

EQUALITY COMMISSION FOR NORTHERN IRELAND

RESPONSE TO NIO CONSULTATION PAPER – ‘DEALING WITH THE PAST IN NORTHERN IRELAND: THE RECOMMENDATIONS OF THE CONSULTATIVE GROUP ON THE PAST’

2 October 2009

The Equality Commission welcomes the opportunity to submit this response to the consultation arising from the publication earlier this year of the Report of the Consultative Group on the Past. There is no doubt that the events of the past four decades have left a deep mark on Northern Ireland, on its people and on its public life. Those who suffered or whose loved ones suffered in or from the conflict bear a continuing burden. It is right that Northern Ireland should seek to find the most appropriate way to deal with the consequences of these realities.

Among the statutory responsibilities of the Commission is that of promoting equality of opportunity and good relations and of overseeing the duties placed on public authorities in these regards. Many of the recommendations of the Consultative Group touch directly on these duties. Anything that eases the pain of the past will contribute to improving and sustaining good relations; some of the Group’s recommendations, if implemented, will have consequences for equality of opportunity in terms of the application and implementation of public policy. That is the basis on which this response is framed.

Antecedent to all positive law in respect of equality are the right to life, to bodily integrity and to the peaceful enjoyment of home and community. There can be no greater assault on the principle or practice of equality of opportunity than the wanton taking of life, the reckless exposure of people to serious injury or depriving people of the opportunity to live peaceably in the place of their choice. Nothing can diminish that truth. And any approach to securing equality of opportunity must have these principles as a starting point.

There are a number of themes within or suggested by the recommendations on which the Commission wishes to offer some observations. These do not represent a detailed response to each and every one of the thirty one recommendations made in the report since not all of them are directly relevant to the remit of the Commission. It is hoped, nonetheless, that they will be of value in the overall evaluation of the responses to the consultation.

THOSE WHO SUFFER

There can be no doubt that all who live in Northern Ireland, and the community as a social organism, have suffered as a result of the decades of conflict. None can have fully escaped the consequences of living through that period or its aftermath. But beyond any question, those who have suffered the loss of loved ones or who live with the outcome of violence and conflict in their own lives or in the lives of those whom they love and for whom they care are most deeply affected. This must be borne in mind by all whose task it is to develop public policy in these regards.

The establishment of the Northern Ireland Victims' and Survivors' Commission was an important step in providing the necessary arrangements within which the range of policy issues to be dealt with can be identified and the needs of individuals clarified. The recent inauguration of the Victims' Forum gives an important opportunity for a range of voices to be heard in developing this work. We recognise the value of work being done by grass-roots organisations and others in the area of reconciliation and their work should continue to influence future policy.

The Report rightly identifies the fact that for very many the absence of information on the circumstances that gave rise to the loss they suffer is a significant further burden to bear. Information recovery is, therefore, an important issue to be considered. The Report also properly recognises that particular issues in the areas of health and social care - not all of them immediately apparent - arise as a consequence of the conflict. Many public authorities have important roles to play in dealing with these and related issues and that point will be returned to later in this response.

SECTARIANISM

The Report rightly identifies sectarianism as a significant issue for the present and the future of Northern Ireland. It is a problem that has inevitably been exacerbated by the decades of conflict. It will not easily be resolved. One of the key tasks facing all who live here is that of learning to live and work together in a diverse society. This task expresses itself most acutely, in terms of the future, in the obligation to provide children and young people with the capacity and the wish to see themselves as sharing together the society that they will help to create. That is no easy task but is an essential element in removing a major obstacle to full and normal community living and is a vital contributor to ensuring that violence is never again visited upon the people of Northern Ireland.

Setting a firm policy on sharing and integration at the heart of government and across all areas of government is key to progress in this area. No one agency, not even government, can deal with this challenge single-handed. It is a task for all who live in this society. Nevertheless, government has an inescapable role to play both in terms of leadership and of unshakeable commitment expressed in concrete policy priorities and actions. Much work has been done in shaping policy in this area. There is, perhaps, no greater policy priority for the Executive - even in times of economic difficulty - than the adoption of a clear policy which will apply across all areas of government and will have practical outcomes for people.

CHILDREN AND YOUNG PEOPLE

Children are inevitably the victims of violence and conflict even when its gruesome reality never seems to touch their homes or families. Their lives will be affected nonetheless.

The crucial priority is to ensure that no generation of children will ever live through such an experience again, that violence or its threat will never get in the way of childhood. A related priority is that some way be found for children and young people to understand the journey that this society has taken and to learn the appropriate lessons from the recent past. That is a daunting challenge in a divided society but one that will bear much fruit.

It is important, also, to be aware of the consequences of living through conflict and division and of how that manifests itself, often in unexpected ways, in the lives of individuals. This, too, is a reality that has consequences for those who develop and implement public policy.

Education has a powerful role to play and can be a transformative influence in so many lives. It cannot on its own achieve miracles; parents, families and communities have much to contribute.

CONFLICT-RELATED CONVICTIONS

The Commission has a particular responsibility in respect of fair employment and, specifically, in respect of the Fair Employment and Treatment Order. It has noted with care the recommendation in the Report relating to those with conflict-related convictions and the particular proposal that the Quigley-Hamilton guidance be given statutory force. The Commission's particular interest in this area has been to establish whether those who have turned away from violence and who live, and wish to continue to live, within the law can enjoy the protection that FETO offers to others. A recent House of Lords¹ judgment has shown that no such entitlement exists. If there is to be any improvement in the capacity of those with such convictions to resume a place in the work life of Northern Ireland statutory intervention will be required. Issues of morality and law intersect here, as elsewhere, and important considerations are raised in the Report.

RESPONSE OF THE COMMISSION

All of the issues that have thus far been highlighted in this response find expression in one way or another in the recommendations of the Group. In its response, the Commission wishes to offer the following observations and thoughts to assist those who will take the policy decisions that flow from this consultation. It will also make brief comments on a number of the recommendations which touch more directly on its own remit.

The Economy

Consideration of the Group's Report and of the response to this

¹ McConkey and another v The Simon Community [2009] UKHL 24

consultation will take place against the all too familiar backdrop of unhappy economic circumstances. The Commission has taken account of that in its response. It wishes simply to add the point that the process prompted by the Group's report will have to take place whatever the prevailing circumstances. Fewer resources will be available at certain times. Some ambitions may have to be modified on that account. But the enduring character of much of the work involved cannot be set aside. The grim reality of economic downturn cannot constitute an exemption from the responsibility that has been posed to all, government and individual, by this Report.

Structures

It is clear that much requires to be done. It is not clear, however, that the creation of a new body, such as a Legacy Commission with the form and roles proposed in the report, is necessarily the best way to address the task ahead. There is a real risk of overlap and confusion between it and existing bodies both as to their roles and as to the disbursement of public moneys. The report suggests a variety of structures and relationships centred on or involving the proposed Commission; it is not immediately apparent that, in present circumstances, the best way forward is the creation of a somewhat cumbersome architecture of organisations and relationships.

It is clear that the task set forth in the report cannot be concluded within the five year term proposed for the Legacy Commission. That period would, in any event, see much energy and time consumed in setting up and standing down the proposed structures. There is a real risk that a focus of responsibility in one new body will see something of a disengagement from others only to have to address recreating involvement at the end of the five year period. For the Commission the real value of the report is in recognising and articulating the areas of key concern that will be central to dealing with the past and to securing a peaceful and shared future.

Some issues raise a complex set of considerations, human, moral and legal, that will not easily find solution. How can the quest for justice be realised? How can information be sought and obtained? How can organisational focus be retained on the present and the future if the task of dealing with the past is ever-present? The

Commission recognises, for example, that the PSNI and the Police Ombudsman play a role at present that their founding legislation did not envisage for them and which does not characterise the roles of such bodies in other modern democracies.

The Commission emphasises the need to ensure that the work of existing bodies is not overlooked in whatever decisions are taken and that their potential to make meaningful contributions to the achievement of the policies eventually decided upon is fully availed of. Thus, the Community Relations Council has an integral role to play in the work of reconciliation. The Victims' and Survivors' Commission has a well defined and evidently relevant function. The way must be found whereby these and other existing public authorities take on some of the tasks identified in the report and can be assisted to do so.

The Commission also recognises that, in the event that a central body is not established, some integrating mechanism might be both necessary and desirable to ensure that important strands of work can be independently pursued and are not set aside because of the vicissitudes of budgetary pressures from other priorities.

The Group has battled, as have so many, with the issue of whether or when a "line can be drawn". This poses real difficulties in the area of criminal justice. Is there ever a time when it can be decided not to prosecute any further cases - irrespective of what new evidence emerges? Such considerations also raise real issues of equality of opportunity. What set of arrangements is possible that will not deprive some of what was available to others?

Whatever decisions are taken in terms of timelines, no arbitrary line can be drawn beyond which people are expected to forget their loved ones or put aside their sorrow. But the arc of life must be directed to the future and the greatest testament to all who suffered will be the creation of a society within which all can live and work together in the full richness of their diversity, sharing Northern Ireland as home.

Duties on Public Authorities

The Commission is conscious that in not favouring the structural arrangements proposed by the Consultative Group, the risk is created that there will not be a focus for the other actions they

proposed. In this context, the Commission recalls the fact that the great majority of all public authorities in Northern Ireland have statutory obligations to have due regard to the necessity to promote equality of opportunity and to have regard to the desirability of promoting good relations. These duties, in their varying ways, cover, inter alia, grounds of religious belief, political opinion, age, gender and disability.

These obligations are living realities. They offer a means through which those authorities, whose areas of responsibility have a particular relevance to the issues raised in the report, can contribute to the outcomes that are agreed as constituting priorities. Equality of opportunity and good relations both directly touch upon many of these issues. Such authorities could be invited or required to report on a regular basis - every two/three years, as part of existing reporting arrangements - on the impact which the discharge of their duties has had in these respects.

Remembrance

The Consultative Group rightly gave considerable attention to the questions of remembrance, of remembering and of recognition. It is easy to understand that in the intensity of a conflict that lasted for decades, many feel that their loss has been submerged in the overall picture, that their acutely personal grief has not been recognised. There are no easy answers to this very real question. The Commission believes that the Secretary of State was right, however, in withdrawing the recommendation in respect of a recognition payment from any consideration of implementation.

“Lest We Forget” has been a powerful expression of the importance and necessity of recalling those who lost their lives in the First World War and subsequently. The Commission supports the recommendation that some appropriate and dignified form of Remembrance - one that can endure through the decades to come - be instituted.

Remembrance and remembering are not the same. The day will inevitably come when none remains who remembers at first hand the conflict or the reality of living with its burdens. The day should never come, however, when remembrance of lost lives, of blighted families, of the awful reality of violence fades from the life of Northern Ireland. Providing for families and for schools a shared

story of the past of a divided society could be a potent legacy for future generations.

In respect of a number of the individual recommendations made in the Report, the Commission offers the following further observations:

Recommendation 1 The Commission has reservations about the role for such a body on the lines proposed. It has recognised that some integrating mechanism might be required. Reconciliation could be the realm of the Community Relations Council. Justice and information recovery are vital considerations and could be the realm of existing bodies or directly engaged with any such new mechanism.

Recommendation 2 The Commission does not share the view on the need for such a Forum in addition to existing bodies. Other, less complex, ways can be identified to provide opportunities to contribute to ongoing work.

Recommendation 3 Whether such levels of funding can be available in current and projected circumstances is open to serious doubt. Such funding as may be available might be deployed to best effect by adding to the quality and focus of existing services.

Recommendation 4 As noted above, the Commission believes that the Secretary of State has taken the correct decision. Such funds as might have been made available to meet this recommendation could best be used to address issues as are touched on in Recommendations 5 and 6.

Recommendation 9 Whatever decisions are taken, the Commission is cautious about seeing a five year period as being an end point for concerns with issues of the past. Elements of the concerns addressed by the report will extend beyond that point and any decisions taken should recognise that fact,

Recommendation 10 The Commission recognises that in the process of information recovery the UK and Irish Governments have roles to play in facilitating the process. Whether that is done through existing engagements with the Executive or through the nomination of persons of standing to relate to those charged with this important task is a matter for decision. The Commission does

not express a preference.

Recommendations 11-15 These recommendations have relevance for a number of existing bodies. The Community Relations Council has an evident role to play. Public authorities generally have statutory responsibilities that can be engaged. The Equality Commission has a statutory role as well as a range of current engagements that are directly connected to the work. The Commission advises against seeking to centralise this important responsibility in any new body. The Commission also cautions against the idea that identifying an individual as a “Champion” for societal issues will be effective within the timescale identified or at all.

Recommendation 16 The Commission notes its own interest in this area and the fact, arising from the recent House of Lords judgment², that any change in current practice would require legislative intervention.

Recommendations 17-18 The Commission sees virtue in relieving the PSNI and the Police Ombudsman of the tasks currently borne by them in relation to issues of the past. It realises, however, that this may not be possible. Should the integrating mechanism to which the Commission has referred be established, that might be the focus for the continuation of this work.

Recommendations 19-20 The Commission recognises the importance of information recovery and urges that a means be found whether within existing or proposed structures or through the use of external research bodies to facilitate it. Thematic studies could be incorporated within any information recovery process.

Recommendations 21 and 23 The Commission wonders if a line can be drawn which will definitively rule out further investigation or prosecution if evidence emerged that seemed to warrant it. The Commission also draws attention to the possible implications for equality of opportunity if circumstances were to develop where a facility available to some was denied to others.

The Commission does not wish to comment specifically on the remaining recommendations, save to emphasise the importance of

² Ibid

remembrance, the potential for good that lies in a dignified form of remembrance that would endure through the coming decades and in the real potential, while realising the difficulties involved, in developing for families and for schools a shared story of the past to illuminate the understanding of future generations.

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