linked and in consequence may need to be the same investigation type.
- **The principal objective** of the ICRIR in exercising its functions is to promote reconciliation. If it is in the interests of promoting reconciliation for the case to be assigned to a particular investigative type, this is a factor that will tend in favour of that type.

Consultation question

- 4.53 ***Are there other factors that the Commission should take into account when determining the investigation type? Are there any factors proposed above that should not be included? Please explain your answers.***
- 4.54 The type of investigation will be determined on the basis of application of the criteria to each specific case. Therefore, it will not be possible to determine in advance how likely it is for each route to be used. Focused investigations don't have a comparable process in current systems and have been developed to reflect a need for specific information recovery even where there may have already been a successful prosecution, for example. The current number of criminal investigations and those leading even to referrals for prosecution, let alone a conviction, is small. The reasons for this, such as lack of evidential or investigative opportunities remain and therefore may also reflect in the numbers of the types of investigation the Commission carries out.

Case categorisation

- 4.55 Availability of resources is not a factor and should in no way be taken into account in determining the scope or type of investigation that can be carried out. However, the Commission does not have limitless resources or adequately trained staff at its immediate disposal. The purpose of case categorisation is to progress all cases fairly and equitably. Investigations are categorised for the purposes of resourcing and the category assigned will affect the amount of time allocated by investigators to it in order to progress the case in the most prompt and reasonably expeditious manner. Cases will not be worked on in order of category and all cases in all categories will be assigned to a lead officer. The Commission will therefore match resources with demand and undertake a range of investigations in parallel.
- 4.56 The Commission will review its overall workload to consider the best approach to carrying out investigations in a timely manner. This includes whether to hire or second more officers, subject to maintaining quality standards through open recruitment and training; or to utilise existing resource efficiently across cases where built up expertise and experience outweighs the value that additional resource and the time taken to obtain it would bring. The Commission's funding model means that it is not subject to annual budgeting restraints for operational resourcing, but it does need to forecast, hire and train appropriately, and it needs to avoid excess capacity if

it does not have the cases to justify it, as this is wasteful of the overall funding available to investigate cases.

- 4.57 The principles that the Commission will adopt in all investigations include good practice from the elements of a European Convention on Human Rights compliant approach. This will enable the Commission to ensure investigations which do not directly engage Articles 2 and 3 ECHR are not deprived of resources.
- 4.58 The case categorisation policy applies to all cases under investigation by the Commission, with the exception of inquests that were at an advanced stage on 1 May 2024. Categorisation takes place within the different investigation types so that resource can be focused across all types of case rather than favouring a specific type. Within that it is important for the Commission to ensure in its planning that it can access and allocate sufficient resource to meet requirements under Articles 2 and 3 of the European Convention on Human Rights for the conduct of investigations.
- 4.59 Advanced stage inquest cases will be treated separately as a transitional measure reflecting the work that has already been carried out and the overall stage that they are at in investigation. These cases will always be assigned to Category A (see category table below) for the first 12 months from May 2024.
- 4.60 The presence of one or more of the factors listed in the table below will place the case in the corresponding category (Figure 13).
- 4.61 Categorisation of cases will be considered by the Commissioner for Investigations following a thorough assessment against the criteria. Once the case has been categorised, the Commissioner for Investigations will allocate resources for the investigation. Every investigation must be allocated sufficient resources to be completed. The progress of each case, including its categorisation, will be reviewed by the Commissioner for Investigations on a quarterly basis.

Figure 13. Categorisation table

Category A	<ul style="list-style-type: none"> • The requesting individual is elderly (over the age of 75) or in poor health. • A critical witness or suspect is elderly (over the age of 75) or in poor health. • There is a suspect who poses a current risk to life. • There are linked investigations involving the same suspect.
Category B	<ul style="list-style-type: none"> • The case involves significant complexity in the volume of material, the number of witnesses or the nature of the material. • There are new investigative opportunities to be pursued that could confirm the identity of a suspect. • There is significant public interest in the conclusion of the investigation.
Category C	<ul style="list-style-type: none"> • None of the factors in Category A or B are present. • The case can conclude without the allocation of additional resources.

4.62 Requesting individuals will have the current Commission's resources and workload explained to them as well as be asked for any specific information relevant to the categorisation so that these can be properly taken into account in the assessment. Following the decision they will be updated about the potential timescales for the investigation to be progressed. The category of the case does not indicate the order in which it may be completed, as more complex cases may be given more resource but take longer to complete, whereas some cases in Category C may complete swiftly.

4.63 If the Commission does not have the capacity to immediately allocate resources to certain investigations, these investigations will be considered 'pending' and are subject, together with all other cases before the Commission, to a quarterly reassessment.

4.64 For pending cases, the length of time which has elapsed from the agreement of the Terms of Reference will be taken into account when considering the resources that need to be allocated to progress the case.

4.65 Where the characteristics of a case change, for example, in terms of the availability of evidence, or new information which could inform the

categorisation of the case, this will also be considered when the case is subject to a quarterly reassessment.

- 4.66 Live investigations, once commenced, cannot be closed unless the Commissioner for Investigations decides to treat the request as withdrawn (see paragraphs 4.76 to 4.81 below). However, the Commissioner for Investigations can decide to pause an investigation where required, for example, where the ill health of a witness means the only line of inquiry cannot currently be pursued.

Powers and investigative approaches

- 4.67 The Commission has a range of powers and investigative approaches that it can use. Unless not appropriate to do so, it will usually start with making a request for co-operation and engagement. However, it has a range of legal powers to require information and engagement, both from public authorities and from private individuals and organisations. And it has recourse to legal enforcement mechanisms if its requests are not complied with.
- 4.68 Section 14 of the Act gives the Commission the powers to issue a notice to a person. A notice is a written request asking the person to give the Commission any requested information, documents or items in their possession or attend at a time and place to provide the information, or a statement. The person on which a notice is served must comply with it, unless the person claims they are unable to comply with it or that it is not reasonable to require them to comply with it.
- 4.69 Under Schedule 4 to the Act the Commission can fine a person up to £5,000 when they have failed to comply with a section 14 notice and not provide the requested information. Where a person has committed an offence, such as distorting or suppressing evidence, in relation to section 14, or in relation to other relevant information, if found guilty this can lead to a fine or imprisonment.
- 4.70 Section 5 of the Act gives the Commission powers to require ‘relevant authorities’ to make any information available to the Commission that the Commissioner for Investigation reasonably requires for the purposes of, or in connection with, an investigation. Relevant authorities are organisations listed in the Act which the Commission may request information from (Figure 13). Relevant authorities must provide all the requested information, in full, to the Commission. The Act sets out a corresponding legal duty on them to do this, and disapplies any other legal protections or provisions which might prevent them from providing the information in full. It is for the Commission to determine relevance of the information, and information must be provided in unredacted form. The High Court held in its judgment that “Having

considered the disclosure powers of the Commission and the obligations of the state, in particular, it seems to me this is Article 2/3 compliant and, an improvement on the situation in relation to inquests.“ (para 319)

Figure 13. Relevant Authorities

The list of relevant authorities is:

- the Chief Constable of the PSNI;
- the Chief Officer of a police force in Great Britain;
- the Police Ombudsman for Northern Ireland;
- the Director General of the Independent Office for Police Conduct;
- the Police Investigations and Review Commissioner;
- any Minister of the Crown (which has the same meaning as in the Ministers of the Crown Act 1975 — see section 8 of that Act);
- the Security Service;
- the Secret Intelligence Service;
- GCHQ;
- any other department of the United Kingdom government (including a non-ministerial department);
- a Northern Ireland department;
- the Scottish Ministers;
- any of His Majesty's forces.

- 4.71 To agree how this information will be requested and provided the Commission has the option to put in place agreements called Information Disclosure Protocols (IDPs) with relevant authorities. Although the Commission does not need IDPs to be agreed with each relevant authority to make an information request from them, the Commission will look to agree an IDP with some relevant authorities to ensure there are agreed principles in place to enable the smooth handover of information.
- 4.72 The Commission will handle all information collected through investigations whether sensitive or personal data or otherwise with proper care so that its integrity is maintained and it is not improperly used or disclosed. Information handling processes will be put in place by the Commission to ensure that

only relevant people have access to the information that they need to see and no one else.

- 4.73 In addition to the section 14 and section 5 powers the Commission can use to obtain information, the Commissioner for Investigations, and any other Commission officers so designated by the Commissioner for Investigations, police powers. This includes access to the same powers and investigative measures as the police when investigating criminal offences such as, the power to arrest and detain suspects for the purposes of questioning, obtaining search warrants or other court orders requiring the production of evidence and obtaining samples for forensic testing. These ‘police powers’ will be able to be used in Liability investigations.
- 4.74 All evidence and information will be coordinated through the Major Incident Room (Figure.14). After the Information Recovery Team has received evidence requested they will begin to analyse it to identify whether there are any additional lines of inquiry that an investigation could pursue. Evidence and accounts will be compared against each other and discrepancies identified. Further requests for information and requirements for searches may be made. Any matters of concern identified about the standard of the investigation will be further investigated and assessed against the standards that existed at the time of the original investigation. The Investigation Team’s focus is to review the available material, including the available intelligence, to identify the issues involved in the case, any new evidential opportunities, and any opportunities for new lines of inquiry to be pursued such as speaking to witnesses and any new forensic opportunities.
- 4.75 Where the Investigation Team identify potential lines of enquiry, these lines of enquiry may include opportunities for forensic or ballistics testing, or other expert input, and can take advantage of the scientific advances made since the original investigation. However, this may not be possible in every case as some evidence may have become too degraded or their handling and storage has undermined their integrity. External experts may be used to assist the Investigation Team in this work.

Figure 14. Major Incident Room

All investigations will use the Major Incident Room, which will sit at the centre over all the Commission's information recovery work. The Major Incident Room is a central team, and is responsible for receiving, reviewing and indexing all material gathered during investigations and the subsequent tasking of investigators to drive and direct information recovery.

The responsibilities will include:

- Providing the Commissioner for Investigations and the Senior Investigative Officers with an accurate record of all relevant information relating to the investigation, together with the enquiries made and results obtained.
- Showing the state of the investigation and how much work (outstanding actions) remains to be done at any time.
- Enabling investigators that make enquiries to establish whether any person has previously come to notice in the investigation.
- Providing investigators with a means of acquiring all the knowledge that the investigation already has about their enquiry subjects.
- Keeping records that highlight people, vehicles or other factors that have become subject to enquiry, so that those records can pinpoint individuals for further investigation.
- Acting as a means of historical reference so that, in long-running enquiries, officers joining the investigation can have easy reference to major policy decisions and the rationale behind them.
- Facilitating the preparation of all case material for presentation to the Chief Commissioner and his Findings Team.
- Recording and linking all information so that it may be readily retrieved to aid the SIO and their team to establish priorities. This will ensure that all enquiries are made efficiently and that the results are analysed.
- Ensuring all the recognised protocols have been applied so that the necessary research can be made across different databases and, where appropriate, investigations can be linked.
- Maintaining the database from which it is possible to undertake internal and external reviews.

Changing or withdrawing a request

- 4.76 The Act provides for the Commissioner for Investigations to decide ‘the circumstances (if any) in which a request for a review may be changed (including by changing particular questions included in the request) or withdrawn.
- 4.77 Once a request has been submitted, there will be limited circumstances in which it can be changed or withdrawn. It is important that the Commission makes that clear to the requesting individual before a request is submitted.
- 4.78 Each request will be considered on a case-by-case basis. The further the investigation has progressed, the less likely it is that a request can be changed or withdrawn. Once an investigation has concluded and the Chief Commissioner's Findings Team is considering the report, it is very unlikely that the request could be changed or withdrawn.
- 4.79 Factors that the Commissioner for Investigations may take into account when making a decision as to whether to allow the withdrawal or change of a request are set out in draft below. This is a non-exhaustive list.
- Whether Articles 2 and/or 3 of the ECHR are engaged;
 - There has been a significant change in the circumstances of the requesting individual or family (for example, bereavement or serious mental or physical harm);
 - The requesting individual is in possession of new, verified information and such a change is reasonable in terms of the efficient conduct of the investigation under way;
 - The Commissioner for Investigations is content that the requesting individual has not been coerced to change or withdraw the request;
 - The Commissioner for Investigations considers that to allow the change would assist in achieving the principal objective of promoting reconciliation;
 - Any other factors that the Commissioner for Investigations considers to be reasonable grounds for withdrawing or amending a request.
- 4.80 Any decision to permit or deny a request to be amended or withdrawn will be made by a senior officer of the Commission at least the grade of Assistant Commissioner for Investigations. The decision and rationale will be documented and will be communicated to all requesting individuals impacted by the decision.

- 4.81 All decisions made by the Commission to reject requests, to link requests or to refuse to permit a request to be changed or amended will be subject to a formal right of review, which is set out further (see paragraphs 4.88 - 4.97).

Consultation question

- 4.82 ***Are there any additions you would make to this list of considerations? Are there any considerations on this list which you think should be removed?***

Requests to review investigative decisions

- 4.83 The Commission expects all staff to behave in accordance with its Code of Conduct (Figure. 2) and to observe the core values of integrity, impartiality, openness, accountability and respect in carrying out their official duties.
- 4.84 Important decisions made during the case, such as the type of investigation to be undertaken, will be provided in writing and with reasons as to how the decision was arrived at so it is clear how the decision was made.
- 4.85 If a requesting individual is unhappy about a decision, they can discuss their options with the Case Support Worker and can ask for that decision to be reviewed by way of informal resolution. This might include a complaint about a request that has been rejected, the decision to link a case with another investigation or any other decision that is taken during the information recovery stage.
- 4.86 This informal resolution will be an opportunity to discuss the decision with the decision maker, and/or where appropriate, a more senior officer of the Commission. This will give the requesting individual, with the help of their Case Support Worker and others, the opportunity to share their concerns, and for the Commission to share reasons behind the decision and to explain it properly. This process is voluntary. The aim is for parties to exchange perspectives to understand the decision, discuss concerns, and take an active part in resolving the issues.
- 4.87 The Commission also considers that a more formal means of review is also appropriate for key decisions. It has identified the following decision by reference to rights under the Victims Code.

4.88 The decisions in question relate to:

- Accepting or rejecting a request for investigation;
- The type of investigation to be carried out
- Making a referral to the prosecutor
- Whether a request for an investigation may be changed or withdrawn.
- Whether a request is joined to an existing request

4.89 A decision that a requesting individual does not agree will be reviewed by a formal internal review process. The Commission will consider requests for reviews of relevant decisions on the following grounds:

- The decision was wrong (it involved an error in the application of policy or law); or
- The decision was unreasonable (meaning a decision no reasonable investigator would have arrived at, as opposed to being one which the reviewer disagreed with); or
- There is additional evidence that was not before the original decision maker that would have a material impact on the decision.

4.90 Where the grounds of the review are that there is additional evidence not before the original decision maker, the requesting individual, with help from their Case Support Worker can provide that material for the original decision maker to consider. If the requesting individual remains unhappy with the decision they can request a formal review.

4.91 On receipt of a request for a formal review of a decision, the case will be given to someone who is independent from the original decision maker, either a peer or manager. They will consider the issue raised and any evidence provided to support the request for a review.

4.92 The independent assessment will consider if the decision was properly taken. When considering requests to review decisions not to refer the matter to a prosecutor under s.25 of the Act, the questions of whether the decision was wrong or unreasonable will be made with reference to the Code for Prosecutors (Northern Ireland), the Code for Crown Prosecutors (England and Wales) or Prosecution Code (Scotland).

4.93 In order to overturn the decision, the new decision maker must be satisfied:

- the original decision was wrong (meaning an error in the application of policy or law) or

- the original decision was unreasonable (meaning a decision no reasonable investigator would have arrived at, as opposed to being one which the reviewer disagreed with); and
- the decision must be reversed.

- 4.94 There may be some circumstances in which the decision found to be wrong or unreasonable, but it is not appropriate for the decision to be reversed. Where the decision is reversed, the case will be returned to the Commission officer with conduct of the cases, unless it is appropriate for it to be reassigned.
- 4.95 The Commission will aim to conclude the review and provide a response as soon as is practicable. All responses will be provided in writing with an explanation of the decision on review and any next steps.
- 4.96 Any personal information provided in support of a request to review a decision will be used only for the purposes of informal resolution, or where available, a review of a decision, subject to the need to disclose information as required for lawful purposes and/or as a result of and statutory, legal or parliamentary obligations placed on the Commission.
- 4.97 The Commission will publish information in its Annual Report on the numbers and categories of requests for informal resolution and reviews of decisions received by the Commission. This will include the number of decisions that were found on review to be wrong or unreasonable.

Consultation questions

- 4.98 ***Are there any other types of review we should consider in relation to the decisions identified as having an opportunity for the decision to be challenged?***
- 4.99 ***Are there any other significant areas of decision that you consider should be included within the scope of reviews, when considered against similar rights in the Victims Code?***

Referral to the prosecuting authority

- 4.100 Where there has been a Liability Investigation of a Troubles-related death or of other harmful conduct, the Commissioner for Investigations will be able to refer the conduct under investigation to the relevant prosecuting authority for them to consider whether to bring a prosecution. The Commissioner will need to consider that there is evidence that the conduct is an offence under the criminal law by a known individual, and will then notify the prosecutor of the offence concerned.

- 4.101 The Commissioner for Investigations will pass on such relevant information and material to the prosecutors as he considers appropriate, together with such further information and material that he is able to obtain when requested by the prosecutors. The Commission is considering entering into Memorandums of Understanding with the prosecution authorities about how the two organisations will work together. Reflecting best practice, the Commission would want early involvement from experts from prosecuting authorities as the investigation is conducted to help inform its approach. Whether a case is referred to the prosecuting authorities is solely a matter for the Commissioner for Investigations' determination. The requesting individual will be informed of the decision with the reasons explained, but operational independence and integrity of the evidence will need to be preserved in order to support the best possible chance of a successful outcome.

Enhanced inquisitorial process

- 4.102 As an investigation progresses there may be contested or significantly contradictory evidence and material that requires a more inquisitorial process in order to support findings being made by the Chief Commissioner. Ideas for how such a process could be undertaken within the Commission's statutory framework has previously been set out and the Commission is undertaking more work and engagement to finalise its proposals. This will be set out in the coming weeks.
- 4.103 This further process would only be used in a small category of complex cases after the substantial investigative work had been completed. The draft criteria proposed for the Commissioner for Investigations and the Chief Commissioner to assess whether a case merited this further inquisitorial approach are:
- An obligation arising under Articles 2 / 2 ECHR;
 - There is significant evidence that is contradictory or contested and further questioning of those who have provided information or statements is the only effective and proportionate way of arriving at determinations on the balance of probabilities;
 - Assessments of the credibility of those who have provided information is only capable of being tested through further questioning. This is most likely to arise in circumstances where other witnesses have given contradictory oral evidence about the same event in other proceedings; and

- Without further testing of the evidence the Chief Commissioner would be unable to reach findings in respect of a central issue in determining the circumstances of the death.

4.104 In addition, it has already been proposed by the Commission that current coroners inquests that are at an Advanced Stage, as was defined in the UK Government's Legacy Bill, but were not completed in advance of the Legacy Act requiring them to close, would be transferred directly into this enhanced process, on request. This would mean that they could be completed with minimal impact on the progress made and remaining work to be undertaken.

Concluding the Information Recovery Stage

4.105 Towards the conclusion of the information recovery stage, the investigators will begin focused work to prepare the case and all the material generated for presentation to the Chief Commissioner and his Findings Team so that determinations based on the evidence can be made. This will be explained in the next chapter about the Findings Stage.

5. Findings stage

Overview and stage objective

- 5.1 The aim of this stage is for thorough and independent assessment of the evidence to generate findings that can be set out in a comprehensive report about the case. The findings will be determined, on the balance of probabilities by the Chief Commissioner, who will also be able to request that further investigative work is undertaken. Reports will need to be clear, accessible and accurate, with a consistent approach taken to making and reporting findings. The report will need to set out the circumstances of the death or serious injury and may name those who committed the acts, subject to consideration of competing Article 2 ECHR rights.
- 5.2 The report will be published and other forms of public scrutiny, such as a public reading, a press conference, or wider event, may be held. Personal statements about the impact of the event on an individual may also be published, and could also be read aloud. The Commission needs to support the requesting individual at the end of the investigation to bring the Commission's work with them to a close in a sensitive manner.

What this means for you

- 5.3 Your move from the Information Recovery stage to the Findings Stage and will be assisted by the Case Support Worker who will recap what is likely to happen next and will enable meetings with the Findings Officer involved in your case. You will be able to meet with both the Senior Investigative Officer and the Findings Officer so that you can be part of the discussion about the questions that formed part of your request for an investigation and other matters and issues you have raised during the investigation.
- 5.4 You will be updated as the work progresses, for example, where further investigative work is requested. You will have the approach to how findings are made recorded, and you may have the opportunity to discuss some emerging findings, if appropriate, with the Findings Officer, or areas where it may not be possible to make a finding to a sufficient evidential standard.
- 5.5 You will be able to begin, or if undertaken earlier, update your personal statement about the impact of the events on you. The Case Support Worker will be on hand to assist you consider this and help accesses emotional support where necessary.
- 5.6 You will be updated on overall progress and likely timelines while the report is undergoing internal quality assurance and checks, and while it undergoes other processes. You may receive extracts of the report that have concluded

these processes for discussion or feedback with the Commission. The Findings Officer will meet with you to provide you with the full draft report and to talk you through it. You will have the time and space to consider the report and provide feedback, comments and challenges to the Commission before the report is finalised. You will be closely involved in arrangements for the publication of the report, such as timing, format and the level of public involvement.

- 5.7 You will be able to meet with your Case Support Worker to discuss what happens following the end of the Commission's work and publication and to take stock. You will be able to provide any further feedback to help improve how the Commission operates. This will be the end of your journey with the Commission.

What this stage means for the Commission

- 5.8 At the commencement of the Findings stage the evidence and material assembled by the Investigative Team, along with a full account of how the investigative work was carried out, will be presented to the Chief Commissioner and the Findings Team. This information will be challenged, probed and independently assessed. The terms of reference and the questions asked by the requesting individual will be used to check that all necessary work has been undertaken.
- 5.9 In testing the evidence and using it to determine findings, on the balance of probabilities, the Chief Commissioner may request that further investigative work or assessment is undertaken. In particular any concerns or questions raised by the requesting individual (including the absence of evidence or a desire to prove something was not the case) may be considered by the Findings Team and used to probe how the investigation was conducted and what archives and searches were carried out.

Assessment of findings

- 5.10 The Chief Commissioner and his team will independently assess what findings can be made, based on their analysis of the evidence and materials provided. In some cases however, the Chief Commissioner will not be able to reach a conclusion on the balance of probabilities if this is not supported by the evidence.
- 5.11 A member of the Investigative Team will remain engaged in the work to understand the emerging findings and act as a point of challenge if any material or evidence has not been properly understood

Preparing the report

- 5.12 In line with the principles set out at Figure 16, the Chief Commissioner and his team will prepare a report that records their findings and sets out an account of all the circumstances of the death or harmful conduct. The report will also answer, as far as possible, the questions asked by the requesting individual.

Figure 16. Approach to recording findings in reports

Clarity

Reports will use plain and unambiguous language to avoid misunderstanding and will be written with the requesting individuals and families in mind. Reports will adopt a narrative approach, setting out a theory or description of what happened while also explaining the wider context. They will also (to the extent practicable) answer specific questions asked by requesting individuals and families.

Accessibility

Reports will be made available in a variety of formats to meet the diverse needs of those who will read them, in compliance with legal requirements on equality and accessibility. The Commission will discuss this with requesting individuals and families and may hold reading events at the point reports are published.

Consistency

Reports will be produced to a set template which will be published and explained to requesting individuals and families at the outset. Reports will be written in a consistent style, with the same approach to making findings and reporting conclusions taken in each case.

Accuracy

Reports will set out a summary of the critical evidence and information identified and points of fact. The Chief Commissioner will refer to and/or include relevant information which is of value to requesting individuals and families, but reports will not typically include all underlying evidence identified during the investigation. The Commission will carry out a careful case-by-case consideration where it intends to name individuals in reports.

- 5.13 The Commission will carry out rigorous internal quality assurance on the emerging report. This will include careful consideration of the Commission's safeguarding duties and how the Commission, ultimately the Chief Commissioner, considers these duties should be discharged. How material that relates to national security interests, that risks putting life or safety at risk, or that relates to criminal proceedings is treated and framed are areas where the Commission will take considerable care in discharging its duties. The Commission may require expert input from relevant public authorities about the impact of proposed references to inform its decision.

- 5.14 Where it is considered appropriate that ‘sensitive information’ or ‘protected international information’ as defined in legislation should be included in the report then there is a statutory process for the Commission to notify the Secretary of State for Northern Ireland about the proposal. The information notified will only be the specific material and not the wider report. The Secretary of State must notify the Commission whether disclosure is permitted or prohibited. Prohibition can only be if, in the Secretary of State’s view the disclosure would risk prejudicing or would prejudice the national security interests of the UK, or would be likely to damage international relations. Where they can, reasons should be given. The Commission will consider carefully its response to any decision taken by the Secretary of State and, in any event, the final report will include the Commission’s own view of the Secretary of State’s decision. A legal challenge may be brought to the Secretary of State’s decision.

Process for consultations on reports

- 5.15 When a final draft report has been prepared, before publication the Commission must consult specific interested parties on the content of the report, in line with statutory requirements. This will be a staged process.
- 5.16 Where final draft reports include significant criticism of an individual or public authority, the Chief Commissioner must give them advance notice of the critical material from the report and an opportunity to respond. Any responses received will be considered by the Chief Commissioner who may decide to modify or exclude the critical material from the report.
- 5.17 Requesting individuals and families will have the opportunity and time to consider the proposed report and provide comments, feedback and to make representations. The Chief Commissioner will consider any responses received and may decide to amend the report for final publication.
- 5.18 The Chief Commissioner must also give a draft of the report to the following people and give them the opportunity to make representations:
- Relevant family members of the person whose death has been investigated;
 - Relevant family members of anybody else killed in the same event;
 - Any other person who suffered serious physical or mental harm in the same event, or their relevant family members
- 5.19 The Commission will seek to identify and contact these individuals during the earlier stages of the case (see paragraphs 3.24-3.25) and will adopt a trauma-informed approach in how it does so, recognising that some people

may not welcome or want to have any input into a report that they did not request. The Commission will therefore consider a range of possible options to approaching this part of the process and seek to update this work during the stages of the Investigation. The Case Support Worker will be responsible for this work.

- 5.20 The Commission will need to take reasonable steps to maintain integrity and confidentiality of information throughout the process. If information becomes public it may affect the operational integrity of the investigation. This is also the case at the Findings Stage. The Commission will not in any circumstances set out details of the individuals and organisations it is consulting with, or on what basis that consultation is taking place (i.e. whether it is because they have been criticised in a draft report or have been identified as a relevant family member). The Commission will not publish any details of the responses received. All decisions on content of the report sit with the Chief Commissioner and a report will only be final at the point of publication.
- 5.21 The Commission is interested in views on what steps it could take to ensure that individuals who are entitled to receive draft material or reports ahead of publication likewise respect and maintain the confidentiality of that process, without adopting an overly legalistic approach. The Commission will consider what information it should provide to those it engages with on maintaining confidentiality and explore the potential for putting in place formal agreements or other mechanisms.

Consultation Question

- 5.22 ***What steps should the Commission take to ensure that individuals who are entitled to receive draft material or reports ahead of publication respect and maintain the confidentiality of the process?***

Publication

- 5.23 Once the report is finalised, the Commission will make preparations to publish the report. The Commission will discuss carefully with the requesting individual or family their preferences around publication and take these into account as far as possible. The Commission will also seek to ensure that final reports are published in a variety of formats and will discuss any specific needs or requests with the individual or family.
- 5.24 The Commission is interested in views on the range of potential options for publication. In all cases the final report will be shared with the requesting individual or family and published on the Commission's website. Any personal statements that have been submitted will be published at the same

time alongside the final report, if the commission has been given permission for this to happen.

- 5.25 The point at which a report is published might be particularly challenging for the requesting individual or family and others affected by the particular case of death or serious harm, or the Troubles more widely. The Commission is keen to work with the requesting individual to provide a variety of approaches to publication which can be tailored around their views and preferences and that of wider family members.
- 5.26 Depending on the views and preferences of the requesting individual or family, the Commission could take further reasonable steps to facilitate or hold an event to mark publication. This might range from something relatively contained and informal with the family alone, through to the Chief Commissioner reading a summary of the report and giving a press conference. Whatever the scale of the event, appropriate readings could also be considered, and a recording could be made and published on the Commission's website alongside the final report. The Commission will be responsible for the organisation of private or public events.

Consultation Question

- 5.27 ***What arrangements should the Commission consider putting in place to support a variety of approaches to publication of final reports with a view to allowing sufficient family and public involvement as appropriate?***
- 5.28 When arrangements have been agreed, the Chief Commissioner will give the final version of the report to requesting individuals and families and publish the report.
- 5.29 The point of publication risks being a traumatic occasion and the Commission will ensure that full support is provided before, during and after, including through facilitating a transition to other support services once the report has been published. The Commission will provide the offer of a number of further meetings with the requesting individual after publication of the report, before the case is then closed by the Commission.
- 5.30 A permanent report of the case and any impact statements will remain accessible online and be placed in the appropriate public records archives.

6. Other areas of the Commission's functions

Overview and objective

- 6.1 The Commission's work is wider than just its information recovery functions and also extends to production of an historical record of deaths that were caused by conduct forming part of the troubles.
- 6.2 The Commission has a principal objective to promote reconciliation through the exercise of all its functions. As the Commission's vision and mission set out, the establishment of the facts of each case and provision of an acknowledgement of the wrongdoing can provide a basis for reconciliation, but the Commission considers that this is an area where it will be important for its approach to be informed by a wider consideration of the evolving context of Northern Ireland. And as the Commission's work progresses, it will need to understand the impact its work is having and whether changes in approach or additional steps can be undertaken to assist in the promotion of reconciliation.
- 6.3 In addition to the work currently conducted by the Commission to understand the views from across society (polling, focus groups, bespoke engagement etc), we consider there may be benefit to convening a wider group of people who have differing views about what reconciliation means and how it might be achieved.

What this means for you

- 6.4 You should have the opportunity to have a say in any big questions about how production of the historical record is approached and how the Commission updates its approach to assisting in the promotion of reconciliation.

What this means for the Commission

- 6.5 The Commission will begin developing proposals for how its somber task to produce an historical record will be undertaken. While the record cannot be completed until after the Commission's investigations are concluded, there is much preparatory work which should be undertaken in the coming years to lay the ground work, and there may be questions such as scope and format that others should be given an opportunity to provide their views on.
- 6.6 How the historical record work sits alongside other proposals by the Northern Ireland Office through Part 4 of the Legacy Act is also an important question

for the Commission to consider, so that it can play a joined-up role alongside other parties in the wider memorialisation of the Troubles.

- 6.7 Alongside these elements, it is the responsibility of the Commissioners to set the strategy and direction for the Commission in its approach to the promotion of reconciliation. The Commissioners should not duck or abdicate this task, but the Commissioners also recognise the importance of understanding a wide range of views and input on such an important matter. The Commissioners are considering whether or not to establish an Advisory Group to provide a wider range of views and perspectives to the Commissioners about proposals the Commission has for how to refine its work to assist in the promotion of reconciliation.
- 6.8 Were such a group to be established, it would be essential to ensure it has representation from across Northern Ireland's communities and generations. Membership could be drawn from a diverse range of backgrounds and disciplines and should provide for a wide range of perspectives that can assist the Commission's work of peace building, creating community cohesion and reconciliation. An open competition for applications for membership could run in parallel to an exercise to identify those who might meet the requirements.
- 6.9 The group would be advisory in nature and not a separate initiative to explore its own proposals. In its capacity as an advisory body to the Commission, the Group (Figure. 17) would provide:
- A forum for enquiry and discussion on reconciliation with a primary early years' focus on how the Commission's work on information recovery can assist with the reconciliation process, enabling the participation of individuals with diverse views and experiences.
 - Informed commentary and feedback on the Commission's proposals based on a firm understanding of the underlying evidence base and knowledge of previous initiatives.

Consultation questions

- 6.10 ***Do you think that the Commission should establish an Advisory Group on Reconciliation?***
- 6.11 ***If the Commission, in light of this consultation, decides to establish an Advisory Group, do you agree with the draft statement of intent and remit? What other aspects should be considered? Are there any aspects that should not be within scope?***

Figure 17. Draft Statement of Intent: Advisory Group

DRAFT Statement of Intent: Advisory Group on Reconciliation

At the outset of the Belfast / Good Friday Agreement, the participants declare their firm commitment to ‘the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all’. Working to respect the principles of the Belfast/Good Friday Agreement, the principal objective of the Independent Commission for Reconciliation and Information Recovery (ICRIR) is to promote reconciliation. The Commissioners, as the Board of the ICRIR, have a collective responsibility to set the strategy and lead the ICRIR so that it can meet this objective.

The Belfast/ Good Friday Agreement did not define reconciliation, and the meaning of reconciliation in the present context is not set out in legislation. Various understandings of the term may be construed, based on individual or collective experience. The Commission’s framework for reconciliation must therefore emerge from a wide consideration of these different experiences and perspectives. This framework must necessarily include consideration of what society in Northern Ireland, and beyond, must acknowledge about the past, to be reconciled to a shared future.

It is not the sole responsibility of the ICRIR to answer this question. However, it has a clear duty to play an active and prominent role as a catalyst to progress. Given the wider remit of the ICRIR, this is particularly pertinent in the context of its investigative, information recovery and determination functions.

DRAFT Remit

In developing and iterating their approach, the Commissioners consider it desirable that a wider range of perspectives are brought to bear. The ICRIR would therefore establish an Advisory Group on Reconciliation (AGR). In its capacity as an advisory body to the Commission, the AGR shall provide:

- Informed commentary and feedback on ICRIR’s proposals based on a firm understanding of the underlying evidence base and knowledge of previous initiatives.

7. Next steps for consultation responses and further issues

- 7.1 This document sets out proposals for how the Commission carries out its investigations into deaths and serious injuries that are Troubles related. It also sets out some wider areas of the Commission's work where public feedback is sought at this stage.

Consultation question

- 7.2 *Is there any evidence you wish to provide relating to the potential impact of application of the Commission's proposals on any one or more of the protected characteristics under section 75 of the Northern Ireland Act 1998 that could assist in future screening and other assessments?*
- 7.3 We have set out the specific questions for consultation in the text. We invite comments and feedback on these questions on or before 1 May, addressed to:
- Freepost ICRIR
 - Email: engagementteam@icrir.independent-inquiry.uk
 - Our preference would be for responses to be submitted through either of the two routes – email and postal.
- 7.4 Responses that contain inappropriate language, are considered intimidatory, or do not address the questions will not be considered within the formal consultation.
- 7.5 This consultation focuses on the development of this Commission, it is not a consultation on the UK Government's proposals and the legislation (Northern Ireland Troubles (Legacy and Reconciliation) Act 2023).
- 7.6 We also welcome wider feedback on any aspect of these proposals, although we cannot commit to taking it into account or modifying aspects of the proposals outside of the consultation questions. Such feedback should also be sent to the above address.
- 7.7 Information provided in response to this Consultation, including personal information, may be subject to publication or disclosure in accordance with

the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA)).

- 7.8 Any personal data contained within your response will be deleted once the matter being consulted on has been concluded though the substance of the response may be retained.
- 7.9 This document is available in other accessible formats, such as large print, Braille, audio cassette and other languages if required. Please contact the Commission by email: engagementteam@icrir.independent-inquiry.uk to request this.
- 7.10 The table below provides an overview of the key milestones and associated timelines for this consultation process:

Key Milestones	Timeline
Issue public consultation	14 March 2024
Consultation closes	10 May 2024