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### DH-DD(2025)202

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1521<sup>st</sup> meeting (March 2025) (DH)

Communication prepared and sent by the Independent Commission for Reconciliation and Information Recovery (ICRIR) concerning the McKerr group against the United Kingdom (Application No. 28883/95), circulated at the request of the United Kingdom authorities.

Information made available under Rule 8.2a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

\* \* \* \* \*

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Réunion : 1521<sup>e</sup> réunion (mars 2025) (DH)

Communication préparée et envoyée par Independent Commission for Reconciliation and Information Recovery (ICRIR) concernant le groupe d'affaires McKerr contre le Royaume-Uni (requête n° 28883/95), circulée à la demande des autorités du Royaume-Uni **[anglais uniquement]**.

Informations mises à disposition en vertu de la Règle 8.2a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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DGI

10 FEV. 2025

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

10 February 2025

Dear all,

I am writing to thank you for your time when meeting with us in June House, our operational base, in Belfast in November. It was positive to build on our previous introduction and engagement to date. I would like to take the opportunity to place in writing the update we provided verbally during your trip to Belfast.

I have also built on a few points previously discussed so that you have the most up to date information following your visit, these can be found in the annexes to this letter.

I am acutely aware of the different views across society about the contested context affecting legacy issues. Winning the confidence of the community, particularly victims, survivors and families who have been let down and disappointed for so many years, requires our commitment and delivery.

The Commission's focus remains on developing and delivering our first-class, professional public service, to meet the needs of victims, survivors and families. Our work plan for 2025-26 sets out how we plan to do this.

The Secretary of State set out on 4 December how he plans to respond to the Court of Appeal's September judgment. I have included some summary information on both at Annex 3.

I hope to continue our engagement with you over the months and years ahead.

Yours sincerely,

A handwritten signature in black ink that reads 'Louise Warde Hunter'.

**LOUISE WARDE HUNTER**  
**CEO & COMMISSIONER**

## ANNEX 1 – Operational Update

### Mobilisation and delivery

At the time of writing:

- Over 120 individuals have entered the investigations process by engaging with the Commission. This number continues to rise.
- Of these, 24 requesting individuals' cases have been accepted and are in the Information Recovery stage.
- We have also had a case referred to us from the Secretary of State, resulting in our Officers making an arrest.

On 20 December we published our work plan for 2025-26 [ICRIR Work plan 2025-26 - Independent Commission for Reconciliation & Information Recovery](#). In 2025-26, alongside the expansion of our investigative capacity, and delivery of Findings reports to victims, survivors and families, we will deliver robust engagement. The door to dialogue will always be open to all stakeholders. Listening and responding will remain central to sustaining outreach with key stakeholders and fostering long-term relationships in this important space.

We published our first [Accountability Update](#) in September 2024 and a further update is due for publication in March 2025. Our [Operational Design Framework](#) was published in July 2024 and some additional information on how our investigations operate can be found at annex 2 below.

### Victim, survivor and family engagement

The early feedback we have had from victims, survivors and families has been positive. This includes the following words from a Requesting Individual, as they engaged with a Case Support Worker:

"Glad we've met, my door is always open. I hope you know how determined I am to get closure for my father and for myself. You may or may not make that happen but at least both parties are looking at it with open minds, once trust is established good things happen. Today went a long way in my book, it was really nice to meet you both and I hope we can work together to be one voice for my father, that's what this is about, getting to the truth for him."

In October 2024 we outlined our **trauma and resiliency informed model** for supporting victims, survivors and families at a [webinar](#). This panel event brought together speakers from the Commission as well as external experts from the field of trauma and peacebuilding, both in Northern Ireland and internationally. We discussed how our trauma and resiliency informed model had been informed by feedback and consultation, and our commitment to continuing to iterate and improve it. The event was the start of a conversation with a wide group of stakeholders, who said that they found the event informative and useful.

The Commission for Victims and Survivors and the Victims and Survivors' Forum have provided valuable challenge and feedback on our work over the past year. Dr Lesley Carroll has regular meetings with victim and survivor groups, including South East Fermanagh Foundation and Mid

Ulster Victims Empowerment. Some groups remain opposed to the Commission, but we continue to try to engage directly with them, and more widely through delivery.

## **Reconciliation**

The Belfast/ Good Friday Agreement makes clear that “it is essential to acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation”.

The Legacy Act provides a statutory duty, at Section 2(4), that “the principal objective of the ICRIIR in exercising its functions is to promote reconciliation”.

The Board has approved a strategy framework to embed the promotion of reconciliation, including adopting a voluntary due regard duty, within all aspects of the Commission’s work. Work is ongoing to develop delivery of this framework both operationally and strategically.

## **Investigations – our operational capabilities**

Our high side facilities in both Belfast and London are nearing completion, meaning that we can handle sensitive information and progress investigations securely at our own premises. We continue with the recruitment of investigative staff. It is crucial that we recruit the very best candidates, and we are committed to taking the time needed to get the right people. Planning has been undertaken and the Commission is going to run regular recruitment rounds to build a list of qualified and skilled investigators who can be taken on to manage additional cases. The use of fixed term appointments offers the Commission the potential to manage staff alongside its workload.

The Commission has been clear that it values a diverse workforce and that this is crucial to ensure it is able to deliver as effectively as possible. For example, as the Accountability Update explains, of the 36 people working within the Investigations Directorate, 17 have experience conducting criminal investigations in Northern Ireland, while 12 do not have that experience in Northern Ireland but have substantial experience conducting criminal investigations outside of Northern Ireland. Selection for appointment to the Independent Commission for Reconciliation and Information Recovery reflects public sector good practice recruitment, which is built on the following [principles](#) – appointment on merit based on fair and open competition.

## **Political engagement**

Since our go-live date on 1 May 2024, we have had several briefings with key political stakeholders, with several more taking place in the coming months. This has enabled us to share information and, importantly, for our work to be scrutinised.

## ANNEX 2 - Operational Design Framework

This framework is the product of formal consultation and engagement and our aim from the outset to develop a Commission that can deliver for victims, survivors and families of the Troubles/Conflict. It sets out what can be expected from the Commission, from initial contact through to the publication of a Findings report, and signposts to specific Commission policies. It describes how we will deliver for individuals at each stage of their time with the Commission. It provides openness around the standards we have set ourselves, and to which we can be held to account by those using the Commission.

The Commission's investigation process is a single end to end journey that consists of three stages – support, information recovery and findings. From the point at which an individual engages with the Commission they are in the investigations process.

In early meetings with Requesting Individuals, Case Support Workers spend as much time as needed to explain the process and answer queries, so that they can engage in the investigation in an informed way. The Commission has given a lot of thought to how it can craft processes to support people in a way that lessens stress and reduces the risk of re-traumatisation. This includes trauma and resiliency informed interviewing. Staff wellbeing is critical and our staff are trained so they have trauma-informed skills to maintain and build resiliency.

### **Investigations – three stages, one process**

The **Support stage** is the start of the investigation journey, during which a dedicated Case Support Worker is assigned, information is shared about the process, the questions which the individual wishes to have answered are identified, and support is provided as required. Support is ongoing for the entirety of the investigation.

In the **Information Recovery stage** a team of investigators gathers information and evidence and seeks to answer the questions the Requesting Individual has raised.

At the **Findings stage** the Chief Commissioner produces a report to record the findings that have been made. This includes answers to the questions and issues raised by the Requesting Individual where that is possible.

### **The nature of our investigations**

The Commission has a responsibility to investigate how, and in what circumstances, deaths and serious physical or mental harm occurred. It has extensive information recovery powers to facilitate the provision of all information required in respect of that (whether previously subject to a Public Interest Immunity Certificate or not). The Commission has operationalised three investigation routes: liability, culpability and focused. An explanation of each can be found at Annex 1 to this letter, which is taken from page 35 of our Operational Design Framework.

In summary, a **liability investigation** seeks to determine if there is evidence to refer to a prosecutor. Where there is not enough evidence for a prosecution a **culpability investigation** route is pursued which examines all the circumstances and a report is produced which makes findings on the balance of probabilities. A **focused investigation** seeks to find answers of a meaningful personal nature.

All investigations, including those that may ultimately follow either a culpability or focused pathway, are conducted with a view to being a liability investigation, unless there is not enough evidence to refer to a prosecutor. A cold case review methodology is adopted in all cases. These decisions are taken in consultation with the Requesting Individual.

## Annex 3 Court of Appeal Judgement - Independence

The Court of Appeal made findings in relation to the Commission's independence and prefaced its comments below about the Commission with a recognition of its and its Commissioners' commitment to achieving a Convention-compliant, workable system for Troubles/Conflict victims and survivors which may complement other legal remedies. It held that:

"[212] However, we must address some distinct aspects of the ICRIR which are impugned as follows. The first claim made by Mr Bunting was that the operational structure of the ICRIR denotes a lack of independence. We have considered all of the points made in support of this claim. Having done so, **we do not depart from the trial judge's findings on this issue**. We also consider that **the appointment terms for commissioners or funding arrangements are not unlawful or unusual**. Whilst it might arguably be possible to improve the arrangements to strengthen the ICRIR's independence or the appearance of it, in agreement with the trial judge, we find that **these arrangements do not of themselves offend the principle of independence given the fact that the ICRIR ultimately made up and staffed by independent investigators and decision makers including the commissioners**.

[213] In our view it is **not unreasonable that the SOSNI should set the terms of appointment for Commissioners when he appoints them. Review of the performance of an independent body set up by the lead Department which brought forward the legislation is also not unusual nor, of itself, fatal to the independence** of the body concerned. We accept the submission made by the SOSNI that independent bodies are similarly required to report to Secretaries of State on their performance. That does not make them any less independent of the department which set them up."

### Secretary of State announcement, 4 December 2024

As set out above, the Northern Ireland Appeal Court clearly and unequivocally declared that the Commission is an appropriately independent public authority, endorsing a previous High Court judgement in that regard. Alongside this, the appeal court judgement raised considerations for the UK Government. The Secretary of State for Northern Ireland (SOSNI) has now outlined the [Government's response](#).

This includes the laying of a Remedial Order which remedies the human rights deficiencies in the Act. The Order will remove the provisions from the Act relating to the immunity scheme and will enable all civil proceedings that were prohibited by the Act to proceed. The SOSNI stated his intention to legislate for inquest proceedings and to definitively provide for public hearings; the taking of sworn evidence from individuals; to ensure that families have effective representation; and to allow 'the greatest possible disclosure of information by following very closely the model for statutory inquiries.' Alongside this, the SOSNI outlined his plans to appeal the Court's finding relating to national security provisions, stating that the UK courts have long recognised the Executive's primacy in decisions relating to the security of the state.

The SOSNI's statement identifies that although the courts have found the Commission to be sufficiently independent to conduct Article 2 compliant investigations, there is more work to do to command the confidence of victims, survivors and families. In this regard, the SOSNI has confirmed that the Commission's powers, independence and accountability will be strengthened. The Commission welcomes the planned enhancement of our powers.

Throughout the litigation, the Commission has remained focused on supporting and delivering for the people that have come forward to us with requests for information. We have remained true to the principles that we committed to at the outset: compliance with the European Convention on Human Rights; respect for the principles of the 1998 Belfast-Good Friday Agreement; and focusing on providing information to those affected by the Troubles/Conflict.