

 *Steps into*
dialogue
Project



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Proposals by the
Consultative Group
on the Past

Summary Report

**The Legacy
Commission**
(and Other Bodies)

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The Legacy Commission

Community Dialogue

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Telephone: 028 9032 9995

Fax: 028 9033 0482

admin@communitydialogue.org

Website: www.communitydialogue.org

Introduction

Community Dialogue has received funding under the Special European Union PEACE III Programme to deliver a project entitled 'Steps into Dialogue'.

The overall goal of this project is to use dialogue as a mechanism that allows people affected by the conflict to deal with and address their past and to begin to understand the views and past of others. Through this process, Community Dialogue hopes to ensure people can begin to move forward to a peaceful society together.

There are two steps to the project:

Dialogue on the Ground

This will provide opportunities for individuals to engage in dialogue and discuss contentious issues of the past so that people can deal with these and move forward together. The project will include issue-based dialogue sessions, a series of workshops to unpack topics at a deeper level, and residencies to allow more time for reflection on opinions, ideas and concepts.

Unravelling the Jargon

This aims to take governmental policy and strategy and simplify these documents into "lay terms". This involves the production of pamphlets and follow-up workshops to help the community at large understand the basic components and assist them in making informed choices about their future.

This is the first such pamphlet and Community Dialogue hopes that it will enable a more informed debate around the issues and recommendations raised in the report from the Consultative Group on the Past.

Facing *our* Past to Create *our* Vision of *our* Shared Future

The Legacy Commission and Other Bodies Proposals by the Consultative Group on the Past

1. Background

Processes and Principles

The Consultative Group on the Past was appointed by the Secretary of State in June 2007. It reported in January 2009. Co-chaired by Lord Robin Eames and Denis Bradley, the Group had eight members. Its two international advisors were a former President of Finland and Nobel Peace Prize winner; and a South African lawyer and advisor to President Nelson Mandela who is an expert in mediation and institutional transformation. The Group had a Legal Advisor.

The Group undertook extensive consultations involving public meetings, private meetings with individuals and groups, written submissions, standardised letters and personal letters and attended many independent seminars and conferences. It took account of extensive research, experience of other post-conflict countries and contributions by practitioners.

Four major desires were apparent from the consultations:

- Desire for reconciliation, truth and justice
- Desire that such a conflict should never happen again
- Desire for a way of dealing fairly with the outstanding legacy of the past

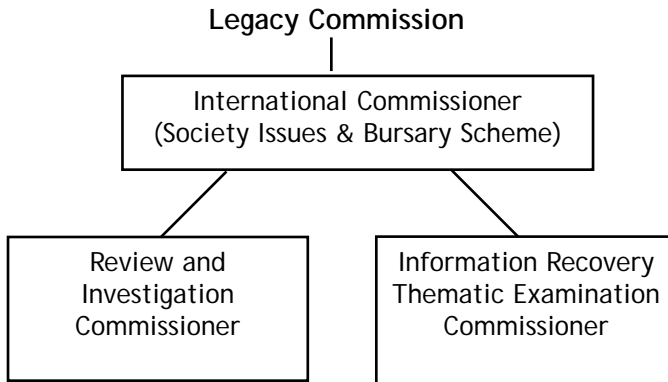
- Desire that the legacy of the past, and dealing with it, should not dominate the future

Key principles emerged from the consultations and these informed deliberations:

- The past should be dealt with in a manner that enables true and lasting reconciliation rather than division and mistrust
- Dealing with the past is a process not an event and must be allowed to evolve
- Sensitivity towards victims and survivors is essential
- Recommendations should be human rights compliant
- Relationships matter and are the foundation for reconciliation
- Consensual agreement is the ideal

The Consultative Group adopted a balanced approach between justice, truth and reconciliation. Drawing on its inclusive consultation process, the Consultative Group tried to judge where consensus lies. It proposed a new Legacy Commission and additional roles and tasks for some existing bodies.¹ The Group also discussed Society Issues that are at the centre of hurt and healing. The following pages outline their thoughts and conclusions. We invite you to discuss them.

¹ See Facing *our* Past to Create *our* Vision of *our* Shared Future pamphlet on The Legacy Commission and Other Bodies.



2. The Legacy Commission

Functions and Powers

The central proposal is for a statutory independent Legacy Commission comprising three Commissioners all of whom must be impartial and capable of managing sensitive information and difficult judgements. The Commission will be charged with promoting peace and stability through combining processes of reconciliation, justice and truth recovery. The Commission will have four strands:

1. Build a shared and reconciled future through engaging people in addressing Society Issues arising from the conflict
2. Review and Investigation of historical cases
3. Conduct a process of Information Recovery
4. Thematic Examination of issues arising from historical cases or the conflict as a whole

Strand 1: Society Issues

The Commission's Chair will be an International Commissioner with responsibility for strategic direction and Society issues. The role is intended to be a champion, a persistent challenger and a monitor of progress with the aim of maximising actions to tackle sectarianism and promote reconciliation. The Commission will administer a bursary to assist this work.

The Chair will lead the Commission's work and partnership with others on Society Issues including:²

- addressing sectarianism
- promoting remembering activities
- working with young people
- providing improved service to meet healthcare needs attributable to conflict
- ensuring that economic benefits are experienced in deprived areas
- ensuring that exiles can return home through a repatriation programme

Strand 2: Review and Investigation

The second Commissioner will lead a new independent Review and Investigation Unit to take over historical enquiries from the PSNI and the Police Ombudsman. The Unit will review cases, conduct further investigation as necessary and establish whether there is a reasonable prospect of obtaining sufficient evidence to consider prosecution. Former police officers will not investigate

cases which concern activities of their previous force. Any cases referred by the Commission Chair to the Director of Public Prosecutions will be accompanied by a Commission recommendation on whether a prosecution is in the public interest.

Where there is no referral, reviews and investigations will be 'completed' in accordance with clear criteria and procedures. 'Completion' will be a definite stage at the end of the process.³ Families will be kept fully informed and consulted from the start to the finish of the process and provided with clear information on procedures, possibilities and expectations.

Strand 3: Information Recovery & Strand 4: Thematic Examination

The third Commissioner will be responsible for leading on Information Recovery and Thematic Examination. These will operate under rules and guidelines that are distinct from Review and Investigation. Neither process will be activated until the decision of 'completion' has been made in any review or investigation of a case.

The purpose of these processes is not to name or blame individuals. Rather it is to:

- gain information and understanding
- identify what went wrong and where
- look at overall accountability
- facilitate the emergence of truth

³ The word 'completed' is used instead of 'closed' to allow for reopening a case in the exceptional situation where new and compelling admissible evidence appears later.

- promote the process of reconciliation
- encourage apology where appropriate
- build a shared and reconciled future

The Information Recovery Unit will use formal and informal means to seek answers to unresolved questions and bring a measure of resolution to victims' families. Cases that raise particular concerns or are linked by circumstances or touch on a theme⁴ will receive attention from the Thematic Examination Unit. Both Units will have the power to compel production of documents and the Thematic Examination Unit will have the additional power to compel witnesses. Enforcement of the Commission's powers will rest with the High Court.

The Commission will balance the interests of victims' families and the interests of society when deciding how any case is handled. Before an individual case can pass to the Information Recovery Unit, the agreement of the next-of-kin, with account taken of views of other family members, will be required provided the case is not linked to a theme being examined by the Commission. Where the Commission is examining linked or thematic cases for the wider benefit of society the Commission will take families' views into account but it need not obtain express agreement.

There will be no public hearings - hearings will be in private to prevent re-fighting the conflict and re-opening scars. There will be no formal parties to proceedings and no general circulation of documents.⁵ There will be access to independent legal advice

⁴ E.g. alleged collusion or an area of paramilitary activity.

⁵ Although those appearing could see documents relevant to their participation.

and representation. The only examination of witnesses will be by the Commission which will have the power, and the duty, to test information given to it. To encourage free and frank disclosure statements made at a hearing will not be admissible in criminal or civil proceedings. The Commission will be able to recommend an apology or other measures.

Transparency

The Commission will keep families informed of progress and answer their questions. It will produce reports to families who engage with the Commission and publish regular reports summarising cases; details of particular cases will not appear in public reports without families' agreement. Public reports will be published on completion of a Thematic Examination.

The Commission should have legal authority to decide which information will be made public. In using its discretion on how much information to make available to families or publicly the Commission will bear in mind the need to protect sensitive information, the obligation to protect life and its objective to promote reconciliation.

Length of the Commission's Mandate

The proposed date for the Commission to start is late 2010. The Commission's mandate will be time-limited to five years and the end of the mandate should signal the transition from the past to the future. To prepare for this the Commission will recommend measures to draw a line under the past, including enabling the intention that historical cases will not be actively pursued in future.

3. Challenges

In coming to their proposals for a Legacy Commission the Consultative Group identified a number of related issues on which people want answers.

Truth and Justice: Bringing investigation, information recovery and thematic examination under one Commission will mean more coherence and focus. However, time lapse makes investigation more difficult and victims' families are entitled to honesty about whether an investigation can yield results. Complete truth might be unattainable, but it might still be possible to recover information which is important to families and society.

Public inquiries: It is envisaged that the new processes of Information Recovery and Thematic Examination will avoid the need for further public inquiries.

Immunity from prosecution: People will be able to give information without fear of prosecution but this is not a means of escaping justice. Protection will be given for a statement made in a hearing but does not extend to general immunity for the person. Statements under Information Recovery will not be sought until a case has reached 'completion' under Review and Investigation to see first if prosecution might be possible. Furthermore, evidence outside the process could still be brought to court.

Amnesty: Amnesty would remove some of the anomalies and inconsistencies in handling historical cases, allow greater focus on information recovery, acknowledge that chances of successful

prosecutions are receding and encourage society to move on. On the other hand, international law practice is increasingly turning against amnesty. The Consultation Group accepted the strong view that a general amnesty would not be appropriate. However, it should be an aspect of the Commission's recommendations when drawing a line under the past at the end of its mandate.

On the runs: Previous attempts to resolve the issue of 'on the runs' failed despite little evidence of criminality for 'on the runs'; where there is sufficient evidence the case should be referred to the Director of Public Prosecutions. On the other hand, if a privileged procedure is accorded to some of those accused of crimes it is difficult to deny the same procedure to others. When recommending how the line under the past should be drawn, the Commission should advance a procedure for dealing with historical cases in respect of 'on the runs'.

4. Inter-dependent Bodies

Commission on Victims and Survivors for Northern Ireland

The Legacy Commission will not assume operational responsibility for tackling Society Issues; rather it will have an oversight role across the issues and a statutory duty to work closely with key bodies. The Commission on Victims and Survivors for Northern Ireland (CVSNI) is such a key body.

CVSNI should be allowed to undertake its work without partisan interference or pressure. It is CVSNI's role to respond to shortfalls in services and longer term funding issues for victims and survivors; and to promote better interaction between groups and a strong interface between groups and the statutory sector. A joined up approach will be important when future funding

depends upon a meaningful process of dialogue between groups from different traditions; so CVSNI's work to establish a Victims and Survivors Forum will be important. The Forum must provide a safe environment to begin to address the process of reconciliation.

Remembering comprises a core part of CVSNI's strategy and it must reach beyond victims and survivors to challenge those in wider society not to neglect their role in remembering the past. CVSNI is to have responsibility for convening a Reconciliation Forum comprising CSVNI, the Legacy Commission Chair and the Community Relations Council, with other bodies invited to specific meetings as merited by the issues under consideration. The Legacy Commission will work in the Reconciliation Forum with CVSNI to promote the value of remembering as a means for achieving reconciliation. Together they will develop remembering approaches and guidance.

Reconciliation Forum

The functions of the Reconciliation Forum are to:

- analyse activity undertaken to address issues
- consider the need for further activity to address gaps and make most impact
- give advice to Government and other policy makers
- advise on strategies to enable targeting of need and promotion of best practice
- advise on development and delivery of services
- decide on priority areas and influence others to take these

into account in their policy development and allocation of resources

The Chair of the Legacy Commission will work through the Reconciliation Forum to:

- ensure ongoing dialogue and engagement with all sectors of society
- encourage the collection of stories
- encourage organisations to adhere to good storytelling criteria and influence funding criteria to support storytelling with reconciliation at its heart
- promote memorial projects across Northern Ireland and explore and develop ideas for a shared living memorial.

The Governments and the Executive

The British Government will introduce legislation in Westminster to provide for the Legacy Commission and other proposals. The Irish government may need to adopt new legislation. The Governments may also consider an inter-governmental agreement. The British Government will provide the bulk of the funding with the Irish Government making an appropriate contribution. Both Governments should commit to cooperating fully with Legacy Commission's processes where required.

The Office of the First and Deputy First Minister should join the two Governments in implementing the initiative. The Commissioners will be appointed by the two Governments and the approval of the Office of the First and deputy First Minister will also be sought. The Legacy Commission will submit annual

reports to the two Governments, the OFMdFM, the Northern Ireland Assembly, the British-Irish Council and key stakeholders. Set-up costs for the Legacy Commission will be round £3 million and its annual costs just over £33.5 million. The total cost over five years will be in the region of £170 million. The Commission will administer a bursary of £100 million for Society Issues. The Consultative Group estimates that these costs represent a significant saving over the existing system of historical investigation and public enquiry.

Conclusion

Implementation of the Consultation Group's framework will need determination, the support of society and the full engagement of those who played a role in the conflict.

Suggested Questions for Discussion

Legacy Commission

- 1) Is a Legacy Commission the appropriate structure in dealing with the way forward?
- 2) Are there other challenges that are not dealt with in the document?
- 3) Do you see the idea of a Reconciliation Forum, which is adequately resourced, as a positive step forward in tackling sectarianism and racism?

Our Vision

“Our vision is of a vibrant, just and inclusive society, informed and empowered through dialogue.”

Mission Statement

“To engage people at all levels in open and honest dialogue that encourages understanding.”

For further information please contact:

Jim O'Neill

Dialogue Development Worker

Email: jim@communitydialogue.org

Telephone: 028 9032 9995

Mobile: 07540 524 186

Maura Deconink

Senior Project Administrator

Email: admin@communitydialogue.org

Telephone: 028 9032 9995

You can find out more about
Community Dialogue by logging
on to our website at:

www.communitydialogue.org

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