



Northern Ireland
Assembly

Research and Library Service Briefing Paper

Paper 129/10

22 September 2010

NIAR 342-10

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Dealing with the Past

1 Background

The Consultative Group on the Past, chaired by Robin Eames and Denis Bradley, was established in June 2007 to look at ways of dealing with the past in Northern Ireland. The Group presented its report on 23 January 2009¹. The UK Government put the 31 recommendations of the report out to public consultation in June 2009, presenting a summary of responses in July 2010².

In June 2010, the Commission for Victims and Survivors issued advice to government, which included some commentary on the report of the Consultative Group on the past, but also made additional comments with regard to ways forward in dealing with the past³.

This comes in the context of a strategy for victims and survivors published in November 2009, which takes a 'victim-centred' approach to be undertaken through the Commission, the Victims and Survivors Forum and a new Service for Victims and

¹ Consultative Group on the Past, *Report of the Consultative Group on the Past* (2009).

² Northern Ireland Office, *Dealing with the Past in Northern Ireland: The Recommendations of the Consultative Group on the Past – Summary of Responses to Consultation* (2010).

³ Commission for Victims and Survivors, *Advice to Government: Dealing with the Past* (2010).

Survivors⁴, which will manage funding distribution to groups and individuals⁵. The new Cohesion, Sharing and Integration (CSI) strategy is also currently out to consultation⁶, which forms the over-arching context for peace building and good relations, although the consultation document is not explicit about the role of victims and survivors in this process.

2 Comparison between the Report of the Consultative Group on the Past and the Advice of the Commission for Victims and Survivors

The report of the Consultative Group on the Past followed a consultation process that led to one key principle, that:

The past should be dealt with in a manner which enables society to become more defined by its desire for true and lasting reconciliation rather than by division and mistrust, seeking to promote a shared and reconciled future for all.⁷

The key recommendation by the Group was for a Legacy Commission, which would run for five years, with a bursary of £100 million, and be chaired by an international commissioner. The mandate for this Legacy Commission would cover four main strands:

- Helping society towards a shared and reconciled future, through a process of engagement with community issues arising from the conflict
- Reviewing and investigating historical cases
- Conducting a process of information recovery
- Examining linked or thematic cases emerging from conflict

Two key arms of the Legacy Commission were proposed in the form of a Reconciliation Forum, which would advocate for victims and survivors, promote services and distribute the bursary, and a Review and Investigation Unit to take on some of the work of the Historical Enquires Team (HET) and some of the related work of the Police Ombudsman.

⁴ Proposals for services to victims and survivors were consulted upon in 2005 and again in 2009 and the Strategy for Victims and Survivors states that the Service was to be established in June 2010 (p.14). A Steering Group has been set up for implementation: <http://www.northernireland.gov.uk/news/news-ofmdfm/news-ofmdfm-july-2010/news-ofmdfm-210710-ministers-announce-plans.htm>.

⁵ Office of the First Minister and Deputy First Minister, *Strategy for Victims and Survivors* (2009).

⁶ Office of the First Minister and Deputy First Minister, *Programme for Cohesion, Sharing and Integration* (2010); consultation ends 29 October 2010.

⁷ Consultative Group on the Past, *Report of the Consultative Group on the Past* (2009), p.23.

The report in broad terms also outlines societal issues emerging from the conflict, justice issues, truth recovery and remembering. While some of these areas of work are recommendations for other bodies, such as the Commission for Victims and Survivors, the majority of points are related to the work of the proposed Legacy Commission. In general, the Group highlighted the need for victims' and survivors' needs to be met and an acknowledgement of what they have been going through, part of which was by a much publicised proposal for a one-off £12,000 payment⁸.

The Commission for Victims and Survivors advice to government, which includes substantial input from the pilot Forum for Victims and Survivors⁹, concurs with the essential sentiment and tone of the report by the Consultative Group. While not commenting on all recommendations, in fact on few recommendations specifically, the Commission is largely in agreement with the Consultative Group. Where the Commission differs significantly is in the Consultative Group's approach, specifically, the proposals for a Legacy Commission. This is explained as follows:

In proposing the creation of a Legacy Commission by the British Government, the Consultative Group failed to show due deference to the need to build consensus and commitment at all levels of our society. It was as if the proposed Legacy Commission was constructed like a super-structure which would be lowered over Northern Ireland's past. For too many stakeholders, the Legacy Commission looked like an imposed structure which they could neither trust nor approach with any degree of confidence.¹⁰

The NIO consultation likewise drew much opposition to the proposal for a Legacy Commission which, as the consultation asked for comments on the specific recommendations, meant that, as with the Commission, the proposals were rejected on the grounds that most of them tied recommendations to the Legacy Commission.

The Commission sets out the following points in response to the Consultative Group's report:

- A 'recognition payment' of £12,000 is not appropriate at this time (p.9)
- There cannot be a line drawn under the past, as it will influence the present and future, so it has to be dealt with (p.10)

⁸ The proposal for a £12,000 payout to the closest relative of each person killed was ruled out by the Secretary of State, Shaun Woodward, in February 2009, see: BBC News Online 25 February 2009 (http://news.bbc.co.uk/1/hi/northern_ireland/7909625.stm).

⁹ The pilot Forum for Victims and Survivors ran from September 2009 to June 2010: http://www.cvsni.org/index.php?option=com_content&view=article&id=131:victims-and-survivors-pilot-forum-exceeds-expectations&catid=44:latest-cvsni-news&Itemid=54.

¹⁰ Commission for Victims and Survivors, *Advice to Government: Dealing with the Past* (2010), p.16.

- The aim of dealing with the past is to promote peace and reconciliation, but these concepts are complex and a more refined understanding of reconciliation is needed (pp.10-12)
- While violence has abated, Northern Ireland is still at a 'conflict management' stage, which would require broad consensus built over a number of generations involving actors within Northern Ireland and in the British and Irish Governments acting jointly to move to 'conflict resolution' (pp.12-13)
- Civic leaders and the community and voluntary sector needs to be supported to continue the work of facilitating citizens to take on board contradictory views of the situation in Northern Ireland (pp.13-16)
- The legacy of the past still impacts on communities today, but there are encouraging examples in the community sector of former adversaries working together to deal with the legacy (p.15)
- The Commission agrees with the ingredients for dealing with the past, but not the Consultative Group's implementation strategy (pp.15-16)

The Commission also sets out a range of concepts beyond the commentary on the Consultative Group's report, most of which are indicated or alluded to in the Consultative Group's report, as follows:

- There needs to be a recognition that there is only superficial political consensus from a coalition of opponents in the Executive on the general point that victims should be looked after¹¹ (pp.16-17)
- New civic norms need to flow from the consensus implicit in the workings of the Executive and Assembly to create the pluralism that is fundamental to Northern Ireland¹² (pp.17-18)
- The involvement of the British and Irish Governments working in partnership is essential to address their role in Northern Ireland's past¹³ (pp.18-19)
- A timetable is offered for cross-party talks, supported by the EU and USA, to agree to arrangements to deal with the past (pp.19-20)
- There are cost benefits to investing in dealing with the past in an agreed and responsible way¹⁴ (p.21)

¹¹ Continuing political antagonism in the Assembly is mentioned by the Consultative Group as an impediment (p.52), but there is also an appeal for cross-party solidarity around a Day of Reflection (p.33).

¹² The Consultative Group reflects on the need for attitudinal change and again indicates the leading role for the Executive in this (p.100).

¹³ Recommendation 10 of the Consultative Group's report reflects this.

- Due recognition and acknowledgement need to be given to victims and survivors and, as witnesses to the human impact of violent conflict, should not be pushed aside in a wish by the rest of society to ‘move on’¹⁵ (pp.21-3)
- Meeting the financial needs of victims and survivors has been inadequate and complex; the Commission will look at this issue in its Comprehensive Needs Assessment and financial needs will be explored by a Working Group convened by the Commission¹⁶ (pp.23-4)
- There are mental health implications for dealing with the past, which will be examined by a Working Group to be convened by the Commission¹⁷ (pp.24-5)
- The intergenerational impacts of the conflict are to be discussed between the Commission and the Commissioner for Children and Young People as a potential subject for study¹⁸ (p.25)
- The definition of ‘victim’ is still a divisive issue and an area of concern, which places on onus on Assembly Members to explore the subject in a reflective and careful manner¹⁹ (pp.25-7)
- Victims and survivors have a right to justice, but there exist significant barriers for many in seeking justice through the criminal justice system²⁰ (pp.27-9)
- Concerns regarding inquests include the advantages and disadvantages of cases being pursued by the Historical Enquiries Team (HET), access to legal aid, the role of the Attorney General, the impact of the Coroners and Justice Act 2009²¹ and the pending release of material relating to the Stalker/Sampson²² inquiry²³ (pp.30-1)

¹⁴ Cost-effectiveness is discussed by the Consultative Group (p.41), and the costs of duplication of services due to division (p.75) and conflict-related costs (p.79) are indicated with the implication, but not being explicit, regarding the cost benefits of dealing with the past.

¹⁵ The Consultative Group discusses the difficulty of a society wanting to ‘move on’ (pp.62, 83) and also the issue of recognition and acknowledgement, but this is mainly in the context of a Recognition Payment (p.31).

¹⁶ Financial needs of victims and survivors are touched upon by the Consultative Group in the context of compensation claims and the Recognition Payment (p.31).

¹⁷ The Consultative Group raises mental health as an impact of the conflict, but not as an implication for dealing with the past (p.88).

¹⁸ The impacts of the conflict on children and young people (p.72) and the inter-generational nature of indirect experience trauma (p.87) are discussed by the Consultative Group, with a suggestion of inter-school co-operation for children and young people to process the legacy of the past (p.74).

¹⁹ The Consultative Group acknowledges this divisive issue, but differs from the Commission in its assertion that further debate should not take place, rather a focus of energies on dealing with the needs of victims and survivors (p.68).

²⁰ Justice is likewise discussed at length by the Consultative Group and also calls for a change in the way justice issues are processed (pp.57-8; p.127).

²¹ <http://www.legislation.gov.uk/ukpga/2009/25/contents>.

- The merits of tribunals of inquiry require further scrutiny and reflection and an alternative to costly inquiries could be found with creativity and imagination²⁴ (pp.32-3)
- The Historical Inquiries Team (HET) has provided information to families but has been less effective in delivering justice, the impact of which will be assessed by a survey to be carried out by the Commission in the autumn of 2010²⁵ (pp.33-5)
- There should be a new agency for dealing with the past²⁶ (pp.35-6)
- There is a lack of consensus between the relative approaches to truth recovery by the unionist and nationalist communities, which requires mechanisms for examination of truth to be able to satisfy these contending perspectives²⁷ (pp.36-7)
- Comparisons with the context of South Africa are unhelpful in Northern Ireland²⁸ (p.38)
- Approaches to the examination of the truth are divisive issues, therefore consensus must be sought for any process²⁹ (pp.38-9)
- Citizens and community groups should also be assisted to contribute to the process by a body such as the Community Relations Council and departmental commitment should be monitored³⁰ (p.39)

²² The High Court in Belfast has ruled that information from the Stalker and Sampson reports into shoot to kill allegations in Northern Ireland, which have not been made public, can be released to families: <http://www.bbc.co.uk/news/10171908>.

²³ The Consultative Group also raises concerns around inquests (pp.115-7) and high profile inquiries (Appendix 4), inquests being dealt with in Recommendation 22.

²⁴ The Consultative Group's Recommendation 21 rules out further tribunals of inquiry.

²⁵ Difficulties with the HET are discussed at length by the Consultative Group (pp.115-7), which concludes in Recommendation 18 that its work be taken over by a Review and Investigation Unit.

²⁶ While this seems to be in agreement with the Consultative Group's proposal for a Legacy Commission, it is the process by which such a structure is to be created that is opposed in the Commission's response to Recommendation 1.

²⁷ These issues are not significantly covered in the text of the Consultative Group's report, but are referred to on several occasions by the Co-Chairs of the Group in their Keynote Address delivered in Belfast on 29 May 2008 (see Appendix 5 of the report).

²⁸ The Consultative Group is specific in stating that any process in Northern Ireland should not be a copy of the South African Truth and Reconciliation Commission (p.56).

²⁹ The Consultative Group likewise seeks consensus for any process (pp.50-1).

³⁰ Wider societal participation is also urged by the Consultative Group (p.102) and monitoring of progress is a role foreseen for the proposed Legacy Commission (p.140).

3 Summary

The following table summarises the recommendations of the Consultative Group, comments from the NIO consultation and the corresponding comments (if any) from the Commission for Victims and Survivors, including the relevant paragraph from the advice to government.

Table 1: Summary of Recommendations of the Consultative Group on the Past, Northern Ireland Office Consultation Responses and Comments by the Commission for Victims and Survivors		
<i>Consultative Group Recommendation</i>	<i>NIO Consultation Responses</i>	<i>CVSNI Response (and Paragraph)</i>
1: Legacy Commission (LC)	Concerns around the LC's focus, independence and duplication of other bodies' work	Imposed superstructure, needs consensus (42)
2: Reconciliation Forum	Overlap with other structures, e.g. CRC	No comment
3: Bursary of £100m	Investment should be in the community	No comment
4: £12k per victim	Divisive issue	Not appropriate at this time (4)
5, 6: Services for victims	General support	No specific comments, but assertions that needs are to be met
7: International chair for LC	Support for international involvement	No comment
8: 4 strands to LC mandate	Broader mandate needed	Identified key ingredients for dealing with the past (40)

9: LC to run for 5 years	Arbitrary end point	No comment
10: OFMDFM, GB and Rol governments to co-operate	GB and Rol government involvement supported, some concerns of OFMDFM politicisation	Support for GB and Rol government partnership (28)
11-14: Dealing with societal issues	Work is already ongoing in the community, some groups omitted, such as women	Support for managing the conflict society (22-28) and the involvement of young people (97)
15: LC engagement with churches	General support, but other faiths also	No comment
16: Anti-discrimination for victims in statute	General support	No comment
17, 18: Review and Investigation Unit in LC	Questions around independence and staffing	One comment suggesting the Historical Inquiries Team (HET) and parts of the Police Ombudsman be subsumed in a new agency, but not clarified in the text (Proposal ix)
19, 20: Information recovery and thematic examination	Questions around balance and access	Support of truth recovery processes (162-174)

21: No new public inquiries	Some opposition on justice grounds, but concerns around cost	No further open-ended inquiries, but alternative processes (136-141)
22: Coroner and Criminal Case Reviews to be continued	General support	No comment
23: No amnesty, but LC is to 'draw a line'	Opposition to any amnesty	No amnesty, but a judicial approach is unlikely to satisfy victims (112-113, 180)
24-26: Storytelling and remembering	Support for the process, but acknowledgement of limitations	No comment
27-29: Ceremony of remembering	Support, but concerns about 'equivalence'	No comment
30: Declaration not to use violence	Meaningless and omits governments	No comment
31: Shared memorial	Concerns around whether the time is right and 'moral equivalence'	No comment

Beyond the specific commentary on the recommendations of the Consultative Group, the Commission made additional comments many of which nevertheless formed part of the Consultative Group's conclusions. These points are summarised in the following table.

Table 2: Summary of Additional Points Made by the Commission for Victims and Survivors in its Advice to Government and Corresponding Comments by the Consultative Group on the Past

<i>CVSNI Comments</i>	<i>Consultative Group Comments</i>
Superficial political consensus on the care of victims (pp.16-17)	Recognition of political antagonism (p.52) and appeal for solidarity (p.33)
Need for new civic norms to flow from the Executive (pp.17-18)	Need for attitudinal change and a leading role played by the Executive (p.100)
GB and RoI governments to address their role (pp.18-19)	Recommendation 10: GB and RoI governments to work together
Cross party talks (pp.19-20)	Not mentioned
Cost effectiveness of peace (p.21)	Costs of conflict (pp.75, 79)
Due recognition, resisting pressure to move on (pp.21-3)	Due recognition (p.31) and will of society to move on (pp.62, 83)
Meeting financial needs (pp.23-4)	Compensation difficulties and Recognition Payment (p.31)
Mental health implications of dealing with the past (pp.24-5)	Mental health impacts of conflict (p.88)
Intergenerational impacts (p.25)	Impacts on children (p.72) and intergenerational legacy (p.87)
Lack of consensus on a definition of 'victim' needs more debate (pp.25-7)	Divisive issue of definition should not be debated (p.68)
Right to justice (pp.27-9)	Need for justice and change to the way justice is administered (pp.57-8, p.127)
Concerns around inquests (pp.30-31)	Concerns around inquests (pp.115-7), Recommendation 22: Inquests to continue
Alternative to tribunals to be found (pp.32-3)	Recommendation 21: No more costly tribunals

Impact of the HET to be assessed (pp.33-5)	Recommendation 18: HET's work to be taken over
New agency for dealing with the past (pp.35-6)	Recommendation 1: Legacy Commission
Need for consensus on a mechanism for truth recovery (pp.36-7)	Referred to in Co-Chairs' keynote address, Appendix 5
Comparisons with South Africa unhelpful (p.38)	Process not to be a copy of South African TRC (p.56)
Need for consensus on any truth process (pp.38-9)	Need for consensus on any process (pp.50-1)
Wider participation and monitoring (p.39)	Wider participation (p.102) and monitoring (p.140)