

NIRPOA Position Paper on CGP Report

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Introduction

1. The Northern Ireland Retired Police Officers’ Association (NIRPOA) represents the interests of retired members of the Royal Ulster Constabulary George Cross (RUCGC) and the Police Service of Northern Ireland (PSNI). It has some 3,000 members. Whilst individual members have a range of views on many aspects of the Report of the Consultative Group on the Past¹ (“the Report”), in presenting our corporate views we will concentrate on the Report’s proposals in relation to victims and to the Legacy Commission.

Language Used in the Report

2. There are, however, some general points that should be made about the Report overall. The language of the Report is hardly surprising in view of the former professions of the co-chairs as clergymen². The

¹ Report of the Consultative Group on the Past, presented to the Secretary of State for Northern Ireland, Belfast, 23 January 2009

² Report, pp 162-164; the membership of the Consultative Group on the Past also contained another churchman and a theologian

concept of forgiveness is very worthy and no less than we might hope for in the broader spiritual sense. There is also recognition that those to be forgiven would normally be expected to acknowledge the need for forgiveness³.

3. At the political level things are rather different. The Consultative Group on the Past (CGP) has produced a document which unfortunately appears to be part of the wider agenda being followed by our government (and almost certainly also the government of the Republic of Ireland) - in “collusion” with Sinn Fein - to establish the concept of “moral equivalence”. That is to say that the whole thrust of the document seems to be to draw no moral distinction between those who sought to commit murder and torture, who used assault and intimidation, who bombed buildings and destroyed economic infrastructure and those who did their duty in a law-bound, disciplined, visible public service in order to protect life and property. NIRPOA’s members were engaged in civilian policing, however difficult and even contentious that may have been. We do **not** accept that we were one party in a legitimate conflict between groups enjoying equal legal, ethical and moral status. From the establishment of “police primacy” in 1976 our commitment was to the rule of law, not to victory in armed combat.

4. “Parity of esteem” should **not** be extended to cover this area of public life. To refer to “the oppressive presence of military and paramilitary forces”⁴ as if not only the effect, but also the reason for the presence of such forces, was somehow parallel or equally valid, is ridiculous and offensive; it seeks to legitimise the existence of the paramilitaries and their presence within such communities. This sort of language unfortunately sets the tone for much of the Report.

³ Report, pp 25, 54-55

⁴ Report, p 26; the fuller picture presented by the text on page 71 mitigates this effect to some extent, but continues to suggest moral equivalence

5. The Report refers constantly to the “conflict”⁵; and it offers an explanation for this choice of vocabulary⁶. But the Report is implicitly, and frequently explicitly, referring to the conflict between Republicanism and the State and not to the real conflict, that between good and evil in all parts of our community. The substantive “conflict” here was that between, on one side, those who wished to pursue their aspirations and objectives (or to defend their values, institutions and traditions) in civilised, lawful, and peaceful ways - and on the other, those who chose to inflict their will on others through the use of violence. This proved to be a violence which not only destroyed lives and damaged families, but also corrupted the perpetrators themselves. Such conflict existed *within* communities. The use of the term “killings”⁷, where many would use the word “murders”, is similarly indicative of this approach.
6. The “State” which seems so keen to accept blame for its actions is now peopled by those who will claim no *personal* responsibility for the events which the Report describes. That was then (and “them”) and this is now (and “us”). Current office-holders and officials appear to think that there is a good political deal to be had by allowing, and even participating in, the castigation of those who themselves have no current corporate existence. The Report does acknowledge the existence of concerns in relation to this issue, although unsurprisingly it does not examine these in depth, preferring to leave such matters to the proposed Legacy Commission⁸. NIRPOA’S concerns regarding the Legacy Commission are outlined below⁹.
7. Another theme running through the Report is the constant use of the word “collusion”¹⁰. It is clear that members of the CGP have listened well to the propagandists whose efforts over the last twenty years have

⁵ Report, *passim*

⁶ Report, p 51

⁷ Report, *passim*

⁸ Report, pp 68-69

⁹ *Vide sub*, p 6 *et seq.*

¹⁰ Report, *passim*, but see for example pp 35, 69, 125, 135, 147 etc

been rewarded with a number of mud-slinging opportunities at vast public expense¹¹; but there is no indication that any consideration whatsoever has been given to the attempts by NIRPOA to establish a credible definition of a term which has such emotive connotations here in Northern Ireland¹².

8. Instead the Report asserts that “The issue of alleged collusion has not been properly dealt with”¹³. But the Report makes no mention of the outcome of the lengthy and detailed consideration given by the Director of Public Prosecutions to the one million pages of evidence produced by Lord Stevens as a result of the latter’s meticulous inquiries into allegations of serious crime and misconduct¹⁴.
9. Unusually the Director of Public Prosecutions issued a public statement on the matter. “In relation to collusion it should be noted that whilst there is or may be conduct which may be characterised as collusion, there is no offence of collusion known to the criminal law of Northern Ireland. However, evidence of criminal conduct which could be characterised as collusion may, where there is sufficient available and admissible evidence, give rise to prosecution for certain criminal offences. In this regard, the Director, in his examination of the police investigation files, gave consideration to whether the evidence was sufficient to meet the Test for Prosecution in respect of a range of offences, including murder, conspiracy to murder, manslaughter, misfeasance in public office, firearms and documents offences.”¹⁵ The Director gave his consideration and decided that the evidence was **not** sufficient to meet that test.

¹¹ For example, the Rosemary Nelson Inquiry, the Billy Wright Inquiry

¹² See “‘Collusion’ – Easy to Allege but Hard to Define” in “How the Ombudsman got It Wrong”, published by NIRPOA, Belfast, March 2007 and available on the NIRPOA website: www.nirpoa.org

¹³ Report, pp 35, 124

¹⁴ Often referred to as “Stevens III”; see Report p 178

¹⁵ Statement by the Director of Public Prosecutions for Northern Ireland in relation to decisions as to prosecution arising out of the Stevens III Investigation

10. Astonishingly, the Report, in dealing with the outcome of “Stevens III”, blithely refers to the file “leading to 98 convictions” without bothering to point out that, generally speaking, hardly any of these could be construed as having anything to do with any alleged “collusion”. Nor does the Report mention that each of the three inquiries undertaken by Lord Stevens was instigated at the request of the Chief Constable of the RUCGC of the time.
11. And further on the subject of “collusion” the Report appears to accept uncritically the allegations of the former Police Ombudsman for Northern Ireland in respect of her highly controversial report on the activities of the Ulster Volunteer Force in North Belfast¹⁶. This much publicised “Statement”, which was a series of unsubstantiated assertions, was comprehensively demolished by NIRPOA in their published rebuttal¹⁷. And the Security Minister publicly cleared three former senior RUCGC officers who had been subjected to unfair and cowardly criticism under the cover of “parliamentary privilege” as a direct result of the irresponsible handling of the “Ballast” inquiry and the “Statement”¹⁸.
12. Yet only an unchallenged repetition of the Ombudsman’s now discredited “findings” appears in the Report. There is no reference to the fact that this prolonged inquiry failed totally to persuade the Director of Public Prosecutions that there was any criminal case to answer, nor to the widespread rejection of the Ombudsman’s unfounded assertions.
13. These defects in the Report are important because they may create an impression in the mind of the reader which would make the Report’s recommendations in relation to the “Legacy Commission” and “Justice and Information Recovery”¹⁹ appear to be more reasonable and indeed

¹⁶ Report, pp 178-179; referring to Section 62, Police (Northern Ireland) Act, 1998 Statement by Police Ombudsman on “Operation Ballast”, Belfast, January 2007

¹⁷ “How the Ombudsman Got It Wrong”, published by NIRPOA, Belfast, March 2007

¹⁸ Hansard, 17 July 2007, Column 185W

¹⁹ Summarised at Report, pp 17-19

more attractive than actually they are. It is the view of NIRPOA that these recommendations require thorough scrutiny and debate and that, taken as a whole, they are not acceptable in their current form.

Retired Police Officers as “Victims”

14. Very many retired police officers are “victims” within the meaning of the accepted definition²⁰. We welcome the attention which the Report pays to the interests of victims. It is noted that whilst some thought is given to the particular concerns of those who served in Her Majesty’s Forces and the Prison Service, the Report is largely silent on former members of the RUCGC and RUCR. Whilst it is not believed that this is intended in any way to be a slight, it is hoped that proper consideration will continue to be given to the needs of our members.

15. In particular we would draw attention to the high referral rate to the Department of Psychological Therapies within the Police Rehabilitation and Retraining Trust (PRRT). Some 250 new referrals are received each year, most of them self-referrals²¹. Amongst those from a profession with a reputation for a “macho” culture such figures are alarming. In some cases “story-telling” of the type alluded to in the Report²² may be therapeutic, but we would have significant concerns about the potential impact of the Legacy Commission and the recommendations in the Report concerning Information Recovery²³.

Continuing Inquires and Information Recovery

16. We oppose many aspects of the proposals in these matters, but even the general aspirations of the CGP as articulated in the Report seem optimistic to the point of being unrealistic: “to look at overall accountability, not individual accountability; to identify areas where

²⁰ Report, p 67, quoting Article 3, Victims and Survivors (Northern Ireland) Order 2006

²¹ Figures from PRRT bulletin, January 2009

²² Report, p 97

²³ Report, pp 125-126

things went wrong and why they went wrong; to gain greater understanding”²⁴.

17. We are very concerned about the proposals to compel witnesses to give evidence under oath in private, informal hearings and to make the production of documents mandatory²⁵. And the Report appears to advocate giving the Commission authority to overrule state agencies where there may be a dispute over the supply of information²⁶. Inquiries held in private have not always earned public confidence and the present proposals smack of the “Star Chamber”²⁷; certainly the privacy and compellability aspects are difficult to reconcile with the aspirations of the CGP to make only recommendations which are Human Rights compliant²⁸. Whilst the Report pays attention to its own interpretation of the requirements of Article 2 (the Right to Life), in our view it pays scant regard to Article 6 (the Right to a Fair Trial) and Article 8 (the Right to Privacy).

18. We would also have significant concerns about the creation of any additional new body with “police powers”²⁹. The serious mistakes which were made when the Office of the Police Ombudsman for Northern Ireland was created must not be repeated. This was a body which had police powers but, contrary to all modern civilised norms and to the provisions of Article 13 of the European Convention on Human Rights (ECHR), there was absolutely no mechanism for those who had complaints against the body in relation to their treatment by it to have any redress whatsoever³⁰. This led to severe injustices which have yet to be remedied and which must not be repeated.

²⁴ Report, p 129

²⁵ Report, p 148

²⁶ Report, p 151

²⁷ Secret courts which increased the unpopularity of the Stuart monarchy during the early 17th century (prior to the advent of ECHR!)

²⁸ Report, p 50

²⁹ Report, p 125

³⁰ Police (Northern Ireland) Act 1998 and subsequent legislation; but the lamentable oversight has *still* not been addressed by government

19. Our particular concern in this matter would be the uneven burden which would be likely to fall on individuals within the community in Northern Ireland. Inquiries into deaths are likely to require the assistance of the police officer who was in charge of any investigation at the time. There are a number of retired police officers living in Northern Ireland who served for many years in the Criminal Investigation Department (CID) and were involved in, or indeed led, murder inquiries. Some were involved in over 100 such inquiries. Are such people really to be dragged out of well-earned retirement time and again to be confronted anew with the horrors of the past? Where is the right to enjoy family life under Article 8? And in many cases there is likely to be an agenda which alleges or implies that their conduct was somehow deficient. Where, after so many years and with so many advances in techniques and changes in procedures, is the right to a fair hearing?
20. The Report states that the purpose of such investigations would *not* be to blame or name individuals³¹, but it is hard to see how that could be avoided or to find any alternative purpose for such an investigation in the highly-charged and retributive climate of Northern Ireland's politics. And with the prospect of "reports" being published by the Commission³² there arises the possibility of irresponsible and unaccountable behaviour such as was seen with the publication of the former Police Ombudsman's "Ballast" Statement³³.
21. It is agreed that the present arrangements for investigating past crimes are unsatisfactory, but the Belfast Agreement has limited the options in this area. The CGP appears to recognise that the Historical Enquiries Team (HET) has had some limited success in conveying information to relatives but that it is unlikely to solve many crimes, with its principle

³¹ Report, pp 129, 152

³² Report, p 152

³³ *Vide supra*, p 5 and footnote 16

success to date resulting from a “walk-in”³⁴. The truth is that most serious investigative resources (Police Ombudsman, HET special teams, Public Inquiries, Stevens) are today focused on scrutinising state agencies, in particular the police, in order to try to identify opportunities, if not for prosecution, then at least for criticism.

22. The Northern Ireland Affairs Committee (NIAC) recognised that the activity of the Public Inquiries generated by Cory’s report placed “the police and prison services under particular scrutiny”³⁵; but the CGP appear to wish to exacerbate this problem. The statistics demonstrate that the police were responsible for fewer than 2% of the deaths due to the security situation in Northern Ireland during what the Report refers to as the “conflict”³⁶, but the reader will struggle to find this information in the Report³⁷. And yet who does the CGP really expect to turn up to its Commission, complete with documentary records, to deal with its individual and thematic inquiries? Does the CGP expect the terrorists or criminals (or perhaps we should say “paramilitary participants in conflict”) to parade before its Commissioner, complete with minutes of meetings of the Ulster Defence Association Brigadiers or the monthly activity reports of the Provisional Army Council? It is quite clear where the burden will once again fall – certainly not on those who set out to commit murder.

23. The Report does not make clear how areas for “Thematic Examination”³⁸ might be selected, although it makes no secret of its determined agenda to keep the myth of collusion at the forefront of our minds³⁹. There is a danger here that politically-driven pressure groups will ensure that we continue to look backwards, instead of striving to

³⁴ Report, pp 106-107

³⁵ Quoted in Report, p 115

³⁶ Fay, Morrissey, Smyth, Wong, “Northern Ireland’s Troubles: The Human Costs” Pluto Press, London 1999; see also <http://cain.ulst.ac.uk>

³⁷ Report, pp 60-61

³⁸ Report, p 135

³⁹ *Vide supra*, p 3 *et seq.* and footnote 10

move forwards in accordance with the wishes of the people of this island as expressed in 1998⁴⁰.

Case Studies

24. One retired police officer was subject to a harrowing ordeal over a period of nearly a decade after his retirement from the police. His conduct was investigated from a criminal perspective and attempts were made to find fault in terms of the procedures which he followed in saving countless lives. In view of the facts, it was inevitable that no prosecution would follow; but he was relentlessly pursued until all possible avenues by which he might be sanctioned were utterly exhausted and he was finally "cleared". Are we now to create a new mechanism for subjecting him to another five years of punitive, unfair and unwarranted treatment?

25. Another retired officer (who was subject to more than one attempt on his life) dealt with in excess of 100 murder inquiries. Since his retirement he has been pursued by the former Police Ombudsman and has assisted at Public Inquiries. Is he now to be at the beck and call of some new Commissioner for the next five years of his life, as he laboriously rehearses the horrific details of many of the murder scenes which he has visited?

Conclusion

26. For our members the suspicion must be that, with all the attempts to establish the myth of "collusion" having failed through want of evidence, it is now thought necessary to lower the threshold of proof in the hope of justifying the unjustifiable assertions of the detractors of the RUCGC. The suspicion is reinforced by an examination of the language which the Report chooses to use in relation to the role of

⁴⁰ "Good Friday Agreement" 1998, "Belfast Agreement"; and subsequent referenda

informants⁴¹. The CGP should know that it was not “communities”, but rather terrorist organisations, that were the target of the security forces’ informant operations. Many informants saved numerous innocent lives and should in no way feel, or be made to feel by the Report, that their “self-esteem”⁴² is compromised or that they have anything to “admit”⁴³. It is hard to avoid seeing a connection between the Report’s attitude to informants (and its persistent use of the word “collusion”) and the long-term Republican strategy to undermine confidence in police intelligence-gathering techniques. Recent tragic events should indicate the need for proper consideration of all the issues in relation to this important matter.

27. Retired police officers look forward no less than any others to genuine reconciliation within our community and we welcome the skill and devotion which has gone into the Report of the CGP. We have tried to restrict our comments to specific areas, but would note that many of the Report’s recommendations for new activity seem to us to duplicate or overlay existing structures or institutions. Similar results might be achieved with greater efficiency by providing additional support or funding to those institutions.

28. In many areas we are in agreement with the CGP’s recommendations; but we have felt it right to draw attention to our considerable concerns regarding (i) what we consider to be the unfortunate use of language in some areas and (ii) the very serious and deleterious implications for many of our members of the proposals in relation to continuing inquiries and truth recovery mechanisms.

Maryfield
Belfast
April 2009

⁴¹ Report, pp 71-72

⁴² Report, p 71

⁴³ Report, p 72