



**Draft Governance Framework for the  
Independent Commission for  
Reconciliation  
and Information Recovery**

**September 2023**

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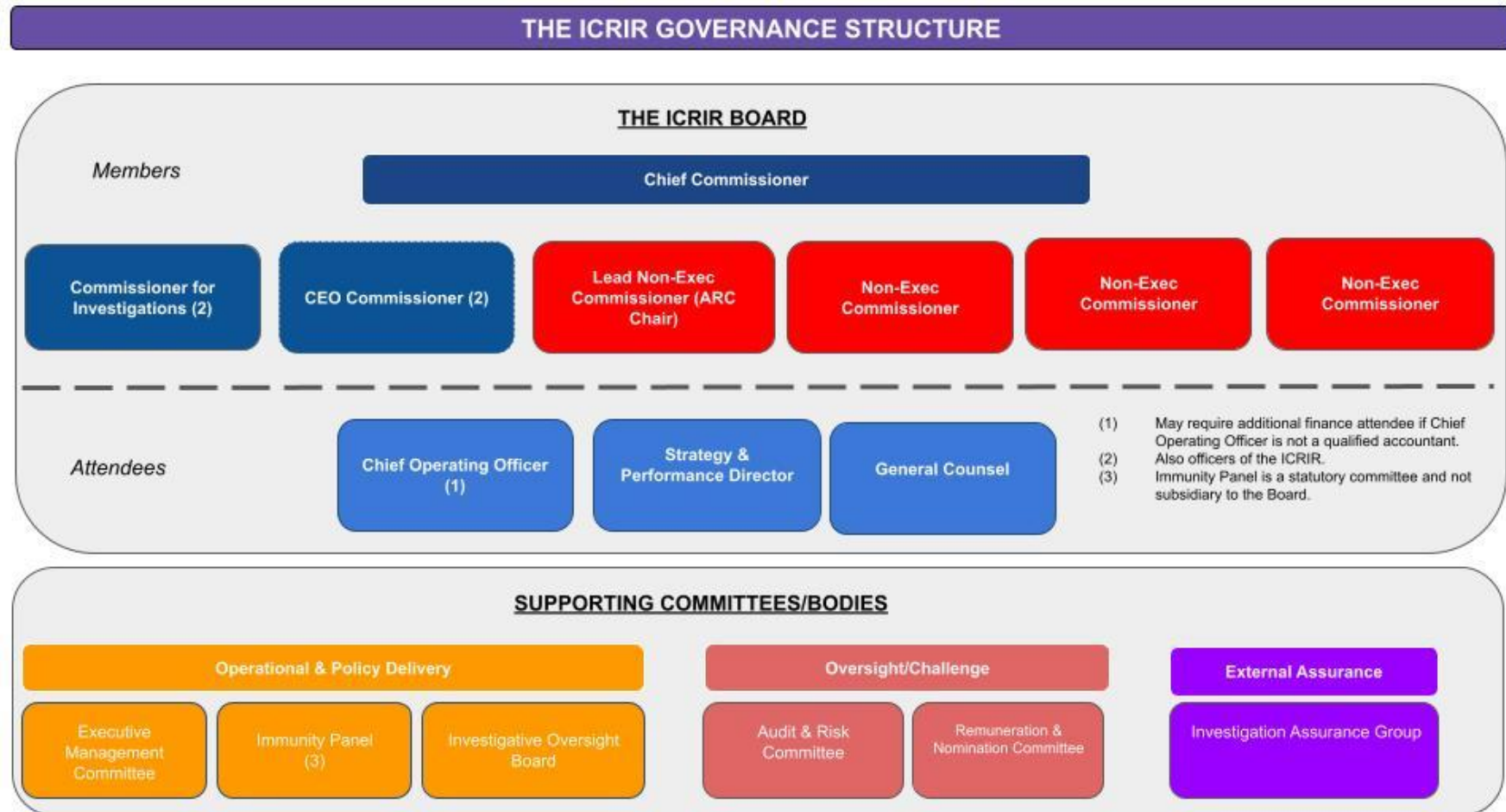
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## 1. INTRODUCTION

1. The ICRIIR will be established as a statutory body corporate with a Board of Commissioners that will be responsible for ensuring the ICRIIR fulfils its purpose and functions. While the ICRIIR will receive grant funding voted by Parliament through the Northern Ireland Office, it will be operationally independent and the Board of Commissioners will be responsible for the acts and decisions of the ICRIIR.
2. The legislation which establishes the ICRIIR sets out the Commission's principal objective to promote reconciliation, and it sets out its remit, powers and duties. It is for the Board of the Commission alone to ensure that it meets its objective and its duties and fulfils its different functions. This document sets out proposals about how the Board of the Commission will organise decision making within the Commission. These proposals are in draft and will need to be considered and revised as appropriate by the Commissioners once they are in post. Once the ICRIIR is legally established these draft proposals, along with any feedback that has been received, will be provided to the Board to assist its decision making to adopt or amend these proposals.
3. These governance arrangements should support good quality decision making so that the Commission can discharge its legal obligations and ensure proper oversight and challenge internally and ultimately via the Board of Commissioners. Good governance can support better outcomes for those that the Commission is there to assist, through promoting efficiency, consistency and rigorous internal challenge.
4. In developing proposals for governance arrangements, independent expert legal advice has been engaged and good practice from across the public sector, including Operation Kenova has been drawn on. These proposals (published below) include the draft Board and Committee structure and respective Terms of Reference, and the Standing Orders. There may be other Groups or Boards that the Commission feels are necessary to provide insight and input into decision making and the Commission will be free to amend these plans and adopt them based on feedback to these initial proposals.
5. An infographic and accompanying narrative are provided below at Section 2 detailing the Commission's governance structure, including the members and attendees of the Board, and the supporting committees and bodies.

6. The proposed Terms of Reference have also been provided for each of the Board's supporting committees/bodies, as follows:
  - Remuneration and Nomination Committee
  - Executive Management Committee
  - Investigations Oversight Board
  - Audit and Risk Committee
  - Immunity Requests Panel
  - Investigative Assurance Group
7. Finally, the proposed Standing Orders for the Board have been provided, detailing the procedural rules for the conduct of meetings, the declaration of interests at those meetings and rules around the establishment of Committees, and appointments to them.
8. The probity of the conduct of Commissioners and officers of the ICRIR is vital. Therefore a draft policy for the *Declaration and Management of Outside Interests* has been prepared at this stage. Again, the Board will need to consider and adopt this (with any amendments they consider necessary) on formation of the Commission.
9. These proposals are at draft stage, and comments are welcomed from interested individuals or organisations. Any feedback you provide will help the Board understand how people want the Commission to carry out its work and establish how the Commission will operate. You can comment on the proposals by using the contact form on our website at <https://icrir.independent-inquiry.uk/contact-us/> or by writing to us at FREEPOST ICRIR.
10. Once finalised, this set of documents together with future internal policies such as a *Code of Conduct* and a *Gifts and Hospitality Policy*, and external instruments, such as the Framework Agreement required between the Commission and the Northern Ireland Office, will set out a transparent framework that governs the ICRIR's overall conduct.

## 2. ICRIR GOVERNANCE STRUCTURE



## THE ICRIR BOARD

1. The ICRIR is to be led by the Board, which will have collective responsibility for setting the strategic direction of the body to enable it to deliver its functions.
2. The Chief Commissioner, Commissioner for Investigations and the Chief Executive Officer will be executive members of the board. The Chief Executive Officer will also be the designated Accounting Officer for the Commission, with direct accountability to Parliament for the use of public funds.
3. The Board will also have up to four Non-Executive Commissioners, one of whom will act as the Lead Non-Executive Commissioner and will chair the Audit and Risk Committee.
4. The ICRIR will be operating in an extremely complex environment with particularly sensitive and challenging processes and stakeholders. A critical bearing on the success of the ICRIR will be its ability to achieve the trust and confidence of those it is there to serve.
5. The legislation makes reference to the Chief Commissioner and Commissioner for Investigations in relation to many of ICRIR's functions. The legislation also sets out that ICRIR is a body corporate, acting through the Board and its officers. Therefore, where specific Commissioners have roles in determining policies or procedures, this is treated as being the lead for securing the Board's (or forum the Board has delegated to) agreement to proposals. Where the legislation establishes statutory roles in relation to individual operational decisions (i.e. specific review or immunity cases) these are taken to be exercised by the individual office holder, or delegate in that special capacity, where such delegation is not prohibited.
6. The credibility of the Commission will be paramount to achieve this and it will be of the utmost importance that mechanisms are in place to enable the body to demonstrate:
  - *Clear and effective communication and engagement with stakeholders and the public;*
  - *Credible investigative/review processes;*
  - *Compassion with stakeholders/users; and*
  - *A culture that is focused on reconciliation and respect.*
7. Achieving these objectives will require the Board to establish a governance structure that enables it to delegate key activities to

supporting committees whilst also ensuring independent and rigorous oversight/challenge structures are in place.

## **SUPPORTING COMMITTEES AND BODIES**

### **Operational/Policy Delivery**

8. The Executive Management Committee (chaired by the CEO) will be responsible for overseeing the ICRIR's operational performance and delivery. ExCo will set direction for the organisation, implementing the agreed mission of the Board and will be the overall decision-making body for operational performance and delivery, under delegated authority from the Board. Where decision making is delegated, it will provide oversight of decision making within the organisation.
9. The Immunity Requests Panel (chaired by the Chief Commissioner) will consider evidence and make an assessment on whether an individual should be granted immunity from prosecution. This is a statutory panel, established in the legislation and not operating under delegated authority from the Board.
10. The Investigative Oversight Board (chaired by the Commissioner for Investigations) will be responsible for monitoring (approved) reviews and ensuring they are carried out in line with the requirements of the legislation.

### **Oversight/Challenge**

11. The Audit & Risk Committee (chaired by the Lead Non-Executive Commissioner) will provide independent assurance in relation to the Board's responsibility for issues of risk, control and governance.
12. The Remuneration & Nomination Committee (chaired by the Chief Commissioner) will provide independent assurance in relation to senior appointments, including senior management pay issues (within any overall pay remit and controls).

### **External Assurance**

13. The Investigation Assurance Group will comprise of a mix of external interested parties and act to advise the Commissioner for Investigations (and the wider Commission) on operating policies and practices including providing feedback on the performance of investigations/reviews methodologies and forward plans.

### **3. DRAFT BOARD COMMITTEE TERMS OF REFERENCE**

#### **A. Audit and Risk Committee Terms of Reference (Draft)**

##### **Purpose**

1. The Audit and Risk Committee ("Committee") operates independently under delegated authority of the ICRIR Board. The Committee's role is to support the Board and Accounting Officer in discharging their responsibilities for issues of risk, control and governance. The Committee supports the Board and the Accounting Officer in these responsibilities by reviewing the comprehensiveness of assurances and assessing the reliability and integrity of these assurances. In undertaking this role the Committee will adhere to the principles set out in the HMT Audit & Risk Assurance Committee Handbook.

##### **Membership**

2. The Committee is appointed by the Board. The Committee will consist of a minimum of two ICRIR Non-Executive Commissioners together with a further external independent member. The ICRIR Lead Non-Executive Commissioner will be the Chair of the Committee.
3. The Committee may also:
  - co-opt additional members for a period not exceeding a year to provide specialist skills, knowledge and experience;
  - procure specialist ad-hoc advice at the expense of the organisation, subject to budgets agreed by the Board.

##### **Responsibilities**

4. The Committee will advise the Board and Accounting Officer on:
  - the strategic processes for risk, control and governance;
  - the Governance Statement;
  - the accounting policies, the accounts, and the annual report of the organisation, including the process for review of the accounts prior to submission for audit, levels of error identified, and management's letter of representation to the external auditors;
  - the planned activity and results of both internal and external audit;
  - the adequacy of management responses to issues identified by audit activity, including external audit's management letter;
  - assurances relating to the management of risk and corporate governance requirements for the organisation;
  - (where appropriate) proposals for tendering for either Internal or External Audit services or for purchase of non-audit services from contractors who provide audit services;



- counter-fraud policies, raising a concern / speaking up processes, and arrangements for any special investigations; and
- assurances on the framework in place for managing information risk and cyber security.

## **Meetings**

5. The Committee will meet at least four times a year. The Chair of the Committee may convene additional meetings, as they deem necessary. A minimum of two members of the Committee will be present for each meeting for it to be quorate.
6. The Board or the Accounting Officer may ask the Committee to convene further meetings to discuss particular issues on which they want the Committee's advice.
7. Committee meetings will also normally be attended by the Accounting Officer or their nominee; the Chief Operating Officer, a member of the Northern Ireland Office's Audit and Risk Committee<sup>1</sup>, the Head of Governance & Board Secretary, along with a representative from the Internal Audit Service Provider and the National Audit Office.
8. The Committee may ask any other officers of the organisation to attend to assist it with its discussions on any particular matter. On such occasions, officers are expected to treat attendance at the Committee as a priority.
9. The Committee may ask any or all of those who normally attend but who are not members to withdraw to facilitate open and frank discussion of a particular matter.
10. The Committee may take decisions by correspondence, as appropriate, and with the agreement of the Chair.

## **Information Requirements**

11. For each meeting, the Committee will be provided in advance with:
  - a report summarising any significant changes to the organisation's strategic risks and a copy of the strategic/corporate and financial Risk Registers;
  - a progress report from the Head of Internal Audit summarising:
    - i. work performed (and a comparison with work planned);
    - ii. key issues emerging from the work of internal audit;
    - iii. management response to audit recommendations;
    - iv. changes to the agreed internal audit plan; and
    - v. any resourcing issues affecting the delivery of the objectives of internal audit.

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<sup>1</sup> Reflecting the good practice set out at 3.5 of the HMT Audit & Risk Assurance Handbook

- a written progress report from the External Audit representative summarising work done and emerging findings (this may include, where relevant to the organisation, aspects of the wider work carried out by the ICRIIR, for example, Value for Money reports and good practice findings).

12. As and when appropriate the Committee will also be provided with:

- proposals for the terms of reference of internal audit;
- the internal audit strategy;
- the Internal Audit Service Provider's Annual Opinion and Report;
- all internal audit reports;
- quality Assurance reports on the internal audit function;
- the draft accounts of the organisation;
- the draft Governance Statement;
- a report on any changes to accounting policies;
- external Audit's management letter;
- a report on any proposals to tender for audit functions;
- management stewardship statements;
- a report on co-operation between internal and external audit;
- the organisation's Risk Management strategy;
- a copy of the corporate policies register;
- a copy of the *Code of Conduct* and policy on the *Declaration and Management of Outside Interests*; and
- a copy of the *Register of Interests for Commissioners* and the *Gifts and Hospitality Register* for the Board and Senior Management Team.

## **Reporting**

13. Minutes of the Committee shall be circulated to the Board. The Committee will also submit an annual report to the Board setting out how it has discharged its responsibilities in accordance with the HMT Audit & Risk Assurance Committee Handbook.

## **Review**

14. These terms of reference will be reviewed by the Committee at least every two years and must be endorsed by the Board following a review.

## **B. Remuneration and Nomination Committee (REMC) Terms of Reference (Draft)**

### **Purpose**

1. To determine the remuneration of the Board and consider overall pay policy for the wider organisation and to lead work to appoint Executive Commissioners (Chief Executive Officer and Commissioner for Investigations).

### **Membership**

2. The Committee is appointed by the Board. The Chief Commissioner will be the Chair of the Committee. The ICRIR Non-Executive Commissioners will be members of the Committee along with a further external independent member.

### **Responsibilities**

3. The role of the Remuneration & Nomination Committee (REMC) is to review the structure, size and composition of the Board and wider ICRIR (including the skills, knowledge, experience, diversity & reward policy) to ensure that it remains fit for purpose. In particular, the REMC will consider and make recommendations to the Board on the following key areas:
  - Within the terms of the agreed policy and in consultation with the Chief Executive Officer, determine the total individual remuneration package of each member of the Board and senior management team.
  - Consider and recommend to the Board the framework or broad policy for remuneration for all employees and contractors where these provisions apply, taking into account advice from the Chief Executive Officer and Chief Operating Officer.
  - Determine targets for any performance-related pay schemes for the Executive Team operated by ICRIR and approve the total annual payments made under such schemes.
  - Determine the policy for, and scope of, pension arrangements for each member of the Board and senior management team.
  - Ensure contractual terms on termination, and any payments made, are fair to the individual and ICRIR, that failure is not rewarded and that the duty to mitigate loss is fully recognised.
  - Approve, in addition to approval by the Chief Executive Officer, redundancy payments for any individual which is over £95,000 and any redundancy programme that impacts over 10 individuals.
  - Oversee any major changes in employee benefits structures including pension arrangements.
  - Agree the procedure for authorising claims for expenses from the Board and Executive Team.

- Determine the direction and provide scrutiny and oversight of the pay and reward policies.
- Provide oversight of succession planning and talent management to ensure proper planning and mitigation against the risk of losing key individuals; and
- Lead on the processes to identify a recommended candidate for appointment as Chief Executive Officer and Commissioner for Investigations should any vacancy arise.
- The REMC will also receive an annual report from the Chief Operating Officer setting out the diversity of the workforce.

### **Meetings**

4. The REMC will meet at least twice a year. At least two Non-Executive Commissioners and the external independent member must be present together with the Chair, in order to be quorate. The Chief Executive Officer, Commissioner for Investigations and Chief Operating Officer will attend all the meetings unless matters concern them individually or collectively and other ICRIR officers may be invited to attend for all or part of the meeting.
5. Other meetings will be arranged by the Secretariat at the request of the REMC Chair. The ICRIR Board or Chief Executive Officer may also ask the REMC to convene further meetings to discuss particular issues on which they require the Committee's advice.

### **Reporting**

6. Minutes of REMC meetings shall be circulated to the Board, ExCo and Audit & Risk Committee.

### **Review**

7. These terms of reference will be reviewed by the REMC at least every two years and must be endorsed by the Board following a review.

## C. Executive Management Committee (ExCo) Terms of Reference (Draft)

### Purpose

1. To oversee the ICRIIR's operational performance and delivery. It focuses on strategic leadership, management and direction, ensuring the most effective prioritisation of resources and makes recommendations to the Board as necessary.

### Membership

2. ExCo shall comprise the ICRIIR Senior Executive Team - Chief Executive Officer (Chair), Commissioner for Investigations, Chief Operating Officer, General Counsel, Strategy and Performance Director, Head of Governance & Board Secretary.

### Responsibilities

3. ExCo is the overall decision-making body for operational performance and delivery, under delegated authority from the Board. This will include taking necessary decisions in the following areas:
  - **Strategy:** developing organisational strategy and performance objectives, including a multi-year strategic plan and the Annual Work Plan.
  - **Delivery, performance, monitoring and evaluation:** ensuring delivery of commitments, objectives and milestones from the Annual Work Plan; strategic level oversight of the overall operational case load (review, immunity applications, litigation) oversight of the preparation of the Annual Report and Accounts.
  - **Portfolio and pipeline:** ensuring that the selection, prioritisation and resourcing of improvement projects and other activities is appropriate and effective. This does not include decisions about operational caseload selection or prioritisation.
  - **Resources and finance:** ensuring that financial planning, reporting and management is effective, that bids for additional resources are considered and escalated to the Board when necessary, and that future financial planning is undertaken to meet likely operational demands including oversight of the annual budget requirement process with Government.
  - **Corporate Governance:** ensuring that corporate policies are appropriate and effective; providing steers to, and considering recommendations from, the Audit & Risk Committee.
  - **Risk Management:** ensuring that robust risk management practices are embedded across the organisation and that operational risks are reviewed and escalated to the Board when necessary.

- **Organisation Security:** ensuring that appropriate internal and information assurance policies are in place, reviewed and aligned to wider Government policies.
  - **People:** providing a focus on people issues, including organisational culture and the development and talent management of the ICRIR's staff.
  - **Stakeholder engagement:** Maintaining an overview of the operation of relationships with key stakeholders.
  - **Public confidence:** giving consideration to issues, including around openness and engagement that may impact on the reputation of the ICRIR, its officers and the wider environment; including the ICRIR's communications strategy.
  - **Recommendations:** providing advice and guidance or recommendations on operational delivery to the Board, where those matters are reserved, and/or the Audit and Risk Committee.
4. ExCo may establish sub-committees reporting to it. ExCo shall remain accountable to the Board for the work of any sub-committee.

### Meetings

5. ExCo will meet on a monthly basis. A minimum of 3 members will be present for each meeting for it to be quorate. In the absence of the Chair, the Chief Operating Officer will manage meetings with the prior agreement of the Chair.
6. The Chair of ExCo may convene additional meetings, as they deem necessary. The Board may also ask ExCo to convene further meetings to discuss particular issues on which they require ExCo's advice.
7. ExCo shall agree a standing agenda and format for meetings that ensures that it can fulfil its responsibilities. ExCo shall also develop a forward programme of scheduled meetings and work, which can be supplemented, as necessary, with meetings convened with the agreement of the Chair. This will form the basis of meeting agendas, although ExCo members may propose additional items for discussion. Draft agendas will be subject to approval by the Chair.
8. Other members of staff may be invited to attend meetings, when necessary, in an advisory capacity or to contribute to discussions.
9. ExCo may ask any or all of those who normally attend but who are not members to withdraw to facilitate open and frank discussion of particular matters.

10. ExCo may take decisions by correspondence, as appropriate, and with the agreement of the Chair.

### **Reporting**

11. Minutes of ExCo shall be circulated to the Board and the Audit & Risk Committee.
12. The Board reserves the right to challenge ExCo on the delivery of its responsibilities and to scrutinise the quality of its work.

### **Review**

13. These terms of reference will be reviewed by ExCo at least every two years and must be endorsed by the Board following a review.

## **D. Investigative Oversight Board Terms of Reference (Draft)**

### **Introduction & Purpose**

1. The Independent Commission for Reconciliation and Information Recovery (ICRIR) powers and duties derive from its founding legislation. The primary roles of the ICRIR will be to provide information to families, victims and survivors of Troubles-related deaths and serious injury, and in doing so to fulfil its principal objective of promoting reconciliation. The ICRIR will have full police powers to conduct criminal investigations as part of any review and will be able to produce findings following any review.
2. The ICRIR has a statutory duty to carry out reviews of deaths caused by conduct forming part of the Troubles and to carry out reviews of other harmful conduct forming part of the Troubles.
3. The legislation establishes the role of Commissioner for Investigations, and also confers the powers needed to discharge the investigative responsibilities connected with the ICRIR's review functions. As a Commissioner, the Commissioner for Investigations is a member of the ICRIR Board, and shares collective responsibility for ensuring that the ICRIR fulfils its purpose and objectives. A Commissioner may also have delegated responsibility in relation to a particular Board Committee role, enabling the ICRIR to carry out its functions more effectively. In this capacity, a Commissioner may have lead responsibility for securing Board or Committee agreement to policy proposals, and for reporting to the Board on Committee activity.
4. Individual operational decisions regarding the conduct of a specific case are for the Commissioner for Investigations, or delegate, to take in line with the Commission's adopted policies and procedures. Others may be consulted for input where appropriate and legal advice must be taken from the General Counsel or delegate.
5. The Investigative Oversight Board has been established as a Committee of the ICRIR Board to monitor active reviews to ensure they are carried out in line with the requirements of the legislation and the Commission's adopted policies and procedures.

### **Membership**

6. The Commissioner for Investigations is the Chair of the Investigative Oversight Board. Other members are Senior Investigative Officers, Chief Operating Officer and General Counsel.



## **Responsibilities**

7. The Investigative Oversight Board will:
  - Review the form and manner prospective and confirmed requests for review are being taken forward to ensure individual cases are being managed in a manner that is compliant with the requirements set out in the legislation and any policies and procedures adopted by the Commission
  - Maintain an overview of the conduct, progress, efficiency and use of resource of the caseload of the Commission;
  - Consider the management and resource allocation of future requests;
  - Consider the overall caseload and operational capabilities;
  - Consider information requests for disclosures as well as providing oversight on information security process; and
  - Consider management and support of cases that have been referred to prosecutors and/or proposed for closure.

## **Meetings**

8. Meetings of the Investigative Oversight Board will be held on a bi-monthly basis. The Chair of the Investigative Oversight Board may convene additional meetings, as they deem necessary. A minimum of three members, including Chief Operating Officer or delegate, will be present for each meeting for it to be quorate. The Chief Executive Officer may attend if they consider it necessary to do so.
9. The Investigative Oversight Board may ask any other officers of the organisation to attend to assist it with its discussions on any particular matter. On such occasions, officers are expected to treat attendance as a priority.

## **Agenda/Papers**

10. The Investigative Oversight Board may determine that certain matters shall appear on every agenda for meetings. The Chair will however agree the agenda with the secretariat ahead of each meeting.
11. For each meeting, the Investigative Oversight Board members will at a minimum be provided with an update report which sets out:
  - The number of prospective requests and the number of requests that have been considered and confirmed;
  - Case scoping, triaging and allocation into specific interventions (types of review) and assignment of priority; and
  - The current active review caseload that are being conducted in line with the provisions set out in the legislation, and the Commission's policies and processes.

12. The papers for each meeting will be shared with Board members in advance of each meeting.
13. The Investigative Oversight Board may take decisions by correspondence, as appropriate, and with the agreement of the Chair.

### **Reporting**

14. The Investigative Oversight Board will submit a quarterly update report to ICRIR Board. A report will also be provided to the ICRIR Audit & Risk Committee on a bi-annual basis.

### **Review**

15. These terms of reference will be reviewed by the Investigative Oversight Board at least every two years and must be endorsed by the ICRIR Board following a review.

## **4. DRAFT SPECIAL BOARDS TERMS OF REFERENCE**

### **A. Immunity Requests Panel Terms of Reference (Draft)**

#### **Introduction & Purpose**

1. The Independent Commission for Reconciliation and Information Recovery (ICRIR) powers and duties derive from founding legislation. The primary roles of the ICRIR will be to provide information to families, victims and survivors of Troubles-related deaths and serious injury, and in doing so to fulfil its principal objective of promoting reconciliation. The ICRIR will have full police powers to conduct criminal investigations as part of any review and will be able to produce findings following any review.
2. The ICRIR will also have a statutory duty to grant immunity from prosecution for serious or connected Troubles-related offences other than Troubles related sexual offences, when certain conditions are met.
3. The legislation establishes the Immunity Requests Panel, as a statutory panel within the ICRIR. The legislation gives the Immunity Requests Panel responsibility for the consideration of evidence, and making assessments in accordance with criteria set out in the legislation on whether an individual should be granted immunity from prosecution for serious or connected troubles-related offences.
4. The Chief Commissioner is a member of the ICRIR, and also the Chair of the Board. As a member of the Board the Commissioner shares collective responsibility with other Board members in ensuring that the ICRIR fulfils its purpose and objectives. The Immunity Requests Panel is not a Committee of the Board, being a statutory panel established under the legislation. Therefore, in relation to responsibilities connected with the Immunity Requests Panel the Chief Commissioner acts independently of the Board, and not under any delegated authority. In exercising its functions, the Panel is treated as acting on behalf of, and in the name of, the ICRIR.

#### **Membership**

5. In line with the provisions set out in the Act, the Immunity Requests Panel will consist of the Chief Commissioner (Chair), and two ICRIR officers nominated by the Chief Commissioner.
6. An ICRIR officer may not become or remain a member of the Immunity Requests Panel unless the officer:

- a. Is a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland, of at least ten years' standing;
  - b. Satisfies the judicial-appointment eligibility condition on a ten-year basis (as set out in Part 2 of the Tribunals, Courts and Enforcement Act 2007), or
  - c. Is an advocate or solicitor in Scotland of at least ten years' standing.
- 7. The Chief Commissioner may remove an ICRIR officer from the panel, or may nominate a different ICRIR officer to be a temporary member of the panel if an ICRIR officer who is a member of the panel is unable to act (and is not removed from the panel).
- 8. If the Chief Commissioner is unable to exercise some or all of the immunity functions, generally or in particular circumstances, the Chief Commissioner may also nominate another officer;
  - a. To temporarily exercise the immunity functions so far as the Chief Commissioner is unable to exercise them, and
  - b. To be a temporary member of, and to temporarily chair, the immunity requests panel so far as those functions are panel functions.

### **Responsibilities**

- 9. As set out in the legislation, the Immunity Requests Panel will be responsible for considering the truthfulness of an individual's account, and any available evidence, when making an assessment in line with the legal framework on whether an individual should be granted immunity from prosecution for serious or connected troubles-related offences.
- 10. The Immunity Requests Panel shall direct and inform the exercise such powers of the Commission as appropriate in seeking the information it requires in order to exercise its responsibilities under the legislation.
- 11. The Immunity Requests Panel shall follow any procedures that have been determined by the Chief Commissioner.

### **Meetings**

- 12. Meetings of the Immunity Requests Panel will be held at such times and places as the Chief Commissioner may determine in order to progress its business. All panel members must be present for each meeting for it to be quorate.
- 13. The Immunity Requests Panel may determine that others should attend for part of their meetings, this includes, but is not limited to, a

person requesting immunity. Where attendance of a person requesting immunity is determined the meeting must take place in person.

14. Meetings of the Immunity Requests Panel may, if necessary and by order of the Chair, take place virtually (by audio or visual conferencing) notwithstanding that the panel members present may not all be meeting in one particular place, provided that all persons participating in the meeting can hear each other. Participation in a meeting in that manner shall be taken as constituting presence in person at a meeting.
15. The Immunity Requests Panel may determine that certain matters shall appear on every agenda for meetings. The Chair will however set the agenda for each meeting.
16. The agenda and papers for each meeting will be shared with panel members in advance of each meeting.

### **Reporting**

17. The Immunity Request Panel will submit a report to ICRIR Board after each Immunity decision has been taken. An update report will also be provided to the ICRIR Audit & Risk Committee on a bi-annual basis.

### **Review**

18. These terms of reference will be reviewed by the Immunity Requests Panel at least every two years and must be endorsed by the ICRIR Board following a review.

## **B. Investigative Assurance Group Terms of Reference (Draft)**

### **Introduction & Purpose**

1. The Independent Commission for Reconciliation and Information Recovery (ICRIR) powers and duties derive from The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. The primary roles of the ICRIR will be to provide information to families, victims and survivors of Troubles-related deaths and serious injury, and in doing so to fulfil its principal objective of promoting reconciliation. The ICRIR will have full police powers to conduct criminal investigations as part of any review and will be able to produce findings following any review.
2. The ICRIR has a statutory duty to carry out reviews of deaths and other harmful conduct that were caused by conduct forming part of the Troubles where a valid request has been received. The Commissioner for Investigations provides organisational leadership of the ICRIR's review and investigative functions.
3. The ICRIR Board has collective responsibility for ensuring the ICRIR fulfils its statutory purpose and objectives. The Investigations Assurance Group has been established by the ICRIR Board to advise the Commissioner for Investigations (and the wider Commission) on operating policies and practices including providing expert insight to assist the Commissioner for Investigations discharge his/her duties. It will provide a "critical friend" role so that methodologies, information recovery processes and use of the Commission's powers are all focused on delivering good quality outcomes for those making requests.

### **Remit**

4. The Investigations Assurance Group will be given briefings by the Commissioner for Investigations and those acting on his/her behalf, as well as by the Director of Strategy, Planning and Performance about the development of the Commission's policies, procedures and practices, so that it can provide expert advice and input for the Commission to consider. Information briefed and advice given will be in confidence but with the agreement of the Chief Commissioner, the Chair of the Group may publish a summary of the group's opinion via the Commission.
5. Conduct of specific cases and individual operational decisions will remain matters for the Commissioner for Investigations, relevant ICRIR officers and any Committees of the Board so tasked.

## **Membership**

6. The Investigation Assurance Group will include (but not be limited to) those who have experience in law, human rights, law enforcement, experience and knowledge of The Troubles in Northern Ireland and those with oversight experience.
7. The membership of the Group will be kept under review by the ICRIIR Board and subject to potential additions or changes in consultation with the Chair of the Group.
8. The Investigation Assurance Group will have an independent Chair who will be appointed by the Chief Commissioner. The Chair will be responsible for leading discussions, working with the Commissioner for Investigations to identify appropriate topics and areas for support and challenge, and for representing the whole Group membership's views to the Commission. In doing this they may be invited to attend the ICRIIR Board.

## **Responsibilities**

9. The Investigation Assurance Group will:
  - Offer guidance and expert advice about the system and methodology for the conduct of reviews and investigations, including operating policies and practices and information recovery arrangements;
  - Explore the processes required to ensure a robust and credible review or investigation, including compliance with the requirements of the European Convention on Human Rights and the standards of an Article 2 ECHR compliant investigation as appropriate;
  - Provide assurance about how reviews and investigations are being conducted in an independent manner;
  - Provide insight and advice regarding the provision of support and information to families;
  - Consider the strategic workforce and organisational training and development plans so that ICRIIR officers carrying out the review/investigative work have the requisite skills and experience;
  - Upon request, offer specific advice to help resolve obstacles or difficulties that the reviews teams may face.

## **Meetings**

10. Meetings of the Investigations Assurance Group will be held quarterly. The Chair may convene additional meetings, in consultation with the Chief Commissioner and the Commissioner for Investigations.

11. The Commissioner for Investigations will work with the Chair to determine the officers best placed to provide briefings and assist the group.



## 5. DRAFT BOARD STANDING ORDERS

### 1. INTRODUCTION

- 1.1 The Independent Commission for Reconciliation and Information Recovery (ICRIR) was established in 2023 as a result of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (“The Act”). The Act’s purpose is to address the legacy of the Northern Ireland Troubles and promote reconciliation by establishing an independent body for reconciliation and information recovery; limiting criminal investigations, legal proceedings, inquests and police complaints; extending the prisoner release scheme as set out in the Northern Ireland (Sentences) Act 1998; and providing for experiences to be recorded and preserved and for events to be studied and memorialised.
- 1.2 The principal objective of the ICRIR in exercising its functions is to promote reconciliation<sup>2</sup>. In taking decisions, the Board will be expected to consider how it can achieve this principal objective.
- 1.3 The ICRIR’s powers, functions and duties derive from the Act. The ICRIR’s statutory functions are to:
- carry out reviews of deaths that were caused by conduct forming part of the Troubles;
  - carry out reviews of other harmful conduct forming part of the Troubles;
  - produce reports on the findings of each of the reviews of deaths and other harmful conduct;
  - determine whether to grant person's immunity from prosecution for serious or connected Troubles-related offences other than Troubles related sexual offences; and
  - produce a record of deaths that were caused by conduct forming part of the Troubles.

The ICRIR statutory duties include the following:

- to have regard to the general interests of persons affected by Troubles-related deaths and serious injuries;
- to publish personal statements from members of families of victims;
- to produce and publish an annual work plan;
- to produce and publish an annual report;
- to keep proper accounts;
- not to do anything which would risk prejudicing, or would prejudice the national security interests of the United Kingdom;

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<sup>2</sup> Section 2(4), Northern Ireland Troubles (Legacy and Reconciliation) Act 2023

- not to do anything which would risk putting, or would put, the life or safety of any person at risk;
- not do anything which would risk having, or would have, a prejudicial effect on any actual or prospective criminal proceedings in any part of the United Kingdom; and
- to consult on and publish final reports following a review.

The ICRIR's statutory powers include:

- to employ and second staff
- to request and receive full disclosure
- to exercise the powers of a constable
- to refer deaths that were caused by conduct forming part of the Troubles, and other harmful conduct forming part of the Troubles, to prosecutors
- to require production of information
- to enter into contracts
- to regulate ICRIR's own proceedings and to delegate functions

1.4 As set out in the Act, the ICRIR is a body corporate, acting through the Board. The ICRIR Board will have collective responsibility for setting the strategic direction of the Commission to enable it to deliver its functions as set out in the Act. The Board has established Committees to enable it to discharge its responsibilities more effectively, and Board members may be given lead responsibilities, and exercise delegated authority as a Chair or Member of a Board Committee. The Act also conveys specific responsibilities on the Chief Commissioner and the Commissioner for Investigations in relation to immunity and review functions. Separately, the Framework Agreement sets out the specific responsibilities of the Chief Executive Officer in their role as Accounting Officer. These are examples of individual responsibilities which are exercised by these Commissioners in an individual capacity. The exercise of these responsibilities, including decision making, is for these individual Commissioners, although they will be expected to ensure that the Board (or those the Board have delegated the task to) are informed of relevant decisions in a timely manner. Where a matter relates to broader questions of systems and policy, these are to be led by that Commissioner, but require the agreement of the Board or other individuals or Committee to whom the Board has so delegated the matter. These Board Standing Orders set out the basic rules and procedures for the ICRIR's Board. All Board members and members of the senior management team of the ICRIR must be aware of them and be familiar with their details.

1.5 At any meeting, the Chair of the Board has the final decision on the interpretation of Board Standing Orders (on which they may be advised by General Counsel, their deputy or another representative such as the

Accounting Officer with respect to matters relating to the Board's Managing Public Money responsibilities).

- 1.6 These Board Standing Orders, as far as they are applicable, apply with appropriate alteration to meetings of any Committee established by the Board.
- 1.7 It is the duty of the Head of Governance & Board Secretary to ensure that Board members, independent members and officers are notified of, and understand their responsibilities within these *Board Standing Orders*, the *Scheme of Delegation*, the *Standing Financial Instructions* the ICRIR's *Code of Conduct* and the Cabinet Office's *Code of Conduct for Board Members of Public Bodies*.
- 1.8 These *Board Standing Orders*, the *Scheme of Delegation* and the Standing Financial Instructions will be reviewed regularly (at least every 18 months). Updated copies will be made available via the ICRIR intranet and, where appropriate, the ICRIR website following the completion of any review.

## 2. INTERPRETATION AND DEFINITIONS

- 2.1 These Board Standing Orders are made pursuant to the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, and any subsequent regulations. Any expression to which a meaning is given in the legislation or in regulations made under it shall have the same meaning in these Standing Orders, unless the context requires otherwise. In addition:
  - **"Accounting Officer"** is the Officer responsible and accountable for funds entrusted to the Commission. This person is responsible for ensuring the proper stewardship of public funds and assets. Their role is set out at Chapter 3 of *Managing Public Money*. At the ICRIR, the Chief Executive Officer is the Accounting Officer.
  - **"Board"<sup>3</sup>** means the ICRIR Board, which consists of the Chief Commissioner, Commissioner for Investigations, Chief Executive Officer along with up to four Non-Executive Commissioners.
  - **"Board member"** means any person appointed as a member of the ICRIR Board (as set out above). The Secretary of State for Northern Ireland has the power to make appointments to the

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<sup>3</sup> Section 2(3), Northern Ireland Troubles (Legacy and Reconciliation) Act 2023

Board<sup>4</sup>. The selection process for such appointments is set out in the Framework Agreement between the NIO and ICRIR

- **“Budget”** means a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of ICRIR.
- **“Chair”** is the person appointed to lead the Board and to ensure that it successfully discharges its overall responsibility for the work of the ICRIR. At the ICRIR, the Chief Commissioner is the Chair of the Board.
- **“Senior Executive Team”** are senior officers of the ICRIR with responsibility for a significant range of business. The Senior Executive Team is led by the Chief Executive Officer, and includes the General Counsel, the Chief Operating Officer, [the Deputy to the Commissioner for Investigations] and the Director of Strategy, Performance and Planning.
- **“Board Committee”** means a Committee created by the Board with delegated powers or a responsibility to advise the Board in specified areas of business. Committees may consist of or include persons who are not Board Members.
- **“Board Sub-Committee”** means a committee that has been established, with delegated authority from the Board, by a Committee of the Board.
- **“Independent members”** are persons formally appointed by the Board as members of specific committees and/or advisory bodies. Although they are not Board members, these *Board Standing Orders*, the *Scheme of Delegation*, the *Standing Financial Instructions*, the ICRIR’s *Code of Conduct*, and any relevant provisions of the Cabinet Office’s *Code of Conduct for Board Members of Public Bodies* apply to them as they do to Board members.
- **“Commission”** means ICRIR as an organisation.
- **“Officer”** means any person who is an employee of the Commission. This includes persons seconded to work within the Commission’s employee structure and, where appropriate, includes the Chief Executive Officer and Commissioner for Investigations.
- **“Framework Agreement”** is the document agreed between the ICRIR and the Northern Ireland Office (NIO) in accordance with HM Treasury’s handbook *Managing Public Money* which sets out the broad governance framework within which the ICRIR and the NIO operate.
- **“Investigations Assurance Group”** is a Group established by the Board to provide independent advice through expert insight and challenge to the Commissioner in establishing its review policies and procedures, in particular to ensure independence

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<sup>4</sup> Schedule 1, Part 2, Paragraph 8

of the Commission and adherence to European Convention of Human Rights requirements.

- **“Immunity Requests Panel”** is the panel established by the Act as a statutory Panel within the ICRIR to consider requests for the conditional grant of immunity from prosecution where the requirements of the Act are met.

### 3. THE ICRIR BOARD

#### **Board Composition**

- 3.1 The ICRIR Board will comprise:
  - The Chief Commissioner (Chair)
  - The Commissioner for Investigations
  - The Chief Executive Officer; and
  - Up to four Non-Executive Commissioners (one of whom will sit on the Board as the Lead Non-Executive Commissioner and Chair of the Audit and Risk Committee)
- 3.2 The statutory power and requirements to make appointments to the ICRIR Board are set out in Schedule 1 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. The power to make appointments to the ICRIR Board is vested in the Secretary of State for Northern Ireland.
- 3.3 The processes by which Commissioners are selected for appointment by the Secretary of State for Northern Ireland are set out in the Framework Agreement.

#### **Role of Board members**

- 3.4 The ICRIR Board will have collective responsibility for setting the strategic direction of the Commission to enable it to deliver its functions as set out in the Act.
- 3.5 The Board’s role is set out more fully in the Framework Agreement that is agreed between the Commission and the Northern Ireland Office.
- 3.6 Individual Board members must act in accordance with the provisions of the Framework Agreement with particular reference to acting in good faith and in the best interests of the ICRIR and with the Members’ Code of Conduct which complies with the Cabinet Office’s Code of Conduct for Board Members of

Public Bodies (2019). All ICRIR Board members and officers must act in accordance with the Seven Principles of Public Life.

## **4. ICRIR BOARD MEETINGS**

### **Admission of the Public and the Press**

- 4.1 The ICRIR Board will operate in an open and inclusive way, but will need to be cognisant of the Commission's duties under section 4 of the Act and of the need for confidentiality relating to operational work.
- 4.2 The Board may choose to hold meetings in public. Where it does so, proceedings are recorded and are usually made available on the ICRIR website following the meeting. Members of the public, or representatives of the press, are prohibited from making their own recording of proceedings other than in writing or making any oral report of the proceedings as they take place, without the prior agreement of the Board. Arrangements for attendance at any public session are set out on the ICRIR website.
- 4.3 Members of the public and press are not admitted to meetings of the Board or its Committees, except where the Board has resolved to hold a meeting in public or by specific invitation.

### **Convening of Meetings**

- 4.4 Ordinary meetings of the Board will be held at such times and places as the Board may determine in order to progress its business.
- 4.5 The Chair may call a meeting of the Board at any time, provided ten clear working days' notice is given.
- 4.6 In cases of emergency, if the Chair judges that the Board's business cannot be delayed to give the ten days' notice, the Chair is able to convene a meeting to deal with special or urgent matters, provided that a majority of Board members agree. The Chair will use telephone or video conferencing, if possible, to enable as many Board members to participate in the decision. Only those urgent or special matters may be dealt with at an emergency meeting so called.
- 4.7 Meetings of the Board may take place virtually (by audio or visual conferencing) notwithstanding that the Board members present may not all be meeting in one particular place, provided

that all persons participating in the meeting can hear each other. Participation in a meeting in that manner shall be taken as constituting presence in person at a meeting.

- 4.8 If a request for a meeting, signed by at least two-thirds of the whole number of Board members, is presented to the Chair, then the Chair must call a meeting within ten working days of receiving this request. If the Chair refuses to call a meeting or if, without so refusing, does not call a meeting within ten working days of receiving the request, those Members who requested may call a meeting themselves.

#### **Notice of Meetings**

- 4.9 Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, must be made available to every Board member by secure electronic means, at least five working days before the day of the meeting.
- 4.10 The accidental failure to give notice to a Board member or the non-receipt of a duly despatched notice by then will not invalidate the proceedings of a Board meeting.
- 4.11 In the case of a meeting called by Board members in default of the Chair (under Standing Order 4.8), the notice must be signed by those Board members and no business can be transacted at the meeting other than that specified in the notice.

#### **Chairing Meetings**

- 4.12 At any meeting of the Board, the Chair, if present, will preside.
- 4.13 If the Chair is absent, or is disqualified from participating, the Lead Non-Executive member will preside or, in their absence, a Non-Executive member chosen by the Board members will preside.
- 4.14 The decision of the Chair on questions of order, relevancy, regularity and any other matters will be final.

#### **Quorum for Meetings**

- 4.15 A minimum 4 members will be present for each meeting for it to be quorate.
- 4.16 If at any time during a meeting a quorum of Board members is not present then, at the discretion of the Chair, the business may still be discussed by the Board members present but the decision must be deferred to the next meeting of the Board,

unless the Chair of the meeting requires a decision to be made at an earlier date or is able to conduct the business under the provision regarding Urgent Action at 4.26.

- 4.17 If the Chair or any Board member has declared an interest and recused themselves or is otherwise disqualified from participating in the discussion on any matter and/or from voting on any resolution, they may not participate in the discussion or vote and will not be counted towards the quorum on that item. Whoever is in the Chair for the item will determine whether the member may remain in the meeting during the discussion or whether they should leave the meeting at that point in the interests of open and transparent discussion. Such a position must be recorded in the minutes of the meeting.

### **Voting**

- 4.18 The Board will use its best endeavours to decide all items of business by consensus. Where that cannot be achieved, and a vote is necessary, such items shall be decided by a majority of the votes of the Chair and the Board members present voting on the question.
- 4.19 In the case of an equality of votes, the Chair of the meeting will have a second or casting vote.
- 4.20 Voting shall normally be by show of hands. If the matter being voted on is confidential, a paper or electronic ballot may also be used if a majority of the Board members present request it. However, where a meeting is held in accordance with Standing Order 4.7, the Chair of the meeting shall call the roll of Board members and each Board member asked shall, on their name being called, indicate their vote in such a manner that all persons participating can hear it.
- 4.21 If any Board member present so requests, the voting (other than by paper or electronic ballot) on any question will be recorded to show how each Board member present voted or abstained.
- 4.22 If a Board member so requests, their vote will be recorded in the minutes of the meeting by name upon any vote (save those by paper or electronic ballot).
- 4.23 Board members absent from a meeting do not have the right of a proxy vote although their written views submitted to the Chair in advance may be entered in the debate at the discretion of



the Chair. Absence is determined as at the time of voting on a motion.

#### **Notices of Motion**

- 4.24 Any motion proposed must be seconded before it can be considered by the Board.
- 4.25 A Board member desiring to move or amend a motion must send written notification to the Chair at least 10 clear working days before the meeting. The Chair will insert this notice in the agenda for the meeting, subject to the notice being permissible under the appropriate regulations and within ICRIR's statutory remit. This does not however, prevent any motion or amendment being moved without notice during the meeting on any business mentioned on the agenda.

#### **Emergency Motions**

- 4.26 Subject to the agreement of the Chair, and subject also to the provisions below, a Board member may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice must state the grounds of urgency. If in order, it will be declared to the Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item will be final.

#### **Withdrawal of Motions**

- 4.27 A motion, once moved and seconded, may be withdrawn by the proposer with the agreement of the seconder and the consent of the Chair.

#### **Motion to Rescind a Resolution**

- 4.28 Notice of a motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months must bear the signature of the Board member who gives the notice and also the signature of two other Board members.
- 4.29 When any such motion has been disposed of by the Board, it will not be permitted for any Board member other than the Chair to propose a motion to the same effect within six months. The Chair may do so if it is considered appropriate.

#### **Motions and Amendments to Motions**

- 4.30 The mover of a motion has a right of reply at the close of any discussion on the motion or any amendment thereto.

- 4.31 When a motion is under discussion or immediately prior to discussion, it is open to any Board member to move:
- An amendment to the motion;
  - The adjournment of the discussion or the meeting
  - That the meeting proceed to the next business;
  - The appointment of an ad hoc committee to deal with a specific item of business; or
  - That the motion be now put.
- 4.32 No amendment to any motion will be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

## **5. AGENDAS, PAPERS, RECORD OF ATTENDANCE AND MINUTES**

### **Setting the Board Agenda**

- 5.1 The Board may determine that certain matters shall appear on every agenda for ICRIR Board meetings. The Chair will however agree the agenda for each meeting of the Board, in consultation with the Chief Executive Officer.
- 5.2 Board members who wish to put forward agenda items should notify the Chair at least 15 working days before the meeting. Requests made less than 15 clear working days before a meeting may be included on the agenda at the discretion of the Chair.
- 5.3 In the event that the Chair is not willing to include an item on the agenda of a Board meeting, any member will be entitled to have a notice of motion included on the agenda, provided this is submitted in line with the provisions set out under standing order 4.24 and 4.25.
- 5.4 It is within the discretion of the Chair of a meeting to allow urgent items not on the agreed agenda to be discussed at the relevant meeting. The reasons for allowing such action should be indicated by the Chair.

### **Meeting Papers**

- 5.5 The papers for a meeting will be available to Board members at least five working days before a meeting, except in an emergency.

- 5.6 The papers for any Board meetings held in public will be made available on the ICRIR website.
- 5.7 Papers to support decision making by the Board and any Committees must include, but is not limited to, consideration of the following to assist in coming to a decision:
- i. Compatibility with the Commission's statutory principal objective to promote reconciliation and how this decision or options will help to achieve it;
  - ii. Regard to the general interests of persons affected by Troubles-related deaths and serious injuries and how this may be affected by the decision (endorsed by the Head of Engagement or Director of Strategy);
  - iii. Assessment of discharge of the Commission's duties under section 4 of the Act (including with any necessary specialist external input);
  - iv. The financial impact of a decision, including analysis of affordability and value for money (endorsed by the Head of Finance or Chief Operating Officer)

#### **Record of Attendance**

- 5.8 The names of the Chair and Board members present at the meeting must be recorded in the minutes.
- 5.9 Where a Board member is not present for the whole of the meeting the minutes must indicate for which items the Board member was present at the time of determination of the item.
- 5.10 The names of others "In Attendance" at the Board meeting must also be recorded in the minutes.

#### **Minutes**

- 5.11 The minutes of the proceedings of a Board meeting will be drawn up by the Secretariat of the Board and submitted for agreement at the following Board meeting. Any amendment to the minutes must be agreed and recorded in the minutes of the Board meeting at which they are submitted for agreement. Once agreed by the Board and confirmed as a correct record by the Chair, the minutes shall be taken as conclusive evidence of the facts stated therein.
- 5.12 The minutes of any Board meetings held in public will be available to the public and published on the ICRIR website. The Board will also receive the minutes of its Committees for information. Any Board member not on a Committee will have a

right to consult any confidential minutes of that Committee.

## **6. COMMITTEES**

### **Establishment of Committees**

- 6.1 The Board may appoint Committees of the Board to support the delivery of its objectives and ensure independent oversight/challenge structures are in place.
- 6.2 The Board may delegate authority to its Committees to establish and appoint members to further sub-committees/advisory bodies. The Committee shall determine the membership of any sub-committees they establish.
- 6.3 The constitution and terms of reference of the Board's Committees, and any sub-committees or advisory bodies, and any specific executive powers delegated to them, must be approved by the Board.
- 6.4 The Board will keep under review the structure and remit of its Committees.

### **Approval of Appointments to Committees**

- 6.5 The Chair will assign an ICRIR Board member to each of the Committees which it has formally constituted. Where the Board determines, and Regulations permit, that persons, who are neither Board members nor Officers, can be appointed to a Committee, the Committee may proceed to appoint and should inform the Board of any appointments made.
- 6.6 The Chairs of the Board's Committees (not including Statutory Committees of the Board) will be appointed by the Board.
- 6.7 In the event of there being a vacancy in a Committee chair, the Chair of the ICRIR Board is authorised to appoint an Interim Committee Chair.

### **Terms of Reference**

- 6.8 Each Committee of the Board is to have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board may decide and shall be in accordance with any relevant provisions set out in the Act and subsequent regulations.

- 6.9 The terms of reference of any sub-committee/advisory body constituted by a Committee may be proposed by the Committee but must be approved by the Board.

**Delegation of Powers by Committees to Sub-Committees**

- 6.10 Where Committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised to do so by the Board.

**Appointments for Statutory Functions**

- 6.11 Where the Board is required to appoint persons to a Committee and/or to undertake statutory functions as required by the legislation or any subsequent regulations, and where such appointments are to operate independently of the Board, such appointments should be made in accordance with the provisions set out in the legislation. If there are no such directions, the Board may make such arrangements as it thinks fit in order to deliver the statutory function.

**Resignations and terminations of Committee Membership**

- 6.12 Independent members of a Committee may resign from the Committee by writing to the Chair of the Committee providing 30 days' notice.
- 6.13 Should it prove necessary, the Board may terminate the appointment of any independent member to one of its Committees.

## **7. CUSTODY OF SEAL, SEALING AND SIGNATURE OF DOCUMENTS**

**Custody of Seal**

- 7.1 As set out in schedule 1 of the Act, the ICRIR may have a seal.
- 7.2 The common seal of ICRIR shall be kept by the Head of Governance and Board Secretary, or a Manager nominated by them, in a secure place.

**Sealing of Documents**

- 7.3 Where it is necessary that a document be sealed, the seal must be authenticated by the signature of at least one of the ICRIR Commissioners.

- 7.4 A document purporting to be duly executed under the seal of the ICRIIR must be received in evidence and treated as so executed unless the contrary is shown.

#### **Register of Sealing**

- 7.5 The Head of Governance & Board Secretary shall keep a register in which they, or another officer of the Commission authorised by them, shall enter a record of the sealing of every document.

#### **Execution of Documents**

- 7.6 The Chief Executive Officer or nominated Officers are authorised, by resolution of the Board and in accordance with the Scheme of Delegation, to execute on behalf of the Board any agreement or other document.
- 7.7 E-signatures (digital or scanned) can be considered as authentication of a signature of the Chief Executive Officer or nominated Officers. Whether it is appropriate to use an e-signature will depend on the type of document being executed or signed. The Head of Governance & Board Secretary can advise on the options at the time documents are circulated. Where it is not appropriate, a wet ink signature will be applied to a hardcopy of the document.
- 7.8 A document purporting to be signed on behalf of the ICRIIR by at least one of the Commissioners, or any person who is authorised (generally or specially) for that purpose, must be received in evidence and treated as so signed unless the contrary is shown.

## **8. DUTIES AND OBLIGATIONS OF MEMBERS AND SENIOR EXECUTIVE TEAM UNDER THESE BOARD STANDING ORDERS**

#### **Declaration of interest policy for ICRIIR Board members**

- 8.1 A *Declaration and Management of Outside Interests* policy, including the requirements set out in the Act for ICRIIR Commissioners, sets out the requirements and procedures relating to the recognition and disclosure of activities that could give rise to conflicts of interest or the perception of conflicts of interest and ensures that such conflicts are correctly identified, appropriately managed and effectively resolved. All Commissioners and officers will be required to return an annual declaration (including nil return) to the Head of Governance &

Board Secretary, as well as to provide any in-year updates should a change in circumstances require this.

### **Register of Interests**

- 8.2 The Head of Governance & Board Secretary will establish and maintain a *Register of Interests of Commissioners*. This Register will record interests that are considered to be relevant to the ICRIIR and where making the fact of the interest public will help manage or mitigate any perception of conflict.
- 8.3 The *Register of Interests of Commissioners* will be published on an annual basis. At any time during the year, the Head of Governance & Board Secretary may amend the Register to take account of changes recorded in any further declarations that have been made.
- 8.4 The Head of Governance & Board Secretary will write annually to Commissioners reminding them of the continuing requirements of these *Board Standing Orders*, but responsibility for declaration of interests lies solely with Commissioners.

### **Timing of Declaration**

- 8.5 Initial declarations of interests, to inform compilation of the Register must not be made later than 30 days after the date of accepting office and before taking up office.
- 8.6 Omissions or corrections must be notified to the Head of Governance & Board Secretary immediately, if, after lodging a statement, a Commissioner becomes aware that they, or any member of their family, has a declarable interest in respect of which they have not made a declaration. This is also the case if they realise that an interest which it was thought did not need to be declared, but which is in fact later identified as a declarable interest. Changes to interests must be notified to the Head of Governance & Board Secretary within 20 calendar days after they have occurred.
- 8.7 The *Register of Interests of Commissioners* will be reviewed annually.

## **9. SUSPENSION, VARIATION, AMENDMENT AND APPROVAL OF BOARD STANDING ORDERS**

### **Suspension of Board Standing Orders**

- 9.1 Except where this would contravene any statutory provision, any one or more of the *Board Standing Orders* may be suspended at any meeting, provided that at least four members of the Board are present, and that a majority of those present vote in favour of suspension.
- 9.2 A decision to suspend *Board Standing Orders* will be recorded in the minutes of the meeting.
- 9.3 No formal business may be transacted while *Board Standing Orders* are suspended.
- 9.4 A separate record of matters discussed during the suspension of *Board Standing Orders* must be made and must be available to the Chair and Board members.
- 9.5 The Audit and Risk Committee must receive a report of every decision to suspend *Board Standing Orders*.

### **Approval, Variation and Amendment of Board Standing Orders**

- 9.6 These Board Standing Orders and any amendment to them can only be approved if:
  - A notice of motion has been given (i.e. at least 10 working days in advance);
  - No fewer than half the total of the Board Members present vote in favour;
  - At least four members of the ICRIR Board, including the Chair are present at the time of the vote; and
  - The variation proposed does not contravene a statutory provision set out in the Act, any other legislation and/or any subsequent regulations.



## 6. DRAFT POLICY FOR THE DECLARATION AND MANAGEMENT OF OUTSIDE INTERESTS

### Purpose

1. To ensure that employees of the Independent Commission for Information and Reconciliation Recovery (ICRIR) have a clear understanding of what might constitute a relevant outside interest and to ensure that the ICRIR takes a consistent approach to the management of outside interests.
2. ICRIR officers are expected to meet the *Seven Principles of Public Life* and ICRIR's *Code of Conduct*. They must not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. The requirement to act with honesty and integrity is key to how any outside interests should be considered and managed. This policy outlines types of outside interests, the expected standards when declaring and managing relevant outside interests, how to consider whether a perceived, potential or actual conflict exists, and what action must be taken in those circumstances.
3. This policy should be read alongside policies on: *Gifts and Hospitality*; *Reportable Association and Media Relationships*; *Discipline and Conduct*.

### Principles

4. This policy is based on the following principles:
  - You must not misuse your official position or information acquired in the course of your official duties to further your private interests or those of others.
  - You must be honest and impartial in the exercise of your duties and must not allow your judgement or integrity to be compromised.
  - It is your responsibility to declare all relevant outside interests as soon as possible. Where a conflict (actual, potential, or perceived) arises, immediate steps must be taken to remedy it. Failure to declare a known relevant outside interest could result in action being taken under the relevant *Discipline and Conduct Policy*. Any criminal offences will also be referred to the relevant authorities.

## Scope

5. This policy applies to all Commissioners and officers of the ICRIR, including secondees into the body. It applies to both those with permanent and fixed term arrangements, including those on probation. Whilst the *Code of Conduct* does not directly apply to anyone who is not an employee of the organisation, such as contractors, consultants and agency workers, it is expected that they should operate in keeping with its principles and in line with this policy. It relates to general duties and to specific operational case work (see in particular the provisions below relating to Article 2 ECHR policy considerations).
6. In addition to the requirements set out in this policy, individuals working in a commercial or procurement role should also abide by the Government Commercial Function PPN 04/21 'Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing' (or future versions). The PPN includes guidance to assist commercial teams in organisations to develop and enhance local strategies, systems, processes and procedures to prevent, identify and remedy conflicts of interest.

## Outside interests

7. The National Audit Office defines a conflict of interest as 'A set of circumstances that creates a risk that an individual's ability to apply judgement or act in one role is, or could be, impaired or influenced by a secondary interest. It can occur in any situation where an individual or organisation can exploit a professional or official role for personal or other benefit. Conflicts can exist if the circumstances create a risk that decisions may be influenced, regardless of whether the individual benefits. The perception of competing interests, impaired judgement or undue influence can also be a conflict of interest.'
8. You may not always realise you hold relevant outside interests which give rise to a conflict. In most cases, there will likely be nothing wrong or unethical in relation to the circumstances leading to a conflict of interest arising, but when it does, immediate steps must be taken to resolve the matter so as to ensure adherence to the *Code of Conduct*.
9. The starting point is to consider any 'relevant' outside interests. Relevance relates to whether an outside interest (financial or otherwise) could be thought to have a bearing on or overlap with your official role/duties. If you are unsure about whether to declare a relevant outside interest, you should err on the side of caution and declare it. The onus is on you to consider what might be relevant and declare it. This means that an objective judgement can be taken by management about the actual relevance of such an interest, and it may be considered not to be of relevance.

10. In addition to your own interests, those of close family members (for example spouse/partner, adult children, parents and siblings) and close friends should form part of consideration of relevant outside interests. This is limited by the extent to which you can reasonably be expected to know of such interest.
11. It is your responsibility to declare all outside interests that could be relevant. The decision-maker in a particular case (usually your line manager)<sup>1</sup> should first make an assessment as to the relevance of each declared interest and, if considered relevant, whether it meets the definition of an actual, potential or perceived conflict of interest as follows:
- a) Actual conflicts – where there is a risk that your ability to apply judgement is or could be impaired or influenced by an extant secondary interest.
  - b) Potential conflicts – where your ability to apply judgement or act in your role could be impaired or influenced by a secondary interest in the future.
  - c) Perceived conflicts – where your ability to apply judgement or act in one role could reasonably be perceived as impaired or influenced by a secondary interest (i.e. it could cause a reasonable person to think there was a conflict of interest).
12. In some cases, the decision-maker may consider that the outside interest is relevant but presents no issue (i.e. it does not meet the definition of an actual, potential or perceived conflict of interest).

### **Declaring interests**

13. You must declare all relevant outside interests as soon as possible. Your declaration is a live process and should be completed on commencing employment (including a secondment in), moving between roles (including a secondment out) and on an ongoing basis as necessary. All Commissioners and officers will be reminded to update their declaration on an annual basis.
14. The Head of Governance & Board Secretary will hold a central set of declarations, including 'nil returns' that have been assessed by the relevant decision-maker (usually a line manager). Members of the Executive Committee, especially the Commissioner for Investigations, (and nominated deputies) are responsible for ensuring they retain a full set of declarations for officers under their management and for being aware of the content so they can assist in identification of any actual,

potential and perceived conflicts of interest arising as a result of any specific cases / changes in work, and take appropriate action.

15. Below is a non-exhaustive list of types of interests that it might be necessary to declare.

- a. **Personal interests** – where you have relevant close family or personal relationships (including from a work context) which could influence your objectivity or judgement.
- b. **Financial interests** – where you stand to gain financially from the work you are undertaking in the organisation, or where you can use your status to deliberately prevent someone else from gaining financially. This could also include where you have been declared bankrupt or your general financial status makes you more vulnerable to situations that could be seen to compromise your position.
- c. **Private shareholdings** – where you hold shares in a business that you, your team, your areas of the ICRIR, or, if appropriate, the ICRIR as a whole has an interest in (for example prospective business dealings).
- d. **Outside occupations** – all remunerated outside employment, work and appointments should be declared, whether or not considered relevant. Where work is not directly remunerated but may generate financial advantage for third parties, this should also be declared.
- e. **Public appointment and voluntary roles** – although ICRIR supports the performance of a wide range of voluntary roles in the wider public and third sectors, in some cases these roles may create a conflict with your role as a Commissioner or officer of ICRIR.
- f. **Previous employment, appointment or other outside roles** – where you have previously held roles, or formed close working relationships, that might be relevant to your current role (especially where you may be carrying out review or investigative activity into or requiring information from such an organisation). This should also include any elected roles (e.g. parish or local councillor) and may need to be considered in line with the *Code of Conduct* requirements on political activities.
- g. **Business interests** – where you hold an interest in any organisation (including directorships) which you could use your official position to further.
- h. **Insider dealing** – insider dealing is a serious criminal offence under the Criminal Justice Act 1993. If in the course of your work, you come into possession of information that could be used for financial gain (or other types of gain) this must be treated in the strictest of confidence. It may be necessary to declare any interests

that put you in a position where you could benefit from holding certain information.

- i. **Procurements** – where you have direct or indirect financial, economic or other personal interest which might be perceived to compromise your impartiality and independence in the procurement process. Also see Government Commercial Function PPN 04/21 ‘Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing’.
- j. **Leaving the Commission** – an obligation exists to follow any rules in place which considers any post-employment conflicts of interest that may arise.
- k. **Any other relevant interests** – you should include any other interests you hold which might reasonably be perceived as relevant to your responsibilities as a Commissioner or officer of ICRIR.

### Process for declaring outside interests

16. All relevant outside interests should be declared at the recruitment stage. If new relevant interests arise once you are in post, they should be declared as soon as they arise using the declaration of interest form. In most cases, the declaration of interest form should be submitted to your line manager, or for Commissioners to the Head of Governance & Board Secretary.
17. Once an outside interest has been declared, the line manager is responsible for deciding how to address the declaration, taking advice from the Head of Governance & Board Secretary. If the declaration is particularly contentious or poses risk to the reputation of the department and therefore needs escalation before action can be taken, the line manager should discuss the declaration with a more senior manager (although such information is sensitive personal data and must be handled accordingly by all who come into contact with it). In cases of difficulty or doubt, it may be appropriate to seek advice from the Chief Executive Officer.
18. The line manager should document their decision, as well as any specific considerations, mitigations and judgements made on the declaration of interest form. The completed declaration form should be reviewed at regular intervals and should be agreed if you move roles with the Commission.
19. If you have an outside occupation to declare, line manager approval should be sought either before taking up any outside work or before you continue this work. Specific consideration should be given to whether the role could be said to overlap with or draw on the knowledge or skills used in your Commission roles as this will likely present a conflict of interest. You must tell your manager immediately

of any changes in circumstances that may affect the permission you have been given. If you move roles within the Commission, you must tell your new line manager about your additional employment and seek their approval. Any changes to your outside role, if agreed, should be regularly reviewed.

20. Failure to declare a relevant outside interest could result in action being taken in line with the *Discipline and Conduct* policy.

### **Resolving conflicts of interest**

21. Once you have raised an actual, potential or perceived relevant outside interest, the decision-maker, usually your line manager, will decide on what action to take in response. This should be agreed in conversation with you and the decision should be fully documented within the declaration of interest form.
22. The following is a non-exhaustive list of the type of action that may be taken:
- a. **Agreement that there is no conflict of interest (or perceived conflict of interest)** – it may be that the decision-maker decides that there is in fact no conflict of interest to be found. If this is the case, then no additional action is likely to be necessary.
  - b. **Agreement that there is a potential conflict of interest or perceived conflict of interest, but that no additional action is necessary** – for example where declaration is sufficient as the potential conflict may not arise, or perception is most appropriately managed through the fact of declaration.
  - c. **Continue with the activity but implement actions to mitigate any real or potential risk** – what actions are necessary will be entirely dependent on the nature of the conflict of interest and the level of risk, however it might include things such as closer monitoring, revisions to existing work plans, exclusion from certain decision-making activities or the additional disclosure of all relevant information to others involved in the decision-making process. In relation to the conduct of reviews, particular care must be taken where an officer has some form of conflict but remains involved in a specific or limited way (for example providing information about historic context) that they are in no way able to influence decision-making and that their actions are visible to other officers so there is sufficient transparency.
  - d. **Exclusion from the activity** – it may be that the only reasonable step to take to eliminate the risk is for you to remove yourself from the activity/relationship etc. that is causing the conflict of interest. This is only likely to be an option where other mitigations have been considered and ruled out. In an operational context this

will relate mainly to involvement in a specific case, rather than ceasing a role with the Commission at all.

23. Any actual conflicts of interest must be resolved in a way which removes the conflict. Potential or perceived conflicts of interest may exist in some circumstances, provided that effective mitigations are put in place. The assessments, considerations and actions agreed should be properly documented within the declaration of interest form to ensure a clear audit trail.
24. In thinking through an assessment, the decision-maker will want to consider, for example, how the decision would be explained to a judge or defended publicly, and how it would look from the perspective of a member of the public. It is good practice for the line manager to ensure that a second colleague (or possibly the Head of Governance & Board Secretary) checks what is proposed. If agreement cannot be reached on what action should be taken, line managers should escalate this to a more senior manager or seek advice from ICRIR HR. In extremely sensitive cases advice may be obtained from the Chief Executive Officer. The decision of the Commission is final.

## **Article 2, ECHR policy considerations**

25. When conducting investigations where Article 2 is engaged, the ICRIR is obliged to ensure that such investigations comply with the requirements of independence under the European Convention on Human Rights and the Human Rights Act. There are therefore specific circumstances in which the Commission considers that it may not be appropriate for officers from a former RUC, PSNI or Military background to investigate certain matters.
26. While the requirement to maintain hierarchical and structural independence is met by the independence of the ICRIR from the PSNI, the additional requirement to ensure the practical independence of those conducting an investigation from those under investigation is important to consider separately.
27. ICRIR officers who previously served in the RUC or PSNI may have practical links to persons under investigation in any given case and while there is no suggestion of impropriety on the part of any officer, there will be situations where, through no fault of any individual person, the Article 2 requirement would be breached by permitting certain officers from investigating certain allegations.
28. Paragraph 29 below provides examples of situations in which a conflict of interest may arise. Should a conflict of interest arise, the officer



concerned should immediately notify and seek direction from their line manager (or other decision manager as appropriate).

29. Situations where direction from line management should be sought include

- where an investigator at any time served in a line management position relative to a person under investigation (namely where they supervised or were supervised by the person under investigation);
- where an investigator was in any way, in any capacity, linked to the incident under investigation;
- where a police policy is the subject of the investigation and the investigator was in any way involved with the setting or maintenance of that policy,.

30. This list is not exhaustive. Where an investigator has any doubt as to the practical independence of either themselves or any other investigator, they should seek direction from line management, the Chief Executive Officer, or if necessary, the Chief Commissioner.

31. On occasions where practical independence is impacted management may remove an investigator from a particular Article 2 investigation. This step is necessary to ensure compliance with legislation, to protect the integrity of the investigation, protect the individual investigator and to maintain confidence in the police complaints system. Such a decision does not suggest any improper conduct on the part of the investigator concerned.

32. It is possible that a conflict of interest may not be immediately apparent at the outset of an investigation but that an issue may arise during the course of enquiries. In such circumstances the investigator affected should bring this matter to the attention of line management at the earliest possible opportunity.

33. The family of a deceased person has the right to ask if officers connected to their case are Article 2 compliant and to raise an objection if they have concerns about the background of officers involved in investigating their complaint. The objection will be considered by the Commission.

### **Roles and responsibilities**

34. There are a number of parties involved in the management and declaration of outside interests. Below is a non-exhaustive list of the various groups that have a responsibility for ensuring interests are dealt with as and when they arise.



- a. **You (the job holder)** – under the terms of the *Code of Conduct* all Commissioners and Officers must conduct themselves in accordance with the *Seven Principles of Public Life*. Individuals must declare all relevant outside interests to their line manager (or appropriate alternative manager) as soon as they arise.
- b. **Line managers** – line managers are likely to be in most cases the first point of call for those declaring relevant outside interests. Line managers will assess all declared outside interests and decide how to address any actual, potential or perceived conflicts of interest that arise (as above, it is good practice for the line manager to ensure that a second colleague and/or the Head of Governance & Board Secretary sense-checks what has been agreed). Where this is not possible, they will need to make sure that the decision on how to address a declaration of outside interests is escalated to an appropriate level.
- c. **Senior Leaders** – senior leaders should raise awareness of the need to declare all relevant outside interests as soon as they occur. They should put sufficient assurance mechanisms in place to ensure they are confident that the declaration of interest process is robust and operating effectively in their business area. They may be required to provide details to the Board and ICRIR Audit and Risk Committee about how the declaration and management of outside interest policy is being applied in their business area.
- d. **Audit and Risk Committee** – the Commission’s Audit and Risk Committee regularly considers and scrutinises the application of the *Declaration and Management of Outside Interests* policy.

## Publication

- 35. Details of the ICRIR *Declaration and Management of Outside Interests* policy and process will be included in the Commission’s Annual Report and Accounts.
- 36. A *Register of Interests of Commissioners* will also be published. Specific information about the content of the Register will be contained within that publication.

## Data protection and privacy

- 37. UK data protection law requires that data controller organisations must identify a lawful basis for the collection and use of personal data relating to Commissioner and officer outside interests. Data controllers are also required to ensure that their processing of Commissioner and officer personal data is proportionate, lawful and fair. Any and all personal data gathered in relation to declarations of interest will be handled in accordance with the Data Protection Act

2018. Consideration of requests for release of any specific data contained within declarations will need to be considered in line with the Freedom of Information Act and wider legislation relating to personal data. Similarly, proposals for publication by the Commission will be considered in line with the same principles, to reflect that outside interests are personal data and therefore any publication needs to be considered alongside rights of the individual about how that data is used.