



**Response to NIO consultation -
*Addressing the legacy of Northern Ireland's past***

October 2018

1. The Equality Commission welcomes the opportunity to submit this response to the Northern Ireland Office's consultation paper – Addressing the Legacy of Northern Ireland's Past. Furthermore, we welcome the commitment to carry out an equality impact assessment.
2. Those who suffered or whose loved ones suffered in or from the community 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. Anything that eases the pain of the past will contribute to improving and sustaining good relations and equality of opportunity for key groups. The Commission regrets that addressing the legacy of the past remains an ongoing issue, and that Northern Ireland does not yet benefit from a fully reconciled and shared society. Leaders have an important role to play in making this a reality.
3. We note paragraph 2 of the Belfast / Good Friday Agreement¹ which states: *'The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.'* Given the years that have elapsed since the Agreement, and the impact that the passage of time has had to further entrench separateness and impact upon memory, these important issues must be dealt with effectively and with determination.
4. We note the Secretary of State's belief² that there are four important things to be considered in addressing the past.
 - meet the needs of victims and survivors.

¹ <http://cain.ulst.ac.uk/events/peace/docs/agreement.htm#rights> (Human Rights para 1; Economic, Social and Cultural Issues para1)

² Consultation Paper: Addressing The Legacy of Northern Ireland's Past – Foreword by the Secretary of State ([accessed 13 Sept 2018](#))

- promote reconciliation, enabling the people of Northern Ireland to build a better future.
 - reflect broad political consensus and be balanced, fair, equitable, and proportionate.
 - the proposals must follow the rule of law.
5. Our response sets out our broad views aligned to the need to promote reconciliation, and to advance equality of opportunity and good relations. We do not provide a detailed response to all of the consultation questions since not all of them are directly relevant to the remit of the Commission³. It is hoped, nonetheless, that our responses will be of value in informing the consultation.

A: General comments

6. The Commission considers that good relations can be advanced through greater integration of communities; equality and fair participation; dignity and respect; good governance and regulation; and effective leadership at all levels.
7. The Commission recognises that addressing the legacy of the past is a multi-faceted issue and there are many factors to consider. The focus of those designing the legacy institutions should include:
- to tackle sectarianism, prejudice and hate, and the persistent and systemic separateness and lack of interconnection between the two main traditions in Northern Ireland;
 - to involve and engage everyone in the process, not just those who, in the past, have suffered directly or inflicted that suffering;
 - to ensure the process of reconciliation is based on equality and human rights principles; and
 - to make the elimination of inequalities an essential element of post-conflict programmes.

Political leadership

8. The proposed institutions, particularly the Implementation and Reconciliation Group (IRG), are reliant upon political leadership. More broadly, political representatives will influence the level of buy-in from our wider society to the proposed institutions and their outputs.

³ We note that the pension and the Mental Trauma Service are being taken forwarded separately to this consultation.

9. Leadership goes beyond simply seeking consensus and agreement to recognising disagreement and finding pathways through. It involves recognising the responsibility to bring people to challenge the accepted, to persuade others to change if necessary, to be supportive and to change by example.
10. The Commission considers that effective leadership must: set the tone and standards; provide top level commitment to achieving change; unite and unify to a common purpose; tackle prejudice, promote understanding and address inequalities; challenge inappropriate behaviours; embed good relations principles in operational practice; establishing positive working relationships; and ensuring participation and facilitate collaboration.
11. Changing behaviour is a core challenge which will take leadership from all the influencers in our society. There is a need to create a public consensus which promotes an acceptance and appreciation of the diversity of our society and challenges all expressions of prejudice and hostility towards people in our community based on negative stereotypes.
12. Without the confidence and support of the population of Northern Ireland, the intended outcomes and the potential they have to do good will not be realised. Leaders and stakeholders must all show a willingness to compromise and move forward in a spirit of partnership, mutual support and respect. Strong political leadership, which demonstrates respect and tolerance for difference through words and behaviours, is needed.
13. We recognise that the out-workings of the proposed institutions will very likely impact upon lives across Northern Ireland on other policy areas, including Together: Building a United Community; sharing in education; and shared housing.

Together: Building a United Community

14. The Commission endorsed the commitments in the TBUC strategy around building a culture where everyone feels safe and creating a community where all areas are open and accessible to everyone. No one agency, not even government, can deal with this challenge single-handedly. 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.

Role of women

15. The Belfast / Good Friday Agreement makes two commitments on the inclusion of women: the right of women to full and equal political participation and the advancement of women in public life. The Commission recommends that any new structures must provide opportunities and encourage women's roles in leadership and decision-making. This was referenced in the CEDAW examination of the United Kingdom – the 2013 Concluding Observations recommended that Government ensure the participation of women in the post-conflict process in Northern Ireland.⁴
16. We have welcomed initiatives designed to ensure greater involvement of women in peace building, including the 2014 publication⁵ of a strategic guide and toolkit⁶. This guide has recommended a gender mainstreaming approach including the inclusion of gender perspectives in all strategies, institutions and arrangements for peace building. The Commission was disappointed, therefore, to see that there was only one woman among the 15 appointments to the Commission on Flags, Identity, Culture and Tradition⁷ established in 2016.
17. A 2015 UN commissioned study into the implementation of UN Security Council Resolution 1325⁸ highlighted that women's participation is key to sustainable peace. In particular, it noted that research comprehensively demonstrates that the participation of women at all levels is key to the operational effectiveness, success and sustainability of peace processes and peace building efforts⁹. While Government has not implemented United Nations Security Council Resolution 1325, the UK's (2013) 7th and (2017) 8th Periodic Reports^{10, 11} record that: *“(n)evertheless, some aspects of UNSCR 1325, such as women’s participation in peace building and political processes, are relevant to all states.”*

⁴ Concluding Observations reference, 26 July 2013

⁵ Hinds B, Donnelly D (2014) [WPS Toolkit](#) 'Women, Peace and Security: Women's Rights and Gender Equality, developing and applying women, peace and security practice in Northern Ireland'. This Strategic Guide and Toolkit to Developing and Applying Women, Peace and Security Practice in Northern Ireland/Ireland was commissioned by the Community Foundation for Northern Ireland (CFNI). It is the culmination of the Women and Peacebuilding: Sharing the Learning project funded by the Special EU Programmes Body responsible for Peace III funding in Northern Ireland/Ireland.

⁶ The toolkit has been developed following an extensive Women and Peacebuilding Project to put forward the imperative for involving women and to set out good practice models from across the public sector for involving women in peace building.

⁷ Commission on Flags, Identity, Culture and Tradition - www.fictcommission.org

⁸ [UN SCR 1325](#) (2000) on women, peace and security. UN SCR 1325 recognises that women and girls have critical roles to play as active agents in conflict prevention and resolution, peace negotiations, peace building and post conflict reconstruction. Other UN SCRs pertain including [UN SCR 2122](#) on involving women in decision making in post conflict reconstruction

⁹ UN (2015) [Preventing Conflict, Transforming Justice, Securing The Peace](#)

¹⁰ Home Office (2013) [UK CEDAW 7th Periodic Report](#)

¹¹ GEO (2017) [UK CEDAW 8th Periodic Report](#)

Conflict-related convictions

18. While not within the Northern Ireland Office's remit, conflict-related convictions and the application of the Fair Employment and Treatment (NI) Order 1998 (FETO) are highly relevant to how Northern Ireland addresses its past and looks to its future. The Commission has responsibility in respect of fair employment and the FETO. Our particular interest in this area has been to ensure those who have turned away from violence and who live, and wish to continue to live, within the law can enjoy the legal protection FETO offers to others. If there is to be any improvement in the capacity of those with convictions to resume a place in the work life of Northern Ireland, statutory intervention will be required.

Sharing in education

19. Education has a powerful role to play and can be a transformative influence in so many lives. The Commission considers it important that a system of shared education has a central role to play in advancing a shared society and has recommended a move to a system of sharing across the full range of education providers at each level of provision; one which routinely teaches students together via a shared curriculum in shared classes.

Shared housing

20. We recall the recognition within the Belfast / Good Friday Agreement of the role of mixed housing in facilitating reconciliation and also the recognition of the importance of enabling people to exercise choice in the type of community in which they wish to reside.
21. We have recommended that sharing in housing is advanced, while ensuring that objectively assessed housing need is met. We restate our view on the value of shared housing and that segregated housing in Northern Ireland is not the way forward for our society. We view socially, ethnically, politically and religiously integrated housing as a preferred option and long-term goal. The Commission recognises that people need to feel safe where they live, and considers that actions are needed to encourage and incentivise integration. While reiterating the importance of ensuring that housing need is met on the basis of objectively assessed need, actions which advance sharing in housing could also serve to expand housing markets; increase opportunities to meet objectively assessed housing need; and advance sharing more generally.

B: Specific observations about the proposals

General principles

22. The Commission welcomes that the legacy institutions would be required to act consistently with the six general principles¹² set out in the Stormont House Agreement in exercising their functions¹³.
23. We also welcome recognition¹⁴ that ‘the institutions, as public bodies, would be required to comply with section 75 of the Northern Ireland Act 1998. This would ensure that the needs of all section 75 groups are recognised. For example, given the passage of time, many victims and survivors are likely to be older people. In addition, the majority of those who died during the Troubles were men while a disproportionate number of survivors and family members are women. Similarly, a significant number of victims and survivors have disabilities as a result of the Troubles. It would be important to take account of any generational, gender or disability effects in the design of, or access to or engagement with the legacy institutions.’
24. Our comments below are made on the basis of the impact of the proposed bodies’ work upon those with Section 75 characteristics, such as people with disabilities, older people, women and people with dependants. For example, the 2014 women in peace-building guide referred to above, recommended greater support for women, women’s groups and networks to manage the mental health challenges resulting from the community conflict and civil unrest and the continuing challenges of paramilitarism and gender-based violence, abuse and threat.
25. As public bodies, the legacy institutions would have statutory obligations under Section 75 to have due regard to the necessity to promote equality of opportunity and good relations and to have regard to the desirability of promoting good relations. Steps should be taken to ensure compliance with these duties throughout the design, implementation, work and reporting of the institutions should be set out.

¹² [Stormont House Agreement](#), paragraph 21, an approach to dealing with the past is necessary which respects the following principles:

promoting reconciliation;
upholding the rule of law;
acknowledging and addressing the suffering of victims and survivors;
facilitating the pursuit of justice and information recovery;
is human rights compliant; and
is balanced, proportionate, transparent, fair and equitable.

¹³ 6.1, page 21

¹⁴ 6.1, page 21

Historical Investigations Unit (HIU)

26. Sufficient resourcing will be required to ensure completion of the tasks set for the Historical Investigations Unit during its five year life span. This includes a caseload of around 1700 deaths, which could increase should the Director of Public Prosecutions refer further deaths to it. We note that between 2006 and December 2014, the PSNI's Historical Enquiry Team completed 1615 cases, involving over 2000 deaths. That period would, in any event, see much energy and time consumed in setting up and standing down the proposed structure.

Independent Commission on Information Retrieval (ICIR)

27. 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. We are concerned by the potential impact the passage of time has had and continues to have on memories, and how information provided can, as time passes, be adequately corroborated so as to reach the standard required by the body. Furthermore, the sequencing of cases, whereby a person may have to await the outcome of the HIU investigation before seeking assistance from the ICIR may create a further impediment to the five-year timeline. Given the importance of the work to be undertaken by this body, consideration is required as to how it can meet its objectives within the stipulated period.

Oral History Archive (OHA)

28. We welcome the proposed Oral History Archive, which has the potential to facilitate both remembering and remembrance. 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.

Implementation and Reconciliation Group (IRG)

29. There is a lack of specificity and clarity around the role of the Implementation and Reconciliation Group (IRG), particularly as regards reconciliation, and its relationship to other non-legacy bodies. Greater clarity should be provided with perhaps a statement of intent or purpose. We note that paragraph 52 of the Stormont House Agreement states that:

‘Promoting reconciliation will underline all of the work of the IRG. It will encourage and support other initiatives that contribute to reconciliation, better understanding of the past and reducing sectarianism.’

30. It is proposed that the IRG will *‘take such steps as it considers appropriate to promote reconciliation of the differences related to the constitutional status of Northern Ireland or to the political or sectarian hostility between persons there.’* This work can include *‘supporting and encouraging others persons’* in the promotion of reconciliation. The activities this may comprise and how it is planned to operate during its limited life span alongside existing bodies undertaking reconciliation work, requires clarification.
31. The IRG, and other legacy institutions, are obliged to operate in a way that is ‘balanced’¹⁵. In our view, this should be across the Section 75 categories. Given the make-up of the body, with 8 of the 11 members political appointees, clear rules / a code of conduct is required to ensure confidence in the body. Furthermore, we note that appointees can be withdrawn by their nominating body with written notice. This notice does not appear to need to include grounds for removal.
32. As regards the academic research report, we concur with the consultation view that an independent approach should be taken to producing it. We are concerned however around the timeline for its delivery. If the report is to be commissioned after five years, and based on the evidence of the legacy institutions, any slippage from them is likely to impact upon the commissioning process. The period for production of the academic report is not stated, but may be substantial. Clarification of the anticipated timeframe for completion and publication of the report is sought. These issues should be addressed and greater clarity provided.

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¹⁵ 6.1, page 21