

Northern Ireland Affairs Committee

Oral evidence: Addressing the legacy of Northern Ireland's past: the UK Government's New Proposals, HC 329

Wednesday 15 July 2020

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

Questions 119 - 153

Witnesses

I: Raymond White, Chair, Northern Ireland Retired Police Officers Association, Chris Albiston, Member, Executive Committee, Northern Ireland Retired Police Officers Association.



Examination of witnesses

Witnesses: Raymond White and Chris Albiston.

Q119 **Chair:** Welcome to this session in our inquiry addressing the legacy of Northern Ireland's past and the UK Government's new proposals. We have an hour for this session. In a moment I will ask our witnesses to introduce themselves for the record. Could I urge that we have short questions and short answers, as we have a lot of ground to cover?

This is a bona fide parliamentary Select Committee meeting, irrespective of where we are sitting physically. To that end, I remind all hon. Members and witnesses that the matter of criminal charges against Soldiers F and B, Dennis Hutchings, David Holden, Soldier A, Soldier C, John Downey and all matters associated with the Ballymurphy inquest are sub judice under the terms of the resolution of the House. Therefore, references should not be made to the detail of the alleged offences or other aspects of the cases that remain before the courts. Mr Beech, our Clerk, and I will be incredibly vigilant to make sure that this Committee remains on the right side of the sub judice rules.

Witnesses, would you please introduce yourselves for the record, not exactly by name, rank and number, but by name and organisation?

Raymond White: Good morning, Chair and Committee members. My name is Raymond White. I am a retired assistant chief constable. I served in both the RUC and the PSNI. I currently chair a small working legacy group on behalf of the Northern Ireland Retired Police Officers Association. We are a welfare body and, by and large, we address just welfare issues. Because of their magnitude, we have had to engage in answering and addressing legacy matters. That is what we have been doing for the past 15 years, since I retired.

Chris Albiston: Good morning, Chair. Good morning, Committee members. My name is Chris Albiston. I served in the Metropolitan Police in London and then in the Royal Ulster Constabulary. I was then commissioner of the United Nations Police in Kosovo, and then I returned to complete my service as an assistant chief constable in the Police Service of Northern Ireland. I sit with Ray on the committee of the Northern Ireland Retired Police Officers Association.

Chair: Thank you very much. Forgive me; I should have said this earlier. Do any colleagues have any interests to declare for either of these sessions?

Bob Stewart: I would like to declare an interest. I have taken part in meetings of Justice for Northern Ireland Veterans. Of course, I have served in Northern Ireland for many tours, so bear that in mind when I speak.

Q120 **Chair:** Thank you very much indeed. That is appreciated.

Mr White, give us a little sketch. Paint a scene. Tell us what it was like to be wearing uniform in the RUC during the Troubles. Give us a flavour. We



are a mixed Committee with a whole range of age groups, knowledge and experience. It would just be interesting, before we do the deep dive into questions, for you to tell us what it felt like.

Raymond White: I joined the police service in 1965, so I had the pleasure of policing a very quiet rural environment, where if a murder occurred it made national headlines. In fact, for some years we did not even have a murder in the 1960s. By 1969, we were beginning to have to police very large civil rights parades, meetings and protests. It was very much following the flavour of what was happening throughout Europe, where there were protests and demonstrations in France and elsewhere. Civil rights issues were big in the States as well, so a lot of that overflowed into the Northern Ireland scene.

The RUC, at the time, was a very small police service. We had only 3,200 as the established figure, although I do not think we were even at that. You can imagine, more or less, the explosion there was in terms of public order issues, then followed up in the 1970s by the onslaught of violence. We were at the forefront of it all. There was no template that we as a police service could take down off the wall and read, to see how to deal with a growing armed conflict within the boundaries of the United Kingdom. In that sense, we were breaking new ground the whole time.

As regards us being a police service, we had a very small intelligence unit of less than 100 people in Special Branch, and our CID was about 200 strong. You can imagine the very small beginnings from which we had to come, to grow ourselves into a police service capable, in the mid-1970s onwards, of addressing, in conjunction with the military, the issue of armed conflict within our boundaries.

Q121 **Ian Paisley:** Raymond and Chris, thank you for attending today, and for presenting what I hope will be a very useful session for us. At the outset, could I say a general note of thanks for your years of service, both to you for protecting the entire community of Northern Ireland and to your colleagues in the organisation you now represent? Could you relay back to them the message that many people are very grateful for the sacrifice that your members have made? As an opening question, what lessons do you gentlemen feel need to be learned from previous attempts at addressing Northern Ireland's past?

Chair: Who wants to wrestle with that first?

Raymond White: We have had 20 years now, from the establishment of the police ombudsman's office, of looking back at how we address historical investigations. The first thing that we have to realise is that the vast majority of the matters that are now under investigation or have been under investigation occurred in the early 1970s. In that era, the issue of human rights and all the human rights legislation that we have now was there, but it was not incorporated into the law within the United Kingdom or Northern Ireland as such.



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We were dealing principally with legislation that flowed from the common law and from the Criminal Law Act 1967, which allowed for the use of reasonable force. A lot of the issues that now arise, such as proportionality, legality and necessity, were never part of the operational consideration of matters. Having personnel who are now fairly well imbued with the issue of human rights legislation and what is required of policing today, there is a conflict as to how you transport yourself back to looking at crime scenes and issues that were there in the early 1970s, and how you overlay that.

This is part of what has been missing: the contextualisation of what actually was armed conflict within the boundaries of the United Kingdom, and how that impacted on the capacity of the police to manage investigations in that environment, to make crime scene investigations and to deal with witnesses from communities that were conflicted in themselves about even contacting the police. A lot of lessons have to be taken on board in terms of context. I was happy, when I read the draft legislation, to see that context and memory are two of the issues that are now intended to be addressed by the Government in this new legislation.

Q122 Ian Paisley: Looking back at the past and at past actions via the standards of today is one lesson that we need to take on board in how we address that. Chris, have you anything to add about the lessons that need to be learned from previous, probably failed, attempts at addressing legacy?

Chris Albiston: Yes, I endorse what Raymond has said. With the greatest respect, I would ask this Committee to hold our Government and the Northern Ireland Office to account, to demonstrate that they have learned the lessons of the failures of the last 20 years. The way that I would suggest this be done is that the Committee seeks to distinguish between the roles of investigation and the roles of adjudication. In this, they have some help from the recent judgment of the Appeal Court.

I will not take up the Committee's time by rehearsing what the Appeal Court judges said in relation to the association's judicial review of Mr Maguire's investigation and report on the Loughinisland case. A number of very helpful remarks were made by the judges, which indicate that for 20 years we have had a system for investigating the past that has confused the roles of investigation and adjudication. Indeed, two or more ombudsmen have taken it upon themselves to make adjudications, which the judges now say they were not entitled to make. In some ways, the association has only itself to blame for not tackling this issue earlier.

In the early days, we mistakenly thought that the issue we needed to address was the inept nature of the ombudsmen's investigations and the erroneous conclusions drawn from those inept investigations. What we should have been doing from the outset, which we only did more recently, was to draw attention to the fact that the ombudsmen had no power to make these conclusions and public statements, which were based on inept investigations. It does not matter whether the investigations were inept. The judges have now agreed with us that the pronouncements of guilt by two ombudsmen were actually ultra vires.



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In the future, we need to develop a system that holds to the principles of justice that have been developed in this country over centuries. That is that there is a system of due process. For example, we need to look at the history of the HET, the police ombudsman's office and the legacy branch of the police, identify the things they did well and the things they did not do well, and make sure that we do not make the same mistakes again in 2020, as we set off with a new opportunity.

Q123 Ian Paisley: Do your officers feel betrayed by how the legacy issue has been handled in the past?

Raymond White: The officers are retired members. As Chris has said, the outcomes of investigations, rather than being pronounced from the floor of a courtroom, were findings and adjudications announced from a media platform, with no opportunity for the retired officers to challenge what was being presented as evidence, because it had never been through, as Chris says, a due process where those accused had the right to challenge what was being said. We were being tried almost in absentia and pronounced to be guilty to the public at large.

Ian Paisley: I get that point about process. As it was highlighted, it will be very useful if our Clerk could supply us with the Maguire judgment, which we should all read.

Chair: That would be helpful.

Q124 Ian Paisley: Your officers and former officers who have lived through this now have the police service looking back on it. Some of them could be subject to investigation. Do they feel betrayed by how legacy was handled?

Raymond White: Yes, collectively there is that feeling of having subjected themselves to nearly 20 years of re-examination or participating in inquests, public inquiries and investigations for the ombudsman's office. A true picture of the role of the police in the past has not been presented. The other aspect of it is that a lot of officers are still under investigation, 15 or 16 years on, and no conclusions have been arrived at.

Chair: Bob Stewart, could you mute yourself and turn your video off, please, if you are going to take a telephone call? Sorry, Mr White.

Raymond White: Individual officers, having participated in investigations, have found their article 6 and article 8 rights—the right to a private life and the right to a fair hearing and trial—massively abused. They have been left in limbo with no conclusions being arrived at. They have been kept under investigation. In fact, I can think of about four officers who are into their 15th year now and those matters have not been closed.

Take those matters together with the misrepresentation of policing and the inability to get the policing picture across. Quite often, when we provided an answer, if it did not seem to fit with the narrative that the ombudsman's office and others wished to present, it never made the publication. Those



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things collectively have left them feeling an element of betrayal in the systems.

Q125 **Ian Paisley:** Chris, you nodded as well. Is there a sense that the history of what your officers did on the ground is being rewritten by all of this?

Chris Albiston: There clearly is. Members of the Committee will be better placed to judge than I am, because you are professional politicians and you understand what politicians of some parties are trying to achieve by the manipulation of history. That is done by the manipulation of legacy institutions, which seem to our members to be designed not to deal with historical crimes but to catch out those police officers who may be identified as having failed in some way and to draw the darkest possible picture of their conduct. All the retired police officers I speak to share this view.

Q126 **Chair:** For the record, I want to establish two clear things, which hopefully will just be yes-or-no answers. First, Mr White, if a former police officer did wrong and that wrongdoing comes to light, they should be prosecuted to the full extent of the law.

Raymond White: That is correct.

Q127 **Chair:** There should therefore be no general amnesty, drawing a line and saying, "That was the past, and this is now; let us just move on and forget."

Raymond White: No, we do not subscribe to an amnesty. We would say that if a substantive criminal offence has occurred, or if there is reasonable suspicion that a substantive criminal offence has occurred, due process should be used to investigate that matter. That officer or retired officer should be entitled to the legal protections of human rights legislation and the provisions of PACE. That matter should be investigated to the full.

What we object to are investigations that use police powers to investigate matters that are not of a criminal nature, where no substantive offence is alleged and where the investigation, by and large, appears to be based on nothing more than an assertion or belief that something called collusion has occurred, or that some alleged person is being protected because he may or may not have been an informant.

Q128 **Chair:** I am conscious of time. As a very quick question, who should decide whether a prosecution should be embarked upon?

Raymond White: The Public Prosecution Service stands as an independent body that decides upon that.

Q129 **Chair:** Should there be a right of appeal from a third party if a decision is taken to prosecute or not to prosecute?

Raymond White: That would be a matter to be addressed to the Public Prosecution Service.

Q130 **Chair:** Is it something you would like to see?



Raymond White: Certainly, and the precedent is already there, in that the Public Prosecution Service has met with those who have made criminal complaints in the past.

Q131 **Stephanie Peacock:** I want to begin by echoing the thanks that the previous speaker gave for your many years of service. Do you think the Government's new proposals provide a better way forward than the Stormont House agreement Bill?

Raymond White: Yes, the consultation that followed the publication of the draft Bill has highlighted for the Government that what they were proposing in the 2018 Bill was basically unrealistic. In fact, we would argue that it bordered on being unlawful in certain areas, with the retrospective nature of what was being proposed in the Bill. We would say it was, on balance, within the provisions, in that people were reading into it a presumption that the administration of justice had to be victim-centred. We believe that put in peril the whole principle of equality before the law.

The other big issue I have already addressed. That is the fact that it did not recognise anywhere within the principles propounded that armed conflict had taken place and that we had suffered very substantive acts of terrorism throughout the three decades of the Troubles. If you do not take cognisance of that, how it impacted on the courts, how it impacted on the enforcement of law and order, how it even impacted on communities, you are not affording the legacy dimension of the 2018 draft Bill to properly address the magnitude or the nature of the problems that we were dealing with.

Q132 **Chris Albiston:** There is very little that I can add to what Raymond has said. The difficulty with political attempts to resolve issues in Northern Ireland is that there are very clear lines of division within society, which do not need to be rehearsed here and fly way above the heads of retired police officers. They colour the way in which retired police officers are treated. We want fairness and justice of the type that is applied to everybody else.

Chair: Gentlemen, there is clearly a role here for the Republic. There will be instances where the Republic has a role in bringing people to justice, providing evidence where bodies were dumped on both sides of the border, et cetera. In order to get new proposals working and to command trust, how important is it for the Government in Dublin to be in lockstep with the UK Government on their new proposals, vide the written ministerial statement and subsequent remarks?

Raymond White: It is tremendously important. It is an area that does not seem to have been addressed, although I understand that the Government in the Republic of Ireland have issued more or less a statement saying that they would abide by international agreements where requests for information were made. That is not a proactive approach. If we need it this side of the border, we need exactly the same provisions to be made south of the border. How do you deal with murder situations where a murder occurred, the crime scene was in the south of Ireland and the body was



dumped at the border? We have the big issue that the whole arsenal of the Provisional IRA was based in the Republic of Ireland. All the engineering that went on—

Chair: Mr White, in the interests of time, you have answered the question and I am grateful to you for that. We have about 32 minutes and we are only on question 2, so you will appreciate if I repeat my request for very short questions and answers without a lot of background, if possible, please. I look for no greater exponent of that than Colonel Bob Stewart.

Q133 **Bob Stewart:** I am so sorry for that telephone call. Everyone knows it was very important, but I am okay, thank goodness. Can I just say that I have the deepest respect for the Royal Ulster Constabulary and the Police Service of Northern Ireland? My question is very short. What steps should the Government take to prevent unwarranted, repeated investigations of former policemen, policewomen and security force personnel? Maybe I will ask Chris first. We have to have it short, I am afraid.

Chris Albiston: I will be very short, Colonel Stewart. Please look at the comments in our written submission. We draw attention to the ideas floated by the Secretary of State in relation to renewed investigations. To put it shortly, we believe that if you are going to have either a new investigation into an old matter or an investigation into an old matter that has not been investigated before, there should be some clear evidence, which is credible and compelling, and which may at first sight lead to the prosecution of somebody or to the overturning of a previous judicial decision, be it in an inquest or other non-criminal body.

If that is the threshold that is required, I go back to what Raymond said earlier, and what we have said, incidentally, to Eames/Bradley, to Haass and to this Committee on previous occasions. If there is evidence that somebody has committed a criminal offence, they should be held liable for that.

Raymond White: The Government's proposals are fairly realistic. The only thing we would say to them is that, in trying to draw a red line under an investigation, they need to go one or two steps further. Their criteria should show that historical investigations are always open to investigation, but they should widen their declared principles at the moment to allow for a focus beyond simply assessing information for its capacity to lead to a successful prosecution.

It should be widened to embrace new, fresh evidence or material for its capacity to undermine the conclusion reached earlier in conclusive investigations or to allow an earlier inconclusive prosecution to be investigated further. That small adjustment should be made, along with a good definition of what constitutes new, compelling evidence, that being evidence that the courts have accepted raises a plausible or credible allegation, a piece of evidence or item of information that is relevant to the identification and eventual prosecution or punishment of the perpetrator of an unlawful killing.



If the Government do that, they can rest their case to some degree. The courts have already said that new material emerging should be sufficiently weighty and compelling to warrant fresh proceedings and must, in doing so, satisfy the tests of genuine interest and the convention rules. If they take themselves into that territory by going that wee bit further, from what we can make out from the proposals at the moment, they will be fairly well safeguarded by what the European courts and everything else have said is a reasonable way forward for investigation.

Q134 **Chair:** On the back of Mr White's answer to Mr Stewart's question, the bit about new evidence and compelling new evidence is readily understood. Do you have a thought or observation on where the contemporary investigation was deficient, setting aside the evidence, but where a very cursory investigation took place. We have heard in previous sessions of half-hour desktop investigations: no case to answer here. There may not be any new evidence, but to ensure that people are convinced justice has been done should a deficient investigation at the time be reviewed?

Raymond White: Yes, very much so. Everything that has been there in relation to an unlawful killing needs to be reviewed. That review in itself cannot finish at an assessment of just the evidence that is on the table. If families and others believe that there is fresh, creditable evidence to be produced, that needs to be embraced as well. The experience of the legacy investigation branch of the PSNI is very proactive in looking in all corners for where other evidence or fresh evidence may be found.

Q135 **Claire Hanna:** Thank you to both of the witnesses for engaging with us. When did you first hear or see the contents of the proposals that the Government brought forward in March?

Raymond White: As for every other citizen, it was a statement issued or read out in the House. That is really what we are working off. That is why, as you will see in our submission, we have acknowledged that there is a shortage of the detail that you would actually see in a draft Bill. The broad principles that were enunciated are what we are going forward with.

Q136 **Claire Hanna:** Are you aware of a Home Office-led working party taking forward the proposals? Have you been consulted by it or asked to contribute to it?

Raymond White: No, not on this occasion. During the drafting of the 2018 Bill, we engaged with the NIO in relation to submissions to it, but we have heard absolutely nothing in relation to any revised draft Bill.

Q137 **Claire Hanna:** In a previous answer, you talked about context and memory. The concepts of themes and patterns have come up earlier in our inquiry around the model agreed at Haass-O'Sullivan to allow for proper consideration of, for example, the IRA campaign against border areas or the very high toll that RUC reservists bore. I know there is nothing in your submission about themes and patterns. Do you think that they should be incorporated into proposals? If so, how do you think that could be done?



Raymond White: You can get ahead of yourself in looking for patterns to investigate. Those matters are further down the line. The issue at the moment is to address the individual incidents to the satisfaction of the majority of those who are victims, survivors and things of that nature. Patterns of themselves can be investigated, but it is very manpower intensive. As you know from your own experience, if you identify a pattern on one side of the community, you almost have to identify a pattern on the other, so there is this feeling of investigative balance going forward.

Q138 **Claire Hanna:** It links more to the concepts around the oral history archive and allowing victims to tell their stories. Do you support the themes and patterns models as outlined in Stormont House?

Raymond White: As an association, we have not looked at the themes and patterns thing very heavily. We have been concentrating on the legal and investigative side of things. We welcome the shift in emphasis in the draft issued by the current Secretary of State, which indicates more of a drive now towards trying to balance the provisions of investigation but at the same time providing for a lot of information gathering. We have been trapped in trying to rely on the legalistic investigative process as a mechanism for producing facts for families and things.

I am not at all sure that the two systems are compatible in that respect, in that criminal investigations have a very clear pathway to follow in terms of evidence that is adduced and the way it is handled and recorded. That does not sit quite comfortably with the issue of reconciliation through the finding of facts and provision of information to families. The two things, we believe, could be separate processes.

Q139 **Claire Hanna:** In your submission, you talk about a PSNI in-house model. Does that mean you do not endorse the Operation Kenova model? Would you be able to give me an assessment of how you think the Operation Kenova model is going, even though it is a work in progress?

Raymond White: You are doing a bit of an injustice to the legacy investigation branch there. A lot of what is reflected in Kenova is not unique in terms of policing. It is exemplary in terms of what you would call the special circumstances of the Kenova investigation. If you look at the legacy investigation branch—I do not know whether through the PSNI they are giving evidence to you—they have in place guidance for families; they meet with families; they have liaison officers; they have conflict of interest protocols in place. All the things Mr Boutcher identified as a need within the Kenova investigation are, to a large degree, reflected in the criminal processes that the legacy investigation branch takes forward. If there is any need to augment what they are doing, we believe the opportunity is there to do that.

Hence we said in our submissions to you, “Do not just throw out the legacy investigation branch or even the police ombudsman’s office.” All is not broken. With the proper investment of manpower, time and money, we could continue doing, through the PSNI’s legacy investigation branch, the



very work that needs to be done now, rather than stopping everything and trying to create a whole new historical investigations unit to take matters forward.

Q140 Claire Hanna: Whether or not it is broken, based on the feedback from victims' families about Kenova and the new information that appears to be emerging, it seems to be working very well. Just to clarify, do you believe that Kenova is working well, regardless of your views of other models of investigation?

Raymond White: Yes, I believe so. I have spoken with Mr Boutcher in respect of the progress of his investigations. But you are almost in the position that the National Institute for Health and Care Excellence is in when a new drug is revealed: you can afford the Kenova set-up, with its external oversight, its governing body, its legal counsel and everything else, for very special investigations, but when you try to roll that out to embrace the 1,100-odd cases that we believe the legacy investigation branch has, and the 300-plus cases that the police ombudsman would claim to have, can you afford what Kenova actually is?

Kenova's costs at the moment, as far as we know, run roughly at £6 million a year, and it has not by any means concluded its investigations; it is an extrapolation. These are the two things that were missing from Mr Boutcher's submission. How do you extrapolate it out to embrace the manpower you would need? He has 72 officers at the moment. Some of them are retired personnel who have been re-employed. Others are seconded from police forces in England and Wales. That is to address just a number of cases that Kenova has under its umbrella. If you take that and try to replicate it across the board, where do you find the people to populate that? How do you fund it and everything else?

Given the costs that the Government will face post covid-19, the manpower factor and the cost factor were the two issues that I would have liked to see in Mr Boutcher's submission, if you were to use the Kenova approach as a template for looking at how we should structure an HIU for the future.

Q141 Claire Hanna: The manpower issue is one of the reasons that the PSNI has indicated that it does not want an in-house model. As you say, this is resource-intensive work and they would prefer to be policing the present. Your submission is warm about the March proposals, but it also says that there needs to be equality before the law. Would you not agree that, if these proposals are translated into law, they would benefit the paramilitary just as much as they would the police officer, the soldier or the MI5 handler?

Raymond White: The paramilitary person is as entitled to justice as anybody else. I do not see the proposals as favouring anyone in that respect. To go back to what the Chair said, if we are investigating allegations of a substantive criminal offence, it does not matter whether you are a police officer, a soldier or a paramilitary; you are entitled to have those matters investigated under the provisions of PACE and for



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prosecution to be brought forward, if it is in the public interest and the weight of evidence is there.

Q142 **Claire Hanna:** Kenny Donaldson from Innocent Victims United told us two weeks ago in our inquiry that he thought the proposals were amnesty by stealth. Do you disagree with that assessment?

Raymond White: I do not read into it that it is amnesty by stealth in that respect. The matter can be taken forward on the basis of what is there. It is realistic. The proposals are trying to address through the criminal justice process those issues that have a reasonable prospect of going forward, without having everything thrown into the criminal justice pot to be investigated by somebody because that is the only mechanism of taking things forward. We are looking at information gathering and other mechanisms for allowing victims to tell us the impact that the Troubles have had on them and to meet their information requirements.

If you examine how victims per se came about, there is a certain presumption at the moment that all victims are one and the same. If you look at how victims actually came into being, for the 1,000-odd members of the security forces, there is no great need for us to be told why we were victims. We were wearing uniform and we were deemed to be legitimate targets, and therefore we were shot. Unless you are coming to me or my relatives, telling me who the perpetrators were and giving that sort of information, you are not really advancing me in terms of truth, information, disclosure or anything else. We know why we were picked out as victims. You have to accommodate a lot of people who have come to terms with things and basically just want to get on with life.

Chair: In the interests of wanting to get on, I am going to turn to Mr Campbell.

Claire Hanna: If we have time, I have some important issues to raise around the national security aspect of the submission.

Chair: You can if we have time. We may just slip over the 10.30 chime, but I want to cover what we have.

Q143 **Mr Campbell:** I want to join the tributes paid to all the officers in the past. Can I thank Mr White for his attendance just before the lockdown at an event on legacy issues? On the issue of compelling evidence, we keep hearing witnesses and others telling us that if issues arise where there is new compelling evidence, that can be a basis for a re-examination of incidents from many years ago. How viable do you think that is in the context of 2020, and as we go forward into the next few years, when it will be 50 years from the worst year of the Troubles, which was 1972?

Raymond White: We start from the principle that all the incidents, in a sense, were investigated. What you are looking at is a reinvestigation. Either you are looking for something that challenges the original investigation in terms of evidence that it has missed, or else you have identified some new forensic trail that you can follow or some witness who did not come forward 40 or 50 years ago, who has now come forward and



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can produce something. That evidence has to relate to a substantive offence. It cannot be evidence that simply suggests, "We believe as a family that there was collusion here or some informant was being protected", or anything else of that nature.

As for the evidence itself, there are new moves in forensics and things that now have the opportunity to throw up investigative leads. As for the compelling dimension, the courts have recognised that you cannot reinvestigate a matter simply because a new assertion has been made. There has to be some element of credibility or probity behind what is being produced as the new evidence. Some adjudication then has to be made: "Does this warrant a new investigation or reinvestigation?"

Chris Albiston: I would endorse what Raymond says. One of the grounds, which is not usually articulated but is clearly behind some of the reinvestigations, is that those who are demanding the reinvestigations simply do not like the outcome of the first investigation. In our submission, that cannot be proper grounds for a new investigation. There must be some substantive reason for, as Raymond says, identifying something that was wrong in the previous one, or new evidence.

We say in our written submission that there may indeed be grounds. There may be new grounds. There may be new, compelling grounds. They are going to be very rare in cases that go back 20, 30, 40 or even, as you say, 50 years. They will be unusual, but we do not rule them out. What we say is that they must be properly established on the basis of some kind of legal or criminal investigation principle, not simply for political point-scoring reasons.

Q144 **Mr Campbell:** Does either of you accept the premise, which many people have, of a very stilted approach to the past? Groups, organisations and individuals can demand reinvestigations, go back through paperwork, try to establish what possible criminal activity may have occurred in the past, whereas none of that can be done with terrorist groups, because there is no paperwork. There is an extreme reluctance on the part of paramilitaries to come forward. Many people look at that as a very stilted approach to the past, where there can be an investigative approach on one side, to the security services, but not on the other.

Raymond White: There is a gravitational pull, if I can put it that way, towards any organisation that has documentation available to be examined. In that respect, that is inevitable. If there is clear evidence within that documentation that there were gross inadequacies in an investigation, we accept that.

That is what we were saying at the very outset: the context of how an investigation was conducted back in the 1970s needs to be acknowledged and embraced. Crime scenes were not able to be held. We did not have the forensics that we have now and can apply to matters. Quite often, to actually get to a crime scene for a very short period of time, to recover a



body, you needed major support from our military colleagues. You need to take those things on board, and you need some form of fresh evidence.

As regards paramilitaries, as I was saying to Claire earlier, you can look to see how the victimhood occurred. How do you address the issue of inter-factional feuding that went on? When you look at the statistics in relation to it, how many victims were created because some member of the Provisional IRA shot some member of the INLA, or some member of the UDA shot some member of the UVF? That is where you have to go to get the information that a family needs. In the same fashion, if you look at those who, as part of their proactivity on the terror scene, blew themselves up, that family knows the cause of the death and everything else.

In trying to get the information that a family needs, you have to start to look and see where the victimhood actually originated. On getting information from paramilitary groups, as you know, they will not speak in any shape or form so long as even the faintest possibility exists out there for them to be investigated or prosecuted for what they say.

Q145 **Chair:** Which body or individual should have or could have the right to deem a request for an investigation vexatious?

Chris Albiston: In our written submission, we make some suggestions about how you might structure legacy arrangements in the future. We say that, while acknowledging Ms Hanna's praise for Kenova, it is a Rolls-Royce vehicle. I am very jealous, as a retired detective, of the resources that are applied. It is excellent that that sort of thing should be applied in the future, but there is a matter of principle. The principle that we suggest this Committee should embrace and endorse in its dealings with Government is that the investigation of crimes in the past is a matter for the police of the territory on which those crimes are alleged to have been committed.

There is a role for the ombudsman, and we have no complaint about the way in which present and past officeholders in the police ombudsman's office have dealt with current complaints about serving officers. Indeed, Ray White and I, as senior officers, when we were serving, endorsed the proposal for the independent—

Q146 **Chair:** Sorry, in the interests of time, are you saying the ombudsman should be the final adjudicator as to whether a request is vexatious?

Chris Albiston: No. In our submission we say that the ombudsman has a role to play, but the final answer of what is new and compelling should be with a legacy commissioner.

Q147 **Chair:** Mr Albiston, for the record, in your assessment, who should be the final judge as to whether a persistent claim for reinvestigation or the opening of an investigation is being pursued not in pursuit of natural justice but merely as a vexatious claim? Who should be the one to say, "This is vexatious—case closed. We are not receiving anything else"?



Chris Albiston: That should be a legacy commissioner, who should be an independent person of high judicial standing, who would also have an oversight role over the legacy investigation branch of the PSNI.

Q148 **Scott Benton:** Some organisations have expressed concerns about the Government's new intended approach of separating the investigative and information recovery aspects into a joint new body, which is not due to happen under the previous Stormont House proposal. What are your thoughts on this?

Raymond White: We doubt whether the investigative dimension can be married comfortably with what you call information retrieval—the production of family reports and suchlike. There could well be a conflict of interest between the demands of the legal process, which needs to manage the information it handles in such a way that it is not contaminated regarding its presentation in court or elsewhere. During that process, quite often, information comes, is retained within the criminal justice process and is not made public in the public hearing that may ensue regarding any person being charged.

On the other side, when you are releasing information to families, we would argue that it needs to be simply a fact-based report. You cannot abuse the legal principle of the presumption of innocence in respect of a paramilitary member or anybody else. They are entitled to that presumption. There could be a desire to stray beyond the facts. We had an example. If the Committee wishes to go back and look at the early mistakes that the HET would admit that it made, a lot of subjective commentary went into reports that went to the families, which could not actually be stood over.

In fact, some of that commentary emerged during the process of investigations. When it came to the senior management within the HET starting to determine, "What can we tell this family?", there was a shortfall. The families picked up on it, in that they said, "Your investigators told us certain things and they are not now reflected within the documentation you give us." It is a very difficult area to manage. If you are looking at all the sources of information that are there, you have intelligence and you have to be terribly careful that you do not quote it almost as if it was evidence. You have to know the circumstances.

I would not sell the task short of being extremely difficult. If it is sat apart, it may learn something from the criminal investigative process, but we are inclined to think that the two processes should be managed separately. As our submission suggests, a legacy commissioner's office, which could have an independent scrutiny of what is being said and balance requests from the families with the information being given, would be a much more balanced and impartial way of doing it.

Q149 **Scott Benton:** I know we are quite pushed for time now, so I will come to Mr Albiston. Perhaps in a moment you can add a few reflections to what Mr White has said. I would just like you to answer the following question. The Government's emphasis on information recovery now being at the heart of



a new legacy process is an acknowledgement that, as time goes on, the possibility of securing prosecutions diminishes. Do you think this is a correct new approach, with information recovery being at the heart of what the Government want to achieve?

Chris Albiston: There is little I can add to what Ray White said. It is very clear that we need to differentiate functions. If you have an investigative process that is geared towards the criminal justice system and adheres to principles of the Police and Criminal Evidence Act and so on, you have to be very careful about how you filter information from that process to families who desperately want information. What they want is factual information. Very often it is quite limited factual information.

Our submission is that a legacy commissioner, as well as being a filter for what is new and compelling, could be a filter for determining whether a report is satisfactory, is as full as it might be and meets the needs of the families. It is an opportunity for the legacy investigation branch to expand. The chief constable may have to take on these additional responsibilities, but he has a policing board on which all the major parties of Northern Ireland are represented. Therefore, there should be an opportunity for the legacy investigation branch to handle this sort of work with a legacy commissioner and with a chief constable who answers to a policing board that is fully representative of the community.

Q150 **Chair:** I am going to guess that the answer to this question is no. Do you think a chief constable can pick and choose which tasks they are given, which they do or which they may not want to do and therefore say, "Give it to somebody else"?

Raymond White: Just because a matter is a bit of a burden for a current chief constable, who may wish to present his police service as a community-oriented policing service, and because there is an element of discomfort in him shouldering the problems of legacy, as my colleague Chris has said before, should he be able to walk away from it? I think the answer is—

Q151 **Chair:** I think your answer was no.

Raymond White: We have an established police service and I would like to see it bear the burden.

Chair: I am grateful. Thank you.

Q152 **Mary Kelly Foy:** Good morning. Given what you have told us this morning and your suggestions about how the new legacy body should be set up, do you think it can now be set up in such a way that your members can have confidence in its fairness?

Raymond White: Most certainly, yes. If it is investigating allegations that have been accepted as being based on new evidence or substantive criminal offences, with reasonable suspicion being established in relation to any former police officer, we have every confidence that it can be taken forward by a properly constituted and operational police ombudsman's



office. The same thing applies to any member of the public against whom there is the same substantive allegation. Those people can be investigated.

Our argument is that that matter should be within the hands of the established police service in Northern Ireland, the PSNI, and its legacy investigation branch, properly financed, properly enhanced with staff and given the licence to go ahead and do it.

Chris Albiston: If the investigations are carried out by an organisation within the PSNI, although that makes it uncomfortable for the chief constable—and you can ask Raymond and me whether we ever felt uncomfortable with any of the jobs allocated to us in the past—the public can have confidence. Not only would there be supervision from the chief constable, the policing board, the legacy commissioner and a deputy chief constable from outside, but there would remain the police ombudsman's office for dealing with current serving officers who breached any code of ethics or anything else.

Q153 **Chair:** We are drawing to a close. Let me ask you a very quick final question. Let us say you are in the driving seat and it is your decision which box to tick. If you had that power, would you prefer to say, "Let us resource this properly and get the closure, the justice, the clarity and so" or, "These were hopefully unique circumstances in the history of our islands. We have moved on with the Good Friday agreement and so on. Let us just draw a line and use the resources to make a better tomorrow, rather than try to clarify the past."?

Raymond White: There needs to be clarification of the past. As for whether you need to use the legal process of investigating every incident that happened, it would be much better for the vast majority of us if we moved forward on an acceptance that, on both sides of the community, wrongdoing occurred and people should move towards trying to build reconciliation around that.

You cannot legislate for reconciliation. Nor do you bring peace to the minds of people who have been made victims through microscopic examination of the legacy of the past. Quite often we are harnessed to the mantra, which a portion of the academics and others here have, that somehow or other, if you do not go through this process of minutely examining every incident in the past, you cannot move on to the business of reconciliation.

I would preserve a small area for those investigations that could be undertaken, where creditable evidence is there. On the other side, I would invest the money in trying to find information-giving systems, the recording of history by historians and not allowing self-exculpatory explanations to be given as being part of the history of the Troubles.

Chair: Gentlemen, I am going to draw a line there. I know Claire Hanna had some supplementary questions. Claire, you have my apologies. I would suggest that we table those via the Clerk and we will submit them. If you could provide a written answer to Ms Hanna's questions, that can be taken



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as part of the inquiry, and I would be obliged.

Gentlemen, thank you very much for joining us, for the clarity and detail with which you answered questions. I am very grateful to both of you for finding the time to see us. I now close this session and I will move to our second panel of witnesses. Mr White and Mr Albiston, thank you.