

Northern Ireland Affairs Committee

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

Wednesday 23 April 2025

Ordered by the House of Commons to be published on 23 April 2025.

[Watch the meeting](#)

Members present: Tonia Antoniazzi (Chair); Dan Aldridge; Chris Bloore; Claire Hanna; Adam Jogee; Katrina Murray; Dr Al Pinkerton; Gavin Robinson.

Questions 72-114

Witnesses

I: Jon Boucher, Chief Constable, Police Service of Northern Ireland; Claire McGuigan, Detective Chief Superintendent, Police Service of Northern Ireland; Baroness Nuala O'Loan, House of Lords; Sir Iain Livingstone, Lead Officer, Operation Kenova.

Written evidence from witnesses:

[\[LPN10015\]](#) – Police Service of Northern Ireland (PSNI)

[\[LPN10026\]](#) – Baroness Nuala O'Loan

Examination of witnesses

Witnesses: Jon Boutcher, Claire McGuigan, Baroness Nuala O'Loan and Sir Iain Livingstone.

Q72 **Chair:** Welcome to this Northern Ireland Affairs Select Committee session on the Government's new approach to addressing the legacy of the past in Northern Ireland. Today we have Jon Boutcher, Sir Iain Livingstone, Baroness Nuala O'Loan and Claire McGuigan. Could you introduce yourselves and say what your role is?

Sir Iain Livingstone: Good morning and thank you, Chair. My name is Iain Livingstone. I am currently the head of Operation Kenova, a position that I inherited from Jon Boutcher in October 2023. Prior to that, I was a police officer in Scotland for over 31 years, and latterly, for the last six of those years, I was the Chief Constable of Police Scotland. I retired from that role in August, and then six weeks later, I was back in to accompany Kenova. So that is my position and my role, and thanks for the invitation this morning.

Baroness O'Loan: I am Nuala O'Loan, a Member of the House of Lords. I was the first Police Ombudsman for Northern Ireland, and I have been a member of the Operation Kenova steering group since 2015. I am also a member of the McCullough review into the surveillance of journalists and lawyers. I chaired the Daniel Morgan panel, which was a six-year inquiry into the Metropolitan police. I have done various other things in Northern Ireland, including being on a committee that watched, managed and reported on the debriefing of the UVF loyalist, Gary Haggarty, who admitted to 200 crimes, including murder and stuff like that, following my McCord report. So I have a little bit of experience around Northern Ireland.

Jon Boutcher: Good morning; I am Jon Boutcher. I am currently the Chief Constable of PSNI and I took up that role in October 2023. Previously to that, I was the lead for Operation Kenova and handed over the reins to the very capable hands of Sir Iain that October. I ran Kenova and was commissioned to do so by a previous Chief Constable of the PSNI, Sir George Hamilton, in 2016, and we began Kenova properly in 2017. During that period, I was the Chief Constable of Bedfordshire police.

For the majority of my career, I have been involved in tackling serious and organised crime and terrorism. I am the ex-head of covert policing in the guise of the Regulation of Investigatory Powers Act, which deals with agents, CHIS and surveillance. I was also the head of undercover policing for policing in England and Wales. I am very happy to be here today—thank you.

Claire McGuigan: Hi. I am Claire McGuigan. I am a Detective Chief Superintendent in the PSNI, and I am in charge of legacy and disclosure.

Q73 **Chair:** Thank you. Chief Constable Boutcher, thank you for the response to my letter, which has been published. It was very detailed and very



HOUSE OF COMMONS

powerful. In your opinion, what should meaningful engagement with the Government look like?

Jon Butcher: Thank you for the easy opener! Since I wrote to you, I have had two meetings with the Northern Ireland Office legacy lead and the permanent sec for the Northern Ireland Office, which is really encouraging; one of those meetings was last week. Because of the considerable experience I have and the journey I have been on with regard to legacy, I had hoped and had sought to be involved in helping to try to find a way forward with legacy; that was because of the experiences in Kenova. I think it is important, if I may, just to set out very briefly some history that predates me.

With the signing of the Good Friday agreement, nobody gave up more, with regard to the sacrifices of and what had occurred during those difficult years, than victims of the Troubles in Northern Ireland. I have described legacy as the unwritten chapter of the Good Friday agreement, but it was a wickedly difficult problem to deal with, so it is perhaps understandable why it was not dealt with at that stage.

We then had, in 2014, an agreement by most people, most parties—four out of five of the major parties in Northern Ireland—and the Irish Government, which was the Stormont House agreement. Even on that process—I remember that when I started Kenova, there was a public consultation on draft legislation that had been issued, which I responded to. I think it was in 2017 or 2018. There were 17,000 responses. Then, unfortunately and unexpectedly, the British Government went unilaterally in a different direction, which was really tough for victims and stakeholders in legacy.

We then got a Command Paper in July 2021—I would invite you all to relook at it—which was extremely challenging around victims and what they are seeing as they see an opportunity to finally get truth, reconciliation, justice; there are all sorts of different descriptions of what different people want. The Command Paper was a really, really difficult read for them around the mechanisms that were going to be closed down. That was the precursor to the current Bill.

With the election last year—I know that in January of 2023, the current Prime Minister said that they were looking to repeal and replace the legacy legislation. I think the level of engagement generally has not been what people would have wanted, and I offer you this. I wrote the Kenova report, and in that, I described how numerous previous inquiries had suffered because of a lack of disclosure and challenges around national security. The stakeholders who seem to have the most influence in legacy are lawyers, Government lawyers, and it is those very lawyers and those very institutions—I am now the Chief Constable of the PSNI and I am very defensive about how the security forces generally operated during the Troubles, because I think they did a remarkable job. But what we have done since the Good Friday agreement is try to put brick wall after brick wall in front of information provision, and it feels to me like the unilateral

approach by the last Administration was a final high wall to stop information coming out.

The engagement that I would have expected—the open consultation that I would have hoped for—has not occurred as any of us would have wished. I think the Secretary of State and the Northern Ireland Office have a strong relationship with the lawyers who have helped to draft the Bill, who are part of the problem in understanding all the different viewpoints, experiences and needs of society in Northern Ireland. I genuinely believe that this Secretary of State wants to get this right, but it has taken some time to do that, because it is clearly a very difficult journey to go on.

Q74 Chair: Thank you; we appreciate your candidness. Sir Iain, have you had engagement with the Secretary of State and the Northern Ireland Office on how legacy structures could be improved?

Sir Iain Livingstone: I haven't directly, Chair. I have met the Secretary of State for Northern Ireland and his officials a number of times, but it has mostly been to do with issues that I have had with bringing Kenova to a closure, and primarily the significant issue around material that had been withheld by MI5—this is a matter of public record—and the implications from that and the circumstances around that. I have also written to the Secretary of State seeking an update on the 10 recommendations included in Jon's interim report, as well as specifically asking and seeking authority to name Agent Stakeknife—again, that issue was raised in some detail in Jon's report.

But on legacy, perhaps because we are busy with other material, I actually have not had that discussion with either the Secretary of State or his officials. Candidly, it is something that I would be more than happy to do, because, although I am not quite an independent third eye, there is an element of that. I have been involved, as Nuala has, with some of the oversight boards right from the outset. I have had previous experience of working in Northern Ireland, but I am not immersed in it; I come from another jurisdiction with different structures and processes. So I would be very happy and I suppose would be motivated to make a contribution, but I actually have not had any specific discussion or consultation on legacy matters with either the Secretary of State or his officials.

Q75 Chair: But would that be useful, in your opinion?

Sir Iain Livingstone: With all due modesty, I think I would have a contribution—another voice—and, as I said, I would have a perspective that is informed but distant at the same time, if that is not too contradictory.

Q76 Chair: Okay, I understand. Baroness O'Loan, what is your view on the Government announcing that they would retain ICRIR before formal consultation processes had begun? And what is your view on the Government's overall approach to the consultation thus far?

Baroness O'Loan: I think it is marked by confusion and contradiction, because it is almost as if there are two sets of language being used, and



HOUSE OF COMMONS

they do not mean the things that the other side thinks they do. For example, the Secretary of State said that he would repeal the legislation, then talked about amending it, then talked about keeping ICRIR and then talked about everything being up for discussion. I think they are still talking about repeal, but it is very clear that there is an intention to keep the ICRIR. I think that would be the wrong thing to do.

The Secretary of State said in December, "I can...announce...that I will introduce primary legislation when...time allows", and that went quiet. We then had the draft remedial order, and I actually tabled a non-fatal motion in respect of that in our Chamber; that is the only discussion of that that there has been. We do not know when the remedial order is coming back or in what form it is coming back.

They used the non-urgent procedure for the remedial order, which I think is significant because that says that it is not urgent, but actually, for those victims who maybe have civil actions or have other issues—particularly the inquest victims' families—it really is urgent. There were people in the middle of inquests or civil actions that they had started in the hope that they would be able to run them through, but they have not.

So I think the uncertainty about inquest processes is very unhelpful. I understand that the Secretary of State feels that he must clarify legal positions, but I think the current number of actions that are before the court is sending a message about disclosure of information, which is not helpful at a time when the ICRIR is supposed to be set up to deliver all the information in a way that nobody else has been able to before.

And I am not aware of any real consultation. I know the Government are talking to various organisations like the Human Rights Commission, as I would expect them to, but there is no body of suggestions on the table on which people could comment, and no formal consultation. So it is a very peculiar situation. I am sure the Committee is much better informed than I am, but I do not actually know what is happening, or what is really proposed. The problem is that that generates suspicion in the community in Northern Ireland, and that is not helpful at this time.

Q77 Gavin Robinson: Good morning, everyone. Chief Constable, I think it is fair to say that you have been brutally but appropriately frank about the financial situation that the PSNI finds itself in. One of your predecessors lamented the fact that the police are spending so much time policing the past, and that is having a fundamental impact on the ability to police the present. Could you contextualise for us the cost of legacy to PSNI and what impact it has on your operative budget at the moment?

Jon Boucher: Yes, and thanks for the question. This is an area, again, where any Government approach to legacy has to factor in all the different limbs and consequences of legacy being addressed. I would suggest that there is not another organisation that has such an important issue attached to it as the PSNI regarding legacy, because this is about trust and confidence.



HOUSE OF COMMONS

When the PSNI was formed, it was a forward-looking organisation, community-based, seeking to be representative of all the communities it policed, and human rights-focused. I have had a number of discussions about what arrangements were in place when policing was devolved in 2010 to the Executive in Northern Ireland to deal with legacy. In fairness to the Executive and others, I do not think that in 2010, they probably expected legacy to still be such a challenging issue. It is a cross-cutting issue in Northern Ireland, but there were no arrangements or agreements around how legacy for the PSNI will be funded.

To give you some figures, we have a legacy investigation branch, which is the successor unit to the HET, the Historical Enquiries Team, and that unit costs £5.3 million a year to fund. We also have ongoing civil cases—criminal investigations that are dealt with by the legacy investigation branch. It costs us over £3 million to deal with those cases.

I will give you another snapshot of why this is, frankly, quite a mess, and continues to be a mess—and I think we are in a unique place, opportunity-wise, to try to resolve this. Between 2018 and 2024, the PSNI resolved 30 challenging civil cases. In those cases, we paid out to families, claimants and victims a total of £25 million, which we are not funded for. Of that £25 million, though, I am told that £7.3 million went to the victims and claimants themselves, and £17.7 million went to the lawyers. Because we have this attritional approach to legacy by all the security agencies around information disclosure and provision, it creates a greenfield site for lawyers. That is public money that the PSNI is not funded for. That is taking money from contemporary policing. I know that you very well know the challenges we have with paramilitaries and trying to police a post-conflict society. We need to be in schools and communities. We had an incident on Easter Monday where 50 petrol bombs were thrown. Children are being criminalised. We are not where we should be, because we spend so much time looking back at the past.

I will shortly bring in Claire for some of the detail on the figures, but although it varies year on year, we are spending just over £20 million a year now. That would be about 400 police officers. We have been left with this millstone—this anchor—that holds the PSNI back. Families—victims—on all sides of the different victims profile see that lack of action as our fault and responsibility, and it genuinely is not.

We are trying to design a plan now to go to the Secretary of the State—to go to the Executive—to try to make sure that they do not just think about the ICRIR, but think about moving society in Northern Ireland forward, by helping the PSNI do what we were never intended or designed to do in dealing with these legacy issues. It is a considerable burden on us.

We are trying to get a conversation about where we might get that funding, but the current financial climate, because of what has happened globally—the geopolitics—is really tough. The Secretary of State will send me to the Executive, and the Executive will send me to the Secretary of State. It was during direct rule that these cases occurred, but we are left trying to address them. I want candour and openness, but I have not got



HOUSE OF COMMONS

the people to provide the sort of response that I need, because of the lack of any funding.

Claire McGuigan: It is important to recognise that the Department of Justice did give us some funding, which was for the five-year plan on inquests. The Stormont House agreement said that inquests would continue, and that the Executive would ensure that funding was provided for that. Apart from that, the PSNI has had to find the funding from our own budgets to deal with that. Over the seven years, if you look at the investigations we have done and the civil actions in terms of resourcing them and then the compensation, it has cost around £126 million in totality. That is quite a significant amount of money. Breaking that down, you are into £18 million to £20 million a year. I am anticipating that the legislative changes are likely to add to that.

Nothing has stopped because of the Legacy Act. We still have investigations to continue. We still have the civil claims. We have more than 1,100 civil claims to deal with. We do not have anywhere near the resources to actually research and deal with those, nor the money to settle them. We are really in a very, very difficult position. It does not build trust with the community, because it looks like we are stalling—we are taking too long to do these things—and then, of course, that it is because we do not want to disclose, but we simply do not have the resources.

To get those resources, I would have to take even more out of contemporary policing. I would have to go and ask for people to be moved out of contemporary policing to come in to deal with legacy. Nothing has stopped with the Legacy Act, but the provisions within it are likely to put statutory obligations on to the Police Service of Northern Ireland. With that, and public inquiries that are legacy related, I think we are looking at another £4 million to £5 million on top of what we are currently spending. Nothing has stopped for the PSNI.

Q78 Gavin Robinson: Rather than consider this in the round and talk about the potential back and forth between the Executive, the NIO and your own budget, this is an opportunity for us as a Committee to have this inquiry and make recommendations to Government. I would ask for a PSNI response, and then perhaps Baroness O’Loan and Sir Iain, to give us your view on how the NIO should consider the appropriate funding of whatever legacy mechanism it lands on, but also the legacy bits of legacy that still rest within PSNI.

Jon Butcher: I think it relates to what I just said about how it feels like all their eggs are in one basket. Claire alluded to the legislation as it is, and of course we have pointed this out. There is a requirement—this is the lawyers again; it is the lawyers who have disproportionate influence in all of this, and I think are on a particular side of things. I understand, by the way, that these are good people, but I think they have lost perspective.

My background should tell you that I try to bring a really balanced view—I am not going to put any lives at risk; I am not going to breach national security; I am trying to do everything really responsibly. There seems to



HOUSE OF COMMONS

be a disproportionate response in Northern Ireland. The Committee will be aware that since I have arrived as Chief Constable, I have tried to change some of that, and those changes continue, around openness and transparency. But with the creation of whatever the Commission will look like, and whatever units are in the Commission—because there are discussions about whether reconciliation and truth recovery should sit outside or inside and whether they should just concentrate on investigations—there will be significant implications for us of that Commission and that work going forward.

In 2014 the PSNI had 150 civil cases—Troubles-related cases. At the end of 2017-18, that went to 850. As Claire said, it is now over 1,100, and because of the remedial order that the Secretary of State announced in December opening up civil cases again, which in many ways I welcome to try and deal with these issues, that number will only increase.

My plea to this Committee is to take a whole-systems approach to legacy—not a narrow approach to legacy; not a narrow approach to consultation—and genuinely, authentically take a wider approach and listen to everybody's voice, and understand the different mechanisms of legacy. It is not just about the Commission.

Q79 Gavin Robinson: Thank you. Baroness O'Loan, you have experience of this in many regards—with Police Ombudsman work and with the steering group of Operation Kenova and others. Do you feel that there is an appropriate way in which the NIO should approach the financing of these investigations?

Baroness O'Loan: I think there is a way that might help everyone. I would like to take you back for one moment to the recommendations in Patten for the policing complement for Northern Ireland, which if I remember correctly was 7,500 officers for a population of 1.5 million. We now have a population of nearly 2 million, and I can ask the Chief Constable to remind me how many officers he has, but I know it is way below that.

Jon Boutcher: We now have 6,300. I know Baroness O'Loan knows this, and I speak to Chris Patten: the additional resilience that Chris Patten provided was 2,500 reserve officers. That has gone, and that was to scale up in times of crisis. That has gone, so we are down to 6,300, which is dangerously, dangerously low.

Baroness O'Loan: The consequences of that, and the consequences of the things that Mr Boutcher and the superintendent have told you, is that there are very high levels of sickness and other problems for the officers who are trying to provide a service today. Many of them have been providing that service for 20 or 30 years, and have lived through so much in policing terms.

My understanding is that at the current moment there is no PSNI funding for legacy cases, so there is not a ringfenced budget. It is not reasonable that the PSNI have to take today's budget, which is calculated using



HOUSE OF COMMONS

various criteria but which is clearly inadequate, in order to fund yesterday's cases. That is my bottom line. The reality is that these matters do derive in large part from situations over which the United Kingdom Government as a whole had overall control, and they involved all the security and policing agencies, not just the PSNI. So the PSNI very often cannot act alone.

That means the Government really need to be ready to set aside a specific budget for these matters, and in particular to ringfence a separate legacy budget to cover all aspects of providing a criminal justice system to deal with the past, because the reality is that our criminal justice system is quite profoundly broken.

Cases, such as rape cases, are now being listed for 2028-29—for victims, the horror of that situation! For those who are accused and who are innocent unless and until they are found guilty, that is also a terrible situation. So it is not just a matter for the PSNI; it is a matter for the PPS and the whole courts system, and our legal profession. There is an awful lot to fix, but perhaps we could start with a ringfenced budget for legacy.

Q80 Gavin Robinson: Sir Iain, do you have any brief comments to make on the financing of legacy or do you concur with what has been said?

Sir Iain Livingstone: I concur. Just to reinforce the point, it is beyond criminal justice as well, as we know, when you look at the Omagh public inquiry. Whenever there is an announcement from one element, whether it is civil, administrative or criminal justice, it comes back to the police service. The police service obligation is about disclosure. It means that if you are rightly supporting the Omagh inquiry, inevitably something has to give. The pressures are enormous. I have seen them with my own eyes, and I would wholly endorse what my colleagues have said.

Q81 Katrina Murray: As you will appreciate, the Committee has spent time meeting families and the organisations that support them. It is probably fair to say that all of us have been quite affected by their experiences and stories. They are probably no different from anything that you have experienced with them. What seemed very common was the belief that an inquest would provide answers and some form of closure for them. But inquests have not necessarily been that easy to get. Lots of those inquests will have very sensitive information. The Secretary of State has said that he will legislate to ensure that the inquests that have sensitive information and are unable to conclude through the coronial system would proceed through the independent Commission. What is your assessment of that proposal? Can I start with you, Chief Constable?

Jon Butcher: Thank you for the question. This is a very sensitive point for many people and a challenging area. You will be aware that the Act meant that on 1 May last year all Troubles-related inquests had to stop. I arrived in October 2023. Because of the Act—this was really clumsy and not good for families trying to get a meaningful legacy—we had too few barristers and counsel to run those inquests. We had too few coroners and too little estate because there was this sword of Damocles date of 1 May



HOUSE OF COMMONS

2024 when it all had to stop. That is the first thing I would say—the way they were all shoehorned to a full stop, which was not good for anybody. Again, it sends a very negative message to victims and families about how we are approaching legacy in Northern Ireland.

There is a real challenge around sensitive information for inquests. Again, I would say this: the approaches I have seen in Northern Ireland around managing sensitive information and public interest immunity are not as I have experienced previously. They are far stronger in their approach to requiring that information is redacted that I would not ordinarily expect to be redacted. In my view, it is in no way a national security issue, so we have changed our stance. Currently there is a draft public interest immunity policy that we have written, because there was not one, which we have shared with the NIO and the reviewer of terrorism legislation and the legislation in Northern Ireland that manages national security. We have shared it with them for their feedback. So there is much we can do to improve the process.

The proposition to put inquests into the Commission is a bit cart and horse for me, because the Commission needs to be trusted, and you do not get that anywhere else. What people talk about is parity and equality of how things are dealt with elsewhere.

There are also real concerns around the Secretary of State's veto and the Secretary of State's ultimate sanction or decision on reports that will come out with sensitive information, which is, again, something that does not happen anywhere else. It is different, and difference causes suspicion and a lack of confidence. I have no doubts about the integrity and authenticity of this Secretary of State, but he could move, and you would get another Secretary of State. You need to have processes in there that people recognise and have confidence and trust in.

Inquests in Northern Ireland have played a pivotal role in giving many families the truth of what happened. There is no better example than the Ballymurphy inquest, where the security forces were saying one thing, almost right up to the door of the court, until the inquest was brilliantly stewarded by our now Lady Chief Justice, dealing with lots of complex issues and sensitive information—it is certainly worth looking at her judgment.

I think it is premature, and that proposing that direction of travel causes more anxiety than reassurance.

Q82 Chair: Chief Constable, you said that you shared the PII policy with the NIO. Have you had feedback on that?

Jon Butcher: No, they have asked us for more time.

Claire McGuigan: They are ready to meet with us to talk about it, but we have not had that meeting yet.

Q83 Chair: What timescales are you expecting?



HOUSE OF COMMONS

Claire McGuigan: In the next number of weeks we will meet up with them to discuss, but we have not had any written correspondence from them or anything like that. The next step will be that we sit down and discuss the various elements to see how it can work in practice.

Jon Boucher: It has been drafted in a way that is very focused on national security and reassurances. My position would be to publish that. It is a framework to tell you how we would do it, because we were doing it in two different ways when I arrived. We have a single policy, and people can look at that to understand how we are applying it. That is the journey and aim.

Chair: Thank you.

Q84 **Katrina Murray:** Baroness O’Loan?

Baroness O’Loan: Thank you for the question. My understanding is that the proposal that the Government now have for inquests is—I think there are 38 inquests that were stopped, which is not a huge number in the context of a population of 67 million or 68 million—for them to be managed and inquired into by the ICRIR, using what are described as “enhanced inquisitorial proceedings” but falling short of the full inquest processes. Key to all this, and the key to the problem with inquests, is that inquests seek information, and information is not delivered, and people then have to come back.

The Brown family, who currently have an inquest running, have been back in court something like 58 times trying to get information—that is a scandal. I investigated that case 22 or 23 years ago, and I remember being absolutely assured that there was no further information, but knowing from what I knew that there must be further information—and there was. We now know that there was further information available.

In a statutory investigation, whether it is an inquiry, the Police Ombudsman or anything, it is very simple: you need to know which questions to ask. In those bodies—the PSNI, the Legacy Investigation Branch, the Police Ombudsman—we know what the questions are, we know how to frame them and we know what information we are trying to get. When you get further information, you carry on.

The problem is when you ask the questions and the door is closed. That is a repeated event. One of the things that I have noticed over my many years on this is that some information is classified as sensitive and requiring particular protection. But they are trying to protect information that is not sensitive now, although it may have been sensitive once.

I will give you an example. I did an investigation into the killing of the last soldier in Northern Ireland by the IRA. His name was Stephen Restorick. I will never forget him or his parents. In the case of Stephen Restorick, we asked for information, we got information and I produced a report. The report said that a helicopter was flying for a particular purpose, gathering information in a particular context. When I published it, I was told that if I did not take it down, my website would be taken down.



HOUSE OF COMMONS

The fact that Army helicopters collected information is something that is known to the Northern Ireland public. Otherwise, what were they up there all the time for—having parties? I am not being flippant, but I do feel very strongly that information was often wrongly classified. It was classified for a time, but the reality is that the techniques have changed, the individuals are very often dead and there is this NCND policy, which is very problematic.

In fact, we had a judicial review case, which was decided some years ago, involving a man called Scappaticci. Even then, the judge was saying that it is not an absolute obligation not to release information and not to confirm things. What he said was that it has to be done on a case-by-case basis, having regard to all the relevant factors, but that does not seem to be the approach that is taken. Indeed, I did name a woman who was accused of being an informant, Jean McConville, who was taken from her 10 children, and the world did not fall down and there were no major security breaches as a consequence. We need a completely different approach to that. I have not seen the Chief Constable's new PII policy, but I look forward to seeing it when he has got it through the NIO and people like that.

We are being told now—this is the problem—that the ICRIR will be able to get all the information that nobody else has been able to get, yet simultaneously, the Secretary of State is in the courts fighting to prevent disclosure of information and to challenge things like the finding that the ICRIR is not an Article 2-compliant investigation in part because of its powers in relation to next of kin and disclosure. I think it is a huge problem, and people just do not believe that the ICRIR will get this additional information, because there is no reason why it should if nobody else could, unless there is a major policy change by Government and there is no sign of that. Nothing in the legislation as it stands, and nothing in the enhanced inquisitorial processes that are proposed, would overcome the problem. There would be no court and no independent lawyers. Families will not have access to their own lawyers, and the Secretary of State, as the Chief Constable said, has the power to curtail the distribution of the findings. The only thing I would say is that we need to reinstate the coronial process, but we have to devise additional processes to deal with national security information, and particularly to work out what actually is national security information.

Katrina Murray: Is there anything you want to add, Sir Iain?

Sir Iain Livingstone: Baroness O'Loan talked about the fact that, when a process is initiated, you do not know exactly what information is available at that time. I think this demarcation between a normal inquest and a sensitive inquest would be a very, very difficult line to draw, and I think it is something that might evolve once you start something. You might start on one side of that divide, and as it evolves, it moves over. That suggestion would be really, really challenging. I think, as Baroness O'Loan outlined, you would have a robust inquest system with robust processes to deal with sensitive information, rather than having the demarcation that is suggested.



Q85 Claire Hanna: Baroness O'Loan, I want to build on what you said about disclosure and that being the context. You said in your submission to us that, "Having announced the repeal of the Act, the Government has now made clear that it intends to maintain the ICRIR which is a fundamental problem". You later said, in bold, "What is required at this stage is a new institution." You wrote that in February before the appeal on the Sean Brown public inquiry, and before the appeal on the decision on the Legacy Act. Does it remain your view that the ICRIR is widely rejected, and can you reflect what you are hearing from victims and survivors about that body?

Baroness O'Loan: I was with victims and families of the disappeared on Palm Sunday, the Sunday before Easter. There was a certain amount of discussion among them, and I have found distrust in other situations working with families. Very few people have said to me, "I am going", and that is only because there is nowhere else to go. The expectation is that nothing will work. The number of people who have actually gone to the ICRIR is indicative of the fact that people do not trust it. I said in my submission that we got 3,000-something cases in the first year. A lot of them were legacy cases. That has not happened for the ICRIR. Part of the reason is the way it is set up, part of the reason is the powers that it has, and part of the reason is that the courts have confirmed that the processes are in breach of Article 2.

I know we are going to talk about reconciliation later, but the major problem is that investigation is not a reconciliation process. Investigation is a process by which you take a set of facts, consider them, look for investigative opportunities, find all your evidence, bring it together and analyse it. You cannot have a criterion that says we are going to use reconciliation as a factor in deciding which cases we are going to deal with. I just do not understand that at all, and it does not seem awfully sensible to me. If you look at the title of the Act, it says that its purpose is "limiting criminal investigations, legal proceedings, inquests and police complaints". That is not calculated to promote reconciliation, but we will come back to reconciliation later.

We need to separate investigation and information recovery. I have said that there should be a new body, and I suspect what we actually need is the two bodies that the Stormont House agreement proposed initially. The first is what I would call a legacy investigation commission, which would deal with investigations. The second is an independent information recovery commission, which would deal with situations where there is no possibility of prosecution and no evidence, but where it may be possible to delve into open sources, or more particularly into information that is not going to lead to a prosecution but would help victims. I think you should have two separate commissions.

The process of achieving reconciliation, which is the primary duty of the ICRIR, is done by all sorts of things around trust, understanding and knowledge. Before you get anywhere near reconciliation, you need to build understanding and knowledge. That is why information recovery is so important, but I think the rule of law requires that we have a process that



HOUSE OF COMMONS

is not circumscribed by legislation and in which investigators can do the job that they do in all the other cases of murder and serious crime in the rest of the United Kingdom.

If we had an independent commission for information recovery, I do not think it should involve any form of amnesty. You could have something modelled on the Independent Commission for the Location of Victims' Remains, such as a process by which information could be provided, either anonymously or otherwise, that could then be examined, verified—if it is verifiable—and then brought into account.

I also do not think that the ICRIR should be considering reconciliation when it is working out what to tell people, because people need to be told what there is. It is not for those in command or in control of investigations and information recovery to decide what is in a person's interest to hear. I have always taken the view—I started so long ago with the Omagh victims—that you tell them what there is to know. You show them the evidence that supports why you said what you have said, and then you provide the support that enables them to deal with it. You do not withhold information.

One of the problems we have is, of course, that archives disclose information, journalists know things and witnesses tell things. Mo Mowlam had a phrase: she used to talk about "the dogs in the street," and there is an element of that. People need to know, and they need it to be confirmed by bodies that have the respect of the people. I do not think that the ICRIR is so formulated to enable it to earn trust in respect of its process, because it is not independent. It has no power to release sensitive information without consulting the Secretary of State. We will talk later about its powers to access information, but there are an awful lot of problems.

Q86 Claire Hanna: You have answered a number of things that I was going to ask. In regard to separate and firewalled pathways for information retrieval and investigative processes, can you give an assessment of the need for accountability mechanisms for non-state actors? Can you perhaps comment on how that might affect the issue with narratives about what happened in the Troubles?

Baroness O'Loan: There is a narrative that goes: the IRA did not keep records and the PSNI did keep records, and therefore we can find out what the PSNI did but not what the IRA, the UVF and the UDA did. That is true to some degree, but the reality is that the PSNI, the MoD and people like that have an awful lot of verifiable information about what the IRA did. Most of the people who have been prosecuted are members of paramilitary organisations. I think the processes can overuse them—Jon and Iain can probably talk much better about this than I can—but they were talking to people who were very close to what we might call the action, and they recovered information and found things that way. There is an investigative path there, and there is also the ICLVR path—its bread-and-butter business is finding bodies, but in order to find the bodies they need information from people who either buried the bodies or know those



HOUSE OF COMMONS

who did. It has been successful in finding bodies because people have finally come forward. I think that both Jon and Iain would be in a better position to talk about talking to paramilitaries. I have spoken to paramilitaries on all sides, and it is just part of business—it is something that you have to do. It is not difficult or challenging.

- Q87 **Claire Hanna:** Can you comment on what would be required to facilitate full participation or synergy—for want of a better word—with the Republic’s investigations into legacy and their authorities?

Baroness O’Loan: I think it is profoundly difficult. The recent signing of the agreement with the Omagh inquiry is indicative of a will to assist. An awful lot of the crime that occurred actually occurred, in terms of planning, in the Republic of Ireland, and an awful lot of information is held in the Republic of Ireland. It is a bit difficult to get that information out. I would have expected the Republic to have established some sort of independent Omagh inquiry to run parallel with our Omagh inquiry, because there is clear evidence that that bomb was planned down there. That is repeated across many incidents in the Troubles. There probably needs to be legislation in the south to enable the transmission of intelligence and information that the Republic holds. I think they would need some sort of commission that would, at the very least, assist the working of whatever we end up with in terms of a legacy investigation commission. There are very difficult jurisdictional issues to that, and there are difficult political issues to that, but we have to be innovative and find new ways.

- Q88 **Claire Hanna:** Chief Constable, in the light of the appeal on the Sean Brown inquiry and the appeal on the legacy ruling, can you understand circling the wagons a bit on Thompson, and even potentially, as we might touch on, holding back aspects of Kenova? Can you understand the view that it is still, and increasingly, security elites, or at least the needs of security elites, in the driving seat on this legislation?

Jon Boucher: I think that is what I said at the beginning. There is a disproportionate influence by people who have continually sought to take a protectionist view around information. In the Kenova report I talked about various people who had dealt with legacy over recent years, such as Dave Cox from the Historical Enquiries Team, who talked from the PSNI perspective and said that they only ever gave him a limited version of the truth—they never gave everything that they should have given.

By the way, these were conversations that I had with people before I was in front of this Committee in 2021. I just said, “Look, if you were sitting next to me, what would you want to say?” The HET did some really good work. I know some people did not feel that the HET provided them with the answers they wanted, and we know the HET did not get all the information, hence Dave’s comment. The HET did not get the information that they should have got. Some of that is linked to the Sean Brown case—that case is an example of that. We are trying to put that right, and there is a genuine intention to correct that. But if you also look at people’s views on that, it is not just now. A lot of this is driven by the people in the



HOUSE OF COMMONS

background, who are not out on the pitch. I am asking them to talk to me and explain why there are national security concerns about this, because I will listen very carefully to anything they say in case it would influence my position. But those people who did the previous inquiries—Lord Stevens said that he was deliberately misled. He said he was criminally obstructed by the police and military, and he said that MI5 withheld information from him. These are people who have been commissioned to do lawful investigations, at great public expense, to provide families with answers, and we continually fall short because information is not ultimately provided.

Renee Pomerance, who was the deputy to Judge Cory—I would have spoken to Judge Cory, but he wasn't well—describes how MI5 made her job really difficult. Her quote of what was said is in the report, and I shared it with MI5 for accuracy purposes. She said that MI5 made their job as hard as it could possibly be. She actually said—this is something that gets missed—that the security forces considered themselves above the law. We are not above the law. I genuinely think we have got this entirely wrong strategically, including in our approach to legacy and consultation from the first question. From everything I have said, the security services, the security forces, did an incredible job during the Troubles. But we got things wrong, and at times we had criminals in the security forces.

When those agencies are questioned, when allegations are made, how we respond to those allegations sets us apart as a democracy. I think we would call it out internationally if another country responded to such allegations in the same way. I just feel it's about time, and I have great expectations that somebody in this Administration will suddenly start to listen and realise that these people have been saying things for a long time. I met Judge Smithwick, who had exactly the same issues around how difficult his inquiry, south of the border, was—it came from the Cory piece of work—and how it was obstructed. Mary Laverty, his senior counsel, said, "When will they decide that this is not a national security issue?" I don't know when that will be.

It is really important that I say this. There will be national security issues, and there is a real and important reason why we have NCND—neither confirm nor deny—and why we have tried-and-tested mechanisms to deal with sensitive information that provide reassurances about how that information is dealt with. There is a mechanism to ensure that the balancing exercise for competing public interests is addressed, and that mechanism is the judiciary. It isn't people in corridors and behind closed doors. And I speak as a guy who was head of covert policing. I have applied NCND, given evidence at all the main courts and done so much public interest immunity work with judges around sensitive information. I just think we have got this in the wrong place.

The questions you are asking I have not been asked. You asked Baroness O'Loan, "Should there be an information retrieval body separate from the investigative body?" In my view, there should be. I think the Commission, as it has currently been designed, does not know whether it is one thing or



HOUSE OF COMMONS

another. Investigators, from my understanding, are not going to get access to families, because there is a whole other process to go through first.

The Stormont House agreement did a reasonable job of setting out how those two bodies would work together. The investigative body would provide the information retrieval body with its findings, and there was the reassurance to people who came to the information retrieval body that there would be no criminal or civil proceedings against them for what they told that body. There is something in the Dillon judgment: Justice Colton talked about the fact that families are never consulted about whether they would agree to immunity to get information. There are so many aspects of legacy that it feels like people just have not factored in, because there has been such a disproportionate approach to the legislative approach and the lawyer approach.

I will finish with this. In Kenova, we made so much progress. We did stuff that had not been done before, because we learned from those other inquiries I have mentioned. But it feels like—when I read the Bill, my heart sank—the Bill was designed to stop the progress that Kenova had made. So whenever I have heard people saying, “This is a Kenova approach”—let me be very clear. I built Kenova, and the Bill is not a Kenova approach. Let’s be absolutely clear: it is not.

But we can still recover this. As I say, I am really optimistic around what I think this Government intend to do, but we need to see what that looks like, and it needs to be consulted upon.

Q89 Claire Hanna: You built Kenova, and it is associated with, I suppose, a degree of confidence from families that other investigations did not have. Would you agree with Baroness O’Loan’s written comments that ICRIR has been “widely rejected”?

Jon Butcher: There is no doubt that it has been widely rejected—I do not think that is really up for debate—but we need it to work. I want the Commission, or whatever the Commission looks like, to work. Whether or not we do the repeal and replace, we need to do something that gets the families’ trust back. At the moment, we are not asking the right questions or engaging in the right way, other than trying to be protectionist and reassure the lawyers, “Right, we’ll do x, y and z around information provision, and there will be other safeguards for you around vetoes for the Secretary of State.” All of that I understand, and of course they need to consult on that, but that has set a path where there is just no trust and confidence in this process. At some point, somebody has got to call time. I think that might be what is happening, but time will tell.

Q90 Gavin Robinson: Baroness O’Loan, you mentioned in response to Ms Hanna the political and jurisdictional difficulties around the Omagh inquiry, in particular. We are aware that a memorandum of understanding was published within the last fortnight between the Omagh inquiry itself—its chairman—and the Irish Government. Have you read that?

Baroness O'Loan: I have not read the agreement, no. I have not had time yet.

Q91 **Gavin Robinson:** I think you are right to mention that they will have to legislate on the provision of intelligence information. As it stands, the memorandum of understanding is in line with the terms of reference of the Omagh inquiry, which is to assess whether the UK authorities could have prevented the atrocity. There is no introspection in that. This Committee has heard from CAJ, for example, which published a report at the end of February this year citing the fact that the Irish Government have been completely devoid on the creation of investigatory and legacy bodies, the provision of information and the extradition of participants or perpetrators.

While you accept that there are political and jurisdictional difficulties, do you believe that the Irish Government should be doing an awful lot more, particularly in Omagh, not in assisting in answering the question whether the UK authorities could have done more, but in showing a level of introspection to recognise whether they themselves could have done more to prevent the atrocity?

Baroness O'Loan: I absolutely do. It would have been remiss of An Garda Síochána if they had not been gathering intelligence and information about the activities of terrorists—of IRA people—particularly in their jurisdiction. They were gathering such information, and it would be imperative that such information is shared. If we look at Omagh, for example, we know that the bomb that exploded there came up from the south.

I think there has been too much of a process by which assurances have been given that all information will be provided and so on, but when you go back and ask for the information, it is not provided. I will give you one example in the context of Omagh, because it really struck me as being a very interesting approach. I was approached by a Garda officer who was a whistleblower, effectively—he brought information to me—in 2003 or something. I cannot remember the exact year, but it was early on. He produced a mountain of evidence to support his allegations that the Irish Government were actually tracking some bombs, though not the Omagh bomb.

I took that information to Dublin and a commission of inquiry was established. That commission never sought to hear evidence from the senior investigating officer on the Omagh bomb inquiry. When I was invited to give evidence, I went down and asked them one question: "Do you have access to Garda special branch material?" The answer was, "No, we don't need that. This is a CID matter." I knew then that that committee of inquiry would produce nothing.

I think there needs to be a really serious look in the Republic of Ireland, and I know how difficult it is going to be. I know that the dynamics, constructs and contexts are difficult, but there needs to be a determined process through which the records in the Republic of Ireland are made available, where necessary, so that the Omagh bomb inquiry can do its work.



Gavin Robinson: Thank you very much for that response.

Q92 **Chris Bloore:** You have given an incredible set of evidence, and it has been really forthright and candid. I really appreciate that, especially as someone who is new to this Committee.

You have made lots of comments about ICRIR. In previous evidence sessions, we have heard about the limitations, and we have read some of the things that all of you have put on the record as well. I would be interested to know what changes you would recommend to the rules of referral of cases to ICRIR. You mentioned your concerns about trust and engagement from family members, but do you think that could improve engagement with the Commission? ICRIR currently has no power to initiate its own investigations. Should it have that power—and if so, why?

Sir Iain Livingstone: Taking your final question first, yes, it should. They will find something that only they can read, and that would cause them to initiate an inquiry. It would be totally counterintuitive if that had to be referred back to the Secretary of State or Attorney General or whatever, so yes, I think that is an absolute requirement.

On your first question, I think it should. As I understand it, neither the Chief Constable nor the DPP in Northern Ireland has the ability to refer matters in, so there is no 35(5) equivalent, which was the foundation upon which much of Kenova stood. I do think that the bodies of referral need to be extended, and I do think that the Commission should have the power to self-initiate.

Baroness O'Loan: I have absolutely no doubt. Everybody else has a power to self-initiate when they have suspicions that a crime may have been committed. In my early days as Police Ombudsman, there were some difficulties with judges and people like that wanting to refer to me, and those had to be dealt with and were dealt with. Yes, of course they should have a power to investigate without a referral. The biggest reason for that is that people are so afraid. They are afraid of coming forward to give evidence against those who may have murdered their loved ones, because paramilitary organisations still exist and their adherents still exist, and they will threaten people and worse. The power of self-initiation of investigations is definitely necessary.

Another thing that would help is if people could come forward and make a very simple statement. They should not be asked what they want or need to know. That is part of a family liaison process, but it kind of circumscribes the expectations of the public. I remember hearing the case of an individual who had gone to ICRIR and had been asked, "Well, what is it you want to know?" He wanted to know something about the final moments of his loved one. Yes, that is what they want to know, but when you come back, you end up in a situation in which they want to know so much more. It is better to start off from the right place, if you follow me.

I remember a lady coming into my office as Police Ombudsman to complain about her son being murdered. She knew who had murdered her son, but she could not tell me their name. She was too afraid to hear the



words coming out of her mouth. We have come a long way since those days, but people still live in a degree of terror when that has been their experience. People are still subject to vilification and attack when they seek to find out what actually happened. There should be an automatic expectation that somebody whose loved one's death has been the subject of investigation should receive a full, absolute report, subject only to the requirements of national security.

Jon Boucher: I think it has been covered, but when I was doing Kenova, we came across information that required investigation, I spoke to the then Chief Constables, and we then investigated those cases because of what you identify. I have written to the Secretary of State about other cases that I am concerned about and he said, "Well, they can be dealt with by the Commission," but that is not the case if the families do not refer them. He has to refer them in. I was not able to refer them. So, first, the Commission has to self-refer and identify issues, which it will; if it operates properly, it most certainly will identify a number of issues.

To build on Iain's point, we have written to the Secretary of State in a case that was a mess because this provision had not been made. We had somebody arrested for a Troubles-related matter, the custody time clock was ticking and there was no process for the ICRIR to deal with that prisoner, so I had to get the Secretary of State to refer it in, and that relied on people being in the right place at the right time. Had we been consulted on some of those issues, certainly the one about self-referral, they would have been no-brainers—forgive me for the simple language—because of what you come across. I think that is how people tend to lose trust in what is presented in front of them.

Claire McGuigan: I am not sure that I necessarily agree that it needs to be a referral. The Secretary of State has a list of cases that we had in the Legacy Investigation Branch that we were going to investigate. I think that the Commission, or whoever is charged with investigating, should be given that list, and that all those families should have all those cases investigated. That was our intention. My understanding from the Stormont House agreement was that that was being taken away from policing so that an independent body could take it on, and now we are in a position where it requires a referral from the family.

Yes, we should have a mechanism to refer in, but it should not be about referral; it should be about investigating where there are lines of inquiry. That is how you get an article 2-compliant investigation by the state. That is what they need to do. I would like to see all those cases fulfilled, which was what we were trying to do, but we were not resourced enough to do it—we did not have the funding to do it—and we were not deemed, at times, to be independent enough to do it. The new body needs to take on what we had started and what we were trying to work through.

Q93 **Dan Aldridge:** Thank you for all your evidence so far; it has been really important to hear. The ICRIR model was built around conditional immunity for people coming to it with information, and I know some of you have talked a bit about that. With those provisions now deemed incompatible



HOUSE OF COMMONS

with the ECHR, how do you envisage participation by and truth recovery from, for example, non-state actors? How did Operation Kenova obtain information from paramilitaries, and how was the information verified?

Jon Boucher: If I have understood the question correctly, I think there needs to be a separation. We keep going back to Stormont House agreement conversations. With the Historical Investigations Unit that was proposed and the ICIR, it would have been challenging for both organisations to succeed, but I think that was the best model for them to succeed. At the moment, I think the Commission is somewhat confused as to what its primary role is. We can talk about reconciliation, but there is no definition of reconciliation and there is very scant information on reconciliation when you read any of the correspondence over the last number of years from different Governments. I think the institutions should be separate.

I talked about the Command Paper of July 2001, which was the precursor to the legislation. That effectively set out a set of intentions from the Government that were quite worrying to me as a police officer and investigator—about values and bringing people to justice—because it was setting a new set of terms for how to do business with criminal investigations, civil cases and the coronial process in Northern Ireland. That felt quite insulting to victims and families. Many phoned me wondering what it meant for Kenova. I think some of that was because Kenova—I will be frank, and I have said it before—was being so successful in getting information, because we were being extremely robust about information recovery.

You need to separate those mechanisms. They brought them together so that they could have this immunity where anybody came forward and, without their accounts being really tested, they would be accepted. We know—it is mentioned in the Dillon case; Mr Justice Colton refers to it—that that was about protecting veterans of the military from prosecution. I have many friends in the military. So many different stakeholders in legacy disagreed with that approach. It was, again, a very narrow approach. Now that that has fallen, rightfully—I think it was always going to, legally—there is an opportunity to separate those two institutions, and they will work far better.

Building on the Independent Commission for the Location of Victims' Remains, we need to have the international agreement that exists with that organisation with the Irish Government and the British Government around such a framework. I am encouraged by the recent warming of relationships and a positive environment where the Irish Government and the British Government are trying to work through a number of these issues. I do not know the detail or what they are looking at, but I am encouraged, and I would encourage them to come up with a shared approach that addresses some of the issues that have been spoken about around information retrieval. Do not forget that there are a considerable number of families in the Republic of Ireland that I have dealt with and Iain now deals with through Operation Denton.



HOUSE OF COMMONS

With regard to paramilitaries, I will hand over to Iain, because he is dealing with these things now, but we took the approach that is taken everywhere else. In my background we apply something called a SOCPA process. The Serious Organised Crime and Police Act 2005 provides you with a framework. We were trying to mirror what they have in the United States where people cleanse themselves and tell you everything they have done, then they might get immunity or they might not, or they might get reduced sentences. It would give a framework for people to give intelligence without necessarily incriminating themselves.

We looked at the SOCPA provisions when dealing with people. When dealing with people who had already been convicted of offences in Northern Ireland, we had a process where if we spoke to them and they started to self-incriminate, we would stop the conversation and ensure that if they had gone too far, they were cautioned and could withdraw, so that they could have the correct legal safeguards. We were trying to get information for families about other catastrophic incidents during the Troubles. Legally, it is quite a challenging environment, but legal frameworks exist to deal with it.

Q94 Dan Aldridge: Could I probe what you said about the amnesty? You said that it was always going to be legally incompatible. Why would any Government push that through if people were telling them—

Baroness O'Loan: To protect a certain category of individual. That is why they pushed it through.

Dan Aldridge: They pushed it through knowing that it would not stand up to scrutiny.

Jon Boucher: I am not a lawyer, but everybody, including people in the military—colleagues and friends of mine—had real concerns about that. None of us could understand it, but it was because of the approach of the Government of the day. Listen, I understand that. We have to take account of what all the security forces did during the Troubles—the sacrifices and the loss—and I talk about it in the Kenova report, but we, as police officers, are held to a higher standard, and we accept the accountability that comes with it. If we have acted illegally—criminally—we should be held to account.

The application of the security provisions around “neither confirm nor deny” has, without a doubt, allowed the security forces to escape with regard to having acted wrongly and not be held to account for that—that accountability has not happened—and has allowed people who have been involved in criminality not to be prosecuted when they should have been, because we have had this totemic approach.

When I first went into the PSNI, I wanted to try to get more inquests into a position where they could be resolved before the cut-off date, and I was told that we could not do the work that I was commissioning because they were now under the stewardship of the coroner, and that could not happen. That is wrong, and it worries me that they are advocating that to



HOUSE OF COMMONS

their Chief Constable. The second thing is that they said that if there is an agent involved, that attracts national security provisions. That is wrong.

Those are some of the attitudes and approaches to this, and a lot of that is recorded in the Kenova report. We have to start drawing a line on this and move forward in a new way, where we take account of national security concerns but we also take account of everything else, and we are not disproportionate around our approach to national security concerns.

Baroness O'Loan: I support everything the Chief Constable said. You asked about retrieval of information from paramilitaries, and how you verify it. Following a report I did in 2007 into the UVF in north Belfast, one of the brigadiers came forward as an assisting offender under the Serious Organised Crime and Police Act 2005, and was debriefed as an assisting offender. That is a proper process through which you can gather information and then you can verify and look at existing evidence, the forensic evidence, and what was and was not done in the course of an investigation. That man ended up admitting to, as I said, over 200 crimes. One of the problems you have with these people is that when they have committed very serious crimes, their credibility as a witness is somewhat compromised, and therefore there is a huge balancing act to go on. But there are processes—we don't have to go for anything as crude and complete as an effective immunity.

I have a brother and other family members who have served in the military in Northern Ireland. I know how much good work was done by the military in Northern Ireland. I know part of the reason why the Legacy Act was passed was to protect veterans from prosecution, but the reality is that very few veterans have been prosecuted. That is being raised again as the renewal and reform of the Legacy Act is being discussed. Very few veterans were prosecuted and very few were convicted, and the majority of prosecutions then—and those ongoing—were of people who were involved as paramilitaries in murder and serious civil crime.

If somebody has committed an offence, the rule of law requires that it be dealt with according to the rule of law. We can have no special categories because, apart from anything else, if we say our troops are not liable for their actions, then we put them in huge danger when we send them to conflict zones overseas, because that will be the expectation of how they might behave. It is a profoundly important issue, first, that we adhere to the rule of law, and secondly, that we do not in future put our troops into a position of jeopardy.

Sir Iain Livingstone: The referral to the Serious Organised Crime and Police Act and the practices and the legal framework that exists around assisting offenders is an important point, because it exists across the United Kingdom. Very often we look for bespoke solutions for Northern Ireland because of the intense complexity around it, but in actual fact, when dealing with paramilitaries, the first response is—again, I hope it is not overly simple—very difficult and challenging. As Baroness O'Loan said, that can be with the veracity and motive for what they say.



However, you could follow first principles: am I speaking to you as a witness or a suspect? If I start as a witness, that can change, or your status can change if you start to say something incriminating and you pause and stop that. The idea of an absolute immunity seemed bizarre when there was a model that had been used recognising the need to get people who have been involved in serious crime—such as terrorism—and allow that further information to be taken through. At times, stepping back from it and bringing it back to first principles of investigation, due process and fairness would allow that engagement. It is not unusual for investigators—not necessarily in a counter-terrorism environment, but absolutely in that environment as well—to do intelligence debriefs on live and historical investigations. In those you would speak to somebody about not necessarily their own conduct but some knowledge that they have. You need to be able to build credibility with paramilitaries to do that, but processes do exist. The Chief Constable alluded to the SOCA and the serious and organised crime provisions around assisting offenders, and perhaps that is something worth revisiting in the context of the legacy in Northern Ireland.

Claire McGuigan: All I would add is that, with everything that is happening, the current Act needs to be de-conflicted. You need to separate this out. We have talked here about how you can deal with witnesses and suspects, how they can change, and all the other provisions. To me, the Act, and the way all the different parts have been interlinked, is just incredibly confusing. I think that the Commission and the people working in it must be fairly confused about where we are going with this. I think it needs to be de-conflicted—start at that, and you could start to build something moving forward.

Q95 **Adam Jogee:** Apologies for having to step out earlier on. All politics is local, and I had some constituents down, so I had to go and say hello, but I gather, from colleagues' questions and responses, that the panel's answers have been powerful and useful, so I shall closely read the transcript later.

Transparency, answers, the truth: they are what many of the people who I have met, who we have spoken to, and who have been impacted by the violence of the Troubles want to have. That is why the right information is so important. I have three questions, one for each of you. Claire, feel free to drop in, if helpful.

Iain, how much impact would the ministerial national security veto currently in place through the 2023 Act have had on your ability to progress Operation Kenova?

Sir Iain Livingstone: It is difficult to assess fully. As Jon, the Chief Constable, had a previous role on Kenova, he would be able to speak to this as well. Within Kenova, a protocol was developed for placing matters into the public domain, and that built in something we call security checking. I am not disclosing any sensitive information, but this morning I am here and some of the Kenova team are at Thames House with members of MI5, going through what we call our family report. That is an



element of Kenova work related to Stakeknife, where we want to give bespoke reports to families to give them some specific detail. There was no model for that commitment, given by Chief Constable Boutcher; there was no manual that Kenova was following. It came from Jon Boutcher's leadership and commitment to transparency. But even within that, there was always an awareness that at some stage you would have to submit it for what we call security checking to allow representations to be made, similar to Maxwellisation in any other context.

I think what would be different—this was never ultimately tested, although Jon may be able to add to this point—is that it was a matter of representation; there was no veto. If there was a point of dispute between the Cabinet Office, who would co-ordinate matters on behalf of Government Ministers, and the Kenova team—as there yet could be in matters that I wish to put into the public domain later this year—the Secretary of State does not have the ultimate sanction or veto on that. Ultimately, it would be a matter for us, within Kenova, to take that decision. As we touched on this morning, none of us are in any way vandals when it comes to the security network. We are all products of it and have been deeply immersed in it for decades. We have always recognised that there would be potential national security concerns that need to be addressed, but as we have said, they need to be genuine issues of national security, and not necessarily organisational embarrassment.

We would allow people to make representations, but ultimately it would be a matter for Kenova to make a determination on. So, you would not have this overarching veto sitting above it. Right from the outset, and the work led by Jon Boutcher, we have always recognised, and continue to recognise, the significance of national security, but it has to be authentic. There is no ultimate veto on what Kenova does, which differs quite significantly from the current provisions of the legislation.

Q96 Adam Jogee: Chief Constable, do you want to touch on that?

Jon Boutcher: Iain makes a good point—it is about the consultation. Families were really concerned about what any report from Kenova would look like in terms of its journey to being published, because of trust and confidence, so we wrote a draft protocol that set out the steps that the report would go through before it is published. The first step, because people were concerned it would be written by lawyers from the security agencies, was to say that I would write the report—it is the Kenova report, it is our report and it is my report.

The second thing, which you would know as Maxwellisation or representation, was that where we negatively or adversely commented about individuals or organisations, we would write to them, explain what we were saying and give them, if you like, a right to reply, which was right, fair and proper. They did not get the report, just the concern that we were expressing about their role.



HOUSE OF COMMONS

The third role—or the third function—was to do the security checking. Through the Cabinet Office, we gave them the report. In the security checking process, I shared the report with two very senior barristers, both appointed by Government to look at terrorist legislation, so they were vetted to the highest level. These were, if you like, establishment barristers and they both provided me with an assurance that there was nothing in the report that contradicted national security provisions.

I then got a response that there was quite a lot in the report that contradicted national security provisions, so obviously there was a contrast of view, but there was no veto from the Secretary of State. But it felt like I was having to box clever to get the report that I wanted to write, which was not going to threaten national security, published. Baroness O’Loan used the term, “The sky did not fall in”. I almost had to try to outwit the lawyers by saying, “Well, these two senior barristers have said this, so they completely disagree.” I am delighted that the lawyers finally agreed that the report could come out in the form that it is in.

The report then had to go to the Public Prosecution Service to make sure there was no prejudice, before going to the Chief Constable of PSNI. It was obviously the changeover period in which I arrived, so the Deputy Chief Constable dealt with it to avoid any conflict of interest in the publishing of the report.

Again, all that lessons learnt is something that they may have picked up with regards to the NIO and the Bill and how you would deal with reports, but nobody came to speak to us about it, which again, I find sort of disappointing, but reflective of the fact that Kenova was seen as causing problems, if I could describe it that way. We were not causing problems. We were actually trying to find everyone solutions, and were very conscious of the difficult job of all the agencies in making sure that we retain proper national security provisions.

Q97 Adam Jogee: Baroness O’Loan, you have highlighted the issue of disclosure to ICRIR and the reasonableness requirement that did not exist in previous or other legacy investigations. Do you think the Government will, should or may reconsider this provision as part of their reforms to the ICRIR?

Baroness O’Loan: I would very much hope so, because if you have a provision that you can only make reasonable requests from somebody, the consequence is that somebody is going to make a decision about what is reasonable. That almost inevitably leads to judicial reviews about the decision making on the way, so I think it was a silly provision to put in. I think it was an attempt to protect, and it did not work. I would be very surprised if they do keep it. In fact, I almost understand that maybe they are not going to keep that provision.

I wanted to just add something to what Jon and Iain have said about the process before you publish a report, because it is a very lengthy process if you have got a complex report. First of all, there is the fact checking, then the security checking and then checking that you are not going to impact



HOUSE OF COMMONS

on any ongoing criminal proceedings. There is the whole issue of national security. They are all profoundly important. It is important not only that everyone gets the proposed part of a report, but that they deal with it quickly and bring it back quickly. One of the delays that we had with Kenova was simply the waiting. The Kenova report was published last March—

Jon Boucher: The 8 March last year.

Baroness O'Loan: The 8 March last year. The families have received verbal reports about their individual cases. I was speaking to a member of the Kenova families a week or so ago, and I asked them whether they had yet got their personal written report, because I have been asking about these written reports as a member of the steering group. They told me no. The reality is that the security service have had those draft reports since August, and we are now coming to the end of April. They have been through that process of checking, security checking and everything, so I think this really is incumbent on the security services. I know that they are very busy, and are coping with international terrorism and all the threats to national security, but there needs to be someone who can deal with these things and move them on much quicker. The trust in the new processes, whatever they are, will depend on the disclosure of information, as I say in my response to the Committee. For that reason, we need to get these family reports out on Kenova, so that that part of the work is done. Then we will get to a final report on Kenova, for example. Yes, it is not simple, but it is profoundly important, because it goes to trust, and trust is essential for a stable society.

Q98 **Adam Jogee:** That is absolutely right. Chief Constable, Baroness O'Loan touched on this, so I suppose in many ways this will be the answer we have just had, but from your perspective as Chief Constable, in what specific ways would you like to see the national security and disclosure regime adapted? Presumably, speeding up will be part of that, but I wonder if you could unpack that a little for us.

Jon Boucher: It is not straightforward. Stated cases deal with national security, but you will not find a definition of national security. Lots of people have tried to get one, but the courts have addressed it to a certain degree. I have said this before, so forgive me for cheekily referencing it. There are 10 recommendations in the Kenova report. They were fudged when the report came out, because—it was commented—ongoing legal proceedings meant that the Government could not comment. I don't think that those recommendations have any implication for any ongoing legal proceedings, so they need to be acknowledged and applied across the piece. That would be a really positive step for this Government around legacy, and acknowledgment would come from families and victims groups.

One of the recommendations—I give this to the Cabinet Office to do as the people responsible, or the shop front, for national security—is that the Cabinet Office review the provisions of NCND, “neither confirm nor deny”, within the context of the security situation during the Troubles in Northern



Ireland. Without doubt, from what I have seen in my investigations, the provision is applied in a way that has stopped wrongdoing coming to notice and prevented people from being prosecuted for murder. I simply ask the Government to look at that in the context of the Troubles—part of the United Kingdom, part of our democracy—to make sure that, as part of the set of mechanisms to help move us all forward on legacy, they review that.

Obviously, because of what we have been talking about today, the approach currently is still very defensive, and probably not what I would like to see. If the Government could just see the importance of taking a different perspective, looking at it through everyone's lens, not just the security lens—we would still not allow national security to be breached, people to be put at risk or tactics to be revealed; that would not happen—and see their way to approaching this more pragmatically and reviewing NCND within that context, that would be huge. Rather than the type of legislative work that I think they are thinking about doing, that would make a huge difference for people's trust and confidence.

For me as the Chief Constable of the PSNI, I think the thing that still prevents nationalist Catholics joining the PSNI is, fundamentally, legacy and the headlines about legacy; it is about trust and confidence. That will not be built overnight, but it feels in some ways that we have gone backwards. I have spoken to officers who joined the PSNI from a nationalist background, and they feel that we have gone backwards. I have spoken to officers who have been subject to dissident republican attacks because of the intimidation against Catholics—against nationalists—joining the organisation. They often come back to the issue around legacy, because that almost feeds the narrative of the dissident republicans that we are still not addressing the wrongs of the past.

I will say this again, just to reinforce: I have seen remarkable, remarkable work by security forces. But because of our approach, everybody thinks that everything has been done in a collusive way and that collusion exists in every case, and it does not. However, our approach has fed that narrative, and we need to change the approach.

Q99 Adam Jogee: I do not expect you to share details of conversations you have had with Ministers, but have you made those points to the Northern Ireland Secretary, the Home Secretary and such?

Jon Butcher: Not to the Home Secretary, but I have made those points to numerous people that I met in doing Kenova, and I have met some very senior people—Ministers and ex-Ministers. I have repeatedly made those comments. But you come up against this wall—I describe it in the Kenova report as a totemic wall—of the security mantra. I just do not think that they understand that it is holding society in Northern Ireland back.

The last thing I would want to do is breach any national security provisions—I must be very clear on that. But if we just adjusted the dials and we all gave a bit—making sure that national security provisions were



HOUSE OF COMMONS

protected—I think we could make huge strides in Northern Ireland. The PSNI as an organisation could see levels of trust and confidence that were probably hoped for by the members of the Patten Commission when they did the report and the PSNI was formed.

Baroness O'Loan: Could I just add one thing? One of the things I did as Police Ombudsman in reporting was to confirm suspicions that people had brought to me and then to explain in other cases why those suspicions could not be confirmed and were simply unfounded. One of the reasons that we grew such confidence in the office was that we were able to explain a great deal. I came under a lot of pressure not to reveal things, and there were a lot of judicial reviews in the early days, but that ability to confirm what has happened and to confirm what did not happen is enormously important in growing trust in policing and security generally—that is just a final thought.

Adam Jogee: All people from all communities—I think that is the point.

Baroness O'Loan: Yes.

Q100 **Chair:** I have some follow-ups. Baroness O'Loan, you mentioned the personal written reports that the families have not had since last August and said that because they were being held up, the final report would be delayed. Sir Iain, you said on the record that there is a commitment for the final Kenova report to be completed by the end of this year. Do you foresee that delay to the personal written reports being an issue?

Sir Iain Livingstone: My judgment is that it will not be, but only after some nagging, for want of a better phrase, and pushing from us within Kenova. As Baroness O'Loan said, we started submitting some of the family reports—I think it was 26 in all—back in August. There was another tranche later, around October. Bluntly, they had not considered them. We route them through the Cabinet Office, and ultimately the Security Service take that review.

On the back of some other engagement that we have been having with the Security Service, there was a significant issue that arose about this time last year, when Jon and I were in front of this Committee, when MI5 came to us and said that there was a whole load of new material that had not been disclosed regarding Agent Stakeknife, which really knocked us back. That took a period of assessment. I will definitely be reporting on that in the final report. The level of engagement that we have had with MI5 has allowed them to put the resources into the family reports. I hope that within the next number of weeks that security-checking process will at last be completed, which will then allow us to distribute them to the families.

We have met those families. We are in constant contact with them, and they have had a verbal update on matters that are very specific to their loved ones. Some of these are quite significant issues about what was happening in terms of some of the paramilitary organisations, but some of them are very specific. Some of them are facts where through Kenova—through the investigative team that Jon put together and the amount of



HOUSE OF COMMONS

information that was obtained—you can go to somebody and give them some specific fact about what happened to their loved one, either at the time of death or prior to that. Some of those very specific details can bring enormous solace to loved ones.

To give one example, we spoke to a widow and, through the inquiry that was carried out, we were able to show that her husband had had the last rites administered to him before he was murdered. Now, he was still brutally murdered and the impact on the family was enormous, but she had a very strong faith and she took enormous solace from that. So it was a very specific point that would be contained within that specific family report. That is something we want to do across the other 26 reports.

I anticipate that we will be in a position to distribute the reports within the next three to four weeks, and that will allow us then to move on and start to formulate the final report. In that final report, I want to cover all the work that Kenova has done. There is the initial work about Stakeknife, but again, as has been alluded to here, other investigations and reviews have been added to the stable of investigations and inquiries.

Operation Mizzenmast was about the murder of Jean Smyth-Campbell in west Belfast in the early 1970s. Again, the Kenova team have carried out a thorough review on that and have fed back to the families. Then, Operation Turma related to the murder of three police officers outside Lurgan in 1982. Again, through quite incredible investigative work carried out by the Kenova team, a suspect for that has been identified—an ex-paramilitary. He has now been extradited to Northern Ireland. That matter is now clearly into the judicial process and the PSNI will run with that. Finally, there is Operation Denton, which relates to the allegations of collusion between loyalist paramilitaries and state actors in the early 1970s, around mid-Ulster and down into south Armagh. That was a review rather than an investigation. That matter will report.

In the final report, I will seek to pull all that together and pull out the learning from that—again, some of the issues we have discussed this morning will undoubtedly form part of that. But crucially, and as Jon has alluded to, it will be an update on the recommendations. What has happened to those recommendations? They were made back in March 2024. I asked again in late 2024 for an update on where and how they have been progressed. I have not had that update as yet.

The other significant issue that I need to cover is the matter of the non-disclosure of material from MI5 and the impact that that has had. Again, it comes back to the issue that we have heard about right from the outset around trust and confidence, because, as you said, we have seen everything and yet suddenly, eight years into this significant investigation, all this material suddenly arises. That has had a real significant impact on the trust and confidence of the families we have been dealing with.

Q101 Chair: Should we be concerned, though, that there is only a finite amount of money there for Kenova, and that you may run out of time and money?



HOUSE OF COMMONS

Sir Iain Livingstone: The Chief Constable of the PSNI has assured me that we will be able to get our work done. We are down to a very small core team of about 10 or 12. It is demanding, for me and for the rest of the team, but I am confident that we will be able to get the work concluded.

I have had engagement with the Northern Ireland Office, because under the Legacy Act, administrative matters needed to be concluded within, I think, 13 months—I think that is by the end of May; I cannot recall the exact date. But obviously my position would be that if the reason that I might have not been able to conclude the final Kenova report was because of this significant intervening variable—suddenly, we have all this material that MI5 had held back; they have only recently concluded a review of their own. We also felt that other matters in regard to Operation Denton did not actually fall within the Act.

My understanding at the moment is that the Northern Ireland Office intends to extend that provision in the Act to allow Kenova to finish its work, but other agencies, such as the ombudsman's office, may need the benefit of that as well. Rather than having this hard stop at the end of April or the end of May, I think there is an intention to extend things for a further six months. We will certainly finish our work within that time; that is certainly my objective, Chair.

Q102 **Chair:** You don't think that MI5 are being deliberately obstructive, then, in order for the report never to come out?

Sir Iain Livingstone: I don't think so, but it is the timing of it. I said that I wrote to the Secretary of State at the time that this material comes to light after the interim report is published by Jon Butcher, after the DPP takes prosecution decisions not to prosecute, on the eve of the new legacy legislation coming into being. Suddenly, all this material is brought to light. It was massively disappointing, and it was massively concerning, but they have now conducted an internal review, which was carried out by a retired assistant commissioner of the highest integrity, and she has certainly not found anything untoward. But undoubtedly, it is very concerning that this material was not brought to light when it should have been.

Q103 **Chair:** Jon, do you have anything to add?

Jon Butcher: No. Listen, I think it has become a bit attritional with the lawyers, and I do not want it to be. We are trying to influence things so that people just look at things in a broader way and from other people's perspectives—and that is everybody involved in the Troubles. I said earlier that if everybody could just give a bit, and take account of everybody's different perspectives, we could—because of the current position with the two Governments—be in a position where we get something, although it will not satisfy everybody. We could get legacy in a position where families can finally get the information that they have been waiting for for a long time.



HOUSE OF COMMONS

But attitudes need to change, and the structure definitely needs to progress. The Stormont House agreement was pretty much a framework that most people accepted, although I know that work still had to be done on that—it is a wickedly difficult challenge, legacy. But with the work of this Commission and the new Government's approach—I am not criticising the old Government, by the way; different people have different perspectives—there are real opportunities, although they are few and far between.

It is 25 years since the creation of the PSNI next November. If this does not get fixed now, and we are still in a position like this, trying to muddle our way through without any funding and resources to deal with legacy, I think it says a lot about the attitudes towards Northern Ireland society and how serious people are about trying to enable Northern Ireland to move forward.

Q104 Claire Hanna: There is a lot in all of that about the draft reports not being passed back from last August. Perhaps you have all been very committed to protecting national security and been very professional, but it appears that it is over the potential disclosure of the name of the agent known as Stakeknife. You have committed to not naming that person; you have referred to the dogs in the street previously, Baroness O'Loan, and I think that that name is very widely known. Would I be forgiven for thinking that the failure to return those reports is to put Operation Kenova in its place, perhaps, or to further suppress disclosure about the scale and the brutality of the partnership, or the working arrangements, between the security forces and the IRA?

Sir Iain Livingstone: I wrote to the Secretary of State before Christmas for an update on the recommendations, which I published on the Kenova website. Then, there was a second letter that rightly had sensitive material contained within it, but I referenced it in my first letter, where I specifically sought permission to name Agent Stakeknife because I felt it was in the wider public interest to do so. That was a follow-on from the recommendation that was in Jon's report in March.

That issue remains unresolved. I have offered to meet the Secretary of State; I have offered to meet and brief him or other Ministers, or any other parties, I suppose, to advocate the Kenova position that Stakeknife should be named, on behalf of the investigation, but potentially the victims and families as well. I have not yet had a substantive response to that request to name him.

On the other issue, as I said, the director general certainly took the matter very seriously when this material came to light. Again, it is a matter of public record—that continued over the next number of months. New material and other files were suddenly found, because they went back with renewed energy to go through their whole archive and find material, but all of that needed Kenova to assess it and look at its significance. I will report on that in a final report.



HOUSE OF COMMONS

There has undoubtedly been a lot of interaction between Kenova and MI5 on the family reports and on the material that was not disclosed, and we clearly still have this matter about our request to name Agent Stakeknife, because material was shared with us under certain conditions. That is something that I, as the head of Kenova, will not unilaterally breach, but I think it is in the wider public interest that Stakeknife should be named.

Q105 Claire Hanna: I completely understand that, and I am making the point that you have at no point attempted to overstep that. You expressed frustration last year that none of a dozen or more perpetrators, against whom there was strong and compelling evidence, were going to be prosecuted, and then further information became available after those prosecutions were not brought.

We have spoken about wider confidence in the rule of law. In theory, should you then be allowed to pick the investigative processes back up on the basis of that new material? I suppose my question is: is there a wider issue here with confidence in the independence of the organisations involved, and, in general, progress towards the rule of law and adherence to it, if those prosecutions were not made despite that evidence, and then further evidence suddenly, magically, came to light?

Sir Iain Livingstone: We have updated the DPP on the information that we have found as well. The prosecutorial decisions, rightly, are for the DPP alone to make, as you know, and those decisions were made. The deaths of key individuals in other circumstances are undoubtedly a factor related to that.

There was nothing in the material we found that showed additional murders that should have come into the terms of reference, but our big frustration is that there are lines of inquiry that can now never be brought forward or pursued. Had they been available to Jon and his team back in 2015, 2016 or 2017, when they should have been shared, the potential would have been there to gather further evidence. That is something we can never know the answer to. That is what an investigation is: you go and speak to people, and that takes you to other people and then to other people, and those things have been denied.

The significant issue—again, this is a matter of public record and I have referenced it in different forums as well—is that it is very clear that the security services' awareness of Agent Stakeknife was very different from what had been presented both to Kenova and to other public forums. This idea or suggestion that the military were in charge of Stakeknife, and MI5 really only had awareness when Stakeknife came to be relocated to Great Britain, which would probably take us to the mid to late 1990s—being generous—is not the case. This material makes it very clear, as one in some ways would expect, that MI5 had an awareness of Agent Stakeknife almost from the outset, which would take us to the late 1970s or early 1980s. That is a significant issue that, again, I will address in the final report.



HOUSE OF COMMONS

It comes back to what Baroness O'Loan and the Chief Constable have said. What this Committee has focused upon is trust and confidence in the agencies of the British state in dealing with this matter. It was very concerning. I know that the director general shares that level of concern, but there is an impact on communities and on the work that Jon is doing now. Actually, there is a significant impact on the work that we are continuing to do, because when you meet families and say, "This is what we think are our findings," and that is different from something that they think, they say "Well, how do you know you have seen everything? Look what happened with Stakeknife." So it has been concerning, and it has been a very difficult issue for us to deal with.

Q106 Claire Hanna: I think we are all desperately trying to look forward, but some of this stuff is so egregious, as well as current and relevant to what we are talking about. We have heard in evidence that scaling up Operation Kenova would be the most cost effective and powerful way of addressing legacy. Could you briefly address how that might work in practice? That is a big question. Do you agree that scaling up and widening the Operation Kenova model might be the best way to address investigations?

Sir Iain Livingstone: The short answer is yes. Operation Kenova works, and it has worked because of a whole number of factors. I do not want to embarrass Jon, but leadership is undoubtedly one of them, as well as professional competence, rigour and stubbornness in the retrieval of information. When you are looking into another organisation, you need to have your own people in there asking the questions, rather than people who work for the organisation giving you that information. I think Operation Kenova took a whole series of approaches in being investigatively led and forensically focused, and in having exceptional people within it.

So as an investigative arm, yes. Then, as we said earlier today, if you go back to the Stormont House agreement, perhaps you could have another body for information recovery. The investigative arm of Kenova has been quite remarkable, but on the issues about whether people have appeared in court or not, there is a whole series of factors that were way beyond Kenova's power.

Q107 Claire Hanna: Baroness O'Loan, do you want to come in on either of those issues?

Baroness O'Loan: I never make assumptions about why people do things until I have the evidence to tell me, so I will not make any assumptions, but I think the time has come to name the agent Stakeknife.

Claire Hanna: It is one of those things where the process is catching up with the public. Thank you very much.

Q108 Gavin Robinson: I still think it is bizarre that we are having a discussion about naming Stakeknife.

Jon Boucher: I agree.

Q109 Gavin Robinson: As somebody who believes that he is named and



HOUSE OF COMMONS

known, although perhaps not officially, is it fair to say that none of us would be surprised, should the decision be taken to name him, or is that something that you can neither confirm nor deny?

Jon Boucher: We have always said that we will follow due process. In many ways, I do not think that victims have been given due process, so there is an irony here when you listen to the story, the history and the journey of legacy. Victims have been denied due process, and we are applying due process.

I have personally made representations to the Secretary of State about this. This lack of information being provided creates conspiracy theories. Recently, in a book that was published, things were said that were absolutely wrong, but again it traumatises families who have had conversations with Iain's officers and staff. They have laid out information to explain what happened, and in the media there is then a headline that Stakeknife was a group of people. That is wrong; Stakeknife was one individual. It is becoming a pantomime and affecting the credibility of us as the security forces and Government.

I hope that the Secretary of State will see that, but he will be receiving arguments from the lawyers. I read the accounts given by those others who led legacy inquiries, and the same organisations and lawyers will be saying that you cannot name him because that will have, in effect, a chilling effect. With my background, I would strongly argue that it will not, and sometimes you almost lose the right to have that sort of voice when you have failed to manage informants and agents properly, when they have behaved in the way that we set out in the Kenova report, with agents murdering agents. Agents were murdered when information should have been passed to prevent those murders.

We talk about events in society that are catastrophic, such as Grenfell and Hillsborough. They are incredibly tragic events that all come to the forefront of our minds when we think about the seriousness of what can go wrong in society. I would question whether there is anything more serious than what happened during the Troubles, with the numbers that were affected, and yet we are still trying to scramble around and find a way forward, mainly because of the defensive approach that has been taken.

If the defensive approach was justified, I would support it—I genuinely would. There has to be a line around national security, but we have prevented even uncontroversial information coming out. The naming of Stakeknife is something that I would hope that Iain will be given permission to do. If that does not happen, I think it is probably the sounding of a bell to legacy not succeeding moving forward.

Q110 **Gavin Robinson:** Finally, I want to ask about the inclusion of individuals within ICRIR and the investigative process who have a policing past, be that with the RUC or PSNI. I find the argument that they cannot be involved repugnant, biased and politically prejudicial, but this Committee has received evidence, including from the Northern Ireland Human Rights



HOUSE OF COMMONS

Commission, suggesting that people with a policing past are incapable or should be ineligible to participate in legacy bodies. Do you agree with the assessment of the Northern Ireland Human Rights Commission that anyone who served in the PSNI or RUC is incapable of performing their task in a way that is filled with integrity and professionalism?

Sir Iain Livingstone: I do not think they are incapable at all. They have the skills. My own experience of officers in the RUC and PSNI is that their professional standards and ethics were as high as anywhere else you will find across the UK and beyond. I do not think the question is about their capability; I suppose it is about the appearance or how that might vest.

I think this is very challenging, because certainly one of Kenova's virtues was that nobody involved had served previously as a police officer in Northern Ireland. That is also one of the challenges, because it means that people are coming in who do not have some of those cultural touchpoints that we all know are so sensitive in Northern Ireland—Scotland has elements of those as well—and they do not have some of that experience. Jon took that view right at the outset that he would do that, to go and gather the trust and confidence of communities that had never had trust and confidence in state agencies in the past.

My own view, and I say this as a suggestion, is that there might be a distinction to be drawn between those in the position of commissioner and those in the position of investigator and within the investigative team. In that process, the information, skills, knowledge, links and experience that have been gathered can be brought to bear and can continue for the wider public interest. Having served in policing, they can go and serve in the Commission, but perhaps not in the leadership or assessment of it.

If there is validity in the objection, perhaps you could draw a distinction between those who are appointed to commissioner roles and those who are in there as investigators. Are they incapable of discharging it independently? No, they are definitely not. I think this is more about apparent bias than actual bias, but as we know, apparent or perceived bias can be challenging. They are certainly capable, because some of the best detectives and police officers I have ever met are people who previously served in the RUC and PSNI.

Q111 **Gavin Robinson:** The bias, in my view, should be challenged.

Sir Iain Livingstone: As I said, it is not actual; it would be apparent, which would be the challenge.

Q112 **Gavin Robinson:** Baroness O'Loan?

Baroness O'Loan: Thank you, Mr Robinson; I am just looking back at my evidence to you. I think I gave evidence to the effect that those who had held very high office in the RUC, PSNI, armed forces, Ministry of Defence, GCHQ or security services should be excluded from any senior role in the legacy body. As Iain has said, the perception would be that this was the old brigade coming in to run the new system. That is a very damaging



HOUSE OF COMMONS

perception, and it would militate against the development of any trust in the new organisation.

In saying that, I know that there are men and women of great courage in all those organisations who serve with great honour, but the fact is that there have been very serious problems, some at a very high level in the RUC. Certainly, from my personal experience, I have heard comments from very senior officers when independent investigators have come in to do inquiries, particularly from England, such as, "Wine them, dine them and given them nothing."

That sort of mentality has been described as for the protection of the state and the organisations within it that must manage our national security. It is necessary that we protect our organisations, but it is not necessary that we allow people to hold very high offices in an organisation that deals with our legacy. I should say that, as Police Ombudsman, I had former and retired RUC and PSNI officers working for me at the lower levels.

Jon Boucher: I should make it clear why I made the decision that nobody with a background in the security forces in Northern Ireland would be part of Operation Kenova. It was not to do with competence or integrity; it was entirely because I was at the beginning of an investigation at a time when people had no or little trust and confidence in the security forces. Because of that, and because of my focus on trying to be compliant with Article 2 of the ECHR, which requires independence, effective investigation, promptness, openness to public scrutiny and an involvement of the next of kin—the independence piece—I felt that I almost needed to make a statement at the beginning that this would be different. That is why I introduced a number of oversight mechanisms with independent people who I did not know but had incredibly strong reputations.

I had never met Baroness Nuala O'Loan, and I called her out of the blue to explain that I had just been asked to consider doing this investigation and to ask whether she could help me with a group that I was going to set up. I asked her to help us, support us and challenge us on how we conducted the investigation—hold us to account, really, and provide another level of reassurance around the independence piece.

I agree with Iain that, because of the size of the Commission and, if it gets the confidence and trust of victims, the volume of what it will be dealing with—that volume is not yet there—to have people in senior levels is probably a bridge too far. That is probably a challenge, but it should not undermine the credibility, character, honesty and integrity of those people, because they are excellent people. I have complete trust and confidence in them, but it is about the perception of families. You may well have heard the argument from other attendees of this Committee and when you have travelled around speaking to victims' groups. It probably does need to be looked at.

Q113 **Gavin Robinson:** This is an interesting conversation in an academic sense, but we are not in an academic phase of this discussion. There are individuals in senior positions who have a past, and that is why I find



HOUSE OF COMMONS

some of this so repugnant. It all seems very personal and counterproductive to the pursuit of a settlement on legacy.

Baroness O'Loan: If I may say so, the comments that have been made quite widely by a number of individuals about those who should hold high-level appointments in the ICRIR do not refer in any way to the individuals who actually hold those high-level appointments. I think everybody has the greatest respect for them as individuals and for the work that they have done. It is a perception issue, an independence issue and a compliance with Article 2 of the ECHR and our own Human Rights Act issue. It is all those things, and they inevitably lead to the conclusion that there should be nobody at a high level in the organisation—at commissioner or senior investigator level—who has antecedence in the forces, which, as well as the paramilitaries, will be under investigation in the course of the work of the ICRIR.

Gavin Robinson: I think all that is accepted.

Baroness O'Loan: I just wanted to make the point.

Gavin Robinson: But from the perspective of somebody who is in a position, it is not an academic discussion; it is a live, real discussion.

Q114 **Dr Pinkerton:** Given the time and the Chief Constable's warning about an attritional approach—I feel that we have probably worn you down somewhat today—I have a very simple question. The Chief Constable mentioned the fact that we would all wish the ICRIR to have public confidence or at least to have that function being served with some public confidence. Do you know the conflict of interest policy of the ICRIR? Do you see any inconsistencies between that and Kenova? Do you think that putting that conflict of interest policy on a statutory footing might lead to the kind of public confidence we would all wish for, or does it go far beyond that?

Jon Boucher: I am not close to this conflict of interest policy. I know there have been discussions about introducing something into amended legislation. With the HET, there was a mechanism in place to make sure that officers and staff were not conflicted in what they were doing. As I said earlier, because of the numbers that are required for such a body, there is an inevitability that people need to come from organisations in Northern Ireland that served in the security forces. I also think there is a benefit. I have explained the reason why I made the decision for Operation Kenova. I still think that was the right decision, and we have maintained that position.

On the conflict of interest issue, I am probably not close enough within the Commission to know how they are working through that. It is one of a number of issues that caused so many concerns cumulatively. As we said in the conversation previously, the Bill had a bad start—that is why I mentioned the Command Paper in July 2021. It had a really difficult birth.

People also joined the Commission without legal challenges being resolved. I do not criticise them for that—people were trying to get on with



HOUSE OF COMMONS

the creation of the Commission—but that caused a lack of confidence in people’s decision making about joining the Commission at that time. We all need to have some sympathy—I think Gavin mentioned this about an individual in a senior role—towards where we currently are, and we all need to give a little bit and see if we can find a way through this. But the conflict of interest issue is something that I am not close to within the Commission.

Baroness O’Loan: Can you tell me whether it is on their website? I have looked. I know about their code of conduct, but I do not know about a conflict of interest policy.

Dr Pinkerton: It is a very good question. I am not actually sure where it is located. Is it publicly available on the website? I am being told that it is.

Claire McGuigan: It is. It is in their code of conduct.

Baroness O’Loan: So it is simply the statement about conflict within the code of conduct?

Claire McGuigan: Yes.

Baroness O’Loan: Sorry, I misunderstood the question.

Claire McGuigan: Yes, it is within their code of conduct and standards that they will declare a conflict of interest. There is a positive obligation on them to do that. What could more legislation add to that? I am not sure. We need to be careful about how much we want to legislate for, because it is good in that it creates statutory obligations but it is not good whenever you might need to change things because it takes a lot longer. It is where I think we would expect it to be—within their code of conduct and standards.

Chair: I thank all the witnesses for giving evidence.