

Northern Ireland Affairs Committee

Oral evidence: Operation Kenova, HC 671

Tuesday 23 April 2024

Ordered by the House of Commons to be published on 23 April 2024.

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Members present: Sir Robert Buckland (Chair); Stephen Farry; Sir Robert Goodwill; Claire Hanna; Carla Lockhart; Jim Shannon; Bob Stewart; Kelly Tolhurst.

Questions 1-47

Witnesses

I: Jon Boutcher, Chief Constable at Police Service of Northern Ireland, Sir Iain Livingstone, Lead Officer at Operation Kenova, and Judith Thompson, Member at Kenova Victim Focus Group.

Examination of witnesses

Witnesses: Jon Boutcher, Sir Iain Livingstone and Judith Thompson.

Chair: This is a meeting of the Northern Ireland Affairs Select Committee, and I am delighted to be joined today by three witnesses to help us explore the implications of the publication of the interim report into Operation Kenova. This is clearly an important and sensitive issue, which we want to explore with care, and I am delighted that we have a panel that can help us do just that.

I am joined by Sir Iain Livingstone, who, as we know, is the officer in overall command of Operation Kenova; with him are Jon Boutcher, now Chief Constable of the Police Service of Northern Ireland, who was the officer in overall command of Operation Kenova, and Judith Thompson, a member of the victims focus group, who was the first Commissioner for Victims and Survivors for Northern Ireland from 2015 to 2020. I am delighted that this distinguished panel has joined us, and we will move straight on to the first question.

Q1 **Kelly Tolhurst:** Welcome, everyone—it is great to have you here for this session. My first question goes to Mr Boutcher. Can you explain what you believe to be the main achievements of Operation Kenova?

Jon Boutcher: Yes, of course, and thank you, Chair and Committee, for inviting us to talk about the report and the work of Kenova, because it helps with your question. I think Kenova has achieved—on the back of a lot of good work in the past on legacy—success, probably, with regards to each of the families that we have assisted. Without exception, they are saying—this is their words, and we are collecting a lot of testimonies from them now—that they finally feel they have been listened to, their stories have been acknowledged and their loss has been acknowledged but, most importantly, that they have been told information that they have never been told before about how their loved one died, why their loved one died, the circumstances of that death and what happened at the end for some of those individuals, which has provided a level of comfort that they never had before.

Some of them had given up hope of ever receiving what we would expect to have routinely in Great Britain: that sort of honesty and that level of disclosure with regards to the loss of their loved ones. So in terms of that confidence, that trust and the legitimacy, almost, that we have managed to achieve with those families, many of them had lost all confidence and trust in the authorities, in the Executive and in policing, and we have recovered that position. I know that Sir Iain has been inundated with emails and testimonies—as have I—particularly around the individual meetings that people have now had, and continue to have, with that wealth of information.



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The report was published on 8 March, and I remember, when I started this work, phoning a solicitor who represents a number of suspects that we would want to interview. He said, "You've got no chance, son. You'll be gone in six months. You'll never get anywhere." That is how the families felt, and I think we have managed to reset the bar there.

Before I close my remarks to that question, I did say that we achieved all this on the back of others. When we started this work, we spoke to all those who have done incredible work in the past, which is reflected in the report. People like Lord John Stevens, the Cory investigative team—Judge Cory was too poorly to speak to us when I took on the case, and he has now, sadly, passed away, but Renee Pomerance, who is a judge now in Canada, makes comments in the report about Judge Cory's work—Judge Smithwick and Mary Laverty, his senior counsel, all provided us with counsel around this. Sir Desmond de Silva also gave me some really helpful advice and stewardship. Of course, there was the Historical Enquiries Team that Sir Hugh Orde established. There was David Cox, who led that, and Sir Hugh himself. They all helped to shape Kenova, and hopefully Kenova is helping to shape the ICRIR, which is the commission that begins its work shortly to help victims as well.

Q2 Kelly Tolhurst: Thank you. Sir Iain, obviously there is more work to be done; we have had the interim report. Can you give us an overview of the tasks and the timeframe for when the full investigation will be completed and for the conclusion of the work that you have been doing?

Sir Iain Livingstone: We said we would publish a final report, and we are looking to do that by the end of the year. That will be based on specific information to individual families. Jon's report was very high-end, or drew out the themes, whereas what we want to do now and are doing is meeting individual families and giving them specific details as to what happened to their loved one. Then we will close the Kenova work with the report that I am aiming to conclude by the end of this calendar year.

I also felt it was important to reflect, within that report, exactly what work Kenova has done over the last number of years, because it was initiated with the work regarding the agent Stakeknife. But in the course of the last five to six years it has also picked up a number of other really important areas of responsibility. They were often pieces of work that fell into the responsibility of the PSNI but, on grounds of transparency and visible independence, various chiefs have then asked Kenova to pick up these pieces of work. One really important piece of work is Operation Turma. That was about the murder of three police officers at Kinnego Embankment in 1982. That work actually grew from a piece of work that Police Scotland had done, under my leadership, in 2014-15. That is a live criminal investigation; Kenova made strides that had not been able to be made in the last 40 years, and currently it is with the DPP in Northern Ireland for consideration. There was also the murder of Jean Smyth-Campbell in 1972 in west Belfast. That is the subject of Operation Mizzenmast. Again, Kenova took that piece of work on. Then in 2019 a judgment that Lord Chief Justice Declan Morgan gave in the Barnard case called for a review of the so-called Glenanne series, which relates to



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allegations of collusion with loyalist paramilitaries in south Armagh and beyond. Again, for reasons of independence, Kenova took that piece of work on.

That is, in a way, the stable of Kenova work: the Stakeknife work, which it was initiated with; the work on the murder of the three police officers in Turma; Mizzenmast, about the murder of Jean Smyth-Campbell—again, work we have concluded and will report on; and then the review work on the Glenanne series—

Chair: Denton.

Sir Iain Livingstone: That is Operation Denton, sir—absolutely. Those four pieces of work all need to be brought to a head and reported on. The challenge for me is to recognise the value and extraordinary progress that Kenova has made, but also to bring it to an end and allow the new arrangements to bed in through the commission. All that work needs to be done, I would say, in the next six to nine months; and then, again, we will report publicly. The reason why those other areas were given to Kenova was that there was an infrastructure there and they had gained the trust and confidence of communities that had been estranged from agents of the state such as myself and the authorities, if you like. That level of confidence, as colleagues in this Committee will know better than I, is, in Northern Ireland, so valuable. We have built on that in progressing those other matters, and in all four areas we will be looking to report, I hope, within the next nine months.

Kelly Tolhurst: Great. Thank you.

Q3 **Bob Stewart:** Good morning. Nice to see you. Bob Stewart is my name. Thank you so much for coming. My question is to you, Judith—if you don't mind me calling you Judith. You guys have been involved in an incredible, huge amount of work. The scope is huge. Many of the people—the victims and families—are grateful, but is there a section of families or victims who categorically refuse to have anything to do with this or who think it is a total waste of time?

Judith Thompson: The victims focus group, which I am part of, conducted a survey of the Kenova families at an early stage. We had meetings with individuals, I had meetings with groups of individuals in my former role as commissioner, and we have had an ongoing overview.

Although I understand your question—in the most general sense, there probably are people who feel like that—I have not come across it in relation to this investigation, and there are reasons for that. The level of engagement that the Kenova team had from the top down started with Jon Boutcher and was followed through by Sir Iain. Individual families met the person leading the investigation and genuinely understood that a rigorous attempt was being made to properly investigate and retrieve information that might not have been previously retrieved. That has been seen as something that offers, in itself, recognition, due process and a proper experience of a rigorous and transparent investigation. That has been



incredibly well received pretty universally by the people involved in this.

Bob Stewart: I have to say that, of all the reports I have read in my life, which is quite long now, this is probably the most profound, detailed and thorough job done by the people at the top and all the way through. May I congratulate you? That was not a challenge; it was just a question, and you have answered it. Thank you.

Q4 **Jim Shannon:** Gentlemen and Ms Thompson, it is lovely to see you. I would like to put on the record our thanks for all you have done and continue to do—it is much appreciated. It is not an easy task, and we appreciate the difficulty that you have. It was necessary to have the independent steering group and the victims focus group in place. Jon, could you give us your thoughts about why they were really important and what they hoped to achieve?

Jon Boucher: The independent groups were really critical at the start. I will characterise this with a couple of early meetings I had with families. In one family—I won't name them, for reasons of privacy—the son of a victim said, "What's different with you? Another English accent—we've heard it all before." He described a particular incident when some detectives had been to see him and his mother, who was widowed through this murder. They said that they would be back in touch with the family. The son of the victim saw the detectives at Belfast City airport about a year later and said, "I suppose you're still going to come back to me on this case." He said to me, "You've been given a big responsibility here. My mum and this family cannot take being let down and lied to again, so please don't do that."

He sent me quite an email, which I read to the team when we had just set up—within three or four months of being established. The email was incredibly well crafted and fair, very much recognising the different sides of the troubles and the incredible job the security forces had done. He felt the security forces had been unable to investigate his father's murder properly, which I think was a fair comment. He outlined in very clear language that the families had had enough and that this couldn't fail.

I wanted to reassure him that this wasn't a single approach—there was no monopoly on good ideas with me or any of the team. I knew we had to do something different, and after speaking to the various people I mentioned in answering the first question, I decided to set up, initially, an independent steering group. The purpose of the independent steering group—all the terms of reference are on the Kenova website—was, effectively, to create a star chamber of investigators who would make sure that we were not missing anything or accepting something that we should not accept. I am a police officer—I have now had over 40 years in policing—and we all become institutionalised and have unconscious biases, so I set up this independent steering group. It has representatives from people from North America: John Miller, who tracked down bin Laden in Afghanistan and did an interview before the 9/11 attacks; Mike Downing, who was the chief of the Los Angeles police; and Kathleen O'Toole, who is the ex-chief of Boston police and has a very rich understanding of



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Northern Ireland, because she was the overseas adviser and police adviser on the Patten commission. Sir Iain Livingstone gives some UK perspective, and we also had the ex-head of United Nations investigations.

That group would hold my hand to the flame of accountability, to make sure that we had done everything properly. It would be a bit like this Committee: I would sit on one side, they would all sit on the other side, and we would have a meeting for two and a half or three days, every three or four months. They would test what I was doing. That provided me with the reassurance that we were doing everything we could, but it also provided families with a layer of accountability that showed that it was not just me or the team doing the work.

On the victim focus group, I was very aware early on, from speaking to families, that Northern Ireland families in troubles-related cases, from all different profiles, are not treated as victims are treated in mainstream GB. They are not. There is a distance and a remoteness. They do not get the level of interaction, responsiveness and information provision that we would give people in relation to offences today. Of course, the world has moved on, but there is also a real psychological barrier in dealing with troubles-related families. I do not quite understand why, but it exists. So we brought in this victim focus group—Judith was then the Commissioner for Victims and Survivors for Northern Ireland. I sought a group of people, none of whom I knew, who were victim experts—again, to hold us accountable as to how we were treating victims. That included even Lev Altan, who works in Europe and wrote the European victims' charter on how victims should be treated.

We also built in—this is an extension to your question, Jim—a number of independent reviews. We were reviewed by Alyson Kilpatrick, who is now the chief commissioner for human rights in Northern Ireland. She was recommended to me by counsel in London as the subject matter expert. Indeed, it was the reviewer of terrorism legislation, Jonathan Hall, who advised me to use Alyson for a review, to look at our article 2 compliance for Kenova. We also had the National Police Chiefs' Council homicide working group looking at what we were doing. All these reviews were there to provide layers and layers of reassurance that we were doing this as well as it could be done. Also, if I am candid—it is a difficult operating environment, and you are always going to get criticised in Northern Ireland from one side or another—it provided us with a layer of protection against any criticisms, because we had so much independent scrutiny around the investigation.

Q5 Jim Shannon: Thank you for that. I am conscious that some people feel that justice has never happened—for instance, those on the payroll and spies within the groups, whether they be in IRA or loyalist groups. For example, Columba McVeigh was murdered by the IRA. His body was never found, and his family has never had justice—again, an example of where the system has clearly not given justice to the families. I think as well of a friend of mine—a friend of probably many in the Chamber—Raymond McCord. His son was murdered—that was about settling a score



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against a young fella who had the courage to stand up against terrorist groups. His father has sought justice all those years. As an elected representative, I have tried to help him in a small way. Those are just two examples; there are many, many more. Some of those on the payroll of the police service were passing information. They were using their position to score against people and in retribution against those who just happened to be stronger. There are many like them. There are many more cases. I will not go through them all. Jon, you will know them, and Iain and Judith will know them as well.

I feel quite aggrieved when it comes to justice. After all those years—20, 30, 40 years—of waiting for justice, there has not been any and their mums, dads and families have passed away. I wonder where that justice is and when it will come for those families. Do you want to reply to that, Jon?

Jon Boucher: On both of those families you mentioned, through the work that I have done I have met and spent time with them. They are remarkable families. I do not make any comment on who were or were not agents. It is not my place to do that in this forum. What I would say is that on the fragility or vulnerability of Kenova, there is what has been described to me as a hierarchy of victims in Northern Ireland. Some victims, because they are supported by very successful lobbying groups, will get inquiries about Bloody Sunday and other events where quite rightfully there has been an examination of the circumstances of what happened.

Kenova looked at a particular profile of victims in Northern Ireland. I meet many, many victims who are not represented legally. They do not work with victims' groups, but they have approached me privately to ask questions. They deserve, as everybody deserves, an equitable opportunity to be engaged with, to have their stories heard and to get whatever information is available to help them understand what happened.

We are about to see the beginning of the commission. I hope that that can succeed in helping those families, but your remarks on the families are not lost on me.

Q6 **Jim Shannon:** I know that, Jon, but I needed to put on record those two, who have always been on my mind.

Judith, a wee question on the victims focus group. Your involvement in that has been significant; we all appreciate that. How do you feel that the victims focus group has been able to influence the course of any investigations? Has it been for the better? I suspect it has been. But I think sometimes when we look at things, our very nature means that we perhaps see the negatives and not the positives. If there are positives, it is important to know what they are.

Judith Thompson: Could I start by saying how much I recognise the comments you made about people feeling let down? Individuals, particularly this group of individuals, have experienced loss, trauma and the horrendous violence by which they lost members of their families.



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Then they experience stigma and sometimes victimisation as well within their own communities. That is then compounded by a justice system that does not seem to respond in any way to the loss they have suffered.

I know there are many families for whom their meeting with the Kenova team was the first time they had sat in a room with a police officer, even though in some cases they had evidence or were the last person to see that person alive. We are talking here about a group of people who for a range of reasons have been even more isolated and let down than the many, many people who have had that experience in Northern Ireland.

So I think on the positive side the first thing to note is that they have had, I think for the first time for most of them, the real sense that somebody cared, that there was a genuine effort being made to find out the things they wanted to know, because wanting to know the truth is pretty universal. There are many people who really wanted to see prosecutions and were not going to, but in this instance for some people the prospect of prosecution was an anxiety because they feared a repeat of all the victimisation and stigma that they had suffered previously and that that might accompany the revisiting of the case through a trial. Justice means different things to different people, but being treated seriously by the justice system, being given access to justice and seeing some level of procedural fairness is really important.

I want to quote one very impressive woman who I heard interviewed on the radio recently about this and who I have met a number of times. She just said, "It gave me my mother back." Instead of being depersonalised and just seen through the lens of the label "informer" or the violence that was inflicted on her, her mother became an individual whose rights were respected, whose death was marked by the justice system and formally in this report, and who mattered.

Q7 Jim Shannon: If you had had 10, 15, 20, maybe even 30-odd years without having any such opportunity, I think it is absolutely vital that they are given respect and feel confidence in the system, which I do not think they have.

Iain, I have one quick question about the independent governance arrangements that were established by your predecessor. Do you feel that they are sufficient, or should changes be made to improve them? I am not being critical, by the way; I am just asking the question.

Sir Iain Livingstone: The governance has always been a key part of our collective thinking. Jon talked about the independent steering group, and I was involved in that from the outset, going back to 2016. George Hamilton was the chief of PSNI at the time, and because of criticism over previous cases and whatnot and the handling of investigations, George and I had had a number of conversations. We had Operation Klina, which related to the haysheds in the 1980s. This concept of an independent external police service or an independent external police investigator or senior investigator is something that we need to give credit to Sir George Hamilton for. The responsibility for these matters never goes away from



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the office of Chief Constable. Although we are independent, ultimately it has to route back to the Chief Constable, because that is where the legal responsibility sits. Jon's independence was really critical. There was the independent steering group that Jon talked about, with very distinguished individuals, and the victims focus group that Judith led. Subsequently, a governance board was established, again to provide rigour, which I later chaired after the late Sir John Chilcot had chaired it. These were really important to provide structure.

The change of police leadership in Northern Ireland towards the end of last year was a major issue. Various members of the community and various people—perhaps members of this Committee—were saying, "Northern Ireland needs good, ethical and experienced police leadership, and Jon Boutcher is the man to do it." If you are asking about the Kenova legacy, part of it for me as a citizen now is that Jon Boutcher is the Chief Constable of PSNI. Jon was adamant that he had not finished the Kenova work, which I summarised earlier. He was adamant that despite those encouragements, he was not going to apply for the chief position unless he was convinced that the level of independence would be continued.

That is when he spoke to me. I had only recently retired from being chief constable in Scotland for six years, and to be candid it was not really in my short-term plan. I was going to take a gap and give myself a bit of space, but because of the importance of the work, I agreed to take it on. I have said to my own family that I genuinely would not have changed my own plans had it not been for the importance of Kenova. Because of my background as a chief in Scotland for six years, I have been challenged on operational independence, and I have had to show separation from politics and the fact that the police will operate independently according to the rule of law and according to justice and public safety. I think Jon had confidence to ask me to take that role, and only when he was satisfied that that independence would continue. In our relationship, although we are professionally close, Jon would never interfere with my independence as leader now of Kenova. We recognised that that was a challenge, but I think both of us were absolutely committed to maintaining that independence—that Jon, as Chief Constable, ultimately has responsibility, but that I, as officer in overall command, am fully empowered. To be frank, I would not have accepted the role on any other basis.

Jim Shannon: Thank you for your answers. Also, I wish you well for the future, all three of you.

Q8 Sir Robert Goodwill: I would like to follow up on that because, obviously, we were all very pleased and relieved when you were appointed Chief Constable, Jon, having got to know you very well through your Kenova work. My immediate reaction, I remember, was, "Oh great, Jon is Chief Constable," but then, "Oh dear, he is not going to be in charge of Kenova any more," so I am pleased Sir Iain has moved into that role.

You are always very keen to stress how the independence of Operation Kenova is so important, and although you have now sort of gone from



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poacher to gamekeeper, I just want to ask: how will you ensure that that independence is maintained? And how will your relationship with Sir Iain be different from your professional relationship with the previous Chief Constable? Are you going to be able to get the balance right between sort of being a backseat driver and also feeding in the experience you need to feed in. How is that going to work?

Jon Boucher: First, I just want to echo what Iain has just said because it is important. There were difficult circumstances last year in Northern Ireland that befell the PSNI. Lots of different issues arrived all at once for an organisation that is outstanding. When I was approached to apply for that role, I made it very clear that I could not do that because of my commitment to Operation Kenova. It was only then—and he was the only person I thought could do it because of his involvement in Kenova to that point—that I contacted Iain. I did say, “Look, there is no pressure here, but if you can’t do this, then I can’t do that. I’ve got to stay with Kenova because of the commitment I’ve made to the families.”

Because of what I’ve learned on Kenova and the relationships I have built—and every day has been a school day on Kenova—I today have to say this: every day is now a school day as the Chief Constable of the PSNI. I could see that what I have experienced in Operation Kenova would help me in the role of Chief Constable—the relationships I have built with the security forces, the retired officers, the victims’ groups, and the various community groups who had felt a lack of confidence and trust. All of that, I thought, would help with the role of Chief Constable. I have to say, Iain and I had a very honest and authentic conversation about the lines of separation, if I was then successful as Chief Constable and for him to pick up the reins, and there was an interim position that I accepted initially.

There are a couple of things to note. First, when I set up Kenova, I was pretty challenging to Sir George Hamilton around the independence of how it would be done. I will be honest: when was I first asked, I had no idea. I will be frank: I had no idea. There was not a particular group of people I could move in, there was no existing structure to deal with this, so it was an incredibly sharp learning curve and I listened to people’s experience as to how to do this.

I was, I will say, the ex-head of covert policing—undercover policing. I have quite a rich background in dealing with very challenging investigations, so from that perspective, I was fine. But Northern Ireland is a very unique operating environment, and you need to have real emotional intelligence across the piece. The job of Chief Constable is so all-encompassing anyway, I have not got time to interfere with Operation Kenova. I really haven’t. If I did have any time to interfere with it, I would soon get a rebuttal from Sir Iain about his operational independence.

In a way, I think it is the best of both worlds. Because of my understanding of the challenges around getting information, of getting reports out, and of going through the protocol process that I wrote, there is basically a protocol—it is on the Kenova website—that sets out how we



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will deliver our reports so they can be delivered in a way that families, stakeholders and society know that they are legally sound and robust, the first report being the one that we released on 8 March. That is a time-consuming process. It is a challenging process, legally.

Q9 Sir Robert Goodwill: You think it is baked in, in effect.

Jon Butcher: Yes, exactly. It is literally baked in—that is the ideal term. But it is a challenging process. I have a level of understanding and sympathy for what Sir Iain has to now manage. The final report and the Denton report are huge pieces of work. Where I think there is added value is my understanding of the challenges he is facing. Where I can help, I will, but the entire show—all the Kenova suite of investigations—now sits entirely, with operational independence, with Sir Iain Livingstone.

Q10 Sir Robert Goodwill: Will that be help when asked for or help when you feel it is needed?

Jon Butcher: When asked for, certainly. I am so busy that sometimes I will ring Iain to check that everything is okay with Kenova and I will feel guilty that I have not spoken to him for a couple of weeks. I know he has an incredibly challenging diary, because that was previously my diary.

I am very comfortable with the independence. There is a formal process of reporting quarterly to the Chief Constable by the officer in overall command. I get updates from Sir Iain about the progress. Obviously, we are in a unique position of transition into the commission as well and, as Iain described very eloquently, the bringing to a closure of the Kenova investigation's reports for families. I am pretty up to speed on the challenges he faces there. Nobody has raised an issue around the independence. I have been clear about handing the baton to Sir Iain, and so far it has worked very well.

Q11 Sir Robert Goodwill: Do you echo that, Sir Iain?

Sir Iain Livingstone: I do, Sir Robert. As I said, I would not have taken the role on under any circumstances. I spent more than 31 years as a police officer in Scotland and latterly as a chief constable, where my operational independence was tested pretty regularly, without rehearsing matters in Scotland. There was never anything that I would compromise on. You are highly accountable—rightly so—in public to Committees such as this one, to the Northern Ireland Policing Board, to the community and the public through the media, but your decision making must be independent and you must be able to take responsibility for that. However, as Jon said, I would be a fool not to seek some advice or some guidance on a particular case or a particular set of circumstances. We work very well together, but as Jon talked about candid conversation, we speak to each other very directly if needed and I think that is ultimately in the public interest.

Sir Robert Goodwill: Thank you. That is reassuring.

Q12 Bob Stewart: Lady and gentlemen, I want to concentrate on the conclusions and recommendations being transferred into Government



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policy. Are you satisfied, Sir Iain, that the conclusions and recommendations so far are being taken note of by Government?

Sir Iain Livingstone: Again, thanks for the question; it is very pertinent. Only last week, or maybe two weeks ago, I had a meeting with colleagues in the Cabinet Office. The interim report was published in early March, and the purpose of the meeting was to just pause for breath, see where we were and, in a way, allow the Cabinet Office to act on behalf of Whitehall and the Government as a whole in their approach to the recommendations. Not all the recommendations are necessarily directed towards HMG, but I think there is interest and locus in that regard. The Cabinet Office has taken the lead role. I wrote to one of the senior officials there at just the end of last week, setting out where we were, and I know that the Government at this time—the Secretary of State for Northern Ireland and others—are looking at the issue of the need for an apology and that recognition. Jon rightly gave the analogy with then Prime Minister Cameron’s apology regarding Bloody Sunday almost as a way of not drawing a line but creating a foundation to go forward. That is under consideration at the moment. There are the issues that Jon has rightly raised, regarding the need for a review of the NCND policy. Those of us here spend our lives benefiting from it, utilising it and working within that sphere, but that doctrine could do with a consideration.

It has evolved over time, like so many other issues, and has no statutory basis. It is an operational practice, with very sound reason behind it in many theatres and for many different agencies. The Kenova work has shown that it would benefit from a wider consideration, more reflection and a common understanding of its meaning and application.

There are a number of elements in the 10 recommendations that will be progressed. There is the other one about the declassification of certain reports and whatnot. The short answer—I apologise if my answer was too lengthy—is that I have very active engagement with the Cabinet Office, on behalf of the Government, and I think they are taking the recommendations very seriously.

Q13 **Bob Stewart:** Sorry, that raises a quick question from me. To whom do you report? Obviously to the Cabinet Office, but do you report to the Prime Minister, the Secretary of State for Northern Ireland or the Home Secretary? Or do you report to all of them?

Sir Iain Livingstone: I report to the Chief Constable of the Police Service of Northern Ireland.

Q14 **Bob Stewart:** That is fine. I know who the Chief Constable reports to, so I think the question is answered. You report to the Chief Constable, yet you are dealing with the Cabinet Office.

Sir Iain Livingstone: It goes back to the question that was raised earlier. Because of my operational independence, I need to operate in an independent manner. I have no authority other than that which has been granted by the Chief Constable. In terms of the practice, the day-to-day independence, I take the lead on that. We have had that level of



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engagement with the Cabinet Office. Obviously, they will co-ordinate across the various Departments that have interest—not only the NIO but the Home Office and others—

- Q15 **Bob Stewart:** Sorry, I have quite a lot of detail in the questions that I have to ask. I am talking about conclusions 6 and 7 for a start. Does Government policy allow victims who want a prosecution to have a chance of securing one? Can people who do not want a prosecution not have a prosecution, as it were?

Chair: I think what Bob is referring to there is the crossover between the conclusions you made about the fact that some families want a prosecution and the fact that others do not. There is that continuing wrongful stigmatisation of families, where people who were killed were accused as agents. How does that cross over to the policy under the 2023 Act and the work of the new commission? That is what Bob is getting at. What is the read-across?

Sir Iain Livingstone: Again, those are really interesting and challenging issues. The first thing I would say is that prosecution decisions are not a matter for us as investigators, whether as an independent investigator or for the PSNI. That is a matter for the DPP in Northern Ireland, the PPSNI. The point you make, which Judith alluded to earlier, about the feelings and attitude of a victim and their family is a key factor in any prosecutorial decision that would be made, as well as matters of public interest. In that prosecution decision, the sensitivity would be there, again, as well as the normal tests of evidential standard and public interest.

- Q16 **Chair:** I think what Bob was getting at is that we are in this transitional period to the work of Sir Declan Morgan and the commission. How is that going to affect the ongoing work in Kenova?

Sir Iain Livingstone: Where prosecution decisions have been taken prior to 1 May, they will continue. That will be the case. Thereafter, with Kenova, we will not report any other matters for prosecution decisions after 1 May. That will then be a matter for Sir Declan and his team, depending on the number of cases that go forward. There is no doubt that a number of the cases that we have dealt with as a team potentially could go into the work of the commission. There were different views on the legislation, but that is the law of the land. Therefore, my role and responsibility are to taper off Kenova and, as best we can, support the new work of the commission through the learning that we have had and perhaps some of the key resources, such as some of the investigators who have gained trust. They are outstanding individuals who have been working on Kenova for a number of years; not all of them, but a number of them, may go into the commission's staff, so the ethos and approach of Kenova can be sustained with the work of the commission, despite the fact that their remit is clearly far greater and wider.

Chair: Bob, any follow-ups?

- Q17 **Bob Stewart:** To be honest, I have got a bit more, but I am trying to cut down so that we can get on.



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I am going to skip the next the next question and go straight to my final one, which is on transitional arrangements. Are they interfering, or are they likely to interfere, in your end-of-term work, as it were? Transitional arrangements can really screw up what you are trying to do. I have tried to telescope it down.

Sir Iain Livingstone: I hope they won't, and I expect they won't. The NIO and the Secretary of State have been very supportive of allowing Kenova to finish its work, which is the Denton work that I mentioned earlier, on the role of the loyalist paramilitaries. That is a significant piece of work. It is a review rather than an investigation, and a number of the families were very concerned that we were going to have to come to a hard stop at the end of April and that we would not be able to finish this review work. There was always the intention that we would be allowed to do that, but I welcomed the transitional arrangements because they made it clear that the work that Kenova had in place could be finished. The work that we need to finish is the Denton work. We will put a public report on the Glenanne series, and we will also then publish a final Kenova report that will cover all the four areas I described earlier, as well as deliver an update on the recommendations and some other reflections on the work and the outcomes.

Q18 **Bob Stewart:** You have already said that you are going to aim to finish by the end of this year, 2024. Have you got enough time?

Sir Iain Livingstone: It is incredibly demanding, and Jon and I had a discussion around—

Bob Stewart: Jon is giggling. He doesn't think so.

Chair: I think Jon is smiling wryly.

Sir Iain Livingstone: He thinks I am being over over-ambitious or perhaps naive, but I seriously want to maintain some momentum because colleagues—both those appearing before this Committee and others—have all been involved in pieces of work that are challenging. Unless we try to give ourselves milestones to finish, matters can drift. We have done all the work. The challenge now is articulating it, gathering it and then presenting it in a manner that this Committee and the public can understand and assess. We are very intense around that work. I am saying the end of this calendar year; I suppose my backstop would be the end of the financial year and to try to close the—

Q19 **Bob Stewart:** I shouldn't really go on, but looking at Judith, do you think your constituency would be satisfied by the end of this year? Do you think they think it can be done?

Judith Thompson: It is incredibly important work for them. The expectations from victims and survivors, particularly in relation to the Denton report, are for a report with the kind of informed approach that maybe they have not had.

Bob Stewart: That final report is going to be crucial.



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Judith Thompson: It is a huge piece of work, and it is really significant.

Bob Stewart: I am sorry I have taken so long.

Chair: No, it is fine. A lot of us in this room, me included, have had a lot of experience of criminal investigation and prosecution. This is difficult stuff, and I think it is right that, while we try to get on with it and give some hope to families, they want it to be done properly, bearing in mind their experience. We are entitled to query each other about timescales, but we should also remember the incredible seriousness of what we are dealing with here. I don't think we should lose that at all.

Q20 **Claire Hanna:** Thank you very much for being with us. I am going to come on to disclosure, but I wanted to follow up on prosecutions. In the interim report, you comment on the resourcing of the DPP, but you do give a solid analysis of the files that went forward. It says in the report, "For my part, I believe they contain significant evidence implicating Stakeknife and others in very serious criminality and that this needs to be ventilated publicly." Of the 28 files that went forward, not a single one appeared to meet the threshold the DPP set for prosecution, and I think that, for many people, that tests their confidence in the DPP.

Sir Iain, you said on the day of that decision: "Kenova's position remains that we have recovered a huge amount of new material and made significant forensic breakthroughs. That includes obtaining new physical evidence and repurposing existing exhibits to obtain full DNA profiles...We have also been able to utilise cutting-edge techniques of fingerprint and DNA recovery on ballistic items to present significant evidence linking numerous murder cases forensically for the first time...Many have shared new and significant evidence to strengthen our investigation". It goes on, but you clearly paint a picture of very strong and compelling evidence. You say that it "has helped us build a strong and compelling case which we are frustrated will now not be tested before a court." Could I just ask both of you to outline your response to the PPSNI?

Jon Butcher: First, I know that the PPS work really tirelessly to do their function of examining files that are submitted with regards to potential prosecutions. I do not think it is controversial for me to say this, and I do not think they would disagree—I describe it in the report, and I pored over every word of the report very carefully to try to be fair to everybody, including the PPS—but I have dealt with some really complicated cases in the past, involving international terrorism and organised crime, and if the same approach that the PPS have applied to legacy cases had been applied to those cases, many of which are very well documented as stated cases for prosecutions, my history of successfully prosecuting those cases would not be that same history. They would not have been prosecuted. I am very clear on that. The mechanism that they adopted to look at these cases built in considerable delay, and it did not build in the level of relationship and communication between the independent investigative team, the independent prosecution authority and the independent counsel appointed to look at the evidence. And these cases are complicated.



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I will give you an example from when we first had a conversation about the admissibility of hearsay evidence. Whenever you have got a case that is from some time ago, there is inevitably going to be a challenge around showing the continuity of certain evidence, because people have passed away, or there may be a break in the chain of the integrity of exhibits. I had a meeting with the PPS, and we had an independent counsel from London, who was very clear: the commentary used was, "Every day of the week at the Old Bailey, I would get that hearsay evidence in," but there was a different view from the Public Prosecution Service for Northern Ireland.

Whatever we might say about the same legal processes being in place, Northern Ireland has a different way of approaching some of that evidence, because legacy has become so challenging. Every case faces either a judicial review or an appeal, for everything that the PPS do. In a way, the imagination and energy, almost, of prosecution authorities with which I have engaged around complicated cases on al-Qaeda or organised crime gangs is absent on legacy, because they are worn down by this legal battlefield that exists around whether they make one decision or another.

I do not think that we got to discuss and engage with each other about the details of that evidence in the way that I would have expected and hoped we would. There was the very nature of the delay in making those decisions and the frustration of having to tell victims repeatedly, "We are still waiting." There is an example where we were told that we would get a decision by September 2022, and we got that decision only very recently; we were told that we could tell those families that we would get the decision then. All of that has been a huge frustration for the families and for us as investigating officers, but it is a frustration for the PPS as well.

I know that, in anticipation of the level of work that we would create as an investigative body looking at these cases, Stephen Herron asked for investment—I reflected this in the report. It was already probably too late to get that investment and get those lawyers, because these are such specialist cases that, in my view, you need specialist lawyers. However, he did not get that investment. Again, it is about legacy. That is why, at every juncture, these victims feel that they are let down. I articulate in the report that something should have been put in place years ago, after the Good Friday agreement.

Again, this goes to one of Mr Stewart's questions—it was recommendation 8 about the victims' views and wellbeing being taken into account by the Public Prosecution Service on these decisions. Just to articulate and explain my thinking on that, a number of families, knowing that files were with the PPS, were really concerned that there would be a prosecution, because they still live in those same communities, and there are still some challenges in those communities towards those families. By having a prosecution, they felt that it would bring towards them unwanted attention, unwanted media attention—

Claire Hanna: Intimidation.



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Jon Butcher: And unwanted intimidation. The sort of behaviours that I describe in the report are entirely unacceptable in the past, at the time the offences occurred, and subsequently, from members of the republican movement—abhorrent intimidation towards those families, who had done absolutely nothing wrong.

That recommendation—I have discussed it with Stephen Herron, the Director of Public Prosecutions—is there to try to give the PPS some additional latitude, because if they have a file for murder, and there is such compelling evidence that they pass the first threshold test and there is sufficient evidence to prosecute, they will prosecute that case. Just because the families feel that they may face intimidation, that does not currently, in the codes, provide the prosecutor with the flexibility of deciding not to prosecute on a public interest basis.

If you think of some of these cases and the origins or backstop of what happened with the Good Friday agreement, many families saw murderers released. We all remember the images of these murderers coming out and being almost celebrated by their constituency. These families had to see that, and we have never really had a grown-up discussion with these families about what they want out of this process. Recommendation 8 is from me speaking to a number of families who said, “Look, all we really want, and what your job for us is, is to get the truth of what happened to our loved one. We do not want a prosecution.” However, there should be an independent process for that decision making. I wanted to give the prosecution authority the additional wriggle room to consider those families’ views, if it would be a life-changing decision for them to continue living in that community if there was a prosecution.

Q21 **Claire Hanna:** Sir Iain, do you have anything to add?

Sir Iain Livingstone: My reflection would be that the three legal systems of the United Kingdom—Scotland, Northern Ireland, and England and Wales—have different procedural elements and different bits of substantive law. However, my observation is that we have often said that, if this was a murder in Glasgow, in London or in Belfast, or a serious case, there would be the police side—the senior investigating officer and the prosecution team, whether it is the CPS in England or the Crown Office and Procurator Fiscal Service in Scotland—and then an independent prosecuting barrister. My experience has been that their involvement seems to come a lot earlier in the process, so questions that the prosecution team or the prosecuting KC may have can be addressed at the time. They can say to the SIO, “What do you mean by that? Can you go and get a bit more information on that?”

The experience of Kenova has been that, with the passage of time, that seems to be more siloed as a process; that is an observation. Now, that may be for a very good reason; it may be because of experience or volume. It is just different from what happens in the rest of the United Kingdom when it comes to investigating serious and complex crime, whereby the involvement of the SIO and the prosecution team, including the prosecuting counsel, comes much earlier on in the process.



Q22 Claire Hanna: Do you think it's fair to say that we are talking about two different things here? We are talking about, one, the lack of resourcing, which I think is well documented, and we are also talking about difference in processing and the level of co-operation between investigators and the DPP. But are we also talking about a pre-emptive decision to remove the concept of prosecutions?

Jon Boucher: To be fair to the prosecution service, I think the two are connected, Claire. Because of the lack of resources, and I hope my language isn't clumsy, the legacy cases that we submitted went to the back of the queue, because they had lots of contemporary issues to deal with—public protection files around sexual offences today and serious crimes today. Northern Ireland has certain challenges still around dissident republicanism.

If I look at the way that the investigation and prosecution relationship was with the attempted murder of John Caldwell last February, having arrived as the Chief Constable, that was more akin to the relationship that Iain has described, which we would expect to see. However, because of resources and because of their capacity, they can't apply that standard—that level of responsiveness—for legacy cases, probably based on the fact that, by and large and certainly in the cases that we were dealing with, there was no obvious threat from the people who we suspected of committing these crimes. So, they didn't need to deal with them in the same timely fashion as they had to deal with other files that they were looking at, where there were bail conditions or ongoing prosecutions.

Again, because of the bandwidth of the PPS, they simply weren't able to adopt that process, which we'd agreed they would adopt—we'd agreed they would adopt the process I described at the beginning. But that changed because they simply weren't able to support and resource that. I think that would be what Stephen Herron would say if he sat here today.

Q23 Claire Hanna: It sets the tone for what's coming, though.

I also wanted to pick up on the "neither confirm nor deny" policy. In the interim report, you suggest, as I read it, that that policy is applied almost universally on any interaction, rather than on a more case-by-case basis, and you suggest that it shouldn't be applied to disclosure to secure vetted bodies such as Kenova or a future legacy body. You have that as a recommendation: "Review, codify and define the proper limits of the NCND policy as it relates to...agents". I think that you link the lack of prosecutions to a fairly dogmatic application of that policy.

Within 30 days of your making that recommendation, the UK Government have given a little bit of response, in terms of the Secretary of State going to the High Court to challenge the decision on this. That looks like a fairly aggressive response from London—that they will continue to decide what does get disclosed and what doesn't—and it is therefore likely that the needs of victims and survivors, who you have championed in Kenova, will again be, and will continue to be, secondary, to the needs of state and



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republican and loyalist interests. What do you think that tells us about the future of the body that is due to come into effect next week?

Jon Boucher: First, there are ongoing legal proceedings. And just to contextualise your question, since arriving as the Chief Constable and because of the experiences I have had, I have taken quite a forensic view of how we were dealing with the remaining inquests that were to take place before such inquests had to finish for the commencement of the commission on 1 May. That included my looking at the process that has been adopted on public interest immunity applications.

With my background as head of covert policing, undercover policing, I have done a considerable amount of public interest immunity applications and dealt with every type of sensitive information that is available to intelligence agencies and law enforcement. I have taken a very clear position that this totemic approach in Northern Ireland, and I describe it in those terms in the report, is not correct and is often driven by lawyers. What it leads to, as the Chief Constable of PSNI, is a perception in communities in Northern Ireland that there is a cover-up—

Claire Hanna: There is a cover-up.

Jon Boucher: —that the authorities are deliberately preventing information from coming out. The Kenova report says throughout that I was in awe of the way the security forces dealt with the troubles. Being a member of the RUC to begin with, and I found the United Nations report on this. It outlined how, being such a member of the RUC, it was the most dangerous police force in the world to be a member of. Over 300 officers were murdered. Over 300 officers were subjected to terrorist attacks where they received life-changing injuries. I am a huge advocate for what the security forces did during the troubles, but where we got things wrong—as we inevitably were going to do in an incredibly difficult operating environment, where on occasions—and my whole background is operational—whatever the decision that was going to be taken, there was going to be a loss of life.

We should be open to scrutiny so that we can ensure that we learn the lessons of that operational activity, but also how we have managed agents during that process. By this absolute position of refusing in any way to concede any information, even internally, to legally constituted commissioned investigations, it has fed this narrative of collusion and conspiracy. What I find when I have looked at all the information is that, generally, it does not prove there is any collusion or conspiracy. It shows actually that often the security forces did a great job. But where there is a problem, do not hide it. That is what sets us apart as a democracy.

In the report, at page 144, we are not the first people to see this. I spoke to Dave Cox before I gave evidence to this Committee. Dave Cox, who was the former head of the Historical Enquiries Team, said: “They”, and he was talking about the PSNI then, “always gave me a limited version of the truth—they invariably did not and will not give up information”. Lord Stevens, referring to the security forces, said, “I was misled deliberately, I



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was criminally obstructed from doing my job by the RUC and military, whilst MI5 failed to disclose information". I followed up on all these to make sure these examples are accurate and true.

Renee Pomerance, the senior counsel to Judge Cory, said, "We could not compel material being provided—others controlled what we received and when and how we received it and the conditions in which we received it. They (MI5) made the entire process uncomfortable. The state viewed itself as above the law". Finally, Mary Laverty, senior counsel to Judge Smithwick for the Smithwick tribunal, said, "They (the security forces) made it incredibly hard—when will they decide they can reveal information?"

When the public reads that, they are only left with one impression, and all the incredible work and the sacrifice of the security forces is lost. I am taking a view, and legally I have sought obviously very senior counsel advice, and I am at odds here with the Secretary of State, that we can give some information, but we cannot breach NCND where we will give the details of who an agent is. We cannot put anybody's lives at risk. But this iron curtain approach leads to a lack of trust and confidence towards the security forces. It is unnecessary, and the world has moved on from there, as I try to describe in the report, particularly in sections 47 and 48.

Q24 Claire Hanna: I don't think we are in disagreement here, and I think you said at a previous appearance at this Committee that sometimes the myths that have been created are, in some cases, worse than the reality, but it does dishonour—by the way, and I say this as somebody who came from a community that did not have belief in the police force, I absolutely believe that so many people put on a uniform and went out to protect and serve the community with honour. I think it dishonours them whenever there is not honesty or transparency or disclosure about those—and there were many—who did not do that. I do believe that the dogmatic application drives that mythology and will prevent reconciliation.

I wanted to ask you, Sir Iain, about the same thing: about that application, including the Secretary of State's legal action, including the Secretary of State's letter to the Chief Constable, which was reported in *The Irish News* a week or two ago. What does that tell you about the application? Do you think that creates confidence in the body that is coming into effect next week, and in London's interest in actually getting to the truth and not just sparing the embarrassment of the people who did the murdering?

Sir Iain Livingstone: I mentioned or alluded to this a little bit earlier when I was answering one of Bob Stewart's questions on the recommendations. I think there is absolutely a need for a detailed and informed review of NCND as a policy. We understand the rationale that lies behind it. In general terms, it served its purpose very well in protecting the identity of sources and ensuring the operations of not only investigations but the work of intelligence agencies across the world can be maintained.



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Part of the rationale for NCND is that if you do not uphold it, it is going to be difficult for people to give information. Again, as Jon has alluded to, for a lot of people who gave information it was a very brave thing to do; to come forward to support the forces of law and order who were trying to do the right thing—as you said, not always getting it right. That is what we need to focus on, that actually some of the behaviour was outstanding, was bravery beyond anyone's comprehension, but at other times it was not and it cost life. I do not think recognising one precludes you recognising the other. I think we have to do that.

I think that this is the right time for a review of NCND, how it operates, how it is implemented in practice. I think some of the issues that Jon is currently having within the coronial process in Northern Ireland, and some of the conversations that are ongoing, just underline how there is a lack of certainty about what NCND is, what it means and how it is applied.

- Q25 **Claire Hanna:** I am going to finish, but do you think the Secretary of State's intervention, going to court and the letter he sent, sets the tone right? Do you think that creates any confidence in what is to come in terms of London's approach to disclosure?

Sir Iain Livingstone: I think it is indicative of the challenges and the different perspectives that exist in regard to NCND. I still think the Secretary of State will be getting briefed from his officials and others that this is a policy and a doctrine that must be defended at all costs. We probably have a different view. We think there is a need for it to be applied in an appropriate manner and for there to be a clearer understanding. I personally do not think there is any lack of commitment in supporting the work of the commission, but as ever the proof will be in the pudding.

Jon Boucher: Can I just add that I did respond to the Secretary of State in very clear terms about my position? It is the issue that I have issue with, not the individual. That is part of the democratic process. I am probably bringing a new challenge now, because this is the way it has always been done. Of course, when you go into a new role and somebody says: "Well, this is the way we do things," because of my background and experience I question it—"Well, is that right?"—and question what NCND cannot do. There is no immunity process. Nobody can have immunity in this country, unless it is through provisions of things like SOCPA—specific legislation that would provide for that. Saying that you cannot investigate a crime any further because there is an agent involved is poppycock. That is not right.

I think there has been an application of NCND in Northern Ireland that has restricted previous Chief Constables and investigators. Through the narrative that I described—from these incredibly impressive people who have dealt with legacy in the past—that has created a position that has inhibited us freeing ourselves from some of this legacy. It is like an anchor that holds us back. I think the NCND provisions are part of that. That is why all I am asking is for them to be reviewed and re-codified in the context of the Northern Ireland troubles. Nobody who commits murders



should be protected by the policy of NCND. I do not think anybody could disagree with that.

- Q26 **Claire Hanna:** I agree. The point is that it is not just saying, "This is the way we have always done it." The context is that the Government are saying, "We are taking a whole new approach that is about truth and reconciliation," and yet are applying the same restrictive, dogmatic policy that has thwarted truth and reconciliation for five decades.

What lessons are there, for the process to come, from Kenova, and for managing what may be perceived as a tension between truth, recovery, reconciliation and prosecutions?

Judith Thompson: The whole *raison d'être* of the victims focus group is that it is an international group, an independent group and a group of people whose focus and expertise are around support for victims. The conversation we have just had lands very strangely in that group.

If your fundamental starting point is that any process, going forward, must be focused on those who are harmed—no matter who by, across the board, for all communities—you are operating in a situation where people's experience is that we have just heard about. They are back of the queue; they have so much practice at being back of the queue; they expect to be back of the queue. Their expectations of the justice system are, in many cases, incredibly low. A process of building trust, faith and reconciliation has to start with meeting the needs of those people and thereby building trust in a justice system and in a Government, giving people a sense that their suffering mattered. The process must recognise that if you are not transparent, if you do not deal with the issues, you give the opposite message, and you continue to give that opposite message to people's children and their grandchildren.

If you think about conflict, and the legacy of conflict, and the harm that is done in families, passed on from one generation to the next and held in communities, then—as Jon and Sir Iain have talked about—building confidence in justice, and by implication confidence in the Government, is of such fundamental importance that it has to be the starting point. It must only not be met when there is a reason for default so strong that people understand—and people will understand. People are incredibly realistic, when it comes to it; they have learned to be through hard experience. But it is upside down to start with the reasons why you cannot be transparent when you know that you cannot build reconciliation, you cannot build faith in justice, unless your starting point is transparency.

The *raisons d'être* of the victims focus group—and the other governance group that Jon talked about—were transparency, building faith in justice, having a robust challenge, and a robust investigation process. In terms of the second part of your question about going forward, we think that is incredibly important learning. We have, in this report, a very clear statement that misinformation does incredible harm. Wrong information given to victims and families—which has happened and not always because people intend it to—causes hurt and harm, and gets in the way of



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reconciliation. By the same token, failure to disclose, failure to be transparent, failure to engage with the past, and with victims and survivors, does harm now and needs to change. Any new body has to start with a victim-centred approach, has to deal with absence of trust and confidence through transparency and also by oversight.

External oversight is absolutely fundamental to anything going forward. I am also on the side of leadership. The leadership style in Kenova from Jon Butcher and Sir Iain has been victim-focused. That has told in the way they are perceived, and it has been evident in the excellent staff and processes they have used. The feedback we get about the way the family liaison officers have worked with families in this case is transformational, in terms of the families' views of Kenova, but also of what justice could deliver. The learning is about transparency, being genuinely victim-focused, building an independent oversight, having leadership which is properly victim-focused and, at the end of the day, just always recognising that legitimacy builds trust, and trust builds co-operation and collaboration. Ultimately, probably, be aim, the expectation and the hope is that that will build reconciliation. We know that doing the opposite certainly doesn't build reconciliation. This is just too important an enterprise to allow it to be derailed by formulaic thinking and reluctance to disclose.

Claire Hanna: Thank you very much.

Q27 **Stephen Farry:** Good morning to all our witnesses. I will ask a few questions about Stakeknife in particular, in a moment, but I just want to pick up on a few things that have been said so far. The first is in relation to the recommendations arising from the interim report. Was your hope or expectation that those would be picked up straightaway by the responsible actors? Obviously, some of them will be quite long to take forward. Or are they just there for noting, pending the final report to be published in due course—maybe before the end of the year?

Jon Butcher: When I wrote the recommendations, I was realistic about the amount of time it would take for people to absorb the report and consider it with great care. Although the recommendations are fairly succinct, in that there are only being 10, I was very alive to the fact that asking for apologies from the republican movement and from the British Government around what has happened was going to be quite challenging.

Don't forget that what is not in this report, which is very high level, is that through the protocol process I have described, I Maxwellised—I did a representations process with all the security forces and certain individuals, whereby I set out information that I had to substantiate this report. I then did a security checking exercise where I got all the security forces in. It was choreographed by the Cabinet Office.

I went into great detail about the examples that sit behind the findings in this report, and there are a number of them, giving the circumstances in which people came to lose their lives and we didn't act in the way we should have acted. I am very realistic around this. This is quite an ask. I



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have to say that I was a little bit disappointed with the comments from the Government around there being ongoing civil cases—almost playing it into the long grass with regard to an informed response. I think the victims are owed more than that, but I accept that there is a final report still to come. On the basis of what is in this interim report, I think the Government could have said more. I hoped they would say more. These cases took place so long ago and so much work has gone into getting us to this point, I probably did not expect anything to happen in the short term. However, I certainly hope, whether it is between now and the final report coming out, or on publication of the final report, that we will be in a position through Iain's work, whereby, by and large, the recommendations will have been adhered to.

It is going to take a bit of time to do some of these. For example, the recommendation about lowering the classification of a number of previous legacy reports goes to Claire's point about legitimacy and trust. I have read every word in those reports. With some editing and redaction—but not significant redaction—the messages and findings of those reports can be put in the public domain. They do not breach national security provisions, with the caveat that some minor editing would occur. That would again take us on the road to a level of transparency, openness to scrutiny and reconciliation that we have fiercely guarded against.

I know the landscape around these recommendations will be challenging, but I see signs of people privately accepting a lot of what I said. Ultimately, I hope that when Iain's final report comes out, if we have not already complied with a lot of these recommendations, we will then achieve what they require.

Q28 Stephen Farry: Judith and Iain, do you want to add anything to the point about recommendations more generally?

Sir Iain Livingstone: To reiterate the point I made earlier, the Cabinet Office has taken responsibility from the Government's perspective, in terms of the co-ordination of responses. So many of these issues sit across that, and I am going to be very active in looking for update. As Jon said, when we report there will be an update on where the recommendations are—hopefully "discharged", "discharged", "partially discharged"—with exactly what the implications have been.

Stephen Farry: And Judith?

Judith Thompson: Just to say that some of what is in that report goes a lot further than an investigation or prosecution of a court case could. It goes from robust investigative evidence into recommendations for apologies or a day of reflection. I think that is incredibly important, and is a significantly different step from a normal justice process. I think those things must be delivered in a victim-centred, victim-led way. That might sound obvious, but it is not always.

Apologies can be used as a substitute, or even sometimes to obfuscate access to full disclosure and truth or access to other rights. It is incredibly



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important that as we move forward towards apologies—I hope we do—victims, survivors and their representatives are absolutely involved in all the discussions of what the apologies should say. It is also important that they are specific, and that they include not only the original wrongs but the many failures of the system and the failures in communities, which we have talked about, to support and acknowledge those people.

Complex, difficult, challenging and really important stuff needs to be done in collaboration with victims and survivors. It is the same thing with days of reflection. There are a number of really moving events around. People must feel that there is not a competition with what is there already; it has to be something that everyone buys into. There must be a victim-centred approach in all of it.

- Q29 **Stephen Farry:** Do you see a day of reflection as a bottom-up process that society—victims, in particular—will drive? It can't be top-down. The Government can't say, "This is how it will be," given that they are contested.

Judith Thompson: At the end of the day, they may wish the statement to come from somebody who has the authority to speak for the Government or the organisation they are speaking for, but the victims and survivors must feel they have ownership over what it is said, how it is delivered, where it is delivered and how they are involved in the process of delivery.

- Q30 **Stephen Farry:** Thank you. Jon, you said a few moments ago that you would potentially like to see NCND recodified at some point. That begs the question: is it actually codified anywhere on a piece of paper, and by whom, or is it largely a convention that can be elastic if people want it to be elastic or tight if people want it to be tight?

Jon Boucher: There is a policy for NCND that is owned by the Cabinet Office. People talk about a legal principle, but it is a policy. Policies change all the time, or should evolve. Iain mentioned earlier that I have applied NCND throughout my professional career, but not in a totemic way. How it has been applied in Northern Ireland is a new experience for me.

I understand the reasons for that and the history. It was an incredibly challenging environment that the security forces faced. I have so much sympathy for what they endured, the threats they encountered and the sacrifices they made. My frustrations come from post the Good Friday agreement and our approach to the scrutiny that we would expect in a democracy about how we as state actors responded to those events. I am not talking about looking at individual culpability and responsibility. I am talking about lessons learned. The application as it currently is in Northern Ireland, I think, first, inhibits lessons learned. Secondly, it definitely provides a challenge for us around trust and confidence for communities. That includes some members of the security forces, as well, not just the nationalist community, which you would automatically consider to have a really strong view on this.

Looking at it just within the context of the troubles, we must remember that there was no legal framework to deal with agent handling during the



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troubles. There was a guidance document issued by the Home Office in 1969 that was inherently unsuitable for dealing with the complexity of the troubles. To put all that into context, to look at how NCND is applied, to make sure that the principles of rule of law and public interest are both considered, and to provide a new framework for how we deal with NCND within the concept of the troubles and that period, are long overdue.

I made the comment earlier that nobody would expect NCND to provide a protection or an immunity to murderers. But the report sets out that that is in effect what has happened. I don't think any of us would agree with that. I think it is time to put that right.

- Q31 Stephen Farry:** This will be an incredibly difficult question to answer given some of the very particular circumstances in Northern Ireland and the UK around facing domestic terrorism. Does the UK's approach to NCND equate to what other jurisdictions, particularly western liberal democracies, would be doing, or is it tighter or looser compared with, for example, the USA or Canada?

Jon Boucher: The Five Eyes—the UK, US, Canada, Australia and New Zealand—have more or less a similar approach to NCND. In the report I describe the origins of NCND, which are with a story about the Glomar Explorer, a CIA spy ship that sought to salvage a lost Russian submarine. The Nixon Administration at the time, when they were challenged by the media, which believed that this was a spy ship, used the term, "We will neither confirm nor deny." That is the first time we can find a trace of the term. Subsequently, the Carter Administration changed the position on that. That is an example of how things can change in the face of overwhelming evidence and information.

My view and judgment—and time will tell as to how this plays out with legal challenge—is that the approach in Northern Ireland is one that I don't recognise from my experiences in England, Wales and other jurisdictions, in its iron-clad position around NCND. I understand where it comes from, but I think it is now time to ask questions about the correctness of it. That is what I have sought to do through the report. The consequences of it have meant that investigations have not occurred that probably should have. Even when the very nature of the allegations put to John Stevens that Agent Stakeknife had committed an offence of perjury were looked at to be investigated, the comment was, "Well, this is national security. We can't investigate it." Again, that is because of this approach where with anything to do with agents or suspected agents there is a ring of steel.

That relies on two things. First, that the security forces have acted properly, and secondly, that the agents have complied with rule of law and not committed serious offences. We know from the Kenova cases that that was not necessarily the case in every instance. That is why we need to review how NCND was applied during the troubles.

- Q32 Stephen Farry:** That leads me on to one of the questions that I wanted to ask around the approach adopted by the security forces, whereby the



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protection of certain agents—either perceived or in reality—took precedence over the dissemination of life-saving information. To what extent was that a formal policy or a culture at the time when Stakeknife was operating?

Jon Boucher: We never found anything, if you like. Bear in mind that it was an incredibly difficult environment, and you had different people in the different agencies at different times. This culture was something that emerged almost as a way of doing business, and I describe that in the report. There was not, for want of a better description, a co-ordinating hand sitting above all these different agencies saying, "This is how we are going to do things." There was an absence of a legal framework. A number of the security forces—we documented this during our investigations—asked for but did not get a legal framework to provide helpful and up-to-date guidance about how they could operate within a legislative framework to deal with agents. That was not provided. Effectively, you had people at the front end who were exposed to risk and almost making it up as they went along. There was not the oversight that we see in today's security forces, or in today's society generally. There was not that rigour, so there was no legal framework, no governance and no oversight. You were left with these girls and guys in the security forces doing their very best, and on occasions some of them did not behave as we would have wanted them to behave.

Q33 **Stephen Farry:** Are you familiar with the retired police officers, largely from the RUC special branch, who tell that they had approached No. 10 in relation to that, and at the time Margaret Thatcher declined their request to codify this?

Jon Boucher: We spoke to the officer who did that when Margaret Thatcher made a morale-boosting visit to Northern Ireland to speak to the security forces. Mrs Thatcher did actually probe as to what could be done about this, and effectively nothing was done. Also, Sir Iain mentioned John Chilcot, who has sadly passed away now. At one stage, he talked to us about how he led a piece of work to seek a legal framework, but again it was decided in Government—I think because of the timeliness of what was then hoped would be a peace agreement—that that work never actually progressed to any legal framework. The legal framework that ultimately arrived was not until 2000 with RIPA—the Regulation of Investigatory Powers Act—which was the first time we saw any statutory basis as to how to deal with agents.

Q34 **Stephen Farry:** How rigorous do you think RIPA is today? Would it have prevented the situation that arose with Stakeknife? Is RIPA an absolute shield, or is it better but not entirely?

Jon Boucher: There's not just RIPA now—various other pieces of legislation have come in to support it. RIPA has been amended and improved. Also, there has been the modernisation of policing from a police perspective, and with regards to an authorisation process and an oversight process, there is now ICRIR. You have judge-led oversight bodies that



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come and look at authorisations that are done with regards to agents. How we deal generally with intrusive surveillance to make sure that—

Q35 Stephen Farry: I am conscious of a case working its way through the Investigatory Powers Tribunal at the moment in that respect.

Jon Boucher: There is indeed at the moment in Northern Ireland. But what I am saying is that with those processes and the IPT, which is a statutory body set up so that complaints can be made where citizens have concerns about the use of intrusive surveillance by state bodies, you have all these safeguards that you never had before. I would say that it almost entirely makes the behaviours of agents that we saw during the troubles, in what was a uniquely difficult time, almost impossible. You can never ever cater for what a human being will do, even with all those safeguards in place. If anybody did do something of a serious criminal nature as a CHIS—a covert human intelligence source—as defined by the RIPA legislation, that would quickly be identified and addressed, and they would be treated and investigated as a criminal.

Q36 Stephen Farry: I have two final questions on Stakeknife in particular. First, what was the understanding of the purpose under which Stakeknife was recruited? Was it to be of assistance in criminal investigations or was it for other purposes? Was that ever understood at the time or was it left ambiguous?

Secondly, we had a lot of players in the intelligence sphere at the time, between the Force Research Unit, RUC special branch, and perhaps to a lesser extent at that time, MI5. How does the running of agents work when you have those different agencies at play, sometimes maybe reinforcing each other and sometimes maybe contradicting each other?

Jon Boucher: On the first question, on Stakeknife and, if you like, the background with regard to his recruitment, they are issues that we are seeking to address in the final report through Sir Iain. That has to go through due process with the Cabinet Office, with the permissions that we are seeking, to get that agreed.

With regard to the operating practices, there are obviously two periods that are relevant. There is the period during the troubles, and at different times there were different operating processes between the military, particularly the Force Research Unit, special branch and MI5.

I would say that, at the time, notwithstanding the best efforts of many of the people involved with regard to the security forces, there were times—we have spoken to those individuals at length—where things just did not work because of personalities or the lack of a framework, and that was one of the major contributing factors to the situation that we had with the agent Stakeknife.

Today, I am confident that we have really robust processes where there is proper deconfliction. There is a transparency of sharing of intelligence with regard to national security threats in that particular arena that has come from previous experiences and learning best practice. I would say they are

very robust indeed, and would prevent, again, some of the elements of what we have seen and the themes that were identified in the Stakeknife report. I am assured that we wouldn't see those sorts of lack of co-operation in sharing intelligence that we saw on occasions during the conflict. That is why, I think, there is a justification to look at the period of the troubles with regard to NCND as a specific and separate case.

Q37 **Stephen Farry:** Jon, would that ever get to the stage of one agency saying, "My agent is more important than your agent"?

Jon Boucher: I'm sorry, but could you say that again?

Stephen Farry: Would it ever get to the situation where a certain agency would say, "The agent we're running is more important than the agent that your group is running"?

Jon Boucher: Today, no; I don't think that would happen. I think there are due processes to make sure with regard to what I would describe as, "The possession of our agent and the utility and acuity of our agent is more important than yours, therefore we are going to take these actions." There is a very grown-up process to deal with those issues.

With regard to the period during the troubles, and this will be described in the final report, there were occasions where one agency would have an agent and their approach and management of that agent would have a primary regard to that agent's safety over and above other agents that were with other agencies. So there was something there with regard to a failure of individuals in certain intelligence agencies to share information because it wasn't about their agents and it wasn't going to benefit their agents or their agency. A lot of that was driven by personalities.

You must remember the position taken was that the continuance of the intelligence from that agent was the overriding priority. To be able to secure the life of that agent—their agent—over and above everything else took precedence, so that they could continue receiving information from that agent. So nobody was looking at this holistically—at the benefits and consequences of having that agent over a protracted period of time. That oversight wasn't in place, and it wasn't in place because it was the most chaotic time. We have moved on remarkably from those times, but there were occasions where without doubt, people took decisions within certain intelligence agencies for the benefit of that particular intelligence unit and their agent, over and above other agents who would sit with other agencies.

Q38 **Stephen Farry:** And the interests of the criminal justice system presumably, as well.

Jon Boucher: At times, because of the threat from particularly the Provisional IRA—I described this in the report—the security forces on occasions were just focused on trying to protect society. The rule of law was secondary. It was so difficult and so dangerous for them. You couldn't investigate these cases properly because of the threat to the security forces—because one half of the community and one half of society couldn't

be seen to be speaking to the security forces. It wasn't safe even to try to get forensic information at a scene because of the intimidation and the threats to those agencies.

Because of the very nature of how intelligence was collected, there might have been very important information about a really iconic attack, but to protect an agent who had given that information, that intelligence would not be passed to the senior investigating officer and it would not be passed to the detectives. The fear was that if the detectives acted on it, by this mosaic approach, the IRA and the internal security unit, who were extremely skilled in identifying and locating agents—this is the heart of Operation Kenova—would find that agent and murder them. This focus on protecting the agent at all costs did have consequences, but looking at it, you can understand how that position came to be. I don't agree with it, but I can understand how it came to be.

Stephen Farry: Thank you.

- Q39 **Carla Lockhart:** Thank you to the panel for your endurance with this. I have just a few questions on the back of what has been said; I don't want to rehearse lots of what has been said. I suppose one of the big things is the cost of the report and the fact that there are no prosecutions. I am keen to understand some things around the PPS; I suppose this is for you, Jon. We talk about more resources and all of that, but do you believe that the PPS could have discharged their duties in assessing the Kenova files in a more timely fashion? I think you gave the example of 2022 and they weren't forthcoming until a lot later. Do you feel that there could have been more effort in that regard? During the investigation, did you have any concerns about impartiality within the PPS, and do you feel that there is a double standard in how the PPS addresses contemporary and historic terrorism-related files? I think you gave the example of John Caldwell. Do you feel that has had a big bearing on the contents of the report?

Jon Boucher: I will try to take those in order. Around impartiality, from everything I know, I am entirely satisfied that the Public Prosecution Service for Northern Ireland are impartial with regard to how they approach these cases. I think there is—I described this briefly—a tiredness of legacy among lawyers; it is almost an industry with regard to appeal. You may be well aware, Carla, that until very recently, we had to go through old-style committals in Northern Ireland prosecution cases to test the evidence at an early stage at the magistrates court. Whatever the decision in a legacy case, one constituency or the other would appeal that. For the lawyers, it is almost a marathon for every single case that they face around legacy.

If we do get a decision to prosecute a legacy investigation—we did some casework—they take five to seven years to come to a conclusion, whether that is a successful conclusion or not. There is something about legacy cases being the poor relation of cases in the Public Prosecution Service caseload, but I don't necessarily blame them for that. I think that comes from other factors over many years. We talk about investment, but I think



it is also about structures and the approach to those cases. In the report, I talk about how advantageous I think it would be to have a unit dedicated to legacy cases because of the nuances of the legal issues that are consistently in legacy cases.

On the timing issue—again, I have spoken to this—that is simply because these cases were looked at by lawyers who had significant other casework to do at the time. Because of the seriousness of legacy cases to me, I would have expected dedicated lawyers looking only at these cases, who would know them forensically and would be speaking to my case officers and discussing the strengths and weaknesses of certain aspects of those files, and speaking to counsel about issues such as hearsay evidence, and asking, “How can we address this? How we can be audacious in what we are going to do around these cases?”. That simply did not happen. But again, I know that Stephen Herron, for whom I have a huge amount of respect, would say that we simply did not have the capacity to do any of that.

- Q40 Carla Lockhart:** Was there ever pushback on that, in terms of the PPS recognising that they obviously did not have the resources? Although resources are one thing, it feels like a lot of it was delay—perhaps more so than resources. Was there pushback with you about more resources and a more targeted approach within the PPS? Did they recognise, as you say, the seriousness of it?

Jon Boucher: I think they were as frustrated as us. I will say that I will not agree with Stephen on the nature of the compelling evidence that we gathered, on which Sir Iain commented publicly—again, I would hope that we will be able to address this in the final report—and on some of the detail of the information as admissible evidence that we managed to achieve. Of all the files that we submitted, taking into account the challenges, including the evidential challenges and the witness evidence challenges in Northern Ireland, I expected there to be three or four prosecutions for certain matters.

I talk in the report about the perjury cases, and, if you look at that section with care, I expected there to be a prosecution there. There was a particular stance taken legally on a technical point with regard to the perjury. With all those things, the consequence is that families see that everything is against them: the timing is taking too long and the decisions are not right. What I will say on independence—I need to underscore this—is that the mindset of the individuals and lawyers in the PPS, was, I am absolutely certain, entirely independent with regard to the process.

As I said to Stephen recently, I’ve been reviewed—as in Kenova—by a number of independent bodies. One of the recommendations I have is that the way the PPS has dealt with the legacy cases, such as the Kenova cases—in fact, review Kenova, and have a look at how we have dealt with these cases—should be independently examined. I think there is a concern about that. Even though we have been reviewed by the National Police Chiefs’ Council homicide working group and reviewed by a barrister with regard to our approach to the investigations and our compliance with



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article 2 of the ECHR, I am sure a review of Kenova and how we interacted with the PPS would identify learning. I welcome that, because that helps us with this continuous learning that we should be on.

I think it would help the PPS to understand that maybe there would have been other ways—noting that investment is a key issue and the number of lawyers that they need—to do these cases, which maybe would have presented a different outcome. So I would just welcome that sort of independent examination of how the cases were managed.

Q41 Carla Lockhart: That is really helpful and probably something we can press for as well. There was an important summary paragraph within the document, which said: "I continue to emphasise that, in the context of our core Kenova investigations, PIRA's actions were the most shameful and evil I have encountered. No doubt others will seek to emphasise the failures of the security forces and the state. However, it was the PIRA leadership that commissioned and sanctioned the activities that its ISU carried out. It was PIRA that committed the brutal acts of torture and murder, each evil act being the epitome of cowardice. Senior republicans who condoned, and still condone, these activities are reprehensible. The republican leadership should acknowledge and accept these crimes were wrong and apologise to the victims and the families of those tortured and murdered."

That is such a powerful paragraph because it is just a reminder that it was the brutality of the terrorists that is really at the core of all this. Do you believe that the blanket statement by the First Minister that she is sorry for all loss of life during the troubles goes far enough to meet the recommendation in the interim report? Should the republican leadership acknowledge and accept that these crimes were wrong and apologise to the families of those tortured and murdered? Do you really feel it went far enough?

Jon Butcher: First, I mentioned before that I pored over every word of this report and I stand by everything I wrote that you read out. What the IRA and the internal security unit did to those families, even with the context of the wickedness of the IRA, took evil acts to a new level. I have mentioned this before: they also, outside of the actions they took against people they claimed were informants—a number of whom were not informants and they knew that—took action against family members, people with significant learning difficulties and children who were associated with those victims. I know and I have had personal testimony around a number of those cases, and those families remain, obviously, incredibly traumatised but also still intimidated by all that. I very much endorse, again, what I wrote in the report.

With regard to the apology from the First Minister, I was pleased that the First Minister came out that day and spoke publicly about the Kenova report. Judith, in this session, has articulated far better than I could the importance of those apologies being very much victim-focused and agreed with victims as to what victims want to hear. Both with regard to the republican movement and the UK Government, I would endorse what



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Judith said around how those apologies should be done. They should be done once, they should be done properly, and they should be done with the support and involvement of those victims. That is something that I think we are yet to see, but I was very pleased that the First Minister took the step to come out and speak publicly on the day.

- Q42 **Carla Lockhart:** Judith, do you want to pick up on that? Do you feel it went far enough? You are in continuing contact with victims. It was not victim-centred and, certainly, it was very bland. I am keen to get your views.

Judith Thompson: As Jon has said, the report asked for apologies from both the British Government and the leadership of the IRA. No, the statement that was made was maybe a look in the right direction, but it would not meet the criteria for an apology as it would be accepted in any kind of international law or in previous Northern Ireland practice.

You have to be specific about who you are apologising to and you need to be specific about what you are apologising for—it has to be unequivocal. It has to include all aspects of the activity you are apologising for. It needs to be delivered in a way that is agreed with, and in fact led by, the wishes, needs and rights of those who were harmed. That process has not yet started in the way it is envisaged in this report, and in the way it would be understood as an apology that properly marks full recognition and responsibility for the harm done in all aspects.

You then need follow-through, don't you? Does that then bring us to a place where there is a future of fuller recognition, honesty and openness about the past on all parts? A lot of things have been talked about here that can be built on for education and communities and how we look back in the future. It is a complex process. No, I do not think that what was given would constitute an apology in those terms, but it is good that the word and the notion was present.

- Q43 **Carla Lockhart:** But it was simply a nod; it did not go far enough, and I accept that. In relation to that continual glorification—I think you touched on it there, and you will know them by their actions—what impact does that have on victims? I believe we need to go further as a Government to address the continual glorification of terrorism.

Judith Thompson: When I talked about follow-through there, that is, again, on all parts. Where apologies are owed by the British Government, as outlined in the report, they need to account for not only the actions or failure to act that took place at the time, but the continued failures of the justice system and Government to address the needs of victims and survivors. That would be a full scope for an apology, and is absolutely the same in terms of the IRA needing to deal with the issues around the torture and murder of people they believed to be informers, and the stigmatisation and intimidation of their families to this day. Those things need to be dealt with in the round and going forward.

When that has happened, you would hope that the glorification of any party to conflict should not happen in the same way. If you have an



honest look backwards at what happened, it is not glorious for any party. We need to move forward in a way that harm is seen as harm, and narratives from the past, from whatever quarter, are not glorified in a way that justifies future violence. That is incredibly important and the heart of where you want to get to.

Q44 Carla Lockhart: That is the fear—justifying in young people’s minds that it is okay. Thank you for that.

I will move on to the security forces. So many security forces who put on the uniform did a superb job. They were a human shield between good and evil. I think we always need to be mindful that more than 90% of the murders throughout the troubles were by terrorists. There is always that desire to rewrite history—nearly blot it out—to say that it was a justified war that these terrorists were fighting. This is probably back to you, Jon, but do you believe that the criticisms of the security forces should be viewed in the context of the unprecedented pressure that they were under and of the brutality of the terrorist campaign at the time? Do you feel that that should always underpin the security forces?

Jon Butcher: What I tried to do throughout the report, and I was very conscious of it, was to make sure that we did not rewrite history. You read a passage earlier that was quite dramatic language, and I wrote every word very carefully after what I have seen that the IRA did. I have constantly endorsed the response from the security forces during the troubles in everything I have seen. I spend a lot of time now as a chief constable seeing people who have been impacted by the troubles from a security forces perspective and, as has probably come across in this session, across the victim profile and the landscape of different victims.

I think that the security forces did an incredible job. No agency across the world and no set of security forces across the Five Eyes—the US, Canada, Australia, New Zealand and the UK, the traditional partners—could have dealt with this. At times, the security forces retracted and retreated just to try to protect society, because of what they were facing. They could not investigate these crimes properly at the time. The fact that they had so many prosecutions and convictions, frankly, was remarkable. But I think they would concede—I have spoken to a number of senior investigating officers, including two very retired officers last night about a couple of issues that I am trying to help them with—that where we got things wrong, we need to say we got them wrong. I think that is an emerging narrative here.

Today, in policing, constantly—you will be very alive to it in this building—we recognise the fact that we make mistakes and that, where we make mistakes, there will be independent examinations, public statements and apologies. If you imagine that today in contemporary policing, then magnify that by 100 for what the security forces faced during the troubles, of course they made mistakes. If we do not accept that, on occasion, things happen, such as has been demonstrated in this report, I think that diminishes and undermines the sacrifices and hard work of everyone.



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Sometimes, they were simply still doing their best, but they did not have the structures and the guidance to help them.

On other occasions—let us be clear—people in the security forces did things that I would never accept, and I joined the police in 1983. It was rare, but where it happened, we do not hide it; we acknowledge it, including to the families, and we demonstrate that that could not happen again. That is one of the things that we tried to do through the Kenova report.

- Q45 **Carla Lockhart:** Thank you. Very finally, in recent days, I have had reason to speak with the family of Harry Breen. Obviously, you will know of that murder—that Harry and Bob were killed—and of the brutality of it. His family have spoken about the lasting impact on Harry's wife and on the family. When the Smithwick report was published, they felt that there was some hope, because there was a fanfare around it and a significant spotlight on it, but it has gone nowhere and nothing has happened with it. I am keen to get your views on that and on how we continue to support both those families in that regard, in particular on the collusion piece, where we go with it and how we shine a spotlight on and focus on the Irish Government providing information.

Jon Butcher: First, the murders of Mr Buchanan and Mr Breen are iconic cases. It feels to me that no life is more important than any other, but every time we start talking about cases—Jim Shannon mentioned a couple earlier—my heart goes out to every single family involved. I read Judge Smithwick's report, and I met Judge Smithwick. To a certain extent, I think he hoped that that report and the work that he had done might give some comfort to the families. I know that the commission starts its work in May, which is only a few days away. The ideal position is that there would be a joint position on legacy between the Irish Government, the British Government and the Northern Ireland Executive. There would be an agreement with all the primary victims' groups around such a framework. That is not where we are; it is where I wish we were. I have not given up hope on that.

I absolutely support—and I will ensure that the PSNI co-operates on this—unfettered access to every bit of information, with no redactions, and all material that we hold that the commission wants from us. I am hoping that, with the Smithwick report, the Kenova interim report and the commission, it is a journey and that, hopefully, we get to the right place very quickly. Victims are of a certain vintage now, and we have lost so many victims during Kenova. We tried to give them the truth before we knew that they were going to leave us and pass away. If we do not get this right now, it will be too late. It really will be too late.

I know that there are lots of concerns about the commission. My view is that it is the only thing we have, and we should co-operate with Sir Declan. We certainly will—I will, and the PSNI will. Recent inquests have stopped because of this sword of Damocles—sword of timing. Inquests have had to finish at the end of April. If there is any information in relation to inquests that have not finished, we will give everything that we've got



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to the commission. I hope that families will go to the commission and get that information through Sir Declan. We are not where we need to be at the moment—I accept that.

- Q46 Claire Hanna:** We are not where we need to be. I do not mind admitting that I think there is more for Dublin to do as well, but the way to do that is an agreed process, given the concerns and queries that I and colleagues are forwarding and the case that the Irish Government are taking to Strasbourg, which I think is the right thing to do. The approach is to move forward on these issues like disclosure. We saw last week that the IRA would not co-operate on Kingsmill. The culture of not co-operating still exists, and that is why there is more to explore.

I want to come back to recommendations 9 and 10, on the apologies. I am still old-fashioned enough to believe in prosecutions for psychopathic crime, but I think you are right to say that apologies can really be cathartic. The recommendations were very good and very strong. For what it's worth, although I am glad that there was an acknowledgment, I thought that the Sinn Féin vice-president's remarks were inadequate, insufficient and non-specific. But they were a lot better than what Gerry Adams said in an article just a couple of weeks before publication, where he casually referred to the fact that the "killing and secret burial of people has long been a brutal feature of war," and went on to quote from a UN report that documents thousands of cases from 82 states. That sounds to me a lot like justifying the horrific crime of disappearance and explaining it away, rather than anything like acknowledging the hurt and apologising.

Of course, on recommendation 9, for the UK Government, the Prime Minister declined to give an apology when my colleague Colum Eastwood MP asked him at PMQs last week, on the basis that this is an interim report. Will the final report make the same suggestion for an apology? I suppose it is not for you to decide. You have been very open and clear that you believe an apology is warranted from both the republican movement and the British Government. Will that follow through in the final report?

Sir Iain Livingstone: Absolutely. A key part of the final report will be an update on the recommendations, the actions taken or any further actions that we think are necessary. As I said earlier, that is why I have had relatively early engagement with the Cabinet Office: to continue to pursue the recommendations and to ensure, from our perspective, that they are implemented. As Jon has alluded to today, they have been very carefully considered. Judith has made a number of incredibly important points both today and to us privately about steps that can be made to give life to these key recommendations. That will absolutely be a part of the final report, and there will be an update on action taken.

Claire Hanna: Thank you for the work; it is very important. It is very clear that they were some of the most brutal crimes, and they were carried out against literally the most vulnerable people—children, adults with learning difficulties, and small children who had their mother taken



from them. I am sure that it was a very harrowing piece of work for you all to work on. It was important, and people are very grateful for it.

- Q47 **Chair:** Thank you. Can I go back to Stakeknife? I know that the interim report has come to the conclusion that their continued operation probably resulted in more lives being lost than being saved. Can I explore the assertions and findings relating to the inherently implausible nature of the claims being made that more lives were being saved by them, and whether the security services would have known at the time that overblown claims were being made? Did you uncover any evidence that they ever tried to challenge those claims?

Jon Boucher: With regard to the commentary about the value of Agent Stakeknife and how many lives were actually saved, having had the opportunity to look at the material with regard to his reporting, and being generous to a certain extent in the lives that we think he saved or that could be attributed to him being saved, they were nowhere near the hundreds that have been mentioned anecdotally by people in the media and people associated with the security forces who were not close to Agent Stakeknife. What I have found in the journey I have been on with Kenova—I talk about the media in the report, and the media have a very important role to play in Northern Ireland; there has been some outstanding investigative journalism in troubles-related cases—is that there is an irresponsible nature in the media in reporting things that are factually not true.

Judith mentioned earlier that it is really difficult for families to hear stuff and then find out that it is not true. A lot of that happens in the media, and a lot of it happens on social media. I have had families contacted by accounts that are pretty anonymous on social media saying, “Such and such killed your mother. Such and such killed your father.” I have to go to them and show them that that is not accurate. But if there was not a Kenova, I do not know where the families who get that information fed to them would go. They are left with this extraordinarily vile misinformation about what happened to their loved ones.

With regard to the calculation of the value of Stakeknife, I understand why, but there has been a chorus of defensiveness in the security forces around Stakeknife and other elements of the security forces’ actions during the troubles, whether it be Bloody Sunday or Ballymurphy, where there has been a narrative that, when the layers are removed and the facts are examined, has proved to be entirely wrong. It would benefit all of us to stop that propaganda and just be candid and transparent about what did happen in these cases, and certainly not to say things that are not true or give misinformation. That does not rewrite history.

On Carla’s point and the wording that she provided around my description of the IRA, the IRA committed these murders. The IRA commissioned the internal security unit. The IRA intimidated families in ways that, when they have been described to me, even with my background, have reset my frame for what awful things one human being will do to another. In terms of the security forces, since the Good Friday agreement, we have taken a



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position of not accepting things that we got wrong, or not accepting an examination of things that we may have got wrong, and I think that, as a democracy, it sets us apart when we do do that.

I pick on the point around the lack of acknowledgment or specific apology from the republican movement in terms of the detail of these cases. They could show a different face by actually doing that sort of apology, and I would certainly expect the British Government at least—hopefully, at the time of the final report from Sir Iain—to give the sort of apology that I think people in the security forces and the British Government know is probably owed to these families. However, we will obviously have to wait for that.

Chair: Thank you very much. It has been a long session, but quite rightly so, because there is so much ground to cover and there are so many difficult issues and twists and turns in this. Can I put on record the Committee's thanks to all of you and to everybody involved in Kenova for work that is thorough, vital and an important part of a process by which we do not forget what happened but understand it better and give justice, explanation or information to all those who remain deeply affected by the consequences of this aspect of the troubles?