

Northern Ireland Affairs Committee

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

Wednesday 2 September 2020

Ordered by the House of Commons to be published on 2 September 2020.

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

Questions 204 - 269

Witnesses

[I:](#) Simon Byrne, Chief Constable, Police Service of Northern Ireland; Bobby Singleton, Detective Chief Superintendent, Police Service of Northern Ireland.

[II:](#) Jon Boutcher, Head of Operations, Operation Kenova.

Written evidence from witnesses:

– [Jon Boutcher](#)

Examination of witnesses

Witnesses: Simon Byrne and Bobby Singleton.

Q204 **Chair:** Good morning, everybody. Welcome back, either virtually or physically. I hope you had a passable summer recess and the batteries are recharged. It is great to be back for our first meeting of this new parliamentary term. We continue to take evidence on addressing the legacy of Northern Ireland's past. We are very pleased to be joined by the chief constable of the PSNI and Detective Chief Superintendent Bobby Singleton, who is the head of the PSNI legacy department.

Gentlemen, please introduce yourselves for the record. I understand that you would then like to make a short opening statement, Chief Constable. Before you do so, it would be remiss of me not to note and congratulate you and security colleagues north and south of the border, and indeed in London, on what we hope to be a successful security operation that you have been undertaking in recent weeks.

Simon Byrne: Thank you for those comments, Chair. Obviously, I am introducing myself, Simon Byrne, as chief constable. Joining me today is my colleague Bobby.

Bobby Singleton: I am Detective Chief Superintendent Bobby Singleton.

Q205 **Chair:** Good morning. Chief Constable, I believe you wanted to say a few opening words.

Simon Byrne: Yes, thank you, Chair. I am conscious of time today, but I thought it was important, given this Committee's reach, that we signal the fact that we welcome the opportunity to discuss the Government's latest proposals around legacy with you.

I have been in post for over a year, and it is clear to me that the community-wide desire to resolve the issue of legacy remains as relevant now as it was when I started. A consistent theme has come about in terms of our role in policing the Troubles and investigating our consequences. For us, dealing with legacy remains a barrier to building trust. This can affect our ability to build a representative workforce that reflects the values and attitudes of a modern, progressive and tolerant civic society.

Whatever the endgame is in this current debate, we in the police service begin with a premise that we police by consent and with our communities. Therefore, to move forward legitimately on this agenda with a common purpose means that any proposals need cross-community and political consensus in helping us achieve our lawful aims. Building that momentum against a backdrop of enduring trauma and public sentiment that what happened does matter is an issue for everyone: communities, politicians and policing. We remain impartial. While we can advise on the practical out-workings of any fresh ideas, we are driven in our mission by adherence to the rule of law and the specific ambitions of



the Police (Northern Ireland) Act 2000, which governs our operational parameters.

We do of course appreciate that there are no easy answers to resolving such a sensitive and intractable issue as legacy. The pain of the past has been self-evident during my first year here as chief constable when I have met families and relatives of those killed in the Troubles. But there are some practical issues worthy of note for you as a Committee. First, any growth in the investigative scope and capacity for dealing with legacy will be drawn from a pool of trained investigators that is already under strain. Nationally, there is evidence of a significant shortage in accredited investigative capacity for current UK policing demands. Recruiting sufficient accredited and experienced investigators will therefore be a challenge in this difficult context.

Secondly, I would like to highlight that the financial resource to support coronial inquests, requests and disclosure remains significant. We are engaged in around 1,000 separate different civil litigations at the moment. There are currently 42 legacy-related judicial reviews ongoing. While important in its own right, all this investment of time, finance and physical resource undermines the full potential of our ambitions to grow and embrace neighbourhood policing, which in itself has widespread community support.

Our records on paper and microfiche are not sufficiently digitised. Significant investment will be needed to remedy this and preserve their long-term integrity. It is estimated that we hold over 44 million different items of intelligence data and 95 tonnes of hard-copy criminal justice material.

In conclusion, we are here to advise and not to set the agenda. The agreed purpose of any legacy process, be it about criminal justice or truth and reconciliation, rests with the respective Governments and the wider public. There are clearly difficult choices ahead about how we confront and deal with our shared history, and how we have a more hopeful narrative for future generations as we seek to address the hurt, grief and feelings of injustice that remain traumatic to this day for victims, their families and wider society.

What is certain is that, organisationally, we have to remain impartial. We are here to serve the will of the public as we address and acknowledge the wrongdoing, sometimes from different perspectives, to bring closure and address the needs of those who have lost loved ones. That is what I would like to say as introduction, Chair. Thank you.

Q206 Chair: Thank you, Chief Constable. I am going to use Chairman's prerogative and kick off our questioning with three quick questions. I think you have set out very cogently the desirability of landing this properly and effectively. While it is desirable, do you think it is deliverable, given the constraints and challenges that you have set out?



Simon Byrne: I certainly think that there are really difficult issues for us to resolve. I always try to remain an optimist, but I do not think it is deliverable within the current resource base that we have. We do not have spare detective capacity here, if that was a route to grow one part of the resolution. We seem to be on a path where we still have the four legs of the Stormont House agreement somewhere in the background, and then the two strands of the new proposals, and one body to take it forward.

If this is about article 2 compliant investigations done in a timely manner, I think we will struggle to achieve that within the current resource base. Similarly, the volumes of data that are so important to show that there is impartiality and integrity to the process are eye-watering. The cost to digitise them and keep them safe for the future is significant. In fact, we are struggling to find technology that we would say can scan the volumes with sufficient speed to put them into a permanent archive.

Q207 **Chair:** Can I just ask you a quick question about evidentiary standards? We are often talking about events that took place several decades ago when the standards of evidence, what would be admissible in a court of law, how things would be investigated, et cetera, were very different to that which prevails now in modern policing. You do not need me to tell you that. Where do you strike that balance? At what point do you settle yourself to say, "These are the evidential standards that we are going to deploy?"

Simon Byrne: In a sense, I suppose this all sits with the premise of what is an article 2 compliant investigation. The standard has to show that it is effective. Sometimes the test of that, which we will see from various court challenges, is only at the end of the investigation. Have we been able to bring all the competing bits of information to a point where we refer to the prosecution service here?

We do work slightly differently to my experience in GB, frankly. While there is dialogue with the prosecution service here, it is our duty to present the evidence to the prosecution service as it stands, at the threshold where, on its face, it seems that criminal offences have taken place, rather than going down a route of advice files and things, which may be more common practice for the CPS in England and Wales.

We have to be effective. As various court cases have shown, we have to be independent and be able to show that. We also have to be transparent. Practice might have been different 50 years ago, in terms of how evidence was collected from a crime scene and the way witnesses were dealt with, remembering that often those witnesses might themselves have been under immediate trauma. How we would deal with them now is different, but the standard is the prima facie evidence of a breach of the criminal law, and therefore our duty to investigate under the Police Act.

Q208 **Chair:** In our last evidence session, we heard from retired police officers



HOUSE OF COMMONS

of the real challenge of securing a crime scene at the height of the Troubles. How serious a concern is that to you?

Simon Byrne: Bobby is the head of the team that is delving into the past and might be able to give some contextual examples. We just have to rely on the best evidence that is here before us now. Preserving the integrity of the crime scene is sometimes difficult given the enormous challenges and traumatic issues of dealing with, for example, mass casualty events, et cetera, in the past. At the same time, forensic techniques have improved, so there is a bit of balancing going on there.

The forensic route is only one route. There is witness testimony. There may be other evidence we can bring to bear in any backward-looking review of the over 3,000 cases within the purview of the Legacy Investigation Branch in which someone has sadly died. We remain alert to the challenges. I do not know if Bobby wants to say anything else about the practical difficulties.

Bobby Singleton: Yes, sure. It undoubtedly presents challenges for us, but I would make the point that it is not insurmountable. The first assessment of the available evidence will be done by us, in terms of a review that is carried out. We will look precisely at those factors that you have talked about: the integrity and the validity of the evidence. That is before we make a decision to move from the review stage into what we describe as the investigative stage.

A further assessment of the integrity of the evidence will then take place when the file is passed to the Public Prosecution Service. One of the key tests that they will apply is whether there is a realistic prospect of securing a prosecution. To reinforce the fact that it is not insurmountable, we currently have 11 legacy cases making their way through the court system here in Northern Ireland. That is from a live caseload of 27 cases.

Q209 **Chair:** This is the final one from me at this juncture. Chief Constable, you set out at the start the buy-in hurdles that this issue needs to get itself over, and which you and politicians need to get it over. Without running the risk of understatement, the Secretary of State's written ministerial statement of 18 March was robust in its approach. It was more robust than we had possibly expected. Do you think the approach set out in the written ministerial statement is deliverable or could be made to work?

Simon Byrne: We have not seen the fine detail yet, frankly. We would need to do that before we could make that judgment. There is a broad-brush proposal put to us about trying to bring closure and speed up the whole process. The mere fact we are still talking about it six years since the Stormont House agreement means there is a compelling desire to draw a line in one way or another.

We have yet to see the fine detail of how we will review and make a decision that there are no active lines of inquiry and an investigation is closed, and how you have that dialogue with families of people who have



HOUSE OF COMMONS

been killed. There is a time to go yet before we can make that fine judgment. It probably will not help the Committee if I try to mark it on the broad proposals before us at the moment.

Q210 **Chair:** I am sure colleagues will pick up on this, but you might just say a word now to help set the scene. When was the last scoping or shaping conversation you had with Northern Irish Ministers and/or officials about this? Are you in the loop or are you an observer to it?

Simon Byrne: I am broadly an observer. I do not recall having any conversations with the current Secretary of State, or indeed his predecessor, around the detail. We were invited to sit on a working group that the Northern Ireland Office had set up around March when the initial headline proposals were established. We declined to sit on that working group because we feared that we might be accused of trying to mark our own homework and not remain impartial. I know a group has been established.

Q211 **Chair:** You prefer to implement whatever has been decided in order to maintain operational independence.

Simon Byrne: Yes.

Q212 **Ian Paisley:** Chief Constable, thank you for your hard work and for appearing today. Do you fear for the morale of your officers if this spirals down into a blame game of what the past was about? Is that a concern for you and your chief superintendent colleague?

Simon Byrne: It is not something that is readily raised with me, either from the federation or the superintendents' association, which represent the current views of the workforce. There is clearly anxiety about how the past is dealt with from colleagues who have preceded us and broadly retired from their time in the RUC, but it has not been put before me as a live issue. Bobby might have a different view.

Bobby Singleton: No, I do not think so.

Q213 **Mr Goodwill:** To start with, could I ask the chief constable about the priorities that you have? You have talked about community policing. We have ongoing terrorism, public order and the general crime that any force would face. What priority does the PSNI attach to investigating and resolving the legacy cases?

Simon Byrne: While we see that it is an important issue for families and loved ones, we have said from the outset since we were asked to consult on the Stormont House agreement that we would prefer that this issue is taken from us in its totality. If I answer it from the consequences back up to the day-to-day pressing priorities, there are three legs to this for us. There is dealing with the investigations into the past, which is within the purview of the proposals. But we are still left with other consequences of dealing with inquests and civil litigation, which consume roughly two-



HOUSE OF COMMONS

thirds of our annual costs. Even now on the basis of what we know, there is still a significant drain on servicing that for us.

In terms of the day-to-day priorities, I have talked about this before in other places. In the general sense, without trying to sound trite, I have likened the challenges of this organisation to rebalancing a see-saw. The see-saw is effectively weighed down by issues like dealing with the past, dealing with protests, dealing with bonfires and other celebrations of culture, dealing with serious organised crime, and dealing with the threat of terrorism, which was acknowledged the start of the session.

We need to be better at rebalancing things so that we improve our day-to-day contact with the public, be it through phone or digital means, and increase our visibility in communities right across Northern Ireland. My desire, and the desire of the policing board, is to continue to invest in neighbourhood policing to enable us to do that.

Q214 Mr Goodwill: When you say two-thirds of your budget, do you mean two-thirds of the legacy budget or two-thirds of the entire budget?

Simon Byrne: Roughly speaking, we set aside £30 million a year. I say roughly because some of the litigation costs come in waves, so it is hard to predict how that might fall. It is around £30 million to service this each year.

Q215 Mr Goodwill: Turning to Detective Chief Superintendent Singleton, in your opinion, what are the strengths and weaknesses of the current system for dealing with legacy cases?

Bobby Singleton: There is a strong focus on the criminal justice element of this at the moment. Previous proposals, and what we have seen in the most recent proposal, talk about a broader approach to legacy that is perhaps more focused on truth, recovery and reconciliation.

In terms of the strengths of the current system, I would highlight that the investigative and review model that we deploy against this is to nationally recognised standards of investigation, so investigations are thorough. It is certainly a strength of our current approach that our focus is on providing the best possible service to families who have lost loved ones; that has certainly characterised the approach that we have taken. Indeed, Operation Kenova, which you are going to hear about in the next session, has also rightly put the needs of families right at the heart of what it is doing. I would say strong, nationally recognised standards and a focus on families are probably the strengths at the current time. Did you ask me about weaknesses as well?

Mr Goodwill: Yes, if there are any.

Bobby Singleton: In terms of the weaknesses, there is of course a concern among a section of the community about the practical independence of the investigations carried out by the police. We



HOUSE OF COMMONS

recognise that. We have had to engage in a number of judicial reviews on that subject.

It is clear, and the chief has already touched on this, that there remain confidence issues in the wider police service, not just with Legacy Investigation Branch, but within sections of our community. From a PSNI perspective, we are determined to do everything we can to resolve that situation, but we are realistic in the sense that that might be too much of a gap for us to bridge for some families.

Q216 Mr Goodwill: These are people who would possibly never trust the police whatever you do, and whatever lengths you go to, to try to restore confidence.

Bobby Singleton: Yes. I would hope that was not the case, but I am realistic. I understand that is how some families will feel about it. That is where the need has then arisen to engage external independent investigators, to come in and provide those families with the level of confidence that they need to engage in the criminal justice process.

Q217 Mr Goodwill: Turning back to the chief constable, you have already said that you do not believe the legacy system is deliverable within the resource. Are you suggesting that, by offloading parts of this process that are not specifically police responsibilities, you could then deliver what you feel is within your direct purview? Have you put a figure on what additional money, staffing or other resource you might need? What will it take to give you the resource that you need to do this job?

Simon Byrne: That is one of the killer questions, to be quite honest with you. I talked in my opening comments about this being an intractable issue. Practically speaking, the problem is that, whether we are leading investigations into the past to a standard that would meet the article 2 test, or somebody else goes along that route that was outlined in the Stormont House agreement with the Historical Investigations Unit, it would take significant numbers of trained and accredited people.

As you probably recall, £150 million was set aside earlier to service that desire to bring closure through the criminal justice route. I think some testing has shown that that is probably a conservative estimate, given the sheer scale of this. As I said in my opening remarks, whether it is us or any other body, I am not sure how you square the circle on the detective capacity side and meet the desire to bring a criminal justice resolution for people in a timely and effective manner, with the resource base that we have. That is also one of the article 2 tests about being expeditious.

This is an estimate that I have discussed with Bobby in the past. To go through the LIB list alone, which is not all the 3,500 deaths, would take over 20 years from a standing start now on the current resource base. Many of the witnesses who could contribute to that investigation will sadly not be with us in that timeframe. These are some of the real



HOUSE OF COMMONS

practical difficulties and why we recognise that bringing a resolution is so difficult for the Government and policymakers.

Mr Goodwill: Thank you for being so realistic.

Q218 **Stephen Farry:** Welcome, gentlemen. I join with the Chair in paying tribute to the good work done by your officers over the past number of months in particular.

I just want to pick up on Bob Goodwill's points and ask a double-headed question. Assuming that there is, sadly, no agreement on a new model for legacy, how likely is it that the PSNI will come across insurmountable problems with article 2 compliance in certain situations and have to subcontract those cases to some sort of Kenova-style operation? How sustainable is it in terms of cost and resources to keep replicating that Kenova-style approach if that is deemed the only article 2 compliant route to go down?

Simon Byrne: This is probably a subset of the difficulties. The Chair asked before about dialogue with policymakers in relation to this. I can remember a discussion with Mark Sedwill, who was asking about the practical difficulties rather than making any proposals, on a visit here last autumn. Anticipating the likelihood of further judicial reviews and challenges into the whole machinery that is legacy, we have done some preparatory work with the police chiefs' council and the lead for criminal investigations across the UK in anticipation of just this point.

What happens the next time we are told we are not practically independent, for example? The sum total of the response is that we do not know. From the point of the view of the police chiefs' council, they did not feel they had spare capacity to resource a further investigation to the scale and standard that your next witness Jon Boutcher has been doing through Kenova, for example. That is reflected in the earlier comments I made about the general dearth of trained detectives and investigators to deal with day-to-day issues across the UK, as well as additionality.

I am not sure where we go with this, because we clearly cannot recruit people here from the past. We will fall afoul of the assertion of non-independence and collusion, so the only pool you can recruit from is in England, Wales and Scotland, which itself is short at the moment.

Stephen Farry: Briefly, finances are a considerable challenge too. Maybe Bobby wants to pick that up.

Chair: To try to make some progress, because I am conscious of time marching on, I think we have established that the financing is a very large issue for which there is no immediate resolution. I think the chief constable was pretty clear on that.

Q219 **Caroline Ansell:** Thank you, gentlemen, for joining us this morning, and for all that you have shared to this point. As a very quick follow-up, because I wanted to ask a little about resources too, when you talk about



HOUSE OF COMMONS

being trained and accredited, what sort of training programme are we looking at in terms of time? How quickly do officers move through that programme to come out accredited? What is the lead time on that? I hear what you are saying about the pool, the capacity and the ability to rise up new resources, even where there is political will and financing. What sort of training are we looking at?

Simon Byrne: It will operate on a number of levels. You are probably familiar with the fact that the police like acronyms and jargon. We talk about PIP, which is about the professionalisation of investigations. That is run through the College of Policing across England and Wales. We replicate that standard here, as does Scotland. There are different levels of PIP accreditation from 1 to 5. At the front end, you have to show competence if you want to be accredited at level 1. You have to pass an exam and demonstrate that competence. There is a similar process at the different levels, which reflect either levels of complexity or supervision.

You are probably talking about 12 to 18 months to get through the initial phase on the current operating model. You are usually recruiting on a day-to-day basis from frontline operational police officers in response or neighbourhood teams, or people who might have been in a quasi-role like a crime team, in which they are investigating drugs offences. It is a more proactive part of policing, but then they have to demonstrate that competence to a different level.

If you are bringing fresh people in, you are probably talking that timeframe. Additionally, you are trying to push people into the supervisory roles of those other levels of accreditation. You can probably scoop people up far more quickly if you are recruiting from the current pool of people, but then you have to backfill them to maintain operational resilience. That is one of the challenges as well.

Q220 **Caroline Ansell:** Thank you for that. That is very helpful. I think it is fairly well established that there are weaknesses and failings in the current system. Do you see that the Government have sought to address these in the new proposals?

Simon Byrne: We have not really seen the details, so it is hard to specifically comment. The parliamentary statement was really about themes and trying to bring closure to victims. I suppose if you summarise it, the Stormont House agreement was about criminal justice first, and then reconciliation through its other phases; this flips it on its head. As we read it, it is not saying that there will be no criminal justice route and pathway to justice like that, but it is less likely because there will be quick reviews of the current caseload and quick decisions about whether we proceed if there is no realistic prospect of a prosecution.

The trouble is that there is no detail about the method for doing that at the moment. Given the clamour from families of people who were killed, or indeed the next generations we are seeing now, and given how litigious this has become, how do you evidence to their satisfaction that



HOUSE OF COMMONS

we or somebody else have met that test? It is not clear what the test will be at the moment.

Q221 Caroline Ansell: Understood, but given how very enduring the pain is, because of the lack of timely closure and resolution, do you see in the new proposals an attempt to bring much greater focus and to move much more swiftly to justice?

Simon Byrne: Yes. The length of time for people affected by it is heart-breaking. At the same time, the underpinning assumption from the proposals is about speed and trying to bring things to a quicker point of closure. The detail is still about the “how” factor.

As you have probably seen, and I have certainly seen in all the briefs, reading and conversations I have had about this, not everyone wants a criminal justice resolution. Some people just want clarity about what happened in the last few hours of their loved one’s life. I have had personal experience of dealing with people in that process. When that happens, sometimes a family myth is bust and you re-traumatise people because they get more information and news. They effectively re-grieve the pain of losing a loved one, so it is a very difficult issue to try to draw a line under.

Caroline Ansell: Yes, understood. Thank you.

Q222 Ian Paisley: Chief Constable, would any of this be made easier if you had the full cadre of 7,500 officers?

Simon Byrne: I do not really think so. We would support the growth of the organisation, but this links to earlier comments. The presumption is that we are trying to continue to deal with the threat of terrorism, but move the bulk of that additionality into neighbourhood policing to help us do that. We would not be proposing to grow the legacy teams in that space.

Q223 Stephanie Peacock: Good morning. The Government’s new proposals combine the investigative and information recovery functions in one body. Do you think this is the right approach?

Simon Byrne: I think it is hard to say without clarity on how it is going to work. You can see the symmetry but we need the detail.

Q224 Stephanie Peacock: You have touched earlier on what would make an investigation article 2 compliant. Do you think the Government proposals would need to go beyond a simple review of existing evidence? Would they require an active search for information in individual remaining legacy cases? I suppose I am thinking in particular about a search for historical forensic evidence, if it is available, or access to information held by public agencies.

Simon Byrne: This is one of the unknowns. Frankly, in fairness to the Northern Ireland office, I understand it has set up its policy group to try to understand the practical out-workings of this. There is a lot of case law



HOUSE OF COMMONS

around article 2 compliant investigations but there is no European model for what one is. It is dealt with on a case-by-case basis. An investigator has to show the effectiveness and thoroughness, and take those steps, as well as remaining independent. That is one of the problems.

Bobby Singleton: Not to jump back to Stephen Farry's point, but around the weaknesses of the current system, and specifically article 2, it is worth reinforcing that the adverse judgments we have had have not said that we are incapable of being practically independent. In fact, they have said the opposite; they have said that could be remedied. Putting the Government's proposals to one side, there is still a great deal that we can do within the existing model to make it more demonstrably article 2 compliant.

Q225 **Chair:** On that, evidence, evidence gathering and the like is clearly required north and south of the border. It is imperative that the Republic's Government buys into this. What conversations are you having with your opposite number south of the border?

Simon Byrne: None to date, because we are waiting for the detail.

Q226 **Chair:** Can I try to clarify this conundrum as I have heard it evolve this morning? This is a big, sensitive issue with resource challenges, in terms of both people and money. You need to try to ensure a perception and reality of independence of the PSNI with regards to both communities. This is a cleft stick or a horn of a dilemma; call it what you will.

Is it the right approach to be passive rather than active, in trying to shape this from a practical policing viewpoint and garner a collective policing view north and south of the border, which is going to be required as a joint effort if this is going to be successful? It seems to me a very high-risk strategy to have the Government impose a formula, for want of a better phrase, on you, and then you turn around and say, "From a policing point of view this is impossible".

Simon Byrne: I suppose in a nice way, Chair, that may be something you determine about our stance as a Committee. I have taken a lot of advice from people right across communities and people who are dealing with the operational difficulties. Indeed, I have to respect the governance and accountability relationships that I operate. As you are aware, sometimes things here are so politically acute that you can jump from an operational matter to a political sensitivity very quickly.

I respect the role of the policing board. If we have difficult political conversations, I would encourage them to advocate a point of view or perspective on our behalf. The one thing I have learned in 15 months here is the need to remain in the operational space, as best we can, and how cherished the notion of impartiality is. Given how sensitive this is, and the fact that some of the investigations will inevitably reflect allegations about the actions of former police officers, we remain in that space, so that we are not accused of trying to rewrite our own destiny.



HOUSE OF COMMONS

Q227 **Chair:** Let me clarify this. Have you put any scenario planning responses to Ministers, either separately as the PSNI or conjointly with the Irish policing authorities? Have you said to Ministers, "If you go down this road, this is what we need; if you go down that road, this is what we need; if you go down this avenue, these are the challenges", to help inform the decision-making process, rather than trying to shape the actual product?

Simon Byrne: First, without trying to confuse the two elements of your inquiry, we did set out our response on the previous proposals in relation to the Stormont House agreement, which was reflected in the consultation that led to these proposals. We are broadly standing by those checks and balances, and all the difficulties that we recognise go with that. We have not recently tried to suggest that an operating model would look a certain way; nor would we have dialogue with colleagues in Dublin in that regard at the moment, because we had preferred to wait for detail before we stepped into that space.

Q228 **Chair:** You still see the detail as something that you could then shape. What if it is not? What if the detail is a fait accompli?

Simon Byrne: As I said in the opening remarks, we are bound by the will of the rule of law and we would have to abide by any Government decision to change the current operating environment around legacy.

Q229 **Scott Benton:** Good morning, gentlemen. Chief Constable, following on from the Chair's line of questioning there, you mentioned earlier that the Northern Ireland Office had not consulted you directly ahead of the new policy development and the ministerial statement in March. Do you think it was appropriate of the Government to radically change its approach without engaging directly with you first?

Simon Byrne: That is a matter for them, in one sense. It has not changed an awful lot. It goes back to the theme of this morning of not having the detail. We were not tipped off long in advance that there was going to be an announcement. We were not asked to comment on the shape. I think there was an assumption that what we said in the past stood. We are just dealing with the current status quo about looking for that clarity.

Q230 **Scott Benton:** You referred earlier to the working group that the Government discussed with you in March and you declined to sit on. I appreciate the reasons, but do you not think some people may suggest that is abdicating part of your responsibility? Given your experience and unique position to shape proposals, some people might expect you to engage with the Government to come up with proposals that can attract cross-community support.

Simon Byrne: That is an absolutely fair challenge and we recognise that. When we were invited to participate in this policy group by the head of the Northern Ireland Office, I took advice from a number of constituencies about how that could be perceived. The sum total of that



HOUSE OF COMMONS

advice was to stay on the margins until there was detail. For example, in relation to the core of this, which was what an article 2 investigation would look like, I did suggest going to the police chiefs' council, which has a crime portfolio and would have people who are experienced in resolving that, albeit in a different context.

Q231 **Scott Benton:** This is my final question. I think you have partly answered this, but I will ask it anyway. Are there any areas where the PSNI did have alternative proposals, which you have not fed in at this stage but you would like to go on the record as submitting?

Simon Byrne: No. I think we sent in a detailed response to the Stormont House agreement proposals. We have not refreshed those except for reinforcing today about the practical difficulties of dealing with the scale of investigation and the detail of preserving the integrity of our archives.

Q232 **Claire Hanna:** Thank you to the witnesses. I am asking my questions in the context that all the proposals should be about the needs of victims, but also that the new beginning to policing is one of the great successes of the peace process.

I am going to assume that you have seen Jon Boutcher's evidence. He has said that prosecutions will be very much the exception, but that the proposal to close down investigations of murder "should be approached with extreme caution". Would you agree with that assessment?

Simon Byrne: Yes.

Q233 **Claire Hanna:** A review of Operation Kenova by barrister Alyson Kilpatrick has said that it is commanded and controlled with every aspect of article 2 in mind and that it has already contributed to securing public confidence in the rule of law. Would you share my concern that the new proposals could undermine the rule of law?

Simon Byrne: If you follow the argument, there is clearly that risk. Without sounding like a stuck record, there is a caveat. Who knows if the detail that falls out of the working group might help address some of the learning from Jon's work? As you know, it is not just the way he has gone about the investigation; it is also the way he has tried to bring independent oversight to that. We would assert here that much of what he does is replicated through the work of Bobby and his team. The approach is very similar, but our oversight is through the policing board as opposed to his steering group.

Q234 **Claire Hanna:** Notwithstanding the fact that you have not participated in the working group or the legislation that we now know is being drafted, did you feel that the PSNI was sidelined by the unilateral issuing of that declaration of policy change on 18 March?

Simon Byrne: I think we were surprised, rather than sidelined, that we were not more closely involved in any discussions about what was coming, or what the detail might be, given the significant stake we have in this in terms of the investigative responsibilities and the other



consumption of public resource to manage the day-to-day issues of dealing with legacy. I think some earlier sense of what was coming, and the departure from the current proposals around the Stormont House agreement, would have at least been helpful to help us think that through. We jumped into this next phase a bit like many other people.

Q235 Claire Hanna: What is your view of the NIO claims that a cycle of investigations has undermined attempts to come to terms with the past? What is your view of its claim that the 18 March proposals put victims first?

Simon Byrne: To be candid, you have to follow the evidence. When you look across the political and community spectrum, the narrative that seems to go with the response is not supportive. Many people still clamour for the four stages of the Stormont House agreement. That is a stumbling block, but I recognise that they are trying to deal with the timeliness of investigations as time moves on and bring closure for victims. It is an attempt to remedy that, as they say in the statement they issued in March. I am not so sure that I hear anything in the deliberations I am having at the moment that says there is support for the style and tone of what we currently have.

Q236 Claire Hanna: To the first part of the question, do you agree with the NIO claim that a cycle of investigations has undermined attempts to come to terms with the past?

Simon Byrne: That is a difficult one. The history of this clearly goes back to the original investigations, then the serious crime reviews, then the Historical Enquiries Team that was set up by one of my predecessors, and then the various attempts to remedy that via the Legacy Investigation Branch and subsequent inquiries.

Running through this has still been the spectre of people not trusting that people know no more than they said in the initial response investigations. That causes frustration. I hear repeatedly that the issue of legacy is a blocker to recruiting people into the police, particularly those from the Catholic community, because of the prospect or spectre of collusion in the past. Therefore, it is a blocker. Equally, that frustration would also be expressed by people who say to me that the failure to deal with the past continues to fuel people who are motivated by terrorism.

Q237 Mary Kelly Foy: Good morning, Bobby and Simon. Back on the governance, we have heard quite clearly that one of the weaknesses of the system was that perceived lack of independence. What do you think? In order to reach public confidence, what should the Government do now to ensure that the new system achieves impartiality and independence, and is trustworthy?

Simon Byrne: Whatever we end up with, if it is one body that deals with the two halves of the problem, the idea of some independent steering group is a good one. Obviously, your next witness can probably give some sense of how he has gone about that in his context. Given all the



HOUSE OF COMMONS

concerns of the past and the practical difficulties of dealing with this issue, some oversight in that space would be a good idea.

Q238 **Chair:** Chief Constable, I think we are going to have to assume, are we not, that there are some in the community in Northern Ireland who do not want to be reconciled on this issue because it is a political stick or tool to use? In order to reduce that number of irreconcilables, you have highlighted the staffing challenges. You have highlighted the financial challenges. You have also expressed concerns of marking, or being seen to be marking, your own homework. Given that any other constabulary of Great Britain will be badged as an emissary of a foreign state by some within Northern Ireland, if you had a blank chequebook and a free and unfettered hand, to whom would you turn to undertake either an oversight role or a very hands-on investigatory role?

Simon Byrne: Oversight, in terms of the governance that I am bound by, is still practical through the policing board. There is a broad breadth of experience in the board and that can discharge the oversight function.

To the practical investigation point, some independent body along the lines of Kenova to deal with the totality of this would take it off us. I recognise that, effectively, the Historical Investigations Unit was similar to what Jon has set up. We go back to the problem: if we are going to deal with the scale of over 3,000 deaths that might fall within its remit, how in a timely way do you simply get sufficient people, balanced off against the current policing demands, here or in other parts of the United Kingdom, to discharge that function?

Q239 **Chair:** Yes, I understand that. It strikes me that, given the magnitude of the task and the shortening of the time window to do it, for it to be a meaningful thing for a generation that is ageing, we are all looking for somebody, or some body, to do this piece of work that does not appear to me to exist.

Simon Byrne: Well, exactly; that is why I said in my opening comments that it is an intractable issue. Frankly, even something like the Historical Investigations Unit, if you can describe it as version 1 of Stormont House agreement, still has to be staffed by somebody. If we are now going to review investigations and close them, that still has to be staffed by somebody. This is probably the kernel of the problem we are all wrestling with: how do you do it in an environment that remains litigious and where—try to close your eyes and imagine it, as I did this morning when Bobby talked about it in a chat—we have 95 tonnes of criminal justice material? Just think about the sheer scale of looking through that to make sure there is not a missing piece of the jigsaw in one of those 3,000 deaths we are investigating.

Q240 **Chair:** This may be the right question that you do not want to answer, and I am sure you may be able to plead the fifth. Given all the challenges and the fact that there is always going to be a residue of irreconcilables, would you prefer to metaphorically just draw a line under the whole thing



HOUSE OF COMMONS

and say, "Let us concentrate on the here and now, and the future, to make sure that those terrible things do not happen again, that Northern Ireland is as peaceful and secure as possible, that the economy is prosperous" and so forth? Otherwise, from a policing point of view, it sounds like one goes round and round, chasing one's own tail.

Simon Byrne: There is a sense of that, frankly, yes. We all get some sense of the scale of the problem, but resolution has to be a matter for communities and politicians, given how emotive an issue it remains here, despite the gap between when the Troubles ended and the here and now. I have a private, personal view, but, operationally, as I said at the start, we have to follow political and community will.

Q241 **Chair:** In an ideal world, you would prefer a political process, rather than a policing investigatory court process.

Simon Byrne: The political process sets the framework in which we operate. Some of the constraints could be remedied by legislation if people chose to. That is the first step. Then it is how we bring people with us and build that consensus to bring this issue to a conclusion that is acceptable to all parties, given how sensitive and emotive it is.

Q242 **Chair:** Gentlemen, thank you for joining us, for the honesty and the clarity of your answers, and for setting the scene so well with regard to the magnitude of the task that somebody at some point is going to be faced with having to deliver and deal with. Thank you very much indeed for joining us.

Examination of witnesses

Witness: Jon Boutcher.

Q243 **Chair:** We will now turn to Mr Boutcher, Head of Operations at Operation Kenova, which is often held up by many across the communities of Northern Ireland as an exemplar of good practice. Mr Boutcher, thank you for what you have been doing on what I am sure you know, if you have been listening to the earlier evidence session, is seen by the PSNI as an issue of enormous magnitude and huge hurdles. Can I invite you, for the record, please, to introduce yourself and to state your role? I invite you then to make a few introductory remarks and then I shall throw you upon the tender mercies of the Committee members.

Jon Boutcher: I am Jon Boutcher, former chief constable of Bedfordshire Police and I head Operation Kenova, which investigates a number of legacy cases in Northern Ireland. Thank you for the opportunity to appear before you today.

I thought it might assist the Committee to briefly be reminded of the matters that I am investigating. First, there are the investigations into the activities of an alleged agent known as Stakeknife and any others who may have offended with him. I agreed to do this in June 2016. Next, there is the investigation into the 1972 killing of Jean Smyth-Campbell



HOUSE OF COMMONS

that we began in June of last year. Then there is the investigation into the killings, in 1982, of RUC officers Sean Quinn, Allan McCloy and Paul Hamilton. That began in September of last year. Then, most recently, there is the review of the Glenanne gang series of murders committed during the 1970s, estimated to involve 120 murders, which I agreed in January of this year.

In total, some 236 murders are being examined by my team. I will deliver my findings of these investigations in separate public-facing reports after any potential criminal justice process. It is important to note that, in June 2016, and relevant to the discussions earlier, I had no staff, premises or investigative model for such complex cases. By early 2017, we had secured premises for the most sensitive of material, handpicked 40 vetted staff, achieved agreements with agencies to access sensitive records and designed an investigative plan to deal with these issues.

To assist my thinking, I spoke to numerous stakeholders and family groups at the start with legacy experience to build the most inclusive and robust investigative structure possible. Three independent groups separately provide oversight, advice re victims and expert investigative input to ensure the cases are investigated thoroughly and in accordance with ECHR. Each has considerable experience either of Northern Ireland and its legacy challenges, of championing victims' rights, or of leading complex investigations.

We have now submitted a number of files to the director of public prosecutions in the Stakeknife case. The evidence submitted relates to activities of terrorists and members of the security forces. These files reflect the acquisition of evidence not previously recovered.

Legacy requires three key pillars, in my view: an absolute focus on families, high-quality investigations or reviews and unfettered access to information. Placing families at the centre of legacy is crucial. Many families, including from the security forces, feel that the authorities have let them down. Bereaved families often had little or no contact with the police, scant information about any investigation and were often not even informed of inquests. Recognising that, at times, there were justifiable security reasons for these failings, it has led to significant mistrust for many families.

Families want to be listened to, acknowledged and told the truth of what happened. They want to know that their loss mattered and what happened was wrong. It is a failing of all of us that so many families believe that we, as the authorities, do not care. If the truth is denied them, their next generation will simply carry on the fight for answers and the past will not heal.

Outcomes should not be judged by criminal justice processes alone. The criminal justice system never could or should be a comprehensive solution for dealing with the past. Legacy requires a commitment to an openness towards families. The truth can be uncovered for many. Some



families do not want to revisit these traumatic events, and their wishes must be respected. The inability of the security forces to properly investigate cases due to the threat is well understood, and we should never forget their sacrifice in lives lost. The operating model during the period prioritised intelligence collection above information dissemination. They focused on protecting where intelligence came from, due to the high risks involved in its collection. Therefore, investigators were often not given the information that was available.

A key success for Kenova has been agreeing information sharing protocols with the leadership of the PSNI, the MoD and MI5. We have recovered records that others did not have access to. Notwithstanding this, a culture of secrecy prevails within the security forces. They regard any examination of legacy as a criticism of them and that disclosure of information represents a threat to national security. Neither assertion is correct. It is what sets us apart as a democracy that, having been unable to deal with these cases properly at the time, due to the danger that existed for everyone, we should now do whatever we can to give families information.

Addressing legacy was the missing element of the Good Friday agreement. The peace process saw those involved in violence become part of power sharing, the transformation of policing, the decommissioning of weapons, and, most controversially, the early release of prisoners, including many murderers. The same approach should be afforded now to victims in dealing with these issues. The determination of families to discover the truth is as strong as it has ever been. Recent legal judgments show that the law is on their side. Some commentators suggest the costs of such a process are prohibitive. They are not. The cost of not offering such a process to families is immeasurable, for both the economic and the social future of Northern Ireland. I will be happy to answer any questions I can.

Q244 Claire Hanna: Thank you very much, Mr Boucher, for appearing today and for your written evidence. You clearly have the confidence of families and many others in Northern Ireland. I know I and my party very much support you and the important work you are doing. Could you explain briefly how you have built relationships with families and why that is important?

Jon Boucher: That is a long answer that I will try to keep very short, but it is investing time with them. It is listening to them. It is simple things like meeting them where they feel safe to meet you and being discreet in your interactions, because there are residual concerns about working with the police with some families and groups. It is about making sure that they feel valued and that what happened to them does matter, because it did, and reassuring them that this is a meaningful process and we are going to search in every way possible for the information with regard to what happened to their loved ones.



HOUSE OF COMMONS

All the families get my own details and mobile number. They have a family liaison officer. They have a family liaison co-ordinator. They also have access to the investigation team and we meet them regularly. Initially, I suggested that we would meet families or speak to them on the telephone each month, which was quite onerous, but we have now moved that to whatever the families decide that frequency should be.

It is small things, like remembering the anniversaries of when these events happened with the families. Some families had never been to where these tragic events occurred. It is making arrangements for those visits to occur so they can, in a way, even many years later, say goodbye. It is through the building of the oversight groups that we put in place. It is demonstrating to them, and never being complacent about it, the thoroughness of what we are doing and the independent oversight that we have put in place to make sure that we do this as well as we can.

From that, importantly, I should say that many families, particularly with the Stakeknife cases—and I will be very careful what I say here—have told us things they have never told anybody else. Many of these families, because they have not had an investigation, have done their own inquiries. They have watched every documentary. They have read every book. They have looked at every article in the media and they have their own lever arch files of what they think happened. We are trying to take that responsibility away from them and give them the truth, because much of the information exists there. That is what we have found with the Kenova cases, with Stakeknife. I think that has led to ever-emerging levels of trust and confidence. It has been a slow build but I think now across the piece we have the confidence of literally all the families we are involved with.

Q245 Claire Hanna: In your written submission you say, “Most relatives have told me they want the truth of what happened...rather than a criminal prosecution”. On the other hand, I have heard claims by some in and around the UK Government who say the Kenova approach validates the 18 March proposals, which I believe is an attempt to mangle your work and selectively use the specific choices of specific families. How do you respond to attempts to rely on your work to legitimise the policy declaration of 18 March?

Jon Butcher: I have not heard that. Frankly, I have not heard that from any parties. The rule of law has served us well back to the Magna Carta. I am a detective of nearly 40 years’ experience now, and I have always believed in, and started this incredibly complex work with, a criminal justice focus. But there are huge complexities with Northern Ireland that led to the Good Friday agreement and ways of dealing with the conflict to try to find the peace. The missing chapter of that agreement that was never written is how we deal with legacy.

Criminal justice has served us well, but a new way of looking at criminal justice processes for legacy needs to be considered. The public interest test is a key element to this, to revisit that in legacy cases. What do



HOUSE OF COMMONS

families actually want? Do they want prosecutions? Currently, the director has to apply the same test to a murder that occurs today as he would to a murder that occurred in 1984. There are very different threats with regard to the individual and threats to wider society from a murder in 1984 and a murder today. There are very clear differences with regard to implications for families, who would not want a prosecution for obvious reasons of segregation, sensitivities and still some of the real issues in society in Northern Ireland.

Prosecutions are a collection of admissible evidence to a court process. I often describe a prosecution as an iceberg. You see this incredible mass of evidence above the surface, but there is a huge amount of material below the surface. With legacy cases, the older a case is, the harder it is to prosecute. That is an obvious position. The history of legacy case prosecutions is not a good one in Northern Ireland. The continuity of forensic exhibits is difficult to prove. The probity of documents is difficult to prove. Often, because during the Troubles the focus of the system was on intelligence collection, the information existed about who was responsible all those years ago, but it was not acted upon. There are very legitimate abuse of argument claims to be made by defence, should people be prosecuted.

Then of course, because they occurred so long ago, there is a real issue about the fitness of people to stand trial and the fitness of witnesses to give evidence. Many of the people involved in the Troubles have been through incredibly traumatic experiences. Just as an example, those issues need to be recalibrated with regard to criminal justice decision-making. They all lead to a delay in prosecutions occurring. If we have the information that families want and they are of a certain age—many families are in the sunset of their lives—it would be an act of vandalism to miss the opportunity to give them the truth because of prosecutions that are delayed year on year. We need to relook at the criminal justice process for legacy cases with the same sort of innovation as we did for other issues for the Good Friday agreement.

Claire Hanna: Thank you very much. That is very helpful.

Q246 **Stephanie Peacock:** Good morning. Your investigations have been commended across the board. How difficult would it be to apply that to the 1,000 remaining legacy cases?

Jon Butcher: I do not think it would be difficult, but the key is about what you are going to look at. I believe that all these matters should be victim-driven. It should be for the families to have the options as to whether they want their cases to be re-examined, in my opinion. I speak to families who would say they do not want me to look at what happened because it would re-traumatise them. They have moved on and dealt with their loss in a way that means they simply would not want to opt into a process. That is the key.



HOUSE OF COMMONS

There have been a number of successful prosecutions, so not every case would have to be examined necessarily because of that issue. Certainly, I believe that the history of Kenova shows that this is doable. It is scalable. The key is the number of cases that would need to be looked at. Relevant parties need to sit around a table to work out a criteria of what that inclusion would be.

Q247 Stephanie Peacock: In your experience, is there a risk that, in trying to do things too quickly, the tests set out in article 2 are not met?

Jon Boucher: Undoubtedly, yes. The real challenge we have had is access to information, notwithstanding that I have had the support of all the heads of the different organisations that hold these records. There has been something of battleships with some of the organisations around getting this material. If a process was implemented where there was a free flow of information, and unfettered access to that information, at times there would have to be some checks and balances in place because of national security issues, but this is absolutely achievable on the model of Operation Kenova, as long as we get access to that information in the way that that information should legally be made available.

Q248 Caroline Ansell: I have a further question on that information gathering. You said in your written evidence that systematic failure to disclose information to investigators by security services had been an issue. You touched on that in your earlier remarks when you spoke about the perception of it being a criticism of the services themselves and a challenge to them. I wonder, in terms of the culture of secrecy that you say still prevails, what the Government can do to facilitate information sharing. How do you account for the greater success that you have had through this operation in engaging with those heads of services, such that you have been able to access information and to share and disseminate it, in the way you have?

Jon Boucher: We need to recognise that, when I started this, I did an incredible amount of research with those who had done legacy cases in the past. Kenova is an evolution of all that has happened before, what worked well, and we have learned from what did not work well for those investigations. My background is working in national security. I know the people involved at the very top level of the security service, the military and of course policing. I know how the systems work. I have dealt with the most complex international terrorist investigations, obtaining intelligence from overseas intelligence agencies. It is more difficult to say to me, "No, you cannot have that for this reason", because I have somewhat been round the block a few times.

There is a passage in time since the Troubles where the leadership in these organisations has changed. There is a transition in the makeup of the organisations. Many of those who were involved in the Troubles from the security forces' perspective have now left and there is a new breed, which has helped me, but there is a remaining element of resistance to what we are doing. I understand it. They are very proud of what they did



during the Troubles. By and large, the security forces did an exceptional job and they see any examination as a criticism per se, which it is not. It is what is required for these families in Northern Ireland to move forward.

What we have found and the records we have had access to do not reflect wrongdoing by the security forces. They simply tell us who was responsible for these offences. Of course, when we see anything where there is wrongdoing by the security forces, we will deal with it through due process. This is very achievable. We have had a lot of support because we have learned lessons from others who went before us.

Q249 Caroline Ansell: I am very encouraged to hear you say it is very achievable. How would you bridge that challenge in dividing between the culture of secrecy and the national interest around threat? How do you tread that particular line and what do you want to see the Government doing to facilitate that?

Jon Boucher: When I spoke to people who dealt with these cases before, people like John Stevens, Judge Cory's lead counsel Judge Pomerance—Judge Cory sadly passed away recently—Judge Smithwick and the heads of the HET, they all had real challenges in getting information. Quite dramatic narratives were given to me: they were obstructed and misled; the security forces thought they were above the law. There were lots of really strong messages and that gets across to families. Families hear that.

We need to reposition ourselves that we deal with these investigations in the same way as if they occurred in GB, in Derby, London or Birmingham, and reassure the security forces this is not a witch hunt into the security forces. It is still the case that 90% of these offences were committed against people who were simply innocent victims or people doing their jobs. By getting people around a table, advancing the spirit of the Stormont House agreement and getting people to talk together, to come up with a collective resolution, it is achievable to do this. If not now, I really worry about the future for legacy and what can be achieved.

Q250 Chair: Can I ask you two hopefully quick questions? I suppose this is following on from what Caroline Ansell has been asking. You said at the start in your remarks you have a staff of 40.

Jon Boucher: Yes.

Chair: What is their heritage? Where are they drawn from, not granularly but in siloed terms?

Jon Boucher: I made a decision not to recruit people from the PSNI, RUC, security services, intelligence agencies or the MoD as a demonstration for confidence for families of true independence. They are drawn from mainly the police forces in the United Kingdom. We have about 30% serving police officers. The rest are mainly recently retired or police staff members as investigators. That is the genesis of the workforce with regard to Kenova.



HOUSE OF COMMONS

Q251 **Chair:** Why are you not just viewed as—and I do not use this in a personally pejorative sense—just another retired English copper working with other English coppers, either retired or currently serving, protecting the backs of the policing and security family? What has been your alchemist's trick not to be seen in that way?

Jon Boucher: I will be honest: in some of the first meetings I had, I think I was viewed in that way by many families. It was described to me as "just another English accent coming over here". All the people who showed negativity towards me—and they are the people you should ask this question to, really—would say their view has completely changed. It is showing an absolute commitment to those victims that we are authentic and it is demonstrating it by acts, not just words. People often say in statements that we should and will put the victims at the heart of what we are doing and foremost in our thinking. They have heard it all before. They actually need to see tangible progress.

Q252 **Chair:** So you are the manifestation of the old maxim, "By their deeds shall ye know them". It is not warm words and platitudes; it is proving the independence. It is proving the robustness. It is demonstrating the commitment.

Jon Boucher: Yes, it is. We have independent reviews. Simon talked about not marking our own homework. We bring in National Police Chiefs' Council experts on matters such as intelligence and investigations to review what we are doing. Those reviews are put before our governance committees. On oversight, the independent people we brought in are all incredibly well regarded, both here and internationally. They would not be doing this if it was artificial. If this was some sort of three-card trick, they would soon stand up and say so. That demonstrates to the families that this is truly authentic.

Q253 **Claire Hanna:** Given the breakthroughs you have had in recovering information but also noting those national security processes and vetoes we have just discussed, which are embedded in the NIO approach, what confidence would you have that any future report you bring forward post these proposed changes would not effectively be reduced to dust by those seeking to protect state and, indeed, former paramilitary and now political persons of interest?

Jon Boucher: I am confident that will not happen, but the proof will be in the pudding when I produce that report. I have no doubt there are some who want to dilute what I would wish to say, but I am confident that the leaders of those organisations in the security forces today share my position on this. Overwhelmingly, we will go through some legal discussions. I am certain that we will get the fruits of what we discovered out there. Can I just say this, Chair? I am conscious of time.

Chair: Yes.

Jon Boucher: I have run lots of very sensitive investigations. There is this issue, this myth about national security, and this was said to me by



Judge Smithwick and Mary Laverty, his senior counsel: when does not become a national security concern any more? In modern day investigations, through frameworks and legal structures that exist, we can distil sensitive intelligence into meaningful evidence and information for families and the courts, by protecting still the sources of that material. Most of this is about source protection. Source protection can be provided and this national security label that is put across for reasons as to why it is not provided leads to significant mistrust. It is entirely unhelpful and can be overcome.

Chair: Yes. It is often one of those go-to phrases, it is not? It sounds frightfully important and actually means very little, national security.

Q254 **Caroline Ansell:** One issue that was raised in our first panel was the very significant challenge around building capacity, specifically investigative capacity, to move at greater pace and yet still do justice to the investigations and the families. It sounds like you have recruited a hugely effective team. Can I ask how you might overcome this particular challenge if that is seen as really central to being able to deliver?

Jon Boucher: I recognise the challenge. What Simon Byrne said is right. There is a gap in skills with regard to detectives in the United Kingdom currently. We have a staff of about 72 and we are recruiting now to go to 80, so our staff in the next month or two will be at 80. What the police service is very good at is “doing”, when it is given a task. There are mechanisms, through recruitment of investigators through an initial training scheme, that you could develop—and the police service is now doing that—to bring people into the service straight into the detective role.

There is a huge opportunity around recently retired officers, but there are lessons from the past. They need to remain accredited. All the Kenova staff, through something called continuous professional development, remain at the top of their game so they can conduct these investigations in an accredited fashion, as described by Simon.

It would be difficult, but it is not unachievable. I am not an analyst or a number cruncher around this. It has been suggested to me that you might need around 400 people. You have 20% of that with Kenova as it is. This issue of not having ex-PSNI, the security services or MoD could be revisited. Along with the model and the confidence we have built, you could put in place oversight structures and other safeguards to make sure that none of those from those organisations were investigating or dealing with anything where there was a conflict. That would add to the opportunity to do this.

It is achievable, but it would be hard. If you can imagine that legacy could finally be tackled and addressed within the next five to 10 years, and we are now 22 years past the Good Friday agreement, I think that whatever can be done to achieve it should be done. There are costs, certainly. There are the stand-still costs. Simon talked about £30 million



HOUSE OF COMMONS

a year that the PSNI put aside for legacy. The estimate given to that legacy framework of the future of 400 or so staff has been put at £35 million. I got ungraded at O-level in maths at school, but, if you could see the end to legacy through that process, it makes economic sense as well as, obviously, importantly, making sense for the people who were the victims of these tragic crimes.

Caroline Ansell: That is a very helpful insight.

Chair: Mr Boutcher, I suggest that you sit the exam again. With Ofqual in its current position, you might get an A*. Who knows?

Q255 **Stephen Farry:** Good morning, Jon. Back in his written statement in March of this year, the Secretary of State stated that there will be “swift, final examinations” of all unresolved Troubles deaths. Do you think it is possible to conduct “swift, final examinations” of Troubles cases, from your experience?

Jon Boutcher: The language concerns me. It depends on your perspective of swift. There might be a timeframe of five to 10 years to see through all these legacy cases. It is so important to underline that this should be families deciding whether they want to be part of the process. They should have the choice and option here because of what they have already been through. That is immediate family. It is achievable, but the language causes me concern. Swiftness should not be at the cost of comprehensiveness. You have to make sure that you do this once and you do it properly. As I have said already, that is eminently achievable. As long as all the relevant parties contribute their bit to this, it can be done.

Q256 **Stephen Farry:** In that context, Jon, do you think there are dangers in cases being permanently closed, potentially at a premature stage, if that was indeed the course of action to be taken?

Jon Boutcher: The dilemma there—and it would be I think a unique position in UK law—is what happens if someone comes forward, after this case has been closed through some new legislation that cannot be reopened, to say what happened and give information that is new and compelling. That is the term used. At the very least, the families need to know that information. There is no detail in that statement, as has been widely talked about. Where any new information comes in, the families have a right to know that. If there was a family report that went to those families when the review was conducted, and further information came in, there should be a supplementary report to tell those families what happened.

I am concerned about it. There is a need here for co-operation across the various stakeholders and political parties. The Chair mentioned Dublin and the Republic of Ireland. This should be something that all those parties are a party to, around an agreement as to how this can be done. Then, hopefully, we will see a consensus similar to what we saw in the



HOUSE OF COMMONS

Good Friday agreement and we could finally give these families the truth that they deserve.

- Q257 **Stephen Farry:** Even in the context where there was a comprehensive process, is it wise to ever entirely close the door on a further investigation if some compelling evidence became available even 10 or 20 years down the line, for example from some sort of deathbed confession?

Jon Butcher: You mentioned deathbed confessions. I have sat next to a number of people who have died—passed away—who are from the families, in the last five years. It is so important that we do this for these families and in a timely fashion. The Northern Ireland Troubles were a unique period in our history, one that we would never want to revisit. We should approach this legacy dilemma in a different way. If there is an appetite, which I welcome, to deal with these issues finally by Government and legislate for them, I would not turn my head against closing investigations criminally at a point when everything that can be done to establish what happened has been done. That should not stop any future information being passed to families. They should be made aware of that.

- Q258 **Stephen Farry:** To turn that question on its head and maybe look at the issue a different way, you stress in your written evidence that legacy issues are capable of being investigated and the truth can be uncovered, but in some cases there may be little chance of progress. How do you think, whether it is in terms of Operation Kenova or something else, cases can be prioritised for investigation, or how should they be prioritised for investigation?

Jon Butcher: That is an incredibly difficult question. The Historical Enquiries Team simply went through a date process. That is something, again, that should be consulted on, not by unilateral approach. I revert to the fact that this should be victims-led. If families want to opt into this process, that is the first criteria. Thereafter, there are different arguments to apply this in different ways. There are arguments to deal with the most recent cases now because you are more likely to be able to secure a criminal justice process, rather than wait until the end of any process to deal with those. I am less fixated on that and more focused on the fact that we get a process that allows families to get the information about what happened to their loved ones.

- Q259 **Chair:** I presume that the swiftness of this is in part determined by the personnel resource available to the investigators. You referenced five to 10 years as being a definition of swiftness, potentially. It could be that. If one threw the kitchen sink at it, could it be shorter?

Jon Butcher: The more resource you put into this, the quicker it will be. One of the biggest inhibitors is the access to information in a seamless manner. If all the constituent elements to this—that is, the different stakeholders with information—provided that in a timely and



HOUSE OF COMMONS

unfettered way, this could be done in a very quick fashion. Of course, the way Operation Kenova operates is that we look at all the intelligence, we look at what was in the murder boxes, which will not include the intelligence, and we look at what exhibits were there. Once you have a team up and running and processes in place, that can be a very quick process.

- Q260 **Chair:** Can I clarify this, in the interests of time? From your experience of and exposure to—in the main but not exclusively—the security services, where the garnering of information and evidence is akin to pulling teeth, do you have a concern that, if an end date is established for this process, they would work to make the window where this activity was taking place less fertile, by being even slower in providing information and putting up all sorts of obstacles? Is that a legitimate concern of yours?

Jon Boucher: It would be a concern, but if you got all the relevant parties around the table to agree this and understand the importance of it—

- Q261 **Chair:** If you were writing the rubric, that would be one of the foundation stones you would use to base any timetabling decision on, not the other way around. You would not try to retrofit it.

Jon Boucher: That would be my approach. Of course, there is a carrot and stick here. If that information was not being given, there should be a consequence of that for the security forces, for whoever was in charge of this legacy framework.

- Q262 **Mary Kelly Foy:** Good morning, Jon, and thank you for the incredible work that you and your team have been doing. Operation Kenova has been described as an exemplar of an investigation model that has every aspect of article 2 firmly in mind, which in turn has led to public confidence in the rule of law. What are the steps that Operation Kenova takes to ensure that the investigations comply with article 2? What lessons can the Government learn to ensure they are running ECHR-compliant investigations?

Jon Boucher: We looked at the convention and the various articles to examine which articles an investigation would engage. We produced a document that is on our website, and I made it available in my submission, to demonstrate how we were trying to ensure compliance with the convention. As I have already explained, a lot of this is about putting in layers of independent evidence of scrutiny. There is the ongoing examination of Operation Kenova, and it is not yet finished, by a human rights barrister, Alyson Kilpatrick, with absolute access to anything that she wishes and to any of the stakeholders involved in Operation Kenova, to ensure—and every investigation needs to evolve and improve—we are doing everything we can do. That is a key element.

I have mentioned the reviews. Each 12 to 18 months, we have independent subject matter experts come in to look at different elements of Kenova and produce a report that I get to see. Then I am accountable



HOUSE OF COMMONS

to the governance board and the steering group to explain what we are doing about any concerns that are raised. We talk to all the families about that. We explain to the families about those review processes, when we have commissioned them, how they are progressing and how they are then reported through to our oversight mechanisms. It provides them with the reassurances.

Of course, to be ECHR compliant, you need to be independent. It should be prompt. It should be effective. It should be open to scrutiny and it should involve the next of kin. Covering each of those component parts is something that we focus the investigation upon.

Q263 **Mary Kelly Foy:** So the Government have those lessons from your success that they can put into place.

Jon Butcher: We have given access to anybody who is interested to come and see what we are doing, which obviously includes the Northern Ireland Office and the Ministry of Justice.

Q264 **Scott Benton:** Good morning, Mr Butcher. You previously stated that the oversight and governance arrangements of Operation Kenova have helped you to build public confidence in your approach. Why do you think they have worked so effectively and what lessons do you think the UK Government can learn in terms of replicating these arrangements elsewhere going forward?

Jon Butcher: There is the concept of independence, because of the history of the Troubles. You get extreme views with regard to what happened in Northern Ireland. Independence as a focus is the key thing to take away from Operation Kenova, and that it is meaningful. I also, as I think I mentioned, go before the Northern Ireland Policing Board to answer any questions when called upon.

It is the transparency. We have a website. We update families regularly with what we are doing, not only through the website but personally, through all those telephone calls to the family members. There is an importance here. I actually looked at my telephone this morning with regard to messages from families, most of which were so individual I could not mention. I wrote down 10 messages, which I will not go through, but all effectively say, "You have changed our lives. You have given us a voice when we did not have one before. We appreciate every bit of your time and thoughtfulness, whatever comes. You actually care about us and that means so much".

Legacy is about more than just getting the information. It is about recognising what has happened to these families and treating them properly. It is a culmination of many things that have caused and resulted in us having the confidence that we have had, but we cannot be complacent about it. You will always get odd families who still feel there are concerns, and you have to invest even more then in those particular families.



HOUSE OF COMMONS

Q265 **Scott Benton:** Have there been any occasions where the oversight and governance arrangements have ever limited the scope or nature of the investigations you have been able to carry out?

Jon Boucher: No, not thus far. We have to be very careful with regard to our terms of reference and, if you like, our nexus for operating. There is a phrase that every family wants to be a Kenova family, but I have to be very careful. I explain to families what I am allowed to investigate and what I am not allowed to investigate. That is probably part of the reason that the Government have this extremely difficult job now of trying to deal with legacy. I know they have a really difficult job, as has Parliament, around this. There are a number of stakeholders in Northern Ireland, in Dublin, Parliament and Government, but I think if we approached it in the same way as the Good Friday agreement was approached we can see our way through this.

Q266 **Chair:** How and when and, if so, how regularly, do you have to liaise with the authorities in the Republic? How have you found their response?

Jon Boucher: I have a very good relationship with the Garda Commissioner, Drew Harris, who I have known for many years. Drew has his own legacy story. He has been very supportive of what we are doing. He is the third commissioner that I have engaged with since starting this. We have a very good working relationship with the Garda, but I think it is fair to say it took some time to get into a rhythm that I wanted us to be in. Unfortunately, that has been affected at the moment by Covid, as all our lives have.

We engage very well with the Garda. Drew has actually met families who I have asked him to meet because they felt that previously An Garda Síochána had let them down, and they wanted to meet the commissioner. He agreed to meet them on his own. We have protocols with the Garda with regard to information sharing. Drew and I have many a conversation with regard to the importance of legacy and getting a framework that would enable families to get the truth.

Q267 **Chair:** Has the NIO spoken to you at all in helping to shape or develop its new legacy policy?

Jon Boucher: I have had two Zoom calls, one at the very end of March—I think 30 March—and one on 3 April, with the Secretary of State and members of his team. I had a subsequent call with the Secretary of State's team, not with Brandon Lewis himself, and I have sent them an email, setting out some very clear thoughts around a collaborative approach. It should not be Kenova. There should be a collaborative approach to the various stakeholders to come up with a framework for legacy, which is what I strongly suggested.

Q268 **Chair:** Have you found that engagement with the NIO has in any way undermined or weakened the status and standing of your work within Northern Ireland?



Jon Butcher: No, I do not think so. Most people are probably pushing me to try and promote what we are doing. I did a video on our website about the statement of 18 March. I said we need to wait for the detail, because the initial reaction from a lot of families was one of considerable concern. We do need to wait for the detail. I will say this: I very much welcome the Government's determination to find a way through legacy. We have had the armed conflict for many years. We have been in this no man's land for about 20 years now post the Good Friday agreement. I do not want us to go into the legal conflict, where families and different stakeholders are challenging any Government proposals that do not deal with this in a fulsome, proper and fair way to victims.

Q269 **Chair:** Could I ask you to say a word or two to give us your views, and indeed maybe the views of your team, on the proposal that some have with regard to—again, I do not use this in a pejorative sense—a blanket amnesty, or some form of statute of limitation? We have heard from retired police officers who describe their daily living in fear of a knock on the door. They have had knocks on the door; they have had investigations, but the sword of Damocles continues to hold over their heads.

Jon Butcher: Just on the knock on the door, it is important to say that, at Operation Kenova, we do not knock on doors. We are very careful and courteous to everybody we deal with. We do things by appointment. There is a way of doing the different elements of an investigation with legacy where you do not need to go and be draconian in your approach. That is the first thing I definitely need to mention about that.

With regard to amnesty, many families do not want the criminal justice process or are realistic that criminal justice is probably out of reach now, so they just want to know the truth. The families are very sensible. They are well informed. They understand the issues better than anybody because they have suffered because of what has happened.

"Amnesty" is seen as rather a dirty word because you would not have an amnesty in other parts of Great Britain with regard to offences of this nature. Of course the circumstances are unique. Because of my principles, I find that an amnesty is uncomfortable, but we have to accept that prosecutions are incredibly unlikely for cases from so long ago. The focus should be on information recovery, not prosecution, as I mentioned in my opening remarks.

A criminal justice process should still exist, but with new thinking around the particular nuances of legacy with regard to the public interest tests. We should not be waiting two or three years for a prosecution and a family not getting the truth when maybe a change to those regulations for the director of public prosecutions would allow him to focus more on and defer to information recovery to the families, over and above a prosecution. It would make prosecutions highly unlikely, but, quite properly, not take them off the table if the director felt that there really should be a prosecution.



HOUSE OF COMMONS

Chair: Mr Boutcher, on behalf of the Committee, can I thank you for the work that you and your team have been doing? Can I thank you for the sincerity and depth of your answers to our questions? You have certainly given us a lot of food for thought and I know the Committee will join me in expressing our gratitude to you for that and wishing you well. We have Northern Ireland oral questions in the Commons starting shortly, which a number of us are involved with, so I am going to have to close the meeting now. Again, thank you, and indeed thank you to our earlier witnesses as well.