



# Research on Historical Investigations & Information Recovery

Prepared for the Commission for Victims and Survivors By  
Deloitte

March 2012



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## Acknowledgements

Deloitte would like to thank everyone who contributed to this research. In particular our team was acutely aware of the painful issue family members were relating to in participating in this research. We are most grateful for their contribution.

# Executive Summary

## Introduction

Deloitte was commissioned by the Commission for Victims and Survivors Northern Ireland (CVSNI) to research the current historical enquiries and information recovery services to assess how effectively they are meeting the needs of victims and survivors, what works well and what could be improved. This will help to inform plans for appropriate and accessible services in the future. This is the executive summary of the report.

## Terms of Reference

This research project forms an essential element of the Comprehensive Needs Assessment (CNA) being taken forward by the CVSNI. Specifically, this project is aimed at providing evidence about the Truth, Justice and Acknowledgement needs of victims and survivors of the conflict. The main aim of the research is to provide the Commission with more in-depth knowledge in relation to the historical investigation and information recovery services that are available to victims and survivors. In particular, provide information relating to the experiences of victims and survivors engaging with the organisations and processes responsible.

The objectives of the review are to:

- examine the experiences of victims and survivors who have interacted with the organisations responsible for providing historical investigations and information recovery services including:
  - » The Historical Enquiries Team (HET);
  - » The Office of the Police Ombudsman (OPONI);
  - » The Police Service for Northern Ireland (PSNI);
  - » The Coroner's Service;
  - » The Criminal Cases Review Commission;
- elicit the experiences of victims and survivors who have previously accessed or are currently accessing the services of the organisations listed above;
- develop a questionnaire and carry out primary research with victims and survivors to identify concerns, interests and views of victims and survivors regarding the organisations and services provided in the area of historical investigation and information recovery. This should also include development of a number of case

studies;

- review the adequacy of current arrangements and identify any capacity problems which have generated delays in accessing these services;
- advise on the required level of support or any other needs identified by victims and survivors within the information gathered. This should identify, where possible, good practice and any shortcomings and also comment on the services provided by NGO's working within the sector; and
- provide recommendations in relation to future needs of victims and survivors in this area and the services required to meet those needs.

## **Methodology**

The approach involved the following:

- A desk review of relevant policies and publications was undertaken to help inform our approach to consultation;
- An approach was agreed for the 30 in-depth case studies with victims and survivors. We worked with the Commission and NGO's working with victims and survivors to identify potential participants who had accessed these services. This identified a spread of participants across services provided, NGO support and no NGO support;
- If participants were willing to participate, the interviews were undertaken face-to-face. Each participant signed a consent form and was provided with an information sheets that provided details about the research. An information from the CVSNI was also provided which gave the participant details on what they could do should they require any support following the interview;
- Thirty case study interviews were conducted with victims and survivors. These were with family members of the deceased. In some cases more than one family member participated in the interview. The spread of the case studies completed in the research compared with spread of cases being undertaken by the five service providers is shown below;

**Table 1 - Overview of Case Studies**

<b>Organisation</b>	<b>Cases</b>	<b>%</b>	<b>Case Studies</b>	<b>%</b>
<b>HET</b>	2,559	89	20	67
<b>OPONI</b>	127	4	5	17
<b>PSNI</b>	137	5	3	10
<b>Coroner</b>	29	1	2	6
<b>CCRC</b>	31	1	0	0
<b>Total</b>	<b>2,883</b>	<b>100</b>	<b>30</b>	<b>100</b>

NB. Of the 30 case studies 21 were supported in their respective processes by NGOs. Nine went through the process without NGO support

- Consultations were undertaken with service providers of historical investigations and information recovery services. Consultations were also undertaken with NGOs with the victims and survivors sector that provide services relating to truth, justice and acknowledgement.

## **Victims and Survivors – Experience and expectations**

### **Victims and survivors experience different needs and level of needs**

This research supports a widely held view that each victim and survivor is unique in how they react to the violent death of a loved one. The various responses can be observed in someone's emotional and physical needs.

With this core finding in mind it is recognised that a one-size-fits-all approach to supporting an individual or a family who are going through a historical investigation is not going to work. This presents a challenge in itself.

That said, and in line with a finding by the CJINI, victims will experience similar needs, concerns, fears and expectations. The depth of need can, however vary greatly, from a listening ear and family support to longer term counselling and practical support.

These are the characteristics of the individuals and families who are engaging with the historical investigation and information recovery services.

### **Victims and survivors want different outcomes from historical investigations and information recovery mechanisms**

Our discussions with families going through these processes validated the truth, justice and acknowledgement need category of victims and survivors;

- truth - Participants spoke about wanting answers to questions they have had for years, including the question of who killed my father, brother etc. There was an appreciation of the opportunity to ask questions which the process would seek to answer. The gathering of facts and the description of what happened to a loved one is valued, indeed even by some who cannot bring themselves to read the report;
- justice – A minority of those we interviewed explicitly spoke about getting justice. They spoke of fighting to get the perpetrator to go through due process for what they had done and for the perpetrator to have to face a court. It is recognised this is also one end of the spectrum in terms of outcomes that can be achieved. Of those seeking justice, some recognised the current process was not going to deliver it. Broadly speaking, they vowed to continue to campaign to achieve this outcome. Our team noted that several participants explicitly said their involvement in an historical investigation was not about bringing someone to justice; and
- acknowledgement – Families and individuals appreciated that effort was being applied to look at the case. Some had reconciled themselves to this never happening, so someone taking the time to consider the case after a significant period of time had elapsed was unexpected and welcomed. Others valued the facts surrounding the case of their deceased family members was being written down in an “official” report. Individuals spoke about the process helping the family remember,

speak about and acknowledge their deceased relative.

## **Current Historical Investigation and Information Recovery Arrangements**

A primary point to make is that a variety of historical investigation and information recovery processes, delivered by five different bodies are currently in place. Our research has described the processes involved in each organisation.

In terms of the scale of historical investigations and information recovery arrangements.

- in total there are 2,559 cases that involved 3,259 victims for the HET to investigate. As of 23 August 2011, HET had concluded 1,227 cases, of which review summary reports have been delivered for 778 cases and involved the preparation of family reports involving 1,061 victims. The remaining 449 had no review summary report delivered either because families were not involved or because they were concluded by other means (e.g. OPONI);
- at the time of the research OPONI had 127 historic cases relating to 137 victims/survivors. Work on historic cases is currently suspended;
- at November 2011, the number of historic investigations being investigated by the PSNI was 137, of which 80 victims are linked to HET cases;
- as of November 2011, there were 29 coroner inquests relating to 52 conflict related deaths; and
- with regard to the Criminal Cases Review Team, out of 250 applicants in relation to Northern Ireland conflict-related convictions, 31 have been sent for appeal. Of the 31 cases referred, convictions have been quashed, or sentences amended in 23 of them. In two, convictions have been upheld and in the remaining six referrals, the court has yet to make its judgment.

## **Challenges Facing Current Processes**

Through this research it is apparent that there are substantive challenges, which are inter-linked, facing historical enquiries and information recovery services:

- at a basic level, the sheer volume of cases and complex nature of investigations has led to delays. The HET has had to be extended as it became evident that the original timeframe to complete the 2,559 cases was not achievable. Similarly, OPONI has experienced delays and due to a build-up of issues has now suspended its historical investigations. The inquest hearings going through the Coroners Service have also proved to be slow due to issues around getting access to information and witnesses;
- the nature of historic cases means that there are challenges caused by the time elapsed since the events took place. Tracing witnesses who have moved, maybe overseas or moved more than once can be difficult and indeed accessing witnesses

may turn out to be impossible if the witness has passed on;

- the nature of the conflict was such that there are a significant number of inter-related deaths. Undertaking an investigation into one death in isolation is often impossible, and dependencies surrounding other investigations can create delays;
- given the multiple processes there is often a need for inter-agency working between the service providers. For example the OPONI and Coroner's Service often need to access information held by the PSNI. In our research this transfer of information has been perceived to have been slow for some cases and has subsequently led to delays;
- there is a challenge for the processes to be demonstrably independent and for careful management of perceived conflicts of interest. This is critical in regard to conflict deaths linked to police and army. Additionally it is important considering the lack of trust in state bodies and processes among some in the community, and perhaps particularly those who have lost family members in deaths perceived to be related to police or army personnel. That said in cases in which state agents were not involved there was also concern expressed that reviews of cases that were not satisfactorily undertaken during the conflict require the highest levels of independence; and
- linked with the issues above there is a challenge for processes to know how best to communicate with families (letter, phone, face-to-face), who to communicate with (particularly if there are several family members involved), when and how often to communicate (especially given processes can be long with delays when limited progress can be made). The communication issue is complex given the varying levels of trust a family may have in the process and their level of expectation (see paragraph above on trust, justice and acknowledgement); and
- given the different levels of expectation among individuals and families, it is clear that the various processes with their defined scope and approach, will be unable to meet this diversity of expectation.

## **Support for Individuals and Families**

As stated above victims and survivors will have a range of needs. Some of these will be deep in nature, while other needs will be mild. A single blanket approach will not suffice and indeed there is a spectrum of support available to individuals accessing the historical enquiries and information recovery services.

This support can be from family members and friends, directly from the service provider, from solicitors, from CVSNI or from a range of NGOs in the voluntary and community sector. Our focus in this research has been around the support provided by the service providers and by NGOs. In line with the terms of reference, these have been categorised under: Good Practice, Short Comings and NGO support.

## **Good Practice in supporting families through the process**

Through this research, there were some examples of good practice in regards to supporting individuals through the process:

- a tailored approach – for example at the start of an investigation, the HET allow the family concerned to chose how they want to be communicated with throughout the process, ranging from not participating at all to being given regular updates on progress;
- a personal touch – praise was given to the first Police Ombudsman because she came across as very personal and would have contacted families herself. This made the families feel that they could trust her and the service she was providing. While not universal, there was also some praise for HET team members in terms of their empathy, listening and in terms of how accommodating they were in communication and meeting. Again this created rapport and confidence, particularly at the start of processes;
- the HET process offered two elements of ‘flexibility’ which were considered family friendly in nature. First they encourage families to ask questions which the process would subsequently seek to answer. Second the report they first provide to families can be read, reviewed, questioned and amended. This can be compared with other processes where the remit is tightly prescribed (and hence additional questions cannot be asked) and the report is ‘final’; and
- family liaison officer – services do have family liaison officers in post and these are there to support families through the process. Families were generally aware of these and the minority who availed of their support were positive about their involvement.

## **Short comings in supporting families through the process:**

- sign-posting other support - despite service providers reporting that their processes automatically provides contact details for support for individuals and families involved in the process, remarkably few individuals and families we spoke to recall this. Perhaps this is related to the information being provided in an initial stage of the process (e.g. an initial letter or initial meeting) which can be very emotional and which happened some time prior to the interviews undertaken for this research. One NGO said (in specific reference to the HET) that a telephone number was provided to an organisation people were unlikely to know at the bottom of a page. Generally families felt the onus was on them to seek out support as was demonstrated in the number who had taken steps to link up with the NGOs.
- inconsistent communication:
  - » gaps in communication with those families who want to be communicated was a key frustration. This could be for significant time periods (e.g. months, maybe

more than a year) if there were delays in a case;

- » the medium of communication was relevant. Participants reported frustration with being “*phoned out of the blue*” or “*receiving a letter and not being able to ask questions*”;
- » insensitive communication – a few participants reported discussions with personnel in which the tone was unhelpful or which became heated, and which damaged trust in the process;
- » meeting point – one family reported they had been provided with a report on a deceased family member in the public foyer of an hotel. They felt this to be wholly inappropriate for such a sensitive issue;
- » when team members changed, something that does happen in cases which take a period of time to complete, family members were not consistently informed of the change and why it had occurred. This often led to a loss in rapport.

#### **NGO support:**

- the range of support reported from NGOs included social and emotional support (e.g. providing access to befriending, counselling and therapeutic services), practical support around communications (e.g. assistance in making a call, writing a letter or email), advice in relation to the process (explaining the process, awareness of what has happened in other processes, information on legal dimensions), advice in relation to what questions may be useful to ask, attendance at critical meetings with families (and take a written note of such discussions) and provision of a report (covering chronology of events and other publicly available information, which helps contextualise the case and can inform the family of what questions they might want to ask);
- interviewees clearly valued NGOs who understood the process who they could speak to in between contact with the HET team. One reported their “family would have been lost without the NGO”, others considered the support as helping them “to understand the process” and “in thinking through questions” as being important. NGOs who had an awareness of different cases and experiences of individuals and families did feel that when service providers were aware of an NGO’s involvement there was a helpful heightening of attention onto the investigation;
- we would conclude that individuals and families were more involved as a result of NGO support. Indeed some may have not participated or backed-off without the support of the NGO. In terms of the bigger picture of addressing the past, participation of individuals and families would appear to be a more desired outcome to the process;
- generally individuals or families getting support received some (e.g. advocacy) but not all such support services (e.g. potential advocacy, social, health). An

observation would be the NGOs are quite different in levels of experience, scale and breath of capabilities. There is also variation in NGOs' confidence in and attitudes towards different historical investigation processes (which again could influence the support they offer). In this context the support an individual or family would receive would be dependent on which NGO they would link with;

- we would note the CJI report on “The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland” acknowledged the emotional and practical support provided by Victims Support NI and NSPCC and the need for voluntary and community sector advocacy support to address the needs of some victims; and
- the majority of participants in this research received support from NGOs We would note that there were comments from two such individuals who felt they were going through the process feeling very alone. One spoke of the challenge of sitting in a room with a team going through a report, with one person writing down what I said, and struggling to keep up. It is not possible however to conclude on whether people going through historical investigations without NGO support have a materially different experience.

## **Looking Forward - Recommendations for Consideration**

We put forward the following recommendations for your consideration:

Overall:

- historical investigations and information recovery services are a significant part of acknowledging and dealing with the past. The issues and processes involved are complex and in some cases lengthy and expensive. While the combination of service provided will never meet all the expectations of all victims and survivors (who have diverse expectations) the current arrangements are struggling to undertake the cases assigned to them at all. If the current services are to be continued, there is a need to consider how realistic their current timelines, resource arrangements and processes are. In the future, if there is to be a separate process around these issues, the lessons and experiences from the current processes should valuably inform its design and operation;
- based on this research's findings on the experience of individuals and families, and in line with the CJI report on care and treatment of victims and witnesses, it is reasonable for historical investigations and information recovery services to focus on greater customer care and understanding and to bring the needs and concerns of victims and witnesses closer to the heart of the overall approach and front line service delivery; and
- alongside the current arrangements, there is rationale for families and individuals participating in historical investigations and information recovery services having

access to support independent of the statutory service provider. The rationale can be due to a range of reasons including capability, confidence and trust (including lack of trust in state agencies) which the NGOs can support on. The support can help the individuals and families participate more fully (or indeed participate at all) and get more out of the process.

Scope and provision of support to individuals and families participating in historical investigations and information recovery:

- the scope of this support is dependent on the needs of the family / individual. The scope of support available should primarily include emotional and practical support. There will also likely be a requirement for advocacy support for some families and individuals who have particular issues and concerns in engagement with the historical investigations and information recovery services;
- given our conclusion on need, the funding of this support should be a matter of consideration for government in taking forward future historical investigation and information recovery processes. There is precedent for this in funding the support provided for victims and witnesses in the mainstream criminal justice system;
- given the organic and inconsistent development of NGOs providing support in this arena, the stance NGOs have toward historical investigation processes, and indeed with some degree of community attachment to certain NGOs, there is a concern that individuals and families may not have access to, or receive, a consistent level of support. For example some of the NGOs have personnel with legal skills and experience, others do not. A move to formally support NGOs undertaking this work with funding, through the forthcoming Victims Service, would be an opportunity to better define the scope of support to be provided and the quality standards expected;
- if public funding is to be used to support NGOs in supporting victims and survivors, value for money should be controlled by provision of funding on the basis of quantity of support provided at particular quality standards; and
- a memorandum of understanding, as per between DoJ and Victims Support NI, may be an appropriate tool in considering the relationship between investigating bodies and NGOs supporting families and individuals.

For service providers:

- while the challenge and complexity of their task is recognised there is opportunity to reflect on the practice identified within this research. In particular we would highlight the following practices which have scope for improvement:
  - » service providers need to be more explicit in explaining to participants of the range of support opportunities available to them;

- » while service providers should continue to agree communication strategy with families and individuals at the outset – this should be monitored and changed as necessary, to help families be confident and assured that they understand what is happening with their case;
- » service providers should communicate clearly with families when there is a change in the investigating team and critically, if the case is to be passed to another service provider. The service provider should speak with the family to ensure the family are aware of the reasons why;
- » there should be clear communication around timelines, stumbling blocks, and any issues that come up – people want to be kept informed; and
- » there needs to be good quality inter-agency working on these matters. There should be transparency in requests to access information from other service providers, and where this is problematic this should be escalated.

# 1. Introduction

## 1.1 Introduction

Deloitte was commissioned by the Commission for Victims and Survivors Northern Ireland (CVSNI) to research the current historical enquiries and information recovery services to assess how effectively they are meeting the needs of victims and survivors, what works well and what could be improved. This will help to inform plans for appropriate and accessible services in the future.

This report sets out the analysis of the collated data and will be used to provide an evidence base to support the Commission in informing the future of the Victims and Survivors Service.

## 1.2 Terms of Reference

This research project forms an essential element of the Comprehensive Needs Assessment (CNA) being taken forward by the CVSNI. Specifically, this project is aimed at providing evidence about the Truth, Justice and Acknowledgement needs of victims and survivors of the conflict. The main aim of the research is to provide the Commission with more in-depth knowledge in relation to the historical investigation and information recovery services that are available to victims and survivors. In particular, provide information relating to the experiences of victims and survivors engaging with the organisations and processes responsible.

The objectives of the review are to:

- examine the experiences of victims and survivors who have interacted with the organisations responsible for providing historical investigations and information recovery services including:
  - » The Historical Enquiries Team (HET);
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  - » The Police Service for Northern Ireland (PSNI);
  - » The Coroner's Service;
  - » The Criminal Cases Review Commission;
- elicit the experiences of victims and survivors who have previously accessed or are currently accessing the services of the organisations listed above;
- develop a questionnaire and carry out primary research with victims and survivors to identify concerns, interests and views of victims and survivors regarding the organisations and services provided in the area of historical investigation and

information recovery. This should also include development of a number of case studies;

- review the adequacy of current arrangements and identify any capacity problems which have generated delays in accessing these services;
- advise on the required level of support or any other needs identified by victims and survivors within the information gathered. This should identify, where possible, good practice and any shortcomings and also comment on the services provided by NGO's working within the sector; and
- provide recommendations in relation to future needs of victims and survivors in this area and the services required to meet those needs.

### 1.3 Methodology

In order to deliver on the terms of reference, the following approach was taken.

Stage	Description
1. Project Initiation	A Project Initiation Meeting was held on 13th September 2011 to discuss and finalise the research methodology.
2. Preparation and Consultation setup	<p>A desk review of relevant policies and publications was undertaken to help inform our approach to consultation.</p> <p>A questionnaire was drafted for use with each of the stakeholder groups and agreed with the Steering Group.</p> <p>We then designed and agreed the approach for the 30 in-depth case studies with victims and survivors. We worked with the Commission and NGO's working with victims and survivors to identify potential participants who had accessed these services. This identified a spread of participants across services provided, NGO support and no NGO support.</p> <p>If participants were willing to participate, the interviews were undertaken face-to-face. Each participant signed a consent form and was provided with an information sheets that provided details about the research. An information from the CVSNI was also provided which gave the participant details on what they could do should they require any support following the interview.</p>

Stage	Description																																			
3. Consultation Programme	<p>Consultations were undertaken with service providers of historical investigations and information recovery services.</p> <p>Consultations were also undertaken with NGOs with the victims and survivors sector that provide services relating to truth, justice and acknowledgement.</p> <p>Thirty case study interviews were conducted with victims and survivors. These were with family members of the deceased. In some cases more than one family member participated in the interview.</p> <p>The spread of the case studies completed in the research compared with spread of cases being undertaken by the five service providers is shown below.</p> <table border="1" data-bbox="549 936 1358 1308"> <thead> <tr> <th>Organisation</th> <th>Cases</th> <th>%</th> <th>Case Studies</th> <th>%</th> </tr> </thead> <tbody> <tr> <td>HET</td> <td>2,559</td> <td>89</td> <td>20</td> <td>67</td> </tr> <tr> <td>OPONI</td> <td>127</td> <td>4</td> <td>5</td> <td>17</td> </tr> <tr> <td>PSNI</td> <td>137</td> <td>5</td> <td>3</td> <td>10</td> </tr> <tr> <td>Coroner</td> <td>29</td> <td>1</td> <td>2</td> <td>6</td> </tr> <tr> <td>CCRC</td> <td>31</td> <td>1</td> <td>0</td> <td>0</td> </tr> <tr> <td><b>Total</b></td> <td><b>2,883</b></td> <td><b>100</b></td> <td><b>30</b></td> <td><b>100</b></td> </tr> </tbody> </table>	Organisation	Cases	%	Case Studies	%	HET	2,559	89	20	67	OPONI	127	4	5	17	PSNI	137	5	3	10	Coroner	29	1	2	6	CCRC	31	1	0	0	<b>Total</b>	<b>2,883</b>	<b>100</b>	<b>30</b>	<b>100</b>
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4. Analysis and Reporting	<p>All qualitative and quantitative information gathered through the consultation stage was then analysed and written up in order to meet the requirements of the engagement (as set out in the Terms of reference).</p>																																			

## 1.4 Structure of this Report

The remainder of this report is set out as follows:

**Section 2:** sets out the context in which this research has been commissioned including key developments within Government policy and strategy relating to Victims and Survivors in recent years;

**Section 3:** provides a summary of the current Historical Investigation and Information Recovery services, outlines the role of relevant NGOs and records feedback from NGO consultation;

**Section 4:** presents the findings collating feedback from case studies with individuals / families; and

**Section 5:** outlines our conclusions and recommendations for the Commission to consider in looking forward.

## **2. Context**

### **2.1 Introduction**

In this section we outline the strategic and policy context within which historical investigations and information recovery is currently taking place.

The context within which this research is set, is complex and surrounded by both political and emotional sensitivities. In recent years there has been a number of key developments within Government policy and strategy that have attempted to recognise Victims and Survivors and to put in place measures to support them. This includes the establishment of the Commission for Victims and Survivors and most recently proposals for the establishment of the Victims and Survivors Service being taken forward by OFMDFM. The Comprehensive Needs Assessment will inform the strategic priorities for funding through the Service. The new Service will support services in relation to historical investigations and information recovery. Therefore, this research aims to inform future services.

The rest of this section is set out as follows:

- Victims and Survivors;
- Truth Justice and Acknowledgement;
- Government Policy and Strategy; and
- Other research.

### **2.2 Victims and Survivors**

The Victims and Survivors (Northern Ireland) Order 2006, a Statutory Instrument written to facilitate the establishment of the Commissioner for Victims and Survivors. The Order defined Victims as follows:

- (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.”

This is qualified further with the statement that:

“Without prejudice to the generality of paragraph (1), an individual may be psychologically injured as a result of or in consequence of:

- (a) witnessing a conflict-related incident or the consequences of such an incident; or
- (b) providing medical or other emergency assistance to an individual in connection with a conflict-related incident.”

The Victims and Survivors sector is varied and reflective of the diverse experiences, opinions and needs resulting from the conflict in the region.

There are many groups that have been established via various funding streams that aim to support victims and survivors. Some groups have emerged due to specific events, whilst others have emerged in response to incidents in specific geographical areas. Groups vary in being perceived as representing one or the ‘other’ side in the conflict while some are cross community, some groups are also perceived to be more political than others. Most groups provide certain levels of support to victims and survivors and services range from personal help (e.g. counselling, therapies, social support etc) to advice and advocacy work.

In addition to the groups there are also individual victims and survivors who do not want to associate with groups or do not want to be defined as either victims or survivors. Consequently, they may remain ‘invisible’ in any process which seeks to count them as victims and survivors.

In aggregating the overall numbers of victims and survivors the picture is very complex, and this is despite considerable effort by the Commission and others in attempting to quantify the information available. Currently, no uniform system or method exists to collect and collate this specific information either within the victims and survivors sector or statutory services. In response to an OFMDFM committee question, officials currently progressing the Victims and Survivors Service stated that 11,000 victims and survivors are present on the database held by the Northern Ireland Memorial Fund. The CVSNI commissioned the Northern Ireland Statistics and Research Agency (NISRA) in September 2010 to incorporate a module relating to Victims and Survivors of the Northern Ireland Troubles in the 2010 Omnibus Survey. The survey found that approximately 30 per cent of the current population of Northern Ireland consider themselves to be directly affected by the conflict and therefore, the Commission would estimate that the number of victims and survivors of the conflict equates to approximately 500,000 people.

Understanding the needs of victims and survivors is a particular challenge. The first phase of the Comprehensive Needs Assessment (CNA) recognises “further research and consultation must continue with the victims and survivors sector in order to assist in dealing with the past and taking forward such work in a pragmatic, sensitive and constructive way”.

## 2.3 Truth, Justice and Acknowledgement

The question of how to deal with the past in any society emerging from conflict is wrought with difficulties and in that sense Northern Ireland is no different. Hamber and Kelly's definition of reconciliation identifies the importance of acknowledging the "hurt, truths and suffering of the past".<sup>1</sup> They also identify mechanisms to do so including justice, healing, restitution or reparation and restoration.

Part of the complexity of this issue is directly related to the fact that truth, justice and acknowledgement individually and in their collective form mean different things to different people. In relation to the needs of victims and survivors this can range from story-telling and reminiscing, to the provision of support and advocacy services through to forensic criminal justice processes. Whilst for some, the role of story-telling, recording and documenting experiences and opinions are cited as mechanisms to explore legacy and memory of the conflict within the wider processes of truth recovery and within the context of exchanging different views of history, culture and identity. For others, the value of these activities is contested.

Given the tensions evoked by conflicting memories, efforts to find ways of dealing with the past pose significant challenges and dilemmas for states and societies in transition<sup>2</sup>. This may go some way to explaining why dealing with the past is the outstanding issue of Northern Ireland's peace process. In contrast to some other post-conflict societies it has not established a truth commission.

Despite strong opposition to 'truth' recovery within sections of the community in Northern Ireland, the reality is, 'truth' recovery is taking place by means of introducing a plethora of measures seeking to deal with conflict-related deaths.

These measure includes:

- the establishment of the Police Ombudsman's Office;
- "calling in" of other police forces to investigate deaths;
- the establishment of the Historical Enquiries Team;
- the option for families to judicial review of decisions not to prosecute;
- new practices relating to verdicts of coroner's juries at inquests & disclosure at inquests;
- measures following reviews of the coroners' system; legal aid requests; and
- the Inquiries Act.

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<sup>1</sup> Hamber, B and Kelly, G. (2004) A working definition of reconciliation

<sup>2</sup> Lundy, P. (2010) Commissioning the Past in Northern Ireland, *Review of International Affairs*, Special Issue: Transitional Justice

These are the methods through which victims and survivors can access information relating to a conflict-related death of a loved one.

## **2.4 Government Policy and Strategy**

While progress on the development of policy and strategy on issues relating to victims and survivors can be difficult, there have been a number of key developments within Government policy and strategy during the recent period.

### **Draft Programme for Government 2011-2015**

During November 2011, the First Minister and deputy First Minister published the draft Programme for Government (PfG) 2011-2015 for consultation.

It aims to highlight the actions that the Executive will take to deliver their number one priority which is to achieve a *“vibrant economy which can transform our society while dealing with the deprivation and poverty which has affected some of our communities for generations”*.

Within the draft PfG the Government Priority 4 is to ‘Build a Strong and Shared Community. Within this Priority there are specific commitments to build on the 10 year Victims Strategy and to *“finalise the Cohesion, Sharing and Integration Strategy to build a united community and improve community relations”* .

### **Programme for Government 2008 - 2011**

The current PfG for 2008-2011 over-arching aim was to:

*“to build a peaceful, fair and prosperous society in Northern Ireland, with respect for the rule of law and where everyone can enjoy a better quality of life now and in years to come”*.

Under Public Service Agreement 7 entitled Making People’s Lives Better, is a programme across Government to reduce poverty and address inequality and disadvantage. Objective 6 of this PSA makes explicit reference to victims and survivors:

The specific actions recorded are to:

- publish a new strategy for victims and survivors and establish a Victims and Survivors Forum; and
- establish a new scheme to provide support, assistance and advice for groups and individuals and agree arrangements for the sponsorship of the office of the Commissioner for Victims and Survivors.

## **The Commission for Victims and Survivors**

The Commission for Victims and Survivors was established in June 2008 under the Victims and Survivors (Northern Ireland) Order 2006. It is a Non-departmental Public Body of the OFMDFM. The principal aim of the Commission is to promote the interests of victims and survivors.

Statutory duties include:

- promoting an awareness of matters relating to the interests of victims and survivors and of the need to safeguard those interests;
- keeping under review the adequacy and effectiveness of law and practice affecting the interests of victims and survivors;
- keeping under review the adequacy and effectiveness of services provided for the victims and survivors by bodies or persons;
- advising the Secretary of State, the Executive Committee of the Assembly and anybody or person providing services for victims and survivors on matters concerning the interests of victims and survivors;
- ensuring that the views of victims and survivors are sought concerning the exercise of the Commission's functions; and
- making arrangements for a forum for consultation and discussion with victims and survivors.

The general powers of the Commission include:

- undertaking or commissioning research or educational activities concerning the interests of victims and survivors;
- issuing guidance on best practice in relation to matters concerning the interests of victims and survivors;
- compiling information, providing advice or information and publishing research or advice on any matter concerning the interests of victims and survivors; and
- making representations to anybody or person concerning the interests of victims and survivors.

To meet the statutory duty of making arrangements for a forum for consultation and discussion with Victims and Survivors and to satisfy strategic outcome one, a Victims and Survivors Forum will be convened by the Commission in early 2012.

## **Strategy for Victims and Survivors (2009)**

In December 2009, OFMDFM published the strategy for Victims and Survivors. The strategy recognised that in taking forward a comprehensive approach, cognisance should be given to the complexity and numeracy of the issues relating to Victims and Survivors. The strategy aimed to build upon the existing “Reshape, Rebuild, Achieve” strategy of 2002.

The approach is Victim and Survivor centred and built around three areas:

1. The Commission for Victims and Survivors;
2. A Victims and Survivors Forum; and
3. A new Victims and Survivors Service.

The overall aims of the strategy are to:

- put in place comprehensive arrangements to ensure that the voice of victims and survivors is represented and acted upon at a governmental and policy level;
- secure through the provision of an appropriate range of support services and other initiatives a measurable improvement in the wellbeing of victims and survivors;
- assist victims and survivors, where this is consistent with their wishes and wellbeing, to play a central role, as part of wider society in addressing the legacy of the past; and
- assist victims and survivors to contribute to building a shared and better future.

The strategy highlights action being required in three areas:

- a comprehensive needs assessment to inform the development of services (linked to the provision of long-term funding and support services for victims /survivors);
- dealing with the past; and
- building for the Future.

## **Victims and Survivors Service**

In August 2009, a consultation paper on a Victims and Survivors service was released by OFMDFM. This Service is intended to be the focal point for funding work with Victims and Survivors replacing all current arrangements under which OFMDFM provides funding to the Victims and Survivors sector. It will be responsible for the provision of support for both individual Victims and Survivors, and, groups working with Victims and Survivors.

The Vision Statement for the Service outlined within the consultation paper is as follows:

*“The Victims and Survivors Service will provide support for all victims in a co-ordinated and efficient manner. It will listen and be responsive to the needs of victims, and, will work closely with the Commission for Victims and Survivors and the Forum, to improve the lives of Victims and Survivors”*

Part of the Vision identified within the consultation paper is to build upon the work already carried out by practitioners with Victims and Survivors within the Voluntary and Community sector.

In support of this Vision Statement the Aims of the Service include:

- better co-ordination of funding;
- clearer links between support provided and actual needs;
- more efficient use of resources;
- sustainability;
- to make use of and improve upon good practice in the sector;
- to obtain better information on outputs;
- to collate information on individual needs; and
- better evaluation of services provided.

The Objectives for the service are that Victims and Survivors will have:

- access to high quality services;
- support relevant to their needs;
- services delivered in appropriate locations; and
- a commitment to the long term if required.

Since the completion of the consultation exercise in late 2009 discussions have been taking place with the OFMDFM Committee and the Commission for Victims and Survivors. Taking account of these views and the responses to the consultation, all of the strands of work required to establish the new Service have been identified and have been taken forward during 2010 and 2011. The new Service is due to open its doors on 1st April 2012, however, it is acknowledged that the first two years of the operation of the Service will be viewed as transitional years to the new infrastructure as envisaged in the Victims Strategy 2009-2019.

## Cohesion, Sharing and Integration

The First Minister and Deputy First Minister announced the agreement of the Cohesion, Sharing and Integration (CSI) programme in February 2010. Subsequent to the initial announcement, OFMDFM asked government departments for their input into the CSI programme. The draft programme was released for public consultation on 27th July 2010 and ended in Autumn 2010.

The CSI programme aims to “build a strong community where everyone, regardless of race, colour, religious or political opinion, age, gender, disability or sexual orientation can live, work and socialise in a context of fairness, equality, rights, responsibilities and respect”.<sup>3</sup> In taking forward governments commitment a ministerial panel is to be established under the draft proposals.

The draft CSI programme was put out for consultation and an analysis of responses was conducted by Wallace Consulting in January 2011<sup>4</sup>. The analysis found that while there was a general support for the overall aims presented, the consultation process uncovered “feelings of disappointment with regards to the perception that CSI did ‘not go far enough’ in addressing sectarianism – with a substantive number of submissions requesting a re-draft or at least a significant amendment”. Many respondents also felt that CSI was “a step back” from A Shared Future.

In relation to acknowledging the past, many respondents did not think that the CSI programme “dealt effectively with the past conflict” and wished to see the document “placed in the context of a divided history and the additional complexity that brings”.

The OFMDFM response to the consultation process<sup>5</sup> focused on the main themes arising from the consultation and offered the department’s views on how the issues raised can be addressed to move the programme towards implementation.

In relation to the responses around acknowledging the past, OFMDFM stated:

*“We all acknowledge that the need for a programme like CSI arises out of the unique set of circumstances in which we live. We don’t believe, however, that CSI needs to dwell unduly on the past in order to give shape to our future. We have had inquiries into the past injustices, we are setting up a Victims and Survivors Service and an element of Peace III, namely 1.2, is all about acknowledging and dealing with the past. We believe that CSI needs to take these issues into account and to look beyond them, and set out our positive vision for the future”.*

The Programme is still to be finalised. Overall the time period in developing the draft

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<sup>3</sup> Programme for Cohesion, Sharing and Integration – July 2010

<sup>4</sup> [http://www.ofmdfmi.gov.uk/final\\_web\\_version\\_-\\_csi\\_analysis\\_report\\_-\\_pdf\\_1.12\\_mb\\_.pdf](http://www.ofmdfmi.gov.uk/final_web_version_-_csi_analysis_report_-_pdf_1.12_mb_.pdf)

<sup>5</sup> [http://www.ofmdfmi.gov.uk/ofmdfm\\_response\\_to\\_csi\\_consultation](http://www.ofmdfmi.gov.uk/ofmdfm_response_to_csi_consultation)

Cohesion, Sharing and Integration programme, the reviewing of the consultation responses and finalising the programme highlights that the development of policy in this area has been complex and difficult.

## **2.5 Other Research**

In addition to the Government policy and strategies, there have been numerous assessments, investigations and reports that have influenced and informed the debate in relations to truth, justice and acknowledgement. A summary of the most relevant to this research is set out below.

### **The Comprehensive Needs Assessment**

As stated in the Strategy for Victims and Survivors, the CVSNI is currently conducting a Comprehensive Needs Assessment (CNA) aimed at informing “government of the services required to improve the quality of life and create the conditions where victims and survivors can flourish in society”.

The purpose of the CNA is to “examine the current needs of victims and survivors and assess the provisions and services that have been put in place since 1998 to meet those needs. It also seeks to anticipate the areas of emerging and growing needs that occur over time and in relation to changing social and economic environments”.

The CNA has a key role to play in informing the new Victims and Survivor Service of the needs of victims and survivors and how they should be addressed. The CNA analyses seven areas of relevance to victims and survivors of which Truth, Justice and Acknowledgement is one.

In September 2010, a draft CNA was published which highlighted several key priorities in relation to truth, justice and acknowledgement, as set out below:

- the Commission accepts the importance of truth, justice and acknowledgement for individuals and groups who have been directly affected by the Conflict;
- the past must be dealt with in ways that are truly sensitive to the particular needs and circumstances of individual victims and their families;
- the concepts of truth, justice and acknowledgement remain contested matters in our society. They also involve varying expectations across the community. While it will be wise to accommodate divergent views and allow for a range of practice across society, victims and survivors would benefit from the evolution of greater levels of consensus about these matters, among political leaders and across the community;
- the Commission believes that victims and survivors need mechanisms to deal with the past which are more independent, financially secure and strategically coherent than the current piecemeal arrangements of the Historical Enquiries Team and the Police Ombudsman’s Office;

- the Commission believe it is in the interests of victims and survivors that initiatives by civic society organisations regarding truth, justice and acknowledgement be properly funded and validated; and
- the Commission does not know the proportion of victims and survivors who want action to deliver justice, truth and acknowledgement. However, from our knowledge of those for whom these issues are important, we observe that they have needs in relation to justice, truth, sensitivity, recognition, acknowledgement and advocacy.

### **Can the past be policed? Lessons from the Historical Enquires Team Northern Ireland, 2009<sup>6</sup>**

Dr Patricia Lundy, University of Ulster, conducted research to explore how societies in transition might address victims' quest for the truth and was based on a case study of the HET. The paper states that *"it is generally accepted that truth commissions are more adept at delivering the 'bigger picture' or macro level truths"*. However the *'fundamental weakness'* is the inability to satisfy the majority of victims' needs for micro level information. In that light Dr Lundy stated *"the concept and model of addressing families' needs for a case-by-case individual truth has great strengths"*.

The research looked at policies, procedures and processes during 2005-2007, during the initial period of HET establishment and operation. In that initial period the research found the HET rate of completing investigations into historical cases was low and the quality of reports was inadequate. Reasons for this included: "teething problems"; high staff turnover; quality of staff; sheer volume and complexity of cases; and resource issues.

In terms of lessons learned the author put forward the view that engagement of retired RUC officers throughout various stages had *"tainted the process with an appearance of bias and presumptions of conflict of interest in circumstances where the police may be regarded by certain sections of the community as policing themselves"*. Lundy noted that in other transitional societies that have undergone a truth recovery process, the body undertaking the process has usually been staffed by an independent multi-disciplinary team. The research also suggested if the pursuance of prosecutions were removed, for example through immunity provisions, this would encourage participation of original Senior Investigating Officers and eyewitnesses. An overarching viewpoint offered by the research was that the truth recovery process should be removed from policing. A restructured truth recovery process should use a *"more civilianised multi-disciplinary team"* including police from outside Northern Ireland, preferably with knowledge and experience of Northern Ireland.

### **HET Response to Can the past be policed? Lessons from the Historical Enquires Team Northern Ireland**

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<sup>6</sup> Lundy, P., "Can the Past be Policed? Lessons from the Historical Enquiries Team Northern Ireland", Law and Sociology Challenged, Vol. 11 Spring/Summer 2009

In reference to the research undertaken by Lundy, we would note discussion and correspondence with HET highlighted the timing of the research was the period directly following their set-up. HET stated that “Since its inception in 2005 the HET, its structure and processes have evolved and developed.” HET provided evidence that the rate of completing reports has increased significantly. It reported that during 2006-7 HET completed 4.5 reviews a month compared to 37 reviews per month in 2011. In consultation HET explained how quality assurance processes have been developed in relation to the content of reports (both in terms of technical policing process and family friendly language). This quality assurance process is explained in Section 3.2.1.

In relation to the concerns raised by Lundy around engagement of retired RUC officers and the issue of independence, HET highlighted the Interim Resolution of the Committee of Ministers<sup>7</sup> of the Council of Europe. This interim resolution highlighted the task of HET was to provide a *“thorough and independent reappraisal of unresolved cases with the aim of identifying and exploring any evidential opportunities that exist, and, if evidential opportunities are identified, to proceed with the investigation of the crime.”* The Committee of Ministers decided to close its examination of this issue as it adjudged that the *“HET has the structure and capacities to allow it to finalise its work”*.

### **Report of the Consultative Group on the Past (2009)**

On 22 June 2007 Peter Hain, the then Secretary of State for Northern Ireland, announced the formation of an independent Consultative Group. 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; 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; present a report, which was published, setting out conclusions to the Secretary of State for Northern Ireland, in January 2009.

The Group was also asked to consider: the landscape of initiatives that have already been taken by Governments and non-Governmental groups; work already done – and ongoing – in this area, including consultative exercises; the resources that would be required to implement any recommendations that it makes.

The central proposal from the Group was 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 would be charged with promoting peace and stability through combining processes of reconciliation, justice and truth recovery. The Commission would have four strands:

1. Build a shared and reconciled future through engaging people in addressing Society Issues arising from the conflict;

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<sup>7</sup> CM/ResDH(2009)44

2. Review and Investigation of historical cases;
3. Conduct a process of Information Recovery; and
4. Thematic Examination of issues arising from historical cases or the conflict as a whole.

### **Strand 1: Society Issues**

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

- addressing sectarianism;
- promoting remembering activities;
- working with young people;
- providing improved service to meet healthcare needs;
- attributable to conflict; and
- ensuring that economic benefits are experienced.

### **Strand 2: Review and Investigation**

The second Commissioner would lead a new independent Review and Investigation Unit to take over historical enquiries from the PSNI and the Police Ombudsman. The Unit would 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 would not investigate cases which concern activities of their previous force. Any cases referred by the Commission Chair to the Director of Public Prosecutions would 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.

### **Strand 3: Information Recovery & Strand 4: Thematic Examination**

The third Commissioner would be responsible for leading on Information Recovery and Thematic Examination. These would operate under rules and guidelines that are distinct from Review and Investigation. Neither process would be activated until the decision of

'completion' has been made in any review or investigation of a case.

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

- gain information and understanding look at overall accountability;
- facilitate the emergence of truth;
- promote the process of reconciliation;
- encourage apology where appropriate; and
- build a shared and reconciled future.

The Information Recovery Unit would 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 theme will receive attention from the Thematic Examination Unit. Both Units would have the power to compel production of documents and the Thematic Examination Unit would have the additional power to compel witnesses. Enforcement of the Commission's powers would rest with the High Court. To encourage free and frank disclosure statements made at a hearing will not be admissible in criminal or civil proceedings (i.e. would be given amnesty from prosecution).

### **Commission for Victims and Survivors for Northern Ireland**

In relation to the role of CVSNI, the Group suggested that:

- the Legacy Commission would 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 CVSNI should be allowed to undertake its work without partisan interference or pressure
- CVSNI's role is 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; and
- the CVSNI's work to establish a Victims and Survivors Forum will be important as the Forum will provide a safe environment to begin to address the process of reconciliation;
- a Reconciliation Forum should be established through which the Legacy Commission and the Commission for Victims and Survivors for Northern Ireland would liaise to tackle certain society issues relating to the conflict.

In addition to the establishment of a Legacy Commission the Group also proposed 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. This idea of a “recognition payment”, however provoked anger among some victim and survivor groups and politicians, who believed that this proposal accorded moral equivalence to all those who died.

### **Reaction to the Report by the Consultative group on the Past<sup>8</sup>**

The report sparked large debate and controversy and led to an extensive inquiry undertaken by the Northern Ireland Affairs Committee. The Committee collated views and evidence on the recommendations put forward by the Consultative Group on the Past. The high level recommendations that impact on historical investigations and information recovery, from this inquiry, are set out below.

**The Legacy Commission:** *“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.”*

**Ongoing historical enquiries:** *“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.”*

**Truth Recovery:** *“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*

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<sup>8</sup> Report by the Consultative Group on the Past in Northern Ireland, Northern Ireland Affairs Committee, Second Report of Session 2009-10

*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.*

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.”

### **Public Opinion - Tribunals of Inquiry and Consultative Group on The Past (2009)**

In response to the Consultative Group on the Past’s consultation document, the CVSNI conducted a public opinion poll. In particular, the poll aimed at understanding:

1. The attitude of the general public to Public Tribunals of Inquiry, such as (but not limited to) the Saville Inquiry, and the inquiries into the deaths of Robert Hamill, Billy Wright and Rosemary Nelson;
2. The attitude of the general public on the need for future inquiries on specific instances; and
3. The attitude of the general public to other forms of legal and non-legal process to seek truth and justice.

A summary of the responses are set out below:

- there was a significant degree of respondents being unable to provide an opinion with regard to many of the questions, either saying they did not know or choosing the middle ground throughout the research findings. This was particularly prominent amongst respondents aged under 25;
- overall, around a quarter of all respondents were in support of further Public Inquiries, with half saying no to any more. Respondents who felt there should be further Public Inquiries cited that people still needed to find out the truth, and that there were still unresolved issues;
- the expense was by far the most frequently cited reason for respondents opposing any further Inquiries;
- in terms of attitudes towards Public Tribunals of Inquiry, the majority of respondents agreed that they took too long and are too expensive;

- opinion of the effectiveness of Public Inquiries was divided, although few thought they were very effective;
- the majority did feel that it was important that any such Inquiries held should be held in public;
- just 1 in 3 claimed to have heard of the Consultative Group of the Past (or the Eames Bradley Report);
- however two thirds had heard of the recommendation to make payments of £12,000 to the families of the bereaved;
- overall, this idea of a recognition payment to all bereaved families was more likely to be opposed than supported, although again a significant number were unsure;
- just over 6 in 10 agreed that Northern Ireland needs to deal with the past in order to move on;
- even more (just over 7 in 10) agreed that it is important to deal with the past in a way that promotes reconciliation;
- high importance was also placed on the idea of forgiveness and its importance in dealing with the past;
- in terms of the proposed Legacy Commission, out of a list of possible issues that it might deal with, greatest importance was placed on societal issues, such as working with young people to provide them with the skills to ensure there is no repeat of the past; the provision of improved service to meet healthcare needs and ensuring that economic benefits are equally experienced as well as tackling sectarianism;
- respondents were unsure about the establishment of the proposed Legacy Commission and even more unsure about its effectiveness as a mechanism for dealing with the past; and
- relatively few respondents felt that the proposed Legacy Commission could be truly independent.

### **Review of Community Relations Council's Funding for Victims and Survivors, 2010<sup>9</sup>**

Deloitte, assisted by INCORE, was commissioned by the Community Relations Council (CRC) to undertake a review of CRC Funding for Victims and Survivors. The research found that within the Victims and Survivors sector there is a wide spectrum of need which evolves and changes in nature and in many cases is 'invisible'. There was significant evidence of Core and Development programmes that meet victims and survivors needs and which have also increased the capacity and quality of the sector as a whole. This has led to improved quality of support for victims and survivors.

There was also evidence that needs amongst victims and survivors remains substantial and

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<sup>9</sup> <http://www.community-relations.org.uk/fs/doc/crc-final-report-march-2010.pdf>

there is a requirement for services and activities are tailored in order to engage and support victims and survivors effectively.

Funding within the sector has allowed development and delivery of a range of services to a particularly vulnerable group of people in society who would otherwise have limited access to services.

The report recommended that *“future funding criteria should target funding a priority needs; challenge the sector to demonstrate how it is best meeting the need; and challenging funders and government agencies overseeing the sector to provide direction and assistance in how cost-effectiveness can be demonstrated while continuing to support key services”*.

### **The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland<sup>10</sup>**

The Criminal Justice Inspection (CJI) Northern Ireland report on the care and treatment of victims and witnesses in the criminal justice system provides interesting comparative analysis for our specific research on families participating in historical investigations and information gathering processes.

The Northern Ireland Victims and Witnesses Survey (NIVAWS) (2010-2011) found that 71 per cent of victims and witness were satisfied (64 per cent of victims, 77 per cent of witnesses) regarding their overall contact with the justice system. This satisfaction rate has been improving year on year. There remain 23 per cent who are dissatisfied and the report quoted comments such as *“I felt I was only a reference number”* and *“I felt very let down by the whole system.”*

The report included the following findings:

- there was some variation and gaps surrounding lead responsibility and accountability for victims and witnesses. The review found it is in the inter-agency working between the PSNI and the PPS that these matters become most acute;
- Victims Support NI and NSPCC (for under 18s in partnership with Victims Support NI) are funded by DoJ to provide specialist support services to victims and witnesses. There is a Memorandum of the Terms and Conditions of the Grant-in-Aid in place between the DoJ and Victims Support NI. Victims Support NI provide a community service; criminal injuries compensation service; and witness service:
  - » All staff of the Witness Service are trained to provide emotional support and practical information to victims, witnesses and families;
  - » The Community Service offers emotional support; information on police and court procedure; liaison with other organisations on behalf of clients; advice and

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<sup>10</sup> December 2011, Criminal Justice Inspection Northern Ireland

information on compensation and insurance matters; and contact with other sources of help;

- » In discussing the Community Service the review acknowledged the need for voluntary and community sector advocacy support to address the needs of victims who:
  - do not engage the criminal justice system;
  - have difficulty accessing criminal justice services;
  - need help beyond the period when the criminal justice process has ended; or
  - who needs specialist assistance for reasons of vulnerability;
- the report recommended the Courts Service and Victim Support NI develop a clear system of voluntary referrals to help victims and victim's families access support;
- the Northern Ireland Victims and Witnesses Survey found that 29 per cent felt the Public Prosecution Service could have provided more information or support. Within this, the biggest issues was keeping the victim up-to-date. Letters were used as the key form of communication by the PPS. Letters were standardised and included details on the Community Liaison officer's information line. They were sent at various milestones within the process;
- the report welcomed the new Code of Practice for victims, but noted that this would require robust monitoring of the commitments within it, if it is to realise its potential; and
- the Inspection concluded there is a need for a cultural shift from a system to a service and to greater customer care, understanding and interpersonal skills and to bring the needs and concerns of victims and witnesses closer to the heart of strategy, policy and front line service delivery.

## **3. Current Services**

### **3.1 Introduction**

There are five statutory organisations that are tasked with providing historical investigations and information recovery services.

Each of these mechanisms has a different remit in terms of historical investigation and information recovery. As a result they will interact differently with individual victims and families, some directly through consultation / engagement whilst others less directly. As part of this research, consultations were undertaken with representatives of the five statutory organisations to understand their remit, process, support provided to families and challenges to delivery.

### **3.2 Historical Enquiries Team (HET)**

The HET is a special investigative unit of the PSNI which operates independently and answers directly to the Chief Constable. It was established in 2005 to re-examine all deaths which can be attributed to the security situation in Northern Ireland between 1968 and 1998, which equates to 2,559 cases.

The Northern Ireland Office originally provided the HET with a budget of £30m to establish the team and undertake the enquiries. However due to several teething issues, it took longer than expected to undertake the investigations in the early years of the HET. Therefore in 2010, the Department for Justice awarded a further £13m to extend the life of the HET for another three years to ensure all cases were investigated appropriately.

The HET employs retired police officers and civilians from Northern Ireland and other parts of the United Kingdom and has several review and investigation teams. The HET documentation explains that four of these teams are staffed by retired police officers from outside Northern Ireland. They deal with cases where families prefer officers from outside Northern Ireland (that is those who were not employed by the Royal Ulster Constabulary) to review the circumstances of the death of their relatives. The other teams work on the remainder of cases. All the teams are supported by intelligence and analytical staff.

The main objective of the reviews is to give each family a report on the death of their loved one which tries, as far as possible, to answer their questions and concerns. Every family that engages with HET is given a Review Summary Report. This summarises in writing the circumstances of the death, details of the investigations which have taken place, including any further HET investigations, and answers family questions.

#### **3.2.1 Process**

As the HET was a brand new organisation, it took a while to establish an adequate process of investigation. This caused some delays in the beginning, but as this process has evolved,

the efficiency has improved.

Cases are examined in chronological order starting with the earliest – but there have been some exceptions. The HET sometimes reviews cases out of sequence perhaps, for example, if an elderly relative is in poor health and there is a desire to prioritise as a result, or where a number of violent events are linked, or where there is a public interest issue at stake.

The process is underpinned by contact and liaison with families. Initially a letter is sent out to the families to inform them that a review is taking place into the death of their loved one. They are asked if they would like to participate in the process and if so a contact number is given.

The review proceeds with or without the participation of the family, approximately four weeks after the letter is sent out. According to the HET, on average 30 per cent of families do not want to participate in the process, in these cases the investigation will still take place but with no interaction with the families.

For the remaining 70 per cent of families who do want to participate, the case will be allocated to one of nine teams, each of which has a lead senior investigating officer (SIO). Families first contact the helpdesk in response to the letter and a meeting is arranged via someone on the allocated team. The SIO will go to the meeting with another team member.

During the first meeting, the remit of HET and the process is explained. They will then establish what the family issues are (i.e. what specific questions do they have) which the HET will try and answer. Managing expectations is critical – certain things will be beyond scope (political issues, naming state agents). Also at first meeting the ‘engagement strategy’ will be agreed with the family. For some this will be ‘let us know once you are reporting’ for others it will be periodic updates on progress.

The HET will then begin the investigation into the case. As explained earlier, this process has evolved over a number of years and has become much smoother. The process of investigation through which every case is taken is as follows:

- Collection and Assessment - this includes the recovery and examination of existing records and exhibits;
- Review - here cases are examined to determine whether any further investigative or evidential opportunities exist;
- Re-investigation - if the review finds any new evidence or possible lines of inquiry these are followed up and may be referred to the PSNI Crimes Operations department if the exercise of police powers are required and if appropriate, consideration of criminal proceedings; and
- Resolution - in some cases this could involve judicial proceedings. For all families it will include the provision of a written report addressing the specific questions they have asked.

Once the investigation is completed and for cases where families are participating an internal investigation report and a review summary report (RSR) are produced. The RSR is then provided to the family. The reports are all quality assured (both for technical policing process and family friendly language) by an editorial board which includes Lead Senior Investigating Officers (SIO) and editorial expertise. The editorial board then sign off the report and the lead SIO arranges to hand over to family either in person or to be delivered. The SIO and team member will then go to family and summarise / talk-through the report. The HET will follow-up after about two weeks to speak with family to see if there are any further questions or supplementary report required.

Any further questions will be investigated and an updated report will be produced. This process is repeated until it is self-evident that there is no benefit in pursuing any further and a line will be drawn.

### **3.2.2 Number of Cases to Date**

In total there are 2,559 cases that involved 3,259 victims for the HET to investigate. As of 23 August 2011, HET had concluded 1,227 cases, of which RSRs have been delivered for 778 cases and involved the preparation of family reports involving 1,061 victims. The remaining 449 had no RSR delivered either because families were not involved or because they were concluded by other means (i.e. OPONI, referral, Public Inquiry etc).

### **3.2.3 Support for Families**

When the original letter is sent out to the families to inform them a review is taking place a leaflet on the remit of the HET and the contact details for a trauma advisory panel are also included.

If families choose to participate then a Family Liaison Officer (FLO) is assigned to the case who will meet with the families on their request to support them throughout the process.

### **3.2.4 Challenges**

The key challenges recognised in discussion with the HET include:

- the high number of cases (n=2,259);
- the historic nature of the cases, some of which happened over 40 years ago; and
- the investigation process was found to take longer than expected and therefore further funding had to be provided to ensure all 2,559 cases can be reviewed. The process has evolved and has become smoother and quicker as a result.

Consultations with NGOs and with families of victims raised concern as to the independence of the HET. These concerns related to HET operating independently from the PSNI, yet still

reporting to the Chief Constable which many feel interferes with this independence. Also in relation to independence, there are concerns about the involvement of retired local officers in reviewing cases originally undertaken by the RUC. Consultation with HET did indicate that this was an issue that their teams encountered. The HET representative said they would still seek to work with families who held such a concern, and if families preferred, the HET would work with them through NGOs.

### **3.2.5 Feedback from HET Service Users**

Customer feedback has been collected over the past three years (2009-2011) through a user survey conducted by an independent research company. This year's survey was carried out during summer 2011 with families who had recently received reports from HET. This year, more families took part in the survey than in previous years, 190 this year compared to 143 last year and 116 in 2009.

Key results of the survey<sup>11</sup> during 2011 included the following:

- did the HET answer all of your questions about the death of your family members? More than 82 per cent answered either 'fully' or 'mostly';
- seventy-seven per cent described the HET report presented to them as 'very useful' or 'useful'. Less than seven per cent who said it was "not at all useful";
- ninety per cent of respondents were either 'satisfied' or 'very satisfied' with the performance of the HET;
- eighty-eight per cent found the experience of engaging with the HET 'beneficial' or 'very beneficial'. Four per cent said it was 'not at all beneficial'; and
- almost 97 per cent found the HET staff professional and sensitive

The research company who conducted the research stated that:<sup>12</sup>

*"Satisfaction with the HET has been high in previous years, but this year we saw marked improvements. Over 90% of family members – across all community groups – indicated that they were 'satisfied', or 'very satisfied' with the HET. We also noted a significant increase in satisfaction with the quality of the reports provided to families. The feedback from families is that most derive benefit from the HET's work."*

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<sup>11</sup> Survey data carried in the Belfast Telegraph 13<sup>th</sup> October, 2011

<sup>12</sup> <http://www.quadrigaconsulting.co.uk/blog/index.php/2011/10/14/investigating-the-past/>

### **3.3 Office of the Police Ombudsman Northern Ireland (OPONI)**

The Office of the Police Ombudsman for Northern Ireland (OPONI) was established under the Police (Northern Ireland) Act 1998 and is a Non Departmental Public Body. It is constituted and operated independently of the Northern Ireland Office, the Northern Ireland Policing Board and the PSNI. When policing and justice functions were devolved to the Assembly on 12 April 2010, the Ombudsman's office became an NDPB of the Department of Justice.

The office of the Ombudsman has two separate statutory roles. The first role is the investigation of current complaints and the second relates to investigations involving serious allegations of police wrongdoing during the period of 1968 to 1998. At the time of the research OPONI had 127 historic cases relating to 137 victims/survivors. However work on historic cases is currently suspended as per the Criminal Justice Inspectorate (CJI) report and recommendations that found the quality and robustness of the investigation process to be lacking (further details in Section 3.7).

#### **3.3.1 Remit**

Whilst the office has currently suspended its historical investigations process its current Corporate Plan sets out the core objectives for historical investigations between 2011 and 2014 as follows:

- to resource fully the Historic Investigations Directorate, consistent with the Police Ombudsman's strategy for dealing with the past and DOJ funding (September 2011);
- to complete an assessment (scoping) of all historic matters held by the Directorate with a view to establishing the dimensions of complaints and informing prioritisation of investigative reviews (September 2011);
- to complete investigative reviews of 20 per cent of all historic matters not yet reviewed (March 2012);
- to publish seven reports on historic matters not yet investigated (March 2012); and
- to convene four meetings of the Police Ombudsman's Independent Advisory Group on dealing with the past (March 2012).

#### **3.3.2 Process**

OPONI has recently drafted a new case progression process which will be fully implemented when the suspension of activities has been lifted. The process is outlined below within five distinct areas:

1. Case received – the complaint process can be instigated through public complaint, referral from the Chief Constable, OPONI call-in (the Ombudsman, himself or herself,

has the statutory power to call his/her office into a case) and other referral sources (including from solicitors, CAB etc);

2. Assessment – the case will then enter the assessment process based on the date of the incident. During the preliminary phase the cases is assessed as to whether it fits within the remit of OPONI and using the information gathered during this stage the case is placed within a prioritisation matrix to determine its relative positioning within the review process;
3. Review – During the review case OPONI will identify any evidential opportunities – this will include a formal statement with the complainant. Following this review process a terms of reference will be developed for the investigation. In some cases this review process will stop at this stage if there is no evidence to support the case. The prioritisation matrix is applied again at this stage using the additional information gathered during the review process which dictates its relative positioning within the review process;
4. Investigation – this stage will now involved two dedicated teams. One team dealing with complex investigations (identified as such through the assessment and review phases) and another team dealing with less complex investigations; and
5. Reporting – following the investigation OPONI will produce a statement. In certain cases this will be made public.

### **3.3.3 Number of Cases to Date**

At the time of this report, the OPONI is dealing with 127 historic cases relating to 137 victims/survivors. The OPONI caseload is currently suspended following recommendations contained within the CJI report.

### **3.3.4 Support for Families**

OPONI has a formal family contact policy in place contained within the Communication Unit (containing three members of staff) of the History Team in June 2010. One of the team's tasks is to maintain contact with families throughout the investigation process. In August 2010 a KPI was developed which states:

*“To implement a framework for delivery of a programme of communication with families affected by Historic cases, identifying new areas where the police complaints system could support them in dealing with the past.”*

Support for families is to be provided across a number of areas as follows:

1. Re-establishing contact with families who have previously made a complaint – this

is to support families who have engaged with OPONI prior to establishment of the Communication Unit. Introducing the Communications Unit as family contact point, updating the families on the case progress and establishing an agreement including timescales / format of future updates are key support mechanisms;

2. Initial contact with families on receipt of a new complaint – the communications unit will make initial contact with the family, explain the process of investigation and record a statement of complaint. The Unit will also draw up a formal agreement with the family addressing the nature and manner of contact the family wants with the Communications Unit as the case progresses;
3. Contact with families resulting from an HET referral – the same process as above is applied following acceptance of the case after initial assessment;
4. Contact with families / complainant once the decision has been made to review the complaint – this will be determined by the agreement with the family in the initial contact period. If the review team require further information from the family this is also carried out by the communication unit, thereby acting as a single point of contact for the family;
5. Contact with families whose complaints go for Live Investigation – Once the decision has been made that a complaint should be forwarded for live investigation the appointment of a Family Liaison Officer is considered. The Communications Unit is responsible for introducing the family to the Family Liaison Officer who then takes responsibility for communication with the family; and
6. Family contact at the completion of live investigations – at the conclusion of a live investigation, the Senior Investigation Officer from within the Investigations Team will complete an Evidential report. This report is submitted to the communications unit who complete a Public Report including a report release strategy. The communications unit inform the families of the release date of the report and also follow up with them in the period following its release.

### **3.3.5 Challenges**

OPONI has been subject to three reviews, challenging its independence and investigation techniques. The three reviews were:

- Police Ombudsman Investigation Report by Tony McCusker, June 2011, on behalf of the Minister of Justice;
- Human Rights and Dealing with Historic Cases – A Review of the OPONI by the Committee on the Administration of Justice (CAJ), June 2011; and
- An inspection into the independence of the Office of the Police Ombudsman for

The CJI report made a number of findings:

- the legislative base for the work of the OPONI is solid and provides the necessary framework for the operation of an independent police complaints body;
- there are a number of operational protocols in place that help define the nature of the relationship between the OPONI and PSNI which help to secure the nature of the work of the organisation;
- during the course of inspection, no significant concerns over the ways in which the OPONI deals with current cases was heard;
- however, there is an inconsistent investigation process, a varied approach to communication with stakeholders and differences in quality assurance; and
- the senior management team are divided around the production of reports and there is a fractured governance and decision-making process.

These issues have undermined the confidence in the OPONI among some key stakeholders within the Non-Governmental Organisation (NGO) sector and a range of staff within the organisation. There is also a lack of confidence among those involved in the process, including investigators themselves, victims' families and the police. The way in which the OPONI deals with the investigation of historic cases has led to a lowering of its operational independence.

Based on the findings of this report, there was a recommendation to suspend all historical case investigations. The office accepted the recommendation and suspended historical case investigations. OPONI is aware that this suspension and the damages to its reputation as a result has affected victims and survivors who are currently going through or waiting for a historical investigation are having this process delayed. In addition, the current Ombudsman (Al Hutchinson) is to step down early.

Another key challenge identified by OPONI during the consultation process was in relation to family expectations around what OPONI might find as a result of an investigation. Whilst the organisation would like to get to a place where the process is recognised and validated by families they also recognised that sometimes families will not be happy with the report produced and this reflects on their overall satisfaction with the process.

### **3.3.6 Feedback from Service Users**

OPONI produce an annual report on complainant satisfaction with services provided by OPONI. The survey completed allows complainants to OPONI to express their views on services provided by the Office. All of the complainants who had cases closed within the April – March period are surveyed as part of the report. Prior to 2005, this process involved a

sample of complainants. The main findings from the 2010 – 2011 report include:

- fifty-nine per cent of respondents stated they were either satisfied or very satisfied with the service they received from the OPONI. This had fallen slightly from that reported in 2009 / 2010. However, overall the level remains fairly consistent with that from levels experienced in 2002 / 2003;
- seventy per cent of respondents indicated they had been treated fairly by OPONI during 2010 / 2011. Again, this figure has remained consistent since 2002 / 2003;
- in relation to dealing with staff, a significant majority of respondents had a positive view with over nine out of ten respondents saying they found staff polite or friendly. A minority of respondents had negative views of staff (i.e. 15 per cent indicated staff were “not interested in their complaint”, less than 10 per cent indicating staff were “in a hurry” or “rude”; and
- the highest levels of satisfaction were reported for the following aspects of the complaints process; ease of understanding of any correspondence, the length of time taken to respond after initial contact and the clarity of the explanation of the complaint’s process.

### **3.4 The Police Service of Northern Ireland (PSNI)**

#### **3.4.1 Remit**

When HET believe they have identified fresh lines of enquiry, the criminal investigation is passed to Serious Crime Branch to conduct the investigation.

#### **3.4.2 Process**

When an historical case is handed back to PSNI for re-investigation, the investigation is led by a Senior Investigating Officer of the rank of Detective Chief Inspector. The investigation will be treated as a new case and all evidence will be re-investigated from the very beginning.

At this stage the family concerned will be spoken to and will be informed that it may take a long time to fully investigate the matter and that the only guarantee that the PSNI can give the family is that they will do everything they can.

#### **3.4.3 Number of Cases to Date**

The number of current historic investigations being investigated by the PSNI is 137, of which 80 victims are linked to HET cases.

#### **3.4.4 Support for Families**

Following the Stephen Lawrence Inquiry in 2000, the Murder Investigation Manual was created. This is used for all murder inquiries whether current or historical. The manual states that for all murders, a Family Liaison Officer (FLO) should be appointed to the victim's family. The primary role of the FLO is investigative i.e. to find out about the victim, why anyone would want to murder them, their last known movements etc. They will also provide information on victims support services and bereavement support.

The FLO will stay in contact with the family until there is a conviction. This relationship is a formal one, with minutes taken of meetings and management by the Senior Investigating Officer. A Log is maintained by the FLO and is inspected by the SIO.

The FLO will sets expectations for the family upfront – it may be take a long time, and cannot guarantee to get a conviction, but the police can guarantee that they will do their best. It is important for the FLO to have an exit strategy, as it is harmful for the family to build a reliance on them. Once a conviction is made, the FLO will move onto the next case. This approach has worked well and is now being rolled out across other types of cases e.g. to the Fatal Traffic Accidents.

#### **3.4.5 Challenges**

If new evidence is recovered during the HET review, then the case must be passed over to the PSNI. This is causing a major capacity and resource issue for the Major Investigation Teams within the PSNI. These historical enquiry referrals are allocated across the eight Major Investigation Teams. The PSNI representative explained that this takes up about 40 per cent of the teams' time. This has implications on the capacity with which the PSNI have to deal with future facing issues for example, the current dissident threat.

The representative consulted with also stated that in dealing with historical enquiries there is a concern that, the more vocal the victim, the better the service they will get, potentially to the detriment of those victims who are less vocal. In thinking about families getting supported by NGOs, he stated that some NGOs have political agendas and therefore will advocate for someone more strongly than others.

There is also a challenge in investigating historical investigations by today's standards particularly given the difference in forensics and technology. Any new evidence from historical investigations have to be dealt with by today's standards but often samples aren't adequate, witnesses are missing or people simply cannot remember – this all makes historical investigations extremely difficult.

#### **3.4.6 Feedback from Service Users**

The PSNI do not conduct any formal feedback collation. However, they have appointed a Victims Champion of Serious Crime. Part of this role is to call back victims of rape to get

feedback in order to improve service. This is something that may be rolled out to other teams, including the Homicide Teams.

## **3.5 The Coroner's Service**

### **3.5.1 Remit**

Coroners are independent judicial officers who are available to deal with matters relating to deaths that may require further investigation to establish the cause of death or inquests.

A series of recent legal judgements in Europe and the Supreme Court (formerly the House of Lords) now means that Northern Ireland inquests are obliged to carry out "effective investigations" into the circumstances of controversial deaths, including those killed in so-called 'shoot-to-kill' incidents.

In Sept 2011 the Supreme Court ruled that an inquest into the deaths of IRA men Martin McCaughey and Dessie Grew shot dead by police in 1990 should expand their investigation into the killings to include the planning and control of the police operation, as well as the causes of death.

The court ruled that human rights legislation meant that coroners' courts in Northern Ireland now had an obligation to carry out "effective investigations" into controversial killings.

The Supreme Court judgment followed on from a European Court ruling in 2009 – *Silih v Slovenia* – which appeared to settle the issue of whether human rights law over state-related deaths could retrospectively apply to cases which occurred before the legislation had been enacted in a country. The court ruled Slovenia's failure to provide an effective independent judicial system to determine responsibility for the death of a patient in receiving medical treatment in May 1993 violated Article 2 even though the death itself took place before the European Convention on Human Rights came into force in that state.

One important question considered by the UK courts has been the extent to which the Coroner must conduct, in historic cases, an inquiry which is fully compliant with Article 2 of the European Convention on Human Rights (ECHR), in particular the procedural obligation to conduct an effective investigation when individuals have been killed through use of force.

### **3.5.2 Process**

When an historical case comes up for review, the Coroner will review documents from original investigation. Throughout the process the Coroner will work closely with the PSNI and the Ministry of Defence (MOD) in order to get access to sensitive documents that only they can access under the disclosure act.

When the Coroner is ready to proceed with the case, the family and/or their solicitor will be informed. There may be a number of preliminary hearings prior to the inquest. Legal

representatives will take over the case at this stage.

The inquest will result in the cause of death being provided and the family will be issued with a letter confirming this.

### **3.5.3 Number of Cases to Date**

As of November 2011, there were 29 inquests relating to 52 conflict related deaths.

### **3.5.4 Support for Families**

In all cases, a Family Liaison Office (FLO) is designated to the family of the deceased. When an inquest into an historical case begins, the family of the deceased is written to and the process is explained along with the remit of the FLO.

A full range of leaflets giving advice on where to for further information are also posted to the families. These are also available on the Coroners Service website.

Given the nature of the cases and of inquests themselves, the majority of families are often represented by solicitors. There is also legal aid available to help pay for this to those who meet the criteria.

### **3.5.5 Challenges**

The inclusion of Article 2 in the investigation process has broadened the scope and has therefore increased the responsibility and burden on the Coroner's service.

In addition, the historical cases are often the most difficult cases and as many of the cases involved similar themes, one issue can hold many of the cases up.

### **3.5.6 Feedback from Service Users**

The Coroner's Service collects feedback on a formal basis from families who have been through the process. This feedback has been positive. In addition there has been two evaluations of the service in 2008 and 2010 that recommended further customer service training for staff and the extension of the role of the Court Liaison Officer. All these recommendations have been implemented.

There is also a public forum that meets twice a year comprising of pathologists, undertakers, hospitals, police, HET, solicitors and barristers. The aim is to come together to discuss issues and how to improve services.

## **3.6 The Criminal Cases Review Team**

### **3.6.1 Remit**

The CCRC is the independent public body set up to investigate possible miscarriages of justice in England, Wales and Northern Ireland. The Commission assesses whether convictions or sentences should be referred to a court of appeal and this includes those people in Northern Ireland who have been sentenced for a crime that related to the Northern Ireland Conflict

It was set up as a non-departmental body on 1 January 1997 and took over responsibility from the Home Office and Northern Ireland Office for reviewing suspected miscarriages of justice on 31 March 1997.

The main remit is to review the cases of those that feel they have been wrongly convicted of criminal offences, or unfairly sentenced. They consider whether there is new evidence or arguments that may cast doubt on the safety of an original decision.

Only if there is new evidence will the CCRC notify the court of appeals who will then decide if the original conviction was unfair.

There is a dedicated Commissioner that deals with cases in Northern Ireland

### **3.6.2 Process**

The CCRC advertise services in prison newspapers or through solicitor publications. They rely on people having heard of them and applying. All other routes of appeal must have been exhausted before the CCRC will consider the case. If an application comes in from someone who has not exhausted all appeal channels, the application will be returned.

The first stage is the application stage. Where the applicant and/or their solicitor sets out the details of the conviction and what the issue is. The CCRC representative we spoke to stated that around 50 per cent of those who apply have a solicitor representing them.

The application then goes to the Commissioner who will look at the court of appeal's initial decision, the defence files and prosecution files and make an assessment of what needs to happen next. A letter will then be sent to the application stating either that there was nothing new raised in their application for CCRC to investigate, or that there is something for CCRC to investigate. If the latter, the case then goes into a queue for allocation.

Applications are prioritised by those applicants who are in prison over those who are at liberty. This impacts on Northern Ireland conflict related cases, as the majority are no longer in prison.

There is usually a six month waiting list before the application is allocated to an investigator.

The investigator will consider all the material available and the points made in the application. If there is anything found to support the application, a case plan is then produced which will set out what needs to be investigated to investigate the points set out in the application but also to consider anything else that should be investigated. The case plan is not restricted to the points set out in the application.

If something is found that is ground for referral, the case will go to a committee of three Commissioners who will look at the case with the investigator and decide if there are grounds for appeal. At this stage the 'threshold test' is applied – this comes from the Real Possibility Test Criminal Appeal Act 1995 which states that only if there is a real possibility that the Appeal Court will quash the conviction or reduce the sentence should the case be referred to the Court of Appeal.

If the case passes the 'threshold test' it will be handed over to the Court of Appeal to take forward. If not, a letter is written to the applicants to explain why it was not referred. This is the end of the process.

### **3.6.3 Number of Cases to Date**

Out of 250 applicants in relation to Northern Ireland conflict-related convictions, 31 have been sent for appeal. This is a conversion rate of 12.4 per cent which is three times higher than the average conversion rate of applications from England and Wales (4 per cent). Of the 31 cases referred, convictions have been quashed, or sentences amended in 23 of them. In two, convictions have been upheld and in the remaining six referrals, the court has yet to make its judgment.

### **3.6.4 Support for Families**

In terms of working with individuals and their families, CCRC do not treat applicants as clients – it is crucial to the investigative role that they remain independent of those applying just as CCRC remain independent of the police, the judiciary and all parts of the criminal justice system.

However they do have a Code of Practice for Victims of Crime and take very seriously our responsibilities to the victims of the offences for which those applying to us were convicted.

The Code of Practice for Victims of Crime states that the CCRC should only contact victims of an offence when the CCRC refers the case of the person convicted of the offence to the appeal courts. In a handful of cases they will also contact the victims if it seems likely that the fact of a CCRC review may come to the attention of the victims through media coverage or through some other foreseeable means. This means that out of the 251 reviews done of Troubles-related cases, CCRC have only sought to inform victims of their involvement in the 31 referrals and in a few other cases where there was media interest in the review. The approach to the victim, however, is always made through the relevant police force (i.e. PSNI) and the CCRC rarely have direct contact themselves.

### **3.6.5 Challenges**

Convictions related to the conflict in Northern Ireland have in common with older convictions from any part of CCRC's jurisdiction the fact that the passage of time can often make enquiries harder to carry out. The main reason is that the more time passes, the less relevant documentary material tends to survive and the more memories tend to fade. Another issue that is relatively common in, but not exclusive to, conflict-related applications is the need to handle sensitive security information. The CCRC is equipped for this, but obtaining and handling such material appropriately can be a slow process.

Budgets have reduced over the last few years which will impact on the capacity of the organisation going forward. The CCRC Annual Report and Accounts for 2010/11 stated:

*“The Commission entered the current period of public sector financial austerity having already had its budget cut back significantly in recent years. In fact, allowing for inflation, we have seen a real terms reduction in our funding of almost 30% over the last six years. Indications are that our financial situation may get worse before it gets better. We remain determined that, if that is to be the case, there will be no compromise on the quality of our reviews. It may, therefore, be inevitable that our applicants will have to wait longer for their cases to be completed in the future, but we will continue to do our best to minimise this.”*

### **3.6.6 Feedback from Service Users**

CCRC do not formally seek feedback from service users.

## **3.7 Non-statutory Support**

Outside of the statutory sector, activities to support families / individuals through historical investigation and information recovery services are provided through a small number of community and voluntary groups. The Comprehensive Needs Assessment highlights that funding for these services is provided through two main sources, namely the Community Relations Council's Core and Development Grant Schemes and the Peace III Programme.

In this research we worked with five NGO that support victims and survivors in Northern Ireland in relation to Truth, Justice and Acknowledgement. These are: Relatives for Justice (RFJ); Pat Finucane Centre (PFC); British Irish Rights Watch (BIRW); Help NI; Phoenix NI; and Justice for Innocent Victims of Terrorism (JIVT). A consultation with WAVE was also undertaken.

### **3.7.1 Relatives for Justice**

#### **Remit**

RFJ was founded in April 1991 when a number of bereaved families affected by the conflict came together to support one another. It aims to assist and support families coping with the effects of bereavement through violence and the resulting trauma.

RFJ's mission statement is to:

- provide appropriate therapeutic and developmental based support for the bereaved and injured of the conflict within a safe environment; and
- examine and develop transitional justice and truth recovery mechanisms assisting with individual healing, contributing to positive societal change, ensuring the effective promotion and protection of human rights, social justice, and reconciliation in the context of an emerging participative democracy post conflict.

Another primary objective of RFJ is to assist in the bringing about of a more human rights-based culture in order to safeguard and protect human rights for all.

#### **Support provided**

In order to address the needs of those who have suffered loss and injury, RFJ provides the following services: one to one contacts; self-help; group support; outreach and befriending; counselling support and therapy work; and welfare and legal advocacy.

#### **Capacity**

RFJ has two main offices in Belfast and Dungannon and an outreach centre in Derry. Services are provided by seven staff including:

- One Legal Casework Manager;
- One Youth Worker;
- One Complementary Therapy Coordinator;
- One Family Support Coordinator;
- One Family Advice Coordinator;
- A Director, Deputy Director and Finance & Administration Manager.

In 2010 RFJ supported over 3,000 individuals with a range of advice and support services. Discussion with RFJ highlighted that their funding base (and only similar NGOs) was paltry in relation to the HET, OPONI and others working with the same people. This did mean there was a constant pressure on resources to support victims and survivors through such processes.

### **3.7.2 Pat Finucane Centre**

#### **Remit**

The PFC is a human rights group advocating a non-violent resolution of the conflict on the island of Ireland. The PFC campaigns for the State to uphold Article 7 of the Universal Declaration of Human Rights, “all are equal before the law and are entitled without any discrimination to equal protection of the law”.

#### **Support provided**

Support offered by the PFC to those affected by the conflict in Northern Ireland includes:

- networking with human rights NGOs and parliamentarians in Ireland and abroad;
- long-term involvement on a wide range of issues surrounding policing and the criminal justice system. Facilitating dialogue between the two communities in the North through private contacts, workshops and public meetings on potential truth processes etc.;
- individual casework with families who have lost loved ones and creating support structures for families who attend our monthly family meetings;
- ‘critical engagement’ with the HET and the Police Ombudsman and supporting families that are going through historical enquiries or information recovery through these service providers. This has included preparing families, ensuring that any meetings with the HET and/or the Police Ombudsman take place in a safe environment/location; accompanying families to meetings and supporting witnesses at meetings; and
- PFC provide additional support through the historical process by carrying out elements of historical investigation themselves. This includes undertaking desk based research and working with key agencies to support families to understand what publicly available information there might be. This research can be supportive to families and at times PFC have brought information together within specific geographic areas including a number of potentially related incidents in Armagh.

#### **Capacity**

The PFC operates from two offices: one in Derry and one in Armagh. The biggest challenge facing PFC relates to funding. They are currently funded through SEUPB to carry out their services, however this funding is coming to an end and PFC indicated during consultation that whilst they are hopeful of further funding this could not be guaranteed. Reduced funding or no funding will likely impact significantly on the capacity of the organisation to continue to operate at current levels.

### **3.7.3 British Irish Rights Watch**

#### **Remit**

British Irish Rights Watch (BIRW) is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990.

BIRW has provided advocacy support to individuals and families going through HET, OPONI, Inquest and PSNI cases. The Director estimated that at least 50 per cent of their case load are for people coming through a historical investigation process. Families and individuals have been referred to BIRW by NGOs, lawyers and word of mouth.

#### **Capacity**

BIRW has 22 years experience of this work. Different from the other NGOs it is based outside of Northern Ireland, however case workers will come to Northern Ireland at the appropriate times in the process. The Director and two others take on cases. All three have skills and experience covering human rights, legal process, advocacy, work with victims (and not just victims of the conflict).

During the long period of experience, BIRW has sought to develop and sustain very high standards. For example it has a casework manual, laying out the protocols and specifying the 'do's and don'ts'. Their approach was described as professional and not confrontational.

### **3.7.4 Help NI**

#### **Remit**

The main purposes of Help NI is to:

- provide advice, information and support to victims;
- mediate between victims and third parties;
- advocate and lobby on behalf of victims and survivors; and
- develop and deliver outreach projects for victims and survivors.

#### **Capacity**

Help NI is a small organisation operating out of an office in North Belfast. It receives funding support under the CRC programme for Victims and Survivors Groups. An observation would be that the staff and volunteers have largely been through a historical investigation process themselves. Workers considered this to be a factor in ensuring victims and survivors coming to HELP NI for support would not feel they are coming 'cap in hand' as there would be a more immediate understanding and trust.

### **3.7.5 Phoenix NI**

#### **Remit**

The Northern Ireland Phoenix Project is a relatively new organization, established in 2010 and funded through Peace III funding. Its main aim is to promote, advocate and address the needs of former security service personnel and their families, who have suffered as a result of the violence perpetrated during the 'Troubles'.

The Project also aims to effect attitudinal change by addressing individual hurt and suffering through networking, practical and emotional support, training and dialogue. The support the Project can provide includes welfare advice, a befriending service to those who are in need of assistance with hospital visits, or those in need of a bit of company and a listening ear.

#### **Support provided**

Phoenix NI provides the following services to victims of the Northern Ireland conflict: welfare advice, complementary therapies, confidential counselling; personal development, peace and reconciliation programme and a healthy lifestyle programme.

#### **Capacity**

The Phoenix Project operates from seven different offices across Northern Ireland in: Newtownards; Armagh; Enniskillen; Moygashel; Omagh; Limavady; and Lisnaskea.

### **3.7.6 Justice for Innocent Victims of Terrorism**

#### **Remit**

JIVT was formed in May 2009 in response to a perceived need for an organisation that would offer professional advice and support to 'innocent victims of terrorism' in the Northern Ireland context. The mission statement for the organisation is "*to provide advocacy and representation-based support for those who are innocent victims of terrorism and to empower such affected individuals to move forward with their lives, safe in the knowledge that their trauma is recognised, and that steps are being taken to address the underlying causes of their pain and suffering.*"

JIVT is comprised of a broad range of representatives from victim/survivor groups and other affected individuals from across Northern Ireland.

#### **Support provided**

JIVT provides legal advice and advocacy support to people engaging with HET. The idea is to provide a resource to guide people through engagement with HET or truth recovery processes. This would include emotional support for the trauma of the experience.

## Capacity

The main challenge in terms of JIVT capacity relates to future funding arrangements. As with other groups within the sector the short term nature of funding cycles results in uncertainty with regards employment of staff. Many of those involved in the group do so on a voluntary basis.

### 3.7.7 Qualitative feedback from NGOs

As the section above shows there is some variation in the NGOs engaged in this area. Out of the discussions held with the NGOs we have synthesised the following key messages:

- a key observation from NGOs was that individuals / families proceeding through a historical process will not have the same needs. Some families will need emotional support (e.g. counselling, social support), help around legal / advocacy work (e.g. access to a solicitor, or help with understanding the process, or understanding what questions to ask), other practical support (e.g. support with sending a letter or an email), while others may not need any support whatsoever. The idea of a spectrum of wrap around support, if needed, emerged from these consultations;
- organisations discussed the support to families as ‘voluntary’ in nature. Individuals and families should be able to access the support if they needed it but not to force it upon people who did not want to avail of it. The voluntary nature of the relationship is often demonstrated in families or individuals “turning up” at the NGO office or phoning them to ask for help. Awareness of the NGOs could be through word of mouth within the community, from others who had been supported by the NGO, referral from political parties, lawyers or other NGOs or from the wider profile of the NGO through the media. NGOs profile their services online and via newsletters, leaflets and conferences;
- each of the NGOs spoke about relating to victims and survivors and issues of trust. NGOs considered themselves to be the ‘trusted ear’ of families. NGOs also said for some victims and survivors there were ‘state trust’ issue, some of which are deeply embedded. These issues would arise if the historical investigation process was perceived to be linked to the state. While the NGOs might not seek to resolve this issue, they would be supportive to the victim or survivor if they wanted to engage with the process but had insufficient confidence / capacity to do so on their own. One of the NGOs considered that in their experience the greater the participation in the process the greater the satisfaction level;
- in four out of the six NGOs we spoke with staff / representatives who had been through the investigative process themselves and so had the first hand experience and knowledge of the process. This also assisted in building trust and relationship with victims and survivors;
- it was deemed important for organisations and individuals to draw “professional

boundaries". For example, to ensure that individuals who have been through a process are able to use their experience / knowledge of the process rather than pass on their personal perception (whether positive or negative) of it. One of the NGO's spoke about defining consistent protocols as a critical issue for voluntary organisations providing support to families and individuals going through historical investigation processes. It did not perceive a consistency of approach to currently be in place, as organisations had developed organically and some are relatively 'young'. It argued this lack of standard skills and protocols meant the families and individuals who are seeking help during an already difficult experience may not get the help they require and may actually be put at greater risk. Similarly two NGOs stated there was a need for NGOs to be clear on what scope of support they were equipped to provide. These NGOs explained how they referred victims and survivors to other agencies to ensure they got the appropriate quality of support;

- NGOs broadly agreed that if an NGO was supporting an individual or family with a case, there would be times the service provider would approach the case slightly differently (e.g. it would change the atmosphere if an NGO was in a meeting taking notes of what the service provider was saying). It was difficult for NGOs to evidence to what extent this changed the service provided. One NGO suggested that the service providers were becoming more used to them and were respectful of their role;
- there is some 'alignment' of communities of victims and survivors with NGOs. This was observed in discussion with NGO representatives and was also acknowledged indirectly by some NGOs in discussion of why they were formed. This means that certain victims and survivors will be more likely to access services from certain groups, depending for example on factors including whether the victim was in the security forces, the paramilitaries and to a lesser degree by religious background. This does allow for some level of specialism from the perspective of the NGO's skills and also in terms of the support that can be provided to victims and survivors;
- linked to the points above on 'professional boundaries' and 'alignment' one NGO stakeholder said that NGOs need to be clear with individuals what their NGO's stance is on a historical investigation process (e.g. if they are suspicious of it). Making such information clear at the outset, would go some way to negate a concern the individual or family will go through a process taking on an issue the NGO has rather than the issues the individual or family have; and
- one NGO highlighted that the historical investigations and information recovery processes include very little opportunity for those who were injured to access truth, justice and acknowledgement (albeit some might if there was a death in the case which resulted in their injury).

This section has provided an overview of the remit and support provided by NGOs based on desk review, supplemented by our consultations. It would be reasonable to conclude that there is not a consistent approach nor capability among NGOs working with victims and survivors going through historical investigation or information recovery processes.

## 4. Case Study Findings

### 4.1 Introduction

This section is based on 30 interviews that were conducted with individuals or families who had received services from one of the four main historical enquiries and information recovery services in Northern Ireland: the Coroners Service, OPONI, PSNI and HET. The breakdown of interviews by service provider is provided in Appendix 1.

The main aim of these interviews was to understand how well the services met the needs of the individuals and families, to understand what was working well and what lessons could be learnt for future service provision.

The rest of this section is structured under seven key themes:

- expectations;
- communication;
- timescale;
- support;
- practical issues / challenges; and
- overall views.

Under each theme, the main findings are grouped by service provider.

**This section reports on the views of individuals and families consulted and does not reflect Deloitte’s opinion, which is contained in section 5. In the interest of confidentiality we have sought not to identify individuals and families who participated in this research.**

### 4.2 Expectations

#### HET

Out of the 20 interviews that were conducted with families who had been through the HET process, there was varying levels of expectation. Three quarters stated that they had little or no expectation. Within this group, there were some who were sceptical of the process, for example one interviewee stated *“I was sceptical of the process – not sure where my expectations came from probably just through my family and my own personal opinion of what was going to happen”*. Others simply said they *“didn’t really have any”* expectation.

Three interviewees had an expectation of getting *“some answers to the questions we had.”* One interviewee stated *“I probably knew we would never get the person who done it, but*

*wanted more in-depth answers to solve the rumours”.*

Two individuals felt the process should result in a prosecution, saying everyone “*knows who was involved*” and that “*it was just unbelievable someone hasn’t been charged*”. Notably this person then explained that this was what they felt “*should*” happen, however their expectations of what “*would*” happen “*in terms of the HET investigation, I didn’t have expectations, but I wanted to see the report and give them the benefit of the doubt*”.

One interviewee stated that initially they thought it would have been a “*court or legal thing*” but was relieved when they read the letter which made it clear that it wasn’t.

One family stated its expectations were set “*very low*” following engagement with an NGO in advance of meeting the HET.

In each case there was an initial meeting with the HET. This included discussion as to what the remit of the investigation would be and how the process would work. While an explanation of the remit and process was acknowledged to be inherently setting expectations, in some cases representatives from the HET were perceived to have said things in the first meeting to explicitly reduce expectations including “*information may have been destroyed*”, “*we can only go on available evidence*” and emphasising “*difficulties in trawling through information*”. Another drew the conclusion that “*it was obvious from the initial meeting that it was an information gathering process*”.

Several others (nine cases) spoke of leaving the first meeting with the HET with a good degree of hope or confidence about the process. The “*professionalism*” and “*empathy*” demonstrated by “*honest and genuine*” HET personnel “*who clearly wanted to find out what the family concerns were*” and who “*listened*” in this initial meeting helped encourage the confidence and hope among these participants. Notably this was referred back to by a few of the same participants who subsequently lost confidence later in the process. In these cases expectation levels were at their highest following the initial session.

## **OPONI**

When asked about what their expectations of the service to be provided were, one interviewee stated that her expectation was that she would be able to get answers to certain questions regarding her case. She stated that when she first met the Ombudsman that they clearly stated their remit and informed her that there may be certain things that they won’t be able to do – “*they explained that if a policeman had retired, they could not make him give evidence*”.

A second interviewee stated that they were unhappy that the organisation set up to look at historical cases had been established by the British Government which lead them to have low expectations - “*my expectations were low and they managed to meet these*” . However the interviewee did expect that it would be a long process because the family had already been “*waiting for 35 years*” for the case to be investigated. While the interviewee’s expectations

were low, they did state that, through Ombudsman (Baroness Nuala o'Loan) the family *“felt assured that there would be transparency.”*

Another interviewee stated *“my expectation was that the process would take a year, it took four years”*, which led to a high degree of frustration.

### **Coroners Service**

When asked about what their expectations of the service to be provided were, neither of the two interviewees had any understanding of the Coroner's Service or what they were going to do. They both hoped that the preliminary hearings would lead to an inquest or a public inquiry into the death of their family member.

At the first preliminary hearing, the Coroner did go through the process but this was addressed to the whole court room and not on an individual basis. There were several cases being heard at the same court which the families *“found to be very muddling because there was so much going on”*.

### **PSNI**

Two interviewees had their case passed from HET to PSNI. One was quite *‘dubious’* about why this had happened and about what would happen. The second felt similar. One interviewee in particular, had very low expectations and confidence in the PSNI being able to *“carry out an independent investigation”*. Neither interviewee felt that they had been given an adequate reason as to why their cases had been passed from HET to the PSNI. The third interviewee noted their initial meeting with PSNI did set expectations at a level they were content with.

## **4.3 Communication**

### **HET**

Seventeen of the families interviewed stated they were initially contacted by the HET by a formal letter asking the family if they wanted to take part in the investigation. Contact details were provided in all these cases for the family either to write back or telephone. Three families heard about the HET through the media and decided to contact them. While the HET investigates cases chronologically, there were two interviewees whose cases were taken out of chronological order because of requests of families relating to the age of relatives.

The communication strategy to be used within the duration of the process was discussed and agreed in the initial meeting. Within the case studies it was apparent there was a varying degree of contact across the families spoken to. Some met with or contacted the HET regularly to get an update, this was done either on the phone or through face-to-face meetings. Some said this worked very well (*“as agreed there was monthly contact, either by*

phone or face-to-face, and it was always the same two people over the nine month period”). Others felt more comfortable waiting for the HET to contact them when necessary or when the report was ready. One interviewee had a representative from a local NGO liaise with the HET on her behalf on several occasions because they were unable to get a response.

Satisfaction in relation to communication was variable, and there was not a simple relationship with the frequency or medium of contact. One person stated *“if we hadn’t been contacting them, they wouldn’t have lifted the phone to us”*. In contrast, some who agreed that the HET should contact them when they had some progress to report upon were quite satisfied. For example, one interviewee stated they had two telephone calls from the HET during the investigation when they were *“provided an update on progress and discussed likely timescales to completion”*.

Despite the varying levels of communications and satisfaction, all interviewees who had contacted the HET said that when they phoned, they were able to speak to someone.

The main forms of communication were telephone, face-to-face meetings and letters. Several made comments on these formats. With regard to letters a few described the letters they received as *“generic”* which disappointed one who had written asking a specific questions and had hoped for specific answers. A few others, however, said the letters were helpful as they could read, digest and reflect on them. They compared this with a telephone call which would *“come out of the blue”* and *“catch them off-guard”*. Overall, a greater number preferred face-to-face or telephone as the key disadvantage with a letter was *“you couldn’t ask questions there and then”*.

The location of the face-to-face meetings varied too, depending on the wishes of the family or on perceived concerns of the HET – some took place in a family members home, some in the HET Offices and a small number in solicitor or NGO office.

The relationship with the investigating team was integral to communication. The consistency or lack of consistency of the personnel in this team was notable. For some there remained a consistency which was *“valued”* and in one case at the final report stage was considered to be *“a great comfort and very important for the family to have this person present”*. For a greater number the investigating team personnel changed during the process. This was regularly remarked upon negatively by families who said they were *“never told”*, or that *“someone different was there”* and that *“they were not told why”*. Additionally when teams were changed, interviewees said they had to *“go over old ground”* and the rapport that had been built up had gone. In some instances cross-channel personnel were replaced with local investigators. For some there was a distinct concern, about *“involvement of ex-RUC officers”*, leading to loss of confidence and frustration among some families.

In one case the investigating team looking after the case changed and the family was not informed. It was only when the family member telephoned the CVSNI that one of the Commissioners informed her of the change. At that stage the Commissioner phoned the HET to ask why this had happened. Within an hour, the HET had phoned the family member to

explain that the team who had originally been involved had finished their two year shift and that the new team would be out to see her. Despite this, the interviewee said that the new team was *“on the ball”* and kept her updated on a fortnightly basis.

At the meeting where the reports were handed over, six stated that the HET simply gave them the report, talked over some very high level details and provided contact details should the family have any further questions. Some were happy with this approach, because they wanted to have time to read and digest the report before coming back. However a couple of other families wanted to ask questions then and there but were given no response back from the HET. One family stated *“we hadn’t had a chance to read it and the HET just went through the details they wanted us to hear rather than the things we wanted to understand”*. Another family said they had come back with *“three pages of questions, which the HET said they would take away. We assumed they would come back to us on these, but they simply called and asked if we had any other questions”*. This family was left confused as to whether the process was complete.

One individual spoke in some detail as to the challenge of the meeting in relation to the report. He said, *“I couldn’t get out of the meeting quick enough. I felt very alone, I don’t know if a legal representative would have helped. Throughout the meeting I was very uncomfortable. They read through the 30 page report, skipping pages “we’ll come back to that”. I was trying to keep up and read ahead (the report was on the desk in front of him). There were three in the room with me. One of them was taking notes of what I had said. I was able to ask questions, but didn’t – even though I wanted to as some of the report didn’t make sense to me. I said I would take the report away, think and come back with questions. I have decided not to go back with particular questions. I have read it twice and there are too many questions. They have not sent out copies for my brothers and sisters as requested.”*

Six other families however were taken through the report and all were happy with this. One said *“the officers went through the report page by page. This was very helpful. The officers were brilliant.”* One further family reported receiving the report from an NGO who had been supporting them throughout the process, they stated *“it was the NGO who gave it to me and I knew I could have met with the HET to go through and ask questions if I wanted.”*

## **OPONI**

Of the five families that were interviewed in relation to the OPONI services, three had initially heard about the Ombudsman through the media and had written a letter explaining their situation and expressing the desire to meet. In one of these cases, the individual was also in contact with the British Irish Rights Watch who had also encouraged the family to contact the Ombudsman. Another had also written to the Ombudsman, but had initiated the search for organisations to support their case themselves and the other had walked in to the OPONI offices.

In all cases, the Ombudsman initially was Baroness Nuala O’Loan. All found her to be

very supportive and *“good to speak to”*. An initial meeting took place in all cases with the Ombudsman and two others, where they explained the process and what they could or could not do. One interviewee stated *“Nuala O’Loan reassured me that there would be transparency”*.

All interviewees stated that they felt updated throughout the process, had several meetings or telephone conversations mostly with the same people either in the Ombudsman’s office or at a convenient place for the family. For example, one interviewee stated that they had *“a lot of contact and we were updated every three months”*.

One interviewee mentioned that while the Ombudsman was *“good to talk to”* there was often two other people with her which the individual found *“intimidating”*. The same interviewee also spoke about how the report produced by OPONI was leaked to the media, the family involved wrote to the Ombudsman stating how annoyed and upset they were. The Ombudsman got back to them straight-away saying that it had not come from her office, however the family involved had doubted this and felt very disappointed.

In another case, there was *“a degree of contact”* but felt that the Ombudsman *“had a personal touch and made sure to engage everyone”*.

There were, however communication issues, around the changeover of the Ombudsman. Several interviewees stated that they were not informed about the change in office, or indeed the change to those directly investigating the case. One interviewee stated that he was not surprised by the changes in personnel, given the timescales involved however he described a sense of frustration at *“not being notified of any changes unless we called and asked for someone and were told they had moved on”*. The individual felt that because of the change in personnel, there was a loss of continuity which led to a loss of connection with the process.

Two others stated that they had never received a redraft of the report (which they had asked for due to inaccuracies in previous versions). They stated that it was hard to get in touch with the Ombudsman after the change in office, and since then the service has been suspended and there has been little communication as to what is happening. One interviewee stated *“no-one has been able to give us an answer as to why the report has not been released after approval.”*

On the whole, those who had received a report were happy with the way in which it was given to them. One arranged to meet at the OPONI office, one had it couriered to their house and the other met at the OPONI office and taken to a local hotel, their family was also picked up. This interviewee stated *“this meant a lot, they didn’t have to do that, their task was only to investigate the complaint”*. They were also taken to a hotel and were given a room in which to prepare for the press conference that was also happening that day. However the interviewee felt that releasing a press release about the report on the same day the family saw the report for the first time did not give the family enough time to digest the information.

## **Coroners Service**

The original communication to the family's interview was via letter, informing them that the preliminary hearings into the death of their loved ones were going to start. In one case this was in 1995 and in the other it was 1999.

Communication in both cases has involved the families going to the preliminary hearings that, in one case, occurred every couple of months from 1999 to 2004. During the hearing they listen to what is being said by the PSNI / MOD. On no occasion have either family met with the Coroner on a one-to-one basis. However, one family was allowed to speak directly to the coroner during a preliminary hearing (which is usually not allowed) to ask a question about the process.

During the hearings themselves, one interviewee mentioned that it can be difficult to hear what is being said in the court as everyone involved in the cases have their backs to where the viewing gallery is.

The Coroner has apologised to the families involved on several occasions for the delay in proceedings and has admitted that the process is not satisfactory.

The families concerned had not been given any contact details for people to speak to in relation to their case and so their own solicitor is often the one to explain what is happening to them. For example, when the cases were transferred from one court house to another, it was the families' solicitors that had to tell the families. To date one case have been stalled for some years now and no communication as to why or when it will be resumed has been given. The other case is still ongoing after 16 years and no date has been set for the inquest. Neither felt this length of time to be waiting for an inquest was satisfactory and feel that they have been left hanging, not knowing what is happening.

One interviewee stated that they had written to the Minister for Justice asking to meet to discuss what was causing the delays but he refused to meet the family. Instead, the Minister wrote a letter stating that *"the case would be heard, but that no definite date can be given"*.

## **PSNI**

Communication with the PSNI during the investigation was deemed by interviewees as being inadequate. They had initial meetings and one did have further meetings with the Assistant Chief Constable, however this meeting *"became very heated and in our view damaged the credibility of the PSNI"*.

Two of the investigations are still ongoing and one interviewee could not understand why it had passed to the PSNI stating *"I told them the evidence was with the HET – why not access it"*. This seems to suggest that the rationale of the PSNI investigation was not made clear at the beginning i.e. that if new evidence is discovered by the HET, the PSNI need to investigate it. Indeed one of the interviewees explained their case had originally been with OPONI, who

had passed it to the HET who has subsequently moved it onto the PSNI. The interviewee said they have not heard anything since the initial meeting with PSNI in September 2010 *“they promised to look into it but I’ve never heard anything”*.

## 4.4 Timescale

### HET

The timescale between initial contact and reporting varied considerably from three months to four years.

When asked if families or individuals understood the reasons for the timeline they said the HET team had explained challenges faced in terms of tracking down witnesses, collecting statements, dependencies arising from interconnected cases and the time elapsed since the death. Despite HET communicating to the individuals and families an understanding of such complexities, in a minority of cases frustration was expressed with how long it took, with some saying they were uncertain as to what activity was taking place during periods of time. The longer timescales were linked by a few interviewees to the high number of cases and the resource at HET’s disposal.

The families’ acceptance of the report was another factor influencing timescale. Some were not happy with the quality of the reports, for example in relation to facts that were wrong (*“places names, incorrect names, incorrect dates”*), or had further questions for the HET investigation team. Individuals and families took quite different approaches in these situations. Some thought the HET would not find out anything further (*“regardless of how long this went on”*) and hence did not pursue any further changes, while others continued to ask questions and seek updated report which resolved the issues. The later often added significantly to the timeline.

Overall while most felt the process took longer than expected, most were also reasonably content with the timescale. Frustration was linked to *“not knowing what was going on”* during longer periods of time without communication, and also to overall satisfaction with the results of the process.

The reader should note some of the participants in this research were still going through the process with the HET at the time of the interview for this research.

### OPONI

Overall, for the interviewees that were interviewed, there was a general feeling that the process for investigating their cases was very slow. On average it took four to five years from the initial contact to receiving the first report. One interviewee stated that the process was long and drawn out due to limited co-operation from state elements which he found to be very frustrating. He believed the slowness was because of *“the lack of co-operation from PSNI, the lack of support from Unionist sources, and the lack of resources”*.

Three of those interviewed were not satisfied with the first report and had gone back with further queries. They are still waiting for answers to these questions and a final report. The current suspension of historic cases clearly creates a further interminable delay. One comment summed up the feeling of it being “*a long and drawn out process which was very frustrating*”.

## **Coroners Service**

One interviewee case had been going to preliminary hearings since 1995 and still the inquest has not opened. The last time they attended a preliminary hearing was 6 months ago and all but one of the family has become totally disillusioned with the process and do not want to attend anymore hearings. In addition, due to how long the process has been, the individual feels that no one cares about the cases and there is no respect for the families.

The other interviewee has been attending preliminary hearings since 1999 but it was stalled in 2004 and again the inquest has not yet opened. The family have attended up to 20 preliminary hearings which have been very “*hard and emotional*”. They feel that “*there is no end in sight*”.

## **PSNI**

Both of the cases looked at for this research are still ongoing: one has been ongoing since approximately 2004 and the other from 2006. Both interviewees felt that this was too long and they are not aware of what stage the investigation is at or how long it is likely to take.

## **4.5 Support**

### **HET**

It was clear from the interviews that the processes did impact the individuals and families. People spoke of “*being brought back to the event*”, “*reliving the details*”, of “*emotion being unlocked*”, of “*unearthing things no one had spoken off*”. The contact points often triggered substantial emotion. For example one participant indicated the first meeting “*brought out a lot of emotion and this emotion unravelled for a good time after that first meeting*”, while others spoke of “*mental anxiety*” and “*suffering nightmares for weeks*” after a particular meeting. Notably the emotion and the trauma didn’t just happen at the meetings but could be impacting an individual during the longer process. Some also spoke about how the responsibility for seeing the process through often fell on one or two people within a family. One said “*I was going through a difficult time and had real problems talking to people on the phone, so my wife took on that role which put a lot of burden on her*”. Other interviewees spoke about “*doing this for the family*” or for “*my mother*” indicating they felt a personal responsibility to see the process through regardless of the impact on them.

All participants were asked if they were offered support or received information on how to access support if they required it during the process. The majority of interviewees stated that

while they were given contact details, most “*could not recall any offer of support*” during the initial session with the HET team. Two interviewees stated they were provided with support by an FLO. While the majority spoke about being given “*contact details*” only one explicitly referred to the HET providing a list of support organisations. It is notable that while the HET told us they provided contact details for support as a matter of course, that the majority of participants couldn’t specifically recall this.

More broadly participants recalled being “*asked if they were okay*” in the course of meetings and telephone calls with HET team, but that “*the onus was on the family to seek support if it was needed*”.

Two interviewees who spoke about receiving support from an FLO, the first stated that the FLO was in attendance at the meetings with the other HET investigating offices. The other did state that they were in contact a couple of times however when the FLO changed they were not in contact again after that. Both were positive about this contact.

Of the 20 HET interviews, 16 told us they were supported by an NGO, the CVSNI or a solicitor. They all felt that this support was worthwhile and helped them through the process. The range of support mentioned included social and emotional support (e.g. providing access to befriending, counselling and therapeutic services), practical support around communications (e.g. assistance in making a call, writing a letter or email), advice in relation to the process (explaining the process, awareness of what has happened in other processes, information on legal dimensions), advice in relation to what questions may be useful to ask, and attendance at critical meetings with families. Generally individuals or families getting support received some but not all such support services.

Interviewees were positive about the role and value of the NGOs. One reported their “*family would have been lost without the NGO*”. In terms of the services received people spoke of support “*in helping to understand the process*” and “*in thinking through questions*” as being important. Interviewees clearly valued a third party who understood the process who they could speak to in between contact with the HET team. Some highlighted the relationship / rapport with the NGO “*they were always there if we needed them, always asking if we needed help and responded to us straight away when we asked anything*”.

Interviewees also spoke about coping together as a family. One stated “*we had each other as a family and I’m not sure what we would have done without the family all being in this together.*” Notably some interviewees indicated they were doing this themselves or with a partner and did not have a wider family network of support.

## **OPONI**

In two of the cases, the families recalled being given the option of having the support of an FLO. One family felt that while the concept of an FLO was welcomed, they understood their FLO to also be the senior investigating officer, which was not acceptable “*in my opinion, the FLO should not be someone assigned to the case and the way that it was set-up felt*

*more like a tick-box exercise than anything for the family*". In the other case, they stated that the FLO was *"more style over substance"*.

Another interviewee stated that OPONI asked if the interviewee had a solicitor because they felt it would support the family. The interviewee however felt that *"overall, you are on your own"*.

Two of the cases did receive support from NGOs – both had support from the British Irish Rights Watch and RFJ, and one also had the support of the Pat Finucane centre. Both felt that the support that was provided to them by these organisations was *"above and beyond what they had ever expected"*. In both cases, members of these NGO's would have gone along with them to meetings with the Ombudsman to support the families or to challenge the report findings.

Concerns were raised by one interviewee about the lack of support available, he was *"aware of other support groups, but none from the unionist community"* which he perceived *"shows the attitude of unionist politicians"*.

One interviewee who had the support of both the Pat Finucane Centre and the British Irish Rights Watch stated at the start of the interview that they had *"had serious concerns about why the CVSNI were coming to them now"* to ask them to participate in this research, this was because the individual felt the CVSNI had not offered them any support in the past and *"felt very let down"* by them.

### **Coroners Service**

Neither of the interviewees were provided with any support from the Coroner's Service during the process, even when asked directly about the appointment of an FLO. Both were, however, supported by their own solicitor which they felt important because of the legal jargon used – *"my solicitor was able to tell us what was happening"*.

To support the costs of solicitors, both interviewees had applied and been granted legal aid. One interviewee had expressed her concern over the recent speculation of cuts to legal aid, stating that they would struggle to continue to attend the hearings if they were not able to get legal aid funding for their solicitor costs.

Both interviewees were also supported by RFJ and spoke very highly on the support they had received. In particular, RFJ would have attended the preliminary hearings with the families and have helped to describe what was happening in "lay-man terms".

One interviewee, stated that when the preliminary hearings began, there was no discussion of support by the Coroner's Service so he went to Sinn Fein, who directed him to RFJ. He stated that the support the RFJ has given to the family *"was not political but very beneficial"*. The individual went on to say *"it was only for them [RFJ] that I knew what was happening, I didn't know where to turn back then, because even my solicitor didn't really know"*.

In one of the cases, RFJ is supporting the family to prepare a leaflet about the case to highlight the issues.

RFJ has also offered computer classes and alternative therapies to both interviewees and their families.

## **PSNI**

One interviewee stated that they had been assigned an FLO during the initial HET process initially (before the case was transferred to PSNI) but they hadn't provided much support. The interviewee was not clear on whether the same FLO was assigned to them once the investigation was passed to PSNI, but that the FLO did contact them in 2011 to ask if they had any questions.

This same interviewee has been a member of RFJ *"for many years"*. While the interviewee runs their own support group, they felt that RFJ were good at campaigning and saw them as a *"vehicle for campaigning on bigger issues where it is important to talk to the right people"*.

A second interviewee had no FLO assigned personally to them; however one was assigned to her sister. The interviewee stated that the FLO often was not up-to-speed with the case saying the FLO *"was very behind in terms of what she knows"*. The interviewee also felt the FLO was assigned too late and stated *"they should have been there from day one"*.

The third interviewee had received *"initial advice and moral support from a Victims Commissioner"*.

## **4.6 Practical Issues / Challenges**

### **HET**

There were very few practical issues that were raised by those who had went through the HET process, largely because the HET seemed to be accommodating in terms of where they met families. For example, for the eleven families that had received reports, the HET met with all families but the location varied, typically depending on where the families' wanted to meet. This varied from the HET offices, to the family home or a convenient public place. However one interviewee stated that their meeting to received the report took place in a hotel foyer. The participant spoke of this as being an *"inappropriate place to receive a report of such sensitive and emotional material"*.

There are however a number of recurring challenges observed in discussion with the families. These included:

- consistency of the HET team. In cases which lasted longer there was a higher likelihood of a change in personnel. As noted above under communication this could mean losing rapport and having to go over various information. In some instances

there was also replacement of a GB officer with a local officer which heightened trust issues for some interviewees;

- understanding the process, what would be possible and the timeline for achieving this. These are all discussed in more detail above. Together they link to issues relating to overall expectation of what a process can achieve and communications required to provide the information to manage expectations appropriately; and
- a further issue was around the quality of reports. This included factual issues around wrong names, dates and places, simple things but important for the families to get right as they acted to undermine confidence in other parts of the report. For example, one interviewee whose report was prepared in 2008, stated that they returned the first report in January 2009 because the HET had *“got names wrong, spelt other names wrongly and had date of the murder wrong”*. A new report was then issued eleven months later, however despite the HET mentioning a *“quality assurance process”* some of the dates were still wrong. A final report was issued two weeks later and an apology to the family was written into the report. Overall there was some evidence to suggest the quality of reports had improved over time, with families not reporting numerous versions of reports being issued due to mistakes, although several were not content with the report findings (relating to the challenge as to expectation on what could be achieved within the process).

## **OPONI**

Several interviewees mentioned that OPONI were *“very accommodating”* in terms of when and where the family wanted to meet. However one interviewee did say that getting taxi’s to and from meetings was costly but necessary as it was *“too dangerous for me to get a bus / walk [because] they were no go areas”*.

With regards to the reports that have been produced by OPONI, the majority of those who had received them were happy with the quality of reports but had gone back to with further questions and/or queries. However one interviewee was not happy with the quality of the first report and stated *“it was a mess, it ignored evidence, names were wrong and people were missing”*.

## **Coroner’s Service**

Both interviewees stated that the main challenge was getting time off work to go to the hearings. They both wanted to be there but having to take a day off work to go was not always possible. One stated that it *“does not seem fair that the PSNI and MoD representatives, the barristers and solicitors are all being paid for a day’s work, while the families have to take unpaid leave”*.

In addition to this, in both cases the preliminary hearings have moved location three times and now are conducted in Belfast. One interviewee whose case has not been stalled, stated that going *“all the way to Belfast is a waste of time”*, particularly because they never know

how long the hearing will take, it could be 10 minutes or an hour.

One interviewee stated that because the incident happened over 20 years ago, many next-of-kin are elderly but there is no recognition of their needs in the court room. They explained that their elderly relative is not able to sit for long in the court room, however you are not allowed to stand during the hearings.

As previously mentioned, one interviewee also stated that it is hard to hear what is being said in the court due to the sheer number of people there and the fact that those involved face the Coroner with their backs to the viewing gallery, where the families sit.

In addition to this, the other interviewee stated that several cases where “*lumped together*” for the purposes of the preliminary hearings. The individual was not happy with this because he feels that the other cases are “*political cases*” but his case wasn’t. He has, however been assured that once the inquest is opened, the cases will be separated.

## **PSNI**

The families whose cases are being investigated by the PSNI do not feel like they are part of the process and therefore it was difficult for them to pinpoint any practical issues.

## **4.7 Overall Views of the Process**

### **HET**

In asking interviewee’s about their view of the overall process there were a range of reactions.

We should state at the outset that the majority were satisfied with how they were served within the process. Some referred back to points they had already made in relation to the contact with the HET team. As aforementioned the majority highlighted the professionalism, courtesy and empathy of the team. This was demonstrated in how the team spoke with them, listened to them and asked how they were. A few did report some concerns one specifically related to investigating officers who they perceived becoming “*aggressive*” towards the family when they “*continued to ask questions about the report*”. These families didn’t think the team cared or showed sympathy to their overall position.

There were concerns about “*bigger*” issues relating to the process. This included the independence of the team. Some families spoke of the “*police investigating the police*” and were sensitive to involvement of local members of the HET. Additionally the resources available were questioned, “*there is not enough considering the high number of cases to be covered*”.

There was a range of views in relation to the outcomes of the process. Several spoke about the report being helpful in terms of “*having the events all written down in one place*”. One interviewee said the process “*gave me more after all those years knowing that someone*

*had listened to me and tried to answer some of the questions. It brought me a sense of acknowledgement.”* Another family said *“our point of view was not about seeing someone brought to justice, rather it was about having something official that stated what facts were available.”* One individual said the *“HET report had answered questions, and given me peace of mind”* and in reference to health issues he had been suffering since the loss he continued *“Otherwise I might not be here today.”* Notably some who had not been able to bring themselves to read the report, still appreciated the value of having it.

There remained others who were not satisfied with the content of the report. For example one individual said that while *“they were not unhappy with the process or the fact the investigation was done”*, it was just they feel they *“have been left high and dry with more questions”*. Similarly one family spoke of the process *“opening the wound without closing it”*. Another spoke about part of the report *“not making sense”* and *“still wanting the truth.”* Another spoke about wanting the answer to the ultimate question, *“who killed their family member”*. For some the process did not go far enough, with a few families speaking about wanting convictions, albeit one such interviewee said *“They helped us understand why this may not be possible and we appreciated the reasons why”*.

## **OPONI**

The majority of those who had been through the process were satisfied with the process generally; however there was a marked difference between the first Ombudsman and the second in terms of levels of communication and satisfaction. In addition, the process was a lot longer than most people had expected but that the report at the end of the process was useful – as one interviewee stated *“I was happy with the report – it was fine – there were some things I agreed with and others I didn’t”*.

One interviewee summed up their overall views of the process as *“their [OPONI] hands are tied quite a bit, they were very nice, easy to talk to, well informed and knew what they are talking about”*.

## **Coroner’s service**

Both interviewees whose cases are currently undergoing preliminary hearings through the Coroner’s service are disillusioned by the whole process. They are both concerned that the inquest will not be heard before their elderly relatives pass away and they will not see justice done. One interviewee stated *“justice delayed, is justice denied”*. The other stated *“I just want it finished....I don’t want to be bringing up another generation like this”*.

While both stated that the Coroner himself was very pleasant and seemed to understand their issues, there was a general lack of respect from the PSNI and MoD of the process as a whole. During the interviews, both individuals described situations where there were arguments between the Coroner, the PSNI/RUC and the MoD around disclosure. They described a situation whereby the Coroner would ask if all the information had been disclosed, the barrister for the PSNI / RUC / MoD would say ‘yes’ but then the barrister for the families

would produce PSNI / RUC / MoD documents that the Coroner didn't have. This meant that the preliminary hearing would be postponed to allow the new documentation to be reviewed, however at the next hearing, exactly the same would happen. One interviewee stated that even the Coroner expressed his frustration with the *"blatant lack of respect for the court"*.

## **PSNI**

Neither interviewee whose case had been passed from the HET to the PSNI were happy with the process. They did not fully understand why the case had been passed over and how the PSNI could conduct an independent investigation. The investigations are still ongoing and the families do not feel that they are kept up-to-date with progress.

There is a feeling of mistrust that the PSNI will conduct a thorough investigation and get to the bottom of what happened. One stated that *"I have never felt comfortable, they [PSNI] don't want to close it, they will do their best to stop it"*.

The third had their case passed to the PSNI from OPONI. The case has been completed and while the individual remains dissatisfied with the outcome, they have chosen to *"keep a dignified silence"*.

## **5. Conclusions & Recommendations**

### **5.1. Introduction**

The main aim of the research is to provide the Commission with more in-depth knowledge in relation to the historical investigation and information recovery services that are available to victims and survivors. In particular, provide information relating to the experiences of victims and survivors engaging with the organisations and processes responsible.

This section draws out our conclusions and recommendations.

### **5.2. Victims and Survivors – Experience and expectations**

#### **Victims and survivors experience different needs and level of needs**

This research supports a widely held view that each victim and survivor is unique in how they react to the violent death of a loved one. The various responses can be observed in someone's emotional and physical needs.

With this core finding in mind it is recognised that a one-size-fits-all approach to supporting an individual or a family who are going through a historical investigation is not going to work. This presents a challenge in itself.

That said, and in line with a finding by the CJINI, victims will experience similar needs, concerns, fears and expectations. The depth of need can, however vary greatly, from a listening ear and family support to longer term counselling and practical support.

These are the characteristics of the individuals and families who are engaging with the historical investigation and information recovery services.

#### **Victims and survivors want different outcomes from historical investigations and information recovery mechanisms**

Our discussions with families going through these processes validated the truth, justice and acknowledgement need category of victims and survivors;

- Truth - Participants spoke about wanting answers to questions they have had for years, including the question of who killed my father, brother etc. There was an appreciation of the opportunity to ask questions which the process would seek to answer. The gathering of facts and the description of what happened to a loved one is valued, indeed even by some who cannot bring themselves to read the report;
- Justice – A minority of those we interviewed explicitly spoke about getting justice. They spoke of fighting to get the perpetrator to go through due process for what they had done and for the perpetrator to have to face a court. It is recognised this is also one end of the spectrum in terms of outcomes that can be achieved. Of those

seeking justice, some recognised the current process was not going to deliver it. Broadly speaking, they vowed to continue to campaign to achieve this outcome. Our team noted that several participants explicitly said their involvement in an historical investigation was not about bringing someone to justice; and

- Acknowledgement – Families and individuals appreciated that effort was being applied to look at the case. Some had reconciled themselves to this never happening, so someone taking the time to consider the case after a significant period of time had elapsed was unexpected and welcomed. Others valued the facts surrounding the case of their deceased family members was being written down in an “official” report. Individuals spoke about the process helping the family remember, speak about and acknowledge their deceased relative.

### **5.3. Current Historical Investigation and Information Recovery Arrangements**

A primary point to make is that a variety of historical investigation and information recovery processes, delivered by five different bodies are currently in place. Our research has described the processes involved in each organisation.

In terms of the scale of historical investigations and information recovery arrangements.

- In total there are 2,559 cases that involved 3,259 victims for the HET to investigate. As of 23 August 2011, HET had concluded 1,227 cases, of which review summary reports have been delivered for 778 cases and involved the preparation of family reports involving 1,061 victims. The remaining 449 had no review summary report delivered either because families were not involved or because they were concluded by other means (e.g. OPONI);
- At the time of the research OPONI had 127 historic cases relating to 137 victims/survivors. Work on historic cases is currently suspended;
- At November 2011, the number of historic investigations being investigated by the PSNI was 137, of which 80 victims are linked to HET cases;
- As of November 2011, there were 29 coroner inquests relating to 52 conflict related deaths; and
- With regard to the Criminal Cases Review Team, out of 250 applicants in relation to Northern Ireland conflict-related convictions, 31 have been sent for appeal. Of the 31 cases referred, convictions have been quashed, or sentences amended in 23 of them. In two, convictions have been upheld and in the remaining six referrals, the court has yet to make its judgment.

## 5.4. Challenges Facing Current Processes

Through this research it is apparent that there are substantive challenges, which are inter-linked, facing historical enquiries and information recovery services:

- at a basic level, the sheer volume of cases and complex nature of investigations has led to delays. The HET has had to be extended as it became evident that the original timeframe to complete the 2,559 cases was not achievable. Similarly, OPONI has experienced delays and due to a build-up of issues has now suspended its historical investigations. The inquest hearings going through the Coroners Service have also proved to be slow due to issues around getting access to information and witnesses;
- the nature of historic cases means that there are challenges caused by the time elapsed since the events took place. Tracing witnesses who have moved, maybe overseas or moved more than once can be difficult and indeed accessing witnesses may turn out to be impossible if the witness has passed on;
- the nature of the conflict was such that there are a significant number of inter-related deaths. Undertaking an investigation into one death in isolation is often impossible, and dependencies surrounding other investigations can create delays;
- given the multiple processes there is often a need for inter-agency working between the service providers. For example the OPONI and Coroner's Service often need to access information held by the PSNI. In our research this transfer of information has been perceived to have been slow for some cases and has subsequently led to delays;
- there is a challenge for the processes to be demonstrably independent and for careful management of perceived conflicts of interest. This is critical in regard to conflict deaths linked to police and army. Additionally it is important considering the lack of trust in state bodies and processes among some in the community, and perhaps particularly those who have lost family members in deaths perceived to be related to police or army personnel. That said in cases in which state agents were not involved there was also concern expressed that reviews of cases that were not satisfactorily undertaken during the conflict require the highest levels of independence; and
- linked with the issues above there is a challenge for processes to know how best to communicate with families (letter, phone, face-to-face), who to communicate with (particularly if there are several family members involved), when and how often to communicate (especially given processes can be long with delays when limited progress can be made). The communication issue is complex given the varying levels of trust a family may have in the process and their level of expectation (see paragraph above on trust, justice and acknowledgement); and
- given the different levels of expectation among individuals and families, it is clear that the various processes with their defined scope and approach, will be unable to meet

this diversity of expectation.

## **5.5. Support for Individuals and Families**

As stated above victims and survivors will have a range of needs. Some of these will be deep in nature, while other needs will be mild. A single blanket approach will not suffice and indeed there is a spectrum of support available to individuals accessing the historical enquiries and information recovery services.

This support can be from family members and friends, directly from the service provider, from solicitors, from CVSNI or from a range of NGOs in the voluntary and community sector. Our focus in this research has been around the support provided by the service providers and by NGOs. In line with the terms of reference, these have been categorised under: Good Practice, Short Comings and NGO support.

### **Good Practice in supporting families through the process**

Through this research, there were some examples of good practice in regards to supporting individuals through the process:

- a tailored approach – for example at the start of an investigation, the HET allow the family concerned to chose how they want to be communicated with throughout the process, ranging from not participating at all to being given regular updates on progress;
- a personal touch – praise was given to the first Police Ombudsman because she came across as very personal and would have contacted families herself. This made the families feel that they could trust her and the service she was providing. While not universal, there was also some praise for HET team members in terms of their empathy, listening and in terms of how accommodating they were in communication and meeting. Again this created rapport and confidence, particularly at the start of processes;
- the HET process offered two elements of ‘flexibility’ which were considered family friendly in nature. First they encourage families to ask questions which the process would subsequently seek to answer. Second the report they first provide to families can be read, reviewed, questioned and amended. This can be compared with other processes where the remit is tightly prescribed (and hence additional questions cannot be asked) and the report is ‘final’; and
- family liaison officer – services do have family liaison officers in post and these are there to support families through the process. Families were generally aware of these and the minority who availed of their support were positive about their involvement.

## Shortcomings in supporting families through the process:

- sign-posting other support - despite service providers reporting that their processes automatically provides contact details for support for individuals and families involved in the process, remarkably few individuals and families we spoke to recall this. Perhaps this is related to the information being provided in an initial stage of the process (e.g. an initial letter or initial meeting) which can be very emotional and which happened some time prior to the interviews undertaken for this research. One NGO said (in specific reference to the HET) that a telephone number was provided to an organisation people were unlikely to know at the bottom of a page. Generally families felt the onus was on them to seek out support as was demonstrated in the number who had taken steps to link up with the NGOs.
- inconsistent communication:
  - » gaps in communication with those families who want to be communicated was a key frustration. This could be for significant time periods (e.g. months, maybe more than a year) if there were delays in a case;
  - » the medium of communication was relevant. Participants reported frustration with being “*phoned out of the blue*” or “*receiving a letter and not being able to ask questions*”;
  - » insensitive communication – a few participants reported discussions with personnel in which the tone was unhelpful or which became heated, and which damaged trust in the process;
  - » meeting point – one family reported they had been provided with a report on a deceased family member in the public foyer of an hotel. They felt this to be wholly inappropriate for such a sensitive issue;
  - » when team members changed, something that does happen in cases which take a period of time to complete, family members were not consistently informed of the change and why it had occurred. This often led to a loss in rapport.

## NGO support:

- the range of support reported from NGOs included social and emotional support (e.g. providing access to befriending, counselling and therapeutic services), practical support around communications (e.g. assistance in making a call, writing a letter or email), advice in relation to the process (explaining the process, awareness of what has happened in other processes, information on legal dimensions), advice in relation to what questions may be useful to ask, attendance at critical meetings with families (and take a written note of such discussions) and provision of a report (covering chronology of events and other publicly available information, which helps

contextualise the case and can inform the family of what questions they might want to ask);

- interviewees clearly valued NGOs who understood the process who they could speak to in between contact with the HET team. One reported their “family would have been lost without the NGO”, others considered the support as helping them “to understand the process” and “in thinking through questions” as being important. NGOs who had an awareness of different cases and experiences of individuals and families did feel that when service providers were aware of an NGO’s involvement there was a helpful heightening of attention onto the investigation;
- we would conclude that individuals and families were more involved as a result of NGO support. Indeed some may have not participated or backed-off without the support of the NGO. In terms of the bigger picture of addressing the past, participation of individuals and families would appear to be a more desired outcome to the process;
- generally individuals or families getting support received some (e.g. advocacy) but not all such support services (e.g. potential advocacy, social, health). An observation would be the NGOs are quite different in levels of experience, scale and breath of capabilities. There is also variation in NGOs’ confidence in and attitudes towards different historical investigation processes (which again could influence the support they offer). In this context the support an individual or family would receive would be dependent on which NGO they would link with;
- we would note the CJI report on “The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland” acknowledged the emotional and practical support provided by Victims Support NI and NSPCC and the need for voluntary and community sector advocacy support to address the needs of some victims; and
- the majority of participants in this research received support from NGOs We would note that there were comments from two such individuals who felt they were going through the process feeling very alone. One spoke of the challenge of sitting in a room with a team going through a report, with one person writing down what I said, and struggling to keep up. It is not possible however to conclude on whether people going through historical investigations without NGO support have a materially different experience.

## **5.6. Looking Forward - Recommendations for Consideration**

We put forward the following recommendations for your consideration:

Overall:

- historical investigations and information recovery services are a significant part of acknowledging and dealing with the past. The issues and processes involved are complex and in some cases lengthy and expensive. While the combination of

service provided will never meet all the expectations of all victims and survivors (who have diverse expectations) the current arrangements are struggling to undertake the cases assigned to them at all. If the current services are to be continued, there is a need to consider how realistic their current timelines, resource arrangements and processes are. In the future, if there is to be a separate process around these issues, the lessons and experiences from the current processes should valuably inform its design and operation;

- based on this research's findings on the experience of individuals and families, and in line with the CJI report on care and treatment of victims and witnesses, it is reasonable for historical investigations and information recovery services to focus on greater customer care and understanding and to bring the needs and concerns of victims and witnesses closer to the heart of the overall approach and front line service delivery; and
- alongside the current arrangements, there is rationale for families and individuals participating in historical investigations and information recovery services having access to support independent of the statutory service provider. The rationale can be due to a range of reasons including capability, confidence and trust (including lack of trust in state agencies) which the NGOs can support on. The support can help the individuals and families participate more fully (or indeed participate at all) and get more out of the process.

Scope and provision of support to individuals and families participating in historical investigations and information recovery:

- the scope of this support is dependent on the needs of the family / individual. The scope of support available should primarily include emotional and practical support. There will also likely be a requirement for advocacy support for some families and individuals who have particular issues and concerns in engagement with the historical investigations and information recovery services;
- given our conclusion on need, the funding of this support should be a matter of consideration for government in taking forward future historical investigation and information recovery processes. There is precedent for this in funding the support provided for victims and witnesses in the mainstream criminal justice system;
- given the organic and inconsistent development of NGOs providing support in this arena, the stance NGOs have toward historical investigation processes, and indeed with some degree of community attachment to certain NGOs, there is a concern that individuals and families may not have access to, or receive, a consistent level of support. For example some of the NGOs have personnel with legal skills and experience, others do not. A move to formally support NGOs undertaking this work with funding, through the forthcoming Victims Service, would be an opportunity to better define the scope of support to be provided and the quality standards expected;
- if public funding is to be used to support NGOs in supporting victims and survivors,

value for money should be controlled by provision of funding on the basis of quantity of support provided at particular quality standards; and

- a memorandum of understanding, as per between DoJ and Victims Support NI, may be an appropriate tool in considering the relationship between investigating bodies and NGOs supporting families and individuals.

For service providers:

- while the challenge and complexity of their task is recognised there is opportunity to reflect on the practice identified within this research. In particular we would highlight the following practices which have scope for improvement:
  - » service providers need to be more explicit in explaining to participants of the range of support opportunities available to them;
  - » while service providers should continue to agree communication strategy with families and individuals at the outset – this should be monitored and changed as necessary, to help families be confident and assured that they understand what is happening with their case;
  - » service providers should communicate clearly with families when there is a change in the investigating team and critically, if the case is to be passed to another service provider. The service provider should speak with the family to ensure the family are aware of the reasons why;
  - » there should be clear communication around timelines, stumbling blocks, and any issues that come up – people want to be kept informed; and
  - » there needs to be good quality inter-agency working on these matters. There should be transparency in requests to access information from other service providers, and where this is problematic this should be escalated.

# Appendix 1

## Consultation Programme

### Service providers

Provider	Individuals Consulted
HET, OPONI and PSNI	Group session at CVSNI
The Historical Enquiries Team	Chris Symonds Maureen Cummings Ruth o'Duinnin
The Office of the Police Ombudsman Office	Michael Mulholland Paul Holmes
The Criminal Cases Review Commission	Justin Hawkins
The Police Service of Northern Ireland	Tim Hanley
The Coroners Service	Peter Luney

We would also like to thank the following NGOs who took part in the consultation or assisted in linking us with individuals and families to participate in the research.

NGO	Individual
British Irish Rights Watch	Jane Winter
Help NI	Raymond McCord
HELP NI event at Conway Mill	Multiple families / NGOs
HURT	Gareth Porter
Justice for Innocent Victims of Terror	Geoffrey Hamilton Kenny Donaldson
Pat Finucane Centre	Alan Brecknell
Phoenix Project	Sam Acheson
Relatives for Justice	Shauna Carberry Paul Butler
WAVE	Sandra Peake

30 case studies with individuals / families who have been through or were going through a historic investigation / information recovery at the time of the research.

<b>Organisation</b>	<b>Case Studies</b>
<b>HET</b>	20
<b>OPONI</b>	5
<b>PSNI</b>	3
<b>Coroner</b>	2
<b>CCRC</b>	0
<b>Total</b>	<b>30</b>







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