



Independent Commission for
Reconciliation and Information Recovery

New York

11 April 2024

www.icrir.independent-inquiry.uk

Context

Vision and Mission

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.”

The statutory framework

- The Commission is an independent statutory body led by a Board of commissioners
- Majority of commissioners are non-executive and have been recruited, through open competition, to provide challenge and scrutiny
- The Chief Commissioner, Sir Declan Morgan is a former Lord Chief Justice of Northern Ireland. He is a Judicial Commissioner at the Investigatory Powers Commission and a Supplementary Panel member of the UK Supreme Court.
- The Commissioner for Investigations is Peter Sheridan. Peter served for 15 years as the CEO of Cooperation Ireland. From 2003 to 2008, Peter served as Assistant Chief Constable with the PSNI.
- Open recruitment for the Chief Executive Officer currently at advanced stages.
- The Commission has an External Assurance Group made up of experts, to provide advice, scrutiny and challenge to the Commission.
- Police regulator oversight of serious complaints about use of police powers.

The statutory framework (2)

The new Commission has the following powers and duties:

- Principal objective to promote reconciliation;
- Requirements to comply with the Human Rights Act 1998 / Northern Ireland Act 1998;
- Duty to look into all the circumstances of a case once request criteria are met;
- Duty to have regard to general interests of potential users;
- Duty not to cause threat to life or prejudice national security or criminal proceedings;
- Power to require information from state and individuals (Duty on State Agencies to supply / allow access to all information the Commission considers it requires, subject to reasonableness, without any redaction) with fines for individuals refusing to comply;
- Powers of a police constable; and
- Power to refer cases to prosecutors.

Three principles adopted by the Commission

The Commission has now been formed and at its very first meeting it agreed three essential principles to the Commission's approach:

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

Practical and operational independence

1. Annual budget provided by Exchequer is based on demand rather than a set amount.
2. The Commission can bring legal proceedings, including against government (if necessary).
3. Publication of the Commission's views is unfettered by Government and the Annual Report is laid before Parliament.
4. Any proposal to abolish the Commission must have the Chief Commissioner's advice and a vote in Parliament.
5. Accountability of the Commission is set out in a public document to explain the legitimate information that government may require, for example information about how public money has been spent.
6. Selection of Commissioners is by independent process, with objective criteria.

Outline of the Commission's approach

Key elements of ECHR 2 compliant investigations

The Commission will include six elements in all its investigations:

1. The Commission will investigate each case referred to it independently, thoroughly and fairly;
2. The Commission will undertake investigations promptly and proportionately;
3. The Commission will ensure those making a request are appropriately involved in the investigative process in order to protect their legitimate interests;
4. The Commission will make such factual determinations as are supported by the available material;
5. Findings expressed will always be at least to the civil standard of proof; and
6. The Commission will compile and produce a public report of its findings in relation to each investigation it carries out.

Dillon judgment on ECHR compliant investigations

“Whilst the court is not dealing with a “specific case” it concludes that the proposed statutory arrangements, taken together with the policy documents published by the Commission inject the necessary and structural independence into the ICRIR. At this remove the court concludes that the ICRIR is sufficiently independent to comply with the requirement for independence to meet the procedural obligations under articles 2/3 ECHR.” (para 284)

“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)

“If these policies [set out by the Commission] are adopted and implemented, **the ICRIR will be seen to do all that it can to ensure transparency and victim participation.**

“It is apparent from the policy documents that the public consultation process is ongoing. It is open to all next of kin and, indeed, these applicants to engage with the ICRIR so that they can have a direct input to the design of the scheme and how reviews are conducted.” (paras 356 and 357)

“Public hearings are not the only means by which the requirement for public scrutiny under the article 2/3 procedural duty can be fulfilled. Under the statute, publication of reports into reviews is clearly an element of public transparency. These reports will sit alongside the historical record which is anticipated under the legislation” (para 359)

“The court is satisfied that the provisions of the Act leave sufficient scope for the ICRIR to conduct an effective investigation as required under articles 2 and 3 ECHR” (para 370)

Conditional Immunity

In *Dillon*, the Court also found some aspects of the UK Government's Legacy Act to be in breach of the European Convention on Human Rights:

- The provisions for immunity from prosecution breached human rights law, especially as 'victims have no role or say in these decisions'.
- They were also found to be in breach of the Windsor Framework and therefore the remedy was that the provisions were disapplied from domestic law.
- These provisions therefore do not apply to the Commission's work.
- The Commission is 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.
- The UK Government is appealing the judgment, and the legal process is ongoing.

Expert Human Rights input

- Expert challenge, scrutiny and feedback are important to developing our proposals
- Engagement with Council of Europe with country delegations for their examples of good practice.
- Detailed briefings since September with officials from the Council of Europe to obtain their feedback and improve our proposals
- Meetings with the parliamentary assembly representatives and the Human Rights Commissioner
- Submission of updates on progress to the Committee of Ministers

Trauma informed approach

The Commission has resolved to embed a trauma-informed approach – across our people, processes, external engagement and places (virtual and physical).

We are defining what a trauma-informed approach means for the Commission and considering the following elements to help provide structure and steer:

- **Safety:** Prioritise physical, psychological, and emotional safety through clear communication and safeguarding measures.
- **Trustworthiness:** Build trust through transparent policies, consistent actions, and clear expectations.
- **Choice:** Support shared decision-making, acknowledging trauma survivors' potential difficulties developing trusting relationships.
- **Collaboration:** Recognise the value of staff and service user experiences, actively involving them in service delivery.
- **Empowerment:** Share power, validate feelings, and support individuals in decision-making to counter feelings of powerlessness.
- **Cultural Consideration:** Move beyond stereotypes by offering gender-responsive services, leveraging cultural connections, and incorporating responsive policies.

[The Commission has published initial steps it is taking to embed a trauma informed approach as well as a consultation about how it can continue do to this](#)

The Investigation stages



Stage one - Case support - overview

Awareness

Before the start of an individual's journey with the Commission there needs to be sufficient information and awareness via a number of routes

Approach

People can approach the Commission confidentially through a range of channels. A first meeting will be arranged at a chosen location or at the Commission. This first stage has been informed by trauma informed practice and advice. Requesting individuals will be involved at each step in the case and empowered to make informed decisions about the next steps they may or may not wish to take

Understanding

Case Support Workers will listen to what people want from the process and help individuals and families better understand how the Commission may be able help them (and what it will not be able to do). They will introduce the potential information recovery team.

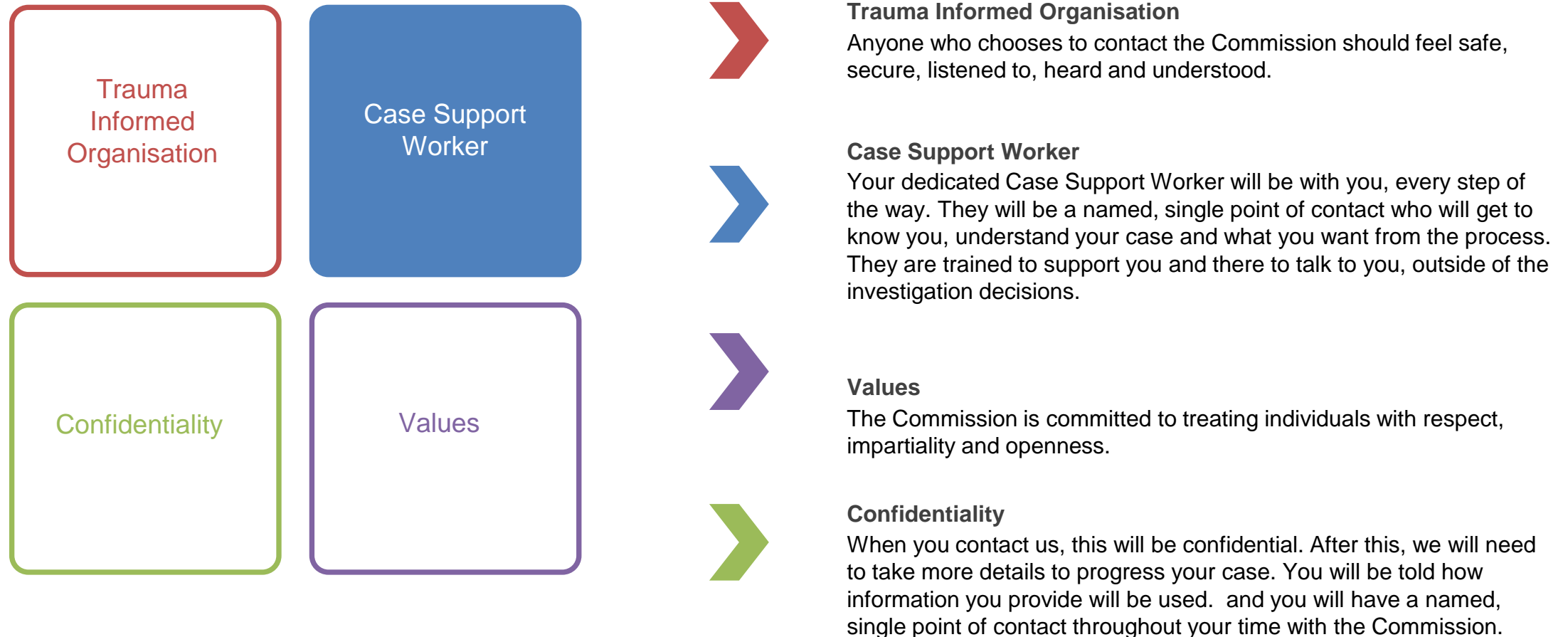
Consideration

The Case Support Team will respond to 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. Initial scoping work from information provided will help provide a more detailed understanding of the likely options available.

Requesting

The Commission will ensure it has got enough information and helped understand the questions being posed to validate the request. The Case Support Worker will provide a single point of contact and consistent, objective support for the requesting individual and family throughout their time with the Commission. Ways of working between the Commission and the requesting individual will be agreed.

Stage one - Case support - your journey



Stage two - Information recovery - overview

Scoping

Each case will start with a scoping exercise, based on the approach for review of cold cases for homicide. Initial information from the state will be gathered to inform this approach. Whether previous work can be relied on or if duplication is necessary will be considered. Evidential opportunities and new lines of enquiry will be identified.

Terms of Reference

Following the scoping stage, terms of reference (ToR) for an examination will need to be developed so that the work covers all the necessary information that will be required to produce the final report. The requesting individual will be involved in formulating the ToR. It will also include the questions being asked and proposed lines of enquiry.

Type of investigation

Every investigation will be different and designed to find answers specific to what is being requested. The Commission has designed three broad approaches to investigations and depending on the questions being asked, investigations will be allocated a route forward. This route may change, in some circumstances, as the investigations progress.

Categorisation

To ensure fair allocation of resource, a categorisation model. Once a case has been categorised, the Commissioner for Investigations will either allocate resources and the investigation will begin or the request may be held till appropriate resources are identified for the case.

Recovering information

Investigators will be able to use statutory powers as well as police powers when appropriate. Duty on public authorities to provide information requested. Statutory notice process, including fines for non-compliance. The Commission will conduct investigations, obtain and analyse evidence, follow lines of enquiry and compel witnesses.

Stage two - Investigation routes

No two cases will be the same, but there are three types of route that cases will be approached through:

Focused Investigation

- Aim to address the questions that requesting individuals have raised.
- Focus of investigative work will be to recover information that can help answers or addresses those questions.
- Commission will not be duplicating previous investigative work and will likely to draw on previous work.
- Use full range of statutory powers including accessing any sensitive material required.
- Targeted new investigative work, such as interviewing witnesses.
- Carried out promptly.
- Findings on the balance of probabilities.

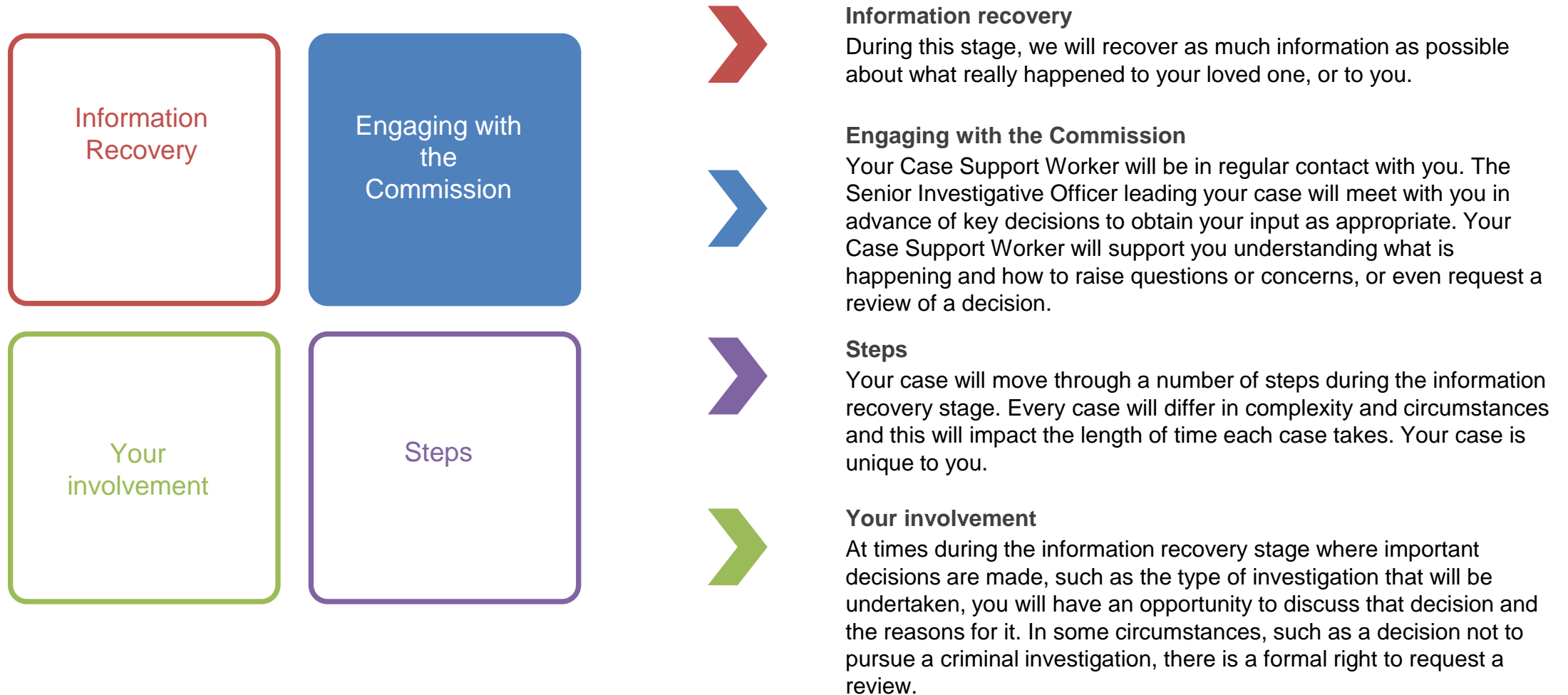
Liability Investigation

- In addition to aiming to address the questions that requesting individuals have raised, will seek to establish all the circumstances of the death or other harmful conduct.
- Capable of leading to a referral for prosecution.
- Substantive updates to the requesting individual, balanced against the need to preserve the integrity of the ability to prosecute.
- Findings only made and 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 be concluded by way of report on the balance of probabilities

Culpability Investigation

- In addition to aiming to address the questions that requesting individuals have raised, will seek to establish all the circumstances of the death or other harmful conduct.
- Use full range of statutory powers to seek the answers in existing records, including accessing any sensitive material required.
- May be a need for significant new investigative work, or reinvestigation where the Commission considers duplication necessary.
- Material will be presented to the Chief Commissioner for findings, including determining the acts of individuals and organisations.
- Findings made on the balance of probabilities.

Stage two - Information recovery - your journey



Stage three - Findings - overview

Presentation of evidence

An officer from the Findings team will be assigned to each case during the information recovery stage. That individual will independently challenge the direction of investigative work on an ongoing basis and ensure focus remains on responding to the requests made. Once all evidence has been gathered it will then be presented to the Chief Commissioner.

Assessment of findings

The Chief Commissioner will assess if findings can be made from the evidence gathered. They may ask for further lines of enquiry to be opened or for evidence to be revisited. Once the Chief Commissioner is satisfied that all routes to information have been explored, they will draft the final report.

Reports

Reports will be produced to record the findings that have been made and to seek to address the requesting individual or family's questions. Determinations will be on the balance of probabilities

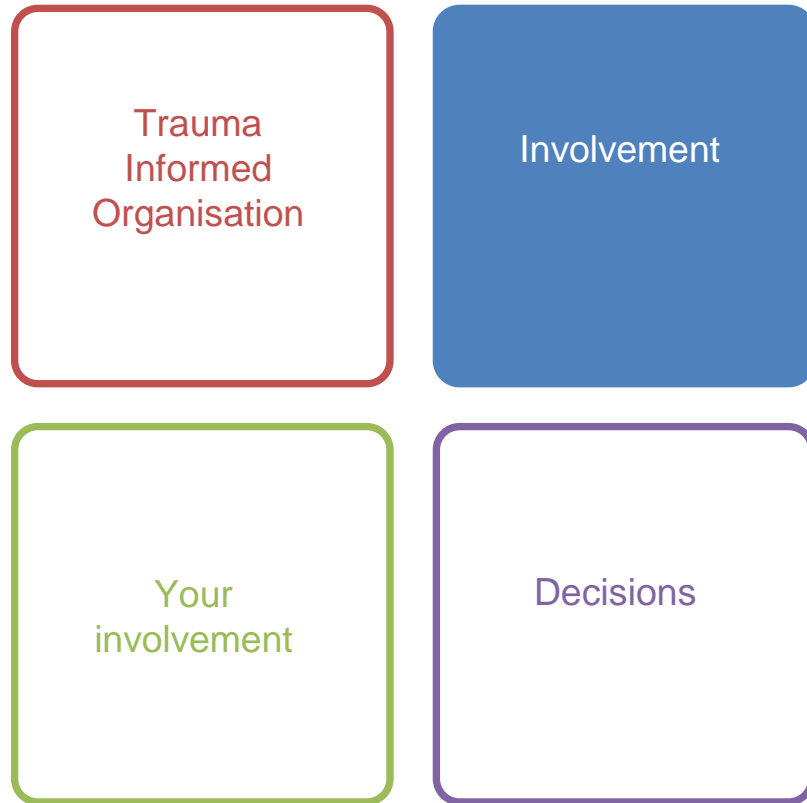
Consultations

When a final draft report has been prepared, before publication, the Commission must seek representations from those subject to significant criticism. The Chief Commissioner will provide requesting individuals and families with a draft of the report. All decisions on content of the report sit with the Chief Commissioner and a report will only be final at the point of publication.

Publishing

The Commission will sensitively and respectfully publish reports and is committed to keeping the requesting individual closely consulted and involved in how this occurs, for example with public hearings. A personal statement may also be published setting out the impact on the victim, survivor and family.

Stage three - Findings – your journey



Trauma Informed Organisation

Publication is likely to be a significant moment and you will receive dedicated, trauma-informed support before, during and after this happens



Involvement

You will meet the findings team and understand how they are testing the evidence and what findings may be drawn from it. Ahead of publication you will receive a full copy of the final draft report and have the opportunity to make formal representations on the contents. The Commission will consider these before agreeing the final report. You will also have the opportunity to submit a personal statement to be published alongside the report and your Case Support Worker will explain and provide assistance if this is an option you want to take.



Decisions

The Commission will discuss your preferences around how, when and where the final report should be published, including (for example) whether an event or reading should take place.



Your involvement

You will have the opportunity to discuss the findings and report with those who have prepared it. You'll also be central to any decisions made about publication, announcements and engagement with media outlets.

Recruitment: now building our Operational Teams

General Counsel's Directorate

A small team of legal advisors providing counsel across the organisation

Case Support Team

A team of trained case support workers, as well as experts to provide advice on trauma and safeguarding matters

Information Recovery Team

A multi-disciplinary team of investigators working on a range of cases each supervised by a Senior Investigative Officer

Findings Team

A team of qualified and experienced officers making findings and preparing reports under the overall direction of the Chief Commissioner

Skills and experience

- Operational roles either currently being filled and advertised
- We are not a traditional law enforcement body and are able to follow different practices where these will better support victims, survivors and families.
- Seeking talented, empathetic and committed individuals who have relevant experience, and are looking for the opportunity to do things differently.
- Candidates applying from a variety of professional backgrounds, not just policing.
- Roles advertised openly with objective criteria and panel of mixed skills and external representation for senior roles.
- All roles assessed against Code of Conduct values

Values, ethics and standards

A Code of Conduct adopted five key values underpinning all that we do.

Of vital importance is the declaration and management of outside interests, especially where these relate to previous roles that could be at least perceived to have a bearing on current investigations. Assessment of conflicts on being assigned to each case.

Additional training and screening process before can be designated with police powers.

The Commission will seek to embed practices which treat individuals fairly, with a focus on early resolution of issues and ongoing learning.

A graduated approach to feedback / continuous learning, complaints and serious misconduct:

- Complaints policy for managing administrative complaints already set out on line, so Code of Conduct breaches etc can be drawn to ICRIR's attention
- Further detail relating to rights of review of case decisions being developed.
- For the most serious complaints, relating to the use of designated policing powers, individuals policing oversight authority will have a role.

Code of Conduct



Integrity: Putting the obligations of public service above your own personal interests. Acting in line with other applicable professional obligations and standards.



Openness: Being truthful and straightforward in your communications and your engagement while respecting confidences and keeping information safe.



Respect: 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.



Impartiality: Behaving in a fair and objective manner, treating all equally, remaining open minded and taking decisions based on evidence.



Accountability: 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.

Engaging with victims, survivors and the public (1)

Since its inception the Commission has sought to engage as widely as possible. Given the opposition to the Commission, we have had varying levels of success.

We want to hear the views and opinions of the public (in NI and GB) and senior stakeholders – these include those from victim and survivor groups, civil society, operational, religious and political representatives.

To broaden our engagement and involve as many people as possible we are taking an iterative and innovative approach to engagement.

Engaging with victims, survivors and the public

Engagement during the design phase of the Commission has been extensive and included:

- **Public consultations:** The Commission has recently launched public consultations to enhance its understanding of the following:
 - [Implementing a Trauma Informed Approach](#)
 - [Disability Action Plan](#)
 - [The Equality Scheme for the Commission](#)
 - [Operational Design](#)
- **Commission for Victims and Survivors (CVS):** the Commission has built a strong working relationship with the CVS Office that includes monthly face-to-face engagement. The CVS has provided four advice papers on the Commissions emerging policies
- **Have Your Say Survey:** the Commission has received c.350 public responses to its policy development work
- **Publishing developing thinking:** the Commission has published all emerging policy considerations on its website and encouraged stakeholders to read and contribute ideas to developments

Operational Design consultations

On 14 March the Commission launched a public consultation into the operational design of the Commission. This consultation will run for eight weeks and conclude on 10 May.

The consultations asks questions around the three key stages that requesting individuals and families will go through, should they engage with the Commission.

Areas we are consulting on (amongst others)

- How the requesting individual and the Commission agree to work together during the process.
- How the Commission determines the type of investigation that is most appropriate to a specific case.
- How the Commission's key decisions in case handling can be reviewed.
- How publication of final reports can be designed to meet the needs of different cases.

<https://icir.independent-inquiry.uk/document/consultation-on-operational-design/>

Independent polling

The Commission has instructed two independent external polling agencies, Opinium and Lucid Talk, to conduct a series of Baseline polls in Northern Ireland and Great Britain.

The first Baseline poll was carried out in November 2023, the second is due to launch at the end of February.

In total **3,382** people aged 18+ took part. **1,382** people in NI responded and **2000** people in GB.

A majority, **87%** of all NI respondents, believe that reconciliation is still needed in Northern Ireland.

65% of respondents in NI felt that the most positive impact the Commission could have would be in retrieving information for families.

Two in three NI adults are aware of the Commission. **31%** of people have some understanding of what it aims to deliver, but **27%** lack a clear understanding.

Questions

www.icrir.independent-inquiry.uk/document/consultation-on-operational-design/