

Northern Ireland Affairs Committee

Oral evidence: Addressing the Legacy of Northern Ireland's past: The UK Government's New Proposals , HC 284

Wednesday 15 June 2022

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Members present: Simon Hoare (Chair); Mr Gregory Campbell; Stephen Farry; Mary Kelly Foy; Sir Robert Goodwill; Claire Hanna; Fay Jones; Ian Paisley; Bob Stewart.

Questions 451 - 596

Witnesses

I: Danny Kinahan, NI Veterans Commissioner, NI Veterans Commissioner's Office; Chris Albiston, Member of the Executive Committee, Northern Ireland Retired Police Officers Association.



Examination of witnesses

Witnesses: Danny Kinahan and Chris Albiston.

Q451 **Chair:** Good morning, colleagues, and good morning to our witnesses. Thank you for joining us this morning, Chris Albiston and Commissioner Danny Kinahan, the Veterans Commissioner for Northern Ireland, for this session with regards to our scrutiny of the Government's proposals vis-à-vis legacy.

Let me kick off the questions, if I may, to both of you. We are pressed for time, so we are going to ask for brief questions and succinct answers. Could you give us a brief overview with regards to the level of engagement that the NIO has had with you as these policies have evolved? What is your rating with regard to their satisfactoriness? What is the main, if any, good thing contained within the Bill and what within the Bill gives you most cause for concern? Shall we start with Commissioner Kinahan?

Danny Kinahan: As you know, I represent the veterans in Northern Ireland, but that also links into veterans here and in the Republic of Ireland. If I start on engagement, I need to make it clear that I am appointed by the Secretary of State, but I do not report to the Secretary of State. I am totally independent and totally non-political.

I have at almost all times been able to talk to the Northern Ireland Office or to someone from the Secretary of State down, at almost any level, when there was time to fit it in, sometimes even via phone calls, which has been extremely useful.

Q452 **Chair:** In broad terms, as far as you as commissioner are concerned, you would say that the engagement with the NIO has been satisfactory.

Danny Kinahan: It has been satisfactory and very open. At the same time, I have been going around and talking to everyone I can, not just veterans, because I needed to know what other people thought and I knew it was therefore helpful to feed that through. I got the impression that the NIO was really in the same place as everyone else.

Q453 **Chair:** Mr Albiston, what was the level of engagement with the Northern Ireland Retired Police Officers Association?

Chris Albiston: We are very happy with the level of engagement. Since the new proposals were mooted, we have had a meeting with the Secretary of State; we have had a meeting with the Permanent Secretary at the Northern Ireland Office; and we have had regular update meetings either face to face or via this technology with an official in the Northern Ireland Office. We are happy with that.

Q454 **Chair:** That is encouraging. To the second part of my question, if somebody stuck a microphone under your nose and asked, "What is the best thing in the Bill and what the thing that causes you the most concern or the worst thing in the Bill?", how would you answer that? Let



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us go to Mr Albiston first.

Chris Albiston: You have pre-empted my list of points. If I had to try to narrow them down to one, I would say—

Chair: I will be charitable: you can have two.

Chris Albiston: The good point is that there appears to be a recognition that, although as retired police officers you might expect us to want to use the criminal justice system to deal with legacy matters, in fact we have long come to realise—and we think the Government are now realising—that the criminal justice system is increasingly less able to deliver satisfactory outcomes for anybody under the present arrangements.

The second good thing is that we think it will be more efficient to draw all the various strands of legacy argument—for example in relation to civil actions, coroner's inquests, potential referrals to the Director of Public Prosecutions and so on—into one body, which, provided it is properly staffed and properly equipped, should be able to do a better job than the current institutions and arrangements are doing.

Q455 **Chair:** Can I come back to you on that with a devil advocate's point? You are a retired police officer; your whole professional life and those of your colleagues within the association has been devoted to upholding the rule of law and prosecuting justice. Resources and capacity, either bums on seats or pounds invested, will often impact on the delivery of service. If you run your argument to its logical conclusion, where does that take us? To put it another way, why should cases under the legacy umbrella be treated any differently outwith the criminal justice system? Do you not just improve the system rather than remove it?

Chris Albiston: We have worked with the system. We have sought improvements over a number of years. As time goes on, the difficulties that the criminal justice system faces are being aggravated by the increasing age and loss of memory of potential witnesses, and the lack of access to other material that might be of assistance.

Q456 **Chair:** We have the War Crimes Act, do we not? That deals with a different theatre, but age and memory are no barriers. We have seen in different courts very elderly people, frail people, people with diagnosed dementias and the like appearing in the witness box in the pursuit of justice. Why should the age of a UK police officer be an impediment to them giving evidence in a criminal case?

Chris Albiston: I do not say it would be a bar. I say that, in practical terms, the chances of the chief investigator getting useful evidence are diminishing with every month that passes. I certainly do not resile from the position that, if you can find evidence that criminal offences have been committed, whether by terrorists or, indeed, by soldiers or police officers, you should pursue that evidence. All I am saying is that, in



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practice, it is going to be increasingly difficult and that is probably recognised by the proposed legislation.

Chair: Based on what you are saying, you would support the door of a court action remaining open.

Chris Albiston: Yes, absolutely.

Q457 **Chair:** You gave us the best. What was the worst thing about the Bill?

Chris Albiston: If you look at clauses 15 to 16 and the proposals around the commissioner's reports, we fear that, unless this is handled very carefully, we are simply going to get some of the fiascos produced by the Police Ombudsman repeated under new legislation. Indeed, while we say that the legacy reports produced by the Police Ombudsman were unlawful because they were never authorised by section 62 of the enabling legislation, this legislation will make such reports lawful, because it is primary legislation, which will create the power for the commissioner to do those reports.

Look at the Maxwellisation processes that are envisaged by clauses 15 and 16. There are several points that I would make, if we have time later, about why those appear to us to be inadequate.

Q458 **Chair:** Mr Albiston, if it is not for the commissioners to make these reports, who should make them?

Chris Albiston: If there is a report to be done on some event that took place in the past that involves suggested criminal liability on the part of retired police officers, the investigation should be done by an investigatory body and the papers should then be forwarded to the Director of Public Prosecutions. If there is any evidence that might justify criminal proceedings, that is a matter for the DPP to decide upon.

You cannot then turn around and say, "There is no evidence that justifies these papers going to the DPP, but I am just going to publish a report saying that the police were all involved in improper activity anyway". That is not acceptable and never has been, and it has been going on for 20 years. We were looking for this legislation to put a stop to it.

Danny Kinahan: You asked for the best. The fact is that we are now going to have what looks like a fair and more balanced playing field. We did a questionnaire, and 90% of the veterans I spoke to wanted new legislation to tidy up a system that does not work. That is the main plus for us. A second plus is that many veterans still wanted the door to justice open. They are concerned about going to court, but they feel that everyone should go to court, if it is needed. They want to follow the rule of law.

As for the downsides, will it work? At least we have a timeframe, and it should all happen; we should get closure for the families and for everybody. Will immunity work? I would have thought that the veterans



will find it hard. They do not want immunity. They have not done anything wrong. They will not be going down that route. Will justice actually happen? If you open up a prosecution and it is reduced to no time in jail and small penalties for not coming forward, there will be those sorts of doubts on the back of the Bill, but we welcome it.

Q459 **Chair:** Do you have any squeamishness about the word “amnesty”?

Danny Kinahan: Yes, plenty. Veterans do not want an amnesty. It is slightly misplayed as a term. The Bill is not technically an amnesty. We are all innocent until proven guilty, and an amnesty is when you have been found guilty and then let off. But that is how it is being portrayed. They have nothing to fear. They want to go to court; they want to have their day in court. Dennis Hutchings was a perfect example. He wanted to fight and show that he did nothing wrong. Yes, it is a really uncomfortable term.

Q460 **Chair:** Just for the record—this is such an important point, Commissioner, and you and your colleagues will understand this—let me put to you my understanding of a summary of the position of the veteran community, as affected by this proposed legislation.

The overarching and majority mindset is that, if somebody in uniform did something wrong and there is evidence to demonstrate that that wrongdoing occurred, that individual should not be in any way exempted from appearing before a court to answer through the process on that merely because they were wearing uniform.

Danny Kinahan: That is exactly right.

Q461 **Bob Stewart:** Danny, you said that the vast majority are prepared to appear in court. Some do not want to, do they? They do not want to go to court. It is frankly quite frightening for people to appear in court. Having done it with soldiers and police officers, it is not a nice experience. It is not something they particularly enjoy.

Danny Kinahan: You are absolutely right. They want to go to court to show they did nothing wrong. They do not want to go to court, because the process of going through it is quite terrifying and frightening.

Bob Stewart: The process is pretty awful.

Danny Kinahan: There is trauma that comes with it. An awful lot of veterans I speak to had awful things happen to them. If you remember, they went out to defend society, not to kill. They are suffering. They have put it all behind them. They want their story told, but when I ask, “Will you tell me your story?”, they do not want to tell it, because it opens up, in many cases, really appalling events that happened in the past. You are right: there are many who do not want to. There are lots of reasons as to why not to, but it is not to avoid being taken to court for doing something wrong.

Bob Stewart: I agree with that.



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Q462 **Ian Paisley:** Mr Albiston, it is good to see you. Will this legislation, in your view, end the enduring perpetual cycles of investigations and re-investigations of officers and former officers? Will it, as you have identified in clause 15 and 16, just open up another line of investigation and inquiry?

Chris Albiston: Mr Paisley, we are concerned that retired officers of some age and some vulnerability may be summonsed in circumstances that are, to them, intimidating, whereas any retired terrorists will simply laugh off any summons issued by the chief commissioner or the commissioner for investigations.

In relation to the discussion between the commissioner and Mr Stewart, it is fair to say that police officers are trained to conduct interviews and should therefore be expected to be more capable of participating in interviews. They are also trained to give evidence, and you might therefore expect that they would be less uncomfortable in court than retired military personnel. But, while very many of the retired police officers who are concerned about facing investigations into what happened in the past wish to discharge their civic obligations by answering questions fully and truthfully, you have to remember that they are nevertheless not as experienced as some people might think in this sort of thing.

Many of them were engaged mostly in patrol duties trying to keep themselves alive for 30 years. They do not have the sort of experience of investigations and court that might be supposed. There are vulnerabilities there, and we should be very wary of those.

Q463 **Chair:** I am sorry to interrupt. Mr Paisley, forgive me for interrupting your section of the cross-examination. Mr Albiston, I am a little confused. I am going to ask you to clarify, if I may. You have referenced now on two occasions in answer to questions the age of retired police officers; you have spoken about vulnerabilities; you have spoken about anxieties in giving evidence; and you have spoken about how not everybody is experienced in giving evidence and the supposition is that all police officers are. If the test of giving evidence in a prosecution or any form of inquiry is that you are young, comfortable and experienced, I put it to you very gently that, on that premise, the criminal justice system would have ground to a halt quite a long time ago.

Can you just clarify this? I am concerned that what you are telling us may be misconstrued by some. Either your association is happy, where there is evidence and with no caveats with regards to age, vulnerability or experience, for a person to appear before the relevant bodies to answer questions, potentially face criminal charges and appear in court, or you are not. You cannot have the penny and the bun on this. Can you work out whether you want the penny or the bun?

Chris Albiston: What I want are the elements of the criminal justice system that are operating currently and that, under the proposals,



appear to be likely to continue to operate, namely the investigation of behaviour that may prove to be criminal. That is legitimate. The age of a potential defendant or witness is a matter for careful handling by the relevant authorities; it is not a bar to investigation and never should be.

What I am saying is that there have been, over the last 20 years, numerous totally unwarranted investigations amounting to harassment of retired police officers, which is totally unacceptable. I can describe cases to you of officers who are not only retraumatised by investigations that have been completely illegitimately inaugurated as a means of intimidating the police and trying to foment the illusion that the police were somehow on a moral plane with the terrorists. There are officers who I know personally who are mentally and physically unwell as a result of having been under investigation and renewed investigation for up to 20 years. This is the sort of thing that we are hoping the Bill will knock on the head.

We are not saying that officers who have committed offences should not be investigated. We have never, ever asked for amnesty. We have always said, "If you have evidence, bring it to us. Send it to the Director of Public Prosecutions". We want none of this nonsense whereby people can dream up imaginary problems with police behaviour or police investigations long in the past. This generates and is encouraged to generate ridiculous and harmful investigations that lead nowhere.

Chair: I will leave it there.

Q464 **Ian Paisley:** Mr Albiston, you have identified where I was trying to go with my question. You want these illegitimate and unworthy investigations knocked on the head. Is it not the case, from what you have said, that under clauses 15 and 16 a new body, individual or organisation would be established that could further admonish police officers? Therefore, the claim of this Bill that it ends the enduring perpetual cycles of investigations and re-investigations is an absolute nonsense. It simply establishes another organisation to admonish you.

Chris Albiston: If the purpose is admonishment, yes, we reject that utterly. As I tried to indicate previously, there is a place for identifying criminal behaviour by police officers, and that is an established court of law. It is not an office at the top of a building in Belfast where nonsense reports are cooked up and published as fact when the DPP has said there is nothing to see.

Q465 **Ian Paisley:** Commissioner Kinahan, you have heard what Mr Albiston has said. The words "enduring perpetual cycles of investigations and re-investigations" are the Secretary of State's *raison d'être* as to why he wants this piece of legislation in place. Mr Albiston says that clauses 15 and 16 potentially put in place another organisation that could end up admonishing former military people. If that is the case, does it not suggest that, at its heart, this legislation is flawed?



Danny Kinahan: If that is the case, yes. If it is not, we at least will have a body that does all the different court systems, if I understand it, but we wait to see who the people involved with it are and how they are going to do it. What we have in place at the moment does not work. It certainly does not work from a veterans' point of view. The hope is that the way it is written will be run properly by the legal teams that are running it. Yes, it is a fear. If it does not work, everything could just keep on going. There is a timeframe, which might lessen that, but it is not a very firm timeframe.

Q466 **Ian Paisley:** Mr Kinahan, in your initial answers to the Chair, you indicated that you had had a good engagement with the Secretary of State and his Department. As you will know, a number of former military personnel were murdered on the border and the perpetrators found sanctuary in the Republic of Ireland. Have you had any sort of engagement whatsoever with the Republic of Ireland? What has that experience been like?

Danny Kinahan: I have asked for engagement at the highest level. I went to the British-Irish Association last September so that I could make my points there. I was promised a meeting. We have asked for a meeting; we have been acknowledged, certainly, by Simon Coveney. It has never actually happened.

However, I have also been asked to look after veterans across the border, of whom we have about 10,000. I have been in Ireland talking to the regimental associations—to SSAFA, to the British Legion, but also to ONE and their own organisations such as the Irish United Nations Veterans Association. They have some of the same difficulties that we have.

On a lower level, there is really good communication. Everybody is talking and looking to work together. At the top end, we have not really had a chance to get a look in, because the protocol has taken most of the interest.

Q467 **Ian Paisley:** That is clear. Nine months ago, in September, you sought a meeting. We have had that gestation period, but nothing has come out after nine months. The ambassador of the Irish Government in London said that he wants a partnership approach on legacy. It does not look like much of a partnership, does it?

Danny Kinahan: I will keep pushing for a partnership approach as well. We all need to be talking to each other. You are right.

Q468 **Ian Paisley:** There has not been a partnership approach. Mr Albiston, can I come back to you? There are 200 unsolved police murders, where RUC officers were murdered in a dastardly way by terrorists in Northern Ireland. Will this Bill go any way to help you get closure to those cases and for the families of those people left behind?



Chris Albiston: The short answer is that I do not know. A criminal prosecution of the perpetrators of the heinous crimes to which you refer is the best method of seeking closure. The passing of this legislation will not make any change to the chances of that happening. If the purpose of the legislation is to say, "If we cannot prosecute the people who did it, perhaps we can provide more information to grieving families about the circumstances of a loved one's death", that would be a good thing.

I am not sure how many police families feel that they need more information. There may be people who represent other groups of families who feel that this is of more benefit to them than it is to police families, who may already have some information simply because of the contacts that they had.

There is a truth in the provision of information leading to some sort of improvement in the feelings of families. When I was a serving officer, I was asked to speak to relatives of a deceased officer and give them some background information on the circumstances of their father's death. It was a difficult meeting for the two young people and for me, but, at the end of it, I think they felt like they had had a benefit from that meeting. Even though it was obvious that no prosecution or anything like that was going to follow, they had more information about what their father was doing at the time of the incident, what help he received and so on.

Q469 **Claire Hanna:** As a follow-up on that, Danny, you talked about engagement from the Republic of Ireland. Do you agree that, under treaty obligations, the Stormont House agreement would oblige a role for the Irish Government, while this unilateral approach will not oblige a role for the Irish Government? Will it therefore be to the detriment of those who are seeking action from Dublin?

Danny Kinahan: I am not sure I know the agreement well enough to answer that.

Q470 **Claire Hanna:** Stormont House was a treaty between the UK and Ireland. It formalised a partnership approach and parallel legacy institutions. Taking this unilateral approach cuts that out and therefore limits the options for those who are seeking action from Dublin.

Danny Kinahan: It could be seen that way. I know officials have been talking at all levels on this. It is not as if it is not a partnership approach from that point of view. It is at the top level where it is not happening.

You might think it is defence, soldiers, military and others, but not veterans. Actually, it still is. We sit in a limbo. Most of my work for veterans ends up lobbying here rather than Stormont. Yes, it is devolved when you get to housing, education and other things, but it is difficult as to whether it is something that another Government should be involved in. Yes, just as neighbours you should be talking to each other all the way through. It just has not happened. We have tried. I know they intend to talk to me. It just has not happened.



Claire Hanna: The Bill proceeds unilaterally.

Q471 **Bob Stewart:** My question is really about definitions, Mr Albiston. I hope you do not mind, but I am going to ask you first. In particular, it is about the definitions in clause 1, for example the phrases "other harmful conduct" and "Troubles-related offences". Speaking as a police officer, do these definitions adequately cover the problem?

Chris Albiston: The short answer is that we welcome what appears to be a widening of the ambit of the legislation so that we are not now talking simply about deaths but serious injuries and indeed the mental knock-on effects. "Other harmful conduct" possibly needs a little more elaboration, because it is hard to know what that is.

In legal terms, courts feel that they know pretty well what is meant by "assisting offenders", "conspiracy to commit offences" and that sort of thing. I am not quite sure what "other harmful conduct" means in this particular context. It would be a pity if it were so broad that it dulled the edge of the work of the commissioner of investigations.

Q472 **Bob Stewart:** To be honest, you have summed it up. You can work with "other harmful conduct" being mental problems or other serious injury. Presumably the court would accept that "other harmful conduct" would be those. I cannot think of any other circumstances; can you? That just about covers it, does it not?

Chris Albiston: If "other harmful conduct" means people doing things that are arbitrarily assigned the status of being harmful but are not actually criminal offences, we are wandering into difficult territory.

Q473 **Bob Stewart:** It suddenly crosses my mind that it could mean bullying or harassing relatives and things like that. Is that covered here?

Chris Albiston: We will not know unless the legislation makes that clear.

Danny Kinahan: We wait to see how the judges or those involved choose to take it forward.

Q474 **Mr Campbell:** Welcome to both the commissioner and Mr Albiston. The Bill appears to suggest that the Independent Commission for Reconciliation and Information Recovery would be able to grant some people immunity from prosecution. We are yet to find out how low the bar to meet that will be. What is the view of those you have spoken to and represent on that?

Danny Kinahan: There is huge concern about the level of the bar for immunity. Veterans would find it very hard for anyone to be given immunity. All they want is the rule of law. There are no means of revoking it, which you can understand from a certain point of view. You are not going to come forward and give evidence if you know it might be changed, but if you can get away with lying or not telling the whole truth, and you have immunity should anyone find out, that does not work.



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There is the concern about whether it will bring anyone forward. I like the idea of families get a chance to know, because will come forward and say why they did it. I just have severe doubts as to whether people will come forward from one side, because the code of conduct says "don't". On the other side, which is our own, all the information will be out there. We are not afraid of that, and that is absolutely right. It looks like a good idea, but I have huge concerns with it.

Chris Albiston: Mr Campbell, in principle, you are well aware of our opposition to the concept of amnesty. Equally, we are opposed to any proposition that might allow propagandists of the future to suggest that police officers were afforded amnesty by a different name.

Having said that, I would go back to what I said at the beginning. As police officers, we are realistic about the prospects of successful prosecutions. We do not see this happening 25, 35 and sometimes 40 years after events. Secondly, a lot of people have already had immunity. No retired soldier or police officer that I am aware of has ever been offered any sort of immunity from prosecution, but we all know that there have been various methods by which gangsters have avoided criminal liability for their deeds. Those are political decisions, and it is not for me to comment on them except to say it is a fact that these things have happened. We do not seek immunity any more than we seek amnesty, because we do not think there is any need for us to be subject to immunity.

Where the Bill may be of advantage is in circumstances where, for example, a retired police officer is summonsed by the commissioner for investigations to describe to the commissioner events that took place, say, 35 years ago. That retired police officer should be able to say, "I made a statement at the time to the investigating authorities when the events were fresh and clear in my mind, and I rely on that statement as my description or definition of complying with the requirements of this investigation". If that is in fact how the process would work, so that relying on a statement made previously would thereby relieve an elderly woman or man of further interrogation, we would say that this is a good thing, does not represent any form of amnesty and is to be welcomed.

Q475 **Mr Campbell:** I want to put this question to both of you. The vast majority of former serving police officers and former military personnel will not be seeking any form of amnesty, because they did not do anything wrong. We are talking about an infinitesimally small number of previously serving personnel. That is unlike the terrorists, 100% of whom did things wrong because their *raison d'être* was to try to murder people.

If the amnesty part of this Bill is accurately described—I appreciate this may be conjecture—a number of people have put it to me that the likely outcome is that a very small number of former serving personnel, who may feel they have been pursued for some time by the police, may take advantage of the opportunity to come forward, but no former terrorist will do so because they have not been pursued. How likely is that to be some



form of outcome of the amnesty section of the Bill?

Danny Kinahan: It is quite likely. You read it absolutely rightly. The military and police do not want an amnesty. They do not want immunity. They want to show they did nothing wrong. I do not think they will be opting for it, but they will be coming forward. On the other side, we live in hope. Here is a chance to get other people to come forward and tell the families what happened, if they want to know. As I understand the Bill, you have to ask for your family to find out what happened. We hope that will happen and will lead to closure for families that is better than the court system at the moment, which does not do that either. You read it absolutely right. That is a problem. If the commissioner in charge and the judges involved work this properly, it can work. We need everyone to come forward to try to make it work.

Chris Albiston: Taking up the commissioner's last point, we note that the legislation proposes that the chief commissioner should be someone of high judicial standing. That was the late Dr Maurice Hayes's intention in relation to the office of the Police Ombudsman. Four ombudspersons down the road, we are yet to have anybody of high judicial standing in that post.

We would hope that, if this legislation goes through as envisaged, the Government would hold good to its promise of appointing someone of high judicial office. If that appointment is made, there is some hope for all of us that the affairs of the commission will be carried out properly and that any reports, whether we like the concept of reports or not, will at the very least be evidence-based.

Going back to the beginning of this, if you are looking at an incident that took place in the past involving members of the security forces and terrorists, you will be able to identify who the members of the security forces were. There may be some records that you can produce that will show who they were, why they were where they were and possibly some account given by them of what they did when they were there. On the other hand, unless a prosecution takes place, to identify the terrorists concerned you will be relying on the possibility of intelligence, rumour or something that is subsequently said by somebody who decides to change the course of their lives and describe their history in a way that they have never done previously.

Therefore, the old problem of an imbalance in the way that such investigations take place will remain with us. I honestly do not see any way round that. If the Government and the investigators are acting in good faith, that imbalance will always be there.

Q476 **Chair:** I have a quick yes or no question to both of you. Is the idea of one of the commissioners having international experience a good idea?

Danny Kinahan: Yes, but—my “but” being this—we must make sure it is someone who understands the situation in the context of the time.



Q477 **Chair:** Is that pivotal?

Danny Kinahan: Yes, it is.

Chair: Why?

Danny Kinahan: The way terrorism happened in the early years, in the 1970s and 1980s, was so frantic. The value judgments were different from today. We are 40 years on. It needs someone who can explain the franticness of each day. If you look at one newspaper from one day, you will have 20 incidents happening. The police could not go in and investigate, because they might get shot again. It is very hard to get across.

You had slightly different value judgments in those days compared to today. The system was so fast and furious. Again, you do not understand it today. Yes to "international", but they must have that balance.

Chris Albiston: The one-word answer would be no, because of my experience with advisers who came in from abroad in the past. Of the four police ombudsmen, by far and away the best was a Canadian. Perhaps I should be careful about that opinion.

Chair: Yes, you might revise your thinking.

Q478 **Bob Stewart:** Mr Albiston, to supplement what you said, as I recall, up until 1977, investigations involving the military were done by the Royal Military Police at least and probably the RUC. After 1977, there was always a police investigation. I am talking about fatality incidents where people were killed. I just wanted to put that on the record. There is quite a lot of evidence when there was a fatality incident, at least from the point of view of the security forces. Am I correct in saying that?

Chris Albiston: All these fatalities would be well documented from the security force side. The problem—it is part of the problem with considering the possible prosecutions for very old offences—is that, because of the security situation, the opportunities for police to conduct effective investigations into unlawful killings in South Armagh, East Tyrone, West Belfast or anywhere else within Northern Ireland were not the same as those for police investigations in Cambridgeshire or Argyle and Bute. It was not like that.

If you had to put soldiers' lives at risk holding crime scenes while police officers and forensic scientists pottered about, you were doing nobody any favours. We have to rue missed opportunities now, but that is it. That happened, and that is the way it was.

Bob Stewart: Thank you very much. That is exactly what I wanted.

Q479 **Stephen Farry:** It is worth stressing at the outset that the context in which investigations took place may be different, but essentially the rules of engagement have been fairly consistent throughout. Those standards are very much with us through to today.



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I just wanted to ask both of you, first of all, to clarify something. There is a little bit of confusion building up. Both of you, at the start, gave a broad welcome to the legislation. Subsequent to that on multiple occasions both of you have also been very clear about your opposition to amnesty and to immunity. Many independent experts say that the immunity is, to all intents and purposes, an amnesty. I would just ask you to try to reconcile that tension in terms of the evidence that you have both given to date.

Danny Kinahan: I do not see the same problem. We have a Bill here that is a great improvement on where we are at the moment. It gets all the court cases into one place, being dealt with by a commissioner with high legal standing. It gives us a chance to have a balance from what has been going on for the last 30 or 40 years.

Yes, there are lots of concerns. There is lots of legalese in this. For a great deal of it, we wait to see how good this commissioner is going to be and how he is going to set the standards. The pluses outweigh the minuses, but today we are being asked to concentrate more on what the negatives of this are.

Q480 **Stephen Farry:** Let me phrase it in a different way. Are you prepared to accept immunity and amnesty as the price for, in your view, this improved situation?

Danny Kinahan: I speak for veterans. I have been to about 450 meetings. I have gone to meet more of them than probably any of you have. They begrudgingly accept all of this, because they see it as a better chance to help families and to close it all down, yet they do not want amnesties and they certainly do not want moral equivalence.

Q481 **Stephen Farry:** With respect, Danny, you say that they do not want amnesty and they do not want moral equivalence, but that is what this is—

Danny Kinahan: I said right at the beginning that they begrudgingly accept this as a much better way forward. When I started going around talking to people, I expected that most veterans would be against it. The more and more I spoke to them, the more and more of them I met who said, "If this is the best we can get, if this is a better system that concludes it all not just for them but for the families and for society, then do it".

There is huge discomfort for many of them. I know one who lost four or five members of his family. His comment was, "I can never accept not having the chance for justice". When I asked, "Are you for the Bill or against?", he would go, "I cannot accept it". He could not answer the question. He cannot ever stop wanting to get justice for his family, but you all know that, if we are to find a better way forward for society, we have to find a fairer and better legacy system. This offers it, if it all works properly.

Q482 **Stephen Farry:** I want to ask the same question to Mr Albiston. Chris,



you made the point about the work of propagandists, with which I concur in relation to the point around moral equivalence. There is another angle around propagandists. If general immunity is granted to a terrorist, it could give them licence to do full disclosure and tell their side of the story, to publish books and articles, and almost to glorify the actions they took. Does that not risk further hurt and insult to the families, particularly those most directly affected by their crimes?

Chris Albiston: I can answer your question, Mr Farry, in two parts: first the amnesty/immunity bit and then the propaganda bit. I am not a legal expert, but I do not see amnesty and immunity as being identical. To give credit to the legislators and the draftsmen, this legislation is intended to draw a distinction between the concepts of amnesty and immunity. It is all right for me to sit here and say that retired police officers do not want amnesty or immunity because they have nothing to fear from a thorough investigation, but that is not to say that amnesty and immunity are the same thing.

Amnesty, it seems to me, is a general gift from the authorities to those who may have offended to say, "That is it. It is all over", irrespective of conditions. Immunity, as envisaged by this legislation—those who sponsored it will no doubt correct me if I am wrong—has to be earned by what the chief investigator and subsequently the chief commissioner would accept as being an honest account of what happened. That, it seems to me, is a legitimate distinction.

Q483 **Stephen Farry:** Is that not a very low bar and a very subjective test? I am sorry to interrupt you.

Chris Albiston: It may be a low bar. The test will certainly be subjective. If the people concerned are of high judicial office, they will have an understanding of what sort of considerations have to be applied. As I understand it, the legislation makes provision for the chief commissioner and the commissioner of investigations to set the standards by which they will make these judgments. It would be unfair of me to anticipate in advance that they are not going to get it right.

So far as propaganda is concerned, I sit on the side of the team that has been well and truly thrashed in the propaganda battle over the last 20 years. I do not see that changing as a result of anything in this legislation. In my view—I suspect this is the view of the members of my association—you cannot inhibit free speech because people say things that you do not like. What you can do is avoid a system of institutions that enable those criticisms to be channelled through what purport to be authoritative public bodies. We all know that certain elements of society are pointing to erroneous and unfounded reports by established public bodies as being some sort of evidence of police misconduct when in fact they are nothing of the kind.



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We cannot stop *An Phoblacht* and its successors saying that the police were a bad lot, but it would be a good thing if we did not create institutions that back up those propositions.

Q484 **Stephen Farry:** To follow up, Mr Albiston, I appreciate that you are coming at this from a perspective on which there is very much a difference of opinion. Do you not draw a distinction between what is done by some actors in the wider community and what is done by the various bodies in the criminal justice system? Do you accept that all those who have operated those criminal justice bodies, from the DPP through to those people who have held the post of ombudsman, have acted with integrity in terms of their own role and the terms of reference of their offices?

Chris Albiston: I do not accept that the reports that come out of the Cathedral Buildings are legitimate and just. As you know, our position as an association is that section 62 does not permit reports of that sort, which express widespread opinions, simply because they only come out when the Director of Public Prosecutions, who is an established and practised lawyer, says there is no evidence to support any prosecution.

Q485 **Stephen Farry:** Just to reinforce that point, you do recognise that there is a distinction between your interpretation of a legal clause and the integrity of the people holding the office. You are not suggesting that the people issuing those reports, albeit on their different view of the legislation, are themselves propagandists.

Chris Albiston: I do not want to go into the ins and outs of certain reports that have been issued. This is not the right place for it. These things have been discussed in the High Court and the Appeal Court in the past. I am sure you are familiar with the findings of Mr Justice McCloskey. I would stand by the findings of Mr Justice McCloskey before I would stand by the findings of Mr Maguire.

Q486 **Claire Hanna:** Danny, we were speaking about the success or otherwise of the existing institutions. In your press release last month when the Bill was announced, you said that the current system is broken and does not serve families, victims or veterans. Do you agree with me that this is because the institutions have not been funded? In the case of the DPP, the Police Ombudsman and the LCJ, funding has had to be fought for. Do you agree that this is in part due to a culture of a lack of disclosure and that that is why the institutions have not been working for families?

Danny Kinahan: I do not know about the funding. I really cannot answer that, and that should not make any difference to it.

On disclosure, it is not very much from that point of view. It is more the court system. I have been in role for just over a year and a half. There have been three major court cases. Each case has collapsed or seen problems: "This was in the early 1970s. Can the evidence be used?" It is more the time it has taken, so many years, to go through. Right at the



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beginning, they could not collect evidence in the same way as we would do it today. That is the reason families do not know what is going on.

From the military side, there is less of a push to try to find out, because people went out there, did their duty, carried on and have gone on with their lives since. Many of them have been under a great deal of threat, but they are not into a campaign of trying to open the door and find out what is going on, as others might be.

Q487 Claire Hanna: You made a comment there about the infrastructure as it exists, and you have outlined three of the cases. I appreciate you are coming from a perspective on those, but there are dozens of other cases, inquests and investigations at various stages in various parts of the limited infrastructure that is there. You make the broad statement that it is not working. Do you acknowledge that part of that is because the institutions have not been enacted and it is not that the system is failing per se?

I appreciate that you are focused on the veterans' community. When you spoke about it, you did suggest that people should be engaging with the Bill so that the whole of society benefits and not just veterans, which implies that you think the Bill does just benefit veterans. Is that a fair assessment?

Danny Kinahan: No, it does not just benefit veterans. It benefits veterans, because the whole system at the moment is so lopsided. You saw it in the answer to Kate Hoey. There are 575 legacy claims going in. There is one angle that is coming at the system, fast and furious, whether through civil courts or inquests. There may be a very good reason in each case to find out what is going on, but it is all coming at the veterans. If you look at the numbers, there are 36 legacy inquests; 23 are related to the state, nine to loyalism and four to republicans. That is 64% that are anti-state.

Q488 Claire Hanna: As you will be aware, there is also the likes of Kenova and other streams of investigation that they are exploring. Where there is the infrastructure, in the case of some of those inquests, some families have been able to access truth and, in some cases, forms of justice. Those parts that are being allowed to work are working. Is that a fair assessment?

Danny Kinahan: They are working, but they seem to be working in a very lopsided way. I do not know about the money side. If you are a veteran, it all looks like a one-way street in the other direction. That is where it could be straightened up, but—I go back to my earlier point—it should be everyone. It is not just veterans. It is hugely lopsided. I will put it that way.

Q489 Claire Hanna: I am just glad that you acknowledge that, in some cases, it is because the architecture has not been established and funded. Nobody would disagree that it is not all working perfectly.



Danny Kinahan: I do not know on that.

Q490 **Claire Hanna:** Mr Albiston, you said to Stephen Farry that the amnesty on offer had to be earned, though you accept that it is a low bar. You were an ACC in Northern Ireland and you were at one time head of the Special Branch. Given your understanding of the character of paramilitary organisations in particular, is there any serious desire by their membership or leadership to come along and engage in that meaningfully? You spoke about what you thought was the role of the inquisitors, but will that work? Will it just produce what you described in your 2020 submission as “self-serving and self-exculpatory narratives”?

Chris Albiston: Ms Hanna, you said “amnesty” when I thought you would use the word “immunity”. I am not sure whether that was a slip of the tongue or deliberate. It is immunity that has to be earned, not amnesty. Amnesty is something that is granted without people having to earn it.

If you are sceptical of the likelihood of people from a terrorist background coming forward to avail of this, your scepticism is absolutely legitimate. To some extent, although it is difficult for me to say this, I have to accept that some of these people really do not believe that they did anything wrong and that they do not need immunity. This is their position of principle.

In practice, they have availed of letters of comfort, Crown pardons and this sort of thing in the past. Perhaps some of them might want it. The price to pay is exposing themselves to a series of questions that, by itself, might imply guilt, in the moral rather than the legal sense. That will be a problem. I suspect the discipline of the various organisations, whichever side of the community they come from, will mitigate against anyone coming forward to participate voluntarily in such a process.

Q491 **Claire Hanna:** I am sceptical. The point I was making is that in your submission you were sceptical about it, too. I am wondering whether anything has changed or whether you now believe there is something in this process or mechanism that would contradict your previous scepticism or achieve a different outcome.

Chris Albiston: It is very unlikely. The passage of time throws up individual damascene conversions, whereby people decide that they want to speak about the past. Sometimes they have to go and live far away in order to feel comfortable doing so. By and large, this legislation will not achieve that effect. You are quite right to feel sceptical about that.

Q492 **Stephen Farry:** We are getting fairly tight for time, so I will ask this very succinctly. Hopefully you can give fairly sharp answers to it. I just want to get both your reactions to the proposals in relation to the conclusion of the current programme of legacy inquests and also the termination of civil cases.



Chris Albiston: The Government have taken a huge step here. We will see whether or not it comes off, because there may be challenges to it. I see no reason in principle why a properly established commission headed by one or more people of high judicial standing cannot satisfy the requirements of article 2 in relation to deaths and matters of principle that are similar in relation to other serious injuries or incidents.

In the past few years, all of us, probably myself included, have misunderstood what article 2 actually means. Indeed, there are developments in Strasbourg—another witness may have more and better evidence for the committee on this than I have—that suggest that our preoccupation with article 2 has been slightly misplaced and lopsided. Maybe the Government are now recognising this and will be able to successfully channel into one place a number of the avenues for legacy investigations, such as inquests and civil actions, as well as criminal prosecutions. Maybe it will work and be recognised as being legitimate, but that is something that we will have to wait and see.

Q493 **Stephen Farry:** I am grateful for your answer. I appreciate that others will probably have a different perspective on that one. I will ask the same question of Danny.

Danny Kinahan: I will give you very much the same answer.

Chair: Excellent—if it is the same, it does not need to be repeated. That is splendid news. Do you have anything else to add on that? I am grateful, Commissioner. Mr Campbell will be rejoicing at my expedited chairing.

Q494 **Fay Jones:** I wanted to ask about clauses 42 onwards of the Bill, which deal with memorialising the Troubles. The Secretary of State has expressed a wish that the Troubles should be evidenced in a “fair and balanced” way. I wondered if you would give your thoughts on that.

Danny Kinahan: As I go around to see veterans, they want their story told. They want to be able to feel proud of all they did. The memorialisation is absolutely key. If it can be done in a fair and balanced way, that is exactly what they want. Peter Shirlow from Liverpool University is also trying to pull this together. You do not just focus on those who gave their lives or those who were injured, their bravery and their courage; you look at their place in society, what it did to the society or the village. If you tell the story of Northern Ireland, people will really understand how the military and the police stopped a civil war.

There is a lot to come out, but it is going to be difficult for many of them. They have parked it; it is behind them. It is critical that we find ways to tell the story and tell it correctly.

Q495 **Fay Jones:** I say this as someone whose partner is currently deployed with the Army. Would you agree that we also need to tell the story of the families and the silent supporters of the military? That is a very important element of the story.



Danny Kinahan: If I have not mentioned family before, I really should have done. They are very much part of it. Often it was the partner, the wife or the family that held everything together. They have gone through the same hell. There is a demonisation of the military in Northern Ireland that we long to see changed. There is a glorification of terrorism. We want to see whether there are ways of amending it to stop that. It is absolutely key.

Q496 **Fay Jones:** Mr Albiston, you mentioned that your side has been damaged by propaganda by decades. I wonder if you would give your thoughts on the memorialisation strategy.

Chris Albiston: At the risk of stealing the commissioner's line in respect of his previous answer, I would say that what he says in relation to military veterans applies also to police veterans and police families. There is a story that we would like to see told. Indeed, it is fair to say that there have been some efforts within the police family to record oral histories and so on, although I am not sure these projects have really come to much fruition.

I welcome the proposals, because we take the view that history is a matter for historians. It is not a matter for politicians, polemicists or lawyers. In the end, there is still dispute over what happened between 1916 and 1923 in the Republic of Ireland. Perhaps in 50 years' time there will still be dispute over what happened between 1969 and 1998 in Northern Ireland. Maybe some dispute, maybe the fact that different people have different truths, is not necessarily a bad thing. We just feel that our voice is perhaps not heard as well as some others, who are better organised than we are.

Fay Jones: I quite agree. Thank you very much. That is very helpful.

Chair: Thank you, Mr Albiston and Commissioner Kinahan, for your time this morning. You are welcome, Commissioner, to stay and listen to section two, if you wish. If you do not, we will not be in the least bit offended. Mr Albiston, you can also stay and listen. We would ask you just to turn your camera to the off position. That would be great.

We will invite our second panel to join us at the witness table. If we can make that transition as speedily as possible, that would be splendid.