

# Northern Ireland Retired Police Officers' Association

## **Response to the Northern Ireland Office Consultation Paper on the Report of the Consultative Group on the Past (Eames-Bradley)**

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## 1 - Introduction

This paper has been prepared, after internal consultation, by the Northern Ireland Retired Police Officers' Association (NIRPOA) in response to the Consultation Paper issued by the Northern Ireland Office (NIO),<sup>1</sup> following publication of the Report of the Consultative Group on the Past ("the Report").<sup>2</sup> It presents the views of the Association, which represents over three thousand retired members – at all ranks - of the Royal Ulster Constabulary George Cross (RUCGC) and the Police Service of Northern Ireland (PSNI) and their families.

We have addressed each of the recommendations in turn, although it will be clear that certain of our concerns apply to a number of the recommendations.

At the rear of the present document we have appended our initial written response to the Report.<sup>3</sup> We would particularly draw the reader's attention to this paper. The views expressed therein have not changed.

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<sup>1</sup> "Dealing With the Past in Northern Ireland: The Recommendations of the Consultative Group on the Past", Northern Ireland Office, June 2009

<sup>2</sup> "Report of the Consultative Group on the Past" presented to the Secretary of State for Northern Ireland, 23 January 2009

<sup>3</sup> "NIRPOA Position Paper on CGP Report", Belfast, April 2009

## 2 - NIRPOA Response to Consultation Paper – the Recommendations of the Report of the Consultative Group on the Past (CGP)

1. *An independent Legacy Commission should be established to deal with the legacy of the past by combining processes of reconciliation, justice and information recovery. It would have the overarching objective of promoting peace and stability in Northern Ireland.*

We **do not agree** with Recommendation 1.

In our view the concept of “justice” in this context is subjective: it appears to mean different things to different groups within Northern Ireland. Nor is the concept of “justice” necessarily consistent with the delivery of “reconciliation”, since many people will feel that true reconciliation can only be achieved, or even offered, in circumstances in which their particular group has achieved what *they* consider to be “justice”.

Furthermore “information recovery” has not been shown to deliver either “justice” or “reconciliation”. Indeed the experience of the hugely expensive public inquiries which are now ongoing would suggest very much the opposite. The one small area in which information recovery may be said to have had some positive outcomes is that part of the remit of the Historical Enquires Team (HET) by which the families of some victims now feel better informed about the circumstances of the deaths of their loved ones than they previously did. This work could be continued by a leaner HET working with the Commission for Victims and Survivors for Northern Ireland (CVSNI).

Where the “legacy of the past” involves some form of criminality this must be purely a matter for the police and the criminal justice system. It is extremely unlikely that there would be any public confidence whatsoever in any alternative vehicle.

2. *A Reconciliation Forum should be established through which the Legacy Commission and the Commission for Victims and Survivors for Northern Ireland (CVSNI) would liaise to tackle certain society issues relating to the conflict.*

We **do not agree** with Recommendation 2.

More detail is required in relation to this recommendation: in particular we believe that for it to acquire support there would need to be a convincing demonstration of how such a body would add value to our public institutions. As it stands we could not support the development of yet another *Quango* which duplicates the work of existing bodies.

Such a forum is not required. NIRPOA, in common with other interest groups, can have bilateral relations with the CVSNI and with the Victims’ Forum without the mediation of any “Reconciliation Forum”.

3. *The Legacy Commission should be given a bursary of £100m to tackle these society issues.*

We **do not agree** with Recommendation 3.

We are in agreement with much of the commentary provided by the NIO Consultation Paper in relation the significant sum of money being proposed. We are particularly concerned about the likelihood of duplication and waste and feel that such money would be much better spent on existing institutions such as the Community Relations Council (CRC) and the CVSNI.

The Report has not, in our view, adequately or accurately identified “these society issues”. As we are in principle wholly opposed to the concept of the Legacy Commission as outlined by the Report we strenuously oppose such funding.

4. *The suffering of families from Northern Ireland and Great Britain should be recognised. The nearest relative of someone who died as a result of the conflict in and about Northern Ireland, from January 1966, should receive a one-off ex-gratia recognition payment of £12,000.*

We **do not agree** with Recommendation 4.

The wording of the recommendation is representative of much that is wrong with the Report, with its reference to “the conflict” and its overriding implication of moral equivalence between those who were or are genuine victims of wrongdoing and those who are associated with the instigators of violence. Whilst it is accepted that the “nearest relative” of a criminal who died as a result of their involvement in criminality may have their own legitimate grief to bear, we cannot accept the implications of the current agenda, which is clearly designed to malign the security forces and to rehabilitate the criminals.

Such a programme of payments would be likely to cause additional stress and suffering to genuine victims. It is unlikely to have widespread support and will certainly not assist in any wider efforts to achieve reconciliation.

In our view any proposals in relation to monetary awards to victims or to the families of victims should be:

- needs-based and designed to improve the quality of life; and
- acceptable to the recipient or beneficiary.

5. *The CVSNI should take account of, and address in their work programme, the present and future needs and concerns of victims and survivors, devoting attention to the provision of services, funding healthcare needs and compensation.*

We **agree** with Recommendation 5.

It is assumed that the use of the word “compensation” distinguishes this funding from the “recognition payments” referred to in Recommendation 4. We would however have some concerns regarding the possible legal implications of payments which fall into the category of “compensation”.

We would hope that the CVSNI would keep their work under constant review, paying particular attention to the changing and developing needs of their clientele and making every effort to anticipate future need as well as dealing with the present.

*6. The Reconciliation Forum would also have a mandate to promote the improvement of services for healthcare issues attributable to the conflict, such as trauma, suicide and addiction.*

We **do not agree** with Recommendation 6.

As we do not agree in principle with the establishment of an unnecessary “Reconciliation Forum” we do not agree with this proposed mandate. We certainly would not welcome any licence for a new *Quango* to interfere with the strategies, operational decisions and management arrangements of healthcare professionals and budget-holders. Nor, we believe, would they.

Four Commissioners have been appointed to advise on a range of matters in relation to victims. These issues are complex and difficult ones which are best left to healthcare professionals. We see no need to override or to duplicate the efforts of Trauma Advisory Panels or Victims’ Commissioners.

*7. The Chair of the Legacy Commission should be an International Commissioner, who would also have specific responsibility within the Commission for addressing society issues through the Reconciliation Forum, tackling sectarianism, promoting reconciliation and administering the bursary. There would be two other Commissioners.*

We **do not agree** with Recommendation 7.

As we do not agree with the concept of the Legacy Commission or the bursary it follows that we cannot accept Recommendation 7.

A succession of international figures have contributed in one way or another to the process by which Northern Ireland attempts to move into a new era. Many of these contributions have been positive and welcome. International figures can offer new perspectives and personal authority. We do believe however that ultimately it is the responsibility of the people of Northern Ireland themselves to find a way of sharing the land together in peace and without perpetual recrimination.

8. *The mandate of the Legacy Commission would consist of four strands of work:*
- *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 the linked or thematic cases emerging from the conflict.*

We **do not agree** with Recommendation 8.

We reiterate our opposition to the concept of the Legacy Commission as articulated in the Report. We believe that its aims are contradictory and that its implementation would exacerbate the “blame game” which is a feature of so much of Northern Ireland’s politics. We would refer the reader to our previous written submission and to our comments in relation to Recommendation 1 above.<sup>4</sup>

The language of the Report overall gives rise to considerable concern that the “linked or thematic cases emerging from the conflict” is no more than code for a further attempt to resurrect the myth of collusion. Having utterly failed to produce evidence of such abuse to the required standard, there is now an attempt to advance the rehabilitation of the criminals by lowering the threshold of proof required to demonstrate wrongdoing on the part of those who made sacrifices over forty years in order to save life and uphold the law. ***This is not and never will be acceptable to our members and their families.***

9. *The Legacy Commission’s mandate would be for a fixed period of five years.*

We **do not agree** with Recommendation 9.

As we do not accept the need for a Legacy Commission it follows that we do not see the requirement for any time limit. Indeed we are somewhat alarmed by the language of the NIO Consultation Paper, which appears to be preparing the ground for some sort of extension of the remit. We do not need another self-perpetuating bureaucracy in any case: one which would be perceived by many to be following a partisan agenda would be even worse and would diminish rather than enhance our prospects of any form of reconciliation.

10. *The Office of the First Minister and Deputy First Minister (OFMDFM) should join the British and Irish Governments in implementing this initiative.*

We **do not agree** with Recommendation 10.

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<sup>4</sup> Vide supra, p 3

As we do not support the concept of a Legacy Commission it follows that we do not believe that any body should implement this initiative.

As an aside, we doubt whether there would be much enthusiasm for this in the Republic of Ireland, bearing in mind that many people in Northern Ireland, and perhaps some in Great Britain, might regard the role of the Government of the Republic of Ireland during the last forty years as coming within the realm of “linked or thematic cases”.

*11. Society issues arising from the conflict which should be tackled include: addressing sectarianism; promoting remembering activities; working with young people; providing improved services for healthcare needs; ensuring an even spread of economic benefits; and helping those exiled from Northern Ireland during the conflict to return.*

We **do not agree** with Recommendation 11.

Our views on the Legacy Commission have been made clear. Many of the “society issues” which have been identified are common to many modern Western societies in some form or another, even if what the Report refers to as the “conflict” has brought them into sharper focus here. We already have mechanisms for dealing with them, for example the Community Relations Council and various initiatives by the Northern Ireland Executive.

Nor do we support the idea that any attempt should be made to “ensure an even spread of economic benefits”. Resources, including taxpayers’ money, international donor money or charitable donations, should be concentrated on areas of need, on areas where there is some prospect that its deployment will deliver benefit. An “even” spread implies that economic benefits are comparable to a bag of sweets which should be shared equally among well-behaved children in order to ensure fairness.

*12. The Reconciliation Forum should help to address these issues by analysing activity undertaken; considering the need for further activity; giving advice to Government and others; advising on strategies and on development and delivery of services; and deciding on priority areas of activity.*

We **do not agree** with Recommendation 12.

We do not support the concept of a Reconciliation Forum and it follows that we do not support this proposal for its functions. We believe that Recommendations 11, 12, 13 and 14 amount to an unwelcome invitation to duplicate or even undermine the work of existing bodies such as the Community Relations Council, Healing Through Remembering, CVSNI etc.

*13. The Legacy Commission should act as a champion for these society issues.*

We **do not agree** with Recommendation 13.

*14. The Legacy Commission should take the lead in ensuring that sectarianism continues to be addressed, including through setting the direction for the debate and by highlighting the contribution that all sectors of society can make.*

We **do not agree** with Recommendation 14.

There are other bodies which might be considered to have a role in challenging sectarianism, in particular the Community Relations Council, the Equality Commission, the churches, business leaders and trades unions.

*15. The Legacy Commission should engage specifically with the Christian Churches in Northern Ireland to encourage them to review and rethink their contribution to a non-sectarian future in the light of their past, particularly in the area of education.*

We **do not agree** with Recommendation 15.

We see no role for any Legacy Commission and it follows that we do not support the recommendation. We understand that the Christian Churches have their own outreach programmes. Such activity is to be welcomed and encouraged, but it hardly requires a Legacy Commission to do this.

*16. The guidance produced by the Quigley-Hamilton working group, to eliminate discrimination against those with conflict-related convictions, should be incorporated into statute and made applicable to the provision of goods, facilities and services as well as recruitment.*

We **do not agree** with Recommendation 16.

Convicted criminals already benefit from the provisions of the Rehabilitation of Offenders Act. We would have serious concerns about the introduction of any statute which were designed to inhibit the right of, for example, employers, to exercise proper diligence and discretion in the conduct of their business.

Many people would consider any criminal conviction, including those which the Report euphemistically describes as “conflict-related”, as being “materially relevant” to their relationship with the convicted person. Whilst this is clearly a political issue, the advice of those with expertise in penology would be helpful. Our particular concerns would revolve around how such a policy might impact upon the police, the prisons, the civil service and the wider public sector.

*17. A new independent Unit dealing with historical cases would be created within the Legacy commission, which would continue to review and investigate historical cases, backed by police powers. This would constitute the second strand of the Commission's work.*

**We do not agree** with Recommendation 17.

This recommendation ranks highly amongst the least acceptable and most pernicious of a series of unacceptable recommendations. There is no rationale offered for the establishment of yet another body with police powers. What is the basis upon which it would investigate cases? If it is indeed "envisaged that very few prosecutions would result" then what is the point? What is meant by "independent"? Such a body could not be independent of the wider criminal justice system: or are we to have another fiasco like the establishment of the wholly unaccountable office of the Police Ombudsman for Northern Ireland?

The investigation of crime is a matter for the police, who have the necessary expertise, experience, access, information, powers and accountability mechanisms. They should be given the necessary resources to do their job. The criteria upon which the selection of matters for investigation should be made should include the seriousness of the matter, the evidence which is or which may become available and the likelihood of success. It should not include the political aspirations of parties or pressure groups or the continued repetition of palpably spurious and unfounded allegations.

Our experience of recent years is that, for the sake of political expedience, gross, crass and hypocritical double standards have been applied by those in authority. Where prosecutions of police officers, serving or retired, have failed (because they were never justified in the first place) other methods have been used to denigrate the efforts of those who sought to protect the community from criminality. For example, public inquiries have been instituted and the provisions of Section 62, Police (Northern Ireland) Act have been abused in order to make or to repeat wholly erroneous allegations.

This recommendation carries with it a significant risk of exacerbating the damage which has already been done to the right to a private family life of many retired police officers. Our arguments and some examples were set out in our initial Position Paper.<sup>5</sup>

*18. The new Review and Investigation Unit would take over the work of the Historical Enquiries Team and the Police Ombudsman's Unit dealing with historical cases. The need for these would fall away when the new Unit is established. The new Unit would build on the work they have done to date.*

**We do not agree** with Recommendation 18.

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<sup>5</sup> Vide sub, for example p 27

The arguments to support our view in relation to this recommendation would be similar to those which were advanced in relation to Recommendation 17 above and in our initial Position Paper.

In relation to the Report's suggestion that such a development might obviate duplication in historical enquiries, we believe that the opposite is more likely to be the case. Not only would there necessarily be much going over of existing material, but there would also be likely to be a great deal of re-learning of previously learnt lessons.

One lesson for the Government to learn is that bodies with police powers must be subject to proper accountability mechanisms.

*19. The process of recovering information of importance to relatives (information recovery) would be separated from the investigative procedure and be subject to a distinct process within the Legacy Commission under a separate Commissioner. This would constitute the third strand of the Commission's work.*

**We do not agree** with Recommendation 19 in its present form.

Information recovery as envisaged *could* be managed separately from criminal investigations; but it must be remembered that much of the necessary information is likely to be held by the Senior Investigating Officer (SIO). There may be legal issues involved. There might be a role in this area for the Victims' Commissioners, receiving information from a leaner HET.

**We do not agree** with the use of protected statements. We do not see how the "Star Chamber" proposals could meet modern legal and Human Rights standards. We would expect the outcome to be that retired police officers would be compelled to give evidence, be subjected to unfounded criticism, be confronted with partial records and be challenged on the basis of self-serving protected statements made by criminals and their political mouthpieces. The experience of our members under the current arrangements for "truth recovery" (public inquiries, irresponsible and disingenuous conduct of the previous Police Ombudsman, public comments on reports etc) would provide absolutely no basis for confidence in any new system which failed to address issues of Human Rights, justice, fairness and common decency.

The current proposals carry a significant risk of attributing undue credence to tainted, incomplete or partisan information. They are designed to facilitate further criticism of the State rather than its adversaries and therefore, by implication, further criticism of those who sought, often at considerable cost to themselves and their families, to uphold the laws of that State.

Our further views on this and on the issue of compulsion in relation to evidence and documents are set out in our Position Paper.

*20. In the fourth strand of its work, the Legacy Commission would examine themes arising from the conflict which remain of public concern, such as specific areas of paramilitary activity, or alleged collusion. This thematic examination would take place without public hearings. This would facilitate more open and frank disclosure and avoid the constant publicity of present inquiry proceedings.*

We **do not agree** with Recommendation 20.

Our views on this wholly unacceptable proposal are set out in our initial Position Paper. We are highly sceptical of the use of the expression “public concern” to describe the narrow political agendas of political parties, partisan organisations and pressure groups. There is no evidence or likelihood that criminals will discuss their conduct frankly in secret hearings, which would be likely to become another vehicle for the continued repetition of baseless allegations against the security forces. These allegations would doubtless be carefully rehearsed and repeated outside the hearings in the belief that the more law-abiding participants would feel inhibited by the rules of such tribunals in relation to any public response or rebuttal.

We emphatically **do not agree** that such hearings should be in private, that they should have the right to compel witnesses or that the rights of people so compelled or named in evidence would in any way be protected.

And it should not be forgotten that the State may also feel less than inclined to be completely frank with any such tribunal. The Security Service still requires secret intelligence in its current struggle with those who present a physical threat to national security.

*21. There would no new public inquiries. The question whether to proceed with the promised Finucane Inquiry is a matter for the British Government but the issues raised by this case could be dealt with by the Legacy Commission.*

We **agree in part** with Recommendation 21.

We **agree** that there should be **no new public inquiries**. These have been selected purely for their political expedience. It is hard to envisage any new public inquiry into atrocities carried out by criminals which might be perceived to have the potential for embarrassing those who are currently engaged in the political process.

We **do not agree** that there is **any role for any Legacy Commission** in relation to the campaign surrounding the Finucane case or any other matter.

Our collective experience of public inquiries as they relate to the police and to retired police officers in particular is that they are selective, partisan, unfair, stressful, divisive, expensive and pointless. Additionally they present a threat to the current security and the family life of those involved.

*22. The outstanding Inquests would remain with the Coroners Service. Criminal case reviews would continue to be pursued through the Criminal Cases Review Commission.*

We **agree** with Recommendation 22 **in relation to criminal case reviews**. We believe that the outstanding Inquests should not be allowed to degenerate into mini public inquiries as this would also be seen as selective treatment and would inhibit reconciliation. Government should therefore find an administrative process, such as Special Coroners and Rules, for concluding the matters speedily. Precedent already exists, for example in relation to Immigration Appeals and the re-call (on the basis of intelligence) of prisoners released under the provisions of the Belfast Agreement.

We do not believe that there is any role in this (or any other) matter for any Legacy Commission.

*23. The Group is not proposing an amnesty but recommends that the Legacy Commission itself make recommendations on how a line might be drawn at the end of its five-year mandate so that Northern Ireland might best move to a shared future.*

We **agree in part** with Recommendation 23.

We **agree** that any form of **amnesty** for criminal acts would be entirely **unjust, inappropriate** and **highly damaging to public confidence** in the rule of law and the political process.

We do not believe that it will be possible to find any “mechanism” by which to “draw a line” after five years. Moving on from the past will be achieved by people changing their behaviour, their positions and their attitudes and not by the imposition of any mechanisms, well-intentioned or otherwise.

*24. The Legacy Commission should, through the Reconciliation Forum, support CVSNI in facilitating and encouraging the telling of stories, including by young people, about the impact of the conflict on individuals and communities; and the stories of intra-communal differences.*

We **do not agree** with Recommendation 24.

There are of course problems with storytelling as a means of promoting reconciliation. The stories themselves are unlikely to be “balanced”, even if the surroundings, the company or the context in which they are told are designed to ensure a fair hearing for all. In an inappropriate context storytelling might amount to no more than the rehearsing and even the reinforcement of entrenched views or the opportunity for the spread of propaganda. Television “documentaries” which appear to glorify prison escape are unlikely to contribute much to reconciliation.

But there *is* evidence that in some circumstances storytelling can have a significantly beneficial effect for both teller and listener – enhanced understanding, greater mutual sympathy or even empathy or perhaps just the opportunity to have one’s voice heard, to believe that somebody cares. We believe that organisations such as Healing Through Remembering would be better placed than a Legacy Commission (with all its baggage from the other strands of its work) to assist with this process.

*25. CVSNI should also be supported in developing the existing ways in which the conflict and its impact are remembered. This should include the development of educational projects; providing support and guidance for those facilitating remembering projects in line with certain criteria; and promoting the value of remembering across society as a means of achieving reconciliation.*

We **agree** with Recommendation 25.

We further agree that the idea of developing through such remembering should not be restricted to the narrow field of victims and survivors (albeit that in the Northern Ireland context that field may not in fact be particularly “narrow”). We agree that the CVSNI have a lead role to play; but we see no role for the proposed Legacy Commission or the proposed Reconciliation Forum.

*26. Future storytelling initiatives should be developed taking account of certain criteria.*

We **agree** with Recommendation 26.

We agree with the principle which is articulated in this recommendation and would refer to our comments in relation to Recommendation 24 above. We understand that there is already work ongoing in this arena and do not see the need for the introduction of any additional level of organisation such as a Legacy Commission or Reconciliation Forum.

*27. Full support should be given by government, the private and voluntary sector, including the churches, to the continuation of the annual Day of Reflection, initiated by Healing Through Remembering, on 21<sup>st</sup> June each year. Consideration should be given to renaming the event a Day of Reflection and Reconciliation.*

We **agree in principle** with Recommendation 27.

The sentiments and aspirations expressed in the recommendation are worthy and are not challenged by us. We understand that there may be some reservations within Healing Through Remembering concerning the addition of the word “reconciliation” to the designation of the day. And we see no reason

to push aside the existing organisation and impose the introduction of a Chair of any Legacy Commission acting through any Reconciliation Forum.

*28. Each year, on or around the Day of Reflection and Reconciliation, the First Minister and Deputy First Minister should together make a keynote address to the Northern Ireland Assembly and invited guests, reflecting on the past in a positive way and confirming their commitment to lead Northern Ireland society towards a shared and reconciled future.*

We **do not agree** with Recommendation 28.

We believe that there is already a duty incumbent upon all political leaders to demonstrate commitment to the values which underpin a peaceful, democratic and law-abiding society, whatever national aspirations or political loyalties its individual citizens may have. In our view this recommendation might politicise the Day of Reflection (and Reconciliation) in a way that was not intended and which would not be helpful.

It is difficult to imagine how such leaders might effectively reflect on the past “in a positive way”. Tales of heroism and endurance, even on the part of medical staff or fire fighters, may still be viewed as partisan by some listeners. Developments in the treatment of traumatic injury and the art world’s response to the suffering of the last forty years can be addressed other than by speeches from the First and Deputy First Ministers.

*29. The Reconciliation Forum should take the lead in implementing an initiative, at the end of the five year mandate of the Legacy Commission, whereby Northern Ireland, with the support of the two Governments and the Northern Ireland Assembly, should conduct a ceremony remembering the past and all those who suffered during the conflict.*

We **do not agree** with Recommendation 29.

It is assumed that the second Government to which reference is made is that of the Republic of Ireland and it is acknowledged that their citizens also suffered appallingly at the hands of criminals. What is not at all clear is how it is thought that such a ceremony might contribute to drawing a line under the past. Might it not equally rekindle old flames? Or is this intended merely to provide another job for the unwanted Reconciliation Forum?

By what criteria has the timeline of five years been established? We believe that “drawing a line under the past” (if that expression is a valid one) is a process that will develop gradually rather than an event which can be scheduled.

*30. The Group therefore recommends that the Commission should, at the end of its work, challenge the people of Northern Ireland, including political parties and whatever remnant or manifestation of paramilitary groups remain, to sign a declaration to the effect that they will never again kill or injure others on political grounds.*

We **do not agree** with Recommendation 30.

Whilst some aspects of this aspiration may be regarded as worthy, it shows the same insensitivity towards those who did *not* resort to unwarranted violence as many other parts of this flawed report. Our members have no need to give any such undertaking: we did not seek to kill or injure anyone on political or any other grounds. This recommendation lumps everybody in Northern Ireland together in an appalling example of totally unacceptable moral equivalence.

Some politicians (from all sides) may also feel that the recommendation belittles or underplays some of the difficult decisions which they made and undertakings which they gave in order to move politics forward at the time of the Good Friday Agreement and subsequently during the fraught life of the Assembly.

*31. A shared memorial to remember conflict in and about Northern Ireland should be kept under consideration by the Reconciliation Forum and criteria should be observed, in working towards a shared memorial conducive to reconciliation. The Legacy Commission should, at the end of its five year life-span, make recommendations to Government in this regard.*

We **do not agree** with Recommendation 31.

We believe that the CGP were correct to identify that the time was not right for such a development. Many people would find such a concept offensive. At present different groups have their own memorials. Doubtless some already find the memorials of others offensive. The abuse of memorials in “shared” areas could lead to additional delay in the prospect of reconciliation. Nor are we convinced by the criteria. The purpose of memorials may in some cases quite legitimately be to “glorify” in some way those whom they commemorate and their achievements.

The problem of memorials which are perceived by some to be objectionable will not be addressed successfully by the introduction of a Legacy Commission which imposes criteria for what is acceptable. We know well which groups would be bound to adhere to directions and which groups would ignore them.

### 3 - Equality Impact Assessment

In the terms of Section 75 of the Northern Ireland Act 1998 we do not believe that retired police officers constitute a group which may be distinguished by “religious belief, political opinion, racial group, age, marital status or orientation”; or by the other criteria set out: and we make no special pleadings in that regard.

We note that, when it suited them, our opponents inaccurately portrayed us as Protestant and Unionist; and there were undoubtedly more men than women in our ranks.

In the wider context the recommendations of the Report, if implemented in full, would be likely to have differing impacts on different parts of the community. And it is even more likely that they would be *perceived* as having differing impacts on different parts of the community. There are significant political implications to all these arguments and NIRPOA will restrict itself to a brief discussion on the potential impact on our members.

Whilst we do not believe that the provisions of Section 75 will afford our members any protection, we would nevertheless draw to the reader’s attention what we believe to be the significant deleterious effects which might result for our members if the Government were minded to support the recommendations in relation to the proposed Legacy Commission and aspects of the truth recovery process.

These arguments are not new. They can be found in our initial Position Paper. They concern the burden which is placed upon accountable organisations and the members or former members of those organisations. In particular we oppose the imposition of a rash of new obligations to participate in one-sided inquiries without any form of Human Rights compliance in terms of Article 6 (right to a fair hearing, equality of arms etc) and Article 8 (right to private and family life). The impact is likely to be particularly harsh for those with experience in the Criminal Investigation Department (CID) or the Special Branch (SB); or for those who held senior rank.

#### **4 - Conclusion**

In view of the problems which led to the creation of the Consultative Group on the Past it was never likely that they could produce a report which would achieve widespread consensus.

Our particular concern is with the potential impact upon our members rather than with the wider political considerations. We believe that to date all the mechanisms deployed on investigations into the past, other than criminal investigations undertaken by the police themselves, have been flawed because their purpose has been to appease those criminals and their political fellow travellers whose sole purpose has been to undermine the rule of law and to demoralise and demonise those who gave their professional lives to the work of upholding the law. This may be a natural part of the work and agenda of any organisation which does not accept the legitimacy of the State: but to us it was and remains wholly unacceptable. We are concerned by the manner in which the Group appears to have embraced the pernicious doctrine of moral equivalence: and we remain bitterly disappointed at the failure of our own Government to identify with those who served the people and the law.

We are resolutely opposed to any further movement down the road towards partisan, pointless, costly, time-consuming and divisive inquiries, especially those in which our detractors will be free to make further unfounded allegations without ever facing their own responsibilities.

## 5 - 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 Past<sup>6</sup> (“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 clergymen<sup>7</sup>. The

<sup>6</sup> Report of the Consultative Group on the Past, presented to the Secretary of State for Northern Ireland, Belfast, 23 January 2009

<sup>7</sup> 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 forgiveness<sup>8</sup>.

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”<sup>9</sup> 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.

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<sup>8</sup> Report, pp 25, 54-55

<sup>9</sup> 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”<sup>10</sup>; and it offers an explanation for this choice of vocabulary<sup>11</sup>. 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”<sup>12</sup>, 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 Commission<sup>13</sup>. NIRPOA’S concerns regarding the Legacy Commission are outlined below<sup>14</sup>.
7. Another theme running through the Report is the constant use of the word “collusion”<sup>15</sup>. It is clear that members of the CGP have listened well to the propagandists whose efforts over the last twenty years have

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<sup>10</sup> Report, *passim*

<sup>11</sup> Report, p 51

<sup>12</sup> Report, *passim*

<sup>13</sup> Report, pp 68-69

<sup>14</sup> *Vide sub*, p 6 *et seq.*

<sup>15</sup> 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 expense<sup>16</sup>; 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 Ireland<sup>17</sup>.

8. Instead the Report asserts that “The issue of alleged collusion has not been properly dealt with”<sup>18</sup>. 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 misconduct<sup>19</sup>.
  
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.”<sup>20</sup> The Director gave his consideration and decided that the evidence was **not** sufficient to meet that test.

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<sup>16</sup> For example, the Rosemary Nelson Inquiry, the Billy Wright Inquiry

<sup>17</sup> 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](http://www.nirpoa.org)

<sup>18</sup> Report, pp 35, 124

<sup>19</sup> Often referred to as “Stevens III”; see Report p 178

<sup>20</sup> 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 Belfast<sup>21</sup>. This much publicised “Statement”, which was a series of unsubstantiated assertions, was comprehensively demolished by NIRPOA in their published rebuttal<sup>22</sup>. 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”<sup>23</sup>.
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”<sup>24</sup> appear to be more reasonable and indeed

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<sup>21</sup> Report, pp 178-179; referring to Section 62, Police (Northern Ireland) Act, 1998 Statement by Police Ombudsman on “Operation Ballast”, Belfast, January 2007

<sup>22</sup> “How the Ombudsman Got It Wrong”, published by NIRPOA, Belfast, March 2007

<sup>23</sup> Hansard, 17 July 2007, Column 185W

<sup>24</sup> 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 definition<sup>25</sup>. 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-referrals<sup>26</sup>. 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 Report<sup>27</sup> 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 Recovery<sup>28</sup>.

### **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

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<sup>25</sup> Report, p 67, quoting Article 3, Victims and Survivors (Northern Ireland) Order 2006

<sup>26</sup> Figures from PRRT bulletin, January 2009

<sup>27</sup> Report, p 97

<sup>28</sup> Report, pp 125-126

things went wrong and why they went wrong; to gain greater understanding<sup>29</sup>.

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 mandatory<sup>30</sup>. And the Report appears to advocate giving the Commission authority to overrule state agencies where there may be a dispute over the supply of information<sup>31</sup>. Inquiries held in private have not always earned public confidence and the present proposals smack of the “Star Chamber”<sup>32</sup>; certainly the privacy and compellability aspects are difficult to reconcile with the aspirations of the CGP to make only recommendations which are Human Rights compliant<sup>33</sup>. 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”<sup>34</sup>. 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 whatsoever<sup>35</sup>. This led to severe injustices which have yet to be remedied and which must not be repeated.

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<sup>29</sup> Report, p 129

<sup>30</sup> Report, p 148

<sup>31</sup> Report, p 151

<sup>32</sup> Secret courts which increased the unpopularity of the Stuart monarchy during the early 17<sup>th</sup> century (prior to the advent of ECHR!)

<sup>33</sup> Report, p 50

<sup>34</sup> Report, p 125

<sup>35</sup> 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 individuals<sup>36</sup>, 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 Commission<sup>37</sup> there arises the possibility of irresponsible and unaccountable behaviour such as was seen with the publication of the former Police Ombudsman's "Ballast" Statement<sup>38</sup>.
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

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<sup>36</sup> Report, pp 129, 152

<sup>37</sup> Report, p 152

<sup>38</sup> *Vide supra*, p 5 and footnote 16

success to date resulting from a “walk-in”<sup>39</sup>. 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”<sup>40</sup>; 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”<sup>41</sup>, but the reader will struggle to find this information in the Report<sup>42</sup>. 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”<sup>43</sup> might be selected, although it makes no secret of its determined agenda to keep the myth of collusion at the forefront of our minds<sup>44</sup>. There is a danger here that politically-driven pressure groups will ensure that we continue to look backwards, instead of striving to

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<sup>39</sup> Report, pp 106-107

<sup>40</sup> Quoted in Report, p 115

<sup>41</sup> Fay, Morrissey, Smyth, Wong, “Northern Ireland’s Troubles: The Human Costs” Pluto Press, London 1999; see also <http://cain.ulst.ac.uk>

<sup>42</sup> Report, pp 60-61

<sup>43</sup> Report, p 135

<sup>44</sup> *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 1998<sup>45</sup>.

### **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

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<sup>45</sup> "Good Friday Agreement" 1998, "Belfast Agreement"; and subsequent referenda

informants<sup>46</sup>. 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”<sup>47</sup> is compromised or that they have anything to “admit”<sup>48</sup>. 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

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<sup>46</sup> Report, pp 71-72

<sup>47</sup> Report, p 71

<sup>48</sup> Report, p 72