

## Northern Ireland Affairs Committee

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

Wednesday 9 September 2020

Ordered by the House of Commons to be published on 9 September 2020.

[Watch the meeting](#)

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

Questions 270 - 307

#### Witnesses

[I](#): Lord Caine; Lord Empey; Lord Hain; Baroness Ritchie of Downpatrick.



## Examination of witnesses

Witnesses: Lord Caine, Lord Empey, Lord Hain and Baroness Ritchie of Downpatrick.

Q270 **Chair:** Good morning, colleagues, and good morning to our panel on this further evidence session, assisting with our legacy inquiry. We have a distinguished panel this morning whose experience and knowledge of all matters Northern Ireland, somebody worked out, extends for about 110 years. That is not one individual claiming 110 years, I have to say; I mean collectively. We have a Baroness and three Lords. It sounds like a verse from *The Twelve Days of Christmas*, but you are very welcome. For the record, please, I would ask you to introduce yourselves.

**Lord Caine:** My name is Jonathan Caine. I have been involved in Northern Ireland affairs for well over 30 years. I was special adviser to Peter Brooke and Patrick Mayhew between 1991 and 1995. I then returned in 2010 when the coalition was formed and stayed in post until July 2019, when Boris took over. I was very heavily involved in legacy issues over the past nine or 10 years.

**Baroness Ritchie of Downpatrick:** Good morning, everybody. My name is Margaret Ritchie. I am from Downpatrick in County Down. I was first elected as a councillor in 1985 and re-elected on several occasions after that. I was elected to the Northern Ireland Assembly in 2003 and served as the Minister for Social Development for three years, from 2007 to 2010. I became MP for South Down in 2010 and that was until 2017. I was appointed last year into the House of Lords. I have been involved with victims and the legacy issues through making representations on behalf of constituents. I had an Adjournment debate in Westminster Hall some five years ago on the Loughinisland issue. That is me.

**Chair:** Thank you very much indeed. We are having audio issues with Lord Empey, so let us go to Peter.

**Lord Hain:** Thank you and good morning, everybody. I am Peter Hain, Lord Hain. I was Secretary of State for Northern Ireland between 2005 and 2007, and helped negotiate the settlement that brought self-government back to Northern Ireland and brought Ian Paisley and Martin McGuinness into power to share it together. I was in the Cabinet for seven years, in Government for 12 and an MP for a quarter of a century. I have served in the House of Lords for five years.

Q271 **Chair:** Thank you, Peter. Reg, are you able to hear us now? Have we sorted Reg Empey's issues out? We have not, in which case we had better continue. As a segue, while the technicians are kicking the hamsters to get them back on the wheel to generate the power, for anybody who is wondering why Robert Goodwill and I are dressed in sheaves of agricultural produce, it is the NFU's Back British Farming Day. Robert and I are very active in that area, as many colleagues know. That is why we are wearing what we are wearing.



## HOUSE OF COMMONS

Let me start, please, by asking the first question of our panel. What in your view are the main shortcomings of the existing mechanisms for dealing with legacy cases? Do you think those shortcomings have been picked up and learned from, and have people tried to modify them? Shall we start with the noble Baroness?

**Baroness Ritchie of Downpatrick:** Thank you, Chair. If I could start in reverse order, I have always believed that victims should come first. It is 175 days since the 18 March Government statement. The British Government are drafting legacy legislation. I understand there is a Home Office working group. Yet, across the last six months, I understand that people and parties in Northern Ireland, and the outgoing Northern Ireland victims' commissioner, have been largely kept in the dark. For me, the reason why we have not had much progress in dealing with the needs of victims is that we have had a contested view of history and of legacy.

For my own part, I have worked with victims and survivors for decades. That was largely conducted quietly, because that was the wish of those victims. Like many political colleagues, I have attended the scenes of murders, wakes and funerals. I have campaigned with families for truth and justice, including regarding the June 1994 massacre of six men in a pub in the small village of Loughinisland. Some of those people were indirectly related to me. I have visited the homes of UDR and RUC people who were murdered by Republican paramilitaries. I have also attended other sorts of atrocities where people have lost their lives.

The principal reason for a large part of non-activity has been that contested view and the fact that vested interests came into play, whether of the state, paramilitaries or others. That prevented progress. We did have progress when we had the Stormont House agreement, but that has been eclipsed by the Government themselves with the 18 March statement.

**Lord Hain:** I agree with much of what Baroness Ritchie has said. There is general agreement, critically including many victims. I have worked strongly with the WAVE Trauma Centre over recent years to get justice for the severely injured victims and regarding the pension, which has been long delayed, but now seems to be on its way. Many victims have said that a focus on prosecutions in dealing with the legacy is misplaced for all sorts of well-rehearsed reasons.

I submitted as evidence to your Committee the letter I sent on 11 September 2018, also signed by Lord Browne of Ladyton, a former Minister of State in the Northern Ireland Office; Lord Cormack, a former chair of this Committee, the Northern Ireland Select Committee; Lord Eames, a former Archbishop of Armagh and Primate of All Ireland; Lord King of Bridgewater, former Secretary of State for Northern Ireland; Lord Murphy of Torfaen, similarly a former Secretary of State; Lord Reid of Cardowan, a former Secretary of State like myself; and Lord Patten of Barnes, a former Minister of State for Northern Ireland and architect of the Police Service of Northern Ireland.



That is not to say that prosecution should be completely ruled out where the evidence meets the appropriate tests. That is what worries me about the Government's statement of March this year in respect of veterans. In my view, the emphasis should be on a truth recovery process that will deliver for families. That is what they really want. There is very little detail in that written Ministerial statement of 18 March. On the face of it, what seems to be proposed by the Government will not deliver for victims or promote reconciliation. It seems to be a rapid desktop review of cases with a view to closing the vast majority forever. That is not a truth recovery process.

An article 2 compliant investigation, in my view, is needed to get to the truth. There is a very good model for that. That is the model of Operation Kenova, headed by former Chief Constable Jon Boutcher, who gave evidence to your Committee. He has told you that Operation Kenova could be scaled up to deal with the legacy over the next five to 10 years, and not at exorbitant cost. I am right in saying that, over the five years of 2013 to 2018, it cost around £190 million to deal with legacy issues, none of which went to the victims. Jon Boutcher has indicated that he could finish the job with £35 million. An annual amount from the Police Service of Northern Ireland's budget is going out at around £30 million with no end in sight.

I do not see the statement on 18 March as addressing the legacy. It is closing it down. I conclude by saying there is real concern felt by those who work on a daily basis with victims that the current proposals of the Government will leave decades of bitterness and stress unresolved, and will result in pain for victims being passed from generation to generation. It could also embolden dissident republicans and loyalists, criminal gangs, if they think that, if they wait long enough, their crimes might be written off. We need a whole new approach, as we set out in that letter of 2018—nine of us, all with experience in Northern Ireland.

Q272 **Chair:** Peter, we heard from Jon Boutcher last week in oral evidence and he gave us a lot to think about. Could I ask you two very quick supplementaries to your answer? Without wishing to sound too much like Pontius Pilate, truth, what is that? Speaking to what Margaret was saying about the two writings of history, both traditions claiming that they are absolutely right and the other side is absolutely wrong, how do you arrive at truth? While accepting that hindsight is the friend of the politician, and is what we all wish we had at the time, do you regret the Blair Government's absence of some form of replication of what South Africa did, in terms of producing truth and reconciliation in the immediate post-Apartheid world?

**Lord Hain:** This is a very important question and a complicated one to answer. I looked at it. Having been brought up in South Africa and very involved in the anti-apartheid struggle, I am very familiar with the truth and reconciliation process. I looked at the model. However, the problem



that you keep confronting is that Northern Ireland is a society basically split and divided down the middle.

South Africa under apartheid was a society where less than 10% of the population were oppressing nearly 90%. There were crimes committed by the paramilitary ANC and PAC as well, as has been acknowledged by Nelson Mandela, among others, but you had a situation where a white minority of 10% or so was oppressing a 90% majority. Therefore, the burden was primarily and sometimes exclusively on the security forces, who behaved terribly—it was a police state—to apologise for that and bring some closure for victims. Some did, who committed terrible crimes, at least on a par with those during the Troubles in Northern Ireland. Horrific crimes were brought in front of the commission and were confessed. They were therefore given an ability to then walk free without being held to account.

That model worked to an extent in South Africa, though not all wounds were healed. I have always thought that it could not easily be applied to Northern Ireland, simply because it is a society divided 50:50.

Q273 **Chair:** To advise colleagues, the technology has failed us with Reg at the moment. We are trying another route, so we are a trio rather than a quartet. A key part of that trio is Jonathan Caine.

**Lord Caine:** There are many in the past who have said that Reg and I normally speak with one voice anyway, not that I would presume to do so on this occasion. The original question was: what are the shortcomings of the current structures? It is worth reminding colleagues of what they are. First of all, you have the investigations by the Legacy Investigation Branch of the PSNI, which took over that function following the demise of the HET in 2013 or 2014. You have the coronial inquests, which were ordered by the Attorney General. Then you have the Police Ombudsman of Northern Ireland, who under the current system is charged with looking at historical allegations of wrongdoing by the RUC.

One of the problems we have found is that these mechanisms have grown up ad hoc. They are disjointed. There is a general consensus among victims and survivors in particular that they do not meet their needs particularly well.

There is another issue, which I know some people will disagree with: taken in the round, there remain legitimate concerns that the current mechanism is disproportionately focused on members of the Armed Forces and the police. The ombudsman just looks at cases involving the police. Of coronial inquests, there are about 50 or so running at the moment, only one of which, from memory into Kingsmill, is not focused entirely on the activities of the state. About 30% of the workload of the PSNI Legacy Investigation Branch is dealing with cases involving the military and police. If you look at the figures, proportionately the state was responsible for around 10% of deaths, in most cases entirely lawfully.



Across the board, there is dissatisfaction. It is that dissatisfaction that has motivated people over a long period now to try to find a better way forward. Since 2010, we first had the Haass-O'Sullivan process, which was initiated by the Executive. We then inherited the architecture that they had come up with when we embarked on the Stormont House agreement in 2014. At some point, I can go more into the history of that, but clearly, six years on, Stormont House has yet to be implemented. One of the lessons I draw from the last number of years is that it might well be the case that we have to look at something rather less ambitious than we were envisaging in 2013 and 2014 with Haass and with Stormont House.

I have some sympathy with the Government's statement of March, which is to try to dispose of cases as quickly and efficiently as possible, possibly to place the emphasis more on the information recovery, although that process depends crucially on people coming forward and telling the truth, which is not necessarily a given. I have some concerns about the Government's proposals from March, namely that they are essentially saying that, once they have looked at the case, if there is no compelling evidence and no prospect of a prosecution, the file will be put in the box and the lid closed. Okay, fine, but they are then proposing that the file be locked and the key essentially thrown away for good. I would have some serious misgivings about that, frankly.

Peter talked rightly about the criminal justice route not being the one that everybody wants, but there are some who would still want to see justice. If there is a faint hope of justice, we should at least give them that opportunity.

**Lord Hain:** Can I briefly come in to support what Lord Caine has said?

Q274 **Chair:** Peter, I just wanted to come back and ask Jonathan this. Are you saying that there is an inherent risk or danger of having a time-limited exercise here, whereby those who are always going to be sceptical about it in the first instance will have added to their scepticism the time delay and the cut-off, allowing them therefore to say that it was skewed? Are we best just to keep it open-ended so people can begin something, if they wish, at any time?

**Lord Caine:** We were conscious at Stormont House that we did not want investigations into the Troubles to end up lasting longer than the Troubles themselves. There has to be a sense of proportionality here. We cannot just go on endlessly re-examining the past. There has to be a time limit put on this. I agree with Peter: in the vast majority of cases, you would probably do essentially a desktop exercise where you would look at the files and say, "There is no new evidence here. We can put the papers back in the box pretty quickly. Under current circumstances, there is no chance of a prosecution".

I just do not think we should close that off forever, because forensic techniques improve. There have been cases. There was a prosecution a



## HOUSE OF COMMONS

few of years ago of an IRA man involved in the murder of an RUC officer from the early 1980s. It was based on forensic evidence from a cigarette stub. The officer had just been to visit his new-born child and was gunned down coming out of the hospital. However faint, it occasionally happens that some forensic evidence is found. As I say, techniques are improving all the time. We should not close off forever the prospect of prosecution.

I agree with David Ford, who said a few years ago, when he was Justice Minister, that there would be very, very few. I agree with that, but there is a story I always tell. When I went to the 30th anniversary service for the Enniskillen bombing, the pain and emotion at that service was as raw as it had been for many years, ever since the actual atrocity. I would hate to be the person who turned round to those families and said, "Yes, we know that there might be some new evidence but Parliament has essentially decreed that there will be no more prosecutions".

**Lord Hain:** To support what Jonathan has said, in our letter, it is pointed out that the Historical Enquiries Team completed work on 1,615 cases involving more than 2,000 deaths. Of those 1,615 cases, only 17 were referred to the Public Prosecution Service and only three resulted in prosecutions and convictions for murder. Starting it all over again even more years later is not going to produce any better result on the remaining 1,700 deaths.

But the law has to follow its course for whomever, whether they are members of the security forces or paramilitaries. If evidence comes to light, new forensic evidence or whatever, the law has to follow its course. I do not believe in an amnesty, but you should not put these huge resources into investigations with a view to prosecution that are not going to get you anywhere, and will not bring closure or justice for victims. Instead, put smaller but effective resources, like Operation Kenova, into the truth recovery process, so that at least the victims have some information about what happened to loved ones.

**Lord Caine:** To put it on record, I broadly agree with all of that.

Q275 **Chair:** You are saying you broadly agree with Peter, so you have antipathy towards or opposition to an amnesty.

**Lord Caine:** I have always been very steadfast in my opposition to an amnesty. I believe in the rule of law.

Q276 **Chair:** Quite a lot of us do as well, which is encouraging to hear. We rather like the rule of law. It is quite an important thing.

**Lord Hain:** Apparently the Secretary of State currently does not.

**Chair:** The Secretary of State was expressing the view of Her Majesty's Government. Whether that is his personal view we will leave to the Secretary of State to opine upon. Margaret, you wanted to chip in.



**Baroness Ritchie of Downpatrick:** We have to remember that, if you grew up here in Northern Ireland, it is the issue of victims. Victims never forget what happened to them or what happened to their loved ones. They do look for some form of redress. What was offered by the Government on 18 March, where no discussion took place with political parties or politicians, was totally unacceptable, because it closed down those investigations that involved the military and also involved paramilitaries. That actually suits the paramilitaries as well. What we are about is truth and recovery, and finding out what happened to our loved ones. That is vitally important.

In some cases, as I know only too well, the evidence was destroyed, maybe wilfully. That has come out as a result of the police ombudsman's investigations, which have proved to be very useful and an element of policing that has worked very well indeed.

Q277 **Bob Stewart:** I just want to tease out the aims and objectives of Government legacy policy a little and what the Government really want out of it. I will start by going to Lord Caine because he seems to have been there from the start. What is his perspective on this?

**Lord Caine:** I am no longer there.

**Bob Stewart:** But you still have your ear open.

**Lord Caine:** It is a year and a bit now so I no longer speak for the Government. I will take you back to 2010, when the coalition was formed. At the time, our main approach was not to go down the route of very costly and open-ended public inquiries, and to draw a line under that. Broadly, we were quite satisfied with the work that the HET at the time was doing. The private polling and so on seemed to indicate reasonably high satisfaction reports, et cetera. The HET was set up by Hugh Orde, I think when you were Secretary of State, Peter. It broadly did quite a good job and it was quite a reasonable model. It collapsed for reasons we are all aware of but, even at that stage.

Post the devolution of policing and justice, we had inquests starting up. We had the ombudsman's work and so on. There was always this constant pressure from victims and from sections of the media to do more. The aim, frankly, was to provide some better outcomes for victims and survivors. That is what we were trying to do at Stormont House but we were well aware of the limitations. Margaret talked about the contested view of history. We are never going to get agreement on what happened in Northern Ireland over 30 years between unionists and republicans. It is just not going to happen. We are never going to solve the past. People talk about mechanisms to solve the past or deal with the past. It ain't going to happen.

We were quite clear that our ambitions were fairly modest and the phrase we used at the time was that the structures proposed "had the potential" to provide better outcomes for victims and survivors. You are never going



## HOUSE OF COMMONS

to satisfy everybody. As a quick example, a couple of weeks after David Cameron's statement on Bloody Sunday, which I played quite a central role in drafting, Owen Paterson and I went to Londonderry City Hotel and met the families. They were broadly split three ways: those who said, "The statement was fantastic; that is great; let's now draw a line under this"; the bulk of the people in the room who said, "Well, it is a great start but now we need prosecutions and we need to go much further", et cetera; and a third group, again a smaller number, who said, "No, Saville is a whitewash" because it did not pin the blame on Edward Heath, Brian Faulkner and the generals. You are never going to get unanimity. You are never going to get, to use that absolutely awful word, closure in this. What you might be able to do through certain steps, and the victims' pension is a classic example, is provide some better outcomes. That is really what we were striving for.

**Bob Stewart:** Can I ask Peter Hain for his view on that?

**Lord Hain:** I broadly agree with that. I am concerned that the Secretary of State's statement of March actually undermines the Stormont House agreement, which was all-party, which was an extraordinary achievement. Margaret basically made this point too. You had every party signed up to that. His statement of March is basically one sided. It deals with the problems of soldiers, for example, who I do not think should be chased to the end of the earth and dragged out of retirement when, for example, on Bloody Sunday there was a fulsome apology. I give total credit to David Cameron and the Conservative Government, which Jonathan Caine advised, for that. It was widely accepted in nationalist communities as that. In fact, there was some astonishment that it was so clear an apology.

Obviously, if evidence comes to light, the law has to follow its course, as we said earlier, but my quarrel is with resourcing, and chasing down people to no really good effect and outcome. There is no closure in any of this for anybody. It happens to be that there is more information generally on where soldiers or members of the security forces were when atrocities were committed—and they were, and the Government apologised for that over Bloody Sunday, and over the Pat Finucane assassination, where there was security force complicity. That is something that, again, to their credit, the Conservative Government held up their hands about.

It is better to approach things not necessarily through multimillion pound inquiries, but with a truth recovery process. That is going to be far more satisfactory all round, and I do not see that happening under the Government's current proposals. That is my concern, Bob.

**Bob Stewart:** Thank you, Peter. To be honest, as an ex-soldier I am really impressed by that comment.

Q278 **Chair:** Colleagues, Reg Empey is now back with us in the room. He is in the Boothroyd Room, which is great. Reg, I am going to go to Margaret



for her answer, but in case you did not hear Bob Stewart's question, it is, "What should be the objectives of the Government's legacy policy?"

**Baroness Ritchie of Downpatrick:** Thank you, Chair, Bob and members of the Northern Ireland Affairs Committee. There are three pillars of reconciliation—we have to have reconciliation for the victims. Those three pillars are justice, truth and accountability. Any process needs to be measured against those three pillars. The 18 March would not fulfil those objectives as it was, I suppose, one-sided or two-sided, if you think of militia and paramilitarism benefiting from the closing down of those inquiries.

The one thing victims want is the truth. All of that was provided, as Peter has already underlined, through the all-party agreement at Stormont House because there you had the oral history archive. You had the implementation and reconciliation group, and you had the independent mechanism to investigate killings in an article 2 way. Those areas are required and that very much differs from what the Government were trying to do in the 18 March statement.

I would also say that the Stormont House agreement and other agreements were underpinned by the bipartisan approach between the British and Irish Governments. That is missing from the 18 March statement. The Irish Government were not consulted, and were aghast, I would have to say, from my discussions subsequent to that, that they were not consulted. In fact, they would not be happy with it either, because you have to have that level of joint co-operation, as was evidenced in other previous agreements including international treaties. "For goodness' sake", I would say to the Government, "Stop doing solo runs".

**Lord Empey:** Good morning, Chair. Thank you for the invitation to attend. I am sorry about the technical issues, but there we go.

**Chair:** Reg, we are delighted to see you. Thank you for persevering with the technology. We are obliged.

**Lord Empey:** I could only hear intermittently so I have not necessarily picked up the threads of the earlier conversation, but I will do my best if you will allow me a little latitude.

I heard Lord Hain and Baroness Ritchie answering Colonel Stewart there, but there is a complete misconception about Stormont House. There was not an all-party agreement at Stormont House. My party has been opposed to Stormont House legacy proposals from the very day we heard about them. That even preceded the discussions in Stormont House, because the first time the concept of the HIU was put to use was back in 2013 when Sir Jeffrey Donaldson and Ms Pengelly came to put forward a proposal for a body like this, which, of course, has evolved.

We were always opposed to it because it is a parallel, auxiliary police force with astonishing powers—powers to make findings of guilt contrary



## HOUSE OF COMMONS

to all the rules of law. I want to make it absolutely clear that we do not support the Stormont House agreement. We never did and, as far as I and my colleagues are concerned, it is merely a half-measure.

First, it deals exclusively with people who were murdered. It ignores the 47,000 people who were injured by bombings and other atrocities during the Troubles. That is an astonishing situation, because it is like saying the police can investigate a car accident where there is a fatality but it cannot investigate an accident where six people have life-changing injuries. It does not make sense. Secondly, it is limited geographically. If an incident took place in County Louth, that would be excluded. If an attack on soldiers took place in Germany, that is also excluded. There is a range of issues there that we feel are entirely wrong.

As far as truth recovery is concerned, I just do not see where this truth is coming from. It would require an effective amnesty to the individuals because the evidence they would give, should anybody emerge willing to do so, could not be passed on to any authorities to assist in a prosecution. Given the statements of people like the late Martin McGuinness with regard to his oath to the IRA and so on, I just do not see where this is coming from. We have, in Northern Ireland, a sort of "lawfare". In other words, this is a battle that is continuing through the legal process, aided and abetted by large amounts of legal aid. Incidentally, the Auditor General is unable to sign off their accounts because of error and fraud. That is something perhaps the Committee should look at.

What is the objective of all this? If we are going to bring prosecutions and get justice through that mechanism, I can only quote the former justice Minister David Ford. When he was asked about this in 2015, all he could say was, "The HIU might at best produce one or two prosecutions". It is going to cost £500 million and produce what? When we come to things like article 2, bearing in mind some of these crimes go back 50-odd years, to retrospectively apply European human rights and article 2 when the circumstances 50-odd years ago were totally different is unsustainable.

The role of the Irish Government is another issue. Margaret Ritchie referred to it, but the Irish Government are pretending that they had virtually no role to play in any of this. Former Irish Governments were up to their neck in the process because many, even Cabinet Ministers, were involved in the formation of the Provisional IRA. The Irish Government need to reflect, given that their territory was used as a safe haven and a training ground for many, many years. They are pretending now that somehow they are whiter than white. They are not. We are all engaged and involved in this, but I just wanted to put the record straight on that. We do not support and have never supported the HIU and the Stormont House legacy proposals.

Q279 **Chair:** Your preference would be to come up with a sum of money that



may be spent on these matters and deploy it on shaping and crafting the future, rather than to right the errors of the past.

**Lord Empey:** In a sense, I suppose that is a fair summary. To spend £500 million, and we are only estimating what it might be, over 10 years—and it will be more than 10 years—investigating 1,700 murders and ignoring 47,000 other people, what is it going to achieve? Would it not be better to give young people skills, so we can avoid future trouble in Northern Ireland and between the different jurisdictions? I just cannot see justice. If there are technical advances in forensics and people might find the opportunity to bring prosecutions, I am 100% for that, because the Ulster Unionist Party is opposed to amnesties for anybody, whether they are Army or terrorists.

Chairman, I support the general thrust of the Government trying to limit, to an extent, where we go with this, but there is so much of the detail we are unaware of. We have had the odd phone call and so on but we do not have a detailed grasp of what they are actually proposing. I would suggest that you are probably closer to a solution than we are with the HIU and associated apparatus.

Q280 **Ian Paisley:** Can I thank the witnesses for the evidence they have given to date, and the hard work they have put into Northern Ireland over the years from their various positions? Margaret Ritchie really hit the nail on the head in her opening comments when she pointed out that the vested interests of paramilitaries have got in the way of a lot of policy decisions. With that statement in mind, I am wondering if Lord Hain and Lord Caine could answer the question. Do they believe that the failure by successive Governments to address the issue of defining who is a real and genuine victim, and their concerns that that might upset Sinn Fein's sensitives, or the sensitivities of other groups, has really helped to prevent us getting to a process that actually works?

**Lord Caine:** You raised the issue of the definition of a victim, Ian. My views on this are well known. I did not support the Government's definition in 2006 in the Order. By the time we came into Government in 2010, all of that was devolved. There was very little, realistically, that we could do about it.

To some extent, it has made the political atmosphere worse around this issue. Do I think it has been a fundamental obstacle to making progress? No, I do not. We made progress in 2014 in Stormont House. I understand Reg's reservations that Stormont House was never perfect and, in essence, we were not starting with a blank piece of paper. We inherited the architecture that Richard Haass and Meghan O'Sullivan had put forward and we tried to improve on it. It is possible to make progress. I could go into all the reasons why subsequently Stormont House has not been implemented. We would probably be here until midnight.

I did not care for the Order at all. I thought it was wrong but I do not think it has fundamentally halted progress. It has not ultimately stopped



a sensible resolution of the issue on victims' pensions but, unfortunately, there are still difficulties with that.

**Lord Hain:** It is good to see you again, Ian. Trying to get an agreed definition of a victim is very difficult, not to say impossible. To that extent, Jonathan makes a fair point. Where Jonathan is wrong is on the 2006 Order, for which I was responsible. People are suggesting, and he was suggesting, that that covered some kind of compensation. It is very different. What that was to do was to say, "Everybody is entitled to basic services", whether it is social services, care services, health services and so on. It was not about a pension, for example.

When I moved the amendment to the Executive Formation Act 2019 last year in the House of Lords, to establish the basis for the pension that the severely injured are now lawfully entitled to but have been blocked from getting in time by the gridlock in the Executive, that was very clear that it was only to go to people who were innocent victims caught in the crossfire, not those who were injured at their own hand. It was people who in no way participated in causing their own injury. You are talking about double amputees and people blinded. People will be familiar with the details. These are 500, 600 or so desperately injured people who are entitled to that pension and it should be speedily paid. The 2006 Order was about the services that any citizen should get as a victim, but was nothing to do with receiving a pension or not.

If you look at the Eames-Bradley report, for example, which I think was a fine report, it fell down on one recommendation, which I always thought was a mistake and I think both Lord Eames and Denis Bradley understand that now. That was to pay £1,000, I think it was, to every victim. That was just like a red rag to a bull. Let us not confuse the issue about the 2006 Order. Let us get on with, for example, paying the pensions to the severely injured victims quickly. That at least establishes a benchmark that you can do these things and bring justice to people who have suffered so much.

Q281 **Ian Paisley:** I agree, actually, with that point. Can I thank you, Peter, personally for the work you did in the House of Lords on the recent Bill, and in helping to drive that through? I know it was supported cross-party, but you were very instrumental.

Can I ask a very direct question of all the witnesses? Peter Hain, in his earlier evidence, mentioned the Pat Finucane case, and said that truth recovery is the way to resolve difficult standout cases like that. Do all the other witnesses believe that there should be a separate inquiry into Pat Finucane, as has been hinted by the European courts recently, or do they believe that it should form part of the general process of resolving victims' issues? We do get these standout cases that are driven, and I am wondering about the witnesses' views on that.

**Chair:** We might have yes or no answers to that, in order to progress.



## HOUSE OF COMMONS

**Lord Hain:** I am not in favour of another inquiry into the Finucane case. The report and the admission by the Government tell their own story.

**Lord Caine:** Ditto. As somebody who was very heavily involved in setting up the Da Silva review and then David Cameron's response, I would not be in favour of a further inquiry.

**Baroness Ritchie of Downpatrick:** Yes. I supported it when I was a Member of the House of Commons and prior to that in the Northern Ireland Assembly, and my position has not changed.

**Lord Empey:** No. I am concerned that there are cases where support groups have been formed around particular individuals. That tends to diminish the case of the ordinary person who does not have that celebrity support. If there is any new evidence, it should be dealt with through that route rather than through the inquiry route. This Government, I understand, were committed to no further substantial inquiries and that was their position from 2010.

**Lord Caine:** Correct.

Q282 **Claire Hanna:** I suppose the conversation has moved on slightly, and I think there is consensus that there has been revisionism and that has been a challenge. We all acknowledge that the prospect of criminal justice and prosecution is very, very minor for most. Would particularly Lords Hain and Caine agree that closing the door on some of those cases, where people have invested literally decades, would actually serve revisionism and those who promote their own self-serving narratives about accountability in the dirty war?

**Lord Hain:** I agree to this extent, Claire. I do not believe in an amnesty. You cannot have a one-sided amnesty. You cannot say to soldiers, "You are never going to be prosecuted, even if the evidence is there". As I said earlier in response to, I think, Bob Stewart's question, I am not in favour of piling resources into investigations that are not going to get anywhere or are likely to be one-sided because the information is more readily available among the security forces than paramilitary organisations.

There is another point here: I do not agree with Reg and the point he made. What Kenova is about is actually truth recovery. It is very successful in getting that. What the Government's current proposals amount to is a kind of desktop review. That is not going to produce the outcome. Inquiries on the one hand, and prosecutions, massively resourced, on the other, will not bring closure for victims, justice or any sense of information. You need a truth recovery process. Operation Kenova, under former Chief Constable Jon Boutcher, is showing the way forward on that.

**Lord Caine:** Claire, I broadly agree with you. Let me be very, very clear. I am absolutely unflinching in my admiration for the contribution made by the Armed Forces and the Royal Ulster Constabulary throughout the



Troubles to preserving democracy and the rule of law in Northern Ireland. I am absolutely forthright in my views on that. Is it the case that some people operated misguidedly, wrongly and outside the law during that 30-year period? Yes, of course. Where there is evidence of wrongdoing, that should always be properly investigated. That applies across the board.

You talked about revisionism. One of the issues that I have had with proposals that carve out a special status for the military or former police officers is that that is exactly the kind of thing that would give republicans the biggest propaganda coup that they could hope for. That would play into the hands of those who wish to write history and to portray the armed struggle as somehow legitimate and the Armed Forces as the oppressors. That is a gross distortion of history, but I fear that some of what has been put forward by some of my colleagues would play into that narrative. If that narrative gained more of a foothold, it could have an impact on recruitment into dissident organisations as well. It is fraught with difficulty.

**Chair:** Thank you. That is helpful.

Q283 **Mr Campbell:** Welcome to all the witnesses. I noted what Lord Empey said about his own position regarding the Stormont House agreement and HIU, which is fair enough. It is long established that he has said that, although his party did issue statements to say that they were reserving their judgment and their position on that.

My question, I suppose, is more to do with 2020 and where we are now. We have heard, and I agree with, many of the reservations that the witnesses have outlined about the current process. We have had three years of a hiatus in Stormont. It has been back up and running now for nine months. Given where we are right now and the problems we are faced with, what do they think the challenges are for the Government here, and then the Administration in Stormont, in trying to map out a way forward beyond 2020, given the passage of time? It is 26 years since the ceasefires were first announced in 1994.

**Baroness Ritchie of Downpatrick:** Gregory, thank you for your question. The first issues are those of Brexit and coronavirus. Those are the two most outstanding policy issues that will confront and which have been confronting the Government and the devolved Administration at Stormont. I take your point and what you say. Maybe what you are trying to say is, "Should there be a line drawn on the past?" Victims, their needs and their requirements should always come first, because there are a lot of sensitivities there. People have suffered and that trauma needs to be recognised.

The first thing that they are looking for, and I know this from the Loughinisland inquiry by the police ombudsman and parallel ones by the PSNI, is the truth, but they are also looking for justice. Reports and inquiries tell you what happened and why it happened, and then



Government should resolve, along with all other players and all parties, to ensure that these things never happen again.

Q284 **Mr Campbell:** I was not suggesting we draw a line under the past. I was really trying to tease out how you think we deal with it in 2020, looking forward now. We have heard all the issues and problems of the attempted resolutions to dealing with the past over the past 10 or 12 years. Given where we are now, how do we deal with it?

**Baroness Ritchie of Downpatrick:** You go back to the Stormont House agreement proposals and that is how you deal with it. You do not deal with it as per the Government's one-sided statement of 18 March.

**Lord Hain:** There are two problems with the current situation and they have been that way for a while. First, within the Northern Ireland Executive, there is simply not the basis of personal trust and the working relationship that they started off with in 2007 under Ian Paisley and Martin McGuinness. Two more improbable people to share power together you could not imagine, but they established a relationship where they could actually work together and deliver together. That has, basically, broken down. That is at the root, for example, of this terrible delay. Two of the severely injured victims have died because of that delay. There is culpability there where the Deputy First Minister, Michelle O'Neill, effectively was blocking the payment of the pension that the law required the Executive to be doing, and was dragged to court under judicial review and forced to do it.

At the root of that is a failure by the DUP and Sinn Féin to establish a working relationship. They have gone backwards in that respect. They do not have to like each other, have a pint together, worship together or whatever, but they should form a proper working relationship. That is the first thing that needs to be restored.

Secondly, I am sorry, but the Secretary of State needs to start behaving like an honest broker. With the exception of Julian Smith, who stood out broadly and was successful in getting Stormont back up and running as a result, successive Secretaries of State have taken a more unionist position whereas, as John Major put it, you have to be an honest broker. You cannot be in anybody's pocket. That was how I was able to negotiate, under Tony Blair, the agreement we got in 2007, because nobody thought I was favouring either side. We would not have got that agreement had they thought that. You have to re-establish that role.

The Secretary of State also has to start obeying the law. If he says he is prepared to break international law, why should anybody think he would uphold the Good Friday agreement, which itself is subject to international law as it is part of a treaty? It is really important that that situation is addressed properly by the Secretary of State. It is destroying trust in Northern Ireland. The victims issue is part of that as well.

Q285 **Mr Campbell:** Peter, I take your point about the honest brokership. That



## HOUSE OF COMMONS

stands above and separate from everything else. Are you seriously saying that, on the one hand, we have an Irish Government that do not make any pretence about their partisanship in terms of the Northern Ireland question, and yet a British Government should in some way be, possibly amending your honest brokering, neutral to try to ensure that they are even-handed? How could that process work, if you had two Governments, one of which was very definitely partisan and the other of which said, "It is not our business to be partisan; we have to be neutral"? That surely could not work.

**Lord Hain:** Gregory, you go back to the most fulfilling relationship between Dublin and London, which was in the period from 1997 to 2007 where you had two individuals, Tony Blair and Bertie Ahern. Whatever their separate views—Tony was always in favour of the union of the UK politically and Bertie was always in favour of the reunification of the island of Ireland—they put those political stances aside and became honest brokers.

I can tell you, having worked with them in those negotiations, that they genuinely were. The Irish Government genuinely were, and I think they still are. They have to be brought into the fold. As Margaret Ritchie said earlier on, the more they are brought into the fold, and they have not been recently, the more they become part of resolving a problem. That is what we have to get back to: problem solving and honest brokering, not partisanship from London, or from Dublin, for that matter. It is vital to this process.

**Baroness Ritchie of Downpatrick:** Added to what Peter Hain has already said, we have also seen very good bipartisan working between Julian Smith, when he was Secretary of State, and Simon Coveney—a Secretary of State, and a Minister for Foreign Affairs and Tánaiste, working together in the best interests to get a resolution, and to ensure that that resolution in terms of *New Decade, New Approach* was implemented. The only sad thing is that we do not actually see it being implemented at the moment, because we see a Government that have faltered and are quite prepared to break an international agreement in terms of Brexit and the Northern Ireland protocol. What faith, then, does the local population have in Governments?

**Lord Caine:** I want to pick up on a couple of points and then return briefly to Gregory's original question. Peter and I will disagree on this issue of the role of the Secretary of State. I have always thought that there was no inconsistency between a Secretary of State being pro-union and their governing in the interests of the community as a whole, fairly and honestly. We have heard lots of references this morning to the Stormont House agreement. Theresa Villiers deserves a great deal of praise. She was regarded as pro-union and more sympathetic to that side, but she managed to produce, in her time in office, two agreements out of two talks processes.



## HOUSE OF COMMONS

I do not think the idea that you just have to be an impartial honest broker all the time is right. It is quite difficult on legacy, frankly, to be an honest broker when you are dealing with arguments between the Armed Forces and those who were carrying out terrorist campaigns. It is quite difficult to sit in the middle of that and not have a view.

Going back to Gregory's question about the way forward, it is not Stormont House and it is not necessarily what was produced in March, but it might be somewhere between the two. One of the problems with March is that we have a written Ministerial statement of a few paragraphs and not much detail, to be honest. As I said at the beginning, I am broadly sympathetic to trying to dispose of cases as quickly as possible rather than spending millions and millions on fruitless investigations. To go back to the original point, you cannot close off the criminal justice route entirely.

**Q286 Mr Goodwill:** Having heard the evidence so far, I am pretty clear on what answer I am going to get to this question. Are the Government right to bring together the functions of investigation and information recovery, aimed at producing reports for families, et cetera, together in a single body? Jonathan talked about planning a better way forward. Is this the better way forward or should the Government think again?

**Lord Empey:** To respond to Gregory Campbell's question, it goes to the core of where your inquiry is leading, in other words, "Where do we go from here?" Lord Hain mentioned "honest broker". This is a term we have heard many times. I am totally in favour of co-operation with the Republic of Ireland. As a Minister, I set up cross-border bodies, InterTradeIreland and Tourism Ireland.

I am all in favour of that and I believe we need to go further in that direction, but at no stage in the negotiations, whether it was the mutual process or subsequently, or even before it, did I ever encounter a situation where the Irish Government did anything other than support the nationalist position. That is what they are there for. That is what they have done. On the other hand, we were always exceptionally suspicious of how our own Government behaved. In fact, the level of trust between unionism and the UK Government during many of the negotiations was at a very low level. I would make that point.

Secondly, on where I want to see us move, the chief constable made a contribution some days ago to you. I worried a little about where he was coming from by saying that legacy issues could upset recruitment to the police from the Catholic community. I have to say that that is not where I think he should be. We need to look at the case sequencing model that he has. There is no question that, if evidence emerges, the PSNI should have the resources to follow that up. If that leads to a prosecution, it is well and good. He should not have a resource issue with that if we are prepared to spend hundreds of millions of pounds on an HIU.



## HOUSE OF COMMONS

I believe very strongly that the issue of an information retrieval commission is a very dangerous road to go down, because I do not see how it can lead anywhere unless you are prepared to give an amnesty to somebody who gives information to that commission. I am opposed to amnesties, as is my party.

Q287 **Mr Goodwill:** If I may interrupt there, when we heard from Jon Boutcher, he was talking more about giving information to families to help them with closure, rather than necessarily expecting new people to come forward under some sort of amnesty to give evidence. It was just opening the files to them, which may have been closed because of the need to keep things confidential pending a possible prosecution.

**Lord Empey:** This is a terrible dilemma. I can sympathise with families but, in reality, to what extent are people actually going to get the truth? We know that the IRA is sworn not to give information. The late Martin McGuinness made that clear. I wonder, therefore, about the quality of information that they might receive. If people are going to go and give information, they are not going to do that unless they are free from the threat of prosecution. Also, they could give misleading information to that body to say that a particular individual was at a certain place and not involved in a crime. What happens if further information comes forward and it can be proved that that individual was? You have this dilemma and I just have very little faith in this truth recovery process. I fear that it could be abused. That would be my main concern.

**Lord Hain:** To briefly respond to Robert's question, we actually have a model that is working at present. That is Operation Kenova under Jon Boutcher. We might as well give that a head of steam. I have talked to him. For example, if your Committee, Simon, recommended this route, they are willing to take on this truth recovery process.

Q288 **Chair:** Peter, your argument is: do not reinvent the wheel. If there is something that is working and is commanding respect, support, faith, confidence—call it what you will—go with that rather than trying to create something else. Yes?

**Lord Hain:** Exactly. It enjoys the confidence of victims and it is producing information for victims already. It may well result in very few, for the reasons we have all discussed. It may well result in some prosecutions, but a desktop review is very different from what he is doing.

Q289 **Mr Goodwill:** I think I speak for the whole Committee when I say that we were so impressed with Jon's evidence, the way Kenova was working and the way he was sympathetic to the victims and what they needed to get. I know you do not get closure.

Q290 **Chair:** Robert, that is a fair assessment. I am afraid I am going to be a bit heavier on the whip now, in the interests of time. I know that there is a lot of ground we still need to cover. Jonathan, can you help me with a pithy answer to Robert's question?



**Lord Caine:** No, not really. I will try.

**Chair:** Okay, next one.

**Lord Caine:** Reg raises a really, really important point about information recovery. People looked at the 18 March statement and thought that the closure of cases and so forth is intended primarily to protect soldiers. That might well be the case, but one of the sentences says, "Such an approach would give all participants the confidence and certainty to fully engage with the information recovery process"—i.e. the cases are closed forever and you can now engage with the truth recovery process.

That seems to be at a slight variance with a key part of the Stormont House agreement, which is paragraph 49. The Stormont House agreement is clear that information disclosed to the ICIR will not be provided to law enforcement. The identities of the people who have given the information will not be disclosed, et cetera. But there is a key sentence in paragraph 49: "No individual who provides information to the body will be immune from prosecution for any crime committed should the required evidential test be satisfied by other means". Even though you co-operate with the ICIR and your information there is confidential, if by some other means the evidence is acquired and reaches the evidential test, you will still be open to prosecution.

I wrote that sentence into the Stormont House agreement and it also appears, in a slightly different way, in the treaty that was signed between the UK and Irish Governments to establish the ICIR. One issue is that any merger, to go back to Robert's original question, raises questions for the Irish Government, who have entered into a treaty with the UK Government to set up the ICIR as a separate individual body. There would have to be some discussions with Dublin over that.

It seems to me that what is in the 18 March statement is chipping away at that key provision in paragraph 49 of the Stormont House agreement. I would have serious concerns about that.

**Baroness Ritchie of Downpatrick:** Chair, obviously I agree with Kenova, and I know that you took evidence from Jon Butcher last week, because that has provided confidence to families and to victims. For me, the 18 March statement closes the door on investigation. It subverts the rule of law and the requirements. Families know that the possibilities of prosecution are slight, but to crudely close the door in a very quick fashion on investigation after years, maybe lasting up to half a century is, in many ways, an act of betrayal. I would urge that the Government look at things differently. The chief constable admitted last week that they were blindsided by what the Government did on 18 March. Police are central to investigations, irrespective of the jurisdiction that you reside in. Therefore, that was a grave mistake.

Q291 **Chair:** This is a yes or no answer. It speaks to this honest broker debate that we have just been having over the role of the Secretary of State. It



is possibly always harder for a member of the Conservative and Unionist Party to fulfil that balancing act. Do we need a new George Mitchell at this time?

**Lord Hain:** It is possible. It is, again, an important question. He played a very important role in the process that led up to the Good Friday agreement and beyond, because he was not seen as having a stake.

**Chair:** He had no skin in the game.

**Lord Hain:** He had no skin in the game, absolutely. Somebody like that could be very valuable. I would add two very brief points. I was in charge when I was Secretary of State, as all Secretaries of State are, of the security forces. I signed warrants for all sorts of things to keep an eye on paramilitaries and disrupt their activity. I worked with undercover officers. I also worked with the Armed Forces and with the Chief Constable. That is the role. You are an honest broker, but you are also playing that role and, of course, that invites suspicion from time to time.

It is critical to get away from this fly-in/fly-out role for a Secretary of State or a Prime Minister. Julian Smith broke the mould in that. Northern Ireland needs constant attention. You have to be there. You have to build the relationships. I had lots of complaints, by the way, not just from the nationalist side of the argument but from DUP Members, including in the Lords, that successive Secretaries of State were not meeting them informally and building relationships. You fly and you have an hour's meeting. You cannot do things that way. You have to bring people together, get them in for a weekend or whatever and really work this hard. That is what has been missing.

David Cameron started off having a pact with the UUP and then the Conservatives under Theresa May ended up having a pact with the DUP. That suggests that you are not honest brokers any more, whatever the reasons electorally for those pacts. Those were mistakes, and Sir John Major has made that point, so do not just take it from me as a former Labour Secretary of State.

**Lord Caine:** Peter, sorry to come back on that, but the first thing that the Government did in 2010 in Northern Ireland, while the Conservatives were still formally in alliance with the UUP, was to publish Saville and apologise for Bloody Sunday, with a Conservative and Unionist Prime Minister being cheered to the rafters in the Guildhall in Derry. That hardly sounds like partisanship.

**Lord Hain:** I have already paid credit to David Cameron's Government for doing that.

**Chair:** We are trying to resolve issues of 40 years' standing, not necessarily 10.

Q292 **Mr Campbell:** I take your point, Peter, about the Conservative and Unionist Party, but you will remember that for many years the SDLP used



## HOUSE OF COMMONS

to proudly boast, and maybe still do, of their sister partnership with the Labour Party. I am sure Margaret and Claire can attest to this. It was a very similar status in that there was a kinship and a political affinity with the Labour Party. We should not dwell too much on the fact that the Conservative and Unionist Party is just that, when the Labour Party is—

**Claire Hanna:** Are the DUP and the Tories sister parties?

**Mr Campbell:** No, we are not.

**Chair:** We are not even kissing cousins sometimes, let alone sister parties. Listen, this could be fantastically fascinating and maybe that is for post-Covid. Peter Hain, let us all have cup of tea and a good old natter. I agree entirely that the Celtic dimension that we have in politics of building personal relationships to evolve policy is important.

**Lord Caine:** Just to reconcile with Peter on a slightly different issue, the question was, "Do we need another George Mitchell?" I know George very well, visited him in New York many times and have a huge admiration for him. Last year, up to July 2019, we were scratching our heads looking for another George Mitchell who might come in and break the deadlock on the politics. We did not succeed in that.

There is a difference on legacy and Peter touched on it with his comments. It is quite difficult to subcontract legacy to an outside individual or international body when you have the national security dimension. The duty of the Secretary of State is to look after national security.

**Chair:** Yes, I take that point.

Q293 **Stephen Farry:** Good morning, everyone. Chair, given that we are mentioning Senator Mitchell, I think everyone would wish to go on record in passing on our best wishes to the senator. As most of you know, he is currently battling cancer. We hope he pulls through and comes out the far end in that respect.

My question has largely been addressed. It was on the panel's view about the switch towards information recovery in the emerging proposals. I want to take the opportunity to drill a bit deeper in and ask the panel to explain what they understand by the term "information recovery". We are potentially talking here to two different aspects. There is the sense of an almost investigatory approach to information recovery, which is where we often get confused around things like HIU. People have made reference to David Ford and others saying there would be very few prosecutions. That is quite right.

There is the discipline of a formal investigation trying to uncover facts that may not necessarily lead to prosecution but still have value, versus, at the other end of the spectrum, a truth recovery process around individuals coming forward and telling their version of what happened. At times, this can be very self-serving and does not have the interrogative approach that an investigation would have. I would ask the panel for their



## HOUSE OF COMMONS

views, when we talk about information recovery, as to where on that spectrum we land. As a slight codicil for Lord Hain in relation to Kenova, which perhaps encapsulates the first aspect of that, to what extent can Kenova be scaled up to take on the role by default that others may have seen the HIU fulfilling?

**Lord Empey:** Mr Farry's question is very pertinent. If you ask people what they mean by that, I suppose you will get a different answer from nearly everybody you ask. My anxiety about that process is that I cannot see how there is going to be any balance between the terrorist-related violence, which accounted for 90% of deaths and nearly the vast majority of injuries through bombings and other events, and that of the security forces, which of course have records of sorts. The records in and of themselves do not necessarily lead to guilt or anything, but the fact is that there is an imbalance between terrorism and the state. That is inevitable.

As for information recovery and trying to satisfy a family as to what actually happened to their loved one, I personally believe that the chances of that happening are very, very limited. I fear that the process is subject to abuse and imbalance from the very start, so I have no enthusiasm, I have to say, for a proposal on these grounds.

**Lord Hain:** I do think Kenova could be scaled up and, indeed, former Chief Constable Jon Butcher has indicated that he would be willing to do that. It would be very cost-effective. Judged by the progress that they had made so far, it will enjoy the confidence of victims, as Margaret Ritchie has indicated. It would really make a lot of progress in a way that this thorny issue has not under all Governments for a very long time.

**Lord Caine:** I have a lot of sympathy with what Lord Empey said. My understanding of information recovery in the Northern Ireland context is probably quite close to what the HET provided, which were family reports, which the HIU, if it ever sees the light of day, was also to produce. I am not 100% convinced that, however you establish it, whether there are amnesties or not, frankly, you are going to get lots of people queuing up to tell their stories to an ICIR-type body and spill the beans about what they or other people did.

The other important element to this is that whatever we do should be family-centred and a voluntary process, so that it is only where families really wish to engage with this sort of process that it happens.

**Baroness Ritchie of Downpatrick:** First, I would say to Stephen that there are certain nuances to information recovery. I support the Kenova inquiry, but you have to be particularly sensitive. If you look at the 18 March statement, it promotes information recovery but fails to acknowledge the width and depth of the so-called national security vetoes that limit the information that would be shared. The security services will cast that particular net widely and they would have



information that will be vital to victims, to survivors and to those inquiries and investigations that are ongoing.

We do not want to see a situation where victims are relegated or side-lined in order to protect certain security interests. There must not be any malign forces at large, so we have to be mindful of that.

**Lord Caine:** National security is a very loaded term. What it really means is stopping information getting into the public domain that could put people's lives at risk. Every Government have a duty to prevent that from happening. As you well know, we went round the houses on this issue after the Stormont House agreement when we were talking about implementation. The Government stretched themselves quite considerably but proposed that, where the Secretary of State had to withhold something on national security grounds from appearing in a family report, there would be a ground for appeal to a High Court judge. We all know that High Court judges do not always find in favour of the Government.

**Baroness Ritchie of Downpatrick:** For elaboration purposes, I am aware of cases, particularly court cases, not necessarily to do with victims but other security issues, where people were investigating why they did not get contracts in the building sphere in Northern Ireland, and information was withheld due to national security. That did not help the progress in that particular case, so I am quite conscious, living in Northern Ireland and having grown up here, of the problems of national security.

Q294 **Claire Hanna:** On that issue of national security, Lord Caine, there is a theory of how it should work, but you know the facts of life based on your time in Northern Ireland, and that national security means, effectively, what the security services want it to mean. It always has done. The truth will not out, in that regard. People will not dispute words where there is a specific risk to life, but the veto is wielded in very, very many other cases where I do not think that that principle would stand up. Would you not agree? If the 18 March proposal advances as it is supposed to, at the very least would you agree that it cannot claim to put victims first because, in very, very many cases, it will put the veto first?

**Lord Caine:** The way I would answer that is that the successive Secretaries of State I have worked for—and Peter was in the same category—take their responsibilities in this area extremely seriously. They do not just go along with everything they are told and asked to do. The job of the Secretary of State is to robustly challenge the information and the intelligence that is put in front of them, and to decide for themselves ultimately whether it is in the public interest for that information to be disclosed. All of the ones I have worked with took that duty very, very seriously.



## HOUSE OF COMMONS

To go back to the original point, it is ultimately about stopping things getting into the public domain that might help our enemies or will put people's lives at risk.

Q295 **Claire Hanna:** Those are just two very different things. There are things that help your enemies by, I suppose, revealing a particular version of events. I suppose it is just a point that there is a difference. There is a line to be drawn between protecting life and information that may help our enemies, which is just a very broad thing. In many cases, something that exposes wrongdoing in the past could fit into that latter category.

**Lord Hain:** I understand where Claire is coming from and respect her point of view. I have not said this in public before, but I signed off 98% of the warrants that I was asked to sign for surveillance and other disruptive purposes to stop people getting killed in Northern Ireland. I did not sign off about 2% because I just did not agree that this would achieve that objective; in fact, it could be counterproductive. There was a security role, which from her political position I can understand Claire's suspicion about historically, but you do it with integrity and you use your own judgment. To that extent, I agree with Jonathan.

Q296 **Claire Hanna:** I do not doubt that, but 2006 and 1976 were very different times.

**Lord Hain:** They were, definitely.

Q297 **Ian Paisley:** Could I ask Peter Hain whether he ever signed off, or was asked to sign off, warrants to snoop on publicly elected officials in Northern Ireland?

**Lord Hain:** I have never commented, Ian, and you would not really expect me to. I know you are never mischievous, but I have never commented on individuals.

Q298 **Chair:** I might rule that one out. A number of you have referenced the work of Jon Boutcher. He made the point to us last week in oral evidence about his experience of the security services really dragging their heels in providing information. Is there not a danger, going to the top of our session this morning, if one has a time limit or cut-off point whereby all the boxes are locked and can never be reopened again, to use Jonathan's phrase, with all the keys thrown away, that they would just drag their heels to run the clock down? Therefore, is there merit in having it open-ended such that nobody—no organisation, no institution—can run a clock down because there is no clock to run down?

**Lord Caine:** In that case, I suspect it will never end.

**Lord Hain:** It is imperative that the security services co-operate fully with Jon Boutcher's Kenova operation. To be frank, as somebody who has worked intimately with the security services when I was Secretary of State in Northern Ireland, I have found it deeply disturbing that he, a former chief constable, indicated that the security services were not being



as co-operative as they could be. It is time they were and they should be quickly. It is in the interests of all of the British security forces to co-operate fully with this because, if they do not, you will see pressure for the prosecutorial routes to be followed. The main individuals who will find themselves in the courts will, simply because the evidence is easier to retrieve, be members of the security forces themselves rather than paramilitaries, republican or loyalist.

**Lord Caine:** I agree with Peter. You will remember that one of the key elements of the Stormont House agreement was that all the information held by the intelligence services would go to the Historical Investigations Unit. You would not necessarily have this problem of the HIU having to go to the MOD, MI5 or whatever it is to get the information. They would have the information.

**Lord Hain:** Exactly.

**Chair:** Reg, could we have the benefit of your thoughts on this?

**Lord Empey:** It is a very interesting exchange at the moment because Kenova is looking at Stakeknife, but it illustrates the potential imbalance in all of this. We are talking about the security services and, because they are part of the state apparatus, there are records. There are no records for the paramilitaries, so my anxiety is that there is a fundamental imbalance in all of this. We have people out there whose sole objective today is nothing to do with truth, but is to rewrite history and justify the murder and mayhem they created, whether they were loyalists or republicans. That is where they are operating, in that space, whereas the state is being raked over.

Let us be honest. As a former Secretary of State, Peter Hain made it very clear that he had responsibilities to protect life and limb. The fact of the matter is that, in all those decisions that had to be taken by security forces, there are bound to be mistakes. There is no question or doubt and there have been admissions of mistakes. There is no equivalence, because all the activities of the paramilitaries were wrong.

Q299 **Chair:** Yes, that is a statement of fact. Reg, surely you are not saying that, because the terrorists were not obliged to keep detailed records and logs, et cetera, and the agents of the state were, the standards required for agents of the state should be lowered to bring equivalence. Surely if one is donning a uniform, or a mackintosh and spyglass if you are in the security services, the standards are arguably higher and, therefore, the need to root out any wrongdoing should be a greater imperative.

**Lord Empey:** I entirely agree with the point you are making. Indeed, that is why we are opposed to amnesties, whether they are for security forces personnel or for terrorists. I totally accept what you are saying, but bear in mind that the state controlled and directed the security forces and the normal organs of the state. What we have seen emerging in recent years is a focus on a small number of individual ex-soldiers, who



## HOUSE OF COMMONS

have been singled out for prosecutions. What I am looking for here is a balance. I am not seeing a balance, but I accept entirely that we all have to be held to the same standards. I totally accept that.

**Lord Hain:** To add to what Reg has said, I think I am right in saying that, when it was put to the former chief constable, George Hamilton, that more members of the security forces were being prosecuted than paramilitaries, he disputed that on the record. Nevertheless, I have made the point myself that records are kept of what soldiers and other members of the security forces do, and records are not readily available for paramilitaries, but bear in mind George Hamilton's point.

**Chair:** I am conscious of time. It is coming up to 11.15. We have about 15 minutes. I am going to ask for nice, short questions and really short and pithy answers. The greatest exponent of that is, of course, Caroline Ansell.

**Caroline Ansell:** I have the question that was described by Lord Caine earlier in the session as the midnight hour question.

**Chair:** I am always asleep by midnight, so I have no idea what you are talking about.

Q300 **Caroline Ansell:** My question to all witnesses is around the Stormont House agreement. Why it has proved to be so very difficult to take legacy aspects forward? Lord Caine, you could particularly speak to your experience and what lessons the Government can take from both the success and the limitations of the process. I think you described it as having potential but not being perfect.

**Lord Caine:** There is enough material there for an entire conference, as somebody once said of Basil Fawlty. I will try to be very quick. One of the reasons we got the Stormont House agreement on legacy was because we stripped out of a lot of narrative and the detail. We then had to start putting it back in when we converted the paragraphs of the Stormont House agreement into legislation. That is where you start getting into difficulty. It was a very cumbersome process.

We then had delays around national security vetoes, which meant that, by the time of the fresh start agreement in 2015, Sinn Fein vetoed any reference to legacy in that agreement. Martin McGuinness on the penultimate day vetoed any references to legacy issues at all. We just lost time. By the middle of 2016, we were so frustrated, a year and a half on, and this was when I suggested that we do a consultation to see whether the thing would still fly. It then took another two years to get the consultation out of the door, by which stage the context had changed entirely in Westminster because of IHAT, which spooked the Ministry of Defence and others, and also high-profile cases like Dennis Hutchings.

What was originally intended, in our eyes, to introduce more proportionality and balance into the debate, since the focus seemed to be disproportionately on soldiers, was now seen by a number of our



colleagues, especially on Conservative Benches, as an instrument for going after soldiers. What lessons do I draw? Going back to the very beginning of what I said, we perhaps have to look at something far less ambitious. That is why I have some sympathy with where the Government are going, but I stand by the caveats that I mentioned earlier on.

**Lord Hain:** To use the Chair's term, scale up Operation Kenova. It is a working, successful model. It could get this whole process going and, above all, bring information desperately wanted to victims. It enjoys their support, which is very unusual. Secondly, it is important that Northern Ireland's politicians start facing the future and stop looking over their shoulder the whole time. That is easy for me to say, but it is something that I have always been struck by. Whether it is Kenova, climate change, the economic crisis that faces us or the crisis in the National Health Service in Northern Ireland, frankly, that is what they should be rolling their sleeves up and getting going on, while trying to bring truth and information to the victims through a Kenova-type process.

As a final point, on the severely injured victims' pensions, I have a great admiration for the Justice Minister Naomi Long, but when she announced that the payments and claims would only start being considered in March, that is six months away after six months already. How many more of these desperately injured people have to die before the payments are made? This is simply not good enough. The Executive have to get skids on and deliver these pensions pronto.

**Caroline Ansell:** Just to reframe this for Baroness Ritchie, it was about the Stormont House legacy agreement. Why has it been so difficult?

**Baroness Ritchie of Downpatrick:** It is because we have vested interests. We have to put victims first in all of this. As Peter Hain has said, we put victims first in the House of Lords in terms of that whole area to do with victims' pensions, because they were the most important people. In fact, they have had to go to court to get the law acknowledged, recognised and implemented.

**Caroline Ansell:** Lord Empey, why was it so very difficult to deliver those legacy aspects around the Stormont House agreement?

Q301 **Lord Empey:** I agree very much with Peter. We need to be looking at the future and we are getting bogged down in the past. If I have one message for the Committee, it is that the creation of an auxiliary police force that can make findings of guilt in family reports or in other ways against individuals is a very, very serious mistake. We are going to create more victims, not fewer. I would strongly suggest that we do not go with that model of the HIU and the associated apparatus. We need to be concentrating on the future, because I do not think that the Northern Ireland Executive are strong enough at the moment to withstand a serious argument over the past, which has the potential to destabilise the Executive even further.



I would be very much of the view that we need to go for a very, very modest set of proposals and not this high-wire act with all these institutions being established, costing hundreds of millions of pounds.

**Lord Hain:** Agreed.

**Scott Benton:** Going back, Lord Empey, to your comment a moment ago in terms of potentially needing a more modest set of proposals, you articulated earlier your concerns about the Stormont House approach. What would those more modest proposals look like? Do you think the Government need to look again at their revised proposals?

**Lord Empey:** With regard to the revised proposals, there is a lot of detail we do not have. That makes a judgment on every aspect of it somewhat more difficult because how it actually is supposed to operate is very critical. There are certain basic, fundamental things that you can create an envelope around. First, all the parties are supposed to be supporting the PSNI. We should therefore trust it to investigate if there is new evidence that it has to recommend a prosecution to the DPP. It should not be starved of resources in that regard given the vast amounts of money that were prepared to be put into the various institutions that were proposed from Stormont House. We should first ensure that the legacy unit within the PSNI is resourced. It should be possible. If people support the PSNI in general, why are they not prepared to allow it to carry out investigations should evidence arise?

We really have to decide whether we are going to immerse ourselves in the past or whether we are going to say we have to prevent another generation from getting itself bogged down in this. The worrying thing I would point out to you is that, among some of the paramilitaries who are emerging—and they have not gone away—there are many young people who had not been born at the time when many of these events took place. That is a very worrying development.

The emphasis, the resources and our collective endeavour have to go to helping young people break the cycle in many of these deprived areas, which is fuelling all of this, to make older paramilitaries try and justify what they did. There is no justification for what they did, so let us concentrate on preventing another generation making the same mistakes.

Q302 **Scott Benton:** Thank you, Lord Empey. I take your point in relation to the lack of detail at this stage. Slightly changing tack, you and members of your party have spoken before in relation to how the previous Stormont House agreement would have led to disproportionate number of investigations surrounding members of the Armed Forces and the RUC. How do you think the Government can now deliver their manifesto commitment to give veterans the protections they deserve through the mechanism of the current framework?

**Lord Empey:** There are huge difficulties in achieving that. As I said, the detail is important and, as you point out, we do not have it. Anybody who



has been in any form of government, even local government, knows that once you establish these organisations they tend to take on a life of their own. They are legal personalities. They are therefore opened up to the courts. People can challenge them on this and people can challenge them on that. Perhaps the Government are moving in the right direction insofar as they are trying to bring some kind of tapering off of this process, but we have to understand that we are up against a whole series of people who are making and creating an industry through the use of legal challenges. That is where the Government have to address things.

We are spending absolute fortunes. As Margaret Ritchie said, the victims are the key here, but the fact is that many of them will remain victims and will sadly go to their graves without knowing how their loved ones came to be assassinated. We have to completely reset our minds as to what the way forward is. It is certainly not, in my opinion, in anything to do with the Stormont House process.

**Q303 Mary Kelly Foy:** Good morning. In the short amount of time we have left, I want to touch on the closure of cases and the Government's proposals to only fully investigate those cases where there is a realistic prospect of reaching a prosecution as a result of new and compelling evidence. What is your view on the fact that some cases could be permanently closed with no further investigation? There are two parts to this: who should be responsible for taking such a decision and should these decisions be open to appeal?

**Lord Hain:** I do not like the idea of permanently closing a case. If forensic evidence, or whatever it is, comes to light, the law must follow its course wherever it goes and on whichever side of the Troubles the spotlight fell. I come back to the point I made right at the beginning. That is a different thing from saying you should resource prosecutorial investigations that are not going to succeed. I have given my view on an alternative truth recovery process. That is the most likely one to bring some justice to victims and it will be far, far cheaper than the hundreds of millions of pounds that end up going to mainly lawyers and diverting police budgets.

**Q304 Chair:** We know the caveats and the concerns that you, as a panel, have on this. Let us work on the presumption, which is the spur of Mary's question, that as per the written ministerial statement there is going to be permanent closure. You may disagree with them but, in those circumstances, if that is what comes out at the end of this process, who should take that decision and should that decision be subject to appeal?

**Lord Hain:** In the end, permanently closing a case has to be a matter for the Public Prosecution Service and the PSNI. They will decide to close a case in the sense of putting it at the bottom of the pile. If they decide the evidence just is not going to lead anywhere, of course they are right to close the case, as they would do on any criminal matter.

**Q305 Chair:** Should that decision be subject to an appeal?



**Baroness Ritchie of Downpatrick:** Yes.

**Lord Hain:** Potentially, any decision like that is subject to an appeal under our judicial system. I do not think you should lay down ground rules. You should leave it to those two authorised bodies, the Public Prosecution Service and the PSNI.

**Lord Caine:** I agree with Peter that prosecutions are a matter for the independent prosecuting authorities. We need to see the detail on this, frankly. I would have thought that, in any scenario in which the prosecuting authorities are being told that once they have gone through a process they have to close a case, that decision would have to be taken by Parliament. I am sure that would require primary legislation to impose upon them that duty to close a case in those circumstances.

**Chair:** That is a very interesting observation, Jonathan. Thank you.

**Baroness Ritchie of Downpatrick:** I would be inclined to agree with Jonathan. It is obviously the Public Prosecution Service. They are the people who are legally qualified in this particular field to close a case.

I come back to my initial statement. We have victims here and we have to think about their particular requirements. There is a growing consensus that people would like to see a beefed-up Kenova. That is currently being undertaken by Jon Butcher. If you are talking about an overarching decision to close down cases, I have to say quite clearly that I would not agree with that. That is an issue for Parliament and for Government. We must remember that the Irish Government have to be involved. It has to be a bipartisan approach.

**Lord Empey:** Ms Foy's is an important question. I do not see how you can close cases permanently without effectively creating an amnesty. That is something we are very uncomfortable with. If you did it for the security services, all the legal opinions one has state that it would apply to terrorists as well. Should that not be the case, that is a different matter, but I understand it is. In those circumstances, that leads you towards an amnesty. I am very strongly opposed to an amnesty for anybody.

**Lord Caine:** Hear, hear.

Q306 **Chair:** I am going to either use or misuse the Chair's prerogative to have the final question. Margaret, you touched on a very important point, and it has come out in other evidence, which is the unilateral action of the written ministerial statement and the deliberate or otherwise overlooking of the role of the Irish Government. Sitting here this morning, Jonathan and Peter may have a real insight into this, given that they have been very close to and in Government. Are the UK Government treating the Irish Government with the respect and courtesy that you think they deserve on these issues? I will first ask Peter as a former Secretary of State.



**Lord Hain:** No is the answer, whether it is over Brexit-related matters or this. Relations between London and Dublin have gone backwards very quickly. That is not just undesirable politically and diplomatically. Our two jurisdictions have been severely at odds over the generations in the past. Particularly from John Major's time onwards and even going back to the Anglo-Irish agreement under Margaret Thatcher, we had built a relationship not of total agreement but of trust and good relations. Brexit has poisoned that. The Secretary of State Brandon Lewis's statement in Parliament yesterday is very, very dangerous and damaging, and has given deep offence and worry to the Irish Government.

We ought to be working together. We are joint custodians of the Good Friday process. It only succeeded because we were both pretty well joined at the hip on it and built trust. That has to be re-established and it has to be re-established quickly over Brexit as well.

**Lord Caine:** I was not involved in anything to do with March so I cannot comment in any detail. I think it was a mistake by Julian Smith to put the 30-day deadline<sup>1</sup> in the *New Decade, New Approach* agreement. I was resisting that demand right until July last year. It did not do Julian's career much good and it meant that the UK Government were under an obligation to rush something out very quickly. We see the result.

I agree that the relationship with the Irish Government is very important. I actually think over recent years it has been very strong, but ultimately in Northern Ireland there are decisions that are for the United Kingdom Government alone as the sovereign Government.

**Baroness Ritchie of Downpatrick:** I am very clear about this: both the British and Irish Governments need to be working together. When both Governments have worked together in the interests of the north or Northern Ireland and the island of Ireland, things have worked well. You only have to look at the Good Friday agreement and what flowed out of that in terms of the three sets of relationships. That is where we need to get back to and not unilateral statements that breach international agreements. Yesterday's statement by the Secretary of State is very damaging when you know that that can impact on the Good Friday agreement, which is all about relationships, addressing our differences and bringing people together. Chair, do you mind? I have to go to Question Time now.

Q307 **Chair:** No, of course. Thank you very much. I am going to turn Reg for the very short answer to my question, in a few words, please, and then I am going to bring proceedings to a close.

**Lord Empey:** I am totally in favour of good relations with Dublin, both from Stormont's point of view and from London's point of view. It is hard to judge from outside what the current relationship is, but we have to remember that the Irish Government are supporting measures in

---

<sup>1</sup> Correction: 100-day deadline



## HOUSE OF COMMONS

European courts taking cases against the British Government when, in fact, they should be working together. There is a need for balance, which does not exist, because the UK Government do not seem to be prepared to defend their actions in Northern Ireland as vigorously as the Irish Government defend theirs, but I am totally in favour of good, strong working relationships.

It has gone downhill since 2016. There is no denying that. It is up to any Secretary of State, nevertheless holding on to his principles and beliefs, to ensure that that relationship is on as good a working platform as it can be.

**Chair:** Thank you very much indeed. Colleagues, thank you for your attendance this morning. On behalf of all of the Committee, can I thank our distinguished panel, who brought a huge range and depth of experience and knowledge? I can remember Jonathan as the desk officer for Northern Ireland in CRD when I was a young library boy straight out of university. I think he was probably there when partition was sorted out in the first instance, but not quite.

**Lord Caine:** I once described myself as having been the former special adviser to Lord Castlereagh when the Act of Union itself was drawn up.

**Chair:** Whatever you are taking, it is working because you are looking good on it. Thank you all very much indeed for your evidence. You have given us much food to think about and digest. Enjoy the rest of the day.