



Independent Commission for Reconciliation and Information Recovery

Requests relating to
'other harmful conduct'

July 2024

What is ‘other harmful conduct’?

The Commission has the power to accept requests for investigations into *other harmful conduct* forming part of the Troubles/Conflict if that conduct caused you to suffer serious physical or mental harm.

Serious physical or mental harm is defined in the law¹ establishing the Commission as:

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

The law establishing the Commission defines ‘the Troubles’ as events and conduct that related to Northern Ireland affairs which happened and occurred during the period 1 January 1966 and 10 April 1998. That includes any event or conduct during that period which was connected with (a) preventing, (b) investigating, or (c) otherwise dealing with the consequences of, any other event or conduct relating to Northern Ireland affairs. Northern Ireland affairs is defined as meaning (a) the constitutional status of Northern Ireland, or (b) political or sectarian hostility between people in Northern Ireland.

The geographical area where the incident happened does not matter. The incident could have happened in Northern Ireland, in another part of the United Kingdom, or elsewhere.

How will the Commission decide if I am eligible for an investigation into *other harmful conduct*?

The Commission’s powers can only be used for an investigation into *other harmful conduct* where a person meets the eligibility requirements set in law:

- The person suffered (or has suffered) one of the conditions set out above which are considered serious physical or mental harm. The nature of these conditions is severe.

AND

- This serious physical or mental harm was caused by an event or conduct. It is this which the investigation will examine.

¹ Northern Ireland Troubles (Legacy and Reconciliation) Act 2023

AND

- The conduct in question meets the definition of “other harmful conduct forming part of the Troubles” as set out in law.

How is serious physical harm defined?

The law defines serious physical harm as:

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

This is therefore the definition that the Commission is required to apply.

How is serious mental harm defined?

The law defines serious mental harm as:

- Severe psychiatric damage

You are likely to meet this criterion if you have evident and enduring symptoms, which have severely impacted your life. While everyone is assessed according to their unique circumstances and experiences, these significantly impacted areas will include your relationships, employment and study, social functioning, decision-making and self-care and you will have marked problems with respect to some or all of these areas.

The Commission considers severe psychiatric damage to encompass a range of severe psychological symptoms and severe psychiatric conditions which may include complex PTSD and severe depression.

We understand that the full extent of the serious harm that you may experience currently, may have developed over time. We take this into account when deciding if your request meets the legal eligibility requirements. We also understand that you may have suffered severe psychiatric damage and that you may have sought medical help. We will consider the injury you suffered and how it affected you at the time when you sought help. We also recognise that mental health can fluctuate over time, in intensity and impact.

The severe psychiatric damage must be caused by the event or conduct you want to request an investigation into, and the conduct must meet the definition of “other harmful conduct forming part of the Troubles”.

If you have suffered severe psychiatric damage as a result of other challenges in your life; or if you have suffered with your mental health but it has not had a severe impact on your life, the law may not allow the Commission to proceed with an investigation.

What if the full extent of the injury suffered has taken time to develop?

The full extent of any serious physical or mental harm that you may experience currently, may have developed over time. The harm must have been caused by the event or conduct that you want the Commission to investigate.

What if the harm I suffered was the result of more than one incident related to the Troubles/Conflict?

The Commission acknowledges that, particularly in relation to serious mental harm, some individuals may have been involved in more than one incident which compounded the harm experienced so their injury now meets the threshold of ‘serious’. It is the final incident that caused the threshold to be met which would be the subject of any investigation.

There is not a limit on how many requests can be submitted by an individual or how many incidents these requests may relate to. We may ask you if you want to submit requests for investigations into more than one incident one at a time, or whether you want to submit them as requests for multiple investigations into multiple incidents. The approach to be taken, and the priority or order of the investigations, will be decided subsequently by the Commissioner for Investigations. Your Case Support Worker will discuss that with you before you make your request for investigation to the Commission.

If I wasn’t present at the incident, am I eligible for an *Other harmful conduct* investigation?

These cases will be considered very carefully by the Commission before reaching a view on eligibility. As part of the eligibility process to meet the legal requirements, a link must be established between the harm caused and the incident in question.

I have access needs, can you meet them?

Ensuring that people with a disability or accessibility needs can engage fully with the Commission is essential. Our Disability Action Plan sets out our wider commitment and approach. Your Case Support Worker will speak to you about your personal access needs and put in place measures to ensure the Commission is accessible to you. We can provide you with written material in different formats or languages to meet your needs. You are welcome to bring a family member, friend, legal adviser or someone from an advocacy organisation with you to meetings with the Commission in order to support you.

Ahead of your meetings with the Commission, your Case Support Worker will ask where and how it would be best to meet you. We have a number of accessible venues we can use, or we can arrange a bespoke location, if that suits you better.

If I find the process stressful or overwhelming, can I pause it?

Only you can decide whether making a request is right for you. We will provide you with information and make sure you have enough time to make your decision. Once the request has been accepted, the Commission is under a legal duty to carry out the investigation. You will be involved in the key points and decisions and how you may input will be explained to you at the outset and again during the process.

Can I be accompanied to a meeting with the Commission?

We understand that talking about incidents that have caused you suffering, grief and harm can be emotionally and psychologically difficult. You are welcome to bring support you need to a meeting with the Commission such as a friend, family member, legal adviser or advocacy group worker. You can also choose to come alone should you wish. Just let your Case Support Worker know.

Do I need a solicitor?

Our processes have been designed in such a way to be accessible to everyone – there's no need to have a solicitor or other legal advisers with you. The Case Support Worker assigned to you will offer you emotional support and will help you understand the Commission's processes. If you would like a solicitor to attend a meeting with you, please let your Case Support Worker know ahead of time. The Commission cannot itself meet the cost of any such legal advice.

Do I need to provide evidence or documentation to the Commission?

If you decide to make a request for an investigation into *other harmful conduct*, the Commission has to take a decision on whether you are eligible for this kind of investigation. To do this, your Case Support Worker will gather information about the incident and your injuries and provide this to the Information Recovery team as part of your request.

The Commission has learned from the experiences of other organisations and designed the process to be, for the requesting individual, as light touch as is possible within the legal requirements that have been set for the Commission.

It is for the Case Support Worker to gather information about the incident in question from you and from open source records (such as newspapers). Your Case Support Worker might ask you to provide more details about your injuries, treatment or for how long you were ill. This might include: letters from your GP, hospital appointment letters, compensation payments and details of disability payments from the government, and any other information you might have about your injuries. You won't be asked to provide any more evidence than you already have, for example, we won't ask you to write to your GP.

We understand that retelling events can be difficult for you. We aim to gather information from you in a balanced and proportionate way by endeavouring to avoid you having to repeat information many times to staff within the Commission. This process is designed to be different from similar assessments or application processes you have gone through for other victims and survivor services.

Will you write to my GP?

We may need to write to your GP or other medical practitioner if we need more information to make a decision about your eligibility. Your Case Support Worker will write this letter. We will only write to these people if we have your consent to do so. Your Case Support Worker will help you understand why we need this information.

Do I need to have a physical or psychiatric assessment?

It is very unlikely that we will need to ask you to have a physical or psychiatric assessment as part of the request process. The Commission aims to be able to make decisions based on the information provided by you and relevant organisations. In a very small number of cases, we may need to ask you if you will consent to an assessment by an independent expert. If you decide you don't want to have this assessment, the Commission will take the eligibility decision based on the information already gathered.

Who fills out the request form?

The Commission doesn't have a request form. You will be provided with a Case Support Worker who works with you to develop your request to the Commission. They assemble the information needed to make a formal request. Nothing will be submitted until you are content, and have provided your consent. Every request follows the same format. The form and manner of the request as set by the Commission are set out in the policy [on Handling a Request: Making, determining, changing and withdrawing a request](#).

My family member is severely incapacitated as a result of the serious mental or physical harm they suffered, how can they make a request?

The Commission's approach to mental capacity is informed by the Mental Capacity Act (Northern Ireland) 2016 and adopts a position that every adult is presumed to have capacity. The Commission's Case Support Team shall ensure appropriate support options are available where there is evidence that a requesting individual may need additional or ongoing support to make, and continue to make, informed decisions.

Can I bring the same information to the Commission as I provided to the Victims Payment Board?

Yes. We will accept any information that you already hold about your injuries and the incident that caused them. We can also ask the Victims Payment Board for any relevant information they may hold on your case with them, but we don't take into account any assessment they may have made, as the Commission uses different criteria to determine eligibility as set out in the law. In the same way, if your request is accepted by the Commission, this doesn't automatically mean you are eligible for a payment from the Victims Payment Board.

What happens when I approach the Commission?

When you make contact with the Commission, your first point of contact will be with the Case Support Team. A Case Support Worker will be assigned to help you understand the Commission's investigative process and what this process might mean for you, and work with you to make a request. If your request is ultimately rejected, they can explain the reasons for this to you.

We understand talking about traumatic events can be difficult. If you would like to bring a friend or family member with you to a meeting with the

Commission, you can. We can also provide materials in alternative formats to help you understand and participate in the process.

Your Case Support Worker will gather some information from you including:

- a. Details of the incident at which you suffered the serious harm such as the location and date.
- b. The kind of serious harm you suffered such as details of injuries and their severity.
- c. The kinds of information you have about your injuries (for example, letters from your GP).

This information will form the basis of your request.

Does the Commission offer therapy?

The Commission is taking a trauma and resiliency informed approach which means your Case Support Worker will be with you for the length of your journey with the Commission. Their role is to be your main point of contact at the Commission, to give you information, ask any questions you have and be your spokesperson within the Commission. We can arrange for independent emotional support to be provided to you. The Commission does not offer specialist psychological support.

Do I have to make a request to the Commission?

No. You can decide that making a request of the Commission is not for you, or that the time is not right for you. Where you make this decision, your Case Support Worker will:

- advise you about any information or data you have already provided will be retained.
- return any documents that you provided to the Commission
- advise you about your right to make a future request
- collect any feedback you may offer on your experiences and why you decided not to proceed with a request.

What happens if the Commission can only get limited information about my health condition?

We understand that you cannot always or easily access information and records about incidents from the Troubles/Conflict. We will not ask you for anything which you do not already have. We also understand that records may have become lost or been destroyed over time, or that organisations

such as Health and Social Trusts may not have the available resources to promptly respond to a request from the Commission. This will be taken into account by the Commission as it makes its decision. If relevant material is not available we will assess your case, fairly, on the basis of what information is available.

How do I make my request?

You can make a request after you have met with your Case Support Worker and are happy to proceed. There is no limit to the number of meetings you can have with them before you submit your request. Your Case Support Worker can work with you to shape the questions you want to have answered; they will gather the information about your case which will accompany your request. They will also discuss the [Commission's Charter](#) with you and explain the Commission's commitments and what it would ask from you as part of the process. Once you are content that making a request is the right decision for you, we will ask you to provide consent to submit the request. Once you have submitted your request, your Case Support Worker will write to you and confirm what you have asked for.

How will the Commission decide if I am eligible and my request can be accepted?

The law requires that Commissioner for Investigations has to decide if a person making a request is eligible to do so and whether their request for an investigation can be accepted. For *other harmful conduct* investigations, this means that the Commission needs to establish that:

- a. You have suffered serious physical or mental harm as set out in the law
- b. This harm was caused by the incident into which you are requesting an investigation for
- c. This incident meets the definition of "other harmful conduct forming part of the Troubles".

Your Case Support Worker will already have made you aware where the incident you wish to have investigated is already being looked at, or has been looked at, by the Commission. Where the investigation has not yet finished, the Commissioner can decide to join your request to the existing investigation. Both you, and the other requesting individual, will be consulted before this happens.

Can the Commission reject my request?

Yes, the Commission for Investigations can reject a request. However, before this happens, the Case Support Worker may contact you to discuss your

request further, and may ask, for example, for more information. There are some reasons why your request can be rejected. These include:

- that you are not eligible to make a request. For example, the harm you suffered is not one of the conditions set out in the law or was not linked to the incident in question.
- That the request was not made in the manner and form required (see above *How do I make my request?*)

What happens if my request is accepted?

Your Case Support Worker will contact you and will arrange a meeting to discuss the decision, should that be helpful for you, and you will receive the decision in writing. The Information Recovery Team will scope your request. This means the Commission will make requests of organisations which may have information about your case and assess the material they provide. The Information Recovery Team may identify new lines of inquiry, or opportunities such as for forensic testing. The results of this scoping exercise forms the basis of the scoping which summarises the work undertaken and the recommended next steps.

What happens if I am unhappy with how I have been treated by the Commission?

In the first instance, we ask that you raise your concern with your Case Support Worker. If they are not able to help you, or if your concern is about them, you can use our [Complaints Policy](#), and make a complaint by email at complaints@icrir.independent-inquiry.uk; in writing at Freepost ICRIR; or in person, by making an appointment using the contact details provided.

What happens if I want to challenge a decision made by the Commission?

In the first instance, we ask that you raise your concern with your Case Support Worker. You can also request a review of the decision under the Commission's '[Requests for review of investigative decisions policy](#)' which is published on our website and your Case Support Worker will also give you a copy of and explain the content to you.