



House of Commons  
Northern Ireland Affairs  
Committee

---

# The Report of the Consultative Group on the Past in Northern Ireland

---

Second Report of Session 2009–10

**EMBARGOED ADVANCE COPY:**  
**Not to be published in full, or in part,**  
**in any form before**  
**00.01 hrs GMT Wednesday 16 December 2009.**





House of Commons  
Northern Ireland Affairs  
Committee

---

# The Report of the Consultative Group on the Past in Northern Ireland

---

**Second Report of Session 2009–10**

*Report, together with formal minutes, oral and  
written evidence*

*Ordered by the House of Commons  
to be printed 9 December 2009*

**EMBARGOED ADVANCE COPY:  
Not to be published in full, or in part,  
in any form before  
00.01 hrs GMT Wednesday 16 December 2009.**

HC 171  
Incorporating HC 287i, ii and iii Session 2008-09  
Published on 16 December  
by authority of the House of Commons  
London: The Stationery Office Limited  
£0.00

## The Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

### Current membership

Sir Patrick Cormack MP (*Conservative, South Staffordshire*) (Chairman)  
Mr David Anderson MP (*Labour, Blaydon*)  
Rosie Cooper MP (*Labour, West Lancashire*)  
Christopher Fraser MP (*Conservative, South West Norfolk*)  
Mr John Grogan MP (*Labour, Selby*)  
Mr Stephen Hepburn MP (*Labour, Jarrow*)  
Lady Hermon MP (*Ulster Unionist Party, North Down*)  
Kate Hoey MP (*Labour, Vauxhall*)  
Dr Alasdair McDonnell MP (*SDLP, Belfast South*)  
Mr Denis Murphy MP (*Labour, Wansbeck*)  
Stephen Pound MP (*Labour, Ealing North*)  
Mrs Iris Robinson MP (*Democratic Unionist Party, Strangford*)  
David Simpson MP (*Democratic Unionist Party, Upper Bann*)

### Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/niacom](http://www.parliament.uk/niacom).

### Current Committee staff

The current staff of the Committee are David Weir (Clerk), Alison Groves (Second Clerk), Emma McIntosh (Senior Committee Assistant), Becky Crew (Committee Assistant), Karen Watling (Committee Assistant), Becky Jones (Media Officer) and Mr Tes Stranger (Committee Support Assistant). Georgina Holmes-Skelton was the Committee's Second Clerk during this inquiry.

### Contacts

All correspondence should be addressed to the Clerk of the Northern Ireland Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 2173/1341; the Committee's email address is [northircom@parliament.uk](mailto:northircom@parliament.uk)

# Contents

---

	<i>Page</i>
<b>Report</b>	
<b>1 Introduction</b>	<b>3</b>
<b>2 The Report of the Consultative Group on the Past in Northern Ireland</b>	<b>6</b>
The consultation process	6
Public reception	7
<b>3 The Legacy Commission</b>	<b>10</b>
Mandate	10
Implementation	12
Period of mandate	14
International commissioner	16
Funding	16
Cooperation with the Irish Government	17
<b>4 Promoting Reconciliation</b>	<b>19</b>
Financial support for victims	19
Defining "victims"	22
Reconciliation Forum	24
Funding services for victims and survivors	27
Remembering activities	28
<b>5 Policing the Past</b>	<b>31</b>
Ongoing historical enquiries	31
Implications of transferring responsibility	31
Costs	33
Truth recovery and thematic investigation	34
<b>6 Public inquiries</b>	<b>38</b>
The future of public inquiries	38
<b>7 Conclusion</b>	<b>39</b>
<b>Conclusions and recommendations</b>	<b>40</b>
<b>Formal Minutes</b>	<b>45</b>
<b>Witnesses</b>	<b>46</b>
<b>List of written evidence</b>	<b>46</b>
<b>List of unprinted evidence</b>	<b>47</b>
<b>List of Reports from the Committee during the current Parliament</b>	<b>48</b>



# 1 Introduction

---

1. The Consultative Group on the Past was established in 2006 by the then Secretary of State, Rt Hon Peter Hain MP, as an independent group to seek views across the community in Northern Ireland on the best way to deal with the legacy of the past. It was co-chaired by Rt Rev. the Lord Eames OM and Mr Denis Bradley. The other members were Mr Jarlath Burns, Rev. Dr Lesley Carroll, Professor James Mackey, Mr Willie-John McBride MBE, Ms Elaine Moore and Canon David Porter. Mr Martti Ahtisaari, former President of Finland, and Mr Brian Currin, founder of the National Directorate of Lawyers for Human Rights, acted as International Advisers. The Group was asked to:

- consult across the community on how Northern Ireland society can best approach the legacy of the events of the past 40 years;
- to make recommendations, as appropriate, on any steps that might be taken to support Northern Ireland society in building a shared future that is not overshadowed by the events of the past; and
- present a Report setting out conclusions to the Secretary of State for Northern Ireland.<sup>1</sup>

2. The Consultative Group was initially asked to produce its report by summer 2008. However, owing to “the breadth of the mandate and the extent of the consultation”<sup>2</sup> the Group did not report until 28 January 2009. The final report contained 31 recommendations on a broad range of activities relating to reconciliation in Northern Ireland.

3. In attempting to establish the best way for Northern Ireland to move forward from the events of the past, the Consultative Group undertook a huge task. Members spoke to individuals from across Northern Ireland from all walks of life and endeavoured to listen dispassionately to the often harrowing stories and the needs of all those affected by the Troubles. They were tasked to take all views into account, despite often contradictory perspectives, and to try to build a way forward for everyone in Northern Ireland. The enormity of this task cannot be underestimated, and the Group’s report represents a very serious attempt at addressing the lingering problems faced by society in Northern Ireland as a result of the Troubles.

4. Given the nature of the past and the raw hurt many still feel in Northern Ireland, it was inevitable that the report would spark debate. However, the extent of the controversy and depth of public feeling that became apparent following publication — in relation, in particular, to one recommendation — had not been foreseen. It was for this reason that we undertook a rather wider inquiry into the report of the Consultative Group than we had first envisaged. In February, we announced that we would undertake a short inquiry into the Group’s findings and would take oral evidence from Lord Eames and Mr Bradley. We had expected that this session, followed by a session with the Secretary of State for

---

1 The Report of the Consultative Group on the Past, January 2009, p 44

2 Ibid p 22

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

Northern Ireland, would be sufficient to gain an understanding of the Group's broad recommendations. However, the detailed nature of the recommendations as well as the sheer strength of public reaction, led to the extension of our inquiry to four evidence sessions and a call for written evidence from the public.

5. How Northern Ireland responds to the past is a critical question for all sections of its community. The Consultative Group's report contains bold recommendations as to how to deal with the past and look to the future. The fact that public reaction was so strong is itself evidence of the need to address the deep-rooted divisions that continue to exist within Northern Ireland. The sectional divisiveness of that reaction in itself highlighted the danger that implementing proposals not supported by the two main parts of the community in Northern Ireland would do more harm than good. In this Report we outline the conclusions we have drawn from our inquiry. We have reluctantly concluded that there is not enough cross-community consensus at present on many of the issues that the Consultative Group raised for the wide-ranging project that it recommended to succeed. It is crucial that any major new body in Northern Ireland, such as the proposed Legacy Commission, should have cross-community support. Without that, it could not hope effectively to fulfil its mandate of helping to lead Northern Ireland towards reconciliation and a peaceful shared future. A body trusted by some but not by a significant number in both communities would risk undoing the progress made in Northern Ireland over the last 10 years.

6. We acknowledge that, even if the time is not right for the kind of all-embracing developments advocated by the Consultative Group, a do-nothing approach is neither practicable nor conducive to the continued development and healing of society in Northern Ireland. Whatever view individuals and parties may take of wider politics, common to all successful development of individuals, communities and politics (as well as security) must be improved relations between the two main communities (and indeed increasingly with growing ethnic minorities too). We recommend that the issue of the past be approached in a more incremental way than proposed by the Consultative Group, but still crucially within a coherent overall framework, supporting and developing a number of essential initiatives (discussed later in our Report) aimed largely at improved healthcare for individuals affected by events of the Troubles and at improving community relations. But we also recognise, as discussed later in our Report, that even such an incremental approach may require both the Government and the Northern Ireland Executive to contemplate measures which might well involve fraught, complex and potentially highly contentious questions about truth recovery in particular. In short, as the Consultative Group recognised, there are no easy answers or quick solutions.

7. On 24 June 2009, the Secretary of State for Northern Ireland launched a public consultation into the recommendations of the Consultative Group. While we note the long, five-month, gap between the publication of the report and the launch of the consultation, it does present an opportunity for reflection and to gauge public reaction, to the Consultative Group's proposals in perhaps a more measured manner than was possible at the time of its publication. We hope that our Report will contribute to that consultation and to the wider debate on the best way to promote reconciliation in Northern Ireland in the coming years.

8. Taking no action to resolve the remaining difficulties in Northern Ireland is not an option, and we believe that a number of proposals in the Consultative Group's report should be built upon. To this end, we have examined the recommendations of the Consultative Group with regard to the individual functions of the Legacy Commission from the perspective that, while such a Commission cannot be successfully implemented at present, it is possible that some similar body could be effective at some stage in the future following further public debate and consensus-building. Some of our proposals could be implemented now, others are considerations for the future. We thank all the witnesses who provided evidence, written and oral, and our specialist adviser David Watkins, for their invaluable and thoughtful contributions.<sup>3</sup>

---

3 David Watkins has been a non-executive director of the Police Rehabilitation and Retraining Trust since 1 October 2009.

## 2 The Report of the Consultative Group on the Past in Northern Ireland

---

### The consultation process

9. In September 2007, the Consultative Group invited individuals and groups affected by the conflict, in Great Britain and the Republic of Ireland as well as in Northern Ireland, to share their views on:

- the legacy of the past 40 years;
- any lessons learned; and
- the steps that might be taken to support Northern Ireland society in building a shared future that is not overshadowed by the events of the past.

10. During the initial consultation phase, the Consultative Group placed articles and adverts in newspapers, undertook radio and television interviews, and sent letters directly to interested groups, in order to publicise and explain the intention and scope of the inquiry. Over the course of the consultation period, the Group received 290 written submissions and 2,086 standardised letters. Public meetings were held in Belfast, Omagh, Armagh, Ballymena, Bangor, Enniskillen and Derry/Londonderry. The locations were chosen to be geographically accessible for as many people as possible, and approximately 500 people attended. Group members and staff also attended seminars, workshops and conferences held by independent organisations and groups where possible. Where attendance was not possible, they received feedback on the issues covered by these events. We note that no public meetings were held in Great Britain, where the number of deaths resulting from the Troubles, though proportionally small, was nevertheless significant, and we feel it right to recognise that the number attending meetings in Northern Ireland was not large.

11. The Consultative Group also met privately with 141 individuals and groups across Northern Ireland, the Republic of Ireland and Great Britain.<sup>4</sup> The Group commented that “[t]hese private meetings were a crucial part of the Group’s engagement, allowing it to hear from those who were not comfortable engaging in more formal meetings”.<sup>5</sup>

12. The report took account of existing work and research undertaken into ways of dealing with the past by a large range of individuals, groups, non-governmental organisations, statutory bodies and Governments. The Consultative Group paid particular respect to the work of Healing Through Remembering (HTR), a cross-community project made up of individual members from a range of political backgrounds. It also drew on the experience of other post-conflict countries and Truth Commissions around the world, and

---

4 Including, in private, the Northern Ireland Affairs Committee, at Stormont in October 2008.

5 The Report of the Consultative Group on the Past, January 2009 p 46

particularly on the experiences of those involved in the implementation of the Truth and Reconciliation Commission in South Africa.<sup>6</sup>

13. The Consultative Group adopted principles against which its recommendations should be measured, with one key principle identified as standing out in particular:

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.<sup>7</sup>

14. From this first premise, further principles followed:

- dealing with the past is a process and not an event;
- sensitivity towards victims and survivors is essential;
- recommendations should be human rights-compliant;
- relationships matter and are the foundation for reconciliation; and
- consensual agreement is the ideal.

15. The Consultative Group reported on 28 January 2009, concluding:

The Group acknowledges that its recommendations represent significant challenges for many within society. This Report will generate further debate on how the past should be dealt with and this will be an important part of taking forward the recommendations.<sup>8</sup>

**16. We welcome the work of the Consultative Group on the Past and recognise the significant time, energy and careful thought that all members of the Group put into compiling their report. The Group consulted widely among communities in Northern Ireland and produced a report which attempted to outline a way forward for everyone. This enormously difficult task was bound to provoke an emotional reaction from all areas of society affected by the Troubles. The final report was the product of a broad consultative exercise, conducted in good faith by the members of the Group.**

## Public reception

17. Initial public reaction to the report greatly concentrated on the widely criticised “recognition payment”. The Consultative Group intended that a one-off payment of £12,000 be made to the nearest relative of each person who died in the conflict as a form of recognition by the state that families on all sides had suffered through bereavement. The families of republican and loyalist paramilitaries as well as families of the security forces and bystanders would all be included. This provoked anger among some victim and

---

6 Ibid pp 45 - 47

7 Ibid p 23

8 Ibid p 159

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

survivor groups and politicians, who believed that this proposal accorded moral equivalence to all those who died. West Tyrone Voice commented:

No amount of spin or political argumentation can change the fact that not one victim of terrorism chose to become that, unlike the terrorists who took up arms against them.<sup>9</sup>

18. The launch of the report at the Europa Hotel in Belfast was disrupted by angry confrontations between some groups and individuals, and subsequent media coverage reflected widespread criticism of this proposal. Gerry Kelly of Sinn Fein described the recommendation as a “mistake”.<sup>10</sup> This view was reflected in several submissions that we received.<sup>11</sup>

19. On 25 February, the Secretary of State for Northern Ireland, Rt Hon. Shaun Woodward MP played down the possibility of the Government implementing the £12,000 payment scheme as proposed by the Consultative Group. He told the BBC:

I have decided however we proceed on this Report, and there are many things I would like to consider in it, I do not think I will be proposing that this particular recommendation is one we should go forward on. There isn't a consensus on it, it is an interesting idea, but very clearly the time is not right for a recognition payment.<sup>12</sup>

20. On 1 April, the Secretary of State told the Committee:

The reason for deciding to move against that one recommendation for a recognition payment was because it was preventing any sensible discussion happening of the rest of the Report, about which I think there is quite a lot of consensus. The particular recommendation on recognition payments clearly had some consensus in some quarters and, as they have described it, it was not only to be found in one quarter but very, very clearly many, many people found it unpalatable, disagreeable and it was clearly getting in the way of sensible discussion<sup>13</sup>

21. On Wednesday 24 June, the Northern Ireland Office (NIO) published its own consultation paper outlining the recommendations of the Consultative Group on the Past in Northern Ireland and inviting comments on them. The NIO document outlines each of the recommendations individually and asks respondents whether they agree with them, along with several more detailed follow-up questions. This consultation closed on 2 October.

22. Having emphatically recommended that this recommendation should not be adopted, we now concentrate on the rest of the Group's report and its other recommendations. **We therefore endorse the Secretary of State's decision to set aside the recognition payment**

---

9 Ev 51

10 “NI Troubles payment is ‘mistake’” BBC News Online, 16 February 2009, news.bbc.co.uk

11 Ev 39, 40, 51 and 56

12 “Woodward rules out Troubles Cash”, BBC News Online, 25 February 2009, news.bbc.co.uk

13 Oral Evidence taken before the Committee on 1 April 2009, HC 404-i, Q 2

proposed by the Consultative Group in order to facilitate discussion of its wider recommendations.

23. Whether or not any or all of the 31 recommendations are implemented, the report provides an opportunity for reflection on the extent to which society as a whole in Northern Ireland has progressed towards reconciliation, the degree and nature of remaining tensions in Northern Ireland, and the work that remains to be done. While we believe that the five-month gap between publication of the Consultative Group's report and the Government's launch of public consultation upon it was unnecessarily long, we hope that the public will have put emotional responses to one aspect of the Group's report to one side and engaged fully with the consultation to establish where consensus lies in relation to the remaining 30 recommendations.

## 3 The Legacy Commission

---

### Mandate

24. The Consultative Group's core proposal was that a Legacy Commission be set up to deal with the legacy of the past by combining processes of reconciliation, justice and information recovery. The Group proposed that this be an independent statutory body with the overarching objective of promoting peace and stability in Northern Ireland. The mandate of the Legacy Commission would be to:

- help society towards a shared and reconciled future, through a process of engagement with community issues arising from the conflict;
- review and investigate historical cases;
- conduct a process of information recovery; and
- examine linked or thematic cases emerging from the conflict.

25. The Commission would, therefore, have three key sections: a Reconciliation Forum addressing societal needs; a Review and Investigation Unit continuing the work presently being undertaken by the PSNI's Historical Enquiry Team (HET) and the Office of the Police Ombudsman of Northern Ireland (OPONI); and a Truth Recovery and Thematic Investigation Unit offering further investigative options for families who are unlikely to be able to pursue prosecution through the courts, and also pursuing wider thematic enquiries emerging from the conflict. Each division would be headed by a separate Commissioner, one of whom would be an International Commissioner, who would also chair the Commission. We will discuss the detailed proposals for these separate aspects of the Legacy Commission later in this Report. Mr Denis Bradley told the Committee:

What we are recommending we think is the most dignified and the most achievable methodology of getting to a place where after five years you can begin to bring down the shutters and say, "We have done our best," because you cannot undo the past. It is not undoable.<sup>14</sup>

26. The response to the proposed Legacy Commission has been somewhat mixed. Most witnesses acknowledged the integrity of the principles upon which the Consultative Group made the recommendations for the structure of the Commission; seeking to facilitate reconciliation through remembering and addressing societal needs relating to the Troubles, and attempting to help Northern Ireland move beyond the past, while retaining some possibility of justice. Nonetheless, serious concerns were expressed about the exact work that such a Commission would undertake. When asked his opinion about the most positive recommendations made by the Consultative Group, Sir Hugh Orde, then Chief Constable of the Police Service of Northern Ireland, told us:

I think it was the structure, in the sense that it tried to bring [...] everything into one place. I think that would have been a positive step forward. It also gave other opportunities to people that did not want the Historic Enquiry Team, which was the only show in town. We said at the beginning — in fact, when we started my expectation was that other things would kick in more quickly. In essence, it formalises a lot of the really good work — healing from remembering; truth recovery, story telling - all the things that we were told, but that were not joined up. I think its strength is its structure, and providing — and it is a big provision [...] — we were satisfied that we could carry on unencumbered by any other administrative difficulty or financial difficulty, then it makes sense to put it all in one place.<sup>15</sup>

27. However, we received evidence from a number of witnesses who were concerned that the Legacy Commission as proposed by the Consultative Group would merely replicate much work undertaken by existing bodies in Northern Ireland. For example, the Northern Ireland Community Relations Council (NICRC) commented:

The Council is not in principle opposed to a body that promotes societal reconciliation. However, we remain seriously concerned about the potential for overlap and duplication in the current proposal, not least with our own work.<sup>16</sup>

28. The Royal Ulster Constabulary George Cross (RUC GC) Foundation had a similar view:

The report suggests many new structures to address the issues relating to the past. It is the contention of the RUC GC Foundation that at best this will lead to duplication or confusion of effort and at worst drive a further wedge between communities who are beginning to learn to live with each other in an unsteady peace. There are already many organisations and groupings working in the identified areas and it might be that the best way to progress matters is by providing additional resources to additional bodies.<sup>17</sup>

29. The Northern Ireland Retired Police Officers Association (NIRPOA) thought that further reflection might be necessary to determine exactly where a body such as the Legacy Commission would fit into existing bodies in Northern Ireland:

I think before anything moves forward we need to have an appraisal of what actually is in place at this moment in time because the feeling coming out of Eames-Bradley is that there is yet another layer of bureaucracy put upon the work of organisations that are actually in place and have been doing good work. [...] I think we need to stop and take a collective long breath and see what is working and fund those issues, and then if there are residual issues that the community at large feels it needs to be addressed then certainly look for softer mechanisms to try and tease out those issues.<sup>18</sup>

---

15 Oral Evidence taken before the Committee on 15 July 2009, HC 745-i, Q 19

16 Ev 48

17 Ev 76

18 Q 114

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

30. There is potential benefit to unifying the various strands of work already being undertaken in Northern Ireland to promote reconciliation under an umbrella organisation. There is also a significant risk that, particularly in the first few years, a great deal of time and money will be spent establishing an organisation to carry out roles which are already being fulfilled by existing bodies. **A Legacy Commission would add real value only if it were qualified fully to take over the functions of bodies such as the Historical Enquiries Team and Police Ombudsman. It is not clear to us that it would greatly enhance the activities of bodies such as the Commission for Victims and Survivors in Northern Ireland, the Northern Ireland Community Relations Council or Healing Through Remembering, unless it were a replacement for, rather than a complement to, them.** There is a danger that Northern Ireland could become overburdened with bodies addressing the Troubles. This would be unhelpful and likely to lead to confusion for the public, with work being replicated unnecessarily, representing an inefficient use of limited resources. We believe that it would be more helpful to give greater support to existing bodies to enable them to fulfil their roles as effectively as possible.

## Implementation

31. It is clear from the reception of the report that society in Northern Ireland continues to be profoundly affected by the past. Serious issues deriving from the Troubles remain unresolved and must be addressed before reconciliation between communities can be achieved. Patricia MacBride, one of the four Commissioners for Victims and Survivors, observed that despite the hostile and emotional response that the publication of the report provoked, tensions between communities had not actually worsened as a result:

I would have to say that I do not believe that the tensions have been increased, I do believe that they have become more apparent and more open. The tensions are there, they have been there, they will continue to be there. What we have within the Report of the Consultative Group on the past is perhaps not a prescription for how we address the legacy of the conflict, what we have is a series of recommendations that may take us some way down the road to doing this.<sup>19</sup>

32. The view that tensions already existed was echoed by NIRPOA, who believed that the report of the Consultative Group had “the potential for producing a focus for existing tensions” and emphasised that the report needed careful handling as a result.<sup>20</sup>

33. Even if the tensions observed following the publication of the report were pre-existing, there is a danger that pursuing activities which do not have cross-community support could give new focus to existing differences and, consequently, prove counterproductive. The RUC GC Foundation was concerned that the implementation of the recommendations of the report would do more harm than good at present:

[...] rather than having the “overarching objective of promoting peace and stability in Northern Ireland”, much of the Report could lead to further division by opening

---

19 Q 77

20 Q 114

up still raw wounds which have not had the time to heal with the potential to destabilise the embryonic political institutions.<sup>21</sup>

34. The Commission for Victims and Survivors believed an understanding had yet to be reached as to what reconciliation of communities in Northern Ireland might constitute in practice:

For some people that may mean them individually becoming reconciled with the events of the past that have impacted upon them, for others it may mean a communal reconciliation between opposing political viewpoints, and for yet more it may mean society as a whole becoming reconciled to moving forward together in a new and inclusive future. The debate therefore about the substantive nature of reconciliation has to, we believe, form part of the debate on how we together move forward and deal with the past. Even if few of the recommendations are ultimately implemented, the publication of the Report of the Consultative Group on the Past has clearly stimulated debate about the how reconciliation is to be understood and achieved in Northern Ireland, and this is to be welcomed.<sup>22</sup>

35. It may be that an open, public discussion is the only way that consensus and understanding can be built with regard to some intensely difficult questions raised by the report. Healing Through Remembering noted:

While the diverse membership of Healing Through Remembering naturally holds a variety of opinions on the individual recommendations in the Report, it feels that this Report offers an opportunity to genuinely engage on the difficult issues of the past.

[...] there is a need for a measured and reasonable debate on the recommendations and an attempt to be made to try to find a measured way of taking this issue forward. The experience of HTR is that honest inclusive debate in an appropriate environment can bring agreement on reconciliations, truth and justice by those who hold opposing views and opinions.<sup>23</sup>

36. While we accept the reasoning behind the recommendations of the Consultative Group regarding a Legacy Commission, we have serious concerns as to the practicality of such a Commission at this time. Such a Commission would have a driving role in creating the consensus by which Northern Ireland society might become united in moving on from the past, but the likelihood of success in that respect could be undermined from the beginning without sufficient cross-community desire to make such an idea work. To invest necessarily substantial sums of money in a Legacy Commission without full cross-community support would be premature and potentially counterproductive. There are simply too many issues relating to the way that the past is understood and dealt with in Northern Ireland for which no consensus yet exists, a reality encapsulated in the public response to the proposed Recognition Payment. We have already noted the danger of duplicating work already being undertaken, potentially at greater expense.

---

21 Ev 76

22 Oral Ev CVSNI Q61

23 Ev 70

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

37. **Given the absence of cross-community consensus regarding the nature, aims or work of such a body, we believe that the conditions of cross-community consensus required for the creation of the type of Legacy Commission proposed by the Consultative Group have not yet been achieved.**

38. There is a danger that the desire to find consensus before acting could delay indefinitely the implementation of work that could in itself help build such consensus. The Church of Ireland commented:

The Report, and reaction to it, has also demonstrated that there remain huge issues on which there is no consensus. If nothing else, this demonstrates the urgent need to make a start; the foolishness of ignoring difficulties; the importance of finding a way forward for the whole community. To do nothing may be more than reckless — it may be a backward step.<sup>24</sup>

39. **We note that the Government completed its consultation on the Consultative Group's report in October 2009 and that the Commission for Victims and Survivors intends to undertake similar activities. These periods of consultation and discussion are necessary. Decisions must be taken, however, on the best way to address the past in Northern Ireland, and these decisions cannot be put off indefinitely. We recommend that the Government announces a time frame for any recommendations that it hopes to implement, following this period of consultation, and following detailed discussion with the parties represented in the Northern Ireland Assembly and, bearing in mind the imminent general election, with the Opposition at Westminster.**

## **Period of mandate**

40. The Consultative Group proposed that the Commission should have a statutory five-year mandate, with the Chairman of the Commission making a report on the progress that had been made in terms of helping Northern Ireland move towards a shared future and recommending any further steps that should be taken to continue the healing process at the end of this period. It hoped that the end of this five years would signify “a significant transition from the past to the future”.<sup>25</sup> The Group explained the importance of an end to such processes of dealing with the past being apparent:

The Group has also taken account of the view, made clear during the consultation, that the past should not be allowed to continue to shape the futures in a way which is unhelpful and divisive. The process, which the group proposes is therefore time-limited in order to allow the past to be the past. Some will, no doubt, view the process as enabling them to get what they want, and for some that may be no more than acknowledgement, for others justice. Others will view the process as a way of “drawing a line under the past”, and no more than that.<sup>26</sup>

---

24 Ev 71

25 Report of the Consultative Group on the Past, January 2009, pp 140 -142

26 Report of the Consultative Group on the Past, January 2009, p. 56

41. Various witnesses expressed concern that five years would not be enough. The Northern Ireland Community Relations Council noted that some victims and survivors were only now coming forward to seek support and predicted that numbers would continue to grow over the next few years:

While Council agrees with the need to have a vision and an end goal we are also of the view that this process will not be completed in a single planned moment. Instead the process of dealing with the past will require continuing attention as well as delicate and sensitive handling. We therefore believe that any institution or Commission should make recommendations on future work at the end of five years rather than drawing an arbitrary line underneath uncompleted work.<sup>27</sup>

42. Similarly, the Corrymeela Community believed that the Legacy Commission's mandate might need to be extended:

It may be that five years is too short and that the mandate should be reviewed before the end of the five year to see whether it might be appropriate to continue for a further period.<sup>28</sup>

43. Lord Eames told the Committee that the choice of five years was in fact rather arbitrary. The most important point was that the process should be time-limited:

We could have picked any figure. We chose five years for the simple reason that one of the things that came through virtually all the evidence that we had presented to us in the 18 months was that if we were not careful of setting some sort of time limit this would go on and on and on. I am obviously not wishing to defend just the figure five, but we had to choose a figure which would be realistic.<sup>29</sup>

44. We understand the underlying thinking behind the proposed five-year mandate. It is important that an end can be seen to the process of dealing with the past, in order to encourage a return to normality and allow society to begin to look forward rather than back. Dealing with the past is an on-going process, however, and it would be inappropriate to assume that the many complex issues that still need to be addressed in Northern Ireland would necessarily be dealt within a period of just five years. Some flexibility would be required.

**45. The precise time frame required by a Legacy Commission could be determined within the context of the needs of Northern Ireland, only if and when cross-community consensus was found on its role and mandate. We believe it likely that any Commission would require a five-year mandate at the very least but support the idea of a time-limited mandate in order to prevent such a body from running indefinitely and prolonging the effects of the past by so doing.**

---

27 Ev 48

28 Ev 45

29 Q 47

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

## International commissioner

46. The Consultative Group recommended that an international commissioner be appointed as Chairman of the Legacy Commission, with overall responsibility for supervising and directing its the work. The Group described this role as strategic, rather than operational, with specific functions in leading the attempt to tackle sectarianism and promoting reconciliation through the work of a Reconciliation Forum, of which the Chairman would be a key member. Two further commissioners would have specific responsibilities for Review and Investigation and for Information Recovery and Thematic Cases. All commissioners would be impartial, appointed jointly by the British and Irish Governments and approved by the Office of the First Minister and deputy First Minister.

47. The Secretary of State did not believe that appointing an international figure to head the Commission was necessarily the best approach:

I would beg the question as to why it might need an international chair and two other commissioners — whether or not that might be the appropriate structure. I do understand why some members of the community in Northern Ireland would feel very strongly about an international chair, so that this would be somebody who would be regarded, as it were, as not in some way carrying baggage from the past in relation to any particular community and, therefore, might be seen as being able to be more fair. On the other hand, it has always been my view that the best person should get the job based on their ability, not on anything else. So I think that is another area where there should be a sensible discussion about the kind of person it should be. I am equally concerned, for example, about a structure which could be very top-heavy in terms of international commissioners and major commissioners but might be rather light on a really good chief executive who might take on this work.<sup>30</sup>

**48. We suggest that the Commission might be more helpfully chaired by a local figure, as an active chief executive, rather than by a foreign figurehead. Northern Ireland is in a position where it is able to run its own institutions, such as the Assembly, on a cross-party basis, and that position is vital in the rebuilding of a sense of normality. While there may be political advantages in bringing an international figure to such a role, it would, at this point in Northern Ireland's progress towards lasting peace, be a much more positive move if any future Legacy Commission were chaired, or jointly chaired, by appointees from within Northern Ireland who could unite communities, with cross-community agreement and support.**

## Funding

49. The Consultative Group stated that the Legacy Commission represented “the most cost effective way to give proper consideration to outstanding historical issues”.<sup>31</sup> The Group anticipated that setting up the Commission would cost in the region of £3 million and that

---

30 Q 135

31 Report of the Consultative Group on the Past, January 2009, p 131

the annual cost would be just over £33.5 million. The total cost of the Commission over a five-year mandate would, therefore, be in the region of £170 million.

50. The Consultative Group recommended the creation of a £100 million bursary for addressing society issues.<sup>32</sup> The report commented:

What we will say is that even if nothing happens, this report never sees the light of day in legislation, there will be £100 million spent on HET and the Police Ombudsman's office dealing with the past and that is only the up-front part, that is not all the hidden cost. The second part is that if any other inquiry of any kind comes into the reckoning then the figures get blown out of the water. The other thing is that we have actually tasked the Irish Government with supporting this financially [...] If they put in a certain amount of money then that reduces the amount. [...] We know where it starts and we know where it ends in rough figures. No one knows how much all of this is going to cost if it continues to be fought through the policing system, the ombudsman system, the court system and the interchange between the British and the Irish Governments.<sup>33</sup>

**51. The reality of devolution must be acknowledged: much of the money required for a Legacy Commission would fund activities in the already devolved areas of health and social care, and in the field of policing and justice, which we hope will be fully devolved in the very near future. Devolution should be seen to be progressing, and, therefore, seeking such additional funding from the UK Government looks like a step in the wrong direction. We believe that any significant additional funding should be voted by the Northern Ireland Assembly, rather than the UK Government. Decisions over funding levels and, by extension, the exact nature of any Legacy Commission would, therefore, be a matter of policy choice for the Northern Ireland Executive, rather than the UK Government. It is in the long-term interest of everyone involved that such decisions be taken by those who represent the people of Northern Ireland, and that the Executive be accountable for the financial consequences of such decisions.**

## Cooperation with the Irish Government

52. The Consultative Group recommended that the Irish Government help pay for and implement the proposed Legacy Commission, collaborating in the appointment of the Commissioners and cooperating with the procedures that the Group outlined for historical inquiries and information recovery processes. The report stated:

The Group considers that, in light of the Irish Government's special interest in Northern Ireland and of the fact that the legacy of the past in Northern Ireland is of mutual concern to the Irish Government, that they should make an appropriate contribution towards costs.<sup>34</sup>

53. The Northern Ireland Human Rights Commission (NIHRC) has argued that the role of the Irish Government was "vague and contradictory" in relation to appointing

---

32 This estimate was challenged in evidence we received from the PSNI. See Chapter 5 for further details.

33 Q 45

34 Report of the Consultative Group on the Past, January 2009, p 137

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

Commissioners and the exact contribution that it would make towards costs.<sup>35</sup> This concern needs to be addressed. The Secretary of State told us that he had not engaged in formal discussions with the Irish Government as to their involvement in such a project, but hoped that the Irish Government would participate in the consultation process:

[...] on the back of this documentation that we are launching [...]we would expect the Irish Government to play a full and active role in that consultation along with ourselves.<sup>36</sup>

54. We noted in our recent Report on *Cross-Border Co-operation* that relationships between Northern Ireland and the Republic of Ireland have improved significantly in recent years, particularly between the PSNI and An Garda Síochána. We hoped that improvements would continue to be made and that both sides would work towards “even greater” co-operation in the future.<sup>37</sup> **We reiterate our previous sentiments regarding cross-border co-operation and note that, while we do not recommend that the Legacy Commission go ahead as proposed, there is scope for collaboration between the United Kingdom and the Republic of Ireland, both in terms of providing support for those affected by the Troubles on both sides of the border and the ongoing work of the Historical Enquiries Team. However, the exact role to be played by the Irish Government, and the legislative framework for such involvement, remain unclear in the report of the Consultative Group. Greater clarification is required as to the exact role of the Irish Government and any financial contribution it would make if any such Legacy Commission were to be pursued in the future.**

---

35 Northern Ireland Human Rights Commission Preliminary Position Paper: Report of the Consultative Group on the Past July 2009, para 84

36 Q127

37 Second Report of the Northern Ireland Affairs Committee, Session 2008 – 09, Cross-border co-operation between the Governments of the United Kingdom and the Republic of Ireland, HC 78, p 6

## 4 Promoting Reconciliation

---

### Financial support for victims

55. We have already noted that the Consultative Group's recommendation that £12,000 be paid to the families of all those killed in the conflict provoked real outrage among some victim and survivor groups and politicians. This was reflected in much of the evidence that we received, and such depth of feeling cannot and should not be ignored. However, there is a need to look at the matter of financial support for victims in Northern Ireland in a more measured manner. The recognition payment did not derive solely from the minds of the Consultative Group without any evidential support. It was proposed as a response to two desires expressed to the Group by a number of those bereaved during the Troubles, namely a desire for recognition and a desire for financial recompense. In relation to financial recompense, the report comments:

Concerns about compensation, expressed during the consultation, largely relate to the amounts paid in the 1970s and 1980s to the families of people killed as a result of the conflict. There was almost unanimous agreement that many payments were inadequate, not least because compensation was primarily based on loss of earnings and did not take into account the loss felt by the family.<sup>38</sup>

56. Concern regarding the financial support available to victims was echoed by the Commission for Victims and Survivors in Northern Ireland, which acknowledged the strength of the public reaction to this recommendation, but supported the proposal on the basis of financial need. Patricia MacBride told the Committee:

[...] there is no doubt that there is a lack of public consensus or support for that particular recommendation at this time, In terms of how we as a Commission approached it, we took a very pragmatic approach to the idea of a recognition payment. We deal on a daily basis with people who have real and genuine need [...] We have a huge number of people who have been under-compensated or not compensated but the money simply does not exist to revisit the issue of compensation and to pay people what they would have expected or what they felt was due to them as a result of the loss or injury that they sustained, so we took a corporate, very pragmatic approach that this £12,000 would address need in some of those instances. It is fair to say that one of our colleagues took a position that he felt that because the recognition payment was not targeted specifically at need and because it had the potential to create division within families who may not agree as to whether to take the money, or indeed whom within the family should receive it, it was probably not a good recommendation, but overall as I say the corporate view was that we welcomed the payment.<sup>39</sup>

57. Several witnesses expressed similar views. For example, the Northern Ireland Community Relations Council told us:

---

38 Report of the Consultative Group on the Past, January 2009, p. 91

39 Q 69

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

Council does not have a fixed view on the appropriateness of an acknowledgement but we acknowledge the spirit in which [the Recognition Payment] was conceived and recognise that the many different circumstances within the victims and survivors sector create difficulties for some. At the same time, we are also aware that this proposal would address real hardship issues for others. Their needs must be addressed and enhanced individual support should be considered through mechanisms such as the Memorial Fund.<sup>40</sup>

58. The Corrymeela Community also noted:

The Consultative Group's proposal on a recognition payment to the nearest relative of someone who died as a result of the conflict has been deeply controversial and will almost certainly not proceed. However, there are significant hardship issues among some victims and survivors which need to be considered. Numerous individual victims and survivors are not catered for by existing groups, community and voluntary organisations, and statutory services, etc. In addition, victims and survivors have a diverse range of needs and this required to be recognised.<sup>41</sup>

59. The Secretary of State acknowledged that this recommendation had been made on the basis of evidence received by the Consultative Group in the course of their consultation and that such a payment would be welcomed, at least by some. For this reason he invited views on this recommendation as part of the consultation into the report of the Consultative Group launched by the NIO on 24 June, despite having earlier played down consideration of any payment in the proposed form.

[...] in reaching this recommendation (and in subsequent discussions I have had with the Consultative Group), I am very firmly of the view that this was not an idea promulgated only by the group; nor, indeed was this an idea solely from one section of the community in Northern Ireland. I believe, therefore, it is important, as we live in a democracy, that, despite the views that I have expressed about what I am minded to do, which clearly reflects the Government's position, nonetheless, we allow, however much of a minority voice it may be amongst some parts of Northern Ireland, people to put forward their arguments for and against this proposal. So I am entertaining, and I would have to have, very strong cogently argued arguments for and against this proposal; not because I have changed my position but because I genuinely believe Eames and Bradley reflected proposals they have heard. I think, in good faith they reflected them in their Report, but perhaps they took them a little far into formulating them into a permanent recommendation.<sup>42</sup>

60. It should be recognised that there is a need for greater financial support to be made available for victims in Northern Ireland. Compensation has not been adequate or consistent in many cases. However, financial need must be disaggregated from the separate desire for recognition. If it is not, any attempt to address the needs of victims will be in

---

40 Ev 48

41 Ev 45

42 Q 118

danger of becoming a matter of political and cross-community division, in the same manner as the proposed recognition payment did. Lord Eames emphasised that:

This was not about compensation. None of us have the moral right to put a figure on any human life. It is about humans and human suffering. At the root of this question is simply this: who is a victim?<sup>43</sup>

61. The proposal was clouded by an attempt to combine a response to financial need with the desire for victims to be recognised in some way. Patricia MacBride, one of the four Commissioners for Victims and Survivors, suggested that the Legacy Commission could constitute a means of addressing the needs of victims and survivors through adopting a broader role in improving services for victims:

[...] what I am hopeful of is that the package of measures that is delivered as a result of addressing societal need will in some way ensure that people's needs are met. It may not be through a recognition payment; if it is through improved services that people require to help them deal with the past, if it is through the delivery and investigation and it addressed need that is far more important than whether the money comes to them as a £12,000 cheque into an individual household or whether it is streamed through a methodology for addressing their needs.<sup>44</sup>

62. The Northern Ireland Community Relations Council also suggested that support is needed by those other than the bereaved who have been affected by the Troubles and noted that the recognition payment "does not take those who have suffered physical injury and mental trauma into account and this has caused considerable upset and anger in some quarters."<sup>45</sup> The Northern Ireland Human Rights Commission has similarly noted the absence of references to other kinds of human rights abuses in the report of the Consultative Group:

[...] in the Report there is no reference to violations of human rights short of killing; whilst great attention is given in the document to the need for what might be termed "macro" or "big picture" truth, the Report does not address in any significant detail issues around injury, sexual violence, including rape, torture, maltreatment, violations of property rights, violations of rights of association, assembly and expression, and so on [...]<sup>46</sup>

**63. We note that in August 2009 the Office of the First Minister and Deputy First Minister published proposals for consultation on the establishment of the Victims and Survivors Service. This is to be welcomed and will improve support to both Victims Groups and individuals affected by the Troubles. We hope that the Northern Ireland Executive will implement this service as soon as is practicable.**

---

43 Q 1

44 Q 72

45 Ev 48

46 Northern Ireland Human Rights Commission Preliminary Position Paper: Report of the Consultative Group on the Past July 2009, para 26

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

64. We believe that there is a need for greater financial support and services to be made available for those affected by the Troubles in Northern Ireland and share the view that this should include those physically and psychologically injured by these events.

65. We commend for consideration by the First Minister and Deputy First Minister the establishment of a fund to be operated on the basis of criteria which command cross-community support.

### Defining “victims”

66. The strength of the public reaction to the proposed recognition payment reflects the reality that the way in which victims and survivors are defined remains a matter of difficulty for communities in Northern Ireland. In the course of their consultation, the Consultative Group encountered a need for some kind of recognition of suffering from families in all aspects of the conflict. In relation to the proposed recognition payment, Lord Eames told the Committee:

[...] time and time again during the consultation period we were urged to produce something which would give recognition to the trauma and suffering of those left behind. They range from the families of security forces, including families of British soldiers who served in Northern Ireland but then still lived on the mainland, from families of the UDR and the RUC victims of the Troubles to civilians caught up in the tragedy. There was a widespread feeling that once the media spotlight and sympathy from their local community passed away from a family after a funeral, society forgot about them. Politicians, social workers and victim’s groups were among those who urged that some recognition of this human reaction must be found in our Report. There were words like ‘there is no difference between a mother’s tears’ [...] This was not about compensation. None of us have the moral right to put a figure on any human life. It is about humans and human suffering. At the root of this question is simply this: who is a victim?<sup>47</sup>

This question lies at the heart of much of this difficulty surrounding the reconciliation of communities in Northern Ireland.

67. The legal definition of a “victim” in Northern Ireland, as adopted by the Consultative Group, is contained within in the Victims and Survivors (Northern Ireland) Order 2006, passed at Westminster before the resumption of devolved government in May 2007. It classifies a “victim” as:

- a) someone who is or has been physically or psychologically injured as a result of or in consequence of a conflict-related incident;
- b) someone who provides a substantial amount of care on a regular basis for an individual mentioned in paragraph (a); or

- c) someone who has been bereaved as a result of or in consequence of a conflict-related incident.<sup>48</sup>

68. This definition was discussed in the Seventh Standing Committee on Delegated Legislation in the House of Commons, which debated the draft Victims and Survivors (Northern Ireland) Order on 1 November 2006. That Committee was attended by members of the Northern Ireland political parties which sit at Westminster, including members of our Committee. It must be noted that that Committee had no power to amend the Order. There was cross-party acknowledgement that the definition, while presenting a challenge for the people of Northern Ireland, was the only way to avoid a “hierarchy of victims”. The draft Order was debated in House of Lords Grand Committee on 25 October 2006. The motion passed without division in both Houses. During the Commons debate, the then Minister of State for Northern Ireland, David Hanson MP, commented:

We define victims and survivors as people who define themselves as victims and survivors. I do not wish to draw an artificial distinction between a person who, for example, might feel hurt because they were involved in an incident that resulted in their family being killed by a bomb in a major city in Northern Ireland and a relative of somebody who was killed in conflict with the British Army or others.<sup>49</sup>

69. Mr Bradley told us that it was not within the Consultative Group’s mandate to challenge that definition:

That is the definition of this House. We are not in a position, nor did we desire to go and seek the changing of that definition. That definition came about, not out of the blue; it came as a result of a number of reports. Sir Kenneth Bloomfield had already done two reports, Bertha McDougall, who was the interim Victims Commissioner, had also done a report, and it was quite clear that within those reports this issue about who a victim was could not be grasped.<sup>50</sup>

He acknowledged, however, that the issue of how victims are defined remains a barrier to peace in Northern Ireland:

The truth of the matter is that in Northern Ireland we are still fighting about who a victim is or who a victim is not [...] <sup>51</sup>

The Commission for Victims and Survivors emphasised to the Committee that they are statutorily required to work with the current legal definition. They told us that they undertook their work from the perspective of addressing the needs of everyone who approached them:

We as a Commission as four individuals regardless of our corporate togetherness on the issue of working to the statutory definition, define a victim or survivor of the conflict based upon the need that they present to us. We define a human face, we

---

48 SI no. 2953 (N.I. 17)

49 HC Deb 1 November 2006, Seventh Delegated Legislation Committee, col 6

50 Q 2

51 Q 3

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

define the needs that walk through our door, we define the needs that are sought out to be addressed with our assistance. You cannot simply categorise an individual because of the circumstances of their loss, you have to have the capacity to consider the human impact of the conflict on these individuals.<sup>52</sup>

70. Many of the submissions we received noted issues surrounding the definition of “victim”. The Northern Ireland Community Relations Council, for example, believed the current definition should be either reaffirmed or altered.<sup>53</sup> A submission from FAIR, a victims’ support group, contrastingly described the definition as “erroneous”.<sup>54</sup>

71. The existing legal definition of “victim” focuses on those left behind rather than those who died. This facilitates the work being done by bodies such as the Commission for Victims and Survivors, who provide support to people affected by the Troubles; it is the living who need such support, not the deceased. However, the definition clearly does not reflect the everyday understanding of a “victim” as expressed by many of those who found the recommendation of the Consultative Group so offensive, for whom the term “victim” clearly reflects some sense of innocence. The submission from the RUC GC Foundation highlighted this disparity:

A great sense of hurt was generated by the definition of “victim and survivor” found in the Victims and Survivors (Northern Ireland) Order 2006 — a definition which has been followed by the CGP, The definition of a “victim” in the Oxford English Dictionary reads “a person harmed, injured or killed as a result of a crime or accident”. This definition is much preferred.<sup>55</sup>

72. The controversy surrounding the recommendation on recognition payments once again demonstrates the continuing relevance of language in dealing with the past in Northern Ireland. **The definition of a “victim” provided by the Victims and Survivors (Northern Ireland) Order 2006 is currently the accepted legal definition of “victim”, and should remain so until such time as an alternative gains cross-party support within the Assembly. However, it is clear that further public debate is needed in order to build a clear consensus on this issue. It will ultimately be for the Northern Ireland Assembly to establish an accepted understanding of who constitutes a “victim”.**

## Reconciliation Forum

73. The Consultative Group recommended that a Reconciliation Forum be established, through which the Legacy Commission would work with the Commission for Victims and Survivors for Northern Ireland (CVSNI) to address various social issues arising from the conflict. This would include working to address 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

---

52 Q 83

53 Ev 48

54 Ev 39,

55 Ev 76

Ireland during the conflict to return. The Forum's function in relation to these activities would be to:

- analyse the activity undertaken to address these issues;
- consider the need for further activity including the need to address any gaps, and, drawing on the expertise within the membership of the Forum, to assess what would make the most impact;
- give advice on policy to Government and other policy makers;
- advise on strategies to enable the focused targeting of needs and the promotion of best practice, drawing on local, national and international experience;
- advise on the development and delivery of services; and
- decide on priority areas of activity and assist in influencing others to take those priority areas into account in the development of their policies and allocation of their resources. The members of the Forum should also work to ensure that their respective organisations take account of these priority areas.<sup>56</sup>

74. The Consultative Group recommended that the Commission for Victims and Survivors should take responsibility for convening this Forum and that the Chairman of the Legacy Commission and the Northern Ireland Community Relations Council should be key members. It suggested that other bodies and groups could be invited to specific meetings, depending on the issues being discussed. We asked the Commissioners for Victims and Survivors whether they would be content with this role. They replied:

We are happy with the concept. I have to say we are a wee bit uncomfortable with the use of the word "forum" and concerned that that might be somewhat misleading by creating an expectation of large numbers of people engaged in this. We know from discussion with the Consultative Group that they envisaged the key agencies who have responsibility for societal matters — principally ourselves, the Community Relations Council and any new body created out of the Eames-Bradley Report — that this would be a tripartite mechanism that the Commission for Victims would convene to address these matters.<sup>57</sup>

75. Particular strategic concerns in relation to the provision of services to victims and survivors clearly need to be addressed. The Consultative Group's report noted:

In some localities a number of victim and survivor groups showed how they had worked in some collaboration with one another. But in other cases several different groups had been delivering similar services in the same locality and were competing for limited resources. Too often the knowledge and experience of the best ways of meeting the needs of victims and survivors were not shared among groups and the opportunity to share valuable experience was lost. The reasons for this were complex

---

<sup>56</sup> Report of the Consultative Group on the Past, January 2009, pp 139 - 140

<sup>57</sup> Q 61

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

but a major factor was the lack of interaction between groups representing different communities and, in some cases, the same community.<sup>58</sup>

76. The Consultative Group further noted that some victim and survivors groups had a tendency to become agents with specific political ends and “claim to represent more than they actually do”.<sup>59</sup> This inevitably leads to the exclusion of those who feel that such groups do not represent their own views.

77. Evidence to this Committee reflected the view that strategic provision of services could be improved, particularly with regard to provision of mental health services for those affected by the Troubles. Mr Raymond White from the Northern Ireland Retired Police Officers Association observed:

We were very fortunate in respect of the Patten Agreement; it recognised the heavy psychological impact that the four decades of the Troubles had on our membership and as a consequence of that the PRRT was established at Maryfield. They have ten psychologists in employment, seven of which as it were are looking after the interests of serving and retired police officers. Some 250 new cases are still presenting themselves on an annual basis to those people, so you can estimate for yourself the number of ongoing new cases — that is not people who have been treated and put back into care of the National Health Service, this is 250 new presentations each year in respect of their services.<sup>60</sup>

78. We visited the PRRT facility at Maryfield, on the outskirts of Belfast, during the course of this inquiry and saw the range of services it offers to serving and former police officers, and to their families, including children who have suffered trauma as a result of the work done by their fathers and mothers in policing Northern Ireland. These officers and families have sometimes had to deal with varieties of trauma and levels of danger more akin to military than civilian service. We pay enthusiastic tribute to the work done at the centre in enabling serving officers and their families to deal with the conditions they face and in helping retiring officers to make the transition towards new interests in employment or in education, after their years of service.

79. The Consultative Group identified issues surrounding the provision of healthcare and sufficient services addressing trauma. The report noted that “[t]he provision of mental health services needs to take fuller account of the mental health legacy of the conflict and reflect this in both the provision of services and ongoing operational priorities”.<sup>61</sup> Lord Eames hoped the Legacy Commission would help resolve some of these issues:

There are some tensions still existing between the voluntary independent sector and the statutory sector around [the treatment of psychological trauma relating to the

---

58 Report of the Consultative Group on the Past, January 2009, p. 85

59 Report of the Consultative Group on the Past, January 2009, p 87

60 Q 103

61 Report of the Consultative Group on the Past, January 2009, p 88

Troubles]. That has not resolved itself and part of what we put in to the Legacy Commission was a task that would actually coordinate some of that.<sup>62</sup>

80. The Commissioners for Victims and Survivors similarly believed that the existing inconsistency of approach to mental health services and treatments was an example of the need to encourage more strategic provision and coordination:

[...] within the health field it is a concern that there is a lack of consensus in Northern Ireland about a concept of conflict related-trauma. There is a lack of agreement among theorists, academics and practitioners about the best models for treatment — indeed whether the medical concept of treatment is appropriate — and there is no clear agreed strategy for the whole of our society. Within health trauma is an example of a profound issue which needs urgent work done and strategic thinking applied to it, we would like to think that in the kind of mechanism envisaged by the Consultative Group there would be a place where three important perspectives could meet, each of them having a view on health needs based on their work.<sup>63</sup>

**81. There is a need to ensure that physical and psychological services and support are available to all who need them. The need for adequate healthcare services is of particular concern. However, we are not persuaded that the Reconciliation Forum as proposed will necessarily add value to existing bodies such as the Commission for Victims and Survivors. The aims of the Consultative Group might be more effectively and efficiently delivered if such bodies empowered to take on a wider strategic role in coordinating and developing existing services for victims and survivors.**

### *Funding services for victims and survivors*

82. The Consultative Group recommended that a £100 million bursary be made available to the Reconciliation Forum in order to support its activities. The report commented:

Many strong views were expressed about the inadequacy of funding that is generally available to meet the needs of, and provide services for, victims and survivors. The chief criticism was the lack of strategic focus evident in the piecemeal and short-term approach to funding. Many groups argued that this impacted on their ability to secure and retain good staff in the longer term and ignored the fact that often the needs of victims and survivors do not emerge for a long time after a traumatic event.<sup>64</sup>

83. The need to ensure continued funding for services to victims and survivors was reflected in the evidence we received. Again, funding for healthcare provision was a particular concern identified by various witnesses. Submissions from the Northern Area Trauma Advisory Panel and TMR Healthcare Professions noted:

The Report recognises the value of the work already undertaken by the myriad of non-statutory groups and many of the statutory organisations but this has, overall,

---

62 Q 46

63 Q 66

64 Report of the Consultative Group on the Past, January 2009, p 86

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

been a very “piecemeal” approach. The approach was revenue dependent and the DHSSPS and local government agencies never fully addressed the level of commitment to long term funding policies that would embed the range of trauma services into core health and social care provision.<sup>65</sup>

84. The Corrymeela Community also emphasised the importance of the work being undertaken by these organisations:

It is important that the Trauma Advisory Programme is maintained. This programme has brought much good support to victims on the group, specific to their needs and has gained much learning from its work. Many of its programmes are systemic, address the relationships of the family and some reconciliation components. Many of the victims who would not have found support through the “normal” (perceived as medical) system have found much to aid them in their recovery. All such holistic programmes must be encouraged.<sup>66</sup>

**85. Existing healthcare services for those bereaved and injured during the Troubles are under pressure, particularly mental health services. We encourage the Northern Ireland Executive to give these matters serious consideration. We recognise that £100 million is a very large sum, and it might be put to more productive use in finding a scheme to help those injured or bereaved, as proposed in paragraph 65 of this Report.**

### ***Remembering activities***

86. The Consultative Group discussed at length the importance of activities aimed at promoting reconciliation through remembering. The report commented:

Whether and how the past should be publicly remembered featured heavily in the consultation. Many groups and individuals shared their view that public remembrance is a crucial element of healing a post-conflict era. It allows them to reflect openly on the past and come to terms with its impact upon their life. It is an important way of celebrating and honouring the lives of those who were lost in the conflict. It provides a way of rebuilding, pointing to the shortcomings of the past, and shaping resolve for a different future.<sup>67</sup>

87. The Consultative Group envisaged a role for the Chairman of the Legacy Commission, through the Reconciliation Forum, to promote storytelling schemes and memorial projects and to develop the concept of a day of shared reflection, presently existing as the Day of Private Reconciliation organised by Healing Through Remembering on 21 June. The Group concluded that at present a physical or living shared memorial would not be appropriate, as such a project “remains a contentious issue for many and poses many challenging issues around which we could not see any consensus”.<sup>68</sup> However, they

---

65 Ev 64

66 Ev 45

67 Report of the Consultative Group on the Past, January 2009, p96

68 Ibid, p 104

believed that storytelling activities were important as a means for individuals to come to terms with the conflict and promote wider social reconciliation:

[...] storytelling is a means of confronting their past and articulating their stories, involving elements of both narrative and moral reassessment. Through storytelling, people realise that, although they feel their cause was just, not all that they did in pursuit of it was either the right thing to do, or altogether necessary.<sup>69</sup>

88. The Consultative Group recommended that whoever chairs the Legacy Commission should encourage the collation of stories in some form of archive and “seek to influence the criteria for receiving funding in order to ensure that storytelling initiatives have reconciliation at their heart.”<sup>70</sup>

89. The Day of Private Reflection was launched on 21 June 2007 by Healing Through Remembering as an opportunity for remembrance and private consideration of the consequences of the Troubles in Northern Ireland.

90. The Consultative Group supported this idea and praised Healing Through Remembering for its work in implementing the day. It recommended that this concept be developed and taken further over time, remaining as a private day initially, but evolving to include more public events, when appropriate. This, it said, would include a keynote speech by the First Minister and deputy First Minister reflecting upon the past “in a positive way and to confirm their commitment to lead us towards a shared and reconciled future”.<sup>71</sup> The day would also be renamed “a Day of Reflection and Reconciliation”.

91. The evidence that we received in relation to the recommendations of the Consultative Group was largely supportive of moves to promote these kinds of remembering activities and the Day of Reflection, in particular.<sup>72</sup> However, there was concern that Northern Ireland was not entirely ready for all of the Group’s proposals in this regard. The Corrymeela Community commented:

Rituals of remembering are important if society is to establish a sense of the common ownership of the past and to offer an opportunity for people to participate in an event that collectively remembers and reflects. A movement from a Private Day of Reflection to an Annual Day of Reflection is to be encouraged but a Day of Reflection and Reconciliation may be a step too far at this time. The involvement of Northern Ireland politicians in key note addresses etc could be important as long as it is not about telling politicians what to do.<sup>73</sup>

92. It was also emphasised to us that it is important to allow individuals to chose when and how to participate in remembrance activity.<sup>74</sup> This concern was acknowledged by Lord Eames:

---

69 Ibid, p 98

70 Ibid, p 141

71 Ibid, p 101

72 Ev 76, 71 and 70

73 Ev 45

74 Ev 76

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

[...] one family's remembrance is a very individual act on their part, what they want to remember, how they want to remember it, and I would always want to protect the right of a family to have their say in how they are left to remember a loved one. That I think is vital. The trouble with our Report and the trouble with our thinking which produced the Report is that to magnify that onto a community site, a community level and a community broad site, it is almost impossible to encompass all the various attitudes to remembrance that there are in Northern Ireland society at the moment.<sup>75</sup>

**93. Storytelling activities and events, which encourage both private and collective remembrance and reflection, have already assisted in promoting reconciliation in Northern Ireland. Any Legacy Commission established in the future may have a role to play in terms of encouraging the development of such initiatives, in liaison with other public bodies engaged in this field. In the meantime, there should be continued support for organisations such as Healing Through Remembering presently undertaking such projects. We emphasise that consensus must be the basis for taking forward initiatives such as the Day of Reflection. Not everyone will feel able to participate in collective remembrance and this should be understood. It is important that leading political, church and other community representatives should be seen to show the way towards reconciliation.**

## 5 Policing the Past

---

### Ongoing historical enquiries

94. The Consultative Group recommended that all aspects of historical investigation and information recovery be brought within the remit of the Legacy Commission, with the hope that this would “promote an approach which is more coherent and more focused on the needs of victims and society”.<sup>76</sup> Under the Group’s recommendations, a new independent Review and Investigation Unit would be formed to take over the work of the Police Service of Northern Ireland’s Historical Enquiries Team and the Office of the Police Ombudsman of Northern Ireland, which are currently reviewing all historical cases. The new Unit would review historical cases to establish whether there was “a reasonable prospect of obtaining sufficient evidence to warrant prosecution, and if necessary, to conduct that further investigation”.<sup>77</sup> This would be headed by a separate Commissioner, and would relieve the Historical Enquiries Team and the Police Ombudsman from the burden of these inquiries.

95. Discretion over whether to engage in a substantive investigation in the course of reviewing a case would lie in the hands of the Commissioner for Review and Investigation. Further investigation would be undertaken only where there was a clear case for doing so. On the advice of the Commissioner for Review and Investigation, the Chairman of the Commission would decide whether to refer a case to the Director of Public Prosecutions to consider any possible prosecution. The Consultative Group recommended that this aspect of work should begin by late 2010.

96. Mr David Cox, Head of the Historical Enquiries Team told us that as of July 2009, 565 reviews had been completed, out of a caseload of 2,550. Reports had been delivered to families in 290 of those completed.<sup>78</sup> As of April, HET had re-opened 1,427 cases altogether, representing 56% of the incidents within its remit.<sup>79</sup>

### *Implications of transferring responsibility*

97. In our 2008 Report, *Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past*, we expressed concern that the burden of the work on the Police Ombudsman and on the Historical Enquiries Team “might compromise the ability of the PSNI to fulfil its primary role of policing the present”.<sup>80</sup> We also noted the potential benefits of an independent body undertaking these functions. However, we did not offer any firm recommendations regarding the future of historical investigations, in order to avoid pre-empting the conclusions of the Consultative Group. It is clear that concerns remain in some quarters regarding the work of HET, and the evidence that we received

---

76 Report of the Consultative Group on the Past, January 2009, p 127

77 Ibid, p 144

78 Oral Evidence taken before the Committee on 15 July 2009, HC 745-i, Q 10

79 Ev 41

80 Third Report of the Northern Ireland Affairs Committee, Session 2007-08, Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past” HC 333, para 29

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

about the possibility of removing responsibility for historical investigations from the PSNI and the Police Ombudsman was mixed. The Corrymeela Community commented:

The work that the Historical Enquiries Team [...] is doing and the investigations of the Police Ombudsman are important, and it is vital that this work continues. However, the proposal that a new Review and Investigations Unit would take over the work of the HET and the Police Ombudsman's Unit would have the advantage of freeing up the Police and the Police Ombudsman to focus on policing now.<sup>81</sup>

However, the RUC GC Foundation believed that:

[...] the PSNI should be properly resourced to undertake the investigation of historical cases rather than creating an "independent unit" to take such investigations forward. Ultimately neither the Historical Enquiry Team [...] nor the Police Ombudsman of Northern Ireland [...] have any information of their own. They rely totally on the PSNI, security services and retired police officers for information. In reality other institutions are not needed — what is needed are people who know their way around the system which existed or currently exists.<sup>82</sup>

98. The Northern Ireland Human Rights Commission discussed the practical difficulties associated with transferring responsibility, particularly in terms of staffing:

There is an argument that oversight and staffing could be placed on a more independent footing if investigations became the responsibility of a new specialised agency. However, there is a concern that given the timescale and problems already encountered in relation to recruitment, that staff presently carrying out the work of HET and those working on the historical cases referred to O would in all likelihood be recruited to carry out review and investigation under the auspices of the Legacy Commission. To recruit and train large numbers of new investigators with the equivalence of police powers, and with policing-level investigative skills and standards, is likely to require considerable time and may not be achievable [...]<sup>83</sup>

99. This observation raises a question as to whether the Legacy Commission would truly be seen to be more independent than the Historical Enquiries Team, given that it would likely be largely staffed by the same individuals. The Northern Ireland Human Rights Commission also suggested that unifying the roles of both the Historical Enquiries Team (HET) and the Police Ombudsman (OPONI) under the Legacy Commission could raise concerns over the accountability of this Unit:

By merging OPONI's historical case-work function with HET, it will mean that the new merged structure will not only be based in the same office but will be reviewed by the same body, the Legacy Commission, that is operationally directing its work. In terms of oversight the proposal to appoint an independent Commissioner of international standing would answer some of the criticisms levelled at the proximity

---

81 Ev 45

82 Ev 76

83 Northern Ireland Human Rights Commission Preliminary Position Paper: Report of the Consultative Group on the Past July 2009, para 51

of HET to PSNI, and the fact that the oversight function for the HET rests with the Chief Constable. It has taken considerable effort to establish OPONI as an independent oversight body charged with investigating allegations of police misconduct. However the Commissioner for Review and Investigation, as a member of the Legacy Commission, would in effect be overseeing the work of the Commission of which he or she is part, and of course if the Commission is ultimately a body appointed and funded by Government, there will inevitably be those who question the extent of its independence.<sup>84</sup>

100. The Northern Ireland Retired Police Officers Association was also concerned about the implications of conferring policing powers upon the Legacy Commission without any mechanism for handling complaints:

[...] the proposals for the Legacy Commission make no reference to any form of appeal mechanism, accountability or control. We went through and we are still going through a horrific experience at the hands of the Police Ombudsman's Office partly because, completely contrary to the clear provisions of Article 13 of the European Convention, when the government established the Ombudsman's Office no mechanism was put in place for anybody to challenge the conduct of the Police Ombudsman's Office for their handling under the Office. There is a mechanism for addressing issues of maladministration, which is common with other parts of the Ombudsman structure in the UK, but the Ombudsman's Office has police powers; it has powers to arrest, search, detain, interrogate and recommend for prosecution. Any other body in the UK which has those powers would have a complaints system. There is no complaints system for the Ombudsman's Office; and we fear that the same thing might happen with the Legacy Commission.<sup>85</sup>

101. The issue of accountability clearly must be addressed before any transfer of functions could occur. We note that the NI Human Rights Commission concluded that additional resources should be provided to the Historical Enquiries Team and the Police Ombudsman in order to allow these organisations to complete the review of historical cases, rather than supporting the transfer of functions to the Legacy Commission.<sup>86</sup>

## Costs

102. The realities of the cost of undertaking historical investigations must also be considered. Mr Bradley told us that it was difficult to quantify how much money was being spent and could be spent in the future on dealing with the past in Northern Ireland under current arrangements. The Consultative Group estimated that more than £100 million would be spent over the next few years on the Historical Enquiries Team and the Police Ombudsman in dealing with the past.<sup>87</sup> Sir Hugh Orde queried this projection:

---

84 Ibid, para 53

85 Q 110

86 Northern Ireland Human Rights Commission Preliminary Position Paper: Report of the Consultative Group on the Past July 2009, para 64

87 Q 45

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

The CGP Report referred to costs of £100 million for existing operations. I am not privy to the calculations they considered; the HET is funded by the NIO for £12.3 million for the next two years. That will end the current funding of £34 million; estimates are that the HET, if unchanged, would require a further two to three years work. At the same approximate level of spend, that would cost an additional £18 million, a total of £52 million for all cases.<sup>88</sup>

103. It is clear that the issue of the cost of historical enquiries remains a matter of debate. Significant sums would be involved in transferring functions to the Legacy Commission. Sir Hugh expressed further concern about the logistics of moving responsibility for historical investigations away from the PSNI:

I have serious concerns that the logistical implications for taking the HET outside the police environment have not been fully appreciated. At present, it operates under my authority and with the full resources of the PSNI in support. This allows use of police facilities, support for HET operations from specialist sections, access to files, records, intelligence and communications, health and safety and security support, trusted access to internal departments and external partner agencies, IT equipment and support, vehicles and buildings and running costs associated with them, executive management level support, free HR and specialist financial support and media management

These are the 'hidden costs' borne by the PSNI and accepted as part of our input into the project in support of the NIO funding.<sup>89</sup>

104. We have recommended that the Legacy Commission should not go ahead until cross-community support for such a project can be established within the Northern Ireland Assembly. In the meantime, we would expect responsibility for historical enquiries to remain with the Historical Enquiries Team and the Police Ombudsman.

**105. If and when a Legacy Commission were established, serious debate would be required on its taking over the task of reviewing historical cases from the Historical Enquiries Team and the Office of the Police Ombudsman for Northern Ireland. The logistics involved in transferring these activities would be complex and costly, and questions arise over the real benefits to be gained from doing so. Unless it can be shown beyond reasonable doubt that a new situation would be significantly more efficient, effective and economical than is the case under the present arrangements, we recommend that historical investigations continue to be carried out by the Police Ombudsman and the Historical Enquiries Team.**

## **Truth recovery and thematic investigation**

106. The Consultative Group recommended that the Legacy Commission should conduct a process of information recovery and examination of linked or thematic cases emerging from the conflict, such as paramilitary activity or alleged collusion. These activities would

---

88 Ev 41

89 Ev 41

be carried out through a distinct process within the Legacy Commission, separate from the historical investigation procedure and under a separate Commissioner. The Commission would have the power to compel the production of papers and the attendance of witnesses, and participants would have the right to legal representation. Both information recovery and thematic examination processes would be without public hearings, to allow “a more frank exchange of information and acknowledgement of past wrongs, which would both facilitate the emergence of truth and promote the process of reconciliation”.<sup>90</sup>

107. The Consultative Group emphasised that people giving information needed to be able to do so without fear of prosecution. However, no general amnesty from prosecution is recommended for those giving statements. Instead, the Group proposed that participants be allowed to make Protected Statements, which would not be admissible in criminal or civil proceedings against the person making them. It would be the statements themselves that were protected, rather than the individual, who could still be prosecuted should further evidence come to light. To prevent this procedure from interfering with future or ongoing court cases, the Group proposed that prospective cases for the information recovery process must have undergone review or investigation to see whether there was any case for prosecution, before any person could provide information under the rules of information recovery. Nor could people give the same evidence outside the Commission with impunity—to the press, for example. The Group believed that it was necessary to develop such a mechanism in order to offer families an alternative to prosecution. They commented:

Throughout the Group’s consultation it was evident that, while we have left the violence behind us, we have found new ways to continue the conflict. This is evidenced by the contention around the language used when describing the conflict and those who played a role in it.<sup>91</sup>

108. Several witnesses have identified serious concerns about the system described by the Consultative Group. Sir Hugh Orde was not convinced that the two aims of Information Recovery and Thematic Investigation could be so easily separated:

Experience of major crime investigation — and or HET work — teaches that a broad, methodical and structured investigation will tease out all the relevant issues in a case. Information recovery is traditionally a by-product of effective investigation; thematic investigations are informed by trends identified during investigations. I do not attach much credence to the prospect of former paramilitaries engaging with any process to assist in “truth recovery” or helping families.<sup>92</sup>

109. The proposals relating to protected statements have been particularly criticised, in terms of practicality and as to whether the proposals constitute a de facto amnesty. Lord Eames and Mr Bradley have denied that this is case, and the report stated that an amnesty was not the aim of these proposals:

---

90 Report of the Consultative Group on the Past, January 2009, p 128

91 Report of the Consultative Group on the Past, January 2009, p 66

92 Ev 41

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

This would not amount either to amnesty or general immunity from prosecution. It does not provide a means for people to escape justice. The concept is to give protection to the statement, not general immunity to the person.<sup>93</sup>

110. However, several witnesses believed that this was the reality of their recommendations nonetheless. Mr Cox, Head of the Historical Enquiries Team, believed the system of protecting statements, but not individuals, “probably would” amount to a de facto amnesty and told us he would not be particularly comfortable with such a system:

[...] I do not know that it would work. The structures and organisations that exist have evolved over the years for a very good reason. They are the tried and tested methods of conducting investigations and trying to establish facts. They all include the checks and balances and protections for individuals that they should, and I think you tamper with them at your peril. On a personal basis, no, I am not hugely in favour.<sup>94</sup>

111. The Northern Ireland Human Rights Commission stated that this mechanism of protected statements would be “tantamount to an amnesty”.<sup>95</sup> It also raised questions regarding the lack of public hearings and formal parties to proceedings, the availability of legal aid and the fact that only the Legacy Commission would be able to examine witnesses:

[...] it appears to indicate a highly formalised system of hearing testimony through a cross examination of witnesses conducted by the Legacy Commission. As such, there must be clear procedural safeguards for alleged perpetrators. There is a danger that in adopting a more victim-centred approach that Article 6 (right to a fair trial) may be breached.<sup>96</sup>

112. Mr White of the Northern Ireland Retired Police Officers Association highlighted the impact that such investigations can have on the lives of retired police officers.

[...] we now have ten years of retrospective investigation, from public inquiries to controversial inquests, to HET inquiries, the Police Ombudsman inquiries and a disproportionately small number of our officers who either served in Special Branch or served in CID are now almost on call, as it were, as unpaid public servants to be at the beck and call of whoever wishes to revisit the past. This is our fear, that in respect of the Legacy Commission this is yet another imposition [...] I am seven years now approaching retirement; I have not had a year in retirement that I have not had a letter arriving either from a public inquiry or the Police Ombudsman’s Office in relation to, as it were, “Can you assist? Or we wish to interview you.” It is not just a matter, Chairman, of an hour. At least six weeks out of my life was taken away in

---

93 Report of the Consultative Group on the Past, January 2009, p 129

94 Oral Evidence taken before the Committee on 15 July 2009, HC 745-i, Q 16

95 Northern Ireland Human Rights Commission Preliminary Position Paper: Report of the Consultative Group on the Past July 2009, para 68

96 Northern Ireland Human Rights Commission Preliminary Position Paper: Report of the Consultative Group on the Past July 2009, para 76

relation to the Rosemary Nelson inquiry, between attending to make statements and then attending the hearing itself.<sup>97</sup>

113. We believe that the proposed mechanisms for truth recovery and thematic investigation do not represent viable courses of action with which families, victims and paramilitaries will engage. In treading carefully, the Consultative Group appears to attempt to reconcile two mutually inconsistent positions. Despite the Group's intentions, the proposals, if enacted as proposed, might well in effect constitute a de facto "amnesty". Yet, at the same time, they might not provide sufficient assurance to those who might engage in truth recovery.

114. Truth recovery could work effectively only if there were open and honest engagement by those involved in past events. It may be that such engagement would be achieved only if those who participated in such events, from whatever section of the community they may come, were guaranteed some amnesty in return for their openness and honesty. This would be an exceedingly high price to pay, and we are not convinced that either Northern Ireland or the rest of the United Kingdom is ready at present to contemplate such a step. We believe that the Consultative Group's proposals in this respect are likely to prove unworkable. The proposed system also raises complex issues in relation to legal process and human rights. We recommend, therefore, that no additional processes of truth recovery or thematic investigation should be undertaken at present by any newly formed Legacy Commission.

115. We recognise that there may be public demand for an alternative process, outside the traditional court system, that allows information to be disclosed and families to seek a different form of resolution. Public debate will be required to establish what further investigations, if any, should be pursued following completion of the work of the HET. We hope that once all cases that could lead to prosecution have been investigated, a clearer consensus will emerge as to how to approach further investigation in a manner that will benefit society as a whole. Any initiative along these lines, if it is to have any prospect of success, must come from the Northern Ireland Executive and be endorsed by the Assembly.

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

## 6 Public inquiries

---

### The future of public inquiries

116. The issue of public inquiries remains divisive for Northern Ireland society. Various groups continue to put pressure on the Government to undertake further large-scale inquiries into events such as the Omagh bombing. However, as we have noted in previous reports, those that have been undertaken have been long, drawn out, and expensive. An oral question to the Secretary of State in March revealed that the Saville inquiry and the current public inquiries into the deaths of Rosemary Nelson, Billy Wright and Robert Hamill are expected to cost over a quarter of a billion pounds:

The Bloody Sunday inquiry is expected to cost a total of £190 million, including costs incurred by the ministry of Defence. The Hamill, Wright and Nelson inquiries are expected to cost a combined total of £117 million. The total cost, to the end of January 2009, of all public inquiries is £267 million, and 70 per cent. of these costs relate to the Bloody Sunday Inquiry.<sup>98</sup>

117. The Consultative Group recommended that no further public inquiries should be held and that all future investigations be brought under the auspices of the Legacy Commission. Public inquiries, it claimed, are “no longer the most appropriate way to deal with the legacy of the past and bring no resolution to families in historical cases”.<sup>99</sup> The Group would have liked to bring existing public inquiries into the new process, but suggested that by the time the Commission has been established it would be easier for this work to be completed independently.

118. In our 2008 Report into the *Cost of Policing the Past in Northern Ireland*, we recommended that no further public inquiries be undertaken without cross-community agreement, citing the unsustainable financial cost and pressure placed on the PSNI.<sup>100</sup> While we stand by this recommendation, we acknowledge the public demand that still exists in relation to such inquiries. The Northern Ireland Community Relations Council commented:

Council is concerned at the proposal that there should be no more public inquiries. This proposal is absolute and to close this avenue of addressing the past will create many dilemmas. It is important this option is still available to those who wish to pursue it.<sup>101</sup>

**119. We recognise the role that public inquiries play in terms of holding the Government and other public bodies to account for their actions in relation to the events of the past. We also acknowledge that such inquiries promise some degree of**

---

98 HC Deb, 4 March 2009, col 259271

99 Report of the Consultative Group on the Past, January 2009, p 154

100 Third Report of the Northern Ireland Affairs Committee, Session 2007-08, Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past” HC 333, pp 35 - 36

101 Ev 48

resolution to families who feel that their cases have not been effectively dealt with through the normal court system. However, there remains a risk that such lengthy investigations are not necessarily conducive to promoting reconciliation and may not come to any new or satisfactory conclusions.

120. In our 2008 Report on *Policing and Criminal Justice in Northern Ireland*, the Committee expressed a view that any public inquiry beyond those currently under way should depend on cross-community support from within the Northern Ireland Assembly. However, the continuing demand for a mechanism to pursue investigation cannot be ignored. If demand still exists once the existing public inquiries and reviews of historical cases have been completed, there may be a role for a body such as the proposed Legacy Commission to undertake some form of thematic investigation as an alternative. We would expect the full devolution of policing and justice to have been achieved by the time that any such decisions are taken. We recommend that necessary funding should then come from the Northern Ireland Executive, rather than the UK Government.

## 7 Conclusion

---

121. The Government has concluded its own consultation on the report of the Consultative Group and is considering the responses. It is almost a year since the Consultative Group reached its conclusions, after its 18 months of consultation and reflection.

122. We have concluded broadly that the time is not yet right for the other recommendations made by the CGP to be implemented in full and as proposed. We do not mean by this to suggest that those recommendations do not provide helpful indicators by which the community of Northern Ireland can continue on its path towards a united future, built on a broad consensus about how the events of the past must be dealt with in a manner that heals rather than re-opening old wounds. The Secretary of State for Northern Ireland has repeatedly said that time is our friend in achieving the distance that will allow those wounds to heal, and we concur with him in that.

123. **Whatever the outcome of the Government's consultation, and whatever emerges from the Consultative Group's report, that report should be seen as a further step in seeking to build a broader and stronger consensus.** However, the controversy that inevitably surrounds any such report is a potent reminder of the depth and extent of the hurt that still disfigures the lives of many in Northern Ireland. It must be the aim of all in positions of influence in Northern Ireland to strive to ease that hurt. **We believe that reflection on and constructive criticism of the Consultative Group's report should help towards a joint acceptance which can, in time, enable Northern Ireland to put its past behind it.**

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

## Conclusions and recommendations

---

1. We welcome the work of the Consultative Group on the Past and recognise the significant time, energy and careful thought that all members of the Group put into compiling their report. The Group consulted widely among communities in Northern Ireland and produced a report which attempted to outline a way forward for everyone. This enormously difficult task was bound to provoke an emotional reaction from all areas of society affected by the Troubles. The final report was the product of a broad consultative exercise, conducted in good faith by the members of the Group. (Paragraph 16)
2. We endorse the Secretary of State's decision to set aside the recognition payment proposed by the Consultative Group in order to facilitate discussion of its wider recommendations. (Paragraph 22)
3. Whether or not any or all of the 31 recommendations are implemented, the report provides an opportunity for reflection on the extent to which society as a whole in Northern Ireland has progressed towards reconciliation, the degree and nature of remaining tensions in Northern Ireland, and the work that remains to be done. While we believe that the five-month gap between publication of the Consultative Group's report and the Government's launch of public consultation upon it was unnecessarily long, we hope that the public will have put emotional responses to one aspect of the Group's report to one side and engaged fully with the consultation to establish where consensus lies in relation to the remaining 30 recommendations. (Paragraph 23)
4. A Legacy Commission would add real value only if it were qualified fully to take over the functions of bodies such as the Historical Enquiries Team and Police Ombudsman. It is not clear to us that it would greatly enhance the activities of bodies such as the Commission for Victims and Survivors in Northern Ireland, the Northern Ireland Community Relations Council or Healing Through Remembering, unless it were a replacement for, rather than a complement to, them. There is a danger that Northern Ireland could become overburdened with bodies addressing the Troubles. This would be unhelpful and likely to lead to confusion for the public, with work being replicated unnecessarily, representing an inefficient use of limited resources. We believe that it would be more helpful to give greater support to existing bodies to enable them to fulfil their roles as effectively as possible. (Paragraph 30)
5. Given the absence of cross-community consensus regarding the nature, aims or work of such a body, we believe that the conditions of cross-community consensus required for the creation of the type of Legacy Commission proposed by the Consultative Group have not yet been achieved. (Paragraph 37)
6. We note that the Government completed its consultation on the Consultative Group's report in October 2009 and that the Commission for Victims and Survivors intends to undertake similar activities. These periods of consultation and

discussion are necessary. Decisions must be taken, however, on the best way to address the past in Northern Ireland, and these decisions cannot be put off indefinitely. We recommend that the Government announces a time frame for any recommendations that it hopes to implement, following this period of consultation, and following detailed discussion with the parties represented in the Northern Ireland Assembly and, bearing in mind the imminent general election, with the Opposition at Westminster. (Paragraph 39)

7. The precise time frame required by a Legacy Commission could be determined within the context of the needs of Northern Ireland, only if and when cross-community consensus was found on its role and mandate. We believe it likely that any Commission would require a five-year mandate at the very least but support the idea of a time-limited mandate in order to prevent such a body from running indefinitely and prolonging the effects of the past by so doing. (Paragraph 45)
8. We suggest that the Commission might be more helpfully chaired by a local figure, as an active chief executive, rather than by a foreign figurehead. Northern Ireland is in a position where it is able to run its own institutions, such as the Assembly, on a cross-party basis, and that position is vital in the rebuilding of a sense of normality. While there may be political advantages in bringing an international figure to such a role, it would, at this point in Northern Ireland's progress towards lasting peace, be a much more positive move if any future Legacy Commission were chaired, or jointly chaired, by appointees from within Northern Ireland who could unite communities, with cross-community agreement and support. (Paragraph 48)
9. The reality of devolution must be acknowledged: much of the money required for a Legacy Commission would fund activities in the already devolved areas of health and social care, and in the field of policing and justice, which we hope will be fully devolved in the very near future. Devolution should be seen to be progressing, and, therefore, seeking such additional funding from the UK Government looks like a step in the wrong direction. We believe that any significant additional funding should be voted by the Northern Ireland Assembly, rather than the UK Government. Decisions over funding levels and, by extension, the exact nature of any Legacy Commission would, therefore, be a matter of policy choice for the Northern Ireland Executive, rather than the UK Government. It is in the long-term interest of everyone involved that such decisions be taken by those who represent the people of Northern Ireland, and that the Executive be accountable for the financial consequences of such decisions. (Paragraph 51)
10. We reiterate our previous sentiments regarding cross-border co-operation and note that, while we do not recommend that the Legacy Commission go ahead as proposed, there is scope for collaboration between the United Kingdom and the Republic of Ireland, both in terms of providing support for those affected by the Troubles on both sides of the border and the ongoing work of the Historical Enquiries Team. However, the exact role to be played by the Irish Government, and the legislative framework for such involvement, remain unclear in the report of the Consultative Group. Greater clarification is required as to the exact role of the Irish Government and any financial contribution it would make if any such Legacy Commission were to be pursued in the future. (Paragraph 54)

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

11. We note that in August 2009 the Office of the First Minister and Deputy First Minister published proposals for consultation on the establishment of the Victims and Survivors Service. This is to be welcomed and will improve support to both Victims Groups and individuals affected by the Troubles. We hope that the Northern Ireland Executive will implement this service as soon as is practicable. (Paragraph 63)
12. We believe that there is a need for greater financial support and services to be made available for those affected by the Troubles in Northern Ireland and share the view that this should include those physically and psychologically injured by these events. (Paragraph 64)
13. We commend for consideration by the First Minister and Deputy First Minister the establishment of a fund to be operated on the basis of criteria which command cross-community support. (Paragraph 65)
14. The definition of a “victim” provided by the Victims and Survivors (Northern Ireland) Order 2006 is currently the accepted legal definition of “victim”, and should remain so until such time as an alternative gains cross-party support within the Assembly. However, it is clear that further public debate is needed in order to build a clear consensus on this issue. It will ultimately be for the Northern Ireland Assembly to establish an accepted understanding of who constitutes a “victim”. (Paragraph 72)
15. There is a need to ensure that physical and psychological services and support are available to all who need them. The need for adequate healthcare services is of particular concern. However, we are not persuaded that the Reconciliation Forum as proposed will necessarily add value to existing bodies such as the Commission for Victims and Survivors. The aims of the Consultative Group might be more effectively and efficiently delivered if such bodies empowered to take on a wider strategic role in coordinating and developing existing services for victims and survivors. (Paragraph 81)
16. Existing healthcare services for those bereaved and injured during the Troubles are under pressure, particularly mental health services. We encourage the Northern Ireland Executive to give these matters serious consideration. We recognise that £100 million is a very large sum, and it might be put to more productive use in finding a scheme to help those injured or bereaved, as proposed in paragraph 65 of this Report. (Paragraph 85)
17. Storytelling activities and events, which encourage both private and collective remembrance and reflection, have already assisted in promoting reconciliation in Northern Ireland. Any Legacy Commission established in the future may have a role to play in terms of encouraging the development of such initiatives, in liaison with other public bodies engaged in this field. In the meantime, there should be continued support for organisations such as Healing Through Remembering presently undertaking such projects. We emphasise that consensus must be the basis for taking forward initiatives such as the Day of Reflection. Not everyone will feel able to participate in collective remembrance and this should be understood. It

is important that leading political, church and other community representatives should be seen to show the way towards reconciliation. (Paragraph 93)

18. If and when a Legacy Commission were established, serious debate would be required on its taking over the task of reviewing historical cases from the Historical Enquiries Team and the Office of the Police Ombudsman for Northern Ireland. The logistics involved in transferring these activities would be complex and costly, and questions arise over the real benefits to be gained from doing so. Unless it can be shown beyond reasonable doubt that a new situation would be significantly more efficient, effective and economical than is the case under the present arrangements, we recommend that historical investigations continue to be carried out by the Police Ombudsman and the Historical Enquiries Team. (Paragraph 105)
19. We believe that the proposed mechanisms for truth recovery and thematic investigation do not represent viable courses of action with which families, victims and paramilitaries will engage. In treading carefully, the Consultative Group appears to attempt to reconcile two mutually inconsistent positions. Despite the Group's intentions, the proposals, if enacted as proposed, might well in effect constitute a de facto "amnesty". Yet, at the same time, they might not provide sufficient assurance to those who might engage in truth recovery. (Paragraph 113)
20. Truth recovery could work effectively only if there were open and honest engagement by those involved in past events. It may be that such engagement would be achieved only if those who participated in such events, from whatever section of the community they may come, were guaranteed some amnesty in return for their openness and honesty. This would be an exceedingly high price to pay, and we are not convinced that either Northern Ireland or the rest of the United Kingdom is ready at present to contemplate such a step. We believe that the Consultative Group's proposals in this respect are likely to prove unworkable. The proposed system also raises complex issues in relation to legal process and human rights. We recommend, therefore, that no additional processes of truth recovery or thematic investigation should be undertaken at present by any newly formed Legacy Commission. (Paragraph 114)
21. We recognise that there may be public demand for an alternative process, outside the traditional court system, that allows information to be disclosed and families to seek a different form of resolution. Public debate will be required to establish what further investigations, if any, should be pursued following completion of the work of the HET. We hope that once all cases that could lead to prosecution have been investigated, a clearer consensus will emerge as to how to approach further investigation in a manner that will benefit society as a whole. Any initiative along these lines, if it is to have any prospect of success, must come from the Northern Ireland Executive and be endorsed by the Assembly. (Paragraph 115)
22. We recognise the role that public inquiries play in terms of holding the Government and other public bodies to account for their actions in relation to the events of the past. We also acknowledge that such inquiries promise some degree of resolution to families who feel that their cases have not been effectively dealt with through the normal court system. However, there remains a risk that such lengthy

**EMBARGOED ADVANCE COPY:**

**Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

investigations are not necessarily conducive to promoting reconciliation and may not come to any new or satisfactory conclusions. (Paragraph 119)

23. In our 2008 Report on Policing and Criminal Justice in Northern Ireland, the Committee expressed a view that any public inquiry beyond those currently under way should depend on cross-community support from within the Northern Ireland Assembly. However, the continuing demand for a mechanism to pursue investigation cannot be ignored. If demand still exists once the existing public inquiries and reviews of historical cases have been completed, there may be a role for a body such as the proposed Legacy Commission to undertake some form of thematic investigation as an alternative. We would expect the full devolution of policing and justice to have been achieved by the time that any such decisions are taken. We recommend that necessary funding should then come from the Northern Ireland Executive, rather than the UK Government. (Paragraph 120)
24. Whatever the outcome of the Government's consultation, and whatever emerges from the Consultative Group's report, that report should be seen as a further step in seeking to build a broader and stronger consensus. We believe that reflection on and constructive criticism of the Consultative Group's report should help towards a joint acceptance which can, in time, enable Northern Ireland to put its past behind it. (Paragraph 123)

# Formal Minutes

---

**Wednesday 9 December 2009**

Members present:

Sir Patrick Cormack, in the Chair

Christopher Fraser

Lady Hermon

Kate Hoey

Dr Alasdair McDonnell

Mr Denis Murphy

Stephen Pound

Mrs Iris Robinson

Draft Report (*The Report of the Consultative Group on the Past in Northern Ireland*), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 123 agreed to.

*Resolved*, That the Report be the Second Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence reported to the House and ordered to be published on 22 April, 29 April, 1 July and 21 October was ordered to be reported to the House for printing with the Report.

[Adjourned till Wednesday 6 January 2010 at 2.30 p.m.]

**EMBARGOED ADVANCE COPY:**  
**Not to be published in full, or in part, in any form before**  
**00.01 hrs GMT Wednesday 16 December 2009**

## Witnesses

---

<b>Wednesday 25 February 2009</b>	<i>Page</i>
<b>Rt Rev Lord Eames OM</b> , Co Chair and <b>Mr Denis Bradley</b> , Co-Chair, Consultative Group on the Past	Ev 1
<b>Wednesday 29 April 2009</b>	
<b>Mr Brendan McAllister</b> and <b>Ms Patricia MacBride</b> , Commission for Victims and Survivors	Ev 16
<b>Wednesday 24 June 2009</b>	
<b>Rt Hon Shaun Woodward MP</b> , Secretary of State for Northern Ireland, <b>Ms Katie Pettifer</b> , Deputy Director, Rights, Election and Legacy Division, and <b>Mr Nick Perry</b> , Director General, Criminal Justice and Policing	Ev 62

## List of written evidence

---

1	FAIR	Ev 39
2	Mr A Wallace	Ev 40
3	County Grand Lodge of Belfast	Ev 41
4	Chief constable, Sir Hugh Orde OBE, Police Service of Northern Ireland	Ev 41
5	Corrymeela Community	Ev 45
6	Northern Ireland Community Relations Council	Ev 48
7	West Tyrone Voice victims of terrorism group	Ev 51
8	Jim Allister QC MEP	Ev 56
9	Commission for Victims and Survivors	Ev 61
10	TMR Health Professionals	Ev 64
11	Northern Ireland Retired Police Officers' Association	Ev 66
12	Healing Through Remembering	Ev 70
13	Standing Committee of the Church of Ireland	Ev 71
14	Northern Area Trauma Advisory Panel	Ev 73
15	Royal Ulster Constabulary George Cross (RUC GC) Foundation	Ev 76
16	Barry Gilligan, Chairman, Northern Ireland Policing Board	Ev 80
17	Rt Hon Shaun Woodward MP, Secretary of State for Northern Ireland	Ev 81

## List of unprinted evidence

---

The following memoranda have been reported to the House, but to save printing costs they have not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives, and are available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

**EMBARGOED ADVANCE COPY:****Not to be published in full, or in part, in any form before  
00.01 hrs GMT Wednesday 16 December 2009**

# List of Reports from the Committee during the current Parliament

---

**Session 2009-10**

First Report	Work of the Committee in 2008-09	HC 90
--------------	----------------------------------	-------

**Session 2008-09**

First Report	Work of the Committee in 2007-08	HC 74
--------------	----------------------------------	-------

Second Report	Cross-border co-operation between the Governments of the United Kingdom and the Republic of Ireland	HC 78
---------------	---	-------

First Special Report	The Omagh Bombing: Access to Intelligence	HC 873
----------------------	---	--------

Second Special Report	Cross-border co-operation between the Governments of the United Kingdom and the Republic of Ireland: Government Response to the Committee's First Report of Session 2008-09	HC 1031
-----------------------	---	---------

**Session 2007-08**

First Report	The Northern Ireland Prison Service	HC 118
--------------	-------------------------------------	--------

Second Report	The Work of the Committee in 2007	HC 286
---------------	-----------------------------------	--------

Third Report	Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past	HC 333
--------------	--	--------

First Special Report	The Northern Ireland Prison Service: Government Response to the Committee's First Report of Session 2007-08	HC 386
----------------------	---	--------

Second Special Report	Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past: Government Response to the Committee's Third Report of Session 2007-08	HC 1084
-----------------------	--	---------

**Session 2006-07**

First Report	Draft Protocol for Community-based Restorative Justice Schemes	HC 87
--------------	--	-------

Second Report	The Work of the Committee in 2006	HC 294
---------------	-----------------------------------	--------

Third Report	Tourism in Northern Ireland and its Economic Impact and Benefits	HC 119
--------------	--	--------

First Special Report	Draft Protocol for Community-based Restorative Justice Schemes: Government Response to the Committee's First Report of Session 2006-07	HC 475
----------------------	--	--------

Second Special Report	Tourism in Northern Ireland and its Economic Impact and Benefits: Government Response to the Committee's Third Report of Session 2006-07	HC 545
-----------------------	--	--------