



Northern Ireland Affairs Committee

Oral evidence: The Government's new approach to addressing the legacy of the past in Northern Ireland, HC 586

Wednesday 19 March 2025

Ordered by the House of Commons to be published on 19 March 2025.

[Watch the meeting](#)

Members present: Tonia Antoniazzi (Chair); Chris Bloore; Claire Hanna; Simon Hoare; Leigh Ingham; Adam Jogee; Katrina Murray; Dr Al Pinkerton; Gavin Robinson; David Smith.

Questions 28 - 71

Witnesses

I: Alan Brecknell, Advocacy Support Worker, Pat Finucane Centre; Kenny Donaldson, Director, South East Fermanagh Foundation; Dr Sandra Peake, Chief Executive Officer, WAVE Trauma Centre.

Written evidence from witnesses:

- Alan Brecknell, Advocacy Support Worker, Pat Finucane Centre

[\[LPNI0008 \]](#)

- Kenny Donaldson, Director, South-East Fermanagh Foundation

[\[LPNI0030\]](#)



Examination of witnesses

Witnesses: Alan Brecknell, Kenny Donaldson and Dr Sandra Peake.

Q28 **Chair:** Welcome to our evidence session on the Government's new approach to addressing the legacy of the past in Northern Ireland. Thank you to our witnesses for coming along today. Alan, Sandra and Kenny, can you say who you are and the organisation you represent?

Alan Brecknell: I am Alan Brecknell. I am an advocacy support worker with the Pat Finucane Centre.

Dr Peake: I am Sandra Peake, CEO of WAVE Trauma Centre.

Kenny Donaldson: I am Kenny Donaldson, director of South East Fermanagh Foundation.

Q29 **Chair:** Thank you for coming. I am going to start the questions. What is your view on the Government's approach to legacy thus far, Alan?

Alan Brecknell: That is quite a loaded question. Since the new Labour Government took power, we have seen a change in how things are being done. There is definitely a greater level of engagement than there was with the previous Government. There are still huge issues with the legacy Act, and things that have been suggested that can be fixed and whatever, but from our point of view and from the point of view of the families we work with, there is still a long way to go in relation to dealing with legacy.

From our point of view, while it is encouraging to see some of the changes that are being proposed, there always seems to be a time delay in all these things. We need to bear in mind the age profile of most of the people we are dealing with. I lost my father in 1975 during the period of the troubles—the conflict. My mother is 92. That is the age profile of some of the people we are dealing with here. Thankfully, she is still in good health and knows what is going on—she asks me on a daily basis about my work and what I am doing—but we need to start to think about how to speed things up. We cannot continually do things at this slow, slow pace. There are ways to do things more quickly.

We hear the Secretary of State say, "We need primary legislation and we can only get that through Parliament whenever we can find a time slot," and all this. To people who this affects on a day and daily basis, that is—excuse my language—gobbledegook. They just think, "Why can this not be sorted out?"

Chair: Thank you. Sandra?

Dr Peake: The process to date is welcome but deeply frustrating. In 2020, the last Government departed from the Stormont House agreement and the process that was suggested. The period in between has been very damaging for victims and survivors. We have seen a lot of



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people coming back into service provision, or indeed coming for the first time. If I look at the proportion of people coming through, 35% of the referred case load is from the 1970s.

We cannot underestimate how damaging the process has been to date. That is why so many people are looking at this as a new horizon, which is why it needs to be right. As Alan said, people are getting older, but that does not diminish their want and right to have the rightful thing done and to have the rightful process in place. That is so important. Every day we see people coming through services. Fundamentally, they need to know that their loved one mattered, what happened to them mattered, and there is a process that will meet their needs.

That is why we now need to see sizeable change coming—it needs to be sizeable change. The legacy Act should be to be looked at in its entirety. Rather than having sections picked out—“We’ll look at this section, and we’ll look at that”—it needs to be considered in a holistic way. People deserve a process that meets their needs, but they deserve for that to happen now, and not for us to be looking at that in five or 10 years’ time. That is fundamentally very important.

Chair: Thank you, Sandra. Kenny?

Kenny Donaldson: Like the other two speakers, I do have to remark that access to the Secretary of State and NIO officials has perhaps improved somewhat over recent months. But whenever it comes down to it, we have to realise the three core issues that are preventing universal agreement around legacy. Those issues are national security, non-criminal misconduct and differences in opinion around that particular issue and how it should be addressed, and the Irish state not being at the table. Those are the three issues that have to be weaved through if there is going to be a resolution that will have maximum support across the sector.

It would be wrong to suggest Stormont House being brought back on to the table tomorrow would be the answer, because it was not—there is a reason why it did not reach the point of being enacted. People need to be very clear in diagnosing the problem if they are going to find the right solution.

From our perspective, we also say that it is critical that a resolution is made on legacy at this point in time, because it infects the present. The level of glorification of violence within our society is absolutely systemic, and it is allowing would-be terrorists of today and the future. It is sending a very dangerous message to them. This has got to be resolved once and for all.

We do want to see a more robust UK Government stance around the issue of the Irish. It cannot purely be marginalised as one state. There are two states who need to be brought to the table on this.



Chair: Thank you, Kenny.

Q30 **Gavin Robinson:** Good morning, folks. Kenny, I will start with you, just on the basis of what you have said about engagement having increased in the last number of weeks and months. The Secretary of State indicated on 4 December that he was going to engage in a programme of consultation. Would you suggest that the engagement you have had is consultation? Are you being asked regularly, routinely or at all about individual proposals that the Government want to bring forward on legacy? More particularly, given that you have raised three issues—national security, non-criminal misconduct and the role of the Irish Government, which always seems absent from these discussions—are you being asked about those as part of the Government’s consultation?

Kenny Donaldson: It is a very good question. It is not exactly an even playing field of a conversation, if I can put it like that. You are being reported to, in terms of, “This is a direction of travel that is being considered. What are your thoughts around this?” Often, our core issues are not factored in.

I go back to the point that this is not going to be resolved unless there is an absolute correct understanding of what the problem is, and there is not; it does not seem to be there. People need to understand that give is needed right across the board to get this over the line. There is a reason why legacy has not been resolved in the 11 years since Stormont House in 2014.

People need to lose some arrogance, to be straight with you. They need to stop being tied to a particular set of proposals and show a little bit of humility and say, “Well actually, maybe we need to go back to the drawing board on this. How can we ensure there is maximum support for this?” Surely that should be the objective—not who has the bragging rights and whose set of measures was supported, but what can attain the best possible resolutions for victims and survivors.

Q31 **Gavin Robinson:** Is it fair to categorise that response as saying that you are not being consulted on the Government’s proposals; you are just being asked, perhaps more routinely, what your view of the world is?

Kenny Donaldson: There is certainly a little bit of that. In the last engagement that we had with a civil servant, there was a little bit more meat on the bone. For us and for our borderland constituency, the issue of the Irish state is critical. We are talking 16% to 17% of the murders and killings of the troubles that connect to that frontier. There is an absence of response, if I can put it like that, when you raise it with the NIO.

It is more or less saying that we are having some discussions, but they are not at a particularly advanced level and there is a sounding-out going on, but that is not good enough. What I am saying is you will not get victims and survivors to buy into any new suite of proposals unless they



can see the beginning, the middle and the end. Too often, people have been manipulated and lied to and have got the raw end of the deal. This time around it needs to be locked down.

Q32 Gavin Robinson: Sandra, how would you characterise the NIO's efforts at consultation over the last four months?

Dr Peake: It is greater, and yet, in terms of the direction of travel and how the Government want to proceed, it maybe is not as clear. As Kenny said, there is greater meat on the bones. You are finding out some information about changes that will be made, but in among that, there have been caveats around legislative frameworks and getting it back in and the changes that can come.

We are concerned. Certainly, there are issues around inquests and civil cases, but really where most people end up coming through is the Independent Commission for Reconciliation and Information Recovery. That is one of the most difficult issues. Yes, it has got better and, yes, there has been more engagement, but it needs to be fuller still and we need to see more sizeable information in terms of the full direction and the changes that are going to be made.

Many people were very hopeful when the Government came in, because there was the concept of repeal and replace, but it was to repeal and replace parts of it but not all of it. I go back to my earlier point that we need to look at the legacy Act in its fullest sense—all of it, not just aspects of it.

Q33 Gavin Robinson: More particularly, can I ask you to reflect on what your members, or constituent families and victims, who believed in repeal and replace would have felt when they heard that there will be a consultation but that ICRIR is being retained? Did that jar with them?

Dr Peake: It did. Many of them had really hoped that a new process would come, and I suppose they became disillusioned in terms of what that actually meant in practice. As Alan has said, people are getting older. A small number of people have gone into the system. The jury is out on the benefit of that, because we can see that maybe even that has a number of issues, and it probably is not as good as we would want to see it for them.

Yes, people felt that something greater would come, and that is what they wanted to see. If you sat around the table like this at our organisation, people would have different views in terms of what they wanted to see happen, but, fundamentally, they want to see a process that works and something that delivers fully for them.

Q34 Gavin Robinson: Mr Brecknell, I do not think we have met before, but you have engaged with the Committee during your visit. How would you characterise the consultation over the last number of months?



Alan Brecknell: As Kenny and Sandra have already said, it has progressed. It is on a different footing than it had been in the past. But I still think that there are issues in relation to what we are being told or what is being suggested as the way forward. As both Kenny and Sandra have suggested—and as you seem to be suggesting yourself—it is more like, “We’re going to come and tell you what we think we should be doing with this Act to make it a better Act or to change it,” as opposed to, “What do you think are the best things for repealing this Act, or changing it or whatever?”

As Sandra has said, a lot of people that we would engage with were optimistic about the terminology “repeal and replace”. There were so many issues with the legacy Act, in relation to its genesis—where it came from—what it was meant to do, why it was put in place in the first place, and how it was, in my opinion, steamrolled through the House of Commons during the last mandate.

While things are better, I am not sure I would class what is currently happening as a consultation. That said, we are being asked, “What do you think about this?” Is that a consultation? I am not so sure, to be honest. I would definitely go back to the notion that, if there is going to be some level of consultation, it needs to be done quickly. It needs to be focused, it needs to be sharp, and it needs to get off the ground very quickly.

Just to go back to one of the points that Kenny mentioned in relation to the involvement of the Irish Government, we meet regularly with the Department of Foreign Affairs, and every time we meet them, we make the point that they need to be engaged in a more meaningful way. I know there were issues and concerns about the Stormont House agreement, but I think it is a good starting point to put in place some sort of process that will work.

As part of the Stormont House agreement, the historical investigations unit was to sit in the north. We said to every Irish official that we met that they needed to have a similar body in the south. Even from a practical point of view, if you have a body in the north that is going to ask questions of a body in the south, you need to have someone to answer those questions. Why not set it up at that time and have the same level of investigative powers? We thought that was the right thing to do under Stormont House. We think it is still the right thing to do.

Q35 **Gavin Robinson:** We took evidence from CAJ a couple of weeks ago. They published a report in February castigating the Irish Government for never having created any legacy mechanism whatsoever. Is that a view you share?

Alan Brecknell: Yes, without a doubt. Justice for the Forgotten is part of the Pat Finucane Centre. It was set up initially to campaign on behalf of the Dublin and Monaghan families. They have issues that need to be



addressed by the Irish state as well as by the British state. If we are going to do this, we should do it properly and do it across the board.

Q36 **Katrina Murray:** Thank you all for coming in today. I want to look at the subject of inquests. One of the things that has kept coming through in the written evidence, the evidence presented orally to the Committee and that we have picked up on visits is that inquests are exceptionally important to people, and rightly so.

Can I start with you, Alan? In the centre's written evidence, you say you are unclear why reinstating inquests cannot be processed through the remedial order. Why is that the case? Could you expand on that?

Alan Brecknell: I am not an expert on how Parliament works, but it was my understanding from the court judgment that that section of the judgment found that it was unlawful, and therefore that inquests could be replaced under a remedial order.

However it is done, it needs to be done, and it needs to be done quickly. People will say that inquests were only working for a small number of people. That is correct. No one disputes that fact. But to take something away from someone, especially when you have promised people that you are going to go through this process, and the Attorney General has decided that there is a case to answer here—there is something that needs to be looked at in more depth. For that to be pulled from under you, with some arbitrary date of 1 May 2024, is soul-destroying for the individuals, because they have fought long and hard to get their inquests.

I suppose the other point is that we have seen how inquests have worked for some people. I am not suggesting that they will work for everyone, but they will work for some people, and they have worked for some people. A certain amount has been about historical clarification: "This has happened. This was the story that went out at the time. However, whenever we look at it 40 years later, there's a completely different story there."

We need to remember that that was the important part of this. I accept and understand that not everyone can have an inquest and not everyone will get to that phase. That is why we need to have a process that can work for the vast majority of people. We are never going to get a process that works for everyone. That is an unfortunate thing to say, but it is a reality. Someone will always want something more. There has to be something greater—you know what I mean? It is just human nature, I suppose.

From our point of view, we were saying that we could not see why a remedial order could not fix the inquest issue. I still cannot see why we now need to have primary legislation—I suppose I am just saying the same thing in a different way—to fix this process. It was taken away very quickly. Why can it not just be replaced very quickly?



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There is another issue around inquests. It seems to be being suggested now that no new inquests will ever be allowed until whatever is in place finishes its work. You are setting up a process now that is somewhat different from the rest of the United Kingdom.

Q37 Katrina Murray: That moves us on to my next question: which inquests would you want to see reinstated? Would it be the ones that were prematurely halted?

Alan Brecknell: I honestly think that if someone has been told that they are entitled to an inquest, they are entitled to an inquest. I do not think we should start drawing new lines as to who is entitled and who is not entitled. We are getting on to very shady ground to say to someone, "The Attorney General thinks you are entitled to an inquest, but—sorry—this Government doesn't."

Q38 Katrina Murray: Sandra, what are the views of the WAVE constituent group on inquests?

Dr Peake: Fundamentally, so many people were disillusioned when inquests were stopped. If you have fought for so long and you have never had an inquest into your loved one's death, surely it is right for that to happen. People have seen that pulled away from them. The need for those inquests to resume, as soon as possible, is very clear. Families have fought long and hard for them and they should happen. They should take place.

Families will often say, "What is the difference between a murder that takes place on the streets of London and a murder that takes place on the streets of Belfast? Why is there a different system? Murder should mean murder." Families will really struggle with that. If you have not had an inquest, surely there is a fundamental right to have that allowed and facilitated. That should take place.

Q39 Katrina Murray: Kenny?

Kenny Donaldson: As an organisation, our starting point has always been that every victim and survivor has an entitlement to pursue justice, truth and accountability. That should not be denied. When we talk about—and this is the problem with our process—the piecemeal efforts there have been over the last number of years, you have to put yourself in the shoes of the victim and survivor who is not able to get any progression in their case whatsoever.

They then fall into this space of seeing others who have resources, whether they are financial resources or media resources, and the power of all of that focused on a case. That is not denying those individuals' rights to pursue in that way, but it has a very severe impact within the community of victims and survivors, and it presents to them as a two-tier process.



It can also be difficult from another perspective. I totally appreciate the issue of historical clarification. There have been a number of cases where it has been deeply important for families to have loved ones cleared of involvement, if I can put it like that, within terrorist groupings. That is important, but it is very difficult for innocent victims to watch resources sometimes being lavished upon people who have been involved in terrorism, who have those focuses upon them. They look at that imbalance. That is, critically, what gets to them.

Whatever we move forward with, you have to understand that for the vast majority of people impacted by terrorism, particularly the constituency impacted by Provisional IRA violence, they got a two-hour box-ticking exercise of an inquest 30 or 40 years ago, and what was the end outcome? An open verdict. It did not work for them. They do not have an access point at this stage. That is why it is critical that they have a tangible progression route.

It is not enough to have a purely tokenistic form of justice on the table. It has to be a justice that is sought for, that is fought for and that the state is 100% behind. There have to be no sneaky-beaky deals done, as there have been throughout time. This has got to be done on the basis of transparency.

I suppose we categorise it as this: it is about all those who are involved in this no longer being begrudging participants but being enablers for accountability. That is two states and it is terrorist organisations. If you cannot answer that question that they are going to make that transition, then you are not going to deliver for victims and survivors.

Q40 **Katrina Murray:** I want to pick up on one of those points, Kenny, because it is something that has kept coming back. It is the point about the power of the inquest. If having an inquest previously was not helpful and was seen to be substandard, it will not have had any beneficial effect on the families.

Witnesses indicated assent.

Q41 **Katrina Murray:** Yes—I see that is something that has been experienced across the board.

The Secretary of State has said that he will legislate to ensure that certain inquests involving sensitive information that would be unable to be concluded in the coroner system would be proceeded with through ICRIR. How do you feel about that proposal? I think I know, but it would certainly be helpful to expand on that one.

Alan Brecknell: If an inquest has been stopped, for whatever reason—in most instances it was because there were issues around onward disclosure of information to families and families' representatives—and a coroner has decided that he or she cannot complete an inquest because the family would be put in a less favourable position, we have to find



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another way around that. We have made reference to that in our submission.

We have worked very closely with the family of Sean Brown. In that particular instance, the coroner decided that the level of redactions that was being requested through PII was so severe and extreme that he could not fulfil his duty as a coroner. In that particular instance, he was the person who suggested that there should be a public inquiry into the murder of Sean Brown. Therefore, it is up to the Government now, and the Secretary of State, to bring that forward and to suggest to the Brown family—which the Secretary of State has done—that they should go to ICRIR, even though he has been told in a number of face-to-face meetings with the family that they do not have any confidence in that process.

I will leave it up to everyone else to decide how they want to describe that, but they have said that it is not a process for them. I think others have said the same. If you are asked to go to a body that is less than what you have been expecting—and that is the perception—that is just a slap in the face to you, to be perfectly honest with you.

Dr Peake: There is no doubt that, if an inquest is taking place, or has been ordered but not delivered, and you are given that as an alternative, it is viewed as insulting to the family. It is viewed as trying to further diminish what has happened to their loved one.

You mentioned inquests. Yes, many families had inquests in the 1970s. Some might not even have known that there was an inquest. In fact, families said afterwards that inquests had taken place and they had never even been informed. It is not that inquests in the past were not without their problems, but there is a very clear mandate to provide an inquest and to provide full information, and that is what should be given to families. We should not be offering them any lesser alternative or, indeed, putting them towards a process that people fundamentally do not trust. What is that saying to families? “Yes, you were offered this, but no—you will take this.”

We must not underestimate how traumatising that is for families, also in terms of the resources and the fight needed to keep going. We should not be sitting here, in 2025, with the legacy process not addressed. That should not happen. When people signed the Good Friday agreement it was on the basis that there would be a process that would come. We need to take due cognisance of the fact that there has been a huge mental and physical health consequence of legacy not being addressed, and we need to get that right.

Kenny Donaldson: It all comes down to Government commitments. It is important to go back and look at the experience of the last 27 years before you can go forward. Let us look at what happened from '98 onwards with prisoner releases. We had the decommissioning of weaponry, with the ballistics and the evidence that held the secrets to the



crimes that were carried out permanently put beyond use. Clean weaponry ended up in the hands of dissident groupings in the years that followed. We then had the OTR saga, with royal prerogatives of mercy. We have a Justice Minister of the Republic of Ireland state confirming that there was a moratorium placed on pre-1998 crimes in practice and that the state would not go after people for those offences.

Those are the building blocks that have brought us to where we are now. It depends on where you come from in terms of your perspective around commitments that have not been lived up to. For many victims and survivors, a quarter of a century of subversion of the criminal justice system has brought us to where we are today. How much of that is going to be rowed back on? On how much of that is it in the gift of the Government to say, "Actually, there needs to be a rebalancing done here, and previous commitments we gave to terrorist organisations may not be worth anything now"? That question will not be answered either.

Q42 Simon Hoare: Can I try to inject a little bit of realistic realpolitik into this? The system that went before, with inquests, some liked and some loathed. Quite a lot of that liking or loathing was determined by whether they found the outcomes palatable or not, and the timeliness with which they were accessed. The trigger—no pun intended—for trying to revisit resolving this legacy issue was the investigatory capacity of the PSNI and the bandwidth of capacity within the inquest system to accommodate demand.

Nobody was particularly cock-a-hoop with the previous regime. Nobody was cock-a-hoop with the previous Government's legacy Act. The evolving position of the new Government appears to be attracting as many detractors and questions, and as much dissatisfaction, as before. It strikes me as an interested but dispassionate observer that trying to alight upon something that can command public confidence from both traditions and all of the political representation, both north and south of the border and here in Westminster, is a high-on impossible task.

My question is the cutting-to-the-chase question that may render every other inquiry on this obsolete. To try to bolster the inquest process through better resourcing—effectively, redeploying the anticipated financial resources to deliver a new legacy settlement—will not attract universal support or like, but it is a tried and tested system that can command some degree of confidence and can deliver dispassionate justice. Certainly, in conversations I have had over the years on this matter, there is a sharp distinction. It is difficult to say in public because it is a hard thing for people to face into, but there are some who do legitimately wish to see justice through the legacy resolution process and there are others who see this as a pursuit of vengeance. Vengeance and justice are two entirely different, counterintuitive and mutually cancelling-out things.

Having said that rather long-winded preamble—I am grateful for your patience, Chair—I will come to my question. Any Government that tries



to resolve this is on a hiding to nothing. Better the devil you know. Bolster the inquest process, as imperfect as it is. Move on. To pick up on your sentiment, Mr Donaldson, stop looking backwards and try to look forwards, and resource the better shaping of the future of Northern Ireland through the resources that are currently earmarked for deployment to try to solve a legacy problem that seems to have no solution that can command universal support, respect or engagement.

If you think there is any merit in that, please say so. If you think I have spoken absolute nonsense, please feel at liberty to say, "That's absolute nonsense, Simon." I will leave it to the three witnesses.

Gavin Robinson: That's absolute nonsense.

Simon Hoare: I am always endorsed by the fact that Mr Robinson thinks I have talked nonsense. There must be a kernel of truth in what I have said.

Kenny Donaldson: I very much disagree with you. If you do not go back and reflect upon things that have been done, whatever the motivation for them, you will not have an understanding of how you can ever cure a problem. Drawing a line is not going to resolve this. It never was. In 1998—

Q43 **Simon Hoare:** But pursuance of the inquest system is not a drawing of the line; it is just resorting to what we have had in the past. That is not drawing a line. That is not pulling the curtains and saying, "Let's just forget about it." It is just using the inquest system and not trying to create anything new. That is not drawing a line. I do not think that is a fair characterisation.

Kenny Donaldson: Just to be clear, are you proposing using the inquest process for all cases, across the board?

Simon Hoare: Yes. Apologies if that was not clear.

Kenny Donaldson: And you have tested the financials on that.

Simon Hoare: It will be no more expensive than anything else that is proposed to come forward in the round. Let us be absolutely frank. And what price justice?

Kenny Donaldson: It is an interesting suggestion. There would need to be a little bit of meat on the bone to decipher what exactly you mean by it and how it could be progressed within a timeframe that is going to meet the needs of first-generation victims.

The bottom line of all this, though, is that there needs to be honesty. Is the state saying that punitive justice is closed—it is done; it is over—and that this is the best other solution that there is? Those questions have to be answered.



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Where I do agree with you is that we do not want tokenistic justice to be back on the table. If justice is back on the table, it needs to be a justice where you can go into a ring and slug it out, or it is worth nothing, because all that is happening is that the victims and survivors are being psychologically tortured into believing that it is possible. If there is honesty and transparency around this, maybe there is a discussion to be had.

Dr Peake: Fundamentally, one of the issues is who will be eligible. The eligibility could be quite small, and that will cut a sizeable proportion of people out of the system. That is why there has to be a process that is available for people who do not meet the criteria for inquests or, indeed, for anything else, but whose loved one was killed and who deserve a full investigation.

The cost of not having something is that we hand it to the next generation. We are already doing that. We can see evidence of transgenerational trauma, as the trauma is handed down. We see people coming in who want to investigate their grandfather's murder, or have taken on the mantle of responsibility where their loved ones are disappeared. It really is extremely sad to see how the next generation are impacted. We have to do something. We also see the cost of deteriorating mental health, and that is huge.

I have been with WAVE since 1995 and I worked as a nurse prior to that, so I come at this very much through a health lens. The best example I have seen is Operation Kenova, which genuinely put people at the heart of the process and saw people through—people who had no confidence in Kenova at the start. To me, that is what we have advocated. People say, "Oh, there are 3,800; it would bankrupt the place," and whatever. Not all families want a process; not all families will go down that route. But if they want it, they should be entitled to an Operation Kenova-type process, which puts them at the centre of the process and delivers for them. That is the best example of legacy that I have seen for families, and that is what I would want to see.

Alan Brecknell: It is an interesting proposal. As Kenny has suggested, the finances might be hugely difficult. If you are proposing something that everyone can avail of, fair enough. But as Sandra has suggested, there is the model, in Kenova, for working through this process: it should be victim-centred and victims and survivors should be at the heart of it. I know, having dealt with people in relation to Kenova and subsequently Operation Denton, that the family liaison people have all done good work and made relationships with families, but I suppose the proof of the pudding will be in the eating and what the outcomes are in the long run. We have had an interim report in relation to Kenova and we await the final report.

One of the important things that should be learned from Kenova is that the process was, to a degree, internationalised. It was taken away from



ourselves, to a certain degree. Oversight was put in place to ensure that things were being done properly, that victims and survivors were being treated properly through the process and that the investigation was being done to the highest possible standards.

I do think the bones of a process are there. Jon Butcher, when he was heading up Kenova, felt that it could be scaled up to look at the 3,700 or 3,800 deaths, and that might be the most cost-effective way. The reason that the discussion around inquests is there is that there was a small cohort of people who had been promised that that was the process that they were going to get. By the very nature of people, if you are promised something, you expect that.

Q44 **Chair:** Alan, I want to bring something up with you after our visit. I was shocked by the amount of redaction that I saw in the paperwork from Sean Brown's family. If they were to go to ICRIR, would that level of redaction still be there?

Alan Brecknell: The file that you were shown that day was a 58-page file and every single page was black with "Secret" printed across the top of it. How is anyone supposed to get any information or knowledge out of that? There were 18 other files that were also heavily redacted that Sean Brown's family got.

In relation to the process, the coroner has seen everything. He has seen all the information. Our understanding is that whatever commission would be in place would also see all the information. It is about the onward disclosure of the information.

We have to remember that Sean Brown was locking up the gates of a GAA club. He was a community man. He was not involved in any paramilitary or military organisation in any way. You have to wonder why there is that level of redaction in relation to his murder, which was committed after the ceasefires by the Loyalist Volunteer Force. You have to ask why that level of redaction is involved in that particular murder.

I cannot really answer your question. I accept that there are national security issues, but I cannot accept that there are national security issues that go to that level in relation to what is being described as a sectarian murder.

Q45 **Gavin Robinson:** It is an interesting discussion back and forth. This national security issue has been a bone of contention throughout the process of legacy and ICRIR. As part of the consultations I was asking you about earlier, have you had direct discussions about how families could at least have the comfort of knowing that, when there are redactions due to appropriate national security considerations, as you have accepted, those redactions are required and they do engage issues of national security? That would mean the family does not get a document where 60 or 80 pages are blacked out, and that the relevant material that needs to be protected can be protected. Are you having



those mechanical conversations?

Alan Brecknell: We have not had that conversation as yet. It is important. It would be very important. This is where the notion of trust comes into it. You have to trust the process. As I say, a number of families trusted the inquest process. They trusted that they would get the answers and that the legal system was working on their side. The difficulty that we currently have with the likes of the ICRIR is that there does not seem to be that level of trust in the commission as it currently stands.

We all see redacted documents whenever they come through to us, and you have to assume that those redactions are done for the right reasons, but without someone being able to verify that and say, "Yes, that was redacted for a genuine national security reason." I have seen documents going back to the 1970s that have been redacted. If national security is based on things that were happening in the 1970s, we are in a very sad place, to be perfectly honest with you.

Q46 **Gavin Robinson:** In court processes, you have special advocates. You can have people who can look at these things devoid of any interest—devoid of family interest, state interest and so on.

Sandra, is this something you guys have been engaged in—how you can do it, mechanically? It seems to me that if there is going to be an injection of confidence in this process, there needs to be a way—Sir Declan has told us he can see everything. When the Secretary of State has a decision to make, should it not take the view of somebody like Sir Declan to say, "Actually, this might be meritorious to protect, and the rest of it is not"?

Dr Peake: We have seen an example of that in Operation Kenova. There is no doubt that they dealt with huge national security issues, and the families understood that there would be things they would never see, hear or have access to. That was firmly understood, but they trusted the process that they were engaged in. The other thing that was very clear is that, because the investigation team had not played any part in policing within Northern Ireland, when they said x, y or z, families could say, "Okay, I understand that," or whatever.

I have seen really good work with Kenova, even in terms of people who were part of the investigation process coming back to engage with Kenova, and families seeing how that process worked in action. It fundamentally comes down to this: "Do you trust the process? Do you trust the people involved? Have they any prior relationship to what has happened here?" It goes back to what Alan has said and what we have said on an ongoing basis: this must be managed and undertaken by people who come from outside our jurisdiction.

Q47 **Gavin Robinson:** Do you have a view, Kenny?



Kenny Donaldson: I go back to the point: is this about doing the minimum or the optimum for all who are participants in it? On the national security issue, given the levels of distrust that exist right across society, the two states have to give maximum disclosure at this point to try to provide even some context to circumstances. We have always argued that the good, the bad and the ugly should be put out on the table, because it can be no worse than what is believed within our society, which often is not based upon reality. To us, that would be a positive thing.

I also go back to the point that this is not only an issue with the states. We have tested this circumstance of whether individuals who were involved in murders in the '70s and are now dead will be named. The likelihood is that they will not, and that is something that victims and survivors find very challenging to deal with—that they will not know at least the individuals involved or, indeed, the command teams that were involved in those operations. They know that their loved one was murdered by a member of a proscribed terrorist organisation. If they are from a security forces background, they know that it was deemed that they were deemed a legitimate target. They know that. They want to know the personnel who were involved in orchestrating all of that. How do they get that accountability through this process, or through anything else that could replace it? You are not going to bring any level of satisfaction to them unless you can achieve that.

Q48 **Dr Pinkerton:** Thank you all very much for coming today. We have a few questions about the ICRIR, and I will take the first of them. This is an institution that was created as a consequence of the legacy Act. We have taken oral and written testimony from academics and NGOs in which the trustworthiness and legitimacy of that organisation has undoubtedly been brought into question. Of course, as Alan talked about, the issue of trust is fundamental to all of this.

We are told that the ICRIR is perhaps going to live on beyond the repeal of the legacy Act. Is there anything that can be done by the Government, or by the ICRIR itself, to increase trustworthiness in the organisation, given the Government's commitment to try to increase that trustworthiness?

Dr Peake: There will be very different views in terms of whether people feel it can be reformed at all or whether changes can be made to it in terms of the necessary trust and buy-in. There will be very clear arguments on both sides about that.

I think the reality is that the legislative framework in which it works allows for limitations, and where the role of the Secretary of State sits in relation to being able to determine information provided—I go back to Kenova. It was a police investigation, so it was a full criminal justice investigation. That is where I saw the benefit for families, which they had never had previously. That is what all families deserve.



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There are very clear issues around structure and governance. Our history shows us that over time we have needed outside help, whether it was with the Good Friday agreement, decommissioning or other aspects of work. There needs to be a very clear independence and governance arrangement that is outside Northern Ireland, and the structure and oversight need to be very clear.

In relation to the approach to victims' services, the individuals coming forward are being asked what questions they want answered, and that is done in order to shoehorn people into quite a narrow framework, which will be a light-touch review. Quite frankly, families do not know what they do not know. That is why they need full access to information. I do not believe that is something that the ICRIR, as it sits, will do. I believe that the families will get a process that is probably lighter than HET was all those years ago.

The consequences of that are huge. We have investigative journalists who will pick and look and study areas. Imagine a family going through the process and asking their questions, but in five years' time an article is published in which there are revelations that the family knew nothing about. They will look back and say, "I engaged with ICRIR. They never told me any of that." How damaging is that for families? They deserve to have the fullest account, if that is what they wish—not all families will enter those processes. There is a huge issue around trust, independence and governance. I think that if ICRIR were to remain, it would change beyond recognition.

Q49 **Dr Pinkerton:** Do you mean it would change or it should change?

Dr Peake: It would have to change beyond recognition.

Alan Brecknell: I cannot disagree with anything Sandra has said, to be honest. We probably need to go back to the origins of the ICRIR and the legacy Act. The vast majority of the families that the Pat Finucane Centre works with would see that as a commitment from the last Conservative Government to protect veterans. That is how they see it. That may be right or wrong, but that is how it is seen. We have to get over that analysis in the first place, and I think that will be very difficult for the ICRIR as it stands to do. Everyone at the ICRIR, especially the chief commissioners, was employed during a time when amnesty was still in place and the rationale for the whole body was to protect veterans. I do not believe that necessarily was the rationale. It probably goes deeper than that.

In relation to independence, we have touched on Kenova a number of times this morning. One of the main selling points of Kenova was that it was independent. It was people who were not seen to be party to the conflict who were engaged in the process of investigation or review. I go back to something I mentioned earlier: we need to internationalise this process. We need to get help from outside. Every time we have had a stumbling block or sticking point along the way, we have internationalised



the process. That does not mean to say that we are doing anything wrong. It is just a different set of eyes and a different way of looking at things or seeing things.

The Secretary of State has talked a number of times about building trust in the ICRIIR. It is not happening—I do not see it happening, sorry. On 1 May, it will have been operational for 12 months, and it was operating in shadow form for 12 months before that. The numbers of people who are coming to it are small compared with the numbers of people who were bereaved or seriously injured through the period of the conflict. To me, that is the biggest indictment of the ICRIIR. It is not the people or the processes; it is that people do not trust it and are not coming forward, for whatever reason. People will have different reasons for it. I am only giving you the reasons that the people that I work along with are giving to us as an organisation.

Q50 Dr Pinkerton: You cannot change your parents, and the legacy Act is the parent of the ICRIIR. Are you saying that this institution is beyond the ability to generate trust because it will always have that origin story?

Alan Brecknell: Personally, yes. As Sandra has already said, if it is a body that is going to gain trust, it will be something that looks absolutely nothing like the ICRIIR currently looks. I note that you have had Daniel Holder from the CAJ in. Its report talked about root-and-branch change, and that obviously came from something that Micheál Martin had said. I think that is the case: it does have to be root-and-branch change.

Kenny Donaldson: The parent of all these processes is the establishment. For 27 years, the establishment has been at the helm. If we look back at the point whenever this was brought through Parliament—not to get party political about it—in terms of the level of opposition at that stage, a lot of victims and survivors questioned the conversations that were being had across parties. It suited a lot of people for this to be taken off the table. There were sometimes very public positions being taken by Northern Ireland political parties, and maybe there will have been private positions held by individuals too.

Claire Hanna: And parties.

Kenny Donaldson: Accepted.

As we see it, there certainly needs to be an external dimension to this process, but there can be no ideological waging against particular individuals who can or cannot serve within it. There are all sorts of mechanisms and conflict of interest checks that can be put in place around particular cases. That can be done, if the will is there.

We would also say that this should not be looked at purely in the context of individual casework—examination of crimes in that manner. There is an absolute need to have thematics running concurrently with this, because the biggest damage that there is within our society is the



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misnomers around particular issues that are felt very deeply within particular communities.

To give an example, some people believe that British soldiers were standing at street corners and picking off civilians as target practice, in that crude way, in the earlier days of our troubles, from '68 through to '75, if you look at the concentration of death that was caused by the military versus what happened in the years thereafter, when it did not cease, but the numbers were much smaller. Examinations of the context of what was going on, the training, the environment in which soldiers were brought into the space of Northern Ireland—that all needs to be looked at.

There is another belief that the Republic of Ireland state was effectively a wing of the Provisional IRA, which again does not stand up to real scrutiny. However, from the period of '68 to '75 you have to look at the policy that was in place around security and extradition, and around the arms crisis, which has never had any real international dimension or probing of exactly what was going on within the Government. You also have to look at the histories of the factories in the Republic, the production of gelignite and of armaments, where that ended up, and what the efforts were to secure that particular material before it crossed the border and was used in the murder of individuals. There is a huge amount in all of that that has to be done.

Q51 **Dr Pinkerton:** And the ICIR does not have the competency or trust in order to get to the bottom of those issues.

Kenny Donaldson: On its own, it will be very challenging. We have a small case load of families who have come forward to us and insisted that they wish to engage with ICIR. They have done so on the basis that there have been very few other options available to them. They are becoming more aged and they see this as a hope, as opposed to having any real certainty of outcome, and they are engaging. But we are not yet at a point where we can make any real judgment around its success or otherwise. It is still in those earlier stages.

Q52 **Dr Pinkerton:** Kenny, you mentioned there families who have come to you and gone on to use the facilities of the ICIR. Perhaps this is an impossible question, because presumably there are lots of families who are not engaging with the process, but from the conversations that you may have with those families, what are the key reasons that people give when they say, "I don't want to engage with this particular institution, the ICIR"? Why are people not coming forward in greater numbers?

Kenny Donaldson: There is obviously a huge noise around it all in terms of the public. The public speak of it. When we go through and do our own analysis of what is there, we are obviously speaking to victims and survivors, and they are doing that themselves. We need to not patronise victims and survivors. They can make their own calls on these issues as well. Some are very astute and understanding, and they can smell a rat.



It has to be said that we are still in the stage of the unknown. I know that in the experience of the families who have engaged with it to date, on the basis of how the process and the individuals concerned have treated them, there are some positives there, but it is the same circumstance as Kenova: you look at what the outcome of all of this is for people, and different people judge an outcome in different ways. What means a good outcome?

The other thing that people need to understand is that, although not all victims and survivors may put their hands up and say, "I'm motivated by justice at this point," it is because they have been conditioned to believe it is impossible. They are then in a space of asking, "What is my next best option here?" But most people, in their hearts, would want actual justice—but it is not there for them.

Q53 **Dr Pinkerton:** Sandra and Alan, in your experience, why are people not coming forward?

Dr Peake: There are a number of things. I looked yesterday at our figures for the last year. We have had over 900 bereaved individuals in—and that is just us. Kenny will obviously have a sizeable case load, and so will Alan. When you think of ICRIR's levels, they are not high. We have a small number of people in the system. I have checked how they are faring through that, and I suppose it is very early days. I would say that when people have very particular issues around age or life-limiting conditions, they should be fast-tracked, but that seems to be very slow. That is regrettable.

The overall issue is that, fundamentally, the ICRIR came from the prior legislative framework, and people viewed that extremely negatively. There was such an outcry about that. The various people within ICRIR signed up to that legislation, and therefore, in a way, they endorsed it. They will say that it was not their legislation and the courts will make the decision, but the reality is that the courts should not have had to make the decision. The legislation should have been right from day one and we should not be putting people into a system that compromises them or makes it difficult for them.

I think that people are waiting and wanting to see. They want to see what the Government are going to do. No pressure, but they do want to see what the Government are going to do. They want to see what changes are going to come before they make their decision. Some of you met people within WAVE. Are the issues as important to them? Yes, absolutely. They want to see a process that works for them, but at the moment they feel they cannot engage in the process that is there. It goes down to lack of trust, lack of confidence and the origins. People signed up to legislation that, yes, may subsequently be changed, but the origins have not given it a strong foundation.

Alan Brecknell: Unlike Kenny and Sandra, none of the families that we currently work with have gone to the ICRIR or even dipped their toe in



the bathwater, so to speak. I go back to the things I mentioned earlier: it is its origins and genesis. As Sandra has just said, there are people who are in the process and are in the commission, engaged in it. People were saying, "There's something wrong here," even as it was going through Parliament. There were a number of attempts, especially in the House of Lords, to make changes in order to make bad law better law, and even they were rejected. People have seen that. It was played out in public and in the open, and people have seen it.

The other point—Sandra has already said this as well, but I will reiterate it—is that if you are having to go through the courts to decide whether what you are doing is legal and right, there is something wrong with the process from the very start, in my opinion. There should have been a process put in place that said, "We can legally do what we are entitled to do here. We can work this system for the best benefit for as many people as possible in as quick a period of time," and that is not a process that is sitting there on the table at the minute.

Q54 Claire Hanna: I want to come back to the issue of separating the truth-seeking and the investigative processes. The Government are saying that they will pursue some of the successful elements, or the perceived successful elements, of Stormont House. What benefit would that have?

Alan Brecknell: The separation of the two? I accept that not everyone accepted Stormont House, but there was a good degree of acceptance there. It was really important at that time to have a truth-seeking process and an investigative process, and that was acknowledged at the time. There was a lot of work and a lot of talk around the sequencing of that process and how it should happen. Greater minds than me had thought through this process and thought, "There need to be two different processes."

There are reasons for that. Some people will just want a truth-seeking-type of process, where they can go, "I have x, y and z questions. I'm not interested in seeing someone going through the courts." I have said that in relation to the killing of my own father. I do not want to see an 80-year-old man sitting in the dock. He or she will have their family and I do not want to see that. I do not think it needs to be brought to another generation. That is a personal opinion; I know others differ on that. They will come with their specific questions through a truth-seeking process. There are others that want a judicial, legal process.

I also think there is an overlap at different times, because the information that comes through a truth-seeking process—and I suppose that when we talk about a truth-seeking process we are talking about information that may come from ex-paramilitaries or whatever—has to be verified. It cannot be just, "That's a justification for what we were doing." That is why I am saying that there is a sequencing needs to be done there.

Q55 Claire Hanna: Do you have any confidence in the exploration of what those verification measures could be?



Alan Brecknell: I do not want to keep coming back to Kenova, but there is a process there. They will have dealt with ex-members of the IRA or members of the IRA and they will have heard information there, and they will have had to go and check whether what is being said is correct or not. There are processes there that have been done and have been tried. But I do think it is really important to keep the two separate, because there is no way someone is going to come forward with information if they think it is going to end up in an investigative process.

I know that sounds a bit convoluted in how I am saying it, but there is a way of doing it. It has to be separated, in my opinion. I know I am not explaining that awful well.

Q56 **Claire Hanna:** Sandra, do you have views on the viability of separating it, and what that would mean for families as they seek either of those two outcomes?

Dr Peake: That is quite a difficult issue. In some ways, Kenova demonstrated how it had been done and how it should be done. That was useful, because they were able to verify whether the information they were receiving was accurate or not. There is no doubt that, if there is a process for people to give information, that would be valuable. However, I would not hold out massive expectations around it.

I go back to our work with the families of the disappeared, where there is very clear legislation and information has taken a long time to come. To be quite truthful, at times it is really about continuing to push and harangue, and trying to make people see that what you are actually looking for is to recover a body as opposed to anything else, and that if they have information, they should come. If anyone says a truth-seeking process will get a lot of information and people will come willingly, I would be very sceptical of that, based on my experience of dealing with the families of the disappeared.

The Kenova model should be looked at in its fullest sense, because I do believe that that has given us the fullest account for families that they have never had, and has probably dealt with some of the very issues that you are looking to tease out. That is what should be explored.

Q57 **Claire Hanna:** Some colleagues will pick up on Kenova. Kenny, you have spoken about the profile of the cases that your organisations deal with, and the desirability of an individual name rather than a corporate narrative. What accountability and verification mechanisms do you think can exist for non-state actors? Have you had any confidence that there is work going in to achieve those? Do your members have any confidence that there will be outcomes?

Kenny Donaldson: A couple of weeks ago, Alan and me, and the former victims commissioner, Judith Thompson, sat in Stormont Hotel on a legacy discussion panel. This issue was discussed that day, and what was coming back from loyalism—and, on the fringes, republicanism as well—



was that they are not committed to providing anything further. That presents a really big problem in all of this. A corporate narrative is not going to bring us any further than where we currently are.

People ask, "Why do individuals require to know who was involved and who actually orchestrated a particular atrocity?" Northern Ireland is a small place, granted, and many people over the years have had feelings and beliefs that particular individuals may have been involved in atrocities. They could be their neighbours. That has destroyed relationships over the years, with the paranoia levels that exist because of it. Are those folks not entitled to clarity and to peace of mind, if the information exists?

I can assure you that, among those we work with, there are not going to be people who will pick up a gun and go out and seek revenge—they would have acted on it already, were they going to—but they are surely entitled to absolute clarity on who and why. There has not been enough of a pressure point placed on proscribed organisations or those who give guidance and oversight to them. The question is whether anything can be done to put a pressure point on them, because they are not going to do so willingly. Sadly, we do not have a circumstance in Northern Ireland where people have been humbled to believe and to understand at this stage that things have to change.

There are two Northern Irelands that have grown up. We have the peace dividend Northern Ireland, post 1998, where some people are enjoying a very good quality of life, which could be akin to anywhere across these counties over here. But there are others who are locked in a state of not being able to move forward fully with their life, because there is this constant psychological torture, you could call it, that they just do not know what is around them. They do not know the people; they do not know who they can trust. When terrorism continues in a very disparate way as well, and that happens in action, then that brings them back even further to where they were.

How do we lessen the chasm between those two groupings of people? That is the real challenge at this stage. It has grown to be quite a difference over the last quarter of a century.

Q58 David Smith: Thank you for coming in today. It is nice to see some of you again. Thinking about the ICRIR, one of the core elements of the original model was conditional immunity for people coming to it with information. Those provisions have now been deemed incompatible with the ECHR. How would you envisage participation by, and truth recovery from, former paramilitaries or former terrorists without that condition?

Kenny Donaldson: It is extremely challenging. It was challenging with it, to be straight, because people have been able to move forward with their lives, to an extent, for the last 30 or 40 years, when they committed these crimes, without the law being applied and them being held accountable. With that being removed, obviously there is absolutely zero



compulsion on their part, unless they have come to a stage in life where they feel, "I want to contribute to a better Northern Ireland, and that requires me to self-reflect upon what I was involved in."

People have to come to a space of being able to divide the two issues: "I believed I had a grievance, whether that was real or perceived, within the context of Northern Ireland," versus, "That gives me the human right to use violence to settle a score." The two have now become intermeshed. That is a very dangerous narrative that we have: that a human grievance entitles you to use violence. No, it does not. The grievance has to be dealt with, and there are political pathways for it to be dealt with, but it never ever justified the use of criminal violence in the pursuance of that.

Dr Peake: I go back to the problems of conditional immunity and the thought that you will get sizeable amounts of information, and the promise that, if that is in place, that would happen. I go back to the Kenova model. Obviously, if there are evidential opportunities, then they are taken, but if they are not there, I am sure there are ways that people can be looked at in relation to how they are considered, and information can come. That is very important.

The reality is that the records that are held within the state system are the records that were recorded at the time, and that gives families the best example in terms of understanding and knowing what actually happened in the past, and if further information comes in around that, then it is of benefit. But it needs to be a criminal justice investigation to get that level of access.

Q59 **David Smith:** Could I piggyback off that point, Sandra? Is there an elephant in the room? You just talked about the state's records and resources. A charitable look at it would say that paramilitaries did not keep those kinds of records, or, if they did, they are not comparable with what the state might have kept. We keep talking about Kenova, and it sounds from all accounts like a good model, but, in an alternative process like Kenova without conditional immunity, even if people who were involved in violence from a paramilitary background were willing to come forward out of a moment of self-reflection and reflect back, "This is what I did," would we ever be able to understand what actually happened? I will open that to anyone, but especially Alan, given that you have not had a chance yet.

Alan Brecknell: We should remember why conditional immunity was in the legislation in the first place. According to the last Conservative Government, it was in the legislation in the first place to protect vets. It was only extended to others because the Government were told, "You can't do it for one and not the other." This notion that the conditional immunity was to try to engage paramilitary organisations to come forward needs to be put to bed, in my opinion.

I have to agree with both Kenny and Sandra that you are not going to get a flood of people coming through the door going, "I did this and I'm really



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sorry,” and whatever. That is not a reason not to have some sort of a body there to take that information, should someone get that road to Damascus experience.

In relation to state records, we hear it mentioned on numerous occasions that paramilitaries did not keep records. The state kept records about paramilitaries. The state very rarely kept records about its own wrongdoing, so there is a bit of a fallacy there.

On whether there is a way of encouraging people in, under the Good Friday agreement, the maximum sentence that anyone who was convicted of a troubles-related offence could receive was two years. I know some work has been done by some academics to suggest that that could go down to zero—that you could go through a legal process and whatever, but the maximum sentence you would get is zero, which I know sounds ridiculous. I do not know if that is a feasible way of dealing with this, but we have to be realistic. You are not going to get hundreds and hundreds of people who were involved in paramilitary organisations, or ex-British soldiers, ex-RUC men, UDR men or whatever, coming forward to say, “This is what I did during the period of the conflict.”

Q60 David Smith: I want to move on to the next question, but just quickly on that, can we have a realistic expectation that a Kenova-type approach, for example, would uncover hundreds of the unsolved or unknown-about acts of violence that happened during the troubles? Is that realistic? If you pick a number, in terms of the number of people affected who want truth recovery, could you multiply Kenova 100, 200 or 300 times?

Alan Brecknell: I can only take Jon Butcher’s word for it. He put the Kenova model in place, and he has said that he believes it can be scaled up. As Sandra has suggested, not everyone will want to come forward and find out information about what actually happened. A lot of people have decided, “That’s there—it’s in the past—and I’m moving forward and looking forward.” But as Sandra also mentioned, grandchildren are now coming forward and saying, “What happened to my grandfather?”—or grandmother, great-uncle, great-aunt or whatever.

A lot of that is because it was not talked about within the family: “Don’t know your mother. Don’t know your father. Don’t talk about that.” People know that there is a history in their family, and we are inquisitive people. We like to know. How many sites are there out there in relation to ancestry and whatever, and programmes on the telly? We want to know about our history, and I think we need to know about our history to ensure that we do not make the same mistakes all over again. While it may be difficult for a period of time to hear the shocking things that happened and to have it readdressed and looked at, we need to be doing it sooner rather than later. That is a personal opinion.

Q61 David Smith: I am mindful of the time that we are taking here. I will ask the next question, but feel free to chip in on the previous ones. We wanted to ask about reconciliation being the principal objective of ICRIR.



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What is your view on that, especially when the commission says it does not have a definition of reconciliation? Alan was just talking about understanding our past, for instance. That is potentially an element of it.

Dr Peake: This is quite difficult, because in some ways it gets very close to victim blaming—some suggestion that victims and survivors need to be reconciled. Yes, there are some people who find it very difficult, but many would bear no ill against anyone else; they are the most progressive people you will ever meet. The difficulty is that there was some suggestion that we have to put reconciliation in, and that that is what is required to do this. If this is about wider societal reconciliation, that is a different process altogether.

I have seen the benefit. I worked with a number of the families for a long time and saw the end of Kenova with them as they came through the end process. For many, there was a sense that the information they got was actually not as bad as what they had imagined for years. Kenny has alluded to that. Sometimes people's imagination was so much more destructive to them. I am not saying the information was not painful; of course it was. I am not saying it was not difficult. I am not saying that people did not struggle with it. Of course they did, but it provided some solace, as well as a sense of greater understanding. Some people also found out that the police force at the time had actually done a number of very clear things in terms of the investigation process that they had never learned. In fact, some of those people came back to assist Kenova.

For them there was a real sense of a greater understanding that the police maybe had not acted in the way that they had once assumed that they did. They had a greater understanding that people still believed enough in their loved one to continue to want to help the process, and that if it would give them a better outcome or a better understanding then they would do that. To me, that process must not be underestimated in relation to the benefit.

I am concerned in that there is a reconciliation framework, and we understand that ICRIR wants to ensure that it asks families what reconciliation would look like for them. Some people really struggle with why they are being asked that. What is the appropriateness of their being asked that? Is there some suggestion that they need it? Yet that could not be further from the truth.

Q62 **David Smith:** I will ask a final question, which is open to everyone. In that context—feel free to agree or disagree with Sandra—is the alignment of the goal of reconciliation and a quasi-judicial process helpful? Should the two things have anything to do with each other?

Alan Brecknell: To me, reconciliation is a personal thing. It is not something that can be forced on me or on anyone else by an Act of Parliament. You reconcile because you work out whatever your differences are, or whatever your perceived differences are.



I am sorry to go back to the legislation as it was first enacted. I think the word "reconciliation" was inserted to ensure that, if a case ever went the whole way to the European Court of Human Rights, the amnesty part, or the conditional immunity part, had some sort of backing, because the European Court has said that, in certain peace agreements, amnesty is appropriate. You can call me a cynic if you want, but whenever it is not even outlined within the Act what reconciliation means and what it looks like, I think that is the reason it is there.

I think it is very cynical, to be perfectly honest with you. The community in Northern Ireland are well capable of reconciling with themselves and with each other. Sandra is right that it is not just about the two communities. There are two islands here that need to properly reconcile with each other as well.

Kenny Donaldson: To feed into the point made by Sandra about the victim-blaming issue, the position has always been put on victims that you either forgive or you are in a state of vengeance. Actually, the vast majority of victims and survivors are in a third place. They have what I would term righteous anger. They genuinely have a right to be angry with how they have been treated. Reconciliation is no substitute for accountability. If we think about it in the context of our everyday lives, whenever we have a disagreement with someone, in order for that relationship to in any way be repaired, there must be accountability. Forgiveness may even come; that does not guarantee reconciliation.

For 25 years we have had a peace and reconciliation industry in Northern Ireland, which has in many ways brought us to a point where reconciliation is a very loaded term that means very little any more. To be straight, it was often used as a crutch to secure resources, and within their hearts, people were not necessarily in a place of motivation to move beyond and to stretch themselves. It was being done for different reasons. There is a bigger debate around what that concept of reconciliation has meant for Northern Ireland for the last 25 years, but attaching it to a Bill of this nature was seen as very cynical. If you were to talk to the faith community, I think they would be very strong on that issue as well. It was certainly not helpful to what was being proposed.

Q63 **Adam Jogee:** Happy St Patrick's week to you all.

Simon Hoare: It has increased to a week now, has it?

Adam Jogee: It will be a month soon, after five years of Labour government.

Alan Brecknell: It was whenever I was a student.

Adam Jogee: Thank you all for making the effort to be here and for bringing the sun with you. Since we saw you all in Northern Ireland, I have been thinking a lot about the family that we spoke to, Alan, and Margaret and Ruth. Do pass our thanks to them. They were very powerful



stories. On Gareth's scones, my wife enjoyed the one that I took home for her, so please say thank you to him too.

I want to talk gently about the UK-Ireland relationship in relation to legacy. Thanks to Mr Robinson's earlier questions, you have all gently touched on the role of the Irish Government, but will you give us a flavour of your views on the Irish Government's engagement with the legacy process?

Dr Peake: We have an ongoing engagement with the Irish Government in relation to the need to ensure that there is a process available for families who have been affected in Ireland or, indeed, people who have been abducted in the north and brought down into the south, which was quite commonplace throughout the troubles. We have had concerns about what that may mean, because it was initially looked at as a cold-case Garda review, or indeed other changes. We have pushed for the Government to lead the way by having a process that meets the needs of families, with a very robust investigative process. We have undertaken that over time.

We have also had more recent discussion with them in relation to the ongoing issues with, and the mechanism for, separating out truth-seeking and investigative processes. At one stage there was a suggestion from both the NIO and the Irish Government of looking at the disappeared legislation and that model in relation to seeking information. We would want to see that process remain very clearly for that process only—that is, recovering the bodies of the disappeared.

There is no doubt that there is a need to ensure that this process and the changes that come are in relation to both Governments, and that there is a very clear equality of process on either side of the border. Over time, the situation has changed in some ways, with greater support for the bereaved and greater support in other areas, but there are schemes and processes such as the troubles permanent disablement payment scheme that individuals in the south are not eligible for, so there are very clear inequities in the treatment of people. We would want to see that levelled, as well as a very clear legacy process in place.

Q64 **Adam Jogee:** That is very helpful. Kenny, earlier on you said that a failure to deal with legacy "infects the present". I believe that was in relation to the beginning of this conversation. I wonder if you could give us your view on the Irish Government's engagement with the legacy process.

Kenny Donaldson: Hands-off. We have used the phrase before that there is a sense that there is a moral superiority around what happened in our troubles, and that the Irish state somehow had neutral observer status. An acknowledgement that, "No, we were an active participant," is a huge cultural change to bring about. Over the last few years there has been more talk and there have been more positive musings around what could happen, but there has never been any meat put on bones.



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At this stage, it is no longer a viable position for the Irish Government to take. They are being asked the questions by their own citizens in the Republic. People from all communities in Northern Ireland are asking the questions. They have got to move. What this all comes down to is, "Do we want a fair and equitable outcome to all of this that means the two nation states have the potential for positive relationships going forward?"—which I think everybody around this table would want. Those relationships have been frayed over the last number of years, without question.

If there is a resolution that creates a sense within one partner that there has been an overly zealous use upon them, and not coming the other way, that presents a big problem. It comes back to what we have said before: what are people really in this for? Are they about bringing progress and resolution for victims and survivors and about aiding our two wonderful states to exist alongside one another and to be successful, or is it about settling old scores and somehow moving the guilt to someone else without being prepared to self-reflect? Nobody gets out easy in this, and they certainly have to move on that.

We have a number of cases along the border that we have sought to move forward with them, and currently we are hitting a brick wall. I hope that there can be movement. We use the example that, for some victims and survivors and groupings in Northern Ireland, the idea of former members of the RUC being involved in processes is challenging for them. Likewise, it is challenging for those who believe there was collaboration between the Provisional IRA and An Garda Síochána to have confidence that the Gardaí could oversee a process south of the border to aid and bring resolution around all of this. You always have to look at it from the perspective of the victims and survivors on the ground and their given circumstances. This is very complex.

Alan Brecknell: I do not have an awful lot more to say, other than what I mentioned earlier: on each occasion when we meet people from the Department of Foreign Affairs, we say to them, "You need to be doing more. You need to be stepping up to the plate here as well." Kenny made the point that there are no neutral observers. I would make the point that that is across the board. I do not think anyone has clean hands in the period of the conflict, the troubles, the legacy or whatever you want to call it. Professor Thomas Leahy has done a lot of work on what the role of the Irish Government has been in relation to legacy, and he has pointed out the deficiencies in that. If anyone is looking for a steer on it, that is a good place to look.

Going back to the Stormont House agreement, the information recovery body that was part of that process, the ICIR, had set up a cross-border treaty for information recovery, but we made the point at the time that there should have been a historical investigations unit similar to that. It should not just have been about information recovery; it should have been about investigations as well.



As I say, every time we meet the Irish Government or representatives we say, "Look, you need to be stepping up to the plate." I think they get that; I am just not sure they know yet how to go about doing that.

Adam Jogee: Thank you very much. There was uniformity in the answers, so that is very helpful.

Q65 **Leigh Ingham:** Thank you all very much for coming today. It is great to see those of you again that we saw recently. From my last visit to Belfast, you know I am particularly interested in Operation Kenova. What do you think are the lessons that this Government should draw from Operation Kenova?

Kenny Donaldson: It has to be said that we as an organisation would not have had as much of a touchpoint with Kenova as the other two groupings represented here today, but of those with whom we do connect, some of them would have said that they did feel very much involved at all levels of the process. They felt they were treated with respect. They felt that there was a will to bring the maximum possible information, and that they were not being palmed off.

What it comes back to—and it depends what eyes you are coming at it with—is that 30-odd cases went before the PPS and none of those has ended in prosecution being taken forward. Some will judge that as not being a successful outcome. Others will say that they did not expect that to be the case anyway, and that it was more about obtaining that information and that confirmation of some issues that they needed a response to.

Certainly, in the round, Operation Kenova would have had a more favourable view of it than any other legacy process. It was not cheap, though, for what was involved. For scaling-up, there would need to be serious work done on the finance for that, which is going to factor into the Government's decision.

Dr Peake: As I said, we worked with Operation Kenova from the very start. At the very start we asked families, "What information do you have before you? What are your levels of trust? Do you think this process will deliver? What are your levels of motivation?" Quite frankly, people said, "It'll not produce anything. This is a process where they're bringing an English copper in to investigate his own, and quite simply nothing will be found." In fact, across all the families, there was no one saying, "Yes, this'll be really good." They had had other processes in the past. One of the young men said that he had met some of the investigators who had come in the past, pre-Kenova, and they said, "We'll be back to you." He said, "That's the last I saw of them, and it was in Belfast City airport." You can understand why people were very sceptical that anything would happen.

Within 18 months, that had moved, because people saw the process starting to move and starting to get information. They started to see the



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systems and processes of family liaison, and continuity; obviously, many of them had retired, so the people they started with were the people they have ended with. That level of continuity is huge. They saw that good governance structures were in place. The steering group was made up entirely of people from outside Northern Ireland, with the exception of Baroness Nuala O'Loan. There were very clear pillars in relation to how governance was managed. Of course, they had the experience of somebody leading it who was from outside Northern Ireland but had huge experience in relation to terrorism and terrorism legislation—Jon Boutcher.

They got the process right from the start. They did not come in with flawed legislation and say, "Actually, let's make the courts decide. It may change within a number of months." They had the process right from the very start, and that made a huge difference.

Families who have come through it will say, "Information is power. Information is control. I now have a sense of what happened to my loved one. I have been given the full account of that in relation to what can be provided." They talk about the sense that, in some cases, it was not as bad as what they imagined and what they thought had happened over the years. Remember, myth becomes reality, and the stories are fed.

For them, finding out that information was deeply painful. Did they struggle with it? Absolutely. Has it been painful? Absolutely. Has it been traumatic? Absolutely. But what made a difference was that, from the very start, Kenova made sure that they were trauma-informed. They were trained and made sure they were sensitive to the nuances of working with families in Northern Ireland, in terms of the language they used, the approach they used and where they would see people. All of those things may seem very small, but they are major. They also always acknowledged the death of the individual on their anniversary, which was huge. It was not just an investigation; it went beyond that.

I can understand it when people say, "30 cases went into the PPS and no cases came out as a prosecution. Is that how you judge Kenova?" There is no doubt that people have focused on that, but the reality was that case determination came after the main subject was dead, so those cases ceased to be cases. Unfortunately, due to the way the law works, families were not allowed to be told whether there would have been a prosecution in that case, because the subject had died.

I do not think it should be viewed on the basis of money or of prosecutions. Certainly from the families' perspective, that is not something they would see. They saw those cases go forward. For them, it was the process and the journey itself that made a huge difference, and that is what I have seen. I have seen that that has freed families, including families who were very isolated in relation to the circumstances of why their loved one died, and that intra-community conflict and the intimacy of violence, which is seldom understood. For families, getting



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back and being able to know and understand, and to have the fullest sense of their loved one's case, was huge.

The NPCC looked at whether Kenova could be upscaled. The arguments from Government at that time were, "It's too expensive. It can't be done," but I go back to my point earlier: not all families would want a Kenova-type investigation. Sadly, people have died who would have been the main representative within the family, so you are looking at a lot smaller number, and the NPCC said that it could be upscaled. I think it is a model that should be looked at.

Alan Brecknell: I have nothing to add to what Sandra just said, to be perfectly honest with you. The only thing that I would caution is we have also been involved with Operation Denton, which is one of the other investigations in the Kenova series, and we have not seen the outcomes of that yet. The proof of the pudding will be in the eating.

Q66 **Leigh Ingham:** That is due this year, isn't it?

Alan Brecknell: Yes.

Q67 **Leigh Ingham:** ICRIR has said that it has its own robust governance structures in place. In your opinion, how do those structures compare to those offered from Kenova, particularly for the support around the family?

Dr Peake: It is early days. ICRIR will say that it is endorsing and using the processes of Kenova. I do not see it. I do not see it in relation to funnelling families down into quite a narrow psychological framework in terms of what questions they have and what those questions are concentrated on. Families seem to be in that process for some time.

As I said earlier, I have been somewhat disappointed when I see people who have very particular life events that I would want to see fast-tracked through, but ICRIR is obviously developing its own model. Is it the right model? Time will tell, but I have certainly not seen the Kenova-type process, which was very much around, "Families don't know what they don't know." That process was therefore very clear from the start, rather than trying to hone people down into quite a narrow process.

Kenny Donaldson: The jury is out. It is very difficult to in any way fairly compare the outworking of Kenova and that experience to ICRIR, which has only just been established. We did raise some of the building blocks and areas of concern that we had with ICRIR, and there were changes made. It has been prepared to be adaptive on the fringes. We obviously have to wait and see.

Alan Brecknell: In relation to ICRIR's governance, yes, it has taken some criticisms on board and made some changes, but the overall governance issue that I would have is that, if they are talking about going along the lines of Kenova, they have forgotten about the international perspective of it again. I am sorry to keep harping back to that, but it is



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important, because it is part of what will help build trust. It is part of what will possibly get people to engage in the process. There is a long, long way to go to build that trust from the people—I do not want to say “the people I represent”, but the people that the PFC works along with. Even with that internationalisation, I am not sure—in fact, I know that ICRIR as it currently stands would not get the buy-in from the people that work along with the Pat Finucane Centre. There is much more that needs to be done, not just a small tinkering around governance issues.

Q68 Leigh Ingham: Sandra, you mentioned that at the beginning of the process, when you first started doing Kenova, there was a huge lack of trust with the communities that were going through that process, but that turned around. Can you foresee that happening with ICRIR as it is?

Dr Peake: I think it turned around because it was very clear that what was promised to them was what was delivered to them. I think they also saw that it was a process in which they were coming side by side with them. That is something that was very important. The difficulty for ICRIR is its early life and the fact that the legislation at the start was so flawed, and that people are still watching and waiting.

The other side of that is that the Operation Kenova staff came very clearly with an outside view. I know that that is difficult in many ways, but it has been essential. That was very useful for families. Yes, you could say on one hand that it is mistrustful because, well, what are you going to do? But on the other, seeing people that were genuinely committed to working with them was important to the Kenova families, and particularly in relation to the circumstances of their loved ones’ deaths. I am conscious that Kenny made the point about representation from across the community in relation to ICRIR, but I think for Kenova there was a very clear benefit to having it from outside. I think that is what is needed. It needs to have that level of scrutiny from outside.

Q69 Claire Hanna: I want to ask briefly about the independence of ICRIR. Could you outline how the appointments process affected confidence in the body, and how any new or reformed body could do that better?

Alan Brecknell: I am going to caveat this by saying that this is no reflection on any of the people who are employed within the ICRIR, but there is not a perception of independence. Unfortunately, in the north, perception means an awful lot. I do not know how we get around that. I hear what Kenny says—that people should not be excluded and whatever—but that is the perception. To a certain degree, some of the families that we work along with would look at it as, “You’re marking your own homework.” You cannot get away from that. Any process that is put in place needs to be seen to be independent, and unfortunately I cannot give you the answer as to how we do that.

Q70 Claire Hanna: Sandra, do you have any suggestions—a conflict of interest policy or internationalisation, perhaps—for ways that a reformed body could feel more independent? I suppose some of it comes down to



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the original plumbing of it, and how material is achieved and signed off, but is there anything to add to that?

Dr Peake: Fundamentally, I can see the benefit of having external personnel involved. I think that goes without saying. You can see from our history that, over time, we have needed that. The fundamental difficulty is that, when people came in, they came in under legislation that in effect gave an amnesty, and it took the courts to make those decisions. I would have much preferred that, as in Kenova, the framework was very clear from the very start. It makes it very difficult when the framework is not clear from the start in relation to how it moves forward, and that causes difficulties.

What would need to happen? I said earlier that there would need to be a fundamental reshaping that probably would not bear much resemblance to what is there. Changes need to be made to ensure that people can trust the process, can go through the process and can get the best from the process. That is really important. There is a challenge and a difficulty there.

Kenny Donaldson: I think people are growingly supportive of the international dimension, and I think that could land, but if any grouping is disbarred as of right from serving within that particular institution, I think you are going to see very big problems. Again, it is about what is achievable. If you want to bring people with you, you can certainly create an international dimension, but that cannot be at the expense of blocking an entire grouping of people from serving. How that is read by a community is—

Q71 **Claire Hanna:** You are referring to people with an RUC background. Do you have any thoughts on a conflict of interest policy? Would that need to be addressed up front in terms of people's perceptions of people who investigated—or failed to investigate—first time around having second dibs? Do you think that can be mitigated, and would a conflict of interest policy remove what people might see as an unfair barrier?

Kenny Donaldson: It is certainly clear that, if the right approach is taken—it is about how we gain maximum confidence. There are people who have an RUC service background who can give a great deal to this process in a way that maybe others cannot. Although there is sometimes an advantage in having an external input, there is absolutely also a requirement to have a localised input in all of this. It is whether people are motivated by ideological reasons, or whether this is actually about how we can attain the very best outcome for victims and survivors.

Chair: Alan, Sandra and Kenny, thank you very much for your time.