



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Draft Statutory Instrument
The Victims and Survivors (Northern Ireland) Order 2006**

Response of the Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligation in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission welcomes the opportunity to respond to the Consultation on Victims and Survivors Order. The appointment of a Commissioner ought to improve the coordination of services for victims and survivors, but other aspects of the proposals are less satisfactory.

Remit of the Victims and Survivors Order

3. The draft order focuses on the establishment of a Commissioner for Victims and Survivors. The earlier

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid.*, s.69(3).

³ *Ibid.*, s.69(4).

⁴ *Ibid.*, s.69(6).

consultative document⁵ had a clear dual focus relating to “services for victims and survivors of the Troubles” and to the “establishment of a Commissioner for Victims and Survivors”. The title of the Order should indicate more clearly that its prime concern is with the establishment of the post of the Commissioner rather than with provision of services and support.

4. A review by the Interim Commissioner of current arrangements for delivery and coordination of services for victims across Departments and agencies, identifying gaps in provision, is to report at the end of 2006. It may have been preferable to postpone the present consultation until the report were published, to allow all interested parties to evaluate the effectiveness of the office and help to inform procedures for the establishment of the permanent post. However, the publication of the interim report *Support for Victims and Survivors: Funding by Government since 1998* does provide useful emerging findings.

Development of a comprehensive strategy for addressing “conflict-related” victimhood

5. The timeline of “in or after 1968” (Draft Order: article 2(2)), may create unnecessary barriers to accessing services by those who suffered a conflict-related incident prior to that date. We would recommend that the timeline is removed and instead the criteria contained in article 3 of the Order are applied.
6. Within the definition of “conflict-related incident”, the reference to a “violent incident” (article 2(2)) omits other types of victimhood, such as those who experience poverty and disadvantage, indirectly or directly, as a result of the conflict, the underlying causes of which may be cumulative and on-going. For example, recent research supports the link between poverty, ill-health and geographical proximity to areas where the conflict has been most in evidence (Horgan 2005).⁶ Child poverty is “most concentrated” in areas “where the conflict has been most intense” (ibid). This pattern is repeated in relation to children suffering psychological distress (ibid).

⁵ *Services for Victims and Survivors of the Troubles and Establishment of a Commissioner for Victims and Survivors* (March 2005)

⁶ Horgan, G., *The particular circumstances of children in Northern Ireland*, November 2005, www.childrenslawcentre.org

7. The appointment of a Commissioner for Victims and Survivors provides an opportunity to develop, through consultation, a comprehensive strategy for addressing “conflict-related victimhood” that also acknowledges the particular needs of persons living in areas most affected by the conflict and links to other policy developments, such as the Children’s Strategy, Anti-poverty Strategy, etc.
8. In relation to carers, research shows a strong link between poverty and carers in that “half of poor households are characterised by long-term limiting illness, health problems or disability, and carers have higher than average poverty rates.”⁷ It is important that these socio-economic factors are acknowledged in the development of particular services for those who care for someone who has been physically or psychologically injured as a result of or in consequence of a “conflict-related” incident (article 3(1)).

Definition of “victim and survivor”

9. In relation to the adoption of a workable definition of “victim and survivor”, the Commission welcomes the steps taken to provide a more inclusive interpretation of the term and, in relation to carers, the adoption of a wider definition referring to “someone who provides a substantial amount of care on a regular basis [to a victim or survivor]” (article 3(1)(b)), rather than to “close relative” as in the previous consultation (2005).

Role of Commissioner

10. The role of the Commissioner should be primarily that of an independent ‘watchdog’, monitoring the establishment of services for victims and survivors of the conflict and ensuring that adequate consultation and funding arrangements are in place for service provision.
11. Clarification is required regarding working relationships with the Northern Ireland Office Minister with responsibility for Victims, the NIO’s Victims Liaison Unit and the Victims Unit within OFMDFM, so as to avoid confusion or duplication of roles.
12. The extent of the role of First Minister and Deputy First Minister, particularly in relation to the appointment of the

⁷ Hillyard, P., et al. *Bare Necessities: Poverty and Social Exclusion in Northern Ireland: key findings* (Democratic Dialogue), August 2003, p55.

Commissioner and the approval and modification of work programmes, may significantly limit the Commissioner's ability to provide a properly independent voice within debates concerning the adequacy and effectiveness of services for victims and survivors.

13. The procedure for establishing work programme raises issues in relation to the Commissioner's ability to set his/her own agenda following consultation with victims and survivors. It is noted that there is a clearly stated requirement on the Commissioner to "ensure that the views of victims and survivors are sought concerning the exercise by the Commissioner of his (sic) functions" (article 6(5)). However, in relation to establishing the work programmes for the Commissioner, the role of the First and Deputy First Ministers in approving or amending the submitted work programme (article 8) may undermine the ability of the Commissioner to respond to issues raised in the course of consultation with victims and survivors. The ministerial role goes beyond what is required to ensure the accountability of the office (such as presentation of strategic and business plans), and offers undue scope for intervention in the office's functions.
14. The principal aim of the office of the Commissioner - "to promote the interests of victims and survivors" – is broadly drawn and provides an opportunity, if not a requirement, to adopt a wide and inclusive remit. The Commission endorses the point made in the 2002 OFMDFM Victims Unit Strategy *Reshape, Rebuild, Achieve* (para. 2.2) that practical help and services are also required in relation to such issues as health, education and learning, housing, developing business skills, together with tackling the wider issue of rural isolation and securing long-term funding for services.
15. In respect of services that are developed to address the particular needs of victims and survivors of conflict-related incidents, the Commission has highlighted the importance of linking service provision to the wider issues of 'Dealing with the Past'. "These are matters of the greatest relevance to victims and survivors and they deserve a fuller treatment... within the context of a consultation on services" (NIHRC response to 2005 consultation on Services for Victims and Survivors, para. 33). It remains our view that "a commitment to consult, with victims and survivors and more widely, on the processes for 'dealing with the past' should form an important part of any overarching strategy for

victims and survivors" (ibid: para. 34) and, as such, should be included within the remit of the role of the Commissioner.

16. In respect of strategy and policy development, including the work programme of the office, care should be taken that "policies designed to address the rights and needs of victims and survivors should contribute to securing the state's compliance with the binding obligations arising from human rights treaty commitments, and should, at the same time, be properly developed through the United Nations, the European institutions and other systems including the Commonwealth" (NIHRC response, para. 5).

Funding issues

17. Clarification is required regarding the relationship and the scope of the advisory role of the Commissioner for Victims and Survivors to the OFMDFM in the distribution of grants to organisations and individuals in connection with work assisting victims and survivors of the conflict.
18. It remains vitally important to acknowledge past and on-going work of the voluntary/community sector and the faith communities, in delivering services to victims and survivors, and to ensure that its funding needs are met. There is evidence that this sector is viewed by some victims and survivors as being better able to handle personal sensitive details in that concerns remain regarding the use of confidential information by statutory organisations (Services for Victims and Survivors: Appendix A, March 2005). Here, the issue of building relationships based on trust within partnership working arrangements, is paramount.
19. The Commission notes the concerns raised by the Interim Commissioner⁸ that the "current lack of coordination of funding and of coordination of service provision" has created difficulties including duplication of funding, gaps in funding and overly demanding administrative processes.
20. The Interim Commissioner further commented that structures such as the Trauma Advisory Panels (TAPs) and the Interdepartmental Working Group (IDWG) set up to provide coordination "have created some networks and coordination but with no agreed direction nor with any overarching aims and objectives within in which all bodies know their role, who

⁸ Report by the Interim Commissioner, *Support for Victims and Survivors: Funding by Government since 1998*, page17.

they are accountable to and what they are ultimately trying to achieve" (ibid). As such, further clarification is required on the relationship of TAPs and the IDWG to issues relating to funding allocation.

Establishment of consultative arrangements

21. The Commission welcomes the requirement that the Commissioner will establish a Forum for consultation and discussion with victims and survivors. It is our view that arrangement should also be made to consult with service providers, particularly those from the voluntary and community sector.
22. In respect of the duty of the Commissioner to "take reasonable steps" to seek the views of victims and survivors (article 6 of Draft Order) the Commission views this as an opportunity to consult with individuals, groups and organisations, across the statutory, voluntary and community sectors in an inclusive manner.
23. It is important that the Forum and other consultative processes be enabled discuss issues including poverty and exclusion, health, education and learning, housing and rural isolation, with issues relating to 'Dealing with the Past' forming part of discussions, as "the need for information, analysis and acknowledgement of what actually happened in the course of the Northern Ireland conflict" (NIHRC response para. 33) is a fundamental issue in relation to the development of comprehensive services for victims and survivors.

Monitoring mechanisms

24. The Commission reiterates its view that there should be a mechanism to ensure a review of policy after a fixed term (NIHRC response para. 42). Such a review should include an evaluation of the effectiveness of the Commissioner in fulfilling his/her duties.

Other comments

25. The establishment of any additional services for victims and survivors of the conflict should attract additional funding, and not detract in any way from existing funding for such services. Equality of provision of comprehensive services

should be an overarching priority of policy-making in this area.

26. The establishment of services for victims and survivors of the conflict should be carried out in close cooperation with other relevant departments and public bodies (for example, the Commissioner for Children and Young People; the OFMDFM Victims Unit, NIO Victims Liaison Unit, Police Ombudsman and other service providers across the sectors) to enable the co-ordination of efforts and exchange of experience and information relating to all aspects of service need and provision.
27. The Commission has reservations about the inclusion in the Order (article 9) of the provision relating to 'Privilege for certain publications'. Absolute privilege, in the sense of a complete defence even for untrue or malicious allegations, is usually limited to proceedings in Parliament or courts, and should not generally attach to publications issued by public bodies, in effect giving immunity from the law of defamation. Given the sensitivity of the post in question, there may from time to time arise a conflict of interest regarding the reputation and rights of others, the confidentiality of information and/or potential interference with the presumption of innocence. It may be more appropriate to specify qualified privilege, not extending to malicious statements, and at any rate the Commissioner should not ordinarily publish material that, absent this provision, would be defamatory or prejudicial.

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