



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Uncorrected oral evidence: Legislative scrutiny: Northern Ireland Troubles Bill, HC 1437

Wednesday 28 January 2026

2.20 pm

Watch the meeting

Members present: Lord Alton of Liverpool (Chair); Juliet Campbell; Baroness Chakrabarti; Afzal Khan; Lord Rook; Lord Sewell of Sanderstead; Alex Sobel; Peter Swallow; Sir Desmond Swayne.

Also present: Lord Carlile of Berriew; Baroness O'Loan.

Questions 1 - 12

Witnesses

I: Alyson Kilpatrick, Chief Commissioner, Northern Ireland Human Rights Commission; Joe McVey OBE, Commissioner for Victims and Survivors, Commission for Victims and Survivors; Lord Houghton of Richmond GCB CBE DL.

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Examination of witnesses

Alyson Kilpatrick, Joe McVey and Lord Houghton of Richmond.

Q1 Chair: Welcome to the 43rd meeting of the Joint Committee on Human Rights in this Session. It comes in the week when the Joint Committee celebrates its 25th anniversary of being established by both Houses of Parliament. For anyone unfamiliar with our committee's work, the clues are, of course, in our name. We are a Joint Committee; we comprise six Members from the House of Commons and six Members from the House of Lords. We are drawn from diverse and varied political backgrounds and traditions. What unites us is a shared passion for human rights and human dignity, examining the impact of policy and legislation on the human rights of UK citizens. We paint on a pretty wide canvas, examining approaches to policy through thematic inquiries and scrutinising legislation through legislative inquiries.

Our most recent reports, evidence, correspondence and work can be read on our website, in fact, going all the way back over those 25 years for anyone interested in what we try to achieve through this committee. Last week, those of you who joined us online will know that we were looking at the human rights of children in social care and the impact of artificial intelligence on human rights. We have a further session on AI next Wednesday, along with a one-off session on the impact of the British Indian Ocean Territory Bill on the human rights of Chagossians in the UK. The following week, the committee will not sit as we are undertaking some field work in Leeds and York as follow-up to our work on children in social care.

Today, following an examination of the Government's remedial Order on Northern Ireland, debated last week in the House of Commons, we begin a detailed examination of what is called the Northern Ireland Troubles Bill. The purpose of this session today is to explore the human rights implications of the Bill and ways in which the legislation might be improved or enhanced.

We have been joined by two colleagues from the House of Lords who are guesting today. One is Baroness Nuala O'Loan, who was the first Police Ombudsman for Northern Ireland, and she was herself a victim of the paramilitaries and is a member of the House of Lords Northern Ireland Scrutiny Committee. The Chair of that committee is here with us today as well, and that is Lord Carlile of Berriew. Alex Carlile KC is the former Independent Reviewer of Terrorism Legislation, and as I say, is Chair of the Northern Ireland Scrutiny Committee of the Upper House.

During the 30-year conflict from the 1960s to 1998, known as the Troubles, there were 3,720 deaths and over 47,500 injuries, with over half being civilians. Some 1,000 people serving the state lost their lives. There were roughly 36,900 shootings and 16,000 bombings recorded. It was my late colleague David Trimble, who served in both the Commons and Lords and was a Nobel Laureate, who once remarked that dealing with the troubled past was never going to be easy. He said, "The dark

shadow we seem to see in the distance is not really a mountain ahead, but the shadow of the mountain behind—a shadow from the past thrown forward into our future. It is a dark sludge of historical sectarianism. We can leave it behind us if we wish”. Today, we will be wrestling with that dark shadow.

We have two panels here in Parliament to help us. We will hear in the first panel from Alyson Kilpatrick, who is the chief commissioner of the Northern Ireland Human Rights Commission; Joe McVey OBE, Commissioner for Victims and Survivors, who is joining us from Northern Ireland and is here online; and Lord Houghton of Richmond, who is a colleague in the Upper House. We will then take evidence at around 3.15 pm from a second panel, and I will introduce them when we get there.

Alyson Kilpatrick was appointed chief commissioner to the Northern Ireland Human Rights Commission in September 2021 by the Secretary of State for Northern Ireland. Her appointment is for a five-year term. The NIHRC is a national human rights institution with category A status, accreditation that is given by the United Nations. It was established under the Belfast Good Friday agreement to monitor human rights in Northern Ireland. It was given further specific functions under the Windsor Framework to monitor human rights in Northern Ireland post Brexit. The NIHRC is funded by the UK Government but is fully independent. Before her appointment, she was a barrister specialising in public law, human rights, socioeconomic rights, and policing, and she was called to the Bar in England and Wales in 1992. She is a former human rights adviser to the Northern Ireland Policing Board.

Joe McVey OBE was appointed as the commissioner for Victims and Survivors by the First Minister and Deputy Minister of Northern Ireland. He was appointed for a four-year term commencing on 6 October 2025. The commissioner’s role is to provide leadership and strategic direction to enable the commission to perform its principal aim of safeguarding and promoting the interests of victims and survivors of the Troubles. Before his appointment as commissioner, Mr McVey was the chief executive of the Brain Injury Matters charity from 2019 to 2023, and he was awarded an OBE in 2010 for services to the voluntary sector.

Lord Houghton of Richmond GCB CBE DL, joined the House of Lords in 2017, where he sits as a Cross-Bench Peer. He has been a member of the International Relations and Defence Committee in the House of Lords since 2024. He was commissioned into the Green Howards in 1974 and went on to have a distinguished military career. He served seven tours in Northern Ireland, including as commanding officer of the 1st Battalion of the Mechanised and Air Mobile Roles, and subsequently commanding the 39th Infantry Brigade in Belfast at the time of the Good Friday agreement. Subsequent highlights of his career include serving as director of military operations in the Ministry of Defence at the time of 9/11, senior British military representative and deputy general of the Multinational Force in Iraq from 2005 to 2006, and Chief of the Defence Staff between 2013 and 2016. Lord Houghton retired from the British

Army in 2016. He was promoted Honorary Field Marshal of the British Army in 2025.

We have a very distinguished panel here today. I am going to ask a question of each of our panellists to open our proceedings, before turning to colleagues who will ask questions that will include the six new protections, rights, and safeguards for veterans; the funding of the legacy commission; the closing down of the legacy inquest; disclosure of sensitive information; definitions; compliance with human rights requirements; and others as members spontaneously decide to intervene.

We will get into the details of the Bill throughout the session, but as the opener, could each of you please give us a few words about whether this Bill is a step in the right direction for resolving the legacy of the Troubles? Alyson Kilpatrick, would you like to kick off?

Alyson Kilpatrick: Yes, very briefly. Chair, thank you for setting out at the beginning the loss of lives, dignity and respect that the Troubles resulted in. Human rights are about human beings, so it is really important to set it in that context. The reason I start by saying this is that some of what I will be saying later may seem quite technical and arid even, but it is all rooted in, and should be seen through, the context of it serving universal and inalienable rights of all people. That includes everybody who was affected by the conflict in any way whatsoever. The commission is approaching it from that angle.

When the draft Bill was published, the Human Rights Commission welcomed it as a very positive step forward. It seemed to be a very genuine attempt to address the legal and practical concerns that were raised in relation to the Act. What it demonstrated to us was that the concerns were heard. There remain some detailed issues, which appear in writing that we have submitted already, and we are continuing to work on those as things progress.

At this stage in the session, I can say we very much welcomed it, and it is a huge step forward. It has removed some of our most serious concerns. The concerns we would flag, which I suspect we all will be touching on, will be the national security so-called veto appointments and whether they are independent, and in relation to family members and the difference potentially between inquests and inquisitorial proceedings. But I will leave that to Members to direct as they want to hear more.

Q2 **Chair:** That is great for openers. Thank you, Ms Kilpatrick. Now, let me turn to Joe McVey.

Joe McVey: Thank you very much for the opportunity to be here. My apologies that I was not able to attend in person. As I had indicated to the committee, we have a longstanding commitment to our Victims and Survivors Forum, and we are currently in the middle of our annual residential. Perhaps the comments I make will be very much flavoured by the past two days living and speaking with victims and survivors. Thank you for the opportunity.

In response to the question of whether the Bill is moving in the right direction, again, I would probably echo a number of things that Alyson has said. There has been a cautious and perhaps guarded welcome from victims and survivors for the Bill. It is a huge step in the right direction to see both Governments moving on issues that appear to have been stalled for 10 to 15 years. In that sense, we are very pleased to see it coming forward. As Alyson has said, there are a number of concerns and potential amendments we would be seeking to support as the Bill progresses.

I know some members around the table will be very mindful of this, but I would like to just remind members of the provenance of this work, going back maybe to the Stormont House Agreement, and the efforts that were made there to try to build a legacy around a number of areas, including acknowledgement, memorialisation, and days of reflection. These are all really important aspects that I hope will build a better place here and contribute to reconciliation.

Also, one of the takeaways from our conference that we are involved with is the sense and importance to remember we are talking about people, humanity and compassion. We are inclined to fall into the trap of labels—victims, survivors, veterans, who is not a victim—but I would remind all members that it is about people, and how we make this place better, and that we do not go back to the way things were. Thank you very much, Chair. I look forward to the conversation.

Chair: Thank you, and do not see this today as the end of the conversation either. If those people you are working with at this very moment in Northern Ireland have specific proposals that you would like us to look at as part of our work, then we are all ears; of course we are. Thank you for that.

Joe McVey: Thank you, Chair. Also, at any opportunity if you and colleagues wish to come to Northern Ireland, we would be very happy to host and support your work.

Q3 **Chair:** It is always wonderful to go to Northern Ireland. Lord Houghton?

Lord Houghton of Richmond: Perhaps as a preliminary, I would say that I am not a nominated representative of any particular veterans' organisation or military pressure group. Indeed, I would stress the fact that there is probably no single monolithic group—there definitely is not—that represents the considered and united voice of the military. If you were to ask me what the main interested parties were and their specific concerns or interests—this is a wholly artificial categorisation—I would probably say first, the various veterans' associations and charities, such as the Royal British Legion. They have general interest in the welfare of veterans. These are co-ordinated by a thing called the Confederation of Service Charities, which gives a fairly unified voice to the general concerns of military veterans.

Secondly, I would say that many of the specific military associations, such as the SAS Regimental Association, the Parachute Regimental Association and the Northern Ireland Veterans Movement, have more specific grievances regarding the Bill in the context of specific events and individuals. Some are very active in both lobbying and legal attempts to help inform the Bill.

Thirdly, I perhaps next group together a very active range of groups, which other panellists and witnesses will be more aware of than me, which are in Northern Ireland itself, such as the victims' group, an all-Irish association with lots of very valiant individuals who rally around a specific issue.

Fourthly, there are bereaved service families who have never had the circumstances of the deaths of their loved ones satisfactorily explained by anybody.

Fifthly—they occasionally write to newspapers—would be the senior officer cohort, which collectively speaks quite openly on behalf of the welfare and fair treatment of veterans. It also puts those concerns perhaps in the wider context of the law being used as a weapon, with specific intent of undermining service morale, operational capability, recruiting, and retention. There is an element of lawfare, which that body feels—justifiably—lurks behind the potential outcome of this Bill.

Finally, another group might be military who, like me, are now politicians or parliamentarians. They feel a specific responsibility, not just for the welfare of veterans and their families, but also, if you like, for the custodianship of military capability going forward, and for ensuring that the legal and moral framework for operations is fit for purpose in the very changed circumstances of modern warfare.

As I say, I do not want to convey the impression of organisation or unity of purpose among these and many other groups; I purely want to indicate there is not a single military view on this issue. Your question really is: what do I think of the Bill from the get-go? I will be honest. First, it is a great shame that successive Governments have found it necessary to embark on seeking to resolve the legacy issue of the Troubles through legal mechanisms. A system based more on truth and reconciliation, had it been practical—the situation in Northern Ireland just has not permitted this—would have been, to me, a far more desirable route.

Secondly, a personal view is that it is a bit of a shame that incompatibility with the ECHR has forced the revisitation of the legislation. It tends to reopen wounds and again bring the troubles and the tensions to the surface, but we are where we are. In significant part, though, at first glance, from the perspective of the military, this Bill is simply unfair. I can stop there and say, "Right, now ask me questions on why I think it's unfair", but I will pause.

Chair: Okay. We will hear more about that question as we continue, but

let me thank all three witnesses first, for raising the curtain so well for us at the outset. I would like to show you that, for instance, the views of ex-servicemen and veterans are understood by members of this committee, not least because Sir Desmond Swayne—whom we are going to hear from now—is himself a serving member of the Territorial Army, holds the rank of major, and served in Iraq.

Sir Desmond Swayne: I am no longer serving.

Chair: Oh, no longer serving. After we have heard from Sir Desmond, I am going to turn to my colleague, Juliet Campbell.

Q4 **Sir Desmond Swayne:** My Lord, I have three questions. First, in your estimate, how much protection do the six protections actually afford to veterans? Secondly, are there any aspects of the Bill that you consider will potentially breach the human rights of veterans? Thirdly, is there any further safeguard that you would put into the Bill to provide protection for veterans?

Lord Houghton of Richmond: I am presuming that everybody knows what those six protections are. I would say two things on those. First, they are not protections exclusively for veterans. The veterans issue has been the motivation behind them, but actually everybody can participate in using them and exploiting them. They are protections for everyone. One of my concerns about the whole fairness of the Bill is that, to an extent, it appears to convey this sense of moral equivalence between terrorists and servicepeople. This undermines that some protections are a specific thing for veterans, as they have been slightly marketed.

Secondly, we are judging a moving target on this Bill. The degree to which those six protections are going to be written into the Bill and carry the force of statute remains to be seen. There remains a risk that they will, in practice, be little more than performative statements and Dispatch Box promises, and they will amount to little more than pastoral safeguards.

To me, there is a concern that the Government have, to an extent, thought that these six safeguards are the things that would buy off the military concerns about the whole of the Bill, but they do not. They are open to all, and they are what should be expected. My strongly held view is that the Bill needs to offer former service personnel a level of protection from ever having to—with some exceptions—appear in a court or tribunal.

This is not to request an exemption from the law. Things go wrong on operations; people exceed their delegated authorities. I can remember, and some of you will recall, the case of Sergeant Blackman, the marine, whose horrific murder of someone was caught on a head camera. We find those things abhorrent. The British Armed Forces likes to think that it tries to fight its wars from a position of moral certainty. I accept there will be these exceptional cases where the law has been broken. But in the majority of cases, service men and women will have been acting in good

faith as agents of the state, within authorised rules of engagement, and in circumstances of great pressure. I say that from the perspective of someone who did his first three tours of Northern Ireland aged 19, 20, and 21. The people ridiculously under my command, as it were, were 18 and 19, and were persistently scared about everything they were doing once they left the security of their base.

The Bill needs to recognise, first, somewhere in the referral process, an exceptionally high burden of proof about the illegal use of force. There needs to be a way of sifting out what potentially are little more than acts of legal harassment. We must recognise the serious concern that current or former paramilitaries could hold influential roles within some bodies created by the Bill. I will say no more on that because you know where I am going on that.

Secondly, in circumstances where servicepeople were operating in good faith within their contemporaneous rules of engagement, it is the state authority or the chain of command that should probably be subjected to the law and not the individual. That to me represents the vast majority of the way service men and women went about their business on a daily basis. They did not exit their bases like terrorists in order to go and murder and kill; they exited their bases to support the RUC and protect the community.

Any sense of a moral equivalence between the terrorists and the veterans, to me, is abhorrent. In those circumstances, for the vast majority, even when lethal force was used or perhaps they were in highly pressured circumstances and there looks to be a case for some sort of legal action, there needs to be something written into the Bill—an amendment that at the moment is beyond where anybody is moving it. It must place this very high barrier of legal proof and take a very fine judgment as to whether they were just the victims of operating in good faith under the direction of the state, and it is their chain of command—either military or political—that should be in the court answering the questions.

Chair: The committee would be very interested to see a draft of such an amendment, which we could then consider during our proceedings when we come to make our own recommendations and conclusions. Ms Kilpatrick next, and then we will come to Mr McVey.

Alyson Kilpatrick: There are just a couple of points I will address, and then I will go directly on to Mr Swayne's question. First, just to counter what was suggested about law used as a weapon and that this is part of that or will encourage that, I am not sure I can accept that law has been used as a weapon. If it has in one or two cases, then that should not influence legislation to apply in all cases. It certainly is not to destroy morale, and the Northern Ireland Human Rights Commission has itself been involved in litigation, certainly not as a means of lawfare, but in supporting its own functions.

I should also say that people who are not veterans of service, or are not men and women of service, now also rely on our servicepeople. It is as much in our interest that they have a good morale, are safe and continue to be able to do their job. I just want to make that clear. We want them to have high morale and to be safe and go about their business. Anything that undermines that is a concern to us, because when they are doing their jobs properly they are the greatest of human rights champions, because they are keeping us physically safe on the streets. I just wanted to address that.

I will keep this very short, I promise. Secondly, there is the suggestion that the ECHR and this legislation have somehow reopened old wounds. Again, I would say we are very conscious of the fact that a lot of what is going to be talked about here—a lot of what might be considered inquests in court—is very hurtful. It is very upsetting. It is very hard to get over. But what I suggest has actually opened and kept open wounds was a failure to comply with the legal standards that have been in place for decades. It is that failure to comply, and this very recent attempt to make those standards inapplicable to Northern Ireland, that have reopened and kept open wounds. That point also just needs to be made.

Lastly, I would like to address the question about protections to veterans, if I may. What is really important to remember is that veterans are not a single group. I do not just mean by that that they have different views about this. Veterans can be victims. I have met many who are victims of the Troubles and want to be seen only as victims of what happened then. I have met some who are witnesses, sometimes against bad behaviour by colleagues, sometimes in support of behaviour of colleagues. They may also be perpetrators. The point is that everyone who is involved or was involved in this may need to be questioned and may need to be tested. No contributor or participant should be treated differently.

What I also say is that veterans are absolutely entitled to ECHR protections just like everybody else. There may be some special ones because they may be alleged perpetrators. The Human Rights Commission has always said those need to be built into this legislation too. Having this in-between situation where you can come out with almost balance of probabilities determinations does not serve those who may be implicated either. We have also been very careful to do that.

The protections protect veterans. One, which is not in the Bill, I understand is a commitment that the Ministry of Defence will offer bespoke legal advice and support. That is particular to veterans and as I understand it has not been offered to, for example, police, intelligence services, or anyone else who is involved in this. Veterans represent us, we are part of the statutory victims and survivors advisory group. Mr McVey can say more about this—I talk about these victims as part of this, but they are not a cohort—as he already has veterans in his forum. I have met them as well.

Lastly, some veterans' families that I have had most contact with are families who believe the state let them down, whether that is police,

Army, or intelligence. They have asked the Human Rights Commission to make sure that this is all above reproach so that they can sit back and say, "At least now somebody has done this properly". They do not trust people who are connected to what they consider to have been a problem in the past, so it is not pointing the finger at anybody.

The final point is that it may be an answer to somehow remove the risk of ever appearing in a court; I know that is not exactly what was said, but in shorthand. What then happens to those people? Who knows whether every single person who served served within the law? What happens to the ones who may properly be suspected of having broken the law or committed criminal activity? Where do they go? Who is appointed to decide? Who decides what they face as a consequence?

So many servicepeople I have spoken to have also said to me that they do not want any of this protection. They are quite happy to take their chances in a court. Most of them do not expect to have to go anywhere near a court, and indeed, over the decades that have passed, very, very few of them ever have. This idea of lawfare and persecuting just does not stack up, but the ECHR will protect them. Almost centuries of protections, long before the ECHR, have protected people who may be accused of something or who were victims or witnesses. That was protected before this Act came into force.

Chair: I am just slightly anxious about the clock because we have a second panel coming, but these replies are very helpful to us, and of course, they require depth as well. I do not want to rush you on, but we need to hear from Mr McVey now before we go to Juliet Campbell.

Joe McVey: I will be very brief. I am mindful that there is a lot of other ground to cover. First, I would say—again, Ms Kilpatrick picked that up—we represent all victims and survivors, and that includes veterans. We have veterans among the groups we consult with. Having spent the past two days with people who are themselves veterans, it would be fair to say that their view on this is that they are not looking for special protections. They simply wish to be treated as everybody would: fairly and equally under the law.

Secondly, this debate around veterans has been incredibly toxic and divisive. The dangers and concerns are that it has taken away the focus on where this should be, in terms of why we are doing this work and how it builds reconciliation.

Thirdly, it was unfortunate how the protections were launched, as it were. When the framework was launched 19 September, the protections seemed to be added on as an afterthought. Again, that just raised suspicions from all sections of the community.

Fourthly, what is there at the moment I would see more as welfare and compassionate interpretation of how veterans and victims would want to be treated. In a sense, the debate—the focus on protections—is in danger of taking us down a very dangerous path. I would also agree with Lord

Houghton when he referred to the need to provide welfare support. Again, as part of the work here in Northern Ireland, the interest and focus on welfare and supporting veterans and victims is very important.

Finally, in terms of the protections, all these measures we will go through in this afternoon's discussion have to be focused on whether they build confidence among victims and survivors. The tone of the debate has to be mindful of that and not taking us down a particular dangerous route.

Chair: You are right. The tone is very, very important. Ms Campbell now, and after that, we are going to hear from Baroness Chakrabarti.

Q5 Juliet Campbell: The Troubles Bill will require the Secretary of State for Northern Ireland to establish a victims and survivors advisory group. My question is to Mr McVey: are you satisfied that the Bill provides an effective framework and role for that group?

Joe McVey: No, not really at this point. Our initial response was that there is already a well-established, very well-organised and very considered group of victims and survivors in a forum that we would manage and support. More fundamentally was a sense that this was an idea that had been borrowed possibly from Operation Kenova, and it was therefore thought that this might be a model that would work.

Our view at the moment is that there needs to be a focus from victims and survivors across all aspects of this work, including the legacy commission and the proposed information recovery body. If you get down the line of looking at memorialisation and acknowledgement, all those aspects of work need to be victim focused. The danger is you set up one group, and therefore that victim centring and victim inclusion are not evident across the whole piece.

The other issue is obviously around who selects people to join any new panel. That is an issue for discussion. We emphasise that at the moment we would like to see a victim and survivors organisation or forum, call it what you will, that will be underpinning all this work. It is the old-fashioned thing of forum following function. We need to be very clear what this grouping would do and what its terms of reference were, and then we could talk in a more informed way of the composition. At the moment, the suggestion of two to three people selected by the Secretary of State is not going to build confidence in victims and survivors. We need to make sure the whole thing is underpinned by the needs and aspirations of victims and survivors.

Chair: What I am going to suggest is that we move to the next question. If our two other panellists want to then add something to the reply that Mr McVey has just given when they come to reply to the next question, then that might be a more expeditious way to do it. Let us turn to Baroness Chakrabarti, and after that, we will hear from Lord Carlile.

Q6 Baroness Chakrabarti: This section is about the functioning of the legacy commission. Its inquisitorial proceedings would be overseen by a member of a judicial panel. Those panellists would be appointed by the

Secretary of State and be removable by the Secretary of State in certain circumstances. Any reappointment at the end of the panellists' term of office would also be a decision for the Secretary of State. First, would judicial panellists appointed by the Secretary of State be sufficiently independent to maintain the confidence of all communities and comply with human rights standards?

Alyson Kilpatrick: It depends. The process that has been put in place for appointments so far, just in the Bill, is unusual. There is not really an explanation as to why there is a departure from the NIJAC, the Northern Ireland Judicial Appointments Commission. However, I accept that these are not being appointed as judges in the normal way. They are being appointed to fulfil a certain role. Having said that, one would expect some sort of explanation to be given for why it would be a Secretary of State appointment because it would make them unusual. They would not be like coroners, for example, who may be hearing some other inquests and things like that.

I certainly would not want to see the Bill stay as it stands, which is that the Secretary of State simply has to consult unidentified people at the minute before he appoints. That runs the risk then that it is seen as a political appointment, which will attract distrust and fear that it will not be sufficiently independent.

Baroness Chakrabarti: Just following that—Lord Houghton may want to join in too from a veteran's perspective—would it be preferable if the panellists were the responsibility of an independent body, such as the Northern Ireland Judicial Appointments Commission?

Alyson Kilpatrick: Certainly, from our perspective, from a human rights perspective, we would say that would be the optimum way of dealing with it. If not that, then—although maybe some more thought needs to be given to how they do this—there needs to be a list of people who must be consulted before an appointment is made and regard given to what they say about that. But the NIJAC should be one of those to be consulted.

Lord Houghton of Richmond: It sounds a bit facile, but it is a little like selecting your football team and being convinced you know how they are going to play. There are so many points of judgment and referral, I have a wiring diagram of it. From my side, when it comes to a point where there is a legally qualified individual—as I understand it, the Solicitor-General will be a point of referral on potential new cases—they might be rejected, they might be referred into the commission or whatever, and you have a reasonable amount of confidence that sensible, balanced, and wholly neutral judgment will be brought to bear. But until you actually know the functionality within the commission, its make-up and how these people have been appointed, it is impossible to judge whether there is a confidence in it that you can unequivocally say in advance of it getting into practice.

Peter Swallow: Ms Kilpatrick, you talked about a range of bodies and

groups being consulted on those appointments. Is that something that the victims and survivors' groups should have an insight into?

Alyson Kilpatrick: Yes. For most of this, I would certainly direct the questions to them. As the Human Rights Commission, we would also listen to them because they are really at the centre of this. The only other thing to add to that, though, is that it is the state's obligation to establish an independent mechanism to discharge the Article 2 obligations and investigate these deaths and serious injuries. It is not enough to say, "We'll set it up and let it go until we find out further down the line that it hasn't proved to be independent". Everything must be done to establish an independent, Article 2-compliant investigation framework. Thereafter, you can see that maybe it will work, maybe it will not, but at least you start out from the premise that you must be satisfied yourself that it is as independent as it can be.

Joe McVey: Not surprisingly, again, we would want to see victims and survivors consulted on this issue. Picking up Ms Kilpatrick's point about the role of NIJAC, again, I am not quite clear why we would move away from that. Our principles around independence and maximum openness and transparency, particularly in relation to here, are really important. The perception that those things are there in law and statute are very important as well.

Q7 Lord Carlile of Berriew: Inquests are a very important, lingering issue, and the legacy Act closed down 38 legacy inquests before they could conclude. This brings us to Part 7 of the Bill. Does Part 7 of the Bill make it clear enough which closed-down inquests will be transferred to the legacy commission, and which will be revived as coronial inquests? Of course, if some are transferred to the legacy commission and others are revived as coronial inquests, there will be two different jurisdictions dealing with inquests. Do the witnesses think that treating families and victims differently in that way, with some having coronial inquests while others have a different inquisitorial process, raises any questions about fairness?

Alyson Kilpatrick: Yes, it does. We can be clear that some inquests that were closed down will be reopened. However, we do not know which are going to be referred into the legacy commission, as it will be. This is something we really struggle with. The inquisitorial procedure, as it now stands under this Bill, is significantly better than what was suggested before, which was driving really from only a policy document more than anything else. But it is still unclear what the differences actually are going to be.

There is a false narrative that somehow the inquisitorial procedure is going to get more than a coroner can. There may be some practical processes that need to change during an inquest, as opposed to an inquisitorial procedure, but there is no reason in law why one would get more information and the other would not. That seems to be the justification for it. If it is just about time—that it is, in essence, opening up another route to get these things moved through more quickly—some

people will say, "Well, why do you think mine can be dealt with so quickly?" Or somebody who is still in an inquest might say, "Why shouldn't mine be dealt with in this much quicker way?"

Until it is explained what the difference really is, and why we have a difference, it is very difficult for people to accept that there are two tracks. We keep being told that the inquisitorial proceedings are as good as, if not better than, inquests. Well, then why not have them all through inquisitorial proceedings? There is an absence of logic there that I struggle with. That is not a legal answer, but it goes to the root of what you are asking. If there is a difference in treatment—clearly it is intended that these two things are different, otherwise, what is the point?—there is a duty to explain it to people.

Ultimately, if they are both human rights compliant, we would complain only about the way in which things were allocated. Not everything requires an Article 2 investigation, for example, so those things could be dealt with in a different way from an inquest. But if an Article 2 investigation is required by law, then the decision to refer that into the inquisitorial proceeding would need to be very careful and very sure that it was an Article 2 inquisitorial proceeding. That was a very longwinded way of answering.

Lord Carlile of Berriew: Given that an inquest is an inquisitorial proceeding anyway, do you foresee problems about, for example, judicial review proceedings being brought to challenge the decision as to which of the two alternatives should be used with a resumed inquest? If so, how easy do you think it would be for anyone to produce judicially triable reasoning as to why they have chosen one or the other? Would it be much simpler to have a single inquisitorial process?

Alyson Kilpatrick: Yes. I am trying to keep my answer shorter.

Chair: Thank you, that is very helpful.

Lord Houghton of Richmond: There are just a couple of issues on the fairness of the Bill. I wonder whether to play it in on this point, if I have understood it right. I am not going to have an argument with the statistics of how many people killed how many people and all that. But I understand that in the totality of the Troubles, in effect, regarding the killings of terrorists, paramilitaries, and some civilians, 300 was the figure that the British Armed Forces could be reckoned to have killed, whereas the paramilitaries killed a considerably greater number. The bottom line of the statistic is that 10% of all deaths were caused by British Armed Forces, but 30% of the legacy cases are against the military.

There is somehow an element of an imbalance. I wonder if an element of the imbalance is brought about by the phrase you are using here, "structural asymmetry", in the evidence? The structural asymmetry in the evidence is really that most of the forensic evidence within these cases on the terrorist side was hidden, buried, and put out of sight. It is irrecoverable, whereas on the military side, which kept relatively good

records of all the incidents in question; they provide a ready-made basis for the creation of a legal case.

What I am saying is that if this alternate route, as it were, is to do with the strength of the legal case and the burden of evidence and all that, then again it appears that there are in-built asymmetries to the treatment. I am not saying I have that right, because I find this process quite a confusing one. I know many of the victims and the veterans do as well. But if that is the case, it goes back to my fundamental starting point that there is this sense of unfairness about it from the offset.

Joe McVey: I just listened to Lord Houghton's comment there. It also goes to the imbalance in the framework and the Bill, the emphasis on the legacy commission, and not surprisingly to this committee, the legal aspects of it. Information recovery and acknowledgement are very important areas for victims and survivors and perhaps do not get the attention in this Bill that they should.

The other point I would make, and it is not a legal point, is that I am mindful of the fact that there are families waiting 50 years and more to receive information on what happened to their family and loved ones. Regardless of whether people label them as victims, veterans or whatever, they are still waiting. I appreciate why the technicalities of the various systems are really important, but to families, if you are waiting 50 years, the method of getting there is not the important point. I am just reminding people of why this matters.

Chair: I know that my colleague Afzal Khan is particularly concerned about families and the impact it can have on them. Let us go to you now, and then we will hear from Baroness O'Loan.

Q8 **Afzal Khan:** The Secretary of State would retain ultimate control over whether sensitive information can be disclosed to families. What impact has this so-called security veto had on the confidence of stakeholders in the legacy commission's work?

Lord Houghton of Richmond: I can offer a comment on that. Some form of a national security veto to protect the anonymity not of witnesses but more particularly intelligence sources will be almost an inevitable requirement of the Bill. I am not an expert on this, but I understand that is the motivation behind this national security veto; that sensitive information that relates to human sources should not be disclosed because of the ramifications for those sources. Therefore, I would imagine that this is a government thing, not a veterans' issue in any way. It would almost be an imperative.

Chair: Ms Kilpatrick, would you want to add to this about getting the balance right between national security interests and the interests of the family?

Alyson Kilpatrick: I accept—not least because of some of my former work—that national security has to be protected for everyone's benefit. I accept it is a very difficult, detailed, and sometimes risky decision to

make as to whether to disclose or not disclose. But the point here is that the Secretary of State—I am not suggesting personally, by any stretch—represents the interests of the state, which in a sense, in the overall scheme of this, is what some families may say is part of the problem. That is not just non-veteran families. Some veteran families feel the state let them down as well.

For that representative to be in ultimate control, unlike in inquests and other proceedings, again, is very unusual. There has to be justification for it. That is not to say it cannot be possible. Certainly, if it was to stay this way, at the very least, there would have to be a really robust appeal procedure, which was not just a judicial review type of procedure, but really could look at the merits of whether it should or should not be. I would think, given the structures, governance and independence that are going to be put into place, and given the fact we are going to have panel members as the judges, we should be able to trust these people to make those decisions. They make them routinely.

There has been a recent case that has talked about what happens when one opinion is different from another opinion, and both people are able to disclose or not disclose. That is not new. There is nothing new about that. There is nothing new in this Bill that is affected by that.

Can I say one last thing? I am sorry, I am going on, but I would like to say something just in terms of records. Of course, the point is well made that there were not records formally kept and archived. However, the security services, the Army and the police had records on most of the paramilitaries, including all the state agents, some of whom will be looked at in these investigations. There are records. It is just that the IRA, for example, may not have a cabinet somewhere that can be opened, but the security service has them. That is why there is a protection of national security.

Chair: Let us stick with you, if we may, for a moment. I want to go to Baroness O’Loan, who is going to ask you about what close family members are. How do we define these things?

Q9 **Baroness O’Loan:** Before I speak, I should say that I am currently an assessor to the newly appointed Patrick Finucane Inquiry, and I am a member of the independent steering group on Kenova. Those are not financial interests, but they are interests.

Various provisions of the Bill rely on this term, “‘close family member’ of the deceased person”. The question really is: is that definition in Clause 93 of the Bill for provisions such as who can request investigations from the legacy commission, and whom the commission must notify about its proceedings, sufficiently broad? For example, should grandchildren be included?

Alyson Kilpatrick: I can give a very quick answer to this: yes. The ECHR standards include grandparents and grandchildren, at least. There is no reason not to include them here. While it goes on to say that, if there is

no close family member, somebody else can do it, they do not have access to all the other rights and protections in the Bill. I absolutely agree.

Joe McVey: Just in response to Baroness O’Loan’s question, yes, we would agree it needs to be broadened in relation to grandchildren, having spent this morning talking to a grandchild of somebody involved over 50 years ago. That needs to be in case because it also plays into the whole issue of intergenerational impact and trauma in Northern Ireland. We cannot exclude people.

Chair: What you say about the intergenerational nature of these things is absolutely right, of course. Even on the day after I was first elected to the House of Commons, Airey Neave was blown up here in the precincts. These things have been around the lives of many people in this room—not least people in Northern Ireland, though. We get some of what you are saying. The legacy commission is something that really interests this committee a lot. I am going to turn to Alex Sobel, Member of Parliament, now. After that, we will hear from Lord Sewell.

Q10 **Alex Sobel:** The legacy commission can accept requests from family members for investigations for only five years. Public authorities can also request investigations for only five years. An exception is made in the case where an investigation is needed for ECHR compliance or because of new information. Coming to you, Joe McVey, do you think family members should also be able to apply for investigations beyond the five-year period in those exceptional circumstances?

Joe McVey: Very briefly, Mr Sobel, yes, we would. Again, it is that issue of fairness and treating everybody equally. In principle, yes, we would want to see that.

Alex Sobel: Alyson Kilpatrick, do you have the same view?

Alyson Kilpatrick: Yes. We have seen over the decades how many things can arise unexpectedly, and things can change. You need to always have an opportunity to reopen it.

Chair: Do you want to add to that, Lord Houghton?

Lord Houghton of Richmond: No. I just do not know enough about the situation of the 200 service families who are also bereaved and taking advantage of this. I have no idea what chance they have of getting resolution out of it. But it seems that, again, in the interest of fairness, everybody should have the ability to take advantage of exceptional cases.

Q11 **Lord Sewell of Sanderstead:** My question is on clarity. The Bill would give the Secretary of State the power to wind up the legacy commission when he is satisfied that the need for the legacy commission has ceased. Is there sufficient clarity in the Bill about the circumstances in which the commission can be wound up?

Chair: Alyson, please?

Alyson Kilpatrick: I am sorry; I always speak too much at these. Yes, there needs to be more clarity. I can apply what I said earlier about appointments: if the Secretary of State is the sole arbiter of when the work is done and if it has been done successfully, for example, then that would raise serious questions about independence. A Secretary of State ultimately will have to take responsibility for this, because it is the state's obligation to set these things up in the first place.

What I would suggest to ensure independence is that once an independent legacy commission and panel are set up, the Secretary of State must accept if they tell him the work is not complete. You are always going to be able to have a cut-off point with things; you cannot go on for ever. But if the legacy commission is saying it is not complete, then it should not be shut down, whatever the Secretary of State thinks.

Joe McVey: Chair, just in support of that, not surprisingly, you would think we would want to see that decision very much informed by consultation with victim and survivors' groups. The other point I would make about time periods is that the information recovery body, which is highlighted in the framework, suggests that should be a pilot. That immediately undermines the potential of that body to do its work. We need to be very mindful of arbitrary deadlines and cut-off points.

Chair: Let us go to the last question, which gives our colleagues on the panel the chance to make any points that we have not heard in the course of our inquiry.

Q12 **Lord Rook:** This one qualifies as the "any other business" question. On that line, I am interested to know, beyond all the things that you shared so far already, are there any things in terms of recommendations or opportunities to improve the Bill that you are thinking, "I have not shared that one, and I need to share it with this group here and now"? What have we missed that you still have to share?

Joe McVey: Chair, I would like to just very briefly pick up on that point. That is a really helpful question. Part of the debate and discussion so far is very much focusing in this committee on the legal aspects of it. There are also elements of the Bill, which were highlighted at the beginning, that were evident in the Stormont House Agreement: the work around oral history and memorialisation themes. It is very important.

Another element that we would want to come back to is on the specific needs of the bereaved—all the bereaved—many of whom obviously were women impacted by the Troubles and the conflict, as part of an acknowledgement. Again, I would like to make just a final point to say that all these elements are really important, and none of them should be seen in isolation. They are all part of building for a better future here.

Lord Houghton of Richmond: There is an ongoing concern and a huge ignorance out there about what the impact of the remedial Order will actually be. I know that it is business that you have done, but it is not clear to us whether nothing happens now until this Bill eventually reaches

Royal Assent, or whether a whole load of civil cases are suddenly free to be pursued in the meantime. It is causing huge amounts of angst within that various list of communities that I mentioned earlier on, because the relative ignorance out there to the latest bit of progress is not being well communicated.

Alyson Kilpatrick: I will answer very briefly indeed. If Clause 24 in relation to the independent person could include human rights compliance of the legacy commission, it would be helpful if it really is to be built into the Bill. Clause 11, where it sets out the principles to be taken into account in any decision or exercise of functions, at the minute reads in a way that no court or coroner would have to consider things like fairness, balance or equity. I just question the application of principles to the discharge of a statutory obligation. What do fairness or balance mean? We probably all know what they mean, but it should not influence a decision as to whether an investigation takes place.

Chair: Those words, fairness and balance, have united all three of you in the evidence that you have given to us this afternoon. We will be bearing that very much in mind as we hear from our second panel in a few moments' time, but also when we come to consider the suggestions that you have made and when we make our own recommendations to the Government. May I thank you for coming, but also for the tone that you have struck this afternoon, which I felt has been extraordinarily helpful in trying to navigate what is such a complex, sensitive and hugely important issue. With those words, I close this first part of our proceedings.