

Northern Ireland Affairs Committee

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

Wednesday 5 November 2025

Ordered by the House of Commons to be published on 5 November 2025.

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Members present: Tonia Antoniazzi (Chair); Claire Hanna; Simon Hoare; Katrina Murray; Dr Al Pinkerton; Gavin Robinson; David Smith.

Questions 292-364

Witnesses

I: Alyson Kilpatrick, Chief Commissioner at Northern Ireland Human Rights Commission, Joe McVey, Commissioner at Commission for Victims and Survivors Northern Ireland, and David Johnstone, Northern Ireland Veterans Commissioner at Office of the Northern Ireland Veterans Commissioner.

Written evidence from witnesses:

– Alyson Kilpatrick: *Chief Commissioner of the Northern Ireland Human Rights Commission (NIHRC)* – [[LPNI0068](#)]

– Joe McVey: Commissioner for Victims & Survivors for Northern Ireland – [[LPNI0070](#)]

Examination of witnesses

Witnesses: Alyson Kilpatrick, Joe McVey and David Johnstone.

Q292 Chair: Welcome to this Northern Ireland Affairs Select Committee session on the Government's new approach to addressing the legacy of the past in Northern Ireland. I welcome Alyson Kilpatrick, Chief Commissioner at the Northern Ireland Human Rights Commission; David Johnstone, the Northern Ireland Veterans Commissioner; and Joe McVey, the Commissioner for Victims and Survivors in Northern Ireland. Thank you for being here today.

What are your views on the level of co-operation and commitment from the Government of Ireland under the joint framework? Do you believe that



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the detail and timescales for those are clear?

David Johnstone: Good morning, Chair. I think the last time I was here, we were on the eve of VE Day, so it would be remiss not to mention that we are in Remembrance Week, which is so important for our nation. Within that, of course, we pay tribute to the members of the security forces, particularly the armed forces, who served in Northern Ireland and who suffered so grievously during the Troubles. For many in Northern Ireland, this is a poignant weekend.

In terms of engagement with the Irish Government, I think my summary would be that we will have to wait and see. Words are easy. There is no doubt that, as I think I said on my last visit, one of the scandals of the Troubles has been the ability of the Irish Government to duck out of responsibility. There is absolutely no question that they facilitated—certainly turned a blind eye to—the slaughter of armed forces, to the slaughter of policemen and women and indeed to the slaughter of ordinary Protestants and Roman Catholics in Northern Ireland.

Therefore, it is important that they engage. We definitely welcome the fact that there seems to be movement. The new unit that is being set up to facilitate that should provide some information for families. We welcome the steps that have been announced, but the proof of the pudding will be in the eating, in terms of, will they engage fully?

Lastly, one concern veterans would definitely have is about accountability. For the Legacy Commission and the different structures involved in Northern Ireland, there is oversight, there are those who are scrutinising and there are conflict-of-interest points that are there and that are highlighted, but who is scrutinising the Irish Government? Who is going to ensure that they provide all the information that they have?

So at the minute, the jury is out, but we hope that the words they have given will be backed up by action.

Alyson Kilpatrick: Certainly, built into the joint framework, the commitment by the Irish Government is really welcomed. It needs more fleshing out in legislation, so that we know exactly what the commitments will be, but that will be their legislation primarily.

I would say that there has been quite a bit of engagement between the two Governments up to this point. There was certainly quite a lot of engagement between the security forces, north and south, during much of the last 20 or 30 years, all of whom suffered terribly during that period. On a previous occasion, Chris Albiston of the Northern Ireland Retired Police Officers Association was very keen to say that his colleagues across the border in An Garda Síochána had co-operated in cross-border investigations. That is also important to remember—that people there also lost lives.

What has improved a lot over the last few years—well, it is too early to say what will actually transpire as a result—is that we can see much greater co-operation on the Dublin and Monaghan bombings, the Glenanne



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series and the exchange of information with Operation Kenova, which has increased beyond all recognition in the past year, I understand from Sir Iain Livingstone. I think that that clearly reflects a whole change of approach.

I also have to say, though, that it is not my jurisdiction, so I do not get involved in what happens in Ireland. But I do work closely with the Irish human rights commission, and we have a joint committee that was set up under the Good Friday agreement. This issue is on the agenda for the next meeting, so we will be discussing it, and I am certainly happy to share any more views once that is over. Largely, it is their concern. They have been working quite closely to make sure that their article 2 obligations are complied with. There has been a lack of compliance in the Republic of Ireland and a lack of commitment to beginning and completing article 2 investigations.

The last thing I would say, which I certainly meant to share with the Committee on the last occasion—if I did not, I should have done—is that when I was doing some of the Kenova advice, I gave advice, which was put into the public domain, that the Republic of Ireland had a duty, as a member state of the Council of the Europe that shared a border with another member state, to give disclosure as per article 2, and that there were obligations that could have been enforced even then that perhaps were not. There is a duty of co-operation across borders between Council of Europe member states. All of that is starting to play out, and it can only be welcomed that this a recognition. As David says, however, a lot of proof will be in how it actually works.

I think you asked about timeframe, and I am not sure what it is—I am not sure anybody really understands the timeframe—and that is an issue. There is a lot of catching up to do, so it cannot be cut short too quickly.

Joe McVey: Thank you, Chair and other Members, for the invitation to be here this morning. Building on what David and Alyson have been saying, I think the commission broadly welcomes the interest and support from the Irish Government. It is encouraging to see the Irish Government and the UK Government working harmoniously—that is very important.

As colleagues have said, we would be keen to see the Irish Government moving forward with legislation. From the people we work with—the groups and individuals, and victims and survivors—there was an expectation that in coming forward with a framework very clearly and very quickly, both Governments would move forward in lockstep with legislation and actions. That is a question that a lot of our victims and survivors groups would have at the moment: where is the next stage? Where is the next step? At that level, we broadly welcome the support, but it is early days in terms of the action.

Moving forward we would also—through some of our groups and individual members—be aware of the needs of the victims and survivors in the Republic of Ireland. That area has been sadly lacking in interest and support from the Irish Government. We did some work in 2023, and we



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did a survey that indicated that a considerable number of individuals there would regard themselves as falling within the definition of victim and survivor. Secondly, I think there was an overwhelming response that people within the Republic of Ireland feel that victims and survivors within that jurisdiction should get the levels of support and interest that we have in Northern Ireland. As you know, we have—again thanks to both the UK and Northern Irish Governments—invested heavily in supporting victims and survivors. There is a lot more to be done, but if you compare that to the infrastructure in the Republic of Ireland, there is a lot more to be done there.

In summary, the response is very positive, and as a commission we welcome what has happened, but clearly there is a need to see action. Certainly the people we would support and represent are saying, “We expect to see legislation. We expect to see concrete action.” The phrase used to me by one of the members was that that it appears “a bit lopsided” at the moment, and to give confidence it needs to be balanced and proportionate.

Q293 Gavin Robinson: Good morning, everyone. Mr McVey, I think the Committee is pleased that you are in post, and that there is a victims commissioner, because on the occasions that we have met the victims commission, there was a vacancy. It is important at this time that victims have a voice and that you can give voice to their concerns.

You mentioned the lopsided nature of the joint framework, and I think it is fair to say that nobody on the panel is able to show what timelines the Irish Government will give for their implementation, because there is no information on that. I think of the 10 pages and 35 or 36 paragraphs, and five of them—the paltry five at the back—rest with the Irish. There is a curious reference in paragraph 33 to the ability for families to obtain family reports from the guards, outside of the Legacy Commission and quite separately from that process. Are you aware of any victims’ families who have secured a Garda family report? Do you know how many there may have been? Do you know the substance or nature of them? Would you care to reflect on the caveat in paragraph 33, which highlights that family reports will not be produced if there is an ongoing criminal investigation, or on the fact that the Donaldson family, for example, cannot even get the return of a diary after 20 years because of an ongoing but never complete, or never progressed, criminal investigation?

Joe McVey: Thank you, Mr Robinson, for your welcome. I am delighted to have been appointed to the post. It has taken a bit of a while, but I am very pleased to be in post. To answer your question, no, I am not aware, but that could be due to my ignorance, having been in post for four weeks, rather than because it is a fact. I will endeavour to find the answer.

In a broader sense, reflecting on the needs of families—you mentioned one family in particular—any investigations and any work that is done on either side of the border should be very much victim and survivor focused. At the moment, I think that would apply to a number of cases where families have been waiting for years, and are still waiting, for the barest



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threads of information. Our work would suggest that what families are looking for and interested in is a degree of acknowledgment of the pain that they have suffered. Whether that comes through a legal route or through information retrieval, there is a very clear sense that much more needs to be done to try to, I suppose, take an approach of maximum rather than minimum disclosure.

Q294 Gavin Robinson: Mr Johnstone or Ms Kilpatrick, are you aware of this process? Did you notice a distinction in the joint framework that this is outside of the Legacy Commission, but a family report from the guards is a mechanism that is available? Have any of your members accessed that provision of information?

David Johnstone: I have certainly heard veterans discuss it and ask questions about the mechanisms: "How does it actually work?" I am not aware of anyone who has requested a report and been provided with it. I think that again points to the lack of information and clarity around the Irish Government's involvement and the commitments that they have made. Time will tell if they actually have any validity, but not as yet.

Alyson Kilpatrick: I do not know. I am looking now at the draft Bill, rather than the joint framework. It has not found its way into the draft Bill. I know that in the joint framework it was much more of an overview. How that plays out in practice, I do not know yet. I do know that some families have been engaging in a roundtable that is held regularly in the Republic of Ireland with legacy families. I know that Jon Boutcher, when he was with Operation Kenova, was working—and Iain Livingstone is now—with quite a few of those families on Dublin and Monaghan and the Glenanne series. They are getting information, but as to the form that is coming in, you would need to ask An Garda Síochána or the victims.

Q295 Gavin Robinson: You have helpfully mentioned the failings of the Irish Government in terms of article 2 of ECHR. You know that they took an interstate case against the United Kingdom Government. Do you feel it would be appropriate for the UK to consider taking action against the Irish Government if they were to fail in their obligations that they have outlined in the joint framework?

Alyson Kilpatrick: I do not think that is a matter for me. What I know is that there were issues, and the Human Rights Commission brought forward those issues and intervened in proceedings, raising the article 2 issues in the UK. Whether or not the UK makes a decision to bring a case is not a matter for me.

Q296 Gavin Robinson: Your primary function is to advise Government on human rights obligations in Northern Ireland. You will be well aware that there are citizens of Northern Ireland who are being failed in the human rights obligations of a neighbouring jurisdiction. Do you give advice? Do you comment? Would you be prepared to suggest that if the Irish Government were to fail in their obligations to victims from Northern Ireland, their human rights would be being impinged and you would assist them in a case against the Irish Government?



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Alyson Kilpatrick: The jurisdiction for me to raise that is the joint committee, when I meet with the Irish human rights commission. They have the power to bring proceedings themselves.

Q297 **Gavin Robinson:** And you have a power to take proceedings.

Alyson Kilpatrick: Not proceedings in the Republic of Ireland.

Q298 **Gavin Robinson:** None at all? You just support people that do?

Alyson Kilpatrick: No.

Q299 **Gavin Robinson:** Sorry, the Northern Ireland Human Rights Commission does not take cases?

Alyson Kilpatrick: Not in the Republic of Ireland, no.

Q300 **Gavin Robinson:** But the Human Rights Commission takes cases.

Alyson Kilpatrick: Yes.

Q301 **Gavin Robinson:** Would you support a family from Northern Ireland who wished to raise these issues outside of the jurisdiction?

Alyson Kilpatrick: I cannot answer that without more information or a family coming forward.

Q302 **Gavin Robinson:** But you would consider it.

Alyson Kilpatrick: It would depend what it was.

Q303 **Simon Hoare:** A very quick question to Mr Johnstone. Good faith and trust are hugely important in all these processes—I think everybody would recognise that. I am asking you for a hunch, really: if Dublin and Westminster were able to arrive at a timetable whereby whatever it was agreed was necessary legislatively was delivered in lockstep, to give mutually supporting confidence to both parties, what if any impact do you think that might have within the veterans community when it comes to the process currently proposed in the Bill?

David Johnstone: As a prelude to answering your question, it is maybe important to say—because I think this may be behind your question—that it would be easy for me to come here as a veterans commissioner today and point to all the negativity that still exists with the Irish Government and with legacy. There are some real concerns; of course there are. However, we have to give space: the Irish Government may have changed their tack going forward—perhaps with the passage of time, or perhaps conscience has played on some of those who are in power—and may now be at a point where they may consider moving to a more appropriate engagement.

To your point specifically, I think the answer would be yes. If there was clearly a lockstep process where, as the British Government implemented legislatively and carried out their plans under the Legacy Commission—with all that that entails in terms of investigations, truth recovery and all of that—the Irish Government were being held to a similar timeline and



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had to commit legislatively at the same time as the UK, and were being seen to engage with the same good faith that, clearly, the British Government are bringing to the table, I think that would be positive. I think that many veterans—perhaps not all, given their history and given the pain they have been through—would give space to the Irish Government to prove that they are serious with the engagement.

Q304 Claire Hanna: I am going to ask each of you about the Independent Commission on Information Retrieval. I will start with you, Joe, and also add my warm wishes on your role—it is really important that such a constructive group as the one you represent will have a voice in this phase. Do you have any concerns about how information provided to the proposed new ICIR will be substantiated, and if so, how would you like the Bill to address this? In particular, have your panel had any thoughts about substantiating information from non-state actors?

Joe McVey: Thank you very much, Claire, and thank you for the welcome. I think, as we saw many years ago with the focus on information retrieval, that we would be broadly supportive of the concept and how it might work out in practice. I think that, for a lot of the people we would work with, both victims and survivors, the focus is on information and acknowledgment, and—to pick up David's point—good faith, rather than pursuing people, perhaps through a judicial or legal process. So as I said, our focus is on maximum disclosure.

I think also, given where we all live and work, that there is that suspicion: will information be protected? Will individuals be protected coming forward in good faith? Listening to victims and survivors, both individuals and groups, I think their approach is that we focus on the individuals—that we focus on the humanity and compassion behind it, rather than, as we do sometimes, get concerned as to where things might lead.

So we would be broadly supportive of it, but again, we would want to see safeguards in terms of the firewalling of information between bodies, because that is still a concern. There are other approaches to information retrieval, in terms of working with those who might be seen as involved in what might be described as paramilitary terrorism activities. Those groups have information. Are they prepared to share that information with families, with a degree of safety? Those are the things that concern us at the moment.

Q305 Claire Hanna: Alyson, I will put to you the same question. Also, the Secretary of State has told us he expects the ICIR will want to check information with the Legacy Commission as part of that substantiation. Do you have any views on that? How would you like the Bill to deal with it?

Alyson Kilpatrick: I think that previously it has been accepted that this was one of the aspects of the Act that was very messy and was leading to very unsatisfactory potential outcomes. There are two sides to it. I am looking at this not from the perspective of a person experiencing the process, but from the legal and human rights perspective. One is to do with gathering information that cannot or will not lead to a criminal



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process. The other is about information that will lead to a criminal process. In the midst of all this, there are also alleged perpetrators whose rights have to be protected. I think the commission was one of the first and perhaps only ones who said that that also had to be at the centre of the new Bill—of the new Act.

There are difficulties if you are running two processes concurrently and without appropriate fireguards between them. Usually a person would go through a criminal process before they would be left open to any sort of misconduct or other civil action. It can work both ways. What concerns us is the protection that might be afforded to somebody coming forward to the ICIR, the information being passed to the Legacy Commission as it will be, what happens with that, who knows what and who is relying on what. Since time immemorial, there have been problems when you may have witnesses who are also suspects, suspects who are witnesses and witnesses who may or may not be a potential suspect—you don't know until much later in an investigation. That was one of the difficulties the Police Ombudsman's Office had in relation to some of their historical investigations.

So this is going to need some real working out. I don't think it can be as simple as the ICIR picking up the phone to the Legacy Commission and asking whether something is true. And I think that if there is going to be a degree of co-operation, it may deter people from coming forward, because the information they give may not then be protected. There is also the obligation to investigate and prosecute if criminality arises, so there would need to be something to protect those in the Legacy Commission from breaching that obligation.

Q306 Claire Hanna: Will you have proposals for how that might be addressed in the Bill?

Alyson Kilpatrick: Yes, we have offered to work through that and certainly give our opinion. It is only our advice, but it is our advice based on the jurisprudence that has come to this stage.

Q307 Claire Hanna: David, you said you have been engaging with veterans. Will you be encouraging them to deal with these new bodies? And specifically, have you had any engagement with the British Army's Military Reaction Force and the Force Research Unit?

David Johnstone: To your last question, no, not personally.

Q308 Claire Hanna: Will you be engaging with those veterans and asking them to participate in these structures?

David Johnstone: That would not be in my remit, in the sense that virtually all those soldiers are outside Northern Ireland. I am the veterans commissioner for Northern Ireland, so it is those who serve in Northern Ireland under my remit. Those who live in England, Scotland and Wales would be the responsibility of another commissioner. But I take the point I think you are going to, Claire. I would say at the minute, with the engagements with veterans, the jury is out a little bit on the Legacy



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Commission. Many veterans had got comfortable with the ICIR. They certainly had confidence in Sir Declan Morgan. They certainly had confidence in Peter Sheridan, in terms of the experience he was going to bring to the table and the journey he had been on in understanding the context of many of these cases.

I think that with the changes that have now been brought in by the Government, many veterans are going to wait and see. Certainly there were those who were championing bringing cases to the ICIR. They are now holding back, which I think is unfortunate. My view is that this is probably the only show in town and therefore, if we are going to have any type of process, this is probably it.

I will make two very brief points on substantiation in relation to the ICIR. There is a concern among veterans that not all but many in the republican movement want to rewrite the narrative and therefore have been able to come to this type of information recovery body and say whatever they want to say. There is a fear in relation to that. The last thing I will say briefly is that, of course, everyone is entitled to their view of the Troubles—you and I might not share every view. We are all entitled to our interpretation of the facts, but we are not entitled to our own facts. The danger is that this process will allow—

Q309 Claire Hanna: Do you agree that exposure of some of the levels of collusion would help to tackle some of that revisionism and to expose just how squalid and sectarian the Provisional IRA's war was?

David Johnstone: Yes, I would be in agreement with all information that is relevant from all sides, from whatever organisation, be they state or terrorist organisations. There is the slight caveat about the disclosure of state secrets, but as a principle, anyone who suffered in the Troubles should have the opportunity to have truth. I agree with that as a principle.

The last thing I will say briefly is on the morality of this, because, again, the Labour Government have made such a big play about the morality of supposed immunity. They have that as the motivation to change the Legacy Act. That is a different conversation, the rights and wrongs of the immunity clause within the act, but in reality, what is on offer now is amnesty in all but name: someone can come forward to disclose information, and they will not be prosecuted. From the veterans' point of view, going back to royal pardons for terrorists—whatever the comfort letters are or are not—and prisoners being let out, it is about the morality side of this. This fails the morality test of basic justice.

Q310 Claire Hanna: On basic justice and after the Soldier F case, you said that you wanted to see fairness for all, but would you agree that that fairness means that everyone is equal before the law, and that no person who created victims, whether a state or a non-state actor, should be beyond the reach of the courts?

David Johnstone: All criminality, from wherever it came from—

Q311 Claire Hanna: Should be investigated, and the pathways, too, with

judicial proceedings.

David Johnstone: Absolutely. You made the point—I agree—about fairness. What is not fair is when—I would argue—there is a huge imbalance, Claire, as to how it is dealt with in Northern Ireland.

Claire Hanna: I do not think that the statistics would bear that out, David. That is what I will say.

Alyson Kilpatrick: May I clarify one thing, in case it is left on the record? Under this Bill, there is no immunity, whether someone comes forward to the ICIR or to the Legacy Commission. I was talking about the misleading of people, almost, about the basis on which they would be coming forward and what happens with their evidence.

What is absolutely clear and what has been the Human Rights Commission's position from the outset, is that where there is evidence of criminality and where there is a requirement for an article 2 investigation, it must be pursued as a criminal investigation or as an inquest. That applies to whomever has committed the offence. I do not think that there is any immunity. That was one of the provisions that the Human Rights Commission found offended human rights law at the beginning.

Q312 **Gavin Robinson:** That is not the point that Mr Johnstone was making. He was making the point that if someone is giving information for information retrieval purposes, those are protected disclosures and therefore cannot be used against you. If that information is gleaned through separate channels in a criminal investigation, of course it could be. The point that he was making is that there is a siloed dissemination of information and protection given to that information, which would not be used in subsequent criminal proceedings. That is the distinction.

Alyson Kilpatrick: No, I understood that, but I have to disagree that that is what the Bill does. As we have suggested, where there is potential or there are lines of evidence that can be pursued in relation to criminal investigations, that should take precedence—that should happen first—but the ICIR will be receiving evidence where there is no prospect of prosecution. That is where they will have to work out the differences.

Q313 **Gavin Robinson:** That is the issue then. If information is subsequently given, having decided that no information is there for prosecution, but that subsequent information could provide information that would make prosecution possible, that stage has already been concluded.

Alyson Kilpatrick: I am not sure that I agree on that reading of the Bill, but—

Gavin Robinson: That is the issue with that information.

Alyson Kilpatrick: I do not agree that that is what the Bill does. One of the issues that we have with the Bill is that it is not clear enough. Those things have to be cleared up—but it is clear that the Bill is not intended to create immunity from prosecution, however you give information to the ICIR or Legacy Commission, because a stage would already have been



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proceeded through which had decided whether any lines of inquiry could lead to a criminal prosecution, where an article 2 investigation was required.

There is simply no prospect, as things stand at the minute, that somebody could, at the same time that the Legacy Commission will be investigating criminality, come forward and say to the ICIR, "I am going to tell you that I committed a murder, and there is nothing you can do about it. I am going to absolve myself of all future responsibility." If that is how this transpires, the commission would, as it did the first time around, have some considerable difficulty with that.

Q314 Gavin Robinson: I think that is very interesting. For example, terrorist A has evaded justice—probably hidden in the Irish Republic for a while and came back again—and there are no lines of inquiry. The criminal part—the stage 1 process for criminal prosecution—has passed. Then terrorist A comes in and starts giving information that could provide evidential lines of inquiry, but that process has passed. You are saying you would be concerned if those two processes were separate, and you are hearing the concerns of veterans who say that is an effective amnesty. However, if terrorist A were to give information—following the conclusion of no evidential lines for prosecution—that could then start or spark an evidential line of inquiry, that should be pursued. You would be concerned if that were not the case—is that right?

Alyson Kilpatrick: No. It is a lot more complicated—a lot more nuanced—than that. I do not accept the premise on which you are putting that binary choice. The reason this has to be investigated properly and fully from the outset—and why everything has to start from the lens of the Legacy Commission—is to avoid precisely that situation. You are suggesting, I think, that at a later stage, somebody could come forward out of the blue, where there has not been any evidence known about them whatsoever, and say, "I've committed a murder" to the ICIR. Whether that would then be referred to the Legacy Commission—how that works—is not in this Bill yet, but the reason the Human Rights Commission cautioned against the previous Act was because those things were not clear. Everybody can go to the ICIR—it is not just terrorists who have been on the run; it is also alleged perpetrators from other backgrounds, so this has to be worked out for everybody.

I started off saying that the lines between the two need to be clear. What is the basis on which the ICIR will receive information? What is its obligation to then take it down as a criminal investigation? That all needs to be fleshed out. If you want a truth recovery process to run concurrently with a criminal investigation process, you will have to be careful how you go about that—those are the sort of choices.

Q315 Gavin Robinson: Are you unclear as to how that will happen?

Alyson Kilpatrick: On the face of the Bill. All that I am here to discuss is the Bill.

Gavin Robinson: I know. We are asking these questions, because for us

taking evidence, this is crucial.

Alyson Kilpatrick: I think all I am saying is that I do not know yet, because there is not sufficient detail. We will be looking at the detail when that comes, but we are in the process of giving our full written advice on each item of the Bill, which I am sure will also be shared with the Committee in due course.

Q316 **Gavin Robinson:** You accept the concerns that have been raised, but you are not clear as to what the actual position is.

Alyson Kilpatrick: What I was not accepting was that there would be immunity created by this Bill.

Q317 **Gavin Robinson:** Your position is that there is no firewall—you do not move from one stage to the next, and that information can never go back to the first stage again.

Alyson Kilpatrick: I am not saying that anything is “never”; I am saying that on the face of this Bill, there is no immunity, whichever way you enter the process. There may be protected disclosures, but that will have to be worked out. That is one of the things we have drawn attention to in our advice.

Gavin Robinson: That is a point of distinction.

Alyson Kilpatrick: Yes, absolutely. I do not disagree with anything David says, in the sense that he is representing veterans. I am here representing the human rights position as I see it; I am not going to speculate on the position.

Q318 **Gavin Robinson:** Should we be in the realm of speculation? This is a genuine question for everyone. We have had 18 months of this Government: 18 months of a promise to repeal and replace; a large launch in September of a joint framework; and now a Legacy Bill—a Northern Ireland Troubles Bill—has been introduced, yet we are speculating. Why are we speculating when it is not on the face of the Bill? This is a general observation, not a criticism of you or anybody on this panel or in the Committee: why are we speculating when we have a Bill of such substance and still do not know the outworkings of the programme before us?

Alyson Kilpatrick: I am not speculating; that is for others. This is at a very early stage.

Gavin Robinson: It is not. We have legislation before us published in Westminster, which will become law.

Alyson Kilpatrick: I am not responsible—forgive me—for the way the legislation proceeds.

Q319 **Gavin Robinson:** You are answering defensively, but it is not a question for you. I am asking the question; anyone on the panel can answer it. Why are we in the space of having to speculate when the details should be

there? We should not have to guess what the process is.

Claire Hanna: I think that is what the witness is saying. She is providing suggestion and clarification.

Gavin Robinson: All of you—the victims commissioner, the veterans commissioner, the commissioner of the Human Rights Commission—should be saying, “We should not be in this position.” Eighteen months after the Bill was published in Westminster, we still do not know how it works.

Alyson Kilpatrick: I think I began by saying that we have flagged the lack of clarity and the fact that more has to be done to make that clear. There is nothing else I can say about that. I accept that there is a lack of clarity there. There is no defensiveness—I have no skin in this game whatsoever.

Gavin Robinson: You should be embracing it; this is an important point.

Alyson Kilpatrick: That is precisely why the Human Rights Commission has said that this needs to be looked at. We will offer suggestions on how it can be improved, including, for example, when authorised and unauthorised disclosures can be made, the warnings that may be given to someone before they reveal anything to ICIR and the duties on the Legacy Commission to prosecute if it comes into receipt of evidence of criminality. It is not my job, thankfully; it is for bigger minds than mine. All I can do is give our advice on what is in front of us. Our advice so far has been that there needs to be more on that point.

Chair: That is really useful, because we have a responsibility to table amendments and to seek clarity. That is why we are here as a Select Committee.

David Johnstone: Just on that point, I did not use the term “immunity”. I referred to “amnesty”, which is different. In my meetings with the Secretary of State for Northern Ireland, he has been very clear that the ICIR is based on the model of the disappeared. There is absolutely no question that that model involves someone coming forward with information for which they cannot be prosecuted. Whether we call it amnesty or immunity is incidental. The point I am making is that, as I understand it—Alyson can correct me if I am wrong—there is a mechanism where a terrorist, or indeed a soldier in the armed forces, can bring forward information about a crime and the information that they provide cannot be used against them for prosecution. That is exactly what is laid out in the ICIR. I am just pointing out that the morality of that is difficult for veterans to take. But I think it is clear that there is a de facto amnesty built into this.

Chair: We will seek clarity on that.

Joe McVey: On David’s point about mood, within Northern Ireland there is a degree of confidence in the commission looking after the families who are seeking responses to what happened to their family members who

were disappeared. I think there is confidence in how the commission is set up and how it is working. That is an important point to put on the record.

Gavin's question about speculation is a fair one. Our role as a commission is to look for clarification on a number of issues in both the framework and the Bill. We have done that in writing, but also in our meetings with Secretary of State, and we will continue to do that. We have confidence in you and in colleagues in the House of Lords that there are opportunities to look at amendments as we go forward. I totally understand Gavin's point. It is disappointing that there is not more detail or things for which we can all say, "That's all agreed." However, I would be very surprised, in the context of Northern Ireland, if we all agreed on any legislation that was brought forward, particularly on such a contentious issue.

We have amendments, suggestions and clarifications. I give credit to the Secretary of State and his colleagues for some of that. They have made themselves very available since 19 September to provide information. We are meeting the Secretary of State again this week. We would want to continue those discussions with the officials and Government from the south of Ireland. A lot more detail is needed before any of the witnesses or any of you can say that we are 100% happy.

Q320 David Smith: Good morning, everyone. I have a quick question for anyone who wants to answer it on the point about amnesty. It seems clear that someone can come forward and make a submission to the ICIR and that would not be permissible for criminal investigation. That seems to be clear, notwithstanding that, there is a lot that is not clear. Is it your understanding that that does not necessarily preclude a criminal investigation or inquest into the actions that that person disclosed, if it comes from a different route? I am just putting it to you and asking an open question: there is a difference, isn't there, between amnesty and—

Dr Pinkerton: Immunity.

David Smith: Between amnesty and immunity, yes. There is a difference between someone being able to share information without it being pursuant to a criminal investigation in that context, but it may still be criminally investigated if that information comes to light from another route. That is my understanding. Do you understand it in that way?

Alyson Kilpatrick: Immunity and amnesty are different. Immunity is what derives from an amnesty, so there can be immunity in all different ways, and amnesty is a grant of immunity. That is all. When I use those two words, that is how I use them. Immunity can come from the grant of an amnesty. In terms of the movement of information between ICIR and the Legacy Commission, I was talking about authorised and unauthorised disclosures.

We do not know enough about what an authorised disclosure from ICIR to the IC—sorry, the Legacy Commission; I am still getting my head around all the new names—would be in the Bill. That is what needs to be fleshed out, so I will not speculate, because it would lead you down the wrong path. We are saying that there is not enough information to conclude on



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that, but there is a difference between authorised and unauthorised disclosures, and I do not know from the Bill what an authorised disclosure is.

I can see a potential situation, depending on how you interpret that, where information given to the ICIR leading to criminality could be disclosed to the Legacy Commission, if it is an authorised disclosure. That is why that needs to be pinned down for everybody's benefit, including those coming forward with evidence and those who may then get taken down a whole process of investigations that come to nothing. This has to be clear to protect everybody.

Q321 Dr Pinkerton: We now have a package of questions explicitly on the Legacy Commission—there will be a good number of questions on that in particular. My first question has been slightly overtaken by the excellent conversation that we have just had. One of the great criticisms of the ICIR is that it was almost exclusively geared to undertake reviews rather than novel investigations. It is important to get your thoughts and reflections on that. Without necessarily rerunning the conversation we just had, do you think, from what you have seen of the proposed Legacy Commission, that it will be better placed and more appropriately geared with the correct and appropriate powers to undertake those investigations and, where appropriate, to pursue prosecutions?

Joe McVey: To come back to our position on the Legacy Commission and information retrieval, we fundamentally come back to what is in the best interests of the needs of victims and survivors, and what would give confidence, both now and going forward.

The criticisms that were levelled at the ICIR, as it was—before it hopefully transforms into the Legacy Commission—were around things like the role of the Secretary of State in appointments, the independence of those individuals and how people coming forward can feel that it is a body that will treat them with respect and fairness.

The framework and the outline of the Bill is sufficient to give people confidence that things will be better, and better received. Having said that, going back to what I said earlier, there are a number of areas that we want to seek clarification on, but at this point we are keen to see the detail. That is all I would say at this point on that one, Dr Pinkerton.

Q322 Dr Pinkerton: So for you it is a watching brief—there is some good stuff in there, as you see it, but you need greater clarity.

Alyson Kilpatrick: In terms of its framework for the possibility of criminal prosecutions, this is night and day from what was there previously. Previously, what was intended was to limit those things—that was what was said in the introduction to the Act. This is to enable those in appropriate cases. Placing the Legacy Commission within the criminal justice system is a huge step forward, because it means those routes can be pursued to their logical conclusion if there is evidence.



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Making the commitment to human rights compliance front and centre makes a huge difference, because if an article 2 investigation is required—that is not all these cases, but it is some cases—there is a statutory obligation on the Legacy Commission to undertake that, with all that that means. The referral mechanisms that have been added, referrals from the police and from others, are a huge improvement; I think that will make a big difference.

The reinstatement of inquests and civil cases, criminal investigations, as we say, and some referrals to the Police Ombudsman's Office are going to make a huge difference. Some of the human rights obligations to investigate can be discharged by way of inquests now. The presumption that certainly serious criminality—death and serious injury—will be pursued, with all lines of inquiry, by an independent team with expertise in investigations is a step change from what was there before.

Q323 Dr Pinkerton: So there are some substantial changes and enhancements, as you see it.

Alyson Kilpatrick: In our view, there are substantial enhancements—but what I do not want to do today, before our very detailed, clause-by-clause analysis is submitted, is to say something that I have to go back on or that somebody else is misled by. What I can say is that this is a huge improvement on what was there before and, in our view, taking a human rights approach to it.

We do not see, in this part of it, any obvious human rights deficiencies. That is a big change from where we were before, and that should give confidence to everybody involved: those families who have not had investigations up to this point; veterans, who are also victims in this—when we talk about victims, we include veterans and we do not see them as distinct—and alleged perpetrators, should they be paramilitaries or from any other walk of life.

This protects all that. It is a fair criminal investigation. Before, it was something in between a criminal investigation and a review. Our view was that that did not serve anyone and certainly did not serve those who might then have been subject to criticism as a result of the review process.

Q324 Dr Pinkerton: Thank you. David, how do you see it on behalf of the members of and people in the community that you represent?

David Johnstone: Thank you for the question. This is the only show in town, and I think it is vitally important. I think most veterans would recognise that we must have a process and a structure that looks into legacy. It keeps being referred to as the unfinished business of the Belfast agreement. I think it is a tragedy and a disgrace that it has been kicked down the road for almost 30 years now and veterans have been left to flounder in this quagmire of uncertainty.

But again, trying to be positive, I think there is no question but that many soldiers' families have engaged with the ICRIR and will move to the Legacy Commission. There are certainly positive aspects to it. The fact



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that, for instance, Warrenpoint is one of the investigations currently ongoing is welcome. Claire and I mentioned earlier probably a slight disagreement on balance, but when you look at all the public inquiries that have happened in Northern Ireland and the hundreds and hundreds and hundreds of millions spent investigating legacy incidents, you see not one into the death of armed forces members—not one—so I think that is a stark imbalance in terms of how legacy has been looked at.

The concerns, if there are concerns, are certainly around the oversight body. The definition of a victim would certainly give veterans concern if those innocent victims of terrorism were treated exactly the same as the perpetrator. That certainly gives cause for concern. There is definitely concern among the veterans over conflict of interest. Obviously, there have been some changes to the ICRIR and there are now the two directors of investigation. There are concerns as to why that came about. The perception is that it is because of the pressure and the complaints from some cohorts in Northern Ireland.

I work very closely with the Northern Ireland Retired Police Officers Association, and they have certainly relayed to me personally on numerous occasions their hurt and their disbelief—to quote them—around some of the public commentary around the conflicts of interest. Just speaking personally, the human rights commissioner's comment around questioning the integrity of some ex-RUC officers was certainly disappointing. I do not think it is appropriate to characterise a whole organisation. If individuals have been proven to have done something wrong, fine, but when we go down the route of conflicts of interest, and look at the whole RUC as somehow not appropriate to be involved, that is wrong, and veterans think it is wrong.

We may come on to the coronial inquest system, but a massive concern of veterans is, if we have created this wonderful body with bells and whistles—the best in class—why are we allowing another, parallel system to investigate things that should be in this body? Overall, I think veterans are going to be faced with reality: if they want information recovery and a route to justice, they will have to engage with the Legacy Commission. It will be about making changes that we can make from the inside, as opposed to making criticisms from the outside.

Alyson Kilpatrick: Before you move on, Chair, can I deal with the suggestion that I, on behalf of the commission, made a comment about the integrity of the RUC or any RUC officer? That is simply not true. I have clarified this on numerous occasions. Other people have put it to me that I said that, but that is not what I have said. It could not be further from the truth.

From the outset, I was aware that numerous ex-RUC officers were investigators in the ICRIR, many of whom I knew when I was working at the Policing Board. I knew them well and had huge respect for their integrity. No criticism was made whatsoever of their place there, and no criticism is made today. In fact, in the lead-up to this, our position was always that it did not make it fatal to article 2 to have ex-RUC or ex-

Army—there are also ex-Army in the investigative team—in fact, it added experience.

If this is going to be repeated, then for the sake of the veterans listening to this, I would like once and for all to make this clear and put it on the record again. I checked what I said before here, and it is exactly what I have just said now. The evidence that was given in relation to conflict was in relation to a post, not an individual. It happened to be occupied by an individual; I could not do anything about that. What we were talking about was the role. Integrity was absolutely not part of the issue.

We were only ever talking about those cases where the RUC may be implicated, and I do not think it is a stretch to say that there needed to be greater experience and background in the investigators—those who occupy that singular role. As I understand it, the reason there are two directors is so there can be a ringfence around some investigations. It absolutely does not disqualify any individual in terms of integrity, experience or otherwise.

In fact, what I have said—I had to put out another statement to correct the misleading characterisation of what I said—is that it is absolutely not about that, and that they are very well placed and have served very well. I know many of them, and I know people personally who have lost their lives. I will not have it repeated again, I'm afraid. I want it made absolutely clear—not for my sake, but for the sake of veterans and ex-police officers, who, as I say, I know very well—that I have never once questioned their integrity. I do not question their integrity. I do not question their ability to lead these organisations. Comments were made in relation to a post; if anyone cares to read what I actually said, it is absolutely clear that it was not about an individual, and absolutely not about an organisation that I have supported for many years, including through the Policing Board.

Thank you for the opportunity to make that clear. I did not want that to be carried on any longer, for the sake of anybody who may be watching this who thinks that I or the Human Rights Commission has any question mark about any former police officer. But some of these cases involve former police officers, and I cannot say anything other than that, as an independent human rights person. If I am asked the question, the only answer I can give, with human rights law in my mind, is that you cannot have that one post occupied in that way. That was it.

Chair: I really appreciate that, Alyson. Thank you very much.

Dr Pinkerton: You have put that on the record. Joe, I think you wanted to come in.

Joe McVey: I think there is a danger as we go forward, in terms of both the framework and the Bill, of almost setting one group against the other. I think David's role is rightly to speak up on behalf of veterans, and that is very understandable, but veterans are also victims and survivors, and we obviously work with veterans ourselves and we hear a very strong



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message from them. They want to be treated, as David said, equally under the law. They are not looking for any favours or special treatment. That is important.

To go back to my earlier answer, we support whatever additions are made at this point to inspire confidence in the general public and in victims and survivors. To pick up on Alyson's points, that may be in relation to roles rather than role-holders. That applies to the Secretary of State as well. We are looking at the role and at the powers that those individuals have, rather than it reflecting on the individuals. We would be very much in support of whatever changes are made that give confidence, but I just want to be very clear that veterans are also victims and survivors, and they require support and respect.

Q325 Dr Pinkerton: Thank you. I am really conscious of time, so I am going to come back on something that you definitely did say, Alyson. You have raised concerns about the definition of "close family member" in the Bill. Can you outline why you have recommended that the definition be amended?

Alyson Kilpatrick: I recommended that it be extended to include, for example, grandchildren. The generational nature and the long passage of time in some of these cases mean that so many of those affected are grandchildren now. There is a distinction between "close family member" and "family member", if there is not a close family member within the definition, but it did not seem to make any sense to have "close family member" defined in the way it was.

I do not think we would say that this issue constituted a violation but, if you want to be as inclusive as possible to those who may be next of kin or may be affected by the incidents that happened many years ago, then you widen it out. We also know in Northern Ireland from experience that sometimes it is the grandchildren, nieces and nephews who are carrying on the struggle for information in these cases.

Q326 Dr Pinkerton: Alyson, are you and the commission content with the new provisions for this proposed commission to self-initiate investigations, or would you like that power to be further expanded or indeed clarified in the Bill?

Alyson Kilpatrick: It is essential that the Legacy Commission can initiate its own investigations; that was lacking before, and it makes sense in article 2 terms, because if there is a requirement for an investigation, then they must investigate and they must be able to initiate an investigation.

What we have said all along is that there is an obligation on the state to investigate. This is not about me or anybody else bringing a case; the state has to undertake this obligation itself. That is what all the international commitments are. That is what the Human Rights Act requires under the European convention. The state must do this of its own motion, not leave it up to family members. However, if family members want information or they want to pursue because they do not believe there has been an article 2 investigation, then they have the right to go and ask



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for that. To say that the Legacy Commission would not have the power to initiate its own investigations would be contrary to article 2. That is a long-winded way of saying that we are very pleased to see that; the Legacy Commission should have more power to initiate its own investigations.

Q327 Dr Pinkerton: From what you can see, do you think that the proposed provisions fully address the concerns that you had with the 2023 Act?

Alyson Kilpatrick: If things stay as they are on that point, I think so, but again, I am simply reserving just a very slight note of caution until we have worked through and compared everything, including all the schedules. There are some bits of this where there are going to be regulations laid and some further information forthcoming. Plus, we hear that arrangements may also change. With that note of caution, yes, it looks as if the people who have been involved in drafting this have tried extremely hard to listen to everybody who is involved in this, and they have tried to come up with an answer that really does give effect to their legal obligations, but also just the compassion for everybody in this process.

Q328 Claire Hanna: The Bill makes provision for the Secretary of State to appoint commissioners on the advice of relevant persons. Is that satisfactory? Do you agree with the calls for more independent governance and oversight? Do you think his duty to take advice and to say publicly who he has taken it from is sufficiently transparent?

Joe McVey: Given the nature of our organisation, we want to make sure that there is very widespread consultation. Under statute, we already have a victims and survivors forum in existence, which is a very effective group. We would expect the Secretary of State to consult that group very regularly to get its views on what he is proposing. I think more attention should be given to victims and survivors groups and individuals in the consultation.

Alyson Kilpatrick: It would be nice to see a little more information about who the consultees will be. I understand that at this early stage it might be impossible to list people, but an indicative list of consultees would be helpful. There is also the independent person who will review the performance of the Legacy Commission, which will be useful. Then there will be the oversight board, plus which it is hoped that victims will be involved throughout. Clearly there is the legal requirement for independence, but there is also the trust and confidence that needs to be afforded to everybody who is represented at this table.

On the appointment process, I do not think that there is anything particularly unusual in the Secretary of State appointing commissioners. That was never a complaint that we had, so long as the process is transparent and so long as it takes into account the requirements for the roles. That is where the independence comes in. We are not simply talking about a public appointment here; we are talking about an appointment to investigate particular types of cases, to discharge a legal obligation. That is where I think the distinction is sometimes lost.



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David Johnstone: I would agree with both Joe and Alyson on that. Transparency is the key. I suppose there is just a wee bit of a concern that the Secretary of State appoints the commissioners and he also gets to appoint the oversight body. With the independency of that, where is the start and finish? I agree with colleagues.

Q329 **Simon Hoare:** I would like to start with a question about the victims and survivors advisory group, and who better to start with than the commissioner himself? In your recent submission to us, you raised concerns about its size and possible composition, about the powers vested with the Secretary of State, and about the potential for duplication of the work of your commission. Would you like to set out a few more details on those concerns, and on any remedies that you may have identified?

Joe McVey: It goes to the question that Gavin raised earlier about the need for clarification. As Committee members will know, we have a requirement under statute to establish a forum, which we have over many years. From my short tenure, I see it as a very effective, very balanced and informed very group who are there to provide information and guidance, and a really effective sounding board.

I suppose that when we saw this, we were a bit surprised and wondered what the need was for another grouping. On the day the Secretary of State came along, the response from members of the forum who were there was, "We're here. We're very happy to assist, and we do assist at the moment with the current commission. We're ready to be asked to support."

The model suggested was that the Secretary of State chooses between three and seven people—again, I have referred to the complexities of our work—and that does seem to be an odd figure. How do you get a representative group out of three to seven? We have questions around that. The model that we have has been tried and tested; it was a very deliberative process of looking for a range of people and going through processes to make sure that people had a range of skills and competencies.

In short, we would like some clarification on where the idea came from and the thinking behind it. Through the forum that we support, and which supports us, we are ready to say that perhaps that is an area for more information and clarification. As I say, I was surprised to see it in there, but it may just require more clarification.

Q330 **Simon Hoare:** There is obviously the risk of duplication of work and effort. Is there the potential of duplication of people? You have mentioned that there will be between three and seven, but if you have one group of people involved in your commission who meet the criteria and the skillset, it is not going to be the biggest of ponds in which to fish. Is there a risk of people wearing two hats?

Joe McVey: There is, and I think that that is the danger of proposing a modelling process without fully understanding where it came from.



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Some Members around this table will know the members of the forum that we work with, and also the members of numerous victims and survivors groups. They are heavily committed already in terms of what they do, and there is a danger that you are asking people to do more without being clear about what demands will be made of them. Again, we are looking for clarification and we are looking at the model.

We are also looking, regardless of how this plays out, at the process for selecting people, because frankly there is a danger that sometimes it is the usual people who are around those tables. We are required under statute to assemble a forum that will provide a voice for victims and survivors. We have a good model at the moment, but that is not to say that that model could not be amended and improved. We are not saying that what we have is perfect. I think that it is very effective, but for the Secretary of State we would be looking for clarification.

Q331 Simon Hoare: The Committee is grateful for that answer. You are the commissioner for victims and survivors, Mr McVey, and we have the creation of an advisory group, as suggested in the Bill. Mr Johnstone, we now have one advisory group being set up to, if you like, mirror the work of the commission in that respect. Do you think that it is an oversight that should be corrected that there is not an advisory group set up with regard to the areas of purview that you have as commissioner for veterans?

David Johnstone: That is a very interesting question. How that mirroring happens should perhaps be explored. We certainly welcome the fact that within the victims and survivors advisory board, as designated, veterans and retired police officers were mentioned, but I think that there was a slight lack of clarity: does it say that there can be or must be a veteran or police officer? That would be interesting to explore. But yes, the veteran community plays a very important part in the different legislative bodies. It is therefore vital that our voice is heard legislatively, just as victims and survivors are heard.

Q332 Simon Hoare: Anybody who ever dips a toe into Northern Irish affairs knows that precision of language is crucial. Mr Johnstone, you have been very clear that you are keen that the veteran community be seen as being protected by that umbrella of victims and survivors. If I heard you correctly, I think you said that in answer to Mr Robinson, but I may be being forgetful on that.

Do you think that it would be helpful, somewhere in the Bill, to set out clearly that it is the view of the Government that veterans who served are considered as part of the victims and survivors, so the need for a separate veterans advisory group becomes redundant because their interests, alongside Mr McVey's interests as commissioner, would effectively be covered by the same advisory group and therefore it would be frightfully important to get the balance of constituencies of interest right?

David Johnstone: Yes. I think that that was the intention of this group: to be able to be broad enough to include all those different cohorts. I think you are right that perhaps it could be more expressly stated in the legislation; that would be helpful. There are certainly many veterans who



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are also victims and survivors. Maybe not all of them fall into that definition, but many do. I mentioned this earlier, but without going over old ground, there would be a concern among some veterans about the definition of a victim and who sits on the advisory group.

Q333 Simon Hoare: At the back of my question is this: I have always hoped, but have yet to be persuaded, that in the general political commentary, media assessment and general societal discourse, veterans will de facto be seen as also having the potential to be a victim and a survivor. They have often been siloed and trammelled as two mutually exclusive cohorts of people—and never the twain shall meet.

David Johnstone: I think that is a very fair point.

Simon Hoare: I have no further questions.

Joe McVey: Just for accuracy, the victims and survivors forum that we are responsible for establishing, and are working with very well, does also contain individuals who have served in a range of capacities for Crown forces. We have a breadth of voices. Members of this Committee will have met the forum members; I am very struck that when they meet that they are very keen to move away from labels and talk about the humanity in the room. The individuals are very committed, regardless of their background, to looking to the future and focusing on reconciliation. To pick up Mr Hoare's point, that constituency of interest has to be reflected. I simply do not know how you reflect that with either three or seven people—that would be quite some group.

Alyson Kilpatrick: It might be helpful if I say a couple of things about that. This was based on the Kenova model—at least, that is what was said at the time—which is two groups. I have met the victims forum a number of times. It is a very, very impressive group made up of veterans from both Army and police. They do not sit around the table looking at each other as veterans and others; they are all victims. Very many of the victims we are talking about here are military and police, including their relatives who are left behind. We always start from that basis.

The victims forum is much more about a direct victim status, if I can put it that way; the victims advisory group is seen as something different. In Kenova, it was a group of advisers with experience in the victims sector. The distinction is that you might see Joe sitting on the victims advisory group, but victims who have direct loss as a result of the cases that the commission is talking about would be in the victims forum. They are working together, but they definitely would not be the same people.

In the victims advisory group that was on Kenova, they had police officers—I met them as well—and the Army and security services all represented. It worked very well, but that only happens if they are complementing each other. There is no suggestion, and there certainly should not be, that veterans are different from victims, because very many of the victims are veterans.

Q334 Simon Hoare: Is there a commonality view on the panel? I rather detect



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that there is. It would be useful—picking up on Mr McVey's point—to capture the fact that it is hard to see how one could meaningfully cover those constituencies of interest with a cap of seven.

Joe McVey: Frankly, I think it is. Regardless of the process, you would end up with a very small pool.

Q335 **Gavin Robinson:** Joe, you mentioned humanity. Ms Kilpatrick has given her view on conflicts of interest, and she has given a précis. She will know, in fairness, from our energetic conversation back in August that I do not agree with what she has shared this morning, but there is probably not much merit in parsing the course on that, although of course there is an open invitation should she wish to. But is it not regrettable that a victim now feels the need to take you to court over the comments that have been made and the use of powers? Is that not a regrettable situation?

Alyson Kilpatrick: I am not going to discuss that case. I cannot, and you understand exactly why I cannot.

If I may just go back to how you opened, you say that you disagree with what I said. I am unclear which bit of it you disagree with, because I have not said what I am accused of saying, which was to malign the RUC or any RUC officer—quite the contrary. I do not know where the disagreement lies. If the disagreement is with comments that were attributed to me, I would agree with you. I would never have made the comments that were attributed to me, or indeed put to Chris Albiston and people like that in the evidence session, where it was put to them that I had questioned the integrity of the RUC as an organisation. That simply does not come from me.

Gavin Robinson: It is about the inability, I think, to suggest that it is a notional conflict that was being considered, and yet specific words you used were about the individual and the role that the individual had because of his specific circumstances within his leadership responsibility.

Alyson Kilpatrick: As was made clear, there was only one person, so I could not avoid—

Gavin Robinson: No, it goes beyond that, in fairness. I do not think it is worth—

Alyson Kilpatrick: I do not accept that it does. If this conversation is to continue, it is really important for everybody who is listening—not just for me and fairness to me—that it is made absolutely clear what I did say and what I did not say, and what has been attributed to me.

Q336 **Gavin Robinson:** Two very quick questions, then. Because you believe that you were misrepresented in *The Irish News* particularly, have you taken steps to address that?

Alyson Kilpatrick: No, no. I did not say I was misrepresented in the *Irish News*; what I said was that there is a short article on a long interview in which there was a lot more context, but there is nowhere in *The Irish*

News article in which I said what you are suggesting I said, or what was put at previous evidence sessions. I simply did not say it.

Gavin Robinson: I disagree with that. I think that that is wrong, but I am not going to continue with it.

Alyson Kilpatrick: I would like to know in writing what it was I said, and then I can have that conversation. But I did not say—and it does not appear in that *Irish News* article—what you said I said, so there is not much more I can say about that. The litigation will be defended.

Chair: Can we leave it there?

Q337 **Gavin Robinson:** I am happy to.

Mr Johnstone, do you believe that the changes from the Secretary of State to ensure that Legacy Commission staff do not have any conflict of interest are right or wrong? Do you believe that the steps to put on a statutory footing the conflict of interest policy that already existed is right or wrong? Do you feel that there is a need for dual investigators whenever it is predicated on one investigator coming from one perspective, when that may not be the case in future?

David Johnstone: Like a lot of things in Northern Ireland, unfortunately, perception is huge, and therefore it is as much about how we have arrived at the two investigative directors as about the validity of that. There is no question but that when you look at what was originally there, it was fit for purpose. There is now, in some ways, a convoluted process when you add a second person in: that then allows for conflict objections to be raised and addressed in a way that would have been more difficult under the old ICRIR.

As you have rightly alluded to, there already existed a conflict of interest policy that could have been brought to bear where there may have been an individual with a specific personal conflict of interest, so where was the need to go this extra step? The perception—again, I can only share what veterans say to me—is that because a certain cohort in Northern Ireland were not happy that there were RUC men in senior positions in the investigative body, that was unacceptable and unpalatable and they would not engage with the ICRIR, and therefore the Secretary of State has decided to bow to their pressure and make changes to try to suit that cohort.

Q338 **Gavin Robinson:** Perceptions can be based on prejudice. As I think Ms Kilpatrick accepts, there are service personnel who are also victims. Mr McVey, you were not the commissioner for victims whenever the lines were blurred with prejudice and perception and how far people were able to pursue their prejudice to the exclusion of certain cohorts of individuals. Have you a sense of the view among the victims you engaged with, through your forum and so on, as to how this discussion has developed? I recognise that there will be some who have no time for the RUC or the Army and do not want them near them, but have you a sense of the overall picture of victims' views on this issue?



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Joe McVey: Again, you will all appreciate that there is no single victim view; they are all very different. Picking up David's point, when the ICIR was initiated, there was generally a sense that it did not engender confidence, both among groups and individuals and within Northern Ireland. I think a very small minority of individuals and groups felt it was going to work.

We are moving now to a new arrangement. I appreciate David's point that a lot of things that happen in Northern Ireland are around perceptions rather than fact. I understand, through one of the commissioners, that they are now dealing with lots of cases—possibly 100, although I am not sure of the exact figure. There have been groups and individuals, and people have come forward. It is no reflection on individuals or their background to say that if appointing another director through a different process gives people confidence, frankly that is a small price to pay.

Picking up Mr Hoare's question from earlier, Northern Ireland is a very small place. If the Secretary of State or anyone is seen to be appointing somebody, the reality is that in Northern Ireland we all know each other, and therefore anything that can be done to provide that support and confidence is very important.

Q339 **Gavin Robinson:** Have you had the opportunity to think through the proposed process that would allow families to be consulted about the involvement of officers, and whether, if there is a relational disagreement or they cannot agree formally, that can be escalated to the oversight board? Have you had a chance to talk to victims about that proposal?

Joe McVey: From a limited number of conversations, the families I have talked to feel that that would be helpful. I keep referring to the point about giving people confidence.

I am mindful of time, but I want to comment that, whether in the structures that we establish, or the work of the commission or the information recovery body, the purpose of this is to aid reconciliation. The difficulty is that we get caught up in arguments about models, processes, veterans and victims, when the reality is that people have been waiting for more than 50 years for progress. The message we got from the forum of our groups that we talk to is that we want to move towards implementation. Members of the Committee will know that, coming out of the Stormont House agreement, there were very positive and practical suggestions about implementation, reconciliation, oral history and memorialisation, looking at themes and trends that you can discern from legacy. That is not looking back for the sake of it or rewriting history, but to provide evidence and support that allows us to build a better place. For us, that is very important.

One of the issues from that work that has not perhaps received the attention it should is the question of gender. Through the Troubles in Northern Ireland, women were disproportionately impacted, and continue to be impacted. One of the measures we have been looking at under the current victims and survivors strategy is payments for the bereaved. It

might seem like, “Why does that matter?” but it is about acknowledgement.

Q340 Gavin Robinson: Do you mean disproportionately impacted in suffering the loss of a loved one?

Joe McVey: Yes, of course—my apologies, Gavin. That is how widows, families and siblings were impacted as a result of the Troubles—thank you for that. Those are issues that certainly the people we work with want to see implemented. Those are the things that matter to contribute towards reconciliation. That is not to take away from Alyson, David and others, who I appreciate are much more knowledgeable about the legislation and the models, but we are interested in reconciliation and what will engender confidence in our groups.

Q341 Katrina Murray: Thank you, Alyson and David, for coming back to see us again. It is really nice to meet you, Joe, and to get your perspectives. What has become clear is the complexity of the work ahead of us and the importance of getting it right. As well as getting the legislative part of it correct, there is the practical implementation of it in the future, when the legislation makes its way through the parliamentary processes. I want to look at resourcing. What is your view on the current resourcing of the Legacy Commission, financially and in personnel? Do you foresee any challenges that amendments to the Bill or other provisions could meet?

Joe McVey: I will respond to that briefly. That is one of our areas of clarification. The framework refers to £250 million over five years and a commitment of €25 million over three years from the Government of the Republic of Ireland. Our question about the UK Government’s investment is, how much of that £250 million is still there and how much has been spent already? Also, is it simply a block grant for the commission to spend? The things I referred to earlier about oral history, memorialisation and reconciliation require resources; where is the money for those things and for payments for the bereaved?

Equally, what will the €25 million investment over three years from Government in the south of Ireland be invested in? As I mentioned earlier, lots of work needs to be done there. It does not seem to be a lot of money over three or five years. That goes to another question about winding up the bodies. That is an odd thing to say at this point, but the timeframe proposed is very short. We would question that.

Katrina Murray: I will come back to you on the winding up.

Alyson Kilpatrick: All I can say is that the commission should have what it needs and the commission should decide what it needs. If it needs more, it should be given it. Once you get the structures right, you fund it appropriately, but you let them tell you what they need. If they want to investigate something, they should be able to do it, and they should have the money to do it, because that is also part of independence. The resourcing needs to be looked at it from the perspective of the reality of what they need to do and where they may need to go. I would not cap the



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money. At the same time, we are all doing with less, so we have to be pretty frugal.

I am sorry to be a bore, but I am going to come back to resourcing one last time. After my exchange with Mr Robinson, it was said again that RUC or veterans in the commission was unpalatable. There are at least 35 veterans in the investigative team at the ICIR. Unlike many other groups, I have not criticised that or said that it is unpalatable or in any way undermines article 2, and likewise with the Police Ombudsman's Office. It is not service and it is certainly not unpalatable. I do not want to have to go back to it again, but I would just say to people out there that I have huge respect for their service, and I know the hurt because I have worked with them for 11 years. Please do not take it that I think it is unpalatable. There are at least 35 veterans that we know of in there and I have never complained about that. I just want to get that in perspective.

Gavin Robinson: Nobody said that you had.

Alyson Kilpatrick: That is exactly what was said.

Gavin Robinson: Not by me.

Alyson Kilpatrick: I think Mr Johnstone said that. It was an exchange. I thought I had cleared it up with you, but it came back.

Simon Hoare: I am not sure that this is particularly fruitful, given the time.

Chair: We will move on with the questioning.

David Johnstone: I agree with Alyson about providing whatever is needed. What is the price of truth and justice? When we look at the overall bill, we need to remember that a lot of investigations have been put down the coronial route, which will cost a lot of money. When we look at the Legacy Bill, let's not confine it just to the Legacy Commission. We have to be mindful of the many millions that will be spent outside what is in the legislation.

Q342 **Katrina Murray:** Joe, I want to go back to your comment about the power the proposals give the Secretary of State to wind up the Legacy Commission when they are satisfied that the need for the exercise of the functions has ceased. What are your specific concerns in relation to that power?

Joe McVey: Again, whether it is the Legacy Commission or the ICIR, our view is that it has to be based on widespread consultation with victims and survivors. I appreciate that for budgetary reasons you have to set an arbitrary period of three to five years, but I struggle to see how the work that will be involved would be done in that period. It comes back to seeing what the situation is. I would be very surprised if three to five years was sufficient time. It has to be based on consultation. They need to be mindful of what is happening at that time in Northern Ireland rather than making arbitrary decisions, because five years will pass very quickly.

Katrina Murray: Particularly given the current situation, where trust in the process needs to be built up and established, or that might stop families coming forward.

Joe McVey: Very much so. Families will be waiting to see what happens. Thank you.

Katrina Murray: Do you have any comment on that, Alyson?

Alyson Kilpatrick: Only to say that as long as the structure is right in the first place, and the independent body is set up to function in accordance with legal obligations, there is nothing unusual in the Secretary of State being the final arbiter of when it has done its job; in the same way, it is for the state to discharge its obligations in the first place. I find nothing unusual in that—nothing in human rights law suggests that he should not be able to wind it up. It is hard when those decisions are made, but if the structure is set up properly, the independence is there. Someone has to make a final decision.

Q343 **Katrina Murray:** Is there any advice you can give us on future-proofing it?

Alyson Kilpatrick: The way the Bill is drafted, there are conditions attached to winding up. The consultations and things like that—consulting the Legacy Commission—are important. That should future-proof it, because if the commission says, “We’re not done,” it would be difficult for the Secretary of State to wind it up. That would need a very good reason.

Otherwise, I think it is just a matter of being mindful, once the Bill is an Act and is up and running and we all know what we are dealing with, that this is done in good faith and that trust is maintained. That requires skill. Certainly with all the people I have spoken to, trust and confidence in the Secretary of State’s decision making are being re-established. That is all I can say.

David Johnstone: I have nothing to add.

Q344 **Claire Hanna:** Several stakeholders have reiterated their concern that the national security veto power is maintained in the new regime, and that that risks seriously undermining confidence. Do you have a view on that, Joe?

Joe McVey: As I mentioned earlier, among families and groups we work with, certainly the principle and the values would be about maximum disclosure to families. It would be naive not to say that in any state, there is a point at which Governments or Prime Ministers play the national security card, for obvious reasons, but that needs to be balanced. Is it simply a default position, or are there adequate and good reasons in terms of going back to maybe not national security, but more the safety of individuals who might be damaged or hurt in disclosure? Certainly our view would be for maximum disclosure. Members of the Committee will know from working with families over the years themselves that nothing is more damaging than to be waiting for 15 or 20 years, only to be given reports and documents that are 99% redacted for reasons that it is hard



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to find an explanation for. National security should not be a default position; the principle should be for maximum disclosure.

Q345 Claire Hanna: This is not related to disclosure, but while I have you here, can I ask whether you been able to engage with, or do you have views on, victims who have experienced a so-called punishment attack or other humiliation practice by paramilitaries, like tarring and feathering or kangaroo courts? Are you assured that there will be a pathway for investigation of those cases?

Joe McVey: I have not as yet, Claire, but it is something I am keen to follow up and come back to. Again, I will take advice from colleagues within the commission. It is outside my knowledge at the moment.

Q346 Claire Hanna: Alyson, will you give us a view on disclosure, and on the review of the restrictive notices as they have been used in public inquiries and their application in the proposed inquisitorial mechanism? Do you think that they will boost confidence or do you have concerns about their role in the disclosure regime?

Alyson Kilpatrick: There are different aspects. One is just the practice of it, the good faith and the goodwill that we have all talked about. The trust is that, if information is requested, it is given, unless it is genuinely sensitive information, as defined. The definition of sensitive information is so much better than it was before, because it is limited to that which would damage or may cause damage. That is much closer to the human rights position. Restrictive notices should never be used to hide human rights violations, they should never be used for embarrassment or organisational discomfort, and they should never be used to protect simply the fact of agents being involved. A number of cases are going through the courts, and it will be interesting to see what they make of some of these issues, so I do not want to get too much into that.

Maybe I am unusual in this compared with some of the NGOs you might have heard from, but I accept that there will always be a restriction on disclosure of national security information, and disclosure of information that might cause damage to health—information on risk to life. The current approach to, for example, neither confirm nor deny may be being extended beyond its proper scope, and that is something that will be looked at.

I am talking now from only what has been said in open court or found in judgments: the cases to date in relation to attempts to conceal disclosure or delay proceedings would cause anyone concern. More recently, courts have commented in a way that I have never seen over the years, and I think maybe after the Sean Brown case, with that as a backdrop, every effort has to be made to give everything that possibly can be given, subject only to a really genuine protection. I think the Bill, if it becomes an Act, will do that, but we will have to see how it operates. It is maybe a bit more concerning that arguments are still being advanced before the courts at the minute in a way that suggests this approach may not be as narrow



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as it looks on the face of the Bill. I have to accept that there are human rights obligations to protect agents and to protect life.

Q347 **Claire Hanna:** I agree, but I suppose essentially what you are saying is that on the face of the Bill, this is an improvement and an encouragement, but some of the legal cases that are currently being fought would appear to go against the spirit of what is in the legislation.

Alyson Kilpatrick: There is still real cause for concern about how this might operate in practice, because there have always been obligations to disclose to courts, for example. There were obligations to disclose during the criminal investigation of Stakeknife, and I know Sir Iain Livingstone told you of his disappointment that after the event they were not disclosed. What is on the page is only as good as the actual practice.

The other thing that will make this so much better is if there is more clarification or a process by which families, victims and alleged perpetrators get to challenge a decision that it is sensitive information and on where they go to do that. I think you can challenge a declaration of sensitivity made by the Secretary of State, but not one made by the Legacy Commission—I think it can also refuse to disclose, if it is sensitive—so we need a mechanism to challenge that. There is also obviously the Investigatory Powers Tribunal and things like that where people can go. Joe is absolutely right; the time has gone now for withholding information, unless there is an essential reason not to.

Q348 **Claire Hanna:** David, do you agree that the definition of sensitive information is too wide? Do you agree that it could prevent the disclosure of information that demonstrates, for example, co-operation between state and non-state actors, which would ultimately help to counter some of the narratives that you have expressed concerns about?

David Johnstone: It is hard for me to say what is or is not—I am not in that space—but I agree with you, and I think it is a very important factor in our legacy discussions. I fully appreciate that there are many victims in Northern Ireland who have a real concern that information is being withheld, maybe not for all the right reasons, but because it may make a certain cohort look bad. I fully accept that; I think that is just the reality of where we are. Clearly, you have the principle on which we all agree as much as possible, and then you have the practicality of what is or is not applicable to be shared.

As I aid, I fully appreciate that there are many victims who have concerns around disclosure—I get that—but in balance with that are the frustrations veterans and what they would say to me about when we go back to this concept of a fair legacy process. I think it is relevant for the Committee to see it through the eyes of veterans where we have this understandable push for disclosure. It is the reality that only the state has records and can have pressure put on it to give information. Veterans will point out to me the Saville inquiry, where Martin McGuinness, a local commander of the IRA, goes to Saville, where there is huge pressure on soldiers to go and

tell the truth. He goes there and says, "I cannot talk because I've got a code of honour with my terrorist colleagues.

Q349 **Claire Hanna:** That's wrong.

David Johnstone: I agree, Claire. I am just expressing the view—

Q350 **Claire Hanna:** About 300,000 soldiers served in Northern Ireland under Operation Banner. How many of those have been in court?

David Johnstone: I cannot give you an exact number, but it is certainly—

Q351 **Claire Hanna:** Is it over 15 out of 300,000?

David Johnstone: It is over 15, but it is certainly under about 25 or 26.

Q352 **Claire Hanna:** Out of 300,000?

David Johnstone: Yes.

Q353 **Claire Hanna:** Do you think your repeated claims that people are being hounded and hunted stand up? I am not a statistician, but that is a really small percentage.

David Johnstone: I was trying to make a point specifically around the fairness and balance in terms of state secrets and disclosure.

Claire Hanna: About 20 out of 300,000.

David Johnstone: If you have some actors in the Province who do not have to give information, then, in fairness, why does one side have to? I am not in any way disagreeing that they should. The obvious answer in terms of numbers is that there were not that many who did anything wrong. That is why there are very few.

Claire Hanna: Therefore tiny numbers have been brought before the courts.

Q354 **Simon Hoare:** Can I just ask for your thoughts on this aspect? I will caveat it: I am not a lawyer. I sometimes become concerned when I hear people saying it is vexatious—I am slightly picking up the point that Ms Hanna was just making. I think most people understand that there are a number of hurdles that any potential case has to get over or go through before appearing in a public court, a closed court or whatever. You will appreciate—I do not need to tell you—the sensitivity of the narrative and conversations around this. People feel very passionately and deeply, which is entirely understandable. But I would welcome your thoughts, as I am sure the Committee would, as to whether you think there is legal validity in using the word "vexatious". They may be annoying, frustrating, hurtful or challenging. There may be lots of things. I know you have not used the word, but do you think "vexatious" is the right word? Because that would suggest incorrect, inappropriate or non-application of the evidential hurdles and tests before anything reached the potential of a prosecution.

David Johnstone: That is a very interesting question. Clearly, I think it is very important that we have the baseline that the legal profession is



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independent and should not be in any way pressured by Government or society. Veterans would hope that is the case. Do many veterans feel very strongly that there are vexatious cases? I have to say yes. Whether that feeling is based on fact or on not having all the information, I cannot really give a view. Like all these things, perception is key. If we take the latest high-profile case of Soldier F, the PPS looked at the information and said, "There is just nowhere near enough information even to have a trial, let alone have a conviction beyond reasonable doubt." Yet years later the same PPS, with different personnel, looked at the information and said, "Actually, let's go to court."

It happened again recently with Soldier B. He was told in 1977 that there was no case to answer, and years later, last year, all of a sudden it is, "Actually, yes. Let's now go to court." As was proven in the case of Soldier F, Judge Lynch was very clear: the information and evidence fell well short, in which case the original PPS view was proven to be correct. I think veterans then question not necessarily the integrity of the legal profession, but a process that takes a veteran who has been told in 1977, "No case to answer"—

Q355 Claire Hanna: Because there wasn't a serious investigation.

David Johnstone: In terms of Soldier B, evidence was presented, and then years later, with no new evidence—I think that is the case—it then proceeds. I am certainly not going to use that term here, but I am just saying that some veterans would have that concern.

Simon Hoare: I hope I was clear: I was not suggesting that you had.

David Johnstone: It is difficult. It is a difficult scenario.

Q356 Simon Hoare: Do you see a role for your position? I see the role of a commissioner as twofold: first, to represent a constituency of interest, but also to report back, inform and "educate" that constituency of interest; it is a two-way street. Do you see your role as commissioner as being to try to help—as I caveated, I am not a lawyer—with a very complex suite of tests and so on, to help the veteran community and allay some of those concerns, so that they effectively have as complete and thorough an understanding as is possible among laypeople about what "vexatious" means and whether or not it is appropriate to use? Do you see that as being part of your role?

David Johnstone: Yes, I absolutely would. It is partly going to the Secretary of State and to Al Carns, the Armed Forces Minister, who looks after legacy, and explaining veterans' concerns, but it is also saying to veterans, "Actually, you haven't got that right," or, "That's an inappropriate comment to make." I have certainly had conversations where I have been accused of being very weak on legacy because I have pushed back on some of the narratives put forward by veterans that I feel are unfounded.

Simon Hoare: Thank you for that answer, and thank you for what you are doing.



Q357 David Smith: We do not have a great deal of time left, so I want to ask all the panellists what your views are on the proposed restoration of inquests and the proposal to move towards the new inquisitorial mechanism on the face of the Bill.

David Johnstone: This is one of my big concerns. When I took on this role—Alan is behind me here—on my first day, I said, “I do not want to be consumed with legacy. There are so many other issues affecting veterans.” The Committee may find that hard to believe, given my comments here, but it was not a driving factor for me to take on this role.

Inquests are the elephant in the room. The Secretary of State and I have had a number of discussions on this. If we have created this all-singing, all-dancing, bells and whistles new Legacy Commission, why are we allowing a whole group of potential inquests to go back down through the coroners’ route? To me, it is as simple as this: all legacy cases—all legacy investigations—should be in this new body. It is just as simple as that. It is in a sandbox, and everyone is playing by exactly the same rules, if you like.

Unfortunately, that is not the case. Veterans are extremely concerned by the reopening of coroners’ inquests, particularly when, as you have rightly pointed out, the inquisitorial route and the ability to see disclosure on all the information sit within the Legacy Commission. It just makes much more sense to go through that route. I may have another comment to make, but I will pause there to let colleagues speak; I appreciate we are tight for time.

Joe McVey: Briefly, to build on what David said, I think for the victims and survivors groups we work with there is an emphasis on speed—getting things done and moving things forward. David used the term “elephant in the room”. I think for the families seeking inquests, having inquests go on for years and years with no resolution does nobody any good at all. If we feel that things will move with greater speed under the commission, we would be happy with that. But, as I say, it is the families who are saying, “We need to move on here and get things done.” The reality is that the individuals and families who are pursuing inquests are not getting any younger. There is perhaps a danger that we will end up having inquests pursued by family members who are now second or third generation. That is not in anybody’s interests at all.

Q358 David Smith: There was a suggestion that there would be an 18-month timescale for some families to find out whether they are going to be entitled to an inquest through the coronial process or the commission. Is that the heart of what you’re—

Joe McVey: For families, frankly, 18 months would be a great improvement on years of waiting. If that is the case, and if it moves quickly and effectively, we’d be content, but we will have to see what happens in practice.

Alyson Kilpatrick: I very much welcome the restoration of inquests. We need to remember that inquests were shut down 18 months ago. That had

been an established and lawful way of discharging the article 2 obligation, which many victims had benefited from. Some of the more recent inquests had given great truth and comfort to a lot of people.

The High Court and the Court of Appeal found the shutting down of those inquests to be unlawful. That is not before the Supreme Court, so it is now the legal position. The remedial order will restore almost all the inquests. I don't think there was ever anything wrong with the inquests, so long as they are funded and run properly, the structures are there, the people who participate in them are properly represented and there is public scrutiny.

Sir Declan Morgan, as president of the coronial system, advised that he could finish all the inquests in five years, so I don't think it will be a huge task. They should be able to be completed within a period of time. In terms of the enhanced process that might then go through the Legacy Commission, we have done some quite detailed work on it, which you will see when we have finished. I think the way it will work is that those who don't require an article 2 inquest will go into the commission. There will now be enhanced structures and protections around that, including for those who may be implicated in wrongdoing.

David Johnstone: I want other colleagues to have a chance to speak, so I will succinctly summarise the issue of inquests. First, the Secretary of State keeps saying that we want maximum truth and the maximum route to justice. The Legacy Commission offers a higher form of investigative process. It can do much more than a coroner's inquest. Why would any family want a lesser standard of investigation when they have been offered a higher standard?

Here is the challenge around the situation. Take Coagh: an SAS man shoots an unarmed driver, and the coroner says it's a justified killing. The families appeal, but the judge looks at the appeal and says, "It is ludicrous to bring this appeal." The coronial inquest system allows this to be constantly repeated.

On the other side of it, when we had the Clonoe ruling, the MOD decided to JR it, so the coronial route just allows for this elongated process. No matter what decision is made, either the families or the MOD will appeal it. I just don't see how that is logical.

Lastly, I have been assured repeatedly that if any of these coroner's investigations bump up against disclosure, they will move into the Legacy Commission. If you take Loughgall, for example, it will of course bump into disclosure. From where did the state forces get the information that allowed them to mount the operation? If we know that the vast majority of these inquests are going to end up in the Legacy Commission anyway, what on earth are we doing allowing this two-tier approach to justice?

I will just conclude with Lord Dannatt, in relation to your question about vexatiousness. Lord Dannatt is eminently qualified to comment on this, given his high regard and standing. He makes it very clear that there is now a two-tier justice system. He said, "No one is above the law, but the



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administration of the law must be on a level playing field.” I think he is right.

David Smith: Thank you. I will pass back to the Chair, in the interests of time.

Q359 **Gavin Robinson:** Mr Johnstone, what is your view of the six new protections for veterans, and what is the view of your members? Do you believe it shows the Government clearly listening to veterans, as they say they are? Is that how veterans view these protections?

David Johnstone: First of all, I welcome that the Government have been listening to an extent. I want to make that very clear: they have put into legislation some mechanisms, some safeguards if you will, that absolutely will benefit some veterans who find themselves in the legal process. It is important at least to acknowledge the fact that there are things now in legislation that were not there before, and therefore there is some degree of welcome.

The big mistake the Government have made is referring to the mechanisms as “protections”. The reality is that people think these protections are about preventing military personnel from being brought to justice; it is nothing about that. It is about some safeguarding and some pastoral care, in some cases, on the way to being potentially prosecuted. It is not about protections. One thing is very clear—and veterans are very aware of this—these are not veterans’ protections, in any way, shape or form. They are witness protections of which veterans can avail themselves. That is important to say. Unfortunately, the Government, in an attempt to balance much that was seen as negative for veterans in the legacy legislation, have tried to oversell the protections as somehow specifically for veterans. It was not lost on me that at the very moment Al Carns was announcing these in London, Simon Harris and the Secretary of State were effectively making it clear that these protections apply to everyone. I will not say much more than that.

Q360 **Gavin Robinson:** We know that the Bill does not use the word “veteran”.

David Johnstone: Correct.

Q361 **Gavin Robinson:** We also know that the Government said that the protections will not be limited to legislation. Do you have any hints of how they expect those protections to crystallise outside of the legislative framework? Do you believe there need to be amendments to cater particularly for veterans within the legislative framework?

David Johnstone: As the three commissioners—Susie in Scotland, James in Wales, and myself—we have lobbied for protections. We are certainly disappointed that, while there is definitely reference in legislation to some of these points, we feel it could go further. That is important to say. The reality is that, if you look down each one of these measures—and I appreciate that we do not have time—they are not guarantees. There are requests for anonymity. Things may happen. Some of it is in the gift of the coroner. Some of it, regarding health, can be referred to the Judge Advocate General. These are not guarantees. That is important to note.



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The fact that veterans were not even mentioned in the legislation was certainly disappointing, although I recognise that veterans can avail themselves of some of these measures—I will not say any more than that.

We welcome the measures as far as they go. They will help some soldiers. Of course—and the Committee needs to be clear on this—these are for the Legacy Commission and coroner's inquests. They do not apply to a soldier who is caught up in criminal proceedings. These measures that are coming down the line would have made no difference to Soldier F or Soldier B. None at all. They are still going to be subjected to the process.

Q362 Gavin Robinson: David, before we move on to another panel member, the one thing that applies solely to veterans is that if the Legacy Commission wishes to write to you, you will receive the letter from the MOD. You will get a letter that is going to land negatively, bringing you back to the past, bringing you back to things that you may have moved on from. Does it matter to veterans who licked the stamp?

David Johnstone: I have to say that, in some cases, it does. That is important to say. I know one veteran who received a letter and was not sure whether it was genuine. He certainly would have appreciated being contacted by someone. It does not change the price of fish in the long run because, if a veteran is in line to be brought into the process, he is going to be brought in anyway. It is a bit of pastoral care, but it does not change the trajectory of the process at all.

Joe McVey: From the commission's point of view, I agree with David. I think what is set out are safeguards, and they are more to do with welfare. From our point of view, they are safeguards that you would want to afford to anyone involved in the process of engaging with the Legacy Commission. To say that they are any more than that is perhaps overselling it. I think they are perhaps based on a more compassionate approach—you would not wish to involve anyone, particularly those who are getting on in years, in processes that are damaging and difficult. It is about affording these safeguards to everyone, but doing it with compassionate intent.

Q363 Gavin Robinson: Thank you. Ms Kilpatrick, in your evidence to us, you expressed concerns about the premise of non-repeated investigations.

Alyson Kilpatrick: Non-duplication, yes.

Gavin Robinson: And how that may conflict with articles 2 and 3. What is your solution, legislative or otherwise, to those concerns?

Alyson Kilpatrick: Our concern about having a provision against duplication is that it presupposes that, if something was looked at once, it was looked at appropriately, and that there was an article 2 investigation where it was needed. That has been found by the UK Supreme Court not to have been the case in the Finucane case, for example, and by the Court of Appeal in the Sean Brown case. There are a number of cases where they went through very lengthy processes. In Sean Brown, in particular,



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they went through a number of processes, but the Court of Appeal said that they had clearly never had an article 2 investigation.

Now, if one applies non-duplication without more, there would be no investigation into Sean Brown or the Finucane case. That's it. Our concern is that it would be used to shut things down on the basis of previous investigations that were not effective. If it had been done properly and there had been an article 2 investigation in the past, no one wants to see that reopened unnecessarily.

Q364 Gavin Robinson: If you are compiling more evidence—I think you said that you want to do something more detailed in the coming weeks, and that you are going to focus on it again—do you have suggestions for amendments to the Bill, or are you just making your concern known?

Alyson Kilpatrick: The way it is at the minute—I think the word is “essential”—there are bits that need to be tied together. “Essential” would include cases in which an article 2 investigation is required as a matter of law. As I have said before, that is not all these cases; a much smaller number of these cases require article 2. When I talk about article 2 investigations, I am not talking about every single case. It just goes through a different framework. There has to be some sort of mechanism for review to determine whether previous investigations were sufficient, and whether it is duplication. I think what is anticipated here is that the Legacy Commission itself will be able to give some guidance in relation to that, because it will have access to the information.

The caveat is that if you say it is essential, it under-represents the nature of linked cases and how often you don't know until you are much further down the line. It is very difficult to say whether an effective investigation took place before you have started investigating. That is all I would say. We are discovering that more and more with some of these other linked cases.

Gavin Robinson: Okay. Thank you.

Chair: Thank you very much for your time, Joe, Alyson and David.