

## Northern Ireland Affairs Committee

### Oral evidence: [Addressing the legacy of Northern Ireland's past: the UK Government's New Proposals](#), HC 329

Wednesday 1 July 2020

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Watch the meeting

Members present: Simon Hoare (Chair); Caroline Ansell; Mr Gregory Campbell; Stephen Farry; Mary Kelly Foy; Robert Goodwill; Claire Hanna; Ian Paisley; Bob Stewart.

Questions 54 - 118

#### Witnesses

**I:** Sandra Peake, Chief Executive Officer, WAVE Trauma Centre; Cathy Curran, Advocacy Worker, WAVE Trauma Centre; Rev Dr David Clements, Board Member, WAVE Trauma Centre.

**II:** Kenny Donaldson, Director of Services, South East Fermanagh Foundation; Ken Funston, Advocacy Service Manager, South East Fermanagh Foundation; Iona Gallagher, Advocacy Support Worker, South East Fermanagh Foundation.

Written evidence from witnesses:

- [Methodist Church in Ireland](#)
- [South East Fermanagh Foundation and Innocent Victims United](#)
- [Wave Trauma Centre](#)



## Examination of witnesses

Witnesses: Sandra Peake, Cathy Curran and Rev Dr David Clements.

Q54 **Chair:** Good morning, colleagues, and good morning to our witnesses for this session on our legacy inquiry. On behalf of the Committee to our witnesses, you are very welcome and thank you for joining us. Before I ask our witnesses to introduce themselves and to make any opening remarks, I am sure the Committee and our witnesses will join me in sending our thoughts, prayers and condolences to the friends and family of Noah Donohoe, who passed away this weekend. Our thoughts and prayers are obviously with him and for him. Thank you.

May I ask our witnesses to introduce themselves and make any opening comments they wish?

**Cathy Curran:** Good morning, Committee, and thank you, Chair, for inviting us along to give evidence this morning. My name is Cathy Curran. I am one of the advocacy support officers at WAVE Trauma Centre. I have been with WAVE for four years now and it has been a real insight into working in legacy and a privilege working with families, victims and survivors. I hope the insight we can give you today will be helpful in your inquiry.

**Sandra Peake:** On behalf of WAVE, thank you for inviting us to come today. I am Sandra Peake, the CEO of WAVE Trauma Centre. I have worked with victims and survivors for 25 years. We have seen successive consultations, reports and initiatives through that time in dealing with the past. We are delighted to come to present to you today and to share a bit about our thoughts and our work in relation to victims and survivors.

**Dr Clements:** I am David Clements. Thank you, Chair, for the invitation. I am a Methodist minister working in Carrickfergus, although the Methodists in Ireland move around fairly frequently, so I have worked in various places including Shankill, where I was at the time of the Shankill bomb. About that time, in the early to mid-1990s, I got an invitation to go to WAVE and I met the women, who were a remarkable bunch of people. Shortly after that, I was invited to join their board. I have been there ever since. I did a deal with Sandra Peake, 25 years ago or so, and I promised I would stay on the board as long as she stayed in her role. We are both still here.

It may be helpful for the Committee to know as well that I wear other hats. As a Methodist minister, I chair our council on social responsibility and you will have had a submission from us. I am sure you have read all of the papers. Just for clarity, I am the same David Clements as in is in the Methodist paper.

Q55 **Chair:** Sandra, do you want to make any opening remarks, or do you want to go straight into questions?

**Sandra Peake:** I am happy to say a few opening remarks.



**Chair:** The floor is yours.

**Sandra Peake:** Thank you, Chair. In relation to WAVE, we have been deeply concerned by the new direction of travel in addressing the legacy of the past. We have made our submission to you and that details it more fully, but I can summarise it in five points. We are concerned about the lack of clear information beyond the written ministerial statement. It is very difficult to comment on full legacy processes when you have literally two pages in front of you. We would have preferred to see a much fuller consultation process. No doubt, you will touch on that. We think that that really garners mistrust at the start and undermines any goodwill.

We want to see a process that is independent, that is fair and that builds trust and confidence. That is crucial for victims and survivors. I have worked with WAVE from 1995. I sat through the Bloomfield report where one of the key issues for victims and survivors was a process to deal with the past. We engaged with the Eames-Bradley report in 2009. A key issue out of that was the need to deal with the past and the process. We engaged with Haass-O'Sullivan and Stormont House. Our concern each time has been that victims and survivors have been built up for processes that have not delivered. We really want a process that is fair, that is impartial and that does deliver. We thought that we had that through Stormont House, and we are concerned now about what is before us.

The families of the bereaved need acknowledgment. They need a thorough and full investigation that is fully article 2 compliant. We are concerned if that is not the case. All we are doing is transferring the trauma to the next generation. We have seen that in WAVE. I used to deal with parents, and we are now dealing with siblings. You can see that it is the next generation of grandchildren who are coming forward. That is a very big issue and it is an issue that, as a community and a society, we need to take on board. We have grave concerns about proposals to close cases and we would like to talk to you about that. We think that that is an affront to the dignity of families.

As a final point, there is an emphasis on reconciliation, and we are concerned that this will be far from reconciling. It could be more damaging to community relations, and could signal to dissident loyalist and republican paramilitaries that they will not be held to account. If there is a failure to deal with the past, that will continue. That is very important in relation to how we move forward.

We are an organisation that essentially works as a very strong service provider. In the last year, we had over 900 new referrals from the ages of four to 98—in that age spectrum. We provide services to over 3,000 people per year and I want the Committee to know that this is far from diminishing. Need is very much present. Victims and survivors are very much present within our community and are presenting today for services, some for the first time decades after their loss.

Q56 **Chair:** Thank you very much indeed for those remarks. Could I just ask



you to give us your thoughts on the current situation/impasse with regard to victims' pensions?

**Sandra Peake:** We are very disappointed by the current impasse on a victims' pension. For 10 years, we have had a very active and dynamic injured group, which has driven this pension. It has had many bumps along the way in relation to hoping to see progress. We were delighted when legislation was eventually granted that it would come in speedily. We were very concerned when we saw that there was inaction on behalf of the Executive Office, and we raised that. We wrote to the First Minister and Deputy First Minister in April. We have yet to receive a response to that letter.

We have continued to highlight, at every opportunity, that it is morally wrong to deprive people now of an injured pension. It shows the difficulties that exist in Northern Ireland in relation to something that should be a good news story, should deliver for people and should deliver to our most vulnerable individuals. We would want to see concrete progress made in getting a Department nominated and getting the victim payment scheme well underway. That should happen.

Q57 **Chair:** Hopefully, this may be answerable with a yes or a no. As far as you are concerned, with regard to the definition of "victim", are you happy—yes or no?

**Sandra Peake:** Yes, we are happy with the current definition.

**Chair:** Thank you very much indeed. That is very helpful.

**Sandra Peake:** Can I add something to that, Chair?

**Chair:** Of course, with the greatest pleasure.

**Sandra Peake:** Fundamentally, the issue with definition is about access to services. There should be no bar to service provision. Psychological services and physiotherapy services should be in place for families. I trained as a nurse, and I worked as a nurse. We served everybody and, in the same way, the definition needs to be there for service provision.

**Chair:** That is a point well made.

Q58 **Ian Paisley:** At the outset, can I say to Sandra, Cathy and David a huge public "Thank you" for the very hard work you do in addressing this issue and keeping it very much in the public mind? I know it is incredibly difficult work and, at times, traumatic, but it is important to place on record publicly a huge "Thank you" to you.

Sandra, in your opening comments, you mentioned your paper, which Committee members have seen. You very succinctly outlined the five key objections to where the failings in the current arrangements for dealing with Northern Ireland's past stand. I will not ask you to go over that because you have saved a huge chunk of the first question by being so succinct. Could I ask you, a little deeper than that, what acknowledgment



would look like? How would we address that issue of acknowledgment? Secondly, how would we address the issue of reconciliation? Leave the reconciliation one to the end. We can deal with acknowledgment first.

**Sandra Peake:** There has been a huge issue in relation to acknowledgment where people feel that they have been overlooked and that the pain and suffering they have endured has not been recognised. In relation to the proposals put before us, for many people, it is to know that their loved one mattered and had value, and there should be a full investigation into what happened to them. They should know as much information as possible. For many people, that simply has not happened. It has not happened because of the state and the ramifications of the Troubles, but, for many people, they did not get that.

We would very much endorse the work of Operation Kenova. We have seen the value for families who have never had anything. They maybe never even had the police to their door to tell them their loved one was dead. For them, it is so important to be able to go through a full investigation, to hear and to get information, and to know that somebody is looking at that impartially and fairly and will come to them with answers, and that they have the credibility to do so.

For many people—for many victims and survivors today—it is about us acknowledging, having a full record and putting this on record. If you remember when *Lost Lives* came out, there were huge issues for people with the details in it that they felt did not reflect what happened to them. That book went into every library and school in Northern Ireland. For many people, it is about ensuring that the facts are there, are down and are available; that we, as a society, do not overlook what people have come through; and that we provide the very best services to them to meet their needs.

Q59 **Ian Paisley:** Sandra, when you hear from some people about acknowledgment and investigations that can no longer take place because, in the words that are used, there is no likelihood of a successful prosecution or a successful outcome, how do you address that issue? When some of your members are told there is never a likelihood that this will come to an end, how do you address that subject?

**Sandra Peake:** We deal with many people and their expectations about prosecution. Yes, some people would like prosecution. There are even variations within families around that. For many people, it is the investigative process. It is knowing that somebody has looked at the facts around their loved one's case, from the start to the end, and that every effort has been made to give a full and frank account of what happened to their loved one. Many people simply have not had that process. In that process, there is a very clear form of acknowledgment.

When Operation Kenova started, we put in place an evaluation process of how families felt. How did they feel? Where was their trust and confidence? What did they believe they were going to get from this



process? What they have said in that process is about respect, frankness and openness, and a sense that their loved ones mattered and their deaths deserved to be fully looked at. That is very important. Can I refer to my colleague Cathy, who has worked daily with families from an advocacy perspective?

**Cathy Curran:** I agree with everything that Sandra has said. Acknowledgment takes many forms, but really it is about treating people with dignity and respect. Unfortunately, throughout the Troubles, there have been so many experiences where there has been a real vacuum in terms of dignity and respect. Families have not been afforded the opportunity to sit down with police and talk about what investigation did take place. They do not have information about how their loved one died and what the circumstances were. Then they have gone through processes that have been fruitless, which has simply compounded their grief and their sense that they or their loved ones do not matter.

For example, in going through an HET process, a family whose loved one may have been killed under the auspices of being, let us say, an informer, and who are very keen to know more about that, have never really been given that information. It has been held behind a firewall: "We can neither confirm nor deny". That is not good enough for families, and certainly not in this day and age. It is really important that people are given as much information as possible because it is empowering for them, and it enables them to make progress.

There is a lot of talk and a lot of use of the word "closure", which I do not agree with. It is easy for me to say—I am not a victim and survivor—but, at the same time, you cannot close the chapter. You cannot close the book on this. It is part of our society and part of people's family history and community history now. It is about transformation more than anything. The only way you can really help people transform on an individual, family or community level is by empowering them, by giving them information and by treating them with respect and dignity. For me, that is what acknowledgment looks like. That means that a full and thorough process needs to be undertaken.

Q60 **Ian Paisley:** You believe that that is missing in the current process. Your presentation makes it clear that that part is missing. If that was factored in—it is not an easy thing to factor in; it would be very complex—would it help to resolve some of the issues and make the process much more manageable for victims?

**Cathy Curran:** Yes, absolutely. From my observations and experience over the past four years of working with victims, survivors and families, it is not an outcomes-driven process. The process is the outcome in itself: the ability to work with the investigators, to have communication with them and to have access, in the case of Operation Kenova, right to the top of the tree. Jon Boutcher has made himself accessible to every family, and that is a huge gesture to make, when you are talking about



families who did not even have a phone call or a knock at the door to let them know that somebody had been killed. That is a process of healing.

Q61 **Ian Paisley:** That potentially could be lost under this new process. Is that not a fear?

**Cathy Curran:** That is a huge fear. The new process, to all intents and purposes, looks like a desktop review, and there is no depth to that, unfortunately. If you are just going to take information and make a review based on what was already there, without drilling deeper into information or accessing information and records in other places, you are not going to get a different outcome for families. I do not see how repeating the failures of the past helps any of us to progress in the future.

Q62 **Ian Paisley:** Most of those comments cover the issue of reconciliation, unless David has something to add.

**Dr Clements:** Thank you, Ian. I appreciate the question. It is a very important one and a difficult one to answer. Sandra and Cathy have answered it well. I would add one thing. It may be helpful as a Committee just to know where the name WAVE came from. When I first met this bunch of women, as I mentioned, just after the Shankill bomb, they had been meeting for a couple of years because there was no other support group for victims. They were started by Sister Marie McNeice, a Catholic sister, and they invited me as a Protestant minister to be part of their group, which I was very glad to do.

Originally, the name stood for Widows Against Violence Empower. That is where WAVE came from. There were always little brackets: "widowers" was in brackets after "widows", so they did not discriminate against men who had lost a partner. Over time, it became a much broader organisation involving people who had lost parents, children or siblings, or people who had been injured or affected by the Troubles in all kinds of other ways. We struggled for a long time to find another acronym that would fit WAVE and we could not, so we just kept the name WAVE because it was well known by then, and we called it the WAVE Trauma Centre.

The key word at the end of that, "empowerment", was always a crucial issue. These were a bunch of women who had all lost their husbands in different circumstances by loyalist and republican paramilitaries, but they were finding a voice. If there is one thing that helps to understand what acknowledgment means, it is to be able to have your voice and to be heard.

The issue of investigation, prosecution and all of that is very difficult. It may never happen. Holding out a false hope of prosecution and conviction at the end of it to victims can be a cruel thing, if it is very unlikely to happen. You have to find other ways for them to have their voice heard and be empowered, and to give them some role in that, not



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just treat them like a political football where they are kicked this side and then kicked the other side. That has been one of the problems over the last two decades, in particular, since the Good Friday agreement. The issue of legacy and victims, and their part in that, has been very difficult and is contested. If we can find a way of giving people their voice, empowering them, acknowledging their loss and acknowledging that what happened to them was wrong, that is the crucial issue.

My dad was a policeman. He was shot dead by the IRA in 1985. I have had lots of conversations with Sinn Fein, with republicans and with others, and they are useful exchanges. I am able to do that, but lots of other people are not. My mother would never engage with them, for example, even when she was younger and fitter. I am articulate enough to engage in that, but lots of others are not. My concern is that this process will just sweep the issue under the carpet for another five or 10 years. The bump in the carpet is not going to go away.

**Chair:** We have until just before 10.30 am for this. I want us to cover as much territory as possible. I do not want to be terribly strong with the whip hand on that, so I am going to go to Robert Goodwill, who is well known as a man of terse Yorkshire words.

Q63 **Mr Goodwill:** We have just been hearing about empowerment and having your voice heard. When Sandra made her opening remarks, she talked about her concern with the new direction of travel and how the two-page ministerial statement was probably a bit of a bolt out of the blue. Do victims feel they have been listened to and engaged with during the development of this new legacy framework? When we talk about engagement, are we talking about engagement with organisations like yours, or with people more generally who may wish to engage?

**Sandra Peake:** It did come like a bolt out of the blue. It came at the worst possible time and there was a very strong reaction to it within the organisation, because we were on the eve of closing the organisation because of Covid. We were moving all the services by telephone contact. Therefore, we were rendering many victims and survivors into effective isolation, and we were bringing something in—the news headline that morning was that 90% of cases would be desk-topped through a speedy review and only 10% would go to full investigation. The word “speedy” is mentioned quite a number of times the whole way through this two-page document. There was no warning of that coming.

Q64 **Mr Goodwill:** Do you think the word “speedy” was there to show that we want a quick resolution to move forward, or do you think that was a bad word to use?

**Sandra Peake:** I think it was an appalling word to use, because you are saying that this will be dealt with rapidly by desktop review, 90% will be put off to one side, 10% may go forward and—even better news for you—we are going to close your case entirely. The message of that was



appalling. Also, the first paragraph is entirely around veterans, the veterans Bill and the need to protect veterans.

We were waiting for Stormont House. We thought there was an agreement between the British and Irish Governments and the Assembly, and we were waiting for an action on that. We had no warning. All of a sudden, in the middle of Covid, a two-page statement came out that really was a demarcation away, with absolutely no warning, at a time when victims and survivors were most vulnerable. The first paragraph of it was around the need to protect veterans and then it moved on to victims and survivors.

Even as of last week, we have had one call with the Secretary of State. We have had nothing since. We have asked for meetings with the NIO officials. We have had two, which we have asked for. We were told there was going to be extensive consultation, but we have not seen that. We were told that there would be papers, but they have not come, and I understand that maybe they will not come.

It is really a very difficult position for victims and survivors to be in. I cannot emphasise enough to you that it really feeds mistrust. It feeds the sense that we do not matter and that this simply is about veterans, not about addressing the needs of victims and survivors. That is grossly unfair. It is very unfair to victims and survivors to do that. I was very robust with the Secretary of State when we spoke to him. I said, "We are rendering people isolated within their four walls. What will they have? They will have their television and their radio, and political programmes will unpick this, go over it and make the case for it. That is when people are most vulnerable". We have been very disappointed by the fact that we cannot see the details of the proposals and how this is going to be taken forward.

**Q65 Mr Goodwill:** Do you think the reference to veterans might also have a bearing on cases in Afghanistan and Iraq? As an English MP, my post box is full of people concerned that various lawyers and companies are going on fishing expeditions. Maybe that context was not understood: the read-across between veterans in Northern Ireland and veterans who have subsequently been involved in actions around the world.

**Sandra Peake:** In relation to the constituency you serve, I can understand why that would be the case. However, we were waiting on the Stormont House process, which was to bring an impartial and independent process to all victims and survivors. If you look at the first paragraph of the opening statement from the Secretary of State, it was entirely about ensuring equal treatment of Northern Ireland veterans and those who served overseas. That was the first paragraph of it, and then it went on to victims and survivors. That is regrettable, because all victims and survivors deserve fair and equal treatment.

It seemed that this push was coming because of the legislation for veterans in relation to overseas and not in relation to victims and



survivors per se and Stormont House. That was regrettable. Even as of last week, officials have been briefing *The Sunday Times* and the *Sunday Express*, which was focused not on Stormont House but on the protection of veterans in relation to the legislation. That is not helpful.

**Q66 Mr Goodwill:** Maybe I could bring David in and ask him how the consultation in the run-up to the two-page statement, which has been described as a bolt out of the blue, compared to consultation and discussions ahead of the Stormont House agreement. Was that more of a process?

**Dr Clements:** Yes, there is no doubt that previous consultation had been much more extensive. There are two cynical views about the lack of consultation and the lack of detail in the written statement. One cynical view is that it is only about the MoD and protecting veterans, and that, as you rightly say, it is more focused on Iraq and other countries rather than Northern Ireland; Northern Ireland just happens to be a consequence of that, and there will be an obvious linkage. The other cynical view is that this is just to kick the can down the road, knowing perfectly well that this will be judicially reviewed. There will be all kinds of concerns that will take years to resolve.

Personally, I am not averse to having a process that is speedy, although I agree with Sandra that it is perhaps not the best word to use, but something that deals with the issue urgently and effectively. I am not against that, but this ministerial statement does seem to have come out of the blue. I was not—and, as far as I know, nobody else was—aware of it until it appeared on 18 March, and that is unfortunate.

**Q67 Chair:** Sandra, on this speed question, you talked about seeing younger brothers and sisters, children and grandchildren coming to you to seek your services and support. In that balanced judgment question, is it more important to try to deal with these matters while the largest cohort of survivors are still alive or to have an elongated timetable while, just by the nature of demographics, people are dying?

**Sandra Peake:** No, I believe it should be in people's lifetimes. We deal daily with people who do not get the answers they want, and it should be within their lifetimes. It depends what you mean by "speedy". If you are talking about a full investigation, Operation Kenova has been in place a relatively short time. They, as far as we understand it, have submitted files and are coming to a stage in their process. That has been a fairly rapid process in overall legacy terms, which seems to be delivering. It is about having adequate resources, having adequate personnel and being a fully compliant process. If you looked at this, there was no role even for victims and survivors. It was going to be a desktop review, and you went one way or the other. You either went forward to the chance of further investigation or prosecution, or you did not.

**Q68 Chair:** In summary, your concern is to make sure that it is done in a timely way, but adequately resourced to ensure it is done properly, rather



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than speed leading to a rather flimsy approach. Is that a fair assessment of your position?

**Sandra Peake:** Yes. The internet connection broke for me slightly, so I was not able to catch the last part of what you said.

Q69 **Chair:** In essence, your concern is that you would like to see this done quickly, to make sure that the largest number of victims who are still alive can see justice done. Therefore, as far as you are concerned, it is not so much the speed that is the question, but making sure it is adequately resourced and can deliver that comprehensive approach at an appropriate speed.

**Sandra Peake:** Yes, absolutely, and it must be fully compliant, independent and credible, and build trust and confidence with families.

Q70 **Chair:** Should investigative procedures and standards be contemporary or as applied at the time of the event?

**Sandra Peake:** Is that in relation to the standards set?

**Chair:** It is both the standards set and, if any investigations are to take place, how they take place. For something that happened in 1975, should they have the investigative norms of 1975 in place or should we be imposing 2020 standards, which are entirely different and much more sophisticated?

**Sandra Peake:** Every opportunity should be taken, so it should be current. Every opportunity should be taken to review the information, recognising the context that existed at that time. There will always be new forensic processes in place. We have seen the benefit of that. An investigation is only as good as the information available to it, so there must be full access to information to give it the fullest picture. At the end of the day, we now are in a situation where this is the last throw of the dice for victims and survivors. We recognise that. This is the last opportunity to get this right, and it has to be right. Therefore, it should be as full as possible, applying today's standards, and making sure every evidential opportunity is followed up on.

Q71 **Stephen Farry:** Good morning to Sandra, David and Cathy. I put on record our acknowledgment of the work you have done on the victims' pension, in particular. We recognise the huge pain of the injured group and the wider victims of the current impasse. Most of our questions are running into one another and you have probably addressed some of my questions already, particularly in your answers to Bob. To frame that, perhaps, in a different way, you have identified the veterans issue as being the prime motivation around the change. If the MoD legislation was extended to Northern Ireland, what would be your view of the impact of that on the ability to sustain any comprehensive, inclusive process in Northern Ireland around legacy?

**Sandra Peake:** It would be very difficult. In fact, for many people, it would be quite intolerable that a process had been brought in, and that



we had failed to implement a full legacy process that looked at all cases in a fair and open way. That is no doubt that there must be a full review in all cases. We are saddled, in the community, with the past, and many families want this released. They want to be able to move forward. They do not want to hand this to their children or their grandchildren, yet that is what we are doing. There needs to be a clear process in place. It would be very damaging for the legislation to apply to Northern Ireland in the absence of any other processes to deal with it. It would be quite intolerable.

**Cathy Curran:** I have a couple of points to make in relation to the previous question. You cannot overestimate the power of establishing trust and confidence with families. What we have seen through the Operation Kenova process has been families and individuals who have come forward and provided information that the investigation never had before. Families with very valuable information, who have never been asked to give statements, are doing that now and bringing forward items that can be retested under new forensic tests. Establishing those relationships with trust and confidence has been very powerful. It has opened the door for a lot of new information to come through. That has been really beneficial for everybody and the investigation.

On the veterans issue, if we were to legislate for that, I think that would be in contravention of article 2 of the ECHR. That is an ongoing obligation. It will continue regardless of whether the Government decide that the cases should be closed, which I do not think is a legal position that they can take. It is something that we need to adhere to. That is enshrined in the Good Friday agreement. It is part of Stormont House. It is part of our Human Rights Act and we cannot ignore it. It will be subject to repeated legal challenge. It will essentially just bog down this whole proposed new system in legal challenges.

I have heard the term "lawfare" used before. If we had a system that delivered for people, they would not be in a position where they had to rely on going down the route of civil actions constantly to try to get access to information or disclosure. Essentially, let us have a system that works for people, so we do not have to rely on going down that route.

**Sandra Peake:** Veterans deserve truth and justice, but so does everybody else. Under the current processes that are being proposed, there is a direct impact even for veterans' families who lost their loved ones here, such as police families. There is no doubt that veterans deserve truth, justice and respect, but, at the end of the day, so does everybody else. There should be a process that applies to all.

Q72 **Stephen Farry:** You have already touched on this to a certain extent but, to ask the question more formally, are there certain aspects of the Stormont House agreement that you would have liked the Government to change or revisit? In reverse, at the same time, what do you regard as being the core aspects of Stormont House that we need to preserve in



whatever system we have going forward?

**Cathy Curran:** The core tenet is that there needs to be a workable, operational, effective investigation unit. Without that, it is hollow, frankly. Reflecting on the principles that Stormont House is underpinned by—promoting reconciliation; upholding the rule of law; acknowledging and addressing the suffering of victims and survivors; facilitating the pursuit of justice and information recovery; human rights compliance; and being balanced, proportionate, transparent, fair and equitable—they are all excellent principles to underpin this process. Unfortunately, I really do not see how that is reflected in the new proposal. It is hard to do that anyway without any detail, but looking at promoting reconciliation, if you are putting speed over quality in investigations, that is not going to promote reconciliation. It is not going to give people dignity and respect. It is not going to lead to acknowledgment.

There are questions about the legality of things such as trying to close down cases, so whether we are upholding the rule of law I am not sure. You are not facilitating the pursuit of justice if you close a case down and tell somebody they cannot proceed. I also do not see that it is the investigations unit's remit to say that a prosecution cannot take place. It is within the remit of the Public Prosecution Service to decide whether a case meets the evidential test and can move forward for prosecution.

There are those key principles that underpin the Stormont House agreement, which was the outworkings of an intensive talks process and had broad political consensus. That has now been disregarded, not to mention the co-sponsors in the British and Irish Governments, who seem to be disconnected on this new proposal. Really, we think that Stormont House, while it was not perfect, as Sandra said, was the last roll of the dice. We tried to be very constructive in our feedback and in our consultation with our members. Unfortunately, it feels like the goalposts have been moved a little bit.

It is about keeping true to the principles of Stormont House. The ministerial written statement said that it adhered to those principles, but we really do not see how it is reflected in the proposals.

**Chair:** Colleagues and witnesses, time runs on. We are halfway through what we wanted to cover. I want really brief, focused comments, questions and remarks.

Q73 **Claire Hanna:** I will be honest: your answers have been so comprehensive that the questions can be shortened. I was going to ask you if there was anything you thought the UK Government needed to do to make the 18 March proposals compliant with article 2 on investigations. Cathy, you articulated that the Government will probably have to completely revise them, but do you think the March proposals can be rehabilitated in a way that makes them compliant?

**Cathy Curran:** It is hard to know without the detail. In looking at something as complex as an investigation that needs to be compliant



with article 2 of the ECHR, we cannot judge that on a two-page written statement that is vague and not substantial in detail at all. The things that make an investigation article 2 compliant are independence, effectiveness, access to information, a degree of public scrutiny, involving the families and giving them their place.

It needs to be prompt, but, as I said before, it cannot be prompt to the detriment of the quality of the investigation. It needs to be independent. There are lots of questions about amalgamating information retrieval with an investigative process. There were already issues with having two institutions independent from each other conducting different remits. At the same time, there were concerns around how robust the protections would be for people who wanted to give information through the retrieval process. Putting that under one roof presents a whole new set of problems. In terms of it being article 2 compliant, we need to see the detail. Through that written ministerial statement, it certainly does not present itself as compliant.

**Q74** **Claire Hanna:** In your assessment of Operation Kenova and how it places emphasis on the victims, do you think that has worked?

**Cathy Curran:** It has been an excellent process from start to finish for many of the victims. We work with only a portion of those people who are engaged with the process, but the people that we support have been impressed by it. We started off the process four years ago and we did a benchmarking exercise, where we took a reading from our members as to where they were in terms of their trust and confidence. It was not good. They had not had good experiences with the police previously. Like I said, they had been through different processes and it had been a very piecemeal approach, as is the legacy landscape today.

Going through a process where they were allocated a specific team, and where they had regular contact and access to the various degrees of management throughout Operation Kenova, including the operational command, has made great strides to instil confidence and trust in them. Let us not forget; we are talking about families who come from a background where, traditionally, there has been mistrust of the police. It is one thing to undo the past failures, but it is quite something else to step in and give confidence to people who come from a community where there was a reluctance to deal with the police whatsoever. That speaks volumes about how Operation Kenova has handled itself.

It is very important that the right people are involved, too. It has become very apparent that Jon Boucher has been able to provide the right type of leadership for this process. He has also brought on board with him, in his 72 staff, people who share in the values and want to see the best outcomes for families. That has been incredibly important as well. It is about the right policies, infrastructure and people.

**Q75** **Caroline Ansell:** I have a sense of how you might answer this question, but I will put it nonetheless. It is essentially around balance and whether



you think the proposals—such as they are, thinking back to earlier comments—strike the right balance on setting the threshold for cases going forward for full investigation. Sandra, you said earlier in this session that there should be no bar to service provision. Where might you see the bar? I am also thinking of David's comments about expectation of prosecution and whether false hope is itself quite wounding. Is there any merit in that idea of an open case being an open wound? Does closure not give some sense of peace?

**Sandra Peake:** It is very difficult to make comments on the threshold just on the basis of the two-page document. I will go back one step. How many families are waiting or looking for prosecution or have an expectation of it? If you read the evidence that has been submitted to you by Jon Boutcher and the Operation Kenova team, which we have read, they were very clear about the opportunities to give families information. Many families want that. They are looking for clear information and a clear investigation. The only way to get that information is an investigation. I am happy to talk about why I think there are limitations to information retrieval from paramilitary groups or whatever.

They need to have a full investigation. They need to be given every opportunity and to have full information from the organisations that hold it. If those cases move forward and you say that is closed, what are you saying to families? By these processes, you are saying this is a de facto amnesty, if you are closing cases off. Whatever comes in the future, you can never go back to relook at their case.

I am sure, MPs, that across your constituencies, whether it is Scarborough, Dorset, Eastbourne or wherever, you have many unsolved murders in those areas. Can you imagine going and saying to your constituents, "Your case is 20, 30 or 40 years old. There is no viable chance of prosecution or of you getting anywhere. We are just going to blanket close this off"? You would not do it. This is my plea to you today. Why would we do this to victims and survivors of the Troubles? Why would we say to them that a case in Scarborough matters, but a case in Northern Ireland does not because it is Troubles-related?

I remember a lady once saying to me that the thought that whoever had killed her son would know for as long as they lived that the knock at the door could come at any time, and they might still be held to account for that, settled her enough. Could we take that away from her? I do not think we could. Does she deserve a full investigation? She absolutely does. For many people, it is a sense of knowing there has been a full investigation into their loved one's death. To move to close and to say, "Based on what we have seen, we are going to close this and it is closed forever", while that is very appealing at a Government level, and at a variety of levels for the families, is a very detrimental statement. In fact, we would argue that it is a de facto amnesty, and that is wrong.

Q76 **Caroline Ansell:** You talked about English constituencies, but my



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constituency was represented by Ian Gow back in the 1990s, who was himself murdered by the IRA, so it reaches far and wide. My community remembers to this day, so I really understand what you are saying about that. To your point on a threshold, your position is that every case should carry a full investigation.

**Sandra Peake:** Yes, absolutely. People deserve that. They need to know their loved ones mattered, and they deserve that. With the right team, process, policies and guidance in place, that can be done. Operation Kenova has demonstrated that.

**Caroline Ansell:** That substantiates the hope that the future might bring new evidence to light as well.

**Sandra Peake:** Yes.

Q77 **Mr Campbell:** I concur with the thanks of other members to each of the three witnesses for all the work they have been doing. I had one very brief issue, and it was this issue of the veterans that kept coming up. I do not think people would want misunderstanding to occur about the fact that many of the veterans themselves are victims and survivors. They are not separate categories of people to be dealt with separately. Many of them would fall into that same category of being both a victim and maybe a survivor.

Just to look at this in the round, there is obviously widespread dissatisfaction with the proposals. If we spent another six months or a year, we may be able to adjust this to get it in a better place where more people would be well disposed towards it. Do you think, in the short time we have, that it is doable to get it to a place where the majority of victims would at least be content that there is a better prospect of getting some form of satisfaction, if ever they can?

**Sandra Peake:** I think there is an opportunity, and I do believe that this is the last opportunity to do it. The proposals need to provide reassurance and a very clear process, meeting all the various article 2 compliance requirements. At the end of the day, Stormont House followed a very extensive consultation. The response to it was huge. I think 18,000 is good for a consultation response. As we have seen, each time that external reports are done, the same issues keep coming back: the need for a historical investigation unit that looks fully at cases. That has to be done. We need to provide trust and confidence that that will be in place and that it will have the credibility to deliver.

At the minute, the lack of information, consultation and engagement and moving away from Stormont House feeds mistrust. There must be a very firm proposal in place that we can see for how this will be taken forward and how the structures and processes will be put in place.

Q78 **Mary Kelly Foy:** You have addressed all the issues that I was going to ask. Very quickly, though, what changes need to happen to put victims first? What do you think would be a good outcome here?



**Dr Clements:** That is a very pertinent question because, from my point of view, putting victims first is the most fundamental issue. Going back to Caroline's question and Gregory's comment about balance, thresholds and so on, the issue of investigations is complicated and difficult. The prospect of an outcome that will satisfy victims is remote in terms of prosecution and conviction. In what other ways can any process support, encourage and empower victims, give them their voice and give them a sense that their loved one mattered and that they are not just a statistic? Some kind of investigative process is probably essential for that.

In the past, I have argued against the historical investigations unit in terms of its cost, its remit and its prospect of coming to satisfactory outcomes for victims. I think, probably, my position now is that we do need some kind of investigative process. I have been encouraged, like the others have said already, that Jon Butcher is a man of character who has been able to drive the Kenova process in a very positive way, so there is a model there that I now see may be helpful, in terms of an investigative process.

I want to bring in the other issues. To Mary's question, what will help victims is having their stories told, having a sense that they matter, having a sense that they have a part in the community and that they are not a stumbling block. Going back a long time, there was a group that was supposed to be helping victims. One of the staff rather colourfully described the situation and summed it up: "Bloody victims—they are just a nuisance. What are we going to do with them?" We do not want that to be the attitude that people have. We want support, encouragement, a sense of being listened to and sometimes just a sympathetic listening, be that through an investigative process, a truth-finding process or just a process within society that gives recognition to victims and their suffering.

Q79 **Mary Kelly Foy:** Following on from that, why do you think, after such compelling evidence given over the years, the Government seem to no longer be listening to your voices—the voices that you desperately need hearing?

**Dr Clements:** In a nutshell, it is because legacy is contested. There are different views and outcomes, and it is always going to be the case. Finding the answer is going to be difficult.

**Sandra Peake:** Chair, as a point of clarification, you asked earlier about the definition of a victim and our view on that. I want to put on record that the victim payment scheme is not a service, so it had to have a separate definition. It is recognition, it is acknowledgment and it was important that it was structured in that way. It is important to put that on record.

**Chair:** On behalf of the Committee, I thank you, Cathy, Sandra and David, for your time, for the work that you do and for the way you have answered our questions. I hope it has not been too horrible an experience



for the three of you. Thank you very much indeed.

### Examination of witnesses

Witnesses: Kenny Donaldson, Ken Funston and Iona Gallagher.

Q80 **Chair:** Good morning. Could I ask you, our second set of witnesses, to please introduce yourselves for the record? If you would like to give a few introductory remarks as a scene-setter before we turn to questions, that would be very helpful. Thank you.

**Kenny Donaldson:** Good morning. My name is Kenny Donaldson. I am director of services with South East Fermanagh Foundation and also spokesman for the Innocent Victims United umbrella organisation.

**Ken Funston:** Good morning. Thank you very much for the chance to speak to you here today. My name is Ken Funston. I am the advocacy manager at SEFF and, in that role, I also provide advocacy support for the other organisations within the IVU.

**Iona Gallagher:** Good morning. My name is Iona Gallagher and I am the advocacy support worked for SEFF. I support victims across Great Britain and I work from London.

Q81 **Chair:** Do you want to give an introductory comment or two or go straight into questioning?

**Kenny Donaldson:** We will maybe make some initial comments. We first want to thank you and Committee members for facilitating us this morning. We appreciate that very much. By way of context, so everyone is clear, in our organisation, the ethos that we operate with is that we support all innocent victims of the Troubles, irrespective of their ethnic or religious background. Our services are delivered across Northern Ireland, the Republic and, indeed, Great Britain. We are the one Northern Ireland-based group that has an office in GB, located in London. That ethos is extremely important to us.

I know that earlier comments have been made around the definition of victim. To save you asking that question to us, we will make it very clear that we do not accept the current 2006 order and have challenged it for the last 14 years. There is an argument made at times that this is about services for individuals. Our position has always been that terrorists, perpetrators and/or their families of course will require support in the context of what has happened. Should they be provided that support under the parameters of victimhood? We would suggest no. We continue to hold that position very strongly.

Q82 **Chair:** Do we take it from that that you are keen to see rapid progress made with regard to the victims' pensions and payments starting to be made as quickly as is feasible?



**Kenny Donaldson:** Yes, absolutely. Parliament has paved the way forward. Legislation is in place. The Northern Ireland Executive is in breach of its responsibility to deliver that pension, a pension that would make a huge difference to so many lives from right across our community. Yes, we would very much call for progress on that matter. For those who hold up that process, sanctions must follow.

Q83 **Chair:** We heard from our previous witnesses that they had communicated their thoughts to the Executive but were still awaiting a reply, some weeks after having sent that letter. From memory, I think early April was indicated. As an organisation, have you made your views known through to the Executive in a formal way, and have you had a response?

**Kenny Donaldson:** Yes, absolutely. We make our views known on this issue on an ongoing basis with all the stakeholders involved. We have been extremely frustrated. It has to be said that it was only nine to 10 days out from the scheme supposedly going live that we were advised at a formal meeting that it was not going to go live. That came as a great concern and shock, but just the level of how far behind the process we are with it is concerning. First generation victims are getting older and many of them will not see the benefit of this pension if it is not instated ASAP.

Q84 **Chair:** Could I ask you to give us a very brief flavour of the responses you have had to this victims' pensions impasse from the people with whom you work? What are you hearing on the telephone, on Zoom and so on?

**Kenny Donaldson:** We have a nine-strong advocacy team, and health and well-being caseworkers, so we have a lot of outreach people across Northern Ireland, the Republic and GB. They are receiving a sense of despondency. There exists currently a real deficit of trust on the part of innocent victims towards, essentially, the establishment. That has to be said. What people have seen happen since 1998 is a subversion of the criminal justice system. We now need to recalibrate where we are going, not continue to do things in the same way as we have done before. There are reasons why we are where we are, and people need to be honest and open about that. Let us build genuine reconciliation, not a phoney kind that is built on sand.

Q85 **Ian Paisley:** Can I thank you, Kenny, Ken and Iona, for the hard work you do and the unstinting efforts you make in advocating for and representing a traumatised group of people? I commend the work that you are engaged in. I know how difficult it is for you and how frustrating it can be for you at times, but thank you nonetheless, very publicly.

Kenny, it is almost like the man who has asked for directions to Cork: "I would not start from here". If you had a blank sheet of paper, how would you make arrangements for victims and legacy arrangements that actually work that would satisfy the vast majority of innocent victims?



**Kenny Donaldson:** Thank you for your question, Ian, and for those kind comments. We have put forward our own paper. Indeed, before the Northern Ireland Affairs Committee inquiry, we submitted a paper to the Northern Ireland Office. It has always been our contention that the HIU is a cumbersome structure that is very much weighted to the advantages of people who were terrorists and/or perpetrators. We saw very little opportunity for the needs of innocent victims to be progressed through that means.

In our alternative proposal, we have suggested that the HIU would be housed within the PSNI. We acknowledge that there is a constituency of people who contend that the PSNI is not acceptable, from an independence point of view, to investigate our past. We have heard this morning already the work of Boutcher, in terms of Kenova, and other forms of investigations that have been carried out by external constabularies. Those cases that allege wrongdoing of the state could be dealt with in that manner. Let us be clear: 90% of the deaths in the context of the Northern Ireland Troubles were committed by terrorists; 90% were murders and those could be housed, looked at and examined through the existing parameters of the PSNI, with a beefed up LIB, the right oversight procedures in place and independence. There is a means to do that.

Q86 **Ian Paisley:** How would you address the issue that is sometimes raised that there is no likely successful prosecution outcome or there is no further material on file? How would you address that and manage that disappointment in real terms?

**Kenny Donaldson:** I want to involve all our colleagues at this stage. Do you want to contribute there, Ken, in terms of your advocacy role?

**Ken Funston:** It is a very difficult question. The reality is that, as an advocate, which all our staff are, we have to be realistic when we engage with a victim or a victim and survivor. I can maybe bring my own family into context in that situation. When my brother was murdered on the border, the perpetrators and murderers escaped back across the border, so the evidence and the potential openings in the case are actually in southern Ireland, hence the difficulties in a lot of cases that are on our files, especially in the border region. We have hundreds of cases in that border area.

We have to be realistic with the family and say, "There are openings here", but this comes back into the context of what was asked earlier about review of cases. Op Kenova has been running for four years with 80-plus investigators/detectives on one focused case. We are looking here at revisiting thousands of cases, and the timespan will be decades at least. Do we look at each individual case as a serious case review or a full murder investigation? If we go into a full murder investigation, again, we are looking at years and years. Families do not have that time. In reality, they do not have that time.



In my own family in particular, at the moment, we have no openings in the case of my brother's murder. Ultimately, it comes back to the question you asked earlier about the new Northern Ireland Office suggestions paper. You still cannot close those cases because something may come forward in the future. A case to mention that I may bring up is the murder of a police officer called Michael Ferguson. Years later, a man walked into the police station and confessed to his involvement in that murder. To me, that is a case to mention where we cannot close these cases, even when there is nothing available.

**Q87 Ian Paisley:** I definitely get the issue of, and the opposition to, closing as if the past is over. The past is never over. Historians will always want to go back into it. That point is well made by you, Ken. You have addressed this issue that things are left to fester. You mentioned the issue of the Republic of Ireland, which we have not really explored with other witnesses. There is no FOI available in the Republic of Ireland. There is no inquiry mechanism whatsoever and yet, as you have outlined in the tragic murder of your brother, the Republic of Ireland authorities have some role in this. How would you open up that aspect of addressing legacy?

**Ken Funston:** Working with any case, whether it is with the UK or the Republic, is difficult. It is slow and cumbersome. It wears the advocate down, never mind the family, because the family have obviously come to us and are looking for answers. In my experience working with authorities in the Republic of Ireland, I have found that it is nigh on impossible to get anything from them. I have one case in particular.

**Q88 Ian Paisley:** For the record, it is nigh on impossible to get anything from the Republic?

**Ken Funston:** That is correct. I met the Minister for Foreign Affairs, Mr Coveney, last year in his office in the Dáil Éireann. There were a level of promises made, and they have since said there will be nothing available in that case. They are not prepared to help us where there are allegations of state actors in the Republic of Ireland being involved in that murder. On behalf of the family, I have engaged with the police ombudsman in southern Ireland. After three years and, in total, so far, 34 unanswered emails to that organisation—after they promised two and a half years ago that they would look at the case again—they have closed it down. They do not want to know.

I brought that case up with Mr Coveney in the south and he said that ombudsman organisations are virtually untouchable. They are standalone organisations and the Government cannot interfere. There are many other cases like that. I have another case where a gentleman was murdered right on the border. He was murdered in the south and his body was dumped just across the border in the north. There are many allegations against what went on in the investigation on the southern side and, unfortunately, again we have hit a blank wall, although the Garda



themselves have now agreed to have another look at it. That is just a small example of the issues we face, working with the south.

Q89 **Ian Paisley:** Chair, it might be worthwhile if we went back to the people we have been talking to in the Republic of Ireland and ask them if they could maybe respond to that allegation of 34 unanswered emails about murders in the Republic of Ireland. That might be useful. We have had some joy with the Corporal Elliott case, as you know.

**Chair:** I have taken a note of that, Mr Paisley.

Q90 **Mr Campbell:** It is good to hear from SEFF again. On the issue that Ian raised there with the Republic, obviously there is a huge distinction in terms of the scale. There were 3,000 deaths in Northern Ireland and significantly fewer in the Republic. The difference in scale has, to some extent, allowed the authorities in the Republic not to answer. There is Ken's point about the scores of emails not responded to. It almost seems as if it is—and I do not wish to minimise this—a forgotten issue or matter in the Republic. The Committee has limited remit, obviously. I take it that it is a matter you would want to see the Republic's authorities reopen, particularly the new Government, Micheál Martin and company, who have been promising all sorts of changes. If it is a legacy matter, they can attempt to bring closure the people along the border corridor.

**Chair:** Mr Donaldson, do you want to give a very pithy response to that?

**Kenny Donaldson:** Yes, absolutely. The southern state, in many ways, has adopted a position over the years where it has almost suggested that it was an independent onlooker to events that were unfolding within Northern Ireland. The truth and reality is that there were 88 innocents murdered within the jurisdiction of the Republic of Ireland. With our research, we have strong suspicions that there are between 530 and 550 murders along our border corridor that directly connect to that jurisdiction.

In respect of the wider issue of the UK Government's position on legacy, almost on a monthly basis we hear from Dublin in respect of cases connected to Northern Ireland, whether it be the Loughinisland case, Ballymurphy, Bloody Sunday, et cetera. Do we, as an organisation, have a difficulty with the southern Government advocating in those cases? No, absolutely not, but we have a big issue with their non-advocacy for our cases that connect to that border corridor. We would also suggest that, in respect of legacy, the UK Government often do legacy like we play the game of cricket. There are not enough probing questions or enough analysis of the Republic of Ireland state's role and responsibility over the years of the Troubles.

**Ian Paisley:** Could I briefly ask that SEFF supply us with a very quick analysis at the end of this meeting, in writing, of those 530 to 550 border corridor cases?

Q91 **Chair:** I think that would be incredibly helpful. Very briefly, Mr



Donaldson, the issues that Mr Funston raised in answer to colleagues' questions would appear to indicate more of a collaborative all-Ireland approach to this issue. Is it your assessment that the ministerial written statement aids that desirability, or does it impinge upon it?

**Kenny Donaldson:** It is a difficult question, because we are not privy to what conversations went on or did not go on between the UK Government, the NIO and the southern Government. We have heard some speculation.

Q92 **Chair:** I can help you on that. Our understanding is that there was little, if any, discussion between the Northern Ireland Office and the Government of the Republic prior to the publication of the written ministerial statement.

**Kenny Donaldson:** We have a change of Government in the Republic of Ireland, and with that comes opportunities. We feel it would be very important, at the early beginnings of that new Government, to have a statement of intent from that Government in respect of this issue, and to hear from Micheál Martin and colleagues that there is a desire and willingness on the part of the southern state to come to this issue with a generosity of spirit. The reality is that, if the Republic of Ireland state was not to engage with whatever structures are in place, or engage at a level comparable to the UK state, those we represent are going to continue to be treated in an unfair and unjust manner. This requires the absolute involvement of the southern state.

Obviously, 50 years ago was the beginnings of the arms crisis in the Republic. There continue to be issues from that period of time that have not been fully probed and answered. I remember the question asked of me by a journalist in Northern Ireland: "Kenny, there has been an inquiry. You must accept the outcome of that inquiry of that time and move on". I said, "Oh right, you mean just as people have done so in Bloody Sunday, Loughinisland and every other of those cases". If there is not a confidence on the part of those who have been harmed that justice and accountability has been served, of course we reserve the right to continue to probe those issues.

Q93 **Chair:** Would you prefer to see greater attention to the two Governments being in much closer lockstep in response to this issue, particularly in relation to your community being a border community and far more sensitive to the approaches of the two Governments?

**Kenny Donaldson:** We need to recognise that An Garda Síochána does not even have a legacy unit within its own force. The other matter that needs to be understood is that the Garda investigate the Garda. There is no independent oversight of the organisation. We want to place on record—and this is important—that our view and analysis of the Troubles is that the great majority of An Garda Síochána members, as well as the Irish defence forces, did their role and duty with honour and integrity, as



did those who served in the army, the police and the prison service within Northern Ireland in the greater majority of situations.

Q94 **Chair:** Do you think that the written ministerial statement, as it currently stands, is likely to deliver that collaborative approach between north and south of the border?

**Kenny Donaldson:** It is not there at present, because there is such limited detail. If you look at the example of the pension for the seriously injured, you might think this ironic, but we are the organisation that would be understood to have roots within south Fermanagh, where the overwhelming majority of our members would have been victims of para-terror at that stage. We have evolved into a much broader and wider organisation over the years, serving all innocents, irrespective of ethnic or religious background. Let us be straight here: any Irish citizen who was injured as a consequence of the Troubles and lives in the Republic of Ireland is excluded from that pension as it currently stands. We have called upon the Republic of Ireland state to step up to the mark and introduce a comparable scheme so those individuals are also dealt with in the way they should be. We are still waiting to hear back on that matter.

Q95 **Chair:** I really am keen to get a yes or no answer to a question that I think can deliver a yes or no answer. Is there greater merit in a uniformity of approach to this issue from both Governments—yes or no? If no, what is the merit of running a two-stream system?

**Kenny Donaldson:** I believe that there is absolute merit in collaborative approaches by both jurisdictions. I am not suggesting a single all-Ireland unit, but I believe that the Republic of Ireland needs to step up to the plate and offer something comparable.

Q96 **Mr Goodwill:** In the first session, I asked about the level of consultation ahead of the ministerial statement. The impression we got was quite clear: there was no consultation; it was a bolt out of the blue. Can I ask the question in a different way this time? What reference do you think there was in the run-up to the statement in, for example, the 18,000 responses to the Stormont House agreement or, indeed, the regular engagement that goes on at a political level locally in Northern Ireland?

**Kenny Donaldson:** I suppose the point here is that we have dissected the summary of responses to those 18,000 consultation submissions at the beginning. There are obviously very significant issues with Stormont House, as reflected in that summary of responses. There is an almost total non-acceptance of the issue of non-criminal police misconduct, the level of proof and burden of proof, and the limited amount of what exists there in order for findings—very severe findings—to be made against individuals who formerly served in the police.

There is an acceptance from those who are realists at this stage that Stormont House, as configured, is dead. It is dead. What we are now required to do is openly and honestly examine why it is dead. If people believe they can reignite that Stormont House agreement without the



support of the largest consortium of victims' organisations in the sector—23 organisations are part of Innocent Victims United, with a membership of 11,500 across Northern Ireland, the Republic and Great Britain—they are deluded. They are doing it for a different purpose if they push that agenda.

They need to engage with us more fully on what is realistic, fair and equitable and what, ultimately, is going to be deliverable for victims. What outcomes are we seeking to reach? We want lasting peace in Northern Ireland. We want genuine reconciliation, but we do not want to continue this phoney approach that has been operational for two and a half decades and that has brought us to a period of paralysis on these issues.

Q97 **Mr Goodwill:** Regardless of the dissatisfaction with the consultation, do you feel that the statement is the basis for progress, or should it be torn up and a fresh start made?

**Kenny Donaldson:** We would want to see what was behind that two-page statement. It smelt like an amnesty by stealth, effectively, and we would guard against that particular approach. My colleague made the point very well earlier that there always exists the potential for someone to explain themselves to have committed a crime or, indeed, for new evidence to come forward. That must always be on the statute book. If the UK, as a state, gets into the business of writing crimes off its statute book—and these were crimes; they were murders or killings—what message are we sending out as a nation? We do not wipe off other crimes connected with other forms of activity, so why would we do it in the context of the Troubles? Justice must prevail.

**Mr Goodwill:** That is very clear.

Q98 **Stephen Farry:** Good morning to our witnesses. Again, I put on record our appreciation for the work that SEFF and IVU do on behalf of victims. The questions are running into one another, but I want to pick up, Kenny and others, on your last comments. If you are concerned about the latest NIO statement—very clearly, you are deeply opposed to Stormont House—where do you see a consensus being formed alternatively to those mechanisms, given that there is such a diverse range of opinion among victims and bearing in mind the need for any mechanism to be article 2 compliant?

**Kenny Donaldson:** The crux of this is that we had a process in Haass-O'Sullivan, where there was quite an open door policy to victims and survivors in presenting their case and their position on these matters. We then moved to a Stormont House process where, effectively, we were locked out of that situation and where engagements were completed among politicians and civil servants. That was a failing because what was then presented was presented as a fait accompli.

The truth is—with the greatest of respect to people who are absolutely trying to do their best within the political realm—that not many people



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out there in the community would have a difficulty with the four pillars within the Stormont House agreement process, but, folks, the devil is in the detail. What was intimated at that particular time, and what that then morphed into in terms of the Bill and the associated outworkings, was a very different animal. People need to do an analysis of why and how, and what individuals were involved in that process, within the NIO and external to the NIO, who had pressure to exert at that particular time. What we have now is not something that we can buy into. Every representative within the Northern Ireland panel today, on the team, knows that. So, too, we have made that clear to the Conservatives and to Labour.

We need to get realistic now. We have put forward a paper that looks at the investigative issue, and we seek proper engagement around that matter. We have put it on record this morning that for those cases that allege wrongdoing by the state, we acknowledge that there is going to be pushback on that matter and people are not going to be happy with an internal investigation of those matters by LIB. Then we look at the framework of Boutcher, or another external, to take on those particular cases. It is there, folks, that there needs to be proper engagement around that structure.

**Q99** **Stephen Farry:** Could I come back on a couple of points? Could I ask Kenny, and indeed any of his colleagues, to maybe factor in the attitude of the police to taking on ongoing legacy cases? They themselves desire a different process to take this forward. Secondly, I want to acknowledge what Kenny has said around the four pillars of Stormont House; I think that is a useful comment. Within that context, if there was the potential for significant change to the HIU process, issues around the scope, the terms of reference and, in particular, the concerns you have raised around the non-criminal misconduct issue, do you see any possibility of that being reassessed and reoriented to address your concerns?

**Chair:** Ms Gallagher, we would be interested to hear your views from a London perspective—or a based-in-London perspective—so feel free to chip in as and when you wish to.

**Ken Funston:** Can I bring up a couple of points on that? In relation to veterans, we, as an organisation, have engaged with many veterans over the last number of years. I cannot say that I have talked to one person who was definite in their response that there should be a statute of limitations. They do not want to be equated to the perpetrators, in that they need something to stop them being investigated. In their view, which stands out in statistics, very few of them were ever involved in misconduct or serious crime. There is not that will within the veterans' community for a statute of limitations.

Secondly, within Stormont House and HIU, they talk about non-criminal police misconduct. That was written by human rights experts. That is in breach of article 6—a right to a fair trial in a public hearing in a reasonable time. We have veterans on our books who are being



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investigated over and over and over. We have one guy in particular: in 10 years he has been investigated six times. Where is the fairness in that? This is where the problems have arisen. We are seeing this now coming into Government papers in relation to veterans because of these vexatious claims and attacks on individuals.

ICIR was never fit for purpose. It did not make any operational sense to run that type of organisation alongside an investigative organisation. Then you have an investigative organisation, the HIU, which was going to have an investigative and adjudicative role all in one, so judge, jury and executioner within one body.

You move on to the police. The chief constable says, yes, he does not want to deal with legacy. He does not want to deal with legacy probably for two reasons: because he does not have the resources, and because of the potential public impact. If we deal with public impact, the PSNI as it stands has probably one of the highest percentages of satisfaction in UK police services at the present. What is it allowed to do and what is it not allowed to do? There was a question, in relation to the Jean Smyth murder, of assessing whether it had practical and operational independence. To me, that can be achieved by the Police Service of Northern Ireland so that, in fact, the Police Service of Northern Ireland can be properly resourced, with a semi-independent, semi-autonomous organisation within it—the legacy branch—that can take this on quickly, in a fair and equitable way.

I mentioned earlier about Kenova: four years on one focused investigation for over 80 investigators. We have legacy branch, which is presently working on a number of cases. If it was properly resourced, it could be up and running and doing this properly within a very short space of time. Obviously, in the present circumstances, with Covid, finances come into the equation as well. It will be much cheaper. As I say, they are ready to go. We would get away from the other logistical problems of a new police service in Northern Ireland, with firearms training, operational limitations, where are they based and many other issues. We have legacy up and running.

**Kenny Donaldson:** For the record, I want to clarify that, when we talk about the four pillars, I refer to justice, truth and information, oral history and reconciliation. No one could have a difficulty with those four concepts, but it is with the actual detail and content contained within the proposals.

Q100 **Caroline Ansell:** I wanted to ask about balance and whether you thought the current proposals struck the right balance in setting the threshold for those cases identified to go forward for full investigation.

**Kenny Donaldson:** I will bring Iona in on that particular point, and also from the perspective of GB killings and how they are not incorporated within the current apparatus.



**Iona Gallagher:** There is an issue with the acknowledgement over victims in GB. Working in London, I work directly with those victims, and but for SEFF, they have no other source of support. They have no services they can engage with other than us. Considering the bringing of cases and, as was mentioned earlier, the issues with limitation, we can look at the case of *Young v Downey* that was in the High Court in December 2019. I am sure most of you will be aware of it. For those of you who are not, this concerned the Hyde Park bombing in 1982. The case was brought by the claimant against Mr John Downey for the unlawful killing of her father, and she won that case.

However, that case illuminated a number of issues that GB victims face. There are two primary issues. First, there is one surrounding legal aid. In that case, the claimant claimed legal aid on five separate occasions and was refused. That case highlights the issues that GB victims have not only in accessing services but also in seeking legal redress and justice through the courts. Secondly, prior to the civil case, the criminal case collapsed in 2014. That highlighted an issue that was referred to as a technicality, which was that Mr Downey was in possession of an on-the-run letter. While the outcome of the civil case in 2019 was successful—

**Chair:** I am going to interrupt you. I am receiving some advice. The Downey case is sub judice so I do not want us to go on to that territory, please. Let me go back to Caroline Ansell to see if she wants to tease out any further information, but I am not going down that road.

Q101 **Caroline Ansell:** Taking aside the case, were there any more general points you wanted to make, Iona?

**Iona Gallagher:** Yes. Generally, GB victims face two primary issues: first, seeking legal aid and being successful in their applications, and, secondly, seeking support. Many of the victims I work with directly in GB say that SEFF is the only organisation that has contacted them, has sought them out and works with them directly. I believe they would be the two main issues that GB victims face.

Q102 **Chair:** Could you give us an idea as to the number of people in GB you are either working alongside or who may have the potential to seek your services?

**Iona Gallagher:** There would be around 150 victims and survivors in Great Britain. I would engage directly and often with around 50 to 60 of them.

**Kenny Donaldson:** Iona has made the point well about the civil court opportunities. There is such a high bar for victims in GB to reach in order to even have the opportunity in that situation. As a state, we obviously have situations where an on-the-run letter, which subverted the criminal justice system in the first place, was able to be produced and that criminal case collapsed. Then we had a situation where those same families were forced to be beggars for not one, not two, not three, not



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four, but five occasions before they were granted legal aid. That is the situation.

**Chair:** I think that point is made: access to legal aid in order to bring prosecutions.

**Kenny Donaldson:** The criminal process, in the context of what Stormont House laid out, related specifically to killings that were committed in Northern Ireland. Murders that were committed in the Republic of Ireland and in GB were not part of that process. What redress is there for individuals who were murdered in GB or the Republic of Ireland on these matters? Again, there was no joined-up approach across the jurisdictions.

Q103 **Claire Hanna:** Thank you, Kenny, Ken and Iona for your engagement and for the work you do throughout the year. We are hearing clearly that you think the principles of Stormont House are solid, but you have concerns about the delivery. You have raised, rightly, issues of disclosure and the trauma of the relentless and sustained border aspects. I know that forms a big part of the work you do. Based on what you have been able to see from the Government proposals, are there ways that the 18 March proposals can be made article 2 compliant? I agree with Mr Farry in that I think the PSNI has indicated that it does not believe it can successfully manage legacy inquiries, and it wants to police the present. Do you have thoughts on a compromise around that?

**Kenny Donaldson:** I suppose the first point—I know Ken has touched on this—is that we have always said that it is not for the Police Service of Northern Ireland or for any of its chief constables, whether present or past, to indicate that they do not wish to take on legacy. It is not their call to make. If it is a matter of resourcing not being available to them to do so, that is an issue they need support with. We do not accept and do not agree with them making a political statement about their unwillingness to take on the past.

The PSNI was an evolution from what had gone before. It has now secured the support of all political parties represented in the Northern Ireland Assembly and Executive. Are we really saying that we have photographs of people standing and encouraging people from across our community to join that police force, yet that police force is not fit for purpose to examine our past? We do not accept that. Following the Jean Smyth case, a number of changes were made internally within the PSNI. We would ask for a reappraisal of whether they are deemed now to have the operational independence to carry out work connected with the past. We have yet to see that advice, unless any of you within the Committee have done so.

Q104 **Claire Hanna:** What is your assessment of Operation Kenova?

**Kenny Donaldson:** We have had some contact with it. The particular concentration, if you want to call it that, of cases is not within our immediacy, where our core base is, but we have engaged with Operation



Kenova. There is positivity around the process and how people were dealt with in it. We await outcomes. The process may be improved from what has gone before, but outcomes are what victims and survivors are seeking, and outcomes have been very thin on the ground.

We have had a situation since 1998 until now: can anyone within the Committee name to us those individuals who were onside with the provisional republican movement, or onside with the loyalist perspective on these issues, who have been successfully prosecuted and put to book in terms of imprisonment? No. We have had people who were offside with the peace process who have been served up as almost token gestures. We want a transformation around all that.

A matter that is of huge concern to us is that 3,000 weapons exist in a lockup in Northern Ireland concerning the past and the Troubles, and they are being used in a reactive way. When the police—the current LIB—come to those particular cases, they then check out the ballistics and so on. A focused piece of work needs to be done on that weaponry now so that all those matches and linkages can be in place, if we are genuinely concerned about actually serving justice for people. If we are simply going through the motions, people need to be honest and say that.

Q105 **Claire Hanna:** You have referred to the need, in your view, for a holistic and comprehensive approach rather than case by case. How do you think themes and patterns can be reflected if we move away from Stormont House?

**Kenny Donaldson:** Our core grievance, if you want to call it this, with Stormont House is that it is in reverse. In a sense, we have always argued that in the absence of the likelihood of large numbers of cases moving towards a situation where custodial sentences are served—if you want to call it this, the raw and understood form of justice—acknowledgement must be there for victims and survivors. What we need at the absolute start of this process, which is what should have come between 1994 and 1998, is an acknowledgement of the wrong of violence across the board, carried out by republicans, loyalists and those members of the forces who dishonoured the code and engaged in a criminal act.

That is the foundation stone. You have that in place, and the rest of this is built on that firm foundation and goodwill will result. We are the core organisation in Northern Ireland that says that publicly. You are going to hear from victims' organisations and they will not acknowledge the wrong of violence across the board. That is where the biggest problem is in all this.

Q106 **Claire Hanna:** We have heard from victims' organisations that very much do acknowledge wrong across the board. Kenny, I agree with you on the concept of virtuous circles. If that acknowledgement comes, good things will flow from it, but I believe some structures will be required for it. I do not know that we have found much better than we will in Stormont House.



**Ken Funston:** Claire has said that SEFF agrees in principle with Stormont House. Actually, in principle, we do not. There are serious issues within Stormont House. The whole structures do not make logistical sense. HIU working alongside ICIR does not make any sense whatsoever. We think the oral history archive has merit but must be a standalone organisation, sitting outside any investigatory or adjudicatory board. The last structure, looking at the themes—the IRG—possibly has merit somewhere down the line, but, in principle, we do not agree with what is in Stormont House.

On the Government proposals in March—the two pages—I understand some of the things they are trying to say, but the language is very clumsy when they talk about swift investigations. Every legacy investigation is subject to a review; not a review the way the HET did, which was totally unfit, but a proper serious crime review. Any serious crime review cannot move forward to an investigation unless there are new lines of investigation to be pursued. Any detective or anyone with understanding of the police service will know that. Ultimately, you cannot do a full-blown investigation in every case. That is impossible for 3,500 cases. That is absolutely impossible, but they merit a serious crime review in each case.

Q107 **Chair:** Why is it impossible?

**Ken Funston:** Kenova has been going for four years. We have not seen what has come out of Kenova at the other end, as of yet. That was 80-plus detectives focused on one line of investigation. If we look at 3,600 deaths and put a team on each investigation, unfortunately—and this is a sad thing to say—the older generation will have gone, and my generation will probably be past it as well. It is going to take many decades, and that is the problem. We need to look at what is in there, in the vaults.

Q108 **Chair:** It is not impossible. It might be undeliverable as a result of lack of resources, but it is not impossible.

**Ken Funston:** It is not impossible, no. We need to have a team in place now to look at what is in the vaults, and what is in there that will give us potential investigative opportunities. In some of the cases, I myself am finding nuggets that are available in there, in Seapark, where the vaults are within the PSNI. Stuff is not coming out because we are at stalemate. We need to be getting in there now, starting to look and see what is available, and getting on with it, not waiting for years.

Q109 **Chair:** Is it fair to summarise your view that you think that the process is being defined by resource and resourcing issues, in terms of both manpower and pounds, shillings and pence, rather than what is actually needed and then backfilling to deliver what is needed? In a nutshell, that is your position, Mr Funston.

**Ken Funston:** It is, to a certain extent. But in reality, in Seapark in County Antrim, where most of the evidence is held, the PSNI do not even know what is in there. Nothing is properly filed away. We are finding things available in cases today that have been lying there for 20 years



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and nobody knew existed. We need to get in there now. It is no use waiting and going over and over this for another five years, trying to get an HIU on board, when we have a police service that could be properly resourced, and could get in there now and get on with it. The PSNI legacy branch has around the same strength as Kenova. It can only do a few cases per year—I mean very few; we are talking about ones and twos.

Q110 **Chair:** It is quite a bald statement to make that the PSNI does not know what is in there.

**Ken Funston:** I think it is a fair statement.

Q111 **Chair:** It may very well be fair. I was going to ask you if you could substantiate it. You have referenced one case, but how does that take you to the fact that they do not know what is in there, as a bald statement?

**Ken Funston:** Let us put it this way: I know of a number of cases where there is forensic evidence available and it has not been unearthed. It has not been brought out because, at the present time, the resources are not available to do it.

Q112 **Chair:** How do you know that and the PSNI does not?

**Ken Funston:** The PSNI does know that, but it does not have the resources to deal with it. That is the problem. If we get the HIU in another form, or the LIB as it now stands, properly resourced, they can get in there and get on with this.

Q113 **Chair:** I am afraid you have now managed to confuse me. Is it that they know what is there but they do not have the resource to do anything with it, or they do not know what is there? If I have heard you correctly—my apologies if I have misheard you—I think you have managed to say both within the last several moments.

**Ken Funston:** I would suggest there is a combination of both. There are cases that have potential investigative opportunities, but they do not have the resources to deal with them. There is other stuff in there that has not even been unearthed at this stage.

Q114 **Chair:** You are able to substantiate that latter statement.

**Ken Funston:** Yes.

**Chair:** How?

**Ken Funston:** I am privy to a few things that were done within the police service in relation to one case in particular. The evidence was supposedly lost and was found by chance a number of years later and brought to the fore, which has resulted in the case moving forward. That is one in particular.

**Chair:** That is interesting.



Q115 **Mary Kelly Foy:** We have heard quite clearly that you are unable to buy into the proposals in their current form. Given that the statement described that this new system would be one of putting the victims first and you are a voice of the victims, can you clarify and confirm what changes you think are needed to put those victims first?

**Kenny Donaldson:** That is a fair question. This language is often trotted out: victim-centred approaches, inclusion and those nice buzzwords. I would first reflect on the point made at the start of this session around the definition of victim. People need to be clear what the outworkings of the 2006 order have been. We have a victims' forum in Northern Ireland, where perpetrators—people who had committed murder—sit on that forum at times. That had the impact of excluding an entire constituency of victims and survivors who could not sit on that forum alongside people who were perpetrators. Imagine if we had a forum for victims of domestic violence or burglary, but that forum was also to comprise the people who committed the crimes. It would be an absolute nonsense. It would not happen, but it happens in Northern Ireland.

Whatever you say about what would now transform things, acknowledgement at the start of this process is the first absolute must. Then, as we have alluded to with Seapark, if the material is there, get it properly co-ordinated. Get it properly tracked. Get that material and evidence on file and then we can examine it while proactive policing can happen, in terms of holding accountable these crimes—not reactive policing, where people almost have to stumble on something for a line to be taken forward. That requires leadership. It requires a political will to look at these issues properly, not scurrying over them and saying, "Let us do something for victims around their mental health and well-being. Let us do something for them on pensions".

The core issue is the sense of injustice that people feel within this society—that right has not been done. They know that it may not result in people going before the courts and into prison, but they will not rest with any sense that the violence of the Troubles was in any way justified, because it was not. This state must stand over that and provide for that apparatus.

Q116 **Mary Kelly Foy:** Finally from me, you have made your views, your thoughts, the wishes of the victims and your dissatisfaction with these new proposals very clear. Why do you think the Government have moved focus and changed their proposals?

**Kenny Donaldson:** It is a good question, but I suppose, in many ways, we are not yet very clear on what they have changed to. Some would use the terminology: was that two-page document a fishing expedition? Throw out some terms and phraseologies that are departures from what has gone before to see where they would land, in terms of thinking and reaction from groupings like us.



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The truth is that we are not going to give a really detailed view on those proposals until we see the content that exists behind them. Otherwise, in many ways, we are not doing our actual role or service to the victims and survivors we represent. We want significant dialogue, and an increase in that, with the Northern Ireland Office and the UK Government around these matters. See us as your partners in delivering this issue. Do not see us as the difficult children in the room screaming. We are part of your solution to get this issue resolved. You will not do it on your own minus our involvement.

Q117 **Chair:** Going back to the discussion we had about the analysis and investigation of armaments held, and the point that you made very clearly about the PSNI not being able to abdicate from one area of policing or another, would there be any merit in having another constabulary peer review and undertake investigations into the stash?

**Kenny Donaldson:** We would be open to a conversation around those matters. We feel that the answers exist internally with policing and there are enough mechanisms now to ensure the proper oversight and independence of operations, if the will is there to find them.

Q118 **Chair:** It is more important that it is done and done properly, rather than by whom it is done.

**Kenny Donaldson:** Yes, certainly. This has been our focus with the latest document: we believe the competency exists within the PSNI and LIB, with a strengthened form, to do this in a timely and financially achievable manner, and to start relatively quickly. If we are talking about building any external independent police force, because that is what it is, it will take years to get that off the ground to begin with, let alone then go through those cases one by one. It is a nonsense.

**Chair:** On behalf of the Committee, can I thank you, Mr Donaldson, Mr Funston and Ms Gallagher, for joining us and for your evidence before us this morning? If we have any further questions, we can always communicate them in writing. Thank you for your time. Thank you to my colleagues for joining us.