



Independent Commission for
Reconciliation and Information Recovery

**Consultation on Operational Design:
Summary of questions**

MARCH 2024

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



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Executive Summary

This is a summary of the Commission's operational design consultation document published on 14 March 2024. It highlights the specific questions that are the focus of the consultation exercise. The square brackets at the end of each paragraph refer to the paragraph in the main document that they relate to. Text without a reference number has been added to help make this summary more accessible.

- 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. [1.1]
- 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. [1.2]
- 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. [1.3]
- 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. [1.4]
- 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. [1.5]

- 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. [1.6]

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. [1.7]
- 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. [1.8]
- 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. [1.9]

- 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. [1.10]
- 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. [1.11]
- 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. [1.12]
- 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. [1.13]
- 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. [1.14]

Using the Commission for information recovery

- 1.15 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. [1.16]

- 1.16 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. [1.17]
- 1.17 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. [1.18]
- 1.18 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. [1.19]

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.

Chapter 2 – Awareness

- 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. [2.1]
- 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. [2.2]
- 2.3 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.

Q1 How would you prefer to find out about the Commission? Are there any other ways? [2.14]

Q2 Accessibility of information is important to meet a range of needs. Thinking about your own circumstances, what support would you want? [2.15]

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

Are there other considerations?

Chapter 3 - Support

- 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. [3.1]
- 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. [3.2]
- 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'. [3.3]
- 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. [3.4]
- 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. [3.5]
- 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. [3.6]
- 3.7 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. [3.23]

- 3.8 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. [3.24]

Q3 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? [3.25]

- 3.9 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. [3.28]
- 3.10 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. [3.29]

Q4 At what level of formality should the agreed expectations between the requesting individual and the Commission be documented? [3.30]

- **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?

Q5 What areas should the mutual expectations cover [3.31]:

- **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?

Chapter 4 - Information Recovery

- 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. [4.1]
- 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. [4.2]
- 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. [4.3]
- 4.4 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. [4.21]
- 4.5 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. [4.22]

4.6 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 [4.26]:

- 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.

Q6 Should any criteria be added or removed from the proposed list and why? Should any criteria be given greater or lesser weight? [4.27]

4.7 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. [4.33]

- 4.8 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). [4.34]
- 4.9 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). [4.36]
- 4.10 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. [4.37]

Q7 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? [4.38]

- 4.11 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. [4.46]

- 4.12 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. [4.47]

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 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.

- 4.13 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. [4.49]
- 4.14 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. [4.50]
- 4.15 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. [4.52]
- **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.

Q8 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. [4.53]

- 4.16 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. [4.76]
- 4.17 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. [4.77]

- 4.18 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. [4.78]
- 4.19 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. [4.79]
- 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.

Q9 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? [4.82]

- 4.20 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. [4.87]
- 4.21 The decisions in question relate to [4.88]:
- 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.

- 4.22 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. [4.91]
- 4.23 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. [4.93]

Q10 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? [4.98]

Q11 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? [4.99]

Chapter 5 - Findings Stage

- 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. [5.1]
- 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. [5.2]
- 5.3 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. [5.20]
- 5.4 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. [5.21]

Q12 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? [5.22]

- 5.5 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. [5.23]
- 5.6 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. [5.24]
- 5.7 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. [5.25]
- 5.8 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. [5.26]

Q13 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? [5.27]

Chapter 6 - Other areas of the Commission's functions

- 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. [6.1]
- 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. [6.2]
- 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. [6.3]
- 6.4 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. [6.7]
- 6.5 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. [6.8]

- 6.6 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 [6.9]:
- 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.\

Q14 Do you think that the Commission should establish an Advisory Group on Reconciliation? [6.10]

Q15 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 (Figure 17)? What other aspects should be considered? Are there any aspects that should not be within scope? [6.11]

Figure 17. Draft Statement of Intent: Advisory Group

Draft Statement of Intent: Advisory Group

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.

Chapter 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. [7.1]

Q16 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? [7.2]

7.2 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 [7.3]:

- 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.

7.3 Responses that contain inappropriate language, are considered intimidatory, or do not address the questions will not be considered within the formal consultation. [7.4]

7.4 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). [7.5]

7.5 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. [7.6]

7.6 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)). [7.7]

- 7.7 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. [7.8]
- 7.8 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. [7.9]
- 7.9 The table below provides an overview of the key milestones and associated timelines for this consultation process [7.10]:

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