

Northern Ireland Affairs Committee

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

Wednesday 3 September 2025

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Members present: Tonia Antoniazzi (Chair); Chris Bloore; Sorchá Eastwood; Claire Hanna; Katrina Murray; Dr Al Pinkerton; Gavin Robinson; David Smith.

Questions 202 - 271

Witnesses

I: Rt Hon Hilary Benn MP, Secretary of State for Northern Ireland; Julie Harrison, Permanent Secretary at the Northern Ireland Office, Northern Ireland Office; Sharon Carter, Deputy Director, Legacy Group at Northern Ireland Office.

Examination of witnesses

Witnesses: Hilary Benn, Julie Harrison and Sharon Carter.

Q202 **Chair:** Welcome to the Northern Ireland Affairs Select Committee session on the Government's new approach to addressing the legacy of the past in Northern Ireland. I would like to welcome the right hon. Hilary Benn, Secretary of State for Northern Ireland; Julie Harrison, Permanent Secretary to the Northern Ireland Office; and Sharon Carter, deputy director of the legacy group in the Northern Ireland Office. Thank you for your time today.

Secretary of State, in April it was reported that an agreement between the UK and Irish Governments could be reached within weeks. We are now in September. What has caused the delay and what is the expected timeline now for any agreement?

Hilary Benn: We have been waiting 27 years to make progress on legacy. This is the unfinished business of the Good Friday agreement. Those who negotiated that extraordinary document recognised that it needed to be looked at, but they were not able to do it at the time. There have been many attempts since, including the legacy Act, which has, in a



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number of respects, to be unpicked, hence the Government's commitment to repeal and replace.

We are close to being in a position to announce an agreement. I have been clear from the start, and it impacts upon the discussions that we have been having with the Irish Government and the Tánaiste, Simon Harris, in particular. I want arrangements that are going to deliver effective investigations and answers for families. For me, if you say, "What is the one thing that we are looking to try to achieve?", it is answers for families. I have met so many families who say, "We still do not know what happened". In that way, it will be capable of commanding support across communities. That remains our objective. It has been at the heart of the discussions I have been having with the Irish Government.

I will take the opportunity to say that, on the shape of the framework, I have already set out many of the things that we are intending to do, building on the principles of the Stormont House agreement, which was the last time an agreement was reached between the UK Government and the Irish Government, and reflecting on the experience of Operation Kenova. That means a significantly reformed, independent and human rights-compliant commission that gives families the best chance of getting those answers; investigations that are capable of referring cases for potential prosecution where there is evidence of criminality; and significant reform of ICIR's governance and powers. That means independent oversight; an ability to hold public hearings in some cases, take sworn evidence and allow families to have effective representation; much clearer conflict of interest arrangements, based on the Stormont House agreement; as well as a victims advisory group, drawing on what Kenova has done, and maximum disclosure consistent with national security, based on disclosure for public inquiries.

There is the potential—and this is very important—for a separate information recovery body, which you have discussed as a Select Committee with a number of witnesses, as envisaged in the Stormont House agreement; resumption of a number of inquiries that have been prematurely halted; and, crucially, protections for veterans who served with great distinction to keep people safe, so that, when they are asked to participate in legacy processes, they are treated with dignity and respect. I have already said publicly that, with modern technology, there is no reason why veterans should have to travel to Northern Ireland to answer questions. Those are the elements that I have been discussing with the Irish Government, which we are pursuing. We are drafting the legislation and looking to make progress as soon as we possibly can. I know it does not quite say, "And this is the date", but just bear with us a bit longer.

Q203 **Chair:** We would love to know the date.

Hilary Benn: I am sure that you would.



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Q204 **Chair:** Going back to the Irish Government, the Committee has consistently heard criticisms of the Irish Government's approach to legacy. Where do you feel co-operation with the Irish Government is not sufficiently developed and how will this be addressed?

Hilary Benn: The issue of the contribution that the Irish Government can make to taking forward a legacy has been a very important part of the discussions that I have been having with Simon Harris. The current position of the Irish Government is that they have brought an interstate case against the UK based on the fact that the legacy Act is not compliant with international human rights obligations.

To be able to get Ireland's support for the new arrangements that I am planning to put in place would be a very significant step forward, including in the provision of information for investigators who are looking into a number of cases. That is one reason why getting an agreement with the Irish Government would be hugely beneficial. Secondly, as I have already indicated, it would enable the revised arrangements to command greater confidence in Northern Ireland if the Irish Government are shown to move from their current position to one of saying, "We have talked to the British Government and we are able to agree jointly on a way forward". That would be a very significant and beneficial step.

Q205 **Chair:** Sir Declan Morgan called for the commission's information-gathering powers to be extended to Ireland. He has also stated that the commission would need Irish and international commissioners. How is this being considered as part of the negotiations? Is it something that you are considering seriously?

Hilary Benn: In looking for the idea of an oversight board for a reformed commission, which is something it does not have at the moment that Kenova has, I am envisaging that people would apply. They could come from anywhere, including internationally, and then appointments would be made. That is a possibility, depending on who would apply for those particular positions to oversee the work of the legacy commission.

I am very keen to get the maximum information made available to the commission in order to enable it to do its work. Last time, Mr Robinson asked me about the Omagh inquiry and the memorandum of understanding that has been reached between the Chair and the Irish Government. I know that we had a slightly different view; I thought that it represented a significant development. I think that it is fair to say, Mr Robinson, that you acknowledge it was some progress, but you think it fell short of what was required. The fact the Irish Government have done that shows a willingness, which I greatly welcome, to provide information in order to help families get answers out. I will keep coming back to that in my evidence today. That is what, ultimately, this is about.

Q206 **Gavin Robinson:** Good morning to you all. Secretary of State, what issues remain outstanding for agreement with the Irish Government?



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Hilary Benn: I am not going to give a running commentary on the nature of the negotiations, but I say to the Committee that I think we are close to being able to announce an agreement. When an agreement is announced, everyone will be able to see what it is that we have agreed.

Q207 **Gavin Robinson:** Are there any outstanding issues for agreement, or has agreement been reached?

Hilary Benn: We have yet to have a formal agreement, but we have made a lot of progress. That is what I would say to the Committee. I am keen that we are able to produce this and share it with everyone. When it appears, people will be able to see what has been agreed.

Q208 **Gavin Robinson:** Will the Irish Government's position have progressed in relation to the Omagh inquiry from the MOU to more substantive and practical engagement with the issue of the Omagh bomb, rather than satisfying the terms of reference for a UK inquiry?

Hilary Benn: Subsequent to the exchange that we had last time, I looked once again carefully at the terms of reference for the Omagh inquiry. I will just try to find the section that relates to it. There is a reference in the terms of reference where it says in 2.i "Any other matters which are relevant to whether the Omagh Bombing on 15 August 1998 could have been prevented by UK state authorities. To the extent it is relevant to the issue of preventability by UK state authorities, this may include information sharing and investigations with and by state authorities in the Republic of Ireland", which is the basis of the memorandum of understanding that was agreed. I have, of course, talked to the Irish Government about Omagh, but their position is well known and understood.

On the other point that you raised with me last time about whether the period of time that the commission covers should be extended to include Omagh, I would simply say that there is a public inquiry taking place that was established by the previous Government. I do not see the case for having the commission looking at it at the same time as a public inquiry is investigating what could have been done to try to prevent it. I do not think that that would be a sensible approach.

Q209 **Gavin Robinson:** With the greatest respect, Secretary of State, you just read out one paragraph of the memorandum of understanding, which reiterates the frustration in all of this. It is about identifying what UK state authorities could have done to prevent the atrocity at Omagh. While you were presenting it as significant progress, and I less so, do you accept that the Irish Government are under an obligation to construct their own inquiry to answer this question: "What steps could the Irish Government and Irish authorities have taken to prevent the bomb that was constructed in their state and transported from their state? The team returned to their state and they were under state agency observation"?



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Hilary Benn: For the record, what I just read out was not from the memorandum of understanding. It was from the Omagh inquiry terms of reference.

Q210 **Gavin Robinson:** It is the same issue. The terms of reference are framed around answering whether UK state authorities could have done more to prevent the atrocity. That means that it is outwith the terms of reference as to whether the Irish authorities could have done anything to prevent the atrocity, which is why Lord Justice Horner recommended in 2021 that there should be parallel inquiries at the same time. Since our exchange—and I predicted this—it is now why the Omagh families are having to seek recourse through the Irish courts to compel an inquiry.

The question is whether the British Secretary of State, who is engaged with the Irish Government and is surrendering his ability—your ability—to determine how we deal with legacy, is pushing the Irish Government. Are you seeking to create an outcome that will satisfy the desire of the Omagh families to seek justice for their loved ones?

Hilary Benn: I would emphatically reject the suggestion that I am surrendering anything to anybody. Since I came into post 14 months ago, committed to repeal and replace the legacy Act, I have been looking to find a way forward, which is not going to please everybody. We have to acknowledge this. I read very carefully the summary of the evidence you had taken when you wrote to me, Chair, in June. On the one hand people said they want this and on the other hand people said they want that. Those two views are not reconcilable in a number of respects, so it falls to the Government to find a way forward.

It is for the Irish Government to decide what they wish to do within Ireland. The Omagh families, of course, have the right to pursue all means at their disposal to find a satisfactory way forward.

I would just say about the memorandum of understanding, while we had exchange of views previously, and are having them again today, about what it may or may not produce, we need to see what comes out of the unprecedented commitment that the Irish Government have given in the form of that MOU to co-operate with an inquiry in another jurisdiction. We have not got to the point yet where we see what information is made available, and I would say that the time to judge that is when we see what comes forward, rather than saying, "It is never going to work because it is not going to produce anything of any use".

Q211 **Gavin Robinson:** Secretary of State, the Omagh families will be sitting there today and will have only taken from your answers that you are not doing anything to push the Irish Government to create a parallel inquiry or, through this negotiation, encouraging them to engage in a way that does not answer whether it was solely the responsibility of the UK authorities to prevent this atrocity but that acknowledges that the Irish have questions to answer as well. As you know, in our last exchange I described the position as immoral and the stance as shameful. I do not



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think that there is anything of encouragement in what you have said today for the Omagh families.

Hilary Benn: I would not agree with that. For those who are watching our exchanges today, as they did when we last discussed this, the memorandum of understanding provides the opportunity for information to be provided by the Irish Government to the public inquiry.

Q212 **Gavin Robinson:** That is to answer one question, but not to answer the other side of a very important coin.

Hilary Benn: Of course I have discussed with the Irish Government their position on having their own way of looking at it, but their position is well known. In an agreement, you are only able to agree things where both parties share the same view. The time to make that judgment about what the MOU will produce is not now. It is when we see how the MOU works in practice, because it has not happened before.

If you think of other contexts and imagine the UK Government co-operating with a public inquiry in another jurisdiction and saying that we will provide information, I cannot think of any parallels. That is why I welcome the memorandum of understanding as being a step forward. I know that you take a different view, but we will probably have to agree to disagree on that.

Q213 **Claire Hanna:** There is no question that the Omagh bomb had a cross-border dimension. It is absolutely right, in terms of getting at truth for the families, that it should have disclosure and participation. That is why it was a huge error of the previous Government to establish an inquiry with no legislative vehicle, no defined MOU, no vehicle to have active participation from any state representative, no gardaí, no army intelligence and no diplomacy. It is the will of the Assembly as well that that inquiry will have full participation in whatever way that can be worked out.

In the disclosure MOU, at paragraph 36, it says that there may be redactions including matters that "may damage the economic interests of Ireland or the United Kingdom". What does that have to do with getting to the truth of an atrocity? Do you have any anxiety about what information such a broad clause might cover up?

Hilary Benn: Is that in the MOU?

Q214 **Claire Hanna:** It is in the disclosure MOU.

Hilary Benn: That is something that the Irish have put into the MOU. One would have to ask them the question.

Q215 **Claire Hanna:** Do you have any anxiety about what that might cover?

Hilary Benn: It depends in what circumstances that was operated. I should add that, as well as providing information, there is also an undertaking to ensure that witnesses from Ireland can be called. That, too, is extremely welcome. It is a very long memorandum of



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understanding and reflects the unprecedented nature of the co-operation that the Irish Government are offering to the Omagh inquiry, which is referred to on a number of occasions when you read the full text of it. That is what I would say.

Claire Hanna: We will pick up on disclosure. The families are participating in hope and after decades. I know that it is incumbent on everybody to make sure that their investment of time and energy, and all else, should not be in vain. It is important that they get maximum disclosure from that. Broad clauses such as that, with all that we know about suppression of information over the decades, do not set the tone very well.

Q216 **Dr Pinkerton:** Thank you all for being here this morning. I am going to move us on to a package of questions about the ICIR. Over the last few months as a Committee, we have taken a lot of evidence from witnesses about the faith, or the lack of faith, that they have in the ICIR. That lack of faith seems to spring from the realisation and belief that the ICIR is a product of the legacy Act, which of course it is.

There is a sense that the legacy Act was introduced purely to curtail investigations into veterans. Because the ICIR is a child of the legacy Act, distrust has been expressed about that particular institution, even if there is a faith in those who are leading it. Can I ask you what the Government intend to do to address those concerns and to gain trust from across all communities in a reformed commission?

Hilary Benn: The lack of trust on the part of quite a lot of people in Northern Ireland in the commission, in the form and circumstances in which it was created, stems from two things. One is the wider context. Everything else shut down. Inquests that were taking place were closed. Civil cases stopped. In respect of civil cases, the courts have found that that was not compliant with our international obligations. We are committed to restoring those. I have indicated that we will be restoring the inquests that were shut down that had started. That is one part. That may or may not change public attitudes, because the context is different.

The second goes to the heart of the way in which the commission is structured and worked. I have made it quite clear that I am looking for significant reform. I have talked about an oversight body, going back to the principles of Stormont House. When all of this becomes apparent and the legislation is published, it will be quite interesting for those who are looking carefully at it to map what we are proposing to do against the principles of the Stormont House agreement, which was the last time there was an agreement between the UK Government, the Irish Government and a number of the parties in Northern Ireland, but not all of them. That is the first thing.

Secondly, I have already mentioned the victims panel. That will be put on a statutory basis. That is drawing on the experience of Kenova. There will be much clearer arrangements dealing with conflicts of interest, which



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Stormont House addressed. The current arrangements do not give confidence to people. There is the ability to hold public hearings through the inquisitorial procedure, which is something that the commission decided to create for itself. I said a long time ago that I welcome that very much indeed, because public hearings are part of what will give people confidence, in certain cases, that the body is doing a decent job.

The last thing I would say is that there is a growing number of families who have now decided to go to commission. In my consultation I have talked to a very large number of people. I know that we may come on to consultation as a topic. They have said, "We have had discussions, but we are not sure we have been listened to". I think I said to you last time that nobody can really know whether they have been listened to until they see the outcome of the listening exercise that I have been engaged in.

They now have 78 or 79 investigations under way. Over 200 people have approached them. There are some very high-profile cases arising from the Troubles, including now the M62 bombing, Warrenpoint, Guildford and others. I have said this repeatedly: the test in the end will be whether all this—a significantly reformed commission, given the nature of your question, Dr Pinkerton—creates confidence. What will really create confidence is if it provides answers to families who have been looking for them for so long. That will be the proof of the commission in its reformed form, as to whether it does what those families are looking for.

I hope that, when people see the full shape of it, there will be a movement. It will not be all, because there are some who say, "We will never be reconciled to this". There are some who have said to me, "Not a single person will go to the commission, not one". I am afraid that evidence has proved that that is not the case. I took a decision, which was very unpopular with some people, right at the beginning that I was not going to scrap it and start again, but I was going to reform it. That is because, first, time is not on anyone's side and there are some very elderly people waiting for answers. What is the purpose in losing time? Secondly, if you are going to abolish it to end up recreating something that looks very much like the reformed ICRIR that I have in mind, what is the purpose in doing that? I stand by that decision, but I have been, of course, criticised—people are perfectly entitled to—for having decided to do that.

Q217 Dr Pinkerton: You mentioned some of the evolution of practice in ICRIR over time, as well as the public hearings and that inquisitorial procedure. Are you going to make the necessary legislative changes to give ICRIR all the powers that it needs to undertake investigations? At the moment, the legislative envelope is more around reviews. The ICRIR itself has said that it would like to have the powers required to undertake and start investigations.

Hilary Benn: It is undertaking investigations as we speak. The courts have found some things that it says are not compliant in relation to



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representation for families in the public hearings and what it has called the EIP in the past, and on disclosure. I told the House last December what I proposed to do in respect of those two things to ensure that the commission is compliant, because it has to be human rights-compliant. That is a fundamental objective of the reform process. The reform process has been made more complicated by the fact that the courts have been opining in real time on the commission and therefore the nature of the reform that needs to be undertaken to make sure that it is compliant.

I know that there are those who have said, "All it does is a desktop review, a bit of this, that and the other". That is not the case currently. It will have a role in relation to investigations but also, where that part cannot lead to anything, to provide information to families. We have all met and heard from the families. Some will say, "I want justice. I want a legal process", but quite a lot will say, "I just want to find out what happened".

Q218 Katrina Murray: Apologies for lateness; I had a meeting with the largest employer in my constituency. It is a shame that all these things happen at the same time. I am interested in picking up on one of the things that you referred to in your answer to Dr Pinkerton. You referred to conflicts of interest within ICRIR. As a Committee, we have heard witnesses arguing that the commission itself should not include ex-RUC or PSNI officers among its senior commissioners, or potentially among any of its staff. The example of Kenova is used to explain why this is necessary. What is your view on those criticisms?

Hilary Benn: It is important to draw on all experience, including investigative experience as available. I would not support saying, "Just because you served in the RUC, you cannot have anything to do with investigations". That, as I understand, is not the view of Sir Declan Morgan. I think that he was questioned on that by the Committee.

Clearly, where there is an actual conflict of interest because someone may have been involved in dealing with that case in the past, it is very important that you have a clear statutory arrangement for dealing with conflicts of interest. There may be cases where the commission says, "For the sake of confidence in the investigation, we should give it to investigators who have not served".

There can be some circumstances in which it is an advantage to have someone who understands how things and processes were working at the time, if you are going to have a proper investigation, so you need to strike a balance. I am absolutely clear that, to create greater confidence in the work of the commission, conflicts of interest should be put on a much clearer footing in the legislation to command greater public support. I am very alive to that argument.

Q219 Katrina Murray: Yes, we all want to have processes that have the confidence of all communities and everybody involved. It then goes to



how you, or we collectively, are going to achieve that.

Hilary Benn: When I say that I have been listening very carefully in the very large number of meetings that I have had with a very wide group of people, I mean it. I have gone away and said, "On this point, this point and this point, what is the merit in doing something about that?" When the draft legislation is published, I hope those people who have met me and given me the benefit of their experience and views will be able to look and see to what extent they feel the Government have listened.

Saying that, some may say, "You have not listened". The people who argue that the commission is irredeemable, unreformable and should be scrapped are not going to be satisfied. I took a decision early on for reasons of timing and pragmatism, as I have already indicated in answer to the previous question, that we will keep it, but we will fundamentally reform it.

The proof will be in what people make of the legislation and how it works in practice. Does it provide answers? That is the ultimate test and the ultimate judge. If families come out and say, "It may not be all the answers, but it has given me something I have never had in 20, 30 or 40 years", I think that that is really important in helping Northern Ireland society traumatised by the Troubles to move forward, and particularly those families.

Q220 **Katrina Murray:** One other thing that we have heard is that there is a real benefit to the internationalisation, particularly through the Kenova process. Do you see there being a role for an internationalisation, namely officers from the rest of the four nations potentially being involved?

Hilary Benn: As I indicated in answer to an earlier question, the oversight board that we are looking to establish will invite applications. Those can come from people from any jurisdiction with a wide range of experience. The appointments to those boards, one hopes, will offer the people you are referring to and who are asking the question confidence that this is a very different arrangement to the way in which ICRIR was set up by the legacy Act, which is not commanding confidence.

Q221 **Gavin Robinson:** Secretary of State, you will know that, both during our inquiry and in a lot of public commentary, there have been quite a number of comments that are deeply prejudicial and, at times, personal when considering the issues around conflict of interest. I have discussed with you in the past my frustration, it seems, at sometimes the lack of support for individuals just because they had an RUC past.

You have fairly said that there is a conflict of interest policy within ICRIR. It has always been there. You are intending to put it on a statutory footing, as I understand it. That is a good thing. You have rightly said that where there is a genuine conflict of interest, somebody should not be involved if they have previous involvement with that case, or even if they were in a managerial structure that meant that they had oversight of that case, I think it is fair to say as well.



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In your answer to Ms Murray, you also mentioned instances where there may be a need to withdraw in order to ensure confidence in the investigation, and that becomes slightly murkier. That is certainly not assisted by the commentary we have had from very senior people, including the chief commissioner of the Human Rights Commission, senior individuals in Kenova and senior members of the oversight body of Kenova, who have been long involved in oversight of police activities in Northern Ireland.

I want to ask you two questions. First, what would the criteria be for determining that somebody should recuse themselves because of perception or to build confidence? Secondly, how damaging do you think it has been that such individuals have strayed into the prejudicial slurs that they have, rather than dealing with the facts?

Hilary Benn: As I have learned from the very beginning of dealing with this, lots of people say lots of things. They are not things that I have said. Indeed, I have said that I have confidence in the leadership of the commission. That is very important. People, of course, are entitled to their opinion.

It is a mistake to focus on individuals. The question is whether there is a structure that can give people confidence that cases will be looked at fairly. That is the approach that I would take. It will ultimately be for the commission, because it is an independent body. The legislative framework is set by the Government, but it is an independent body, and that is very important. The Secretary of State is not giving it instructions. Although some people's perception is that that is the way it was set up, that is not the way it works and it certainly will not work in that way with me. It will be for the commission to apply the framework that we will set out to particular cases. Focus on the structure of the issues and the way the commission works, and not on individuals. I do not myself think that that is terribly helpful.

Q222 **Gavin Robinson:** I agree, but it is the prejudicial part of the comments that have been made and the fact that that may impinge upon confidence. You have mentioned that somebody may need to recuse themselves if there is a need to encourage confidence in the process. My fear is that unless we repudiate the prejudicial comments that have been made, we will only add weight to the ability for people to create the perception of prejudice where none exists. That is worrying. You are the person who is going to put on a statutory footing this conflict of interest policy, so I am asking you to outline what criteria we should be considering in our oversight role when assessing whether there is a prejudicial aspect to confidence in this conflict of interest policy.

Hilary Benn: That is a judgment the commission would have to make in the circumstances. One of the tasks that we are all engaged in here is how to command greater confidence in precisely these legacy processes, given that there are a lot of people who do not have confidence in them at the moment.



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Q223 **Gavin Robinson:** Some of that politically is very much, “An individual served in the RUC and we don’t like him. He served in the RUC, he lived in the north-west, he is a Catholic and we don’t like him”. That is the nub of some of the commentary that has been made, not by everybody. There are others that just raise perceptions around conflicts of interest. That is fine. Some of it has been deeply prejudicial and deeply personal. I think that it would be very useful to hear from you, as Secretary of State, how wrong that is.

Hilary Benn: That is why I have said repeatedly that I have confidence in the leadership of the commission. I really do not think it helps to attack people on that basis, but the commission needs to have effective mechanisms for dealing with conflicts of interest, or apparent conflicts of interest. That is something that will be for the Commission to sort out, within the framework that I intend to put in place.

Q224 **Chair:** Secretary of State, I want to turn my questions to the final Kenova report. We are looking forward to seeing it published and completed. When it is published, will it be able to name Stakeknife?

Hilary Benn: I met Sir Iain Livingstone last week. Following up on the exchange we had about three months ago, I went away and checked that the letter to him responding to the recommendations has gone, and the letter in relation to his separate request referring to the naming of Stakeknife. I think I am right in saying that the letter responding on the recommendations is now in the Library of the House, so it is available for colleagues to see, and, I assume, will be published in the final Kenova report when it comes out.

In my letter to Sir Iain, I said that the Government hold the view that NCND is a very important policy, for reasons that are long established and well set out. There is a very important court case, the Thompson case, which has been heard in the Supreme Court but we are waiting for the judgment. Therefore, I have said to him that, on this particular question, we will come back to Kenova after we have received the Thompson judgment. That is what I have said to him.

Q225 **Chair:** I assume that the Kenova report will be published before the judgment.

Hilary Benn: It may or it may not. That depends when the Supreme Court decides to deliver a judgment in the Thompson case, which is obviously not in my control. Even if Kenova has published, the Government are still able to reflect on the request that was made and make a decision once we have seen what the Thompson judgment has to say.

Q226 **Chair:** If a point of determination in a Supreme Court judgment—I have to be very careful because obviously this is sub judice—is not related to the Government’s policy of neither confirm nor deny, is there a reason why it cannot—



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Hilary Benn: NCND is absolutely at the heart of the Thompson case.

Q227 **Chair:** It is a Government policy rather than a point of determination.

Hilary Benn: Yes, it is a Government policy, but it is being queried in the Thompson case. I have no idea, of course, what the Supreme Court will say, but the Government's view is that it would be sensible to have the benefit of that judgment before making a final decision in relation to the request that the Kenova inquiry made of us regarding the naming of Stakeknife.

Q228 **Chair:** Assuming that Kenova does not and cannot then publish the name of Stakeknife, is there wider consideration that, at the appropriate moment in time—I would assume post the Supreme Court case that is being decided on—you, as a Government, would be able to name Stakeknife on the Floor of the House?

Hilary Benn: You are asking me to presume what the Government's decision would be after the Supreme Court judgment, which, though you kindly invite me to do so, I am not going to do before the Select Committee today. I have said to Sir Iain in my reply that the Government will return to this matter after the judgment.

Q229 **David Smith:** Welcome, Secretary of State and all of you. Returning to ICRIR and the structure of it, you told us in June that you are actively considering the proposal to split the investigative and information retrieval functions of ICRIR into two separate firewalled bodies, as originally envisaged in the Stormont House agreement. Is that still the intention with where we have got to on the replacement? Also, what impact, if any, would you expect that to have on the timeliness for families to receive the information or justice that they are looking for?

Hilary Benn: This is a very important question and there are two aspects to it. The commission has two functions. One is investigative, where it thinks there is a case that it can investigate, but it is also to provide information and answers for families. There is great benefit in having the two things together in the commission. However, I am well aware of what Stormont House proposed. There is merit in a separate information retrieval body, which would allow folk to come forward and disclose information that may assist families in finding answers.

There are some practical questions in relation to that, which we are considering and have been discussing, including with the Irish Government, because it was envisaged that this would be a body jointly between the UK and Ireland. No. 1 is in what order that process takes place. No. 2, and it is a point that you have touched upon in the evidence that you have taken, is how you check. Someone comes along and says, "I want to reveal the following". How do you check whether what they have said squares with the other information available about the event, the circumstances, the killing and so on and so forth? You would have to find a way of ensuring that, because the families would be told, "An unidentified person has come along and said the following", and they



would say, "Do you think that that is true?" Therefore, some means of checking that information would be important in taking this forward.

- Q230 **David Smith:** I will perhaps come back to that question of verification in a moment. In terms of the firewalling of these two things, it was envisaged in the Stormont House agreement that there would be a presumption of inadmissibility for investigations or criminal prosecutions in the information recovery part.

Hilary Benn: Yes.

- Q231 **David Smith:** Would that be something that you continue to envisage?

Hilary Benn: That was the basis on which Stormont House was agreed. It is the basis of the ICLVR, which has succeeded in recovering the remains of a number of people murdered and disappeared by the IRA and buried. It is searching again, I think I am right in saying, as we speak, for Columba McVeigh. His family and all the families have been through so much. There is of course a very big difference between a protected disclosure and the immunity provisions in the Act, which never came into being, were struck down by the courts and the Government are going to remove.

As the ICLVR experience demonstrated, society in Northern Ireland had to decide, "Are we prepared to give that protected disclosure to individuals in return for the recovery of the remains of people who were murdered and disappeared?" I obviously was not party to the decision at the time. I think that it was the right thing to do because the remains of not all of the disappeared, but a significant number, have been returned to their families to be laid to rest. That was a good thing and a sensible thing to do.

- Q232 **David Smith:** My final question is sticking with information recovery. Part of the problem over the last few years since the legacy Act was introduced is a perception in some quarters of inequity between those who may be subject to information recovery or the processes that the legacy Act introduced, especially in relation to state actors versus non-state actors. As we have discussed before, one challenge in this whole process of information recovery is how you actually ascertain the information in relation to non-state actors.

How do you envisage that information about the actions of non-state actors throughout the Troubles being substantiated? Might it draw upon the Stormont House agreement or Kenova? We have talked about the Independent Commission for the Location of Victims' Remains. How would you see especially those non-state actors being involved in this, and especially from the position of recovering information?

Hilary Benn: The first thing I would say is that information retrieval mechanisms should be available to anyone who wants to come forward and provide information for families. That is important. The presumption



is that it will be non-state actors who will be making use of it, but that may not be the case in all circumstances.

Secondly, I think that it is fairly clear that the body to then go to and say "Can you check this? Do you have any information?" would be, in my view, the commission itself, because who else is going to do that? Depending on what is finally decided in terms of the order, if you have said, "The commission has looked at it and gone as far as it can", but then someone comes along and says, "I am now going to provide some information through the information retrieval mechanism", the body that has as much information as is in its possession about the circumstances of the death would seem to me to be the sensible place to go to and say, "This disclosure has been made. Is there any commentary or assessment that you can make of this to assist the families in trying to understand how much weight I should put on this? Does it assist me in finding answers?" That would seem to me to be the sensible way of proceeding.

Q233 Dr Pinkerton: This is a very natural segue from my colleague's questions. It is about the rules of referral to the ICIR. At the moment, there are a few quirks and peculiarities in that referral mechanism. Clearly, family members can refer. As Secretary of State, you can, as can coroners and the Attorney General. The Police Service of Northern Ireland has raised an issue where it does not have a clear pathway to refer cases to the ICIR. In fact, it gave evidence to suggest that it found a workaround that involved it reporting a case to the Secretary of State and then you referred it on. It also said that that was not a sustainable long-term solution. In the repeal and replace, have you thought about that and what changes do you intend to make to that?

Hilary Benn: I certainly have thought about it, because it seems a roundabout route. I get a letter saying, "We would like this to be investigated but we cannot post it direct to the commission so we are going to post it to you. Then you can put another stamp on it and post it on to the commission". It does not seem very sensible to me, and therefore we are indeed looking at giving the DPP, the PSNI and the Police Ombudsman the ability to refer cases direct.

Q234 Dr Pinkerton: Thank you for that. That is really important clarification. That is a simplification of a workaround that had come into being. There is a broader question about the demand-led nature of the work of the ICIR and the fact that somebody needs to come to it with a request. I suppose the question fundamentally is whether the ICIR should have powers to initiate its own investigations.

Hilary Benn: We are thinking about that. I think that I am right in saying that one of the requests I received was to say, "We would like to link this investigation to another investigation". Have I got that right?

Sharon Carter: Yes, that is right.

Hilary Benn: I said, "Fine"—I hope I said, "Fine".



Sharon Carter: You did.

Hilary Benn: I did say, "Fine". In which case, on the basis of what I have just said to you, Dr Pinkerton, it would seem reasonably sensible to say, "The commission can see a connection there. Can we make that connection ourselves?" We are still reflecting on precisely how that might work.

It is very much a demand-led model, and that is principally families, but we will end up with a larger group of people who have the ability to refer cases in. Of course, there are some families who have said, "No way ever do I want the case to go anywhere near it". Once we have fixed the human rights incompatibilities, it is a fully and perfectly compliant body to fulfil obligations, which of course are different where the state has been involved, because there is a particular requirement relating to article 2-compliant investigations that does not apply to non-state actors. That is just the way that the law works. That is why, in some cases, the courts have said, "I am afraid that all the stuff that has happened is not article 2 compliant".

Once we have done that, I hope it will be an effective means of providing answers. Some families may say, "We do not want it to go there". We know that, for some of the cases I mentioned a little earlier, a family member from one of the families has asked for it to go in. There may be family members who are also affected by the terrible killing who have not felt like that. When you have had multiple deaths as a result of terrorist activity, one family member can refer it in and then the commission looks at it.

Q235 **Dr Pinkerton** I am really grateful for that answer. I can see how that widening of the degrees of freedom that you talked about, where perhaps an associated investigation could be linked to a current one, is a very helpful evolution in creating a new pathway for investigation, but it does not get around the issue that there could be another case that the ICRIR might be motivated to investigate where that connection to an existing case cannot be demonstrated. That would require it to set up something new.

Hilary Benn: Would you like to comment on that?

Sharon Carter: We are looking at the circumstances in which the commission might be able to self-initiate an investigation or review. The Secretary of State talked about linked cases but there may be other circumstances, for example where there may be an outstanding article 2 or article 3 obligation that might merit an investigation. We are still discussing that. It is not finalised, but we are looking at other circumstances in which the commission might begin its own investigation.

Dr Pinkerton We look forward to more detail on that as it comes.

Q236 **Gavin Robinson:** Secretary of State, when the legacy Act was passed, in



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2023, I think there were 38 inquests that were stopped. Of those, 24 really had not got going and 14 were in train but had not concluded their findings. Are we to understand that the 24 that have not yet commenced will go straight to the commission?

Hilary Benn: I have made it clear that those that had already started will resume. For the others, there are two issues. First, what is the speediest and most effective way of making progress in looking at a particular case? As I have come to learn more about the inquest process in Northern Ireland, I think it is fair to say that it has been exceedingly slow. There have been some inquests that were started and appeared to end and then new inquests have been ordered. What is the most effective means to get answers for families? That is No. 1.

No. 2 is the question of sensitive information. We know from a number of the inquest cases that coroners have said, "I'm sorry. I cannot take this any further because I do not have the capacity to deal with sensitive information". As the Committee will be well aware, if a PII application is made, the coroner looks at it and decides whether he or she thinks that the Government or others have made a case for the PII. They see everything, but then if they accept the PII application, they are not able to draw on that in taking the inquest forward. That has led a number to say, "I cannot take it any further".

The difference about the commission and its inquisitorial mechanism is that the commission will be able to deal with sensitive information. At the moment we are wrestling with what the best means is of balancing those two points in deciding what happens to the rest of the inquests, other than the ones that had started and stopped.

Q237 **Gavin Robinson:** My question to you was, "Are we to assume that the 24 that have not commenced will go straight to the commission?" Not so, you say.

Hilary Benn: It would not be right to assume that. What I am putting to the Committee is that there will need to be a mechanism for determining the answer to the very fair question you have asked.

Q238 **Gavin Robinson:** In relation to the 14 that have commenced, are we to understand that all of those will continue, or continue to the point at which the coroner has to assess a PII, and therefore they may go to the commission as well?

Hilary Benn: It depends. Those that had started—that had actually begun—yes, as I have said repeatedly, they will be restored. How they then unfold depends on the considerations that I have just set out to the Committee, in particular in relation to sensitive information. We know from previous experience that there are coroners who said, "I am afraid I cannot take this any further", so, in effect, the inquest has come to a stop.



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Clearly, the cases need to be investigated, and it would be sensible for them to go into the commission, which can deal with sensitive information. In some other cases, coroners have decided—the coroners are entirely independent; it is a matter for them—“Notwithstanding the issue, I am going to try to plough on to reach a decision”. The answer to your question is that it depends how those inquests unfold.

Q239 Gavin Robinson: Who makes the determination on closed material? Is that the coroner?

Hilary Benn: The coroner decides whether to accept the PII application. That has been the case for a very long time.

Q240 Gavin Robinson: That is issued by you, the police or the security services.

Hilary Benn: It is issued by me and the police, yes.

Sharon Carter: It is the owner of the information.

Hilary Benn: Yes, the owner of the information is responsible for doing that.

Q241 Gavin Robinson: That could be you or the police. It could be the security services. It could be anybody who has information from the state.

Sharon Carter: Yes, it is the relevant holder of the information.

Hilary Benn: It is the relevant holder of the information. The coroner sees all of it but, as we know, in some cases the coroner has said, “I accept that the Government”—or the other holder of the information—“have made a very valid case as to why this information should not be disclosed”. The rules of the inquest prevent that information from then being drawn upon by the coroner. That will not be the case in the commission.

Q242 Gavin Robinson: You know, and you said earlier in this session, that a lot of people say a lot of things. You cannot be expected to comment on them all. I understand that. The current discourse around inquest is that there are 14 that should be re-engaged when you make an announcement on legacy, that half of them will go to the commission and that only half of them will proceed to full coronial process. That comment is based on a sort of notional working through of the criteria that you will publish. That comment very clearly suggests that, whatever process is going to be gone through, a desktop exercise has identified that seven will proceed and seven will go to the commission. Do you recognise that?

Hilary Benn: Sorry, whose comment are you referring to?

Q243 Gavin Robinson: I am talking about comments and the general discourse on inquests.



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Hilary Benn: I have a hard enough job trying to sort this all out without spending all my time commenting on other people's comments.

Q244 **Gavin Robinson:** In terms of confidence in this process, should people be surprised if half of 14 inquests do not proceed to full inquest?

Hilary Benn: We are just going to have to wait and see the process that we put in place and how it unfolds. I cannot prejudge or anticipate that. I have tried to be as open as I possibly can with the Select Committee in setting out the considerations that we are looking at and deciding how to take the question of inquests forward.

Gavin Robinson: If I was in fair form, Secretary of State, I would say that is a fair answer.

Hilary Benn: I will take that with alacrity. Thank you.

Q245 **Sorcha Eastwood:** Secretary of State, do you intend to reinstate all inquests, or only those that were paused by the legacy Act? Do you see the merit in people wanting to seek fresh inquests?

Hilary Benn: I answered the first part of your question in answer to Mr Robinson when I said that those that had started and were terminated by the portcullis coming down under the legacy Act will be reinstated. As for the rest, we are giving consideration to what the most effective means is of taking those forward and what part sensitive information may play in the ability of inquests to conclude their task.

Secondly, in putting all of this effort, money and legislation relating to a reformed commission, we are looking to move the finding of answers to questions into the commission as the most effective means of trying to enable cases to be investigated and for answers to be provided to families.

Q246 **Sorcha Eastwood:** That is useful. You did not seek, though, to reinstate inquests through the draft remedial order. Why not?

Hilary Benn: Yes, the reason for that was that you can only use a remedial order if you are not appealing any aspect of the judgment relating to that item. I may have explained this previously to the Committee and I certainly explained it to the House in December last year.

As I have said to the House, in respect of the judgment of the court on cases that are being considered through what ICRIR has called the enhanced inquisitorial procedure, the court said, "If there is not effective representation for families, it is not compliant". That is what the court said. I said to the House, "I will remedy that in respect of the commission", but there are broader implications of that aspect of the judgment, which is what is forming the basis of our appeal. Dillon is the lead case, which is going to be heard next month in the Supreme Court.



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Because you are appealing part of an aspect of a judgment, you cannot remedy the other bit using a remedial order.

Q247 **Sorcha Eastwood:** All of that being said, when do you then intend to lay the remedial order?

Hilary Benn: It is my intention to lay it alongside the draft legislation. We have been giving careful consideration to the Joint Committee on Human Rights.

Q248 **Sorcha Eastwood:** That reported in February of this year, I believe, so there has been quite a distance of time.

Hilary Benn: Indeed, yes. There is great merit in laying out the whole picture at one moment. That is why I am telling the Committee that it is my intention to lay the draft remedial order. I have published the proposed draft remedial order. I did that in December or January.

Sharon Carter: It was in December.

Hilary Benn: People have already had a chance to see the shape of that and it was considered by the Joint Committee on Human Rights. Other people have commented upon it. It is my intention to lay the draft remedial order, which is the second part of the process, at the same time as the draft legislation is published.

Q249 **Sorcha Eastwood:** A really key issue in all of this is going to be the issue of funding and how any new inquests or inquests that were put on hold by the legacy Act are going to be funded. The Law Society, among others, has said that the resumption of legacy inquests requires proper resourcing so that it can proceed in an expeditious and efficient way, which is something that you have outlined this morning as a key priority for you.

That being said, the funding issues within the Northern Ireland Executive and the Department of Justice are well known and are something that you will know about. Is it therefore fair or appropriate to expect either those stalled inquests or any potential fresh inquests to be funded through resource money in DoJ?

Hilary Benn: When the five-year plan was put in place by Declan Morgan before he became involved in leading ICRIR, funding was identified for those inquests. If funding was identified for those inquests, it is there. Going back to Mr Robertson's question, how it will pan out in respect of the other inquests depends on the outcome of the consideration process that I have described to the Committee.

The funding for the Department of Justice, which covers inquests, policing and so on, is entirely a matter for the Executive. The Government have done their bit to ensure that the Northern Ireland Executive is funded slightly above its level of need. There have been record settlements. The financial cliff edge, which the Committee has considered, was much talked about. No one is talking about the financial or fiscal cliff edge now



because of the funding settlements that we have made available. It does fall to the Northern Ireland Executive to decide how they are going to deploy their resources between all the competing demands that all Governments face.

Q250 Sorcha Eastwood: If there is a resumption of inquests, it would probably be a fair assumption to make that they would seek to do that as soon as possible. There is potentially going to be a bottleneck of demand there. Are we to assume from your comments that you are saying that the Northern Ireland Executive should fund this? The legacy Act was previously ruled unlawful, and therefore the money that in the past was identified is no longer there. The pressures within DoJ are huge and very well known in terms of day-to-day running, policing and so on.

Do you really expect people to think it is right and proper for all those processes to be funded within the Northern Ireland Executive, when the actions of the previous Government and others stalled the process and then created the demand? The demand is a good thing, but how is it going to be met within any departmental budget?

Hilary Benn: The first thing I would say is that funding was identified—that is my clear understanding—within the Northern Ireland Executive for the five-year programme. Has that been taken away? The funding was identified from within Northern Ireland's resources, and therefore I would presume it is still available for the cases that were listed as part of the five-year programme, which, if I am correct, would include the ones that had started.

Sharon Carter: Yes.

Hilary Benn: Funding had already been identified within Northern Ireland for those cases. I grant you that funding had not been identified in relation to the 20 that the Attorney General for Northern Ireland referred in just before the deadline when the portcullis came down. What happens to those will be subject to the process, which I have tried to be as open as possible about with the Committee in answer to your and Mr Robinson's questions.

We are putting money into the commission, of course. If the commission takes those cases, if that is how it pans out, then the UK Government will be funding that through the money that is available to the commission to do its work. Finally, we have provided additional resources. The Executive takes decisions about how it is going to spend those.

Q251 Sorcha Eastwood: Do you have any intention to revisit the funding formula, given everything that you have just said and the fact that you have accepted that inquests will be only partially funded, not all of them? Clearly, there will be demand. Secretary of State, what I am trying to get at is that we all know, around this table, that the Northern Ireland Executive are struggling in terms of finance. There is not a spare penny in any Department, to the best of my knowledge, and particularly not in



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DoJ. It is a simple matter of common sense. Is it right and proper that that is funded from entirely within the Northern Ireland Executive?

Hilary Benn: I recognise the pressures on all Governments in the current circumstances all around the world. Northern Ireland receives 24% additional funding compared to England. It is slightly above 24%. That is a record settlement for a three-year spending review.

In a separate context, I have always said that all Governments also face decisions about whether there are ways in which they can raise revenue to augment the resources that they have available to meet the demands and pressures that all services and all Governments face. Those are choices for the Northern Ireland Executive.

The Government's job is to make sure that the Northern Ireland Executive is adequately funded. The record settlement announced in the spending review does that because it meets the recognised additional need, as identified by the Northern Ireland Fiscal Council, of an additional 24%. That is the funding that we have made available.

Q252 **Chris Bloore:** Welcome, Secretary of State. I am going to touch on an issue now that I suspect many members of the Committee have had addressed in their inboxes and their community meetings, which is the issue of veterans. I know you took part in the Westminster Hall debate in response to the significant petition that came forward on this issue. I suspect you will know that Mr Johnstone gave evidence to the Committee as well.

Many veterans are concerned about what they see as the fundamental unfairness of the inquest process, which they claim is disproportionately focused on the actions of state forces. How will you address those concerns moving forward?

Hilary Benn: I absolutely understand the concerns that the veterans have. First of all, they were offered immunity that was never going to be capable of being delivered. It was never commenced by the last Government, despite their having put it in the legacy Act. It was then found to be incompatible with our human rights obligations and was struck down by the courts in Northern Ireland.

This Government came into being committed to removing it because we do not agree. One of the reasons why the legacy Act was opposed by so many people in Northern Ireland when it was passed was that it was such a screeching 180-degree turn by the Government from the approach that was in the Stormont House agreement between the Irish and British Governments. That approach did not have the support of everyone in Northern Ireland, but it had a measure of support. We went from that to something that had nobody's support, which is why we are sitting here having this conversation about what needs to be done to address this.

We are not in favour of giving immunity to terrorists. Let us just be frank about that. That is the first point. The second point is that there were no



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protections provided for veterans in the legacy Act in engaging with legacy processes. I have been talking to the Defence Secretary and the Veterans Minister about putting a package of proposals together, which we will set out in due course.

One example, as I have already said, is that clearly with modern technology there is absolutely no reason why a veteran should have to travel back to Northern Ireland in order to give evidence at either a remaining inquest or indeed the commission. They ought to be able to do that remotely. We do have an obligation to veterans. In particular, a large number of those who served are now very elderly. Those are provisions that would be made available to other witnesses as well. This is not just about veterans. If anyone wants to give evidence remotely or is elderly, particular consideration needs to be given to their circumstances.

I would also just address other things that veterans have said. There was the argument about the on-the-run letters. We had the Westminster Hall debate in July. There were colleagues who got up and said, "Well, you have given immunity to terrorists in the form of the on-the-run letters". That is not true. It is really important that we are all clear. That is not the case. You can debate the merits or otherwise of the on-the-run letters at the time, but, as Lady Justice Hallett made absolutely crystal clear, they do not and have not granted immunity. I paraphrase, but what they said was, "We have no reason to be interested in you at this particular moment in time". The proof of that is that there are at least two cases that I am aware of where individuals who received on-the-run letters have then faced prosecution, which proves that on-the-run letters do not give immunity.

Finally, I would mention the Clonoe inquest. Going back to the question of inquests, in the last year and a bit there have been two inquests involving soldiers where the coroner has said, "Yes, in these circumstances the use of force was justified". Some people say inquests are skewed in one direction. People make comments saying it is not fair. In those two cases, would they say that was a fair outcome if they are thinking about the interests of veterans? The inquest said, "Yes, the use of force was justified given the circumstances you found yourself in".

There is no doubt that the Clonoe inquest verdict caused a great deal of consternation, which the Government share. That is why, in an almost unprecedented fashion, the Government have said, first, that they will fund the veterans involved in that case to bring a judicial review and, secondly, that the Government themselves will bring a judicial review. The next phase of that will be a leave hearing in November, if I remember correctly. In that particular case, it shows that the Government absolutely have the backs of the veterans.

Finally, coming back to immunity, I have met many veterans who have said, "I don't want immunity". Indeed—I know you took evidence on



this—the three veterans commissioners issued a statement in connection with the Westminster Hall debate. They said, “This is not a call for immunity from the law”—I agree with that completely—“but for fairness under it”. I agree with that too.

Q253 Chris Bloore: Thank you for that answer, Secretary of State. When there is a void of information or a lack of clarity on when the situation will be clear for veterans, that is where actors can come in and muddy the waters. It would be good to know when you think some of those discussions with the Defence Secretary and the Veterans Minister might become public about what veterans may expect to happen in the future.

Of course, there is a concern about vexatious cases. Clearly, you have mentioned that you will not bring over veterans, and vexatious questions will not be the punishment for those people. As Secretary of State, how will you ensure that those vexatious claims do not get taken forward? How are we going to ensure that that does not become part of the process moving forward?

Hilary Benn: The Government’s approach includes support that we are going to provide veterans. Some 250,000 people served in Operation Banner with great distinction in the most difficult circumstances. A large number of them were killed. They were there to try to keep people safe.

You are right. The Clonoe inquest verdict in particular led people to say, “Is this what inquests are going to produce henceforth?” All I would say is that you need to look back. An inquest process is independent. The commission process is independent. They will form a judgment on the basis of the evidence.

On the vexatious point, I just want to say this. Some of this goes back to commentary, which has been a theme of this evidence session. I have heard people talk about “politically motivated prosecutions”. All of us around the table who are very concerned about the rule of law, the independence of the judiciary and prosecutorial decisions should be really alarmed when the phrases “politically motivated prosecutions” or “vexatious prosecutions” are used.

Who decides on prosecutions? It is independent prosecutors. I emphatically reject the suggestion that there have been politically motivated prosecutions or vexatious prosecutions. If we go down that road, we are in terrible trouble as a society. Language matters. It really matters in this case.

There is a separate question of civil cases. Veterans have views in relation to that. It is ultimately and mainly for the Ministry of Defence to decide how to deal with those particular cases. There is a lot of worry and fear. I accept that. That is why it is important, and I accept your point entirely, that the Government provide clarity about the practical steps we are going to take to support veterans while also upholding the principle



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that the law applies to everybody. We are not going to give immunity to terrorists, which is the Government's policy.

Q254 **Gavin Robinson:** Language does matter, Secretary of State.

Hilary Benn: It does matter, yes.

Q255 **Gavin Robinson:** You will accept that John Downey, the Hyde Park bomber, escaped prosecution on the basis of a letter of comfort. He was not prosecuted because of the letter of comfort.

The letters of comfort were not in isolation either. They came on the back of prisoner releases, a commitment that anyone convicted would only serve two years, the allocation of the royal prerogative of mercy on quite a number of terrorist individuals and the on-the-run legislation introduced by a Labour Government. That was separate from the letter of comfort. It was a scheme, very open and very transparent, to allow people who had evaded justice to come home and retire with a level of dignity that they did not afford their victims.

It is not right to say letters of comfort did not offer amnesty because in John Downey's case they did; nor is it right to single out letters of comfort from the panoply of extravagances that successive Labour Governments offered to terrorists.

If we are saying that language matters, it is fair to put on the record that there was not an isolated scheme to protect terrorists or to give some comfort to terrorists. There were successive schemes offered to terrorists. That is the atmosphere created now about the fear that some veterans have.

I mentioned earlier that it seems from comments made that the inquests will be whittled down to seven proceedings—you are not going to comment on that—and that some of those involve soldiers. In the July Westminster Hall debate—it was good of you to attend that, because it is very rare that you would have a Secretary of State in Westminster Hall; that was a credit to you—I understood that for your Labour colleagues you were going to outline all the protections for veterans, but that did not somehow come. There was a suggestion that the protection being offered is that individuals do not have to travel.

Hilary Benn: Yes, I have already said that to the Committee.

Q256 **Gavin Robinson:** Is that the sum total?

Hilary Benn: No, it is not.

Q257 **Gavin Robinson:** We heard you earlier in the session and we hear others outside of this room say, "We are going to protect veterans". Is not having to travel the sum total protection for elderly veterans who fear being dragged through a prosecution process that in the end could lead to a conviction but with no time served?



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Hilary Benn: To be clear, having no need to travel would relate to inquests or hearings of the commission.

If I may, you have raised a number of points in putting that question. Let us go back to the start. In the case of Mr Downey—this is a matter of public record—the court reached its verdict in relation to the Hyde Park bombing, as I understand it, for particular reasons that were very specific to that particular case. I know that caused a great deal of distress. I would just point out, because it is a matter of public record, that Mr Downey is currently facing prosecution for two other murders, which proves the point that I made earlier—

Q258 **Gavin Robinson:** It does not. It absolutely does not. You said that letters of comfort did not provide an amnesty and people are being prosecuted. People are being prosecuted. There was an inquiry. Lady Justice Hallett said there should be no comfort provided by these letters and they amount to nothing more than a piece of paper. But it is true to say that John Downey walked out of court on the strength of the letter of comfort that he had erroneously been given and was therefore not prosecuted for the Hyde Park bombing. That is why I say language matters.

Hilary Benn: As I understand it, on the particular facts of that case, the court decided it was an abuse of process. We can all read the judgment and see the circumstances of that particular case.

To the argument that has been made, including in the Westminster Hall debate, that on-the-run letters, letters of comfort or whatever you call them mean that people have been given immunity from prosecution, that cannot be correct in this case when it is a matter of public record—I am not going to comment any further, for understandable reasons—that Mr Downey is currently facing prosecution for two murders.

Q259 **Claire Hanna:** Secretary of State, disclosure, deciding who has the say over what information victims get from those who did the killing, whether in uniform or out, is, you might agree, at the centre of a lot of the paralysis—a lot of what has caused these cases, in many cases, to take decades to resolve. This touches on some of the issues you just discussed with Mr Bloore. I credit you for setting out some of the realities of that, but it is about who gets to control the information. You discussed the Thompson case, which is one of the places where that is being fought over.

In the Supreme Court in June, in the public session, your Department's barrister indicated that the chief constable might resign if you and he did not reconcile on your analysis of what constitutes national security. The next day your barrister did try to walk back that suggestion, but it was said in public session. Can you explain how he came to make those comments?

Hilary Benn: I cannot. They were his words; they were not mine. As you say, he walked them back the following day. It comes back to the point



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that I made earlier. It is not helpful to focus on individuals. There has been a difference of view about how PII should be approached between the Government and the chief constable, but I do not think it is helpful to have a go at individuals.

Q260 Claire Hanna: I am not going to insist that you speculate, but people will wonder whether that was a solo run or whether that idea was put in his mind in terms of the thinking and the framing of this issue within the Department. Taking into account that this is not the chief constable's first rodeo—he has a lengthy background in handling sensitive issues—what is your response to his belief that it should be the judiciary that weighs up the competing needs around disclosure?

Hilary Benn: I would say this. First of all, the Government's policy is that we want the maximum disclosure to provide answers consistent with national security. Secondly, Government Ministers have a responsibility for national security. They are set out quite clearly. They are ones that I take extremely seriously. Thirdly, in the light of the court judgment relating to disclosure and the commission, I am committed to undertaking reform so that the disclosure arrangements that apply to the commission are akin to those of a public inquiry.

Now, the court said, "We find this incompatible because it does not look like that which applies in a public inquiry", and I said I want to get to the point where it does so that incompatibility is remedied. In each case, what is disclosed comes down to an exchange of views and a discussion. Ultimately, it is open to anyone to bring a judicial review against a decision, in which case the courts will finally determine what the outcome is.

Q261 Claire Hanna: This is creating the same layers of cases being relitigated and rehashed out, and creating further years of victims having to travel. We have been talking about commentary, but I am also talking about feelings.

You will be aware of the family who are having to return to the Supreme Court again. Can you understand how this is perceived, across the board, by decent people and people who have put a lot of effort into developing confidence in policing and in processes? Can you understand that people are wondering who or what is calling the shots in London in terms of disclosure and the release of material? As I say, families like the Browns are being dragged through another hearing. In open session of the Supreme Court, commentary about the viability and tenability of the chief constable's position is being made by legal representation for the Department.

Can you understand why people are wondering who is calling the shots on what on earth is being covered up?

Hilary Benn: I completely understand the frustration, the pain and the suffering of those families—I have met a number of them, including the Brown family—in still not knowing answers after all of these years.



There is a particular reason why we are appealing in the case of the terrible murder of Sean Brown. The issue of principle, which is not the concern of the Brown family—I understand that—is that it is for Governments to order public inquiries, not the courts. That has always been the position. The courts in Northern Ireland decided that in this particular case they would order a public inquiry to take place. The Government think it is right, if we get leave to appeal that decision, which was upheld by the Court of Appeal in Northern Ireland, to see whether the Supreme Court agrees that long-standing policy should change and the court should be able to decide when public inquiries are ordered. I think it is a job for Governments; it is not a matter for the courts. I do understand that.

I made the commitment to Parliament in December that I will reform the disclosure provisions to make them akin to a public inquiry. After all, the commission is going to see everything. I am not aware of any case in the work that it has undertaken so far where the commission has said, “We would like to see this material” and has been told, “No, you can’t see it”. Those who hold the information are under an obligation to provide it in full, unredacted form to the commission so it can do its job and hopefully provide answers for those families.

I completely understand the frustration and the lack of confidence there has been in the legacy Act in particular, which I am doing my best to try to remedy.

Chair: Can I just make clear, colleagues, that we should not mention any live cases? Thank you very much.

Q262 **Claire Hanna:** We have discussed the “neither confirm nor deny” policy. The chief constable outlined the way in which, from his experience, it is used liberally, prolifically and, he has said, in a way that has “stopped wrongdoing coming to notice and prevented people from being prosecuted for murder”. We have discussed—I will not reopen the discussion that we just had about a case—publicly and privately the legal issues, the moral issues and the very wide public perception. Can you set out how you are intending to address those disclosure issues? How are you intending to respond to the chief constable and many others’ request for a change in NCND policy and disclosure more widely?

Hilary Benn: First, as I have already pointed out, the commission gets full, unredacted disclosure. Secondly, we will amend the regime to ensure that it is consistent with other established mechanisms, which would seem to me to meet the issue that the Court of Appeal raised. There are wider issues to do with the court judgment that form part of the Dillon hearing. It is right that we will then seek clarity from the Supreme Court, but I would repeat what I said a moment ago: the power is not a veto.

Q263 **Claire Hanna:** It is a veto.



Hilary Benn: No, it is not a veto because it can be challenged by way of judicial review, just like any other decision of a Government Minister or a public body. If it can be challenged in the courts, ultimately it is the courts that decide.

Q264 **Claire Hanna:** Can you understand the perception of these increasing layers, rivets and processes that have been put on for decades? Files have been sealed. We have all seen documents with page after page of redactions. People are told, "We will not tell you until you have come back to court", but the people who go to court have avenues shut off and are demonised or subject to lawfare for doing so.

It does not feel like transparency. Setting the truth free is the best way for us to truly move on. We need to go through some things that will be very ugly and very difficult for people to hear. It will be particularly difficult and embarrassing for those with things to hide and particularly cathartic for those who need that truth to be able to move on with their lives—those who have been most wronged.

Until this is properly addressed, until people do not have to go to court and fight further and further and further, until this information is proactively given, we are going to be stuck with fog all around us and hundreds of millions of pounds of legal processes before people finally get to the truth. None of this is worth the paper it is written on, if the principle is still proactive holding down and the proactive use of policies such as "neither confirm nor deny".

Hilary Benn: I can only respond to that by saying I want the maximum possible disclosure to enable families to find answers, but there are considerations of national security. There is no running away from those. All Governments have an obligation to give very serious weight in deciding ultimately what is disclosed.

That is what happens, at the moment, through the PII process. Many coroners have said, "Yes, I have looked at that and, yes, the Government make a fair case". That happens on quite a regular basis. I accept the point that you have made about the frustration, the concern and the worry. People think this must have happened. When answers are ultimately provided, it may be that what people have thought did happen did not happen. The answers may be uncomfortable in lots of different ways.

The Operation Kenova report will be published. It had quite a lot to say in its interim report. I welcome very much what Kenova has done. The way it has gone about this has informed the policy that I am in the process of developing, which will form the basis of the legislation I intend to publish.

Q265 **Sorcha Eastwood:** One of the letters within ICRIR stands for "reconciliation". Some might consider that a misnomer at best or egregious at worst. There have been an awful lot of criticisms of ICRIR's ability to aid, promote and deliver reconciliation. What would be your response to those criticisms?



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Hilary Benn: I read in the evidence you have taken that there are those who have said, "Is there going to be a proper legal definition?" I do not see how legislation can define what reconciliation is. Indeed, when I met a man whose brother had been murdered in the most brutal circumstances, he said to me, "How can there be legislation that tells me that I must be reconciled to what happened to my loved one?" I said, "I agree with you".

In the end, reconciliation can only come from within. It can only come from justice, truth, disclosure and answers. Therefore, the job of the commission is to try to provide those answers. In act of doing that, let us hope it assists the process of reconciliation in Northern Ireland, given the trauma that your society has been through.

Q266 **Sorcha Eastwood:** Would it maybe be better to take it out of it, then, in its entirety?

Hilary Benn: I am certainly looking to change the name of the commission, which is one of the points that have been put to you in the evidence that you have taken. I accept that argument.

It is not the primary focus. If the commission does its job successfully, it will assist the process, but its work does not have a particular reconciliation strand.

Q267 **Sorcha Eastwood:** Secretary of State, ICRIR gave its own evidence. It listed, among a number of bullet points, some of its key functions. It lists one of those as, "Objectively telling unvarnished truths about the past". It is trying, in my opinion, to play a role of looking at reconciliation in its own way. For me and others, including the Northern Ireland Retired Police Officers Association, there is silence on how ICRIR will ever be quantified in terms of having delivered or monitored reconciliation.

A lot of people are looking at this. Given the comments that my colleagues have made in this session today, there is a real concern that terrorists could potentially come forward and tell their own stories. We have already seen the wholesale rewriting of the past in terms of people attempting to justify terrorism and saying that that was what they did and they would do it again. The new generation are very porous in terms of what they are taking in and how that impacts the Northern Ireland of today. In lieu of any mechanism to attest to or corroborate the veracity of claims made by terrorists that could come forward, I worry that using "reconciliation" in the same sentence is problematic.

Hilary Benn: I am wholly opposed to the rewriting of history. When I recently visited the wonderful exhibition on the Troubles at the Ulster Museum, there was a phrase in one of the panels that came out and struck me. It says, "We have a shared past, but we do not have a shared memory". I thought that was really a very good way of summing up what you have gone to the heart of.

Q268 **Sorcha Eastwood:** I agree we do not have a shared memory, but it is



incumbent on all of us to state that terrorism was always wrong.

Hilary Benn: I agree with that.

Q269 **Sorcha Eastwood:** People are entitled to their own memory or whatever it may be, but we have to be open, up front and without fear or favour in stating that, no matter the circumstances. My fear is that this element of reconciliation, with terrorists coming forward, is giving them a charter to rewrite their role in the Troubles and give themselves even more of a platform. Although I agree with what you are saying, all Members should be up front in saying that terrorism was never acceptable. There was always an alternative and it was never justified.

Hilary Benn: I agree with every single word of that. Of course there was an alternative, because the alternative eventually appeared in the wake of the Good Friday agreement, which has brought extraordinary progress to Northern Ireland society in the years since it was signed.

Going back to the earlier question about information retrieval if people come forward, we discussed back and forth how that information itself might be tested. I remain of the view that, in respect of the work of the commission, it is what it does to help provide answers that I hope may assist in the process of reconciliation. I am not looking at trying to define it legally in the draft legislation that I bring forward because I do not think that that is helpful, for the reasons that I have tried to set out in answering your questions.

Sorcha Eastwood: I appreciate that. Thank you.

Q270 **David Smith:** There is no question, Secretary of State, but that the uncovering of truths, the sharing of information and the pursuit of justice are all part of the process of reconciliation. You have said previously to this Committee that it is not the role of the state to impose reconciliation on anyone, which is absolutely correct. However, it is also a possible role for the state to create the circumstances and parameters for, and almost be the facilitator of, a process in which that can happen. Symbolism really matters. Memorialisation really matters. I share some of the concerns of my colleague about the ability of ICRIR to do this. It has, as you say, a place in that.

This might be a slightly unfair question, but it seems to me that one thing that is massively missing in the British state, the Irish state and all stakeholders in this process, including non-state actors, is the role of acknowledgement and even—it is a very old-fashioned word—repentance. This is about looking at not just the last 40 years but the last 1,000 years and saying, “What is the relationship between these islands?” I think of the Queen’s visit to Ireland in 2011 and the massive positive impact that had.

That is a big preamble to my question. What more can the British state and the Irish state do to lead by example and incentivise others to acknowledge that wrongdoing was done, even in a more general sense?



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To me, that seems to be the thing that is missing here and is so often the elephant in the room.

Hilary Benn: It is a very large question, if we are going back 800 years. There is a long story. I was a student at school when I first encountered the Catholic Emancipation Act of 1829, if I was paying attention at the time. When you subsequently come to learn what went on in relation to the suppression of people's culture, their language, their ability to perform jobs and do a whole host of things, it is truly shocking.

You mentioned the late Queen's visit. It was a remarkable moment and then was reciprocated when President Higgins came and addressed both Houses of Parliament down there. The late Queen said, "We can all see things that we would wish had been done differently or not at all". I thought that was a very profound observation. You could almost describe that as a statement of acknowledgement.

There are a growing number of incidents where the state has recognised that wrongs were done involving the state. I think of David Cameron's apology to the House of Commons in respect of Bloody Sunday after the Bloody Sunday inquiry reported. I think of his apology for the shocking level of state collusion in the murder of Patrick Finucane. I think of what Boris Johnson and indeed Brandon Lewis said about Ballymurphy. I just give instances.

It is important that all those who are involved come forward, tell the truth and apologise for what happened. There has been a tendency, going back to Ms Eastwood's question, on the part of those who did engage in terrorist violence to say, "It was justifiable". As we all agree, it was certainly not justifiable. It is a process. It takes time. Northern Ireland's society has moved on a lot, but, having come into this job 14 months ago, it seems to me it is a society that is still traumatised by this legacy in terms of both individual families and the overall impact that this has had.

That is why all of us should do our darndest to find a way forward that could command greater confidence and give answers. If we search for the perfect and somehow believe that everyone in Northern Ireland will say, "You've got it", it is not going to happen. We know that. You know that from the evidence that you have taken in this inquiry that you have been undertaking. Nobody is going to get everything, in the famous words of Mo Mowlam, but let us hope that, when we put all of this effort and energy together, we can produce something that will enable us to move forward.

I want us to be able to move forward because the legacy Act in particular—trying to fix it occupied a very large amount of my time—just went backwards, which is why there was no support in Northern Ireland for it. How can you make progress in Northern Ireland if you bring in a piece of legislation that has no support in Northern Ireland? The answer is obvious. You cannot. That is why things have to change.



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Q271 **Claire Hanna:** That is very well said, Secretary of State. It is fundamentally about moving forward. People think this is all an obsession with the past, and it is not. It is obsession with the future. I genuinely and truly believe that, if there is disclosure and forthcomingness from the state, which is the bit that you have most control over, it will force those paramilitary organisations, which are responsible for the sizable majority of killings, into a virtuous circle. It will remove the hiding places that they have in failing to disclose and failing to be honest. David and Sorcha are entirely right about the non-legislative opportunities for killers and killing organisations to take the initiative and step forward. That will be more clarifying and more freeing than any amount of court action, but those are the things we have legislative control over.

I briefly want to touch on PSNI funding. Week after week, the police set out the challenges that they are facing with the normal and increasing pressures in all areas of life. They are operating with around a fifth fewer police officers than needed and expected, as well as dealing with policing the past and everything else. The chief constable got put in his box by DoJ when he went to London to try to raise this. It appears he got tea and sympathy when he got here. Ms Eastwood has touched on the funding challenges across the board.

Are you making the case to Treasury or whoever else and advocating for increased funding and support for the PSNI? The inability to police the present and the issues that I have raised with you before around confidence and perception that flow from legacy are really challenging the new beginning, which is probably the most successful part of peace.

Hilary Benn: Since I took up post, I have been making the case to the Treasury, given my job, to get the best outcome for funding from the Northern Ireland Executive. Policing is devolved. Those are decisions for the Executive to take.

There are those who come to me and say, "Can you ringfence this bit of money? Can you ringfence that bit of money? We think this is really important and we do not think that the Northern Ireland Executive process is producing enough resource". If you go down that road, we all know where you will end up before very long. It is not devolved government.

I believe passionately in devolved government in Northern Ireland. With devolved government comes responsibility. All Governments have to take really tough decisions about prioritisation. It is within the hands and the means of the Northern Ireland Executive to decide how much money it gives to the Department of Justice and therefore to the PSNI.

I have done my part in that process, which is to make sure that the Northern Ireland Executive gets a decent settlement. It has got a record settlement. That is what the spending review has delivered. The rest is over to the elected politicians in Northern Ireland.



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Chair: Thank you. I would like to take this opportunity to thank you, Secretary of State, and your office, for your time today.