

Northern Ireland Affairs Committee

Oral evidence: Consultation on implementation of the Stormont House Agreement, HC 1095

Wednesday 4 September 2019

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Members present: Simon Hoare (Chair); Mr Gregory Campbell; Maria Caulfield; John Grogan; Lady Hermon; Kate Hoey; Nigel Mills; Jim Shannon; Bob Stewart; Sir Desmond Swayne.

Questions 1-70

Witnesses

I: Daniel Holder, Deputy Director, Committee on the Administration of Justice and a member of the Model Bill Team, Professor Louise Mallinder, Professor of Law, Queen's University Belfast and a member of the Model Bill Team, and Professor Kieran McEvoy, Professor of Law and Transitional Justice, Queen's University Belfast and a member of the Model Bill Team.

Written evidence from witnesses:

– [Model Bill Team](#)



Examination of witnesses

Witnesses: Daniel Holder, Professor Mallinder and Professor McEvoy.

Q1 **Chair:** Good morning, professors and Mr Holder. Welcome to our Committee meeting. *[Interruption.]* Oh, sorry, I have to say, “Order, order”. There we are—I’ve said it, and we are now official rather than unofficial. Please will you introduce yourselves for the record? I invite all or one of you to make some brief introductory remarks; then colleagues on the Committee will subject you to their questions.

Daniel Holder: I am Daniel Holder of the Committee on the Administration of Justice. We were the NGO partner on the model Bill team.

Professor Mallinder: I am Louise Mallinder, Professor of Law from Queen’s University Belfast.

Professor McEvoy: I am Kieran McEvoy, Professor of Law and Transitional Justice, also at Queen’s University Belfast.

I will give you 60 seconds of background on what we have been up to. Throughout the negotiations on legacy, starting from the Haass-O’Sullivan process in 2013, we have been working as a team to provide free legal and technical advice to anyone who has an interest in legacy. We have briefed all the political parties involved in the negotiations, civil society organisations, victims’ groups, retired police officers and veterans—anyone with an interest. We have also done, I think, 20 reports over that period. Once the Stormont House Agreement was concluded, we produced our own version of a ‘model bill’: we commissioned a parliamentary draftsman and drafted a model Bill of what that legislation might look like. We have done a detailed response—some of you may have seen it; it is 106 pages—to the Government’s draft Bill. We have also given technical, legal evidence to a number of forums, including US Congress and the Dáil, and in 2017 I gave evidence to the Defence Select Committee. That is what we have been doing: trying to inform the public conversation about dealing with the past.

Chair: Thank you. I am grateful to you for your economical use of time. Colleagues, who is going to catch my eye first? Lady Hermon.

Q2 **Lady Hermon:** Thank you, Chairman; that is terribly nice of you. Thank you all very much indeed for coming here so early on a Wednesday morning, which meant that you had to come over last night. We appreciate that very much.

I thank you for the work you have done. You will, of course, be aware of the huge response to the public consultation on the legacy document



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produced by the Northern Ireland Office. Of course, the consultation that the Northern Ireland Office put out omitted one of the key and very controversial issues: the very vexed issue of a statute of limitations or, indeed, an amnesty for veterans of the Troubles. Was it a mistake for the Northern Ireland Office to leave that issue out of the consultation when it was such a key issue that needed the public to reflect upon that? Has it been overlooked?

Professor Mallinder: As we included in our written submission to this Committee, we thought it was appropriate that the statute of limitations is omitted from the draft Bill.

Q3 **Lady Hermon:** Omitted?

Professor Mallinder: Yes. We did not think it was appropriate there should be a question on it. There are a number of reasons for that.

Q4 **Lady Hermon:** And those are?

Professor Mallinder: First, the draft Bill is the product of long-standing negotiations that have been going on since to the Consultative Group on the Past. There has been a lot of public conversation about dealing with the past—the Haass-O'Sullivan process, the Stormont House Agreement and then the draft Bill. Through that process there has been a consistent rejection of the possibility of amnesty or similar measures and there has been a consistent commitment to keeping open the possibility of prosecutions for Troubles-related offences. I think that is a clear model of what is politically viable at the present time and I think the response of 17,000 people to the NIO consultation showed an overwhelming majority of those people remain committed to that approach, and reject the possibility of any impunity.

The other reason why we think the omission of that question is appropriate is that we are concerned that the statute of limitation proposals would not be compatible with the United Kingdom's international legal requirements, and we think that at this present moment in time those proposals would not be supportive to the peace process and could potentially risk undermining the support and legitimacy of public institutions.

Q5 **Lady Hermon:** I think it would be very helpful if you could elaborate on our international commitments and why it would not be compatible, particularly since, as you will be aware, even though there have been long-standing negotiations between the political parties in Northern Ireland, and a consensus reached that there was a consistent rejection of an amnesty, MPs in this House—not all of us were in agreement with the suggestion, but it is now a very live issue in this House. So how are we going to reconcile those two things? International obligations first of all.

Professor Mallinder: We have explored this issue in a number of reports we have written in the past and, while we don't think that international law necessarily requires prosecutions in all instances—we think there is space for flexibility around how one deals with the past—we think nonetheless under the European Convention on Human Rights there is a



clear obligation for effective investigations of serious human rights violations. Where a statute of limitations might conflict with those obligations would be where it creates an obstacle to effective investigations being held. At the moment, we don't have a lot of clarity about what a statute of limitations might look like, so the best I think we can go on is the language in the most recent Defence Committee report. There they talk about a qualified statute of limitations and there the qualifications are twofold—firstly, that the statute of limitations would only apply to cases that had previously been investigated.

Lady Hermon: Yes.

Professor Mallinder: And would not prevent new investigations and presumably prosecutions where there is compelling new evidence. So if that provision is adopted and implemented in the way it suggests, then investigations could proceed in cases that have not yet been effectively investigated. That would not constitute an amnesty and that would not necessarily be problematic under international law, if it is allowing investigations to go ahead.

Q6 **Lady Hermon:** But would it be controversial in Northern Ireland?

Professor Mallinder: It would of course be controversial, and I think what would be more problematic is there is a lot of contestation around the extent to which past violations have already been effectively investigated. I think where there have been investigations in the past, particularly of crimes involving members of the armed forces, we have had repeated concerns voiced by the courts, by Her Majesty's Inspectorate of Constabulary, etc., showing that the investigations that have been held to date have not been effective. So the question would be how would the idea of repeat investigations be treated, and if it was treated in such a way as to prevent any of those cases being reviewed, that is when statute of limitations would begin to resemble an amnesty, or would begin to resemble impunity for state actors. That would be deeply damaging in Northern Ireland and would undermine the Stormont House Agreement proposals, and I think it would be damaging to Britain's reputation in the world.

Q7 **Lady Hermon:** Do you think the current Government—the current Prime Minister—understand those sensitivities in Northern Ireland and the impact that these proposals might have in Northern Ireland?

Daniel Holder: No is the short answer. I think there is another big issue here, which is a real risk—depending on what form the statute of limitations took, of course—of essentially rolling back. I notice there are a couple of proposals in the Northern Ireland (Executive Formation etc) Bill, one of which is around investing powers in the Attorney General; that is perhaps a good example. There is a real risk that that type of thing essentially rolls back the criminal justice reforms that were brought in as a result of the Belfast Good Friday Agreement, and indeed the criminal justice review, to the extent that we have a justice system that is based



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around the principle that the rule of law applies to everyone; everyone is equal before the law.

If we look back to what some of the problems are that we are now dealing with, it was essentially, if we are honest about it, that the rule of law was very rarely applied to the security forces, particularly in the early part of the Troubles, which is why we end up with this particularly big group of cases that have never been properly investigated to international—

Q8 Bob Stewart: Would you define the early part of the Troubles? What date do you mean by that?

Daniel Holder: You could look at the period, for example, between 1969 and 1974, where 189 people were killed by the security forces, 170 by the military. In that period there were no convictions and no prosecutions. For most of that period there were not even any police investigations. As you know, the investigations in a general sense were conducted in a managerial style by the Royal Military Police. There's direct Authority, as you will know from the domestic courts, that they didn't meet the standards of 1971 at that time. We know that in terms of determining when the use of force, particularly lethal force, was lawful you need an independent investigation to determine that.

Q9 Bob Stewart: So you are saying up to 1974, not up to 1977, when police primacy was brought in?

Daniel Holder: I am saying there were particular problems in that era, but there have been problems throughout. Police primacy places it in a different place in relation to police investigations and potential conflicts of interest over independence requirements into police investigations. Where we have now reached, as Louise alluded to, there has been a lot of resistance to legacy investigations in state involvement cases, and attempts to limit them. We all know the fate of the Historical Enquiries Team and the sort of differential approach it took.

Essentially, a lot of this appears to be again about disapplying the rule of law to the security forces, which has led us to the situation we are now in. I think it would be a fairly grave mistake, given the reforms of the Belfast Agreement through the criminal justice review to put in place a justice system that is capable of making everyone equal before the law and applying the rule of law to the security forces as well, which is why we have started to see cases now going through. Obviously, there is still not a single conviction of a member of the security forces since the Belfast Agreement, but with the justice reforms we are now seeing some of those cases going through.

I think it would be quite a serious mistake to essentially roll back, particularly the proposal that was in the Northern Ireland (Executive Formation etc) Bill about essentially reversing the criminal justice review recommendations that the Attorney General would no longer have a role in either prosecutorial decisions or prosecutorial policy. That is a direct reversal of the reforms that were put in by the peace process. For obvious



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reasons, this is not the time to be unpicking and dismantling elements of the Belfast Agreement.

Bob Stewart: Forgive me; I am so sorry—

Chair: Bob, Lady Hermon was asking questions and you intervened with a very quick one. Professor McEvoy has indicated he wants to chip in on that, but I will come to you next, if I may. I want to let Professor McEvoy give his tuppence-worth on that. I then want to come back to Lady Hermon to see if she has another question. I will then come to you, Bob.

Professor McEvoy: Thank you, Chairman. This is in response to Lady Hermon's questions about the controversy around the statute of limitations. The other reason why this has proved so controversial is because I think there is probably a widespread consensus that the effect of introducing some form of self-amnesty of the statutory limitations for state actors is that it will make it impossible to prosecute the non-state actors—to prosecute paramilitaries. In effect, we will be giving a de facto amnesty to the paramilitary actors as well.

Q10 **Lady Hermon:** When you talk about state actors, I presume you are talking about both the police and the Army?

Professor McEvoy: The police and the Army, yes, and potentially members of the security services.

Q11 **Lady Hermon:** Could we just make it clear that, as I understand it, the Retired Police Officers Association are not in favour? **Professor McEvoy:** Absolutely; they are opposed to it, as are the Police Federation—

Q12 **Lady Hermon:** Thank you. I just needed you to differentiate from state actors. Thank you.

Professor McEvoy: Absolutely, 100%. In fairness to Dr Julian Lewis, who chairs the Defence Committee, after that report was issued—as I said, I gave evidence to that Committee—he was interviewed about this point, that in effect you will end up giving an amnesty to the paramilitary actors. He said in relation to that, "if the price of protecting our soldiers who are all that stood between Northern Ireland and complete bloody chaos" was that paramilitaries go unpunished, "my...view is we owe it to our soldiers to pay that price...I'd hope families would be big-hearted enough to accept that this is something they could agree to."

That was a very controversial statement in Northern Ireland, but from my point of view, at least Dr Lewis was being honest: if the legal consequences of this are that it is inevitably going to extend to the non-state actors, then let's have an honest conversation with victims and others. That is what we are looking at. That is what we are doing.

Q13 **Lady Hermon:** Have you had the opportunity at all to put these points? I know the new Secretary of State has only just taken up his post about a month ago and has been busy with a whole range of things, but have you had an opportunity to talk to anyone about your concerns?



Professor McEvoy: Yes, we have spoken to colleagues in the Northern Ireland Office and we are seeking a meeting with the new Secretary of State. I think that will happen.

- Q14 **Lady Hermon:** Yes, but there are some junior Ministers who might have time in their diary before that. I think these are key points that need to be made. I will ask one more question, then come back later in the Committee. Mention was made of the differential approach of the Historical Enquiries Team—I am just quoting back here. Could we put on the record that the Historical Enquiries Team did a huge amount of very good work indeed, and gave closure to a lot of families who were not seeking prosecution, but wanted to know the circumstances in which their loved one died: was it a wet day? Did someone comfort them? Did someone pray with them? Could we just have that on the record? But also, it would be very helpful for you to reflect to the Committee and to the wider public why it was that the HET was viewed as having shortcomings. Is this arrangement, this new Historical Investigations Unit, an improvement on the HET? I know those were three questions all rolled into one.

Daniel Holder: The answer to your first question is yes, we would fully agree that the HET brought a measure of resolution to many families through their work, and there were a lot of detectives who did a lot of excellent work with them, within the constraints. One of the problems that the HET had, for example, which goes to your second question, was that the HET was not set up on a statutory basis and did not have statutory policing powers in itself. That may have just been because it was politically untenable at that point to do that through either legislature. It was not independent of the police service, which meant that it could not deal with policing cases; it had to share that caseload with the ombudsman, whereas the difference with the HIU is that you are setting up an entirely different body that can deal with the full range of cases and will have the relevant policing powers.

- Q15 **Lady Hermon:** Do you think this new body, the HIU, is sufficiently independent?

Daniel Holder: The HIU? It depends on how the legislation is framed. Certainly, there are some strong elements of independence in there. What it does, in the latest Bill at least, is to seek to replicate the structures of the HET, whereby you would have different teams where you would have some detectives who would have previous Northern Ireland policing involvement, and there would be an attempt to isolate them from teams that are dealing with state involvement cases that do not.

That has been a very sensitive subject, as you will know. That model did not work in the HET—it was one of the issues that led to its downfall—and it is not the model currently used by the Police Ombudsman's office, which will preclude former RUC or members of the military within its legacy team, although of course the Police Ombudsman's office only deals with state and police cases. It is not the model used by Chief Constable Jon Butcher in relation to the Stakeknife inquiry, whereby he would take the



same approach of precluding involvement. It is a model whereby you have in this Bill a codified approach of splitting the HIU into different teams. I don't know whether that will end up in the same pitfalls that befell the HET, or whether there is a way of firewalling different teams in a different way. The latest from the courts is essentially that the LIB within the PSNI does not meet the independence requirements.

Q16 **Lady Hermon:** Sorry, could you just say that a little bit louder?

Daniel Holder: The latest in the Barnard case was that the Legacy Investigations Branch within the PSNI does not meet the independence requirements because it is a part of the police, so it is difficult to see how it can work in all cases. The HIU will be dealing with a broader set of cases, and I suppose the argument of having different teams is that if you can separate the state involvement cases from non-state involvement cases, that will work. The problem with that is that it is quite difficult to do, particularly when you get into the areas of intelligence and the use of informants and their handlers. It is normally quite difficult to determine whether a case has it and, indeed, if the case engages the adequacy of the police investigation.

That might directly be because the police investigation was running in a context where detectives were constrained, because some of those they may have wished to interview were informants and they weren't allowed to by Special Branch, under the terms of the procedures that were brought in after the 1981 Walker report.

It is quite complicated to separate those two groups of cases. Arguably, it is only after you have done the initial review or the investigation, you can determine whether a case is genuinely one where there is no question of state involvement or not. I still think there are a number of things to work through in relation to that.

The other issue with the HIU will be the breadth of its caseload. There was one thing that came out of the consultation, both from our perspective and the perspective of those who would have, it would be fair to say, very different perspectives from us. There was a general consensus that the HIU d=Director, in terms of its independence—going back the independence question—needs more discretion in relation to which cases it can deal with inside its remit, and which cases and under which circumstances it can launch investigations.

If anything, the Bill was too constraining, in particular in relation to some cases. Some of the reviews had been completed by the HET and, while there is provision for those state-involvement cases where there was the HMIC report, there are other cases that are not state-involvement cases, where families would still wish for the opportunity for the HIU to review and, when the criteria are met in terms of new evidence or leads, investigate those cases.

Q17 **Lady Hermon:** Yes. Anybody want to add anything?



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Professor McEvoy: I agree with Daniel that the HET did a lot of good work. Our concern with the design of the HIU is: why replicate a design failure, when you have already made it? There are political reasons for that, I understand, but why do that when you know that that is going to be problematic?

Q18 **Lady Hermon:** You think that is—in your words—a design failure.

Professor McEvoy: It is a risk of replicating a design failure. I have had this conversation with friends and colleagues, former retired RUC officers. There is an issue about placing people. People have a great pride in the uniform that they wore in the Royal Ulster Constabulary, and the sacrifices that were made. People should not be placed in a context where there are going to be any conflicts of interest. That is an awkward space inevitably.

The other issue is that people are getting older, and whether or not there is a big pool of retired RUC detectives who would want to work for the HIU is another thing. We know that that ultimately undermined the effectiveness of the HET. There are difficulties. I understand the politics of it, but there are difficulties when you know that is a design challenge of doing the same thing again for political reasons.

We are technical people, so we see this from a technical point of view, not just a political point of view. If you already know that there is a design flaw there, why make the same mistake again?

Professor Mallinder: To return momentarily to the statute of limitations question, I think the points that Daniel was talking about with respect to the limitations and the HIU caseload are useful here, because it acknowledges that the HIU process is not intended to repeat investigations of cases that have already been satisfactorily completed.

There are already protections in the Stormont House Agreement itself that protect against repeated investigations in cases that have been effectively investigated thus far. I think that is part of the problem with the statute of limitations proposals: they are being talked about somewhat in a vacuum. It has not been thought about in terms of how they would integrate with the Stormont House Agreement proposals.

Lady Hermon: Thank you.

Bob Stewart: Thank you so much for coming over. It is a pretty awkward day for us—some of us.

Chair: Bob, narrow it down to when days are not always awkward for us—

Q19 **Bob Stewart:** It is certainly awkward for me. To put this in context, I served in Northern Ireland from 1970 onwards, so I have to declare a vested interest. My questions on dates were primarily to try to establish a date from which there was no question that the investigations were proper, hence my question leading towards 1977, when the police took primacy, which meant they took over investigations. Is 1977 a cut-off date? From then onwards it was done, in whatever way you want to call



it, properly.

Daniel Holder: Unfortunately not. It appears that, in the view of the PSNI in particular, 2004 is actually the cut-off date whereby they can stand over murder investigations.

Q20 **Bob Stewart:** From then onwards it was done properly. It seems a bit late, doesn't it?

Daniel Holder: 2004. That explains why within the draft legislation, which wasn't in the previous edition, there is an extension of the potential for the HIU's remit, which previously was to run up to the point of the Belfast Agreement. But there is now an extension whereby, in the event of new evidence cases—not every single case—the HIU can also review cases between 1998 and 2004. That essentially is the position that was set out on the back of the Omagh bomb Police Ombudsman's review—there were a number of, I think, HMIC reports after that—and the adoption of new standards in relation to murder investigations. So these aren't, of course, just issues around the potential questions of independence. These are issues around the effectiveness of investigations as well.

Q21 **Bob Stewart:** So in short, Mr Holder, the answer is no, 1977 isn't the date from which it is done—2004.

Daniel Holder: That would be a shorter answer, yes.

Q22 **Bob Stewart:** Forgive me; I think you have been very kind so far. You are—you used the word, Professor McEvoy—technocrats. So technically, when you looked at some of the investigations, say, in the early '70s, which I presume you have done, you found problems with the investigations—technically.

Professor McEvoy: I think they were described—certainly the pre-'73 Royal Military Police investigations were described by the Historical Enquiries Team themselves—as managerial in tone. In some instances, you would have people having been killed, and a soldier is interviewed for 15 minutes.

Q23 **Bob Stewart:** I was never involved in a fatality shooting before 1973, so I don't know, but I do know thereafter we were really turned over. To us it didn't seem that the military or, indeed, the Royal Ulster Constabulary, were on our side if you were on the receiving end of one of these investigations. The investigation may be technically wrong, but for goodness' sake, for those of us that were undergoing the interrogations, and splitting up, you know, it was extremely—

Professor McEvoy: I think it is really important. I think there is a great risk in all of us, with the benefit of hindsight, judging the quality of investigations. I am a lawyer, so of course I judge it from a legal perspective, but from a human perspective I have done work with the senior team of the PSNI on dealing with legacy, and the reality of the numbers of murders that people were dealing with—you would see teams of detectives investigating a murder, and then they would move to



another murder within a couple of days. That was just the human reality of it.

Q24 **Bob Stewart:** The truth of the matter is it was overwhelming.

Professor McEvoy: Absolutely.

Bob Stewart: Utterly overwhelming for the Royal Ulster Constabulary, utterly overwhelming for the Royal Military Police, and a real problem, because we were also trying to keep the peace at the same time as being investigated. I only put that on the record for those of us that were at the sharp end, being investigated and then going out. It was extremely traumatic. I am going to shut up; because I don't think—I really want to see the whole thing closed down. I do not want terrorists to escape being brought to court, and I will just repeat—I will say—my position. My position is that if there is significant evidence that shows that things were wrong in an investigation, I am happy to see it opened up, but if there are not, I want it closed down. From the point of view of the police, the Army, or whatever, there has got to be significant evidence, to stop old men being dragged out of their beds, when actually— So my plea as a member of the Northern Ireland Committee is, whoever is deciding what the future is, please bear in mind that at the time we thought we were doing right, we were acting within the law. We went through hell at the time, and here is the key thing: we were told it was over. Therefore, it should be over, unless there is significant new evidence that proves that the original evidence was wrong. At that point, Chairman, I will shut up.

Q25 **Chair:** Bob, thank you. Just before I call Mr Campbell, may I ask you to clarify one thing? You have used two words that may be compatible from a technocrat's point of view but to my non-technocratic mind perhaps are not: criteria and discretion. Isn't part of the problem when discretion has the whip hand, rather than a checklist to effectively address the points Mr Stewart was making so people can see that there is a lot of cold, clinical analysis and the result is either yes or no? When discretion comes into play, people can start to shout foul. If, as technocrats, you were writing out the rubric, would you prefer stricter criteria with less scope for discretion in order to try to deliver a greater sense of clear fairness?

Daniel Holder: There are a number of issues in relation to the HIU. One is that, in terms of completed HET cases, decisions were going to be made by the PSNI—essentially by the Chief Constable—about which cases they considered had been completed and therefore would not be within the HIU's remit. It did not seem a particularly good idea for that function to be vested in the PSNI. I am pretty sure they agree with that perspective. They do not want to end up with the role of deciding the HIU case load, so it was more a question of whether that function should really be vested in the HIU Director.

One of the issues was with the completed HET cases where a report had been finalised. There was a group of cases that were state involvement cases—those involving the direct use of force by the military and, indeed, collusion cases. The Bill provides a definition of collusion—not one that we



are particularly impressed with, I have to say, but it does provide a definition for that purpose. However, there are other, non-state cases that were in the HET's case load that would be precluded by virtue of a decision by the Chief Constable. There were a lot of technicalities about that: whether a family had written by a particular date, which I do not think was specified, to the Chief Constable to complain about the HET report and had received a response indicating that it would be reviewed. Some families will have written, but some—particularly after the HET closed its doors—will not have written and will not have thought to have written. You could therefore end up with something that appears to be a little arbitrary in terms of which cases end up in the remit, so there was an issue around the HIU Director role.

You are always going to come up against the issue of new evidence as well. No one should have been advised that things are over when there is no amnesty; everyone is subject to the rule of law. You get instances whereby the HIU reviews an investigation, completes it, sees no leads and sees there is no one to arrest or charge, but, a year down the line, comes across another group of cases that are linked, by either the weapons or the suspects, and therefore new evidence emerges from that group of cases that leads to the reopening of the original HIU case. It is not a case of a one-off investigation necessarily drawing a line because of the issue Mr Stewart raised: new evidence may well arise, and it may arise as a result of a subsequent investigation.

- Q26 **Mr Campbell:** A couple of issues. The first is the proposal for an oral history archive. Given the very contentious nature of dealing with legacy issues, is that at least a less contentious way of trying to work through those issues, particularly when dealing with relatives and family members of people who were murdered or died as a result of the early part of the troubles, when the majority of people were killed? As Lady Hermon alluded to, the only outstanding issue for many of them is bringing closure. They do not know what happened, they do not know how it happened, and they want to close the book and move on. I have had some experience of people coming to me to deal with that. Is the proposal for an oral history archive capable of doing that for those who want to avail themselves of it?

Professor McEvoy: It is an excellent question. From our perspective, the oral history archive is probably one of the mechanisms that has received the least attention. It is hugely important, not least because one of the criticisms of the HIU in particular and the ICIR is that it has focused primarily on deaths. But the oral history archive allows people to come and tell their stories, regardless of whether they were injured—or it could be health professionals who were involved in attending bomb incidents. It captures that much broader range of experiences. As you know, the fourth mechanism of the implementation and reconciliation group is designed to pull together the themes and patterns of the conflict, and the oral history archive has a very important role to play in all of that, not least because, internationally, nowadays you would expect certain themes to emerge.



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In the world that Louise and I operate in, a normal theme you would expect when looking at the legacy of conflict would be gender-based violence—domestic violence—during the conflict being hidden and so on. The oral history archive is a mechanism by which you can capture some of those gendered dynamics. It is also a less Belfast-centric mechanism, where you capture the rural-urban divide. It is also a mechanism for the experiences of victims and others in England, as a result of the conflict. It has a very central role.

You are right, Gregory, to point out that it has probably generated less controversy. There are issues, however, with the design of it in the legislation in particular in terms of guaranteeing its independence. In the draft Bill, it is located in the Public Records Office, overseen by a deputy keeper—in effect, a senior civil servant answerable to the Minister of Communities. Obviously, the Minister of Communities has fluctuated; it has previously been a DUP and also a Sinn Féin Minister. So there are issues about how we ensure that that mechanism is seen to be sufficiently independent to ensure that it gets buy-in from across the community. There are existing oral history archives—the George Cross, for example, has a very extensive oral history archive—so how do we ensure that a mechanism is created and the people already overseeing oral history mechanisms have confidence and trust in it, with regard to handing over their stuff? What is the governance? So there are design issues with it, but it is certainly possible to overcome them, and it is a centrally important element of the architecture, for all of those reasons.

Professor Mallinder: I agree with all the points about why the oral history archive is an important component of the comprehensive proposals set out in the Stormont House Agreement. But on some of the points Mr Campbell raised in relation to the concerns of bereaved families who want more answers about the fate of their relative's death, a particular mechanism that might be of value to them is the Independent Commission on Information Retrieval. That proposal is a useful complement to the work of the Historical Investigations Unit. For all the reasons we have already discussed—all the challenges with collecting evidence at the time that the crimes took place—it is unlikely that we will get much in the way of new evidential leads. If we accept that premise, the Independent Commission on Information Retrieval is likely to be an important vehicle for trying to obtain new information that can help provide the answers to the concerns of those families who wish to engage with it.

Mr Campbell: I want to move on to one other issue. That is one end of the spectrum, which, as I alluded to, I think is less controversial, and you confirmed. At the more controversial end is the overall issue of the lack of consensus in Northern Ireland about legacy per se, as opposed to the nuts and bolts we are discussing. It appears to be the case at the moment that you have a large number of people who believe that, if you look at the terms of the conflict from 1969 through to whenever you define it as ending—1994 or shortly thereafter—there were tens of thousands of members of the police and Army involved, part time and full time. Because of the way the Army came in and out, there were probably even more of



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them, because some were on short-term deployments, which meant there were probably tens of thousands of soldiers alone, plus the part-time and full-time police and the UDR.

Against that, there was a relatively small number of people involved in terrorist groups—probably hundreds rather than tens of thousands or hundreds of thousands. But for many people, the distinction between those two groups, apart from size, is that 100% of the terrorist groups were committed to murder. That is why they belonged to the IRA, the UDA, the INLA and all the other paramilitary groups. Only a tiny number—I think, Mr Holder, you referred to the fact that the numbers of people in the security forces who had not faced prosecution—less than 0.1% of those hundreds of thousands of soldiers and police officers would or should have faced any questions, never mind prosecutions. But 100% of the smaller number of terrorists all should have faced questions and prosecutions. How do you arrive, through the Stormont House Agreement, at a position where the wider community look at it through that prism?

Here was a contest, a dispute—hundreds of thousands of people trying to maintain the law and a tiny, statistically insignificant number of those people may have broken the law, whereas 100% of the terrorists all broke the law. This is what the previous Prime Minister alluded to, the disproportionality of pursuing those people on a legacy-based issue. How do you reconcile those two things?

Professor McEvoy: It is a very important question. On the numbers involved, it is difficult to pin this down; I have tried, actually. The people from the paramilitary organisations who went to prison is somewhere between 30,000 and 40,000—definitively, more or less. A lot of people were processed and, as you all know, that means that the experience of imprisonment directly impacted on working-class communities in particular, in both loyalist and republican areas. It is not a small number of people who went to prison.

Q27 **Mr Campbell:** But they were all convicted.

Professor McEvoy: Yes, they were convicted, absolutely.¹ The other thing to say, in terms of the broader point about all this, is that there are not going to be large numbers of prosecutions of either state actors or non-state actors. That is the reality. There will be different views about whether there should be, but it is just a legal fact that it is extremely difficult to prosecute people for historical offences, because evidence trails go cold, forensics may have been compromised, eyewitness evidence is not reliable—

Q28 **Mr Campbell:** And many of them are dead.

¹ *Clarification from Prof. McEvoy, 11/09/2019:* "I did say here yes they were convicted. However, I really should have said: from 1971 to 1975 internment without trial in Northern Ireland operated so that thousands of people were held in prison without being convicted."



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Professor McEvoy: Absolutely. I think we all, in terms of all this work, need to be honest with victims about that, not to oversell the prosecution product out of all of this, and to say that much of the bulk of the work of these mechanisms will probably be around trying to find out more information. That is probably more realistic. The bulk of the work of the Historical Investigations Unit will be about trying to bring some degree of closure to families and people. We all need to be honest about the prosecutions.

The issues of balance have obviously featured heavily in the debate, particularly around the statute of limitations. We have the figures here, and we can rehearse them if we need. Those do not stand up—the figures of balance in terms of prosecutions do not stand up. You will have seen the evidence—do you want me to go through them?

Q29 **Mr Campbell:** How do you mean they do not stack up? Without going through all the detail of the numbers, I don't understand the concept that they do not stack up.

Professor McEvoy: For example, the question about prosecutorial imbalance. The DPP's office issued in 2017 a recap of where they were at in terms of conflict-related prosecutions. They had had to take decisions on eight cases relating to republicans, and they had prosecuted seven of them; three loyalists, and they had prosecuted all three of them; two soldiers then, and I think there have been two soldiers since, so that takes us up to four, and on three police they had to make a determination and none was prosecuted. In terms of the balance of the work of the DPP's office—

Q30 **Mr Campbell:** But there is a misunderstanding about that. You have to portray that and set that against the backcloth of how many unresolved murders there have been in Northern Ireland. That is the context, because if people have been convicted and served a jail term for murder, then as far as the law is concerned, that case is closed. The people may not be satisfied, the relatives may say it was insufficient, but legally, that case is closed. But you have thousands of unresolved murders, and 99% of them were unresolved murders carried out by the terrorists, not by the police or soldiers.

Professor McEvoy: I agree with that, and that is why I made that caveat about the prosecutions not overselling that paramilitaries will be held to account or sent to prison as a result of that. We cannot be telling victims that, because it will be legally too difficult to do it. The other thing, which is what I suspect motivated particularly the unionist parties around the Stormont House Agreement to make the agreement, is that if this all falls apart, if the Stormont House Agreement is not implemented and those mechanisms are not established after all this, after all we have done with all the victims, the conversations and all of that, the years of waiting for this all to happen—if that all falls apart, and my own view is that this is our last chance to do this—when the dust all settles, what will happen? What will happen is that the normal criminal justice processes will continue to apply. So the legacy inquest cases will continue. The PSNI and the LIB



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will continue to do their investigations. As everyone around this room knows, the police do not want this—they are very keen to hand this on—and that will then have the effect of continuing to undermine the policing settlement and so on and so forth.

The reality of a lot of that work, and you would probably agree with this, Gregory, is that there is a perception in the Unionist community that a lot of that piecemeal approach, as we sometimes talk about, is state-centric—is focused on the state actors. The beauty of the Stormont House Agreement mechanisms is that they are designed to rebalance that. They are designed to address that and to move things away from a state-centric approach to capture the broader reality of the conflict, including that the paramilitaries were responsible for the vast majority of deaths. It is the way in which that concern, particularly expressed in the Unionist community, is addressed—through implementing the Stormont House Agreement mechanisms. That moves it away from the state-centric approach, because if it doesn't, then we are back to square one and the criminal justice system and inevitably we are back to a state-centric focus.

Q31 **Mr Campbell:** I am glad you said that and I welcome that, but do you therefore agree with what I said about the sheer numbers of unresolved killings in Northern Ireland? That they are primarily—not exclusively, but primarily—the responsibility of terrorist groups? The number of unresolved killings carried out by police or soldiers are very important, but significantly, in terms of statistics, they are relevantly tiny, compared with the unresolved terrorist campaign that went on for 30 years.

Daniel Holder: I don't think they are relatively tiny; there is quite significant—

Q32 **Mr Campbell:** Numerically.

Daniel Holder: I don't think they are tiny in terms of their numbers; they are quite significant numbers. There were very few prosecutions of members of the security forces. It was very rare that those cases were properly investigated.

Q33 **Mr Campbell:** But that is because very few members of the security forces broke the law—

Daniel Holder: Well, how do you—

Q34 **Mr Campbell:** Every terrorist broke the law. Every single terrorist broke the law.

Daniel Holder: How do they know that if—

Q35 **Chair:** Sorry, Mr Holder. Can we not have a conversation, and can we not talk over one another? There is a question; we will have an answer and then we will have another question. I think Mr Campbell has asked a question and you are going to answer that, but I don't want to have a conversation going on across the room.

Kate Hoey: Sorry, Chair—and I'm sorry to be late—but could I ask Mr Holder to speak up, please?



Daniel Holder: Sure. Where were we?

In terms of the security forces breaking the law, we don't know that. In terms of some of the figures they gave out earlier, we know that in that early period, 63% of victims were undisputedly unarmed at the time they were shot by the security forces. Those cases have never properly been investigated. We cannot definitely determine that those members of the security forces did not break the law and did not engage in unlawful killings or murder, and that is before we get to collusion cases, which takes up the figure from 10%, which relates to the direct use of force by the security forces, to a higher and as yet undetermined figure in relation to the number of cases.

The United Kingdom Government invited a UN expert to look at this—Pablo de Greiff, the Special Rapporteur on truth, justice and non-recurrence. His conclusions were on the 'impunity gap' that currently existed, reflecting the backlog of cases and the need to investigate cases by the security forces—that there wasn't a proportionate deployment of prosecutorial resources towards cases involving the security forces. There were very, very few prosecutions.

Q36 **Mr Campbell:** Do you accept the widely accepted view among most other people, apart from maybe the CAJ, that 90% of those who were killed in Northern Ireland as a result of what we call the Troubles were killed by terrorist organisations?

Daniel Holder: Yes, but there may have been state involvement in a number of those cases.

Q37 **Mr Campbell:** No, no—the yes bit. I know you said, "Yes, but". Do you accept that that is the case?

Daniel Holder: I have already given those figures: 10%, which is obviously the opposite of 90%, were by a direct use of force by the state; 90% were by paramilitary organisations, but that would include instances where weapons had, say, been supplied by the security forces or other collusive acts had taken place, so there would be state culpability in those cases as well. There is a definition of collusion in the Stormont House legislation.

Q38 **Mr Campbell:** You said there is state culpability. What evidence have you that there is state culpability? You have none.

Professor McEvoy: First of all—

Q39 **Chair:** Hang on, Mr McEvoy. Mr Holder was going to answer—I'm afraid that this is going to disintegrate. Mr Holder.

Daniel Holder: I think there is plenty of evidence. You can start with the Stevens report. You can start with the de Silva report. You can start with the various investigations that have taken place by the Police Ombudsman. In terms of informant-based collusion, the definition in the legislation is in two parts. This is about determining cases that the HET had dealt with that should be revisited. The definition is where a person



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“facilitated”—meaning “assisted or caused or intended to assist or cause”—“an offence or the avoidance of justice relating to the death”. But there is a second part which is “did so with the intention of achieving an unlawful or improper purpose”.

The issue is that that is quite a restrictive definition. It is not quite one requiring conspiracy, but it requires the conduct of being “intended to achieve an unlawful or improper purpose”. That prompts the question of when is facilitating a criminal offence or the avoidance of justice relating to murder lawful and proper? That goes into the extent to which informants were allowed to operate outside the law, on which there is numerous and growing evidence.

If you recall Lord Stevens and his own arrest figures: he arrested, I think, 210 loyalist paramilitaries and 207 of them turned out to be agents of the state. The whole purpose of these mechanisms is to look and determine this. You are right that you can’t put a figure on the number of cases where there is state culpability, either through those types of acts, or through failures to investigate because of the involvement of informants, until there is an effective independent investigation. That is not what has taken place to date in all of those cases.

Q40 Mr Campbell: I have one final question. In terms of the definition of a victim, do you think it is important for that to be clarified beyond any doubt? So that people and organisations that set out to try to murder me and kill and destroy, are not regarded in any circumstances as a victim, even by their own hand. And not to compare that with those who then try to stop them and may exceed their authority. There should be no equivocation between the two.

Daniel Holder: I think the attempts to redefine the definition of a victim of the conflict go well beyond that. They are often framed in those terms but, when I look at Sir Jeffrey Donaldson’s amendments to the Northern Ireland (Miscellaneous Provisions) Bill a while back, which fell, they were to redefine the definition of a victim.

There is also some of the evidence given to this Committee about a proposed model to redefine a victim by Ulster Human Rights Watch. Essentially, what those definitions are about go well beyond what you are suggesting, which is essentially to require a criminal act or an act of terrorism, which would effectively exempt, in the legislation as it stands, all victims of the state from the definition of a victim.

I think it is profoundly wrong to suggest that a child killed by a plastic bullet fired by the security forces is not a victim. The redefinition that both Sir Jeffrey and the Ulster Human Rights Watch proposed would essentially lead to that conclusion. There have been attempts in other places such as Spain to do this, where only victims of ETA and not also victims of the state are considered victims. The definition of a victim that sits in legislation is a definition of victims of the conflict. To restrict that to victims of the conflict who were just victims of republican and loyalist groups and not victims of the state would be too restrictive.

Mr Campbell: No more questions, Chairman.



Chair: Professor McEvoy, you wanted to say something.

Professor McEvoy: On the issue of the victim, obviously our focus today is primarily on the mechanisms of the Stormont House Agreement. It is important to say that that legislation has its own self-contained definitions of who would be, families who would be entitled and so forth.

The broader controversy about victim redefinition does not necessarily read across into that legislation. That legislation has its own definition of which families would be entitled to a report from the Historical Investigations Unit, the ICIR and so forth. In some ways, it is possible to curtail that broader political debate away from the Stormont House Agreement mechanisms in the way in which that legislation has been drafted.

Q41 **Jim Shannon:** You are very welcome, lady and gentlemen. In relation to some pretty quick questions, I am very conscious of timescale. One of the greatest things for me has always been the survivors and victims. My colleague, Gregory, referred to the definition of a victim and it is very important that we get that right. Do you think the draft Bill, within the Stormont House Agreement, fully meets the needs of victims and survivors? That is probably one for you, Professor McEvoy.

Professor McEvoy: It is not a perfect piece of legislation, but it is probably the best we are going to do. As I said earlier, I too have been hugely impressed. I have done a lot of work with victims from across the community over the years, and I find a huge amount of generosity and resilience among people who have suffered terribly. We are 21 years on from the Good Friday Agreement, and we still have not dealt with the past, so we have let them down as a society, yet they have continued to plug on. Some people have been involved in campaigns for almost 50 years; that is a huge amount of personal moral courage. They are very impressive people.

I think this piece of legislation is the best that we are going to get, Jim, in terms of trying to address the needs of victims. It is not perfect, as I say. We did a 106-page submission on things that need to be tweaked in it, but none the less, it is the best that we are going to do. I think if it is given a fair wind politically, it can address the needs of the vast majority of victims in our society. We are not going to get a better effort.

I find it beyond frustrating when—I will not name the particular political party, but there is one political party that seems to me to be playing fast and loose with “let’s dump the Stormont House Agreement” and not suggesting any alternative to that. It is the Ulster Unionist party, and I find their stance on this morally outrageous. The negotiations on all of this started in 2013, and we now have legislation. The idea that we would tear it all up and start again when all of us know that the political energy will dissipate and we will not have another go at this, as families are getting older, is morally outrageous. This is our moment, Jim; this is the moment for all of us to stand up and say, “All of the rhetoric that we hear about victims in Irish society, we are actually going to deliver on it for once.”



Q42 Jim Shannon: I recognise very much the tremendous work that the HET did on delivery. Talking to families who lost loved ones, you have some families that wish to have closure entirely now, and there are others that wish to have some more questions asked. Again, I wonder—asking the question again—do you feel that the Historical Investigations Unit treats police officers and armed forces veterans fairly, no matter what the case is?

Over the summer, Mr Chairman, when I go on holiday, I usually read books, and I got a book given to me at Christmas time. It was “Fifty Dead Men Walking” by Martin McGartland—an incredible story. He was a very clear informant who joined the IRA and, through his experiences, realised that the IRA were abusing the community they lived in and were killing people for all the wrong reasons. He thought that he should be an informant to the RUC, at that time, to undermine the IRA’s position and ultimately save lives. One of the lives in that book, by the way, is a gentleman who is one of my constituents, whose life was saved because of him. He reported back.

Kieran, I am probably looking to you for all of these answers; forgive me for doing so. If any others can come in and answer, I would be more than happy, but it is clear to me that the RUC and, in particular, probably the detectives had a clear role in using informants for a purpose and saved lives by doing that. I have been approached by a number of retired police officers who have been asked for their information, which perhaps could implicate or disclose other informants. That would be unfair, and they would be unwilling and wise not to do so.

You can never forget what the informants did, in relation to giving their lives or living on the edge of life. McGartland’s life was saved almost by chance, but it was saved none the less, and he has been relocated. I am just wondering: what consideration has been given to the police officers and the importance of their informants, and how they ultimately helped to stop the campaign of terror?

Daniel Holder: The HIU’s processes apply to everyone. In the sense that the investigations, in so far as they engage legitimate informant activity—the purpose of informants, as you say, is to essentially be a law enforcement tool: to enforce the law, intercept threat warnings and prevent murders taking place. That is how informants are to operate.

We know, unfortunately, from some of the independent police inquiries that have taken place that that was not always the case in relation to the informant system, and therefore where there is evidence that informants acted unlawfully, under the direction or otherwise of handlers, and acted in a criminal way that cannot be justified, then they would obviously face the rule of law, like others.

However, in the type of scenarios that you are describing, whereby informants were working within the law and passing on threat warnings and saving lives, there is no reason why those names in that context would be made public. I mean, there are already safeguards over the HIU, in relation to HIU reports not making information public that would place



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any individual's life at risk. So there are safeguards that are legal. To be honest, I don't think any investigative police officer is going to do that as a matter of routine anyway, but—belt and braces—the legislation has safeguards to prevent names from being made public in that way, if it is just by way of a Family Report.

I think there are very important lessons to be learned. They largely have been, in terms of reforms within Special Branch, or C2 as it's now known—C2 and C3—in relation to informant handling.

Q43 Jim Shannon: I am very conscious, Mr Chairman, of the fact that some of those police officers are now elderly and probably in poor health as well, and there is a certain trauma of investigations of some 25 years, maybe 35 years, after the events took place. We need to be ever mindful of investigations that take place in relation to people for whom age and health are not on their side.

Another thing that has always bothered me, Mr Chairman, over the years—it bothers us all, and particularly the families—is those who have had loved ones killed and never found their bodies. There is something terribly tragic about those cases. Some of those families are still—30 years later, in some cases. I can think of some—Lisa Dorrian is one that Lady Sylvia and I will be aware of, because she lived in our constituencies, and the family as well. We are really aware that there has been no closure.

I am just wondering what can be done in relation to—it refers to the Independent Commission for Information Retrieval. For me, it is about closure for those people who have lost loved ones. I know the detail of the past may not always be real in people's minds as the years pass, but what can we do there?

Professor Mallinder: Just before I get to that point, I think it is useful to note that in the draft Bill there are protections similar to those that Daniel outlined in the HIU, with respect to ensuring that the ICIR does nothing that prejudices national security or puts individuals' life and safety at risk. Regarding your former question, I think those provisions are built into the ICIR also.

However, in terms of using the ICIR to deliver answers to individuals, the ICIR is not intended to replace the Independent Commission for the Location of Victims' Remains. That body will continue to operate, but the Independent Commission for the Location of Victims' Remains is clearly the model for the ICIR. That process has resulted in the remains of 13 individuals, out of a total of 16 persons who disappeared, having their remains found. I think it shows how this type of confidential process, working over a period of time, is able to build trust with information providers in a way that genuinely can contribute to new information being brought to unsolved issues. I think it provides a model that could be successful.

However, learning from the experience of the Independent Commission for the Location of Victims' Remains points to some challenges in the current



proposals around the ICIR, particularly the fact that, as it is currently envisaged, the ICIR would only operate for a period of five years, and the Independent Commission for the Location of Victims' Remains has been around since 1999, and it still has work to do.

I think that shows that a five-year period for the ICIR is not adequate, particularly not in the case of those families who may wish to let their case run its course at the HIU first before going through an information retrieval process. Therefore, one of the recommendations we made to the NIO was that they look at extending the time period.

Q44 Jim Shannon: This will be my last question, and it will be quick. It is to do with the Implementation and Reconciliation Group. It is always good to have reconciliation and movement forward, but some of the information that we got referred to whether the IRG is sufficiently independent to ensure the confidence of communities. In particular, the information that we were given beforehand referred to the ability of the IRG to deliver or promote reconciliation. There was a certain amount of vagueness. Do you have any idea how we can take care of that?

Professor McEvoy: As Members will be aware, the Implementation and Reconciliation Group is designed to be overseen by political appointees based on proportion—so 3 DUP, 2 Sinn Féin, and so on. Underneath that, working to that body, a group of academics will pull together information on the themes and patterns. That body will also be tasked with doing reconciliation work.

Obviously, they are political appointees. That is a challenge in terms of political credibility and reconciliation work about themes and patterns. My sense on this—actually with all the mechanisms, Jim—is that the key is to maximise the independence of these mechanisms, appoint good people and let them get on with it. We should have clear terms of reference and let them get on with it. That is the same for the work of the Implementation and Reconciliation Group with regard to reconciliation.

Obviously there is no point in reinventing the wheel. As you know, there is a lot of reconciliation work going on at home anyway—people working on the flags and marches issues, and so on—so legacy has to fit within all that. One particular bit that I and other colleagues have been looking at is the line and a half in the Stormont House Agreement about statements of acknowledgement—in effect, saying sorry. We have been doing quite a big project around what that might look like. It is very interesting. We did a survey of 1,000 people across both Northern Ireland and the Republic. There is a real appetite for apologies at home, and people actually taking responsibility and owning up to what they did.

Obviously, the truth and recovery are elements of all the other bits of the mechanisms, but for me one of the important reconciliation bits of work that the implementation and reconciliation group could do is around that—how we look at acknowledgement and memorialisation, and all those issues—as well as building on the reconciliation work and presumably funding grassroots reconciliation. There are lots of creative things that



could be done, but all that will depend on that mechanism having community credibility, and community credibility when you have political appointees is a challenge.

Daniel Holder: Just to touch on your previous question in relation to RUC officer victims and trauma victims being, as is the case with many, quite elderly. One of the things that is built into the legislation that I think is quite useful is a much more structured approach within the HIU to have family support staff who can involve the next of kin and support the family through the process, be they an RUC officer or a family member of an RUC officer who was murdered. There will be a dedicated team, the Bill envisages, to provide assistance to families. That is quite well codified in the legislation, which I think is helpful, rather than it being done on a more ad hoc basis.

Q45 **Kate Hoey:** I missed the bit at the beginning, but I was interested particularly when you were asked about victims and the definition of victims. Can you just be clear—perhaps all of you can answer this—whether you are saying that the person who went deliberately and put a bomb, say at the butchers in Shankill Road, is to be treated exactly the same, in terms of the victim, as the person who was killed?

Professor McEvoy: In terms of the legacy mechanism—

Kate Hoey: The definition of victim as it is at the moment treats those two people the same—in Northern Ireland, not in the rest of the United Kingdom.

Professor McEvoy: As you know, the current definition in the Victims and Survivors (Northern Ireland) Order was introduced by your party, the Labour party, in 2006.

Kate Hoey: I am quite aware of that. It does not mean to say that I have to support it.

Professor McEvoy: No. I looked at the *Hansard* of the debate, and why they went down the particular route that they did. I looked at David Hanson's comments, I think, and a few others. Broadly, I think the view taken then by the people drafting the legislation was that they were focused in particular on the children of terrorists. Would they qualify as a victim or a survivor? That is why they included it. That is the rationale that people have used.

In terms of these mechanisms, that debate is to one side. That debate has obviously primarily been around the pension issues, but we are focused here on the mechanisms of the Stormont House Agreement. That debate can be parked to one side because that legislation has its own definition of which families will be entitled to what.

Q46 **Kate Hoey:** So you are not really, as a group, in whatever reports and so on that you produce, interested in that area.



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Professor McEvoy: In the definition of victimhood? Well, yes, in terms of how it plays out in the broader politics of legacy debates, but in terms of these mechanisms it is broadly a side issue.

Q47 **Kate Hoey:** But you must be aware of the concern of the victims in Northern Ireland—across Northern Ireland.

Professor McEvoy: Yes, and obviously it played out in terms of the advice provided by the Victims' Commissioner on the pension issue and so on.

Q48 **Kate Hoey:** As a lawyer, or as someone who has taken an interest in all this, can you see how unfair it seems that a victim of terrorism in the mainland, say someone in the Manchester bombing or whatever, would not be treated—that the definition is completely different?

Professor McEvoy: I can certainly see the politics of it. I can certainly see why people have campaigned around the issue. I think it was slightly unfair, if I am totally honest, on the Victims' Commissioner. She got a lot of political pressure on this. She was working to the legislation that established her office. She cannot change the legislation that established her office, so I thought that some of the criticisms of her advice—if you are given a job as a commissioner, and they say, "Here's your legislation. Here are your terms of reference," you get on and do that. The decisions made on that legislation were made here, rather than by her. I thought that some of the criticisms around her—I understand the politics of it, of course—were particularly unfair.

Q49 **Kate Hoey:** With the greatest respect, she did say at some of the victims' conferences that she thought that it was wrong for people to be raising it. I do not think we need any lessons on the Victims' Commissioner, thank you. Do any of you want to add anything on the Victims' Commissioner? You seemed to be the one who was most happy with the definition, Mr Holder.

Daniel Holder: There is not much to add in relation to the Stormont House Agreement Bill. It is not an issue for the Bill, because the Bill is looking at deaths, regardless of how they were caused. There is an issue as to whether it should go beyond that to, say, attempted murder or other serious acts that would engage Article 3 of the ECHR, but it does not arise in relation to the Stormont House Agreement Bill.

Q50 **Kate Hoey:** Can I push you on what you think the Republic of Ireland's commitment is to the process and its article 2 obligations? We remember the number of murders that were committed there, particularly having recently visited Fermanagh and gone on the border trail with SEFF—the South East Fermanagh Foundation. We saw how easy it was for people to simply blow up soldiers and police and then simply walk over the border where they seemed to be allowed to go free. How do you feel about the Republic of Ireland's involvement and the state involvement in—perhaps the word "collusion" that you are always using about Northern Ireland?

Daniel Holder: What we did as a Model Bill process was to try to produce a Bill that would implement what was in the Stormont House Agreement,



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which does not envisage a separately constituted HIU within the Republic of Ireland. That is not to say that there is not merit in such a body being established.

Essentially, what it envisages, in terms of some of the cases you mentioned, with someone being murdered just across the border, is that a lot of those cases would fall to the HIU in the sense that the criminal conspiracy, and many of the acts that involved them, would have taken place within the jurisdiction of Northern Ireland. Therefore, those investigations could take place.

It is slightly different, actually, in the formulation in the Bill—I am not sure of the reason and it would be good to press for an explanation of this—in relation to the cases between 1998 and 2004. It is slightly different, as they require the death to have been “in” Northern Ireland, which is more restrictive than the pre-1998 cases. There is an issue there where some of the deaths, of the type that you just described, could be dealt with by the HIU.

What the Republic of Ireland authorities are therefore to do is to co-operate with the HIU. They have already brought forward their Stormont House Agreement legislation. It has gone through the Oireachtas; it is on the statute book. It sets up a mechanism for An Garda Síochána, and I think others, to provide evidence into the Stormont House Agreement mechanisms.

What I would say—this is a separate topic, but it was a separate critique we had of some of the Stormont House Agreement legislation—is that the definition of national security was a bit vague, a bit open, and could be tightened. That is a criticism that we would also make of the Republic of Ireland’s legislation, whereby there is an exemption on disclosure in relation to the sovereignty or security of the state that seems rather open-ended and could catch issues of collusion in the Republic of Ireland to which you alluded, and could be harnessed, because it is so open-ended, to prevent the disclosure of information. We would really like to see in the Republic of Ireland legislation a much tighter definition of any exemptions to disclosure.

Q51 Kate Hoey: If the Garda Síochána are going to be the acceptable body for liaising with the HIU—if the PSNI isn’t trusted by sections of nationalism in Northern Ireland, does it not follow that perhaps there will be some elements of victims and pro-Union communities who will feel just as frustrated about the Garda Síochána giving their history in the Troubles?

Daniel Holder: Yes, but you are talking about a disclosure. The HIU will be independent of the other two. It will have the same issues in the sense that it needs disclosure from the PSNI; there have been difficulties with that in the past, but the legislation is a bit stronger. It could be stronger in terms of compelling disclosure.

The issue is obviously more complicated around Garda Síochána, because you are talking about cross-jurisdictional disclosure. If the Irish



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authorities, the Garda Síochána or the Minister—whoever has that power—started to use this national security veto to prevent disclosure in certain cases, I would think that would have an undermining effect in terms of confidence that the Irish authorities were fully co-operating with the HIU. Ideally, it would be good to see stronger legislation.

Another way of doing it, which wasn't envisaged by Stormont House in relation to the HIU but has taken place in relation to ICIR, would be to have a binding treaty that would assist in the establishment of these mechanisms.

Q52 **Kate Hoey:** Mr McEvoy, do you not think that the bar is very different when finding people who have committed misconduct, and so on, in terms of holding the police to scrutiny rather than holding terrorists accountable? There is a difference, particularly for police officers, in challenging some things. The terrorist bar seems to be set quite high.

Professor McEvoy: Daniel, I will let you take that one. You did all the work on the HIU.

Daniel Holder: Yes, there is a criminal threshold.

Kate Hoey: But the IRA didn't keep logs, letters and minutes of their—

Daniel Holder: Yes, and as far as I am aware there is not a concept of paramilitary misconduct, where you could take someone for breaching a code of conduct. You are right that paramilitaries did not keep records and the issue is often raised that the state kept records, but paramilitaries didn't. We need to be conscious that most of those records kept by the state are about paramilitaries. They are not about the actions of the state, so state records will be useful to the HIU and other mechanisms in relation to all their investigations.

As the Bill stands, it effectively replicates the status quo whereby it is possible to investigate past police misconduct but not any past police misconduct. I am not sure what the Ombudsman's office called it. It had a very informal term for one of its directorates, which I think it called "The officer kicked my cat" directorate, which was the lower end of the scale of misconduct.

At present, the Police Ombudsman's office can investigate misconduct if it was a "grave and exceptional matter"; that's essentially replicated in the Stormont House Agreement Bill. The HIU would investigate criminal acts that would put police officers and paramilitaries on a par. As everyone is saying, police officers and members of the armed forces are to be held to a higher standard in relation to obeying the rules and conduct. Where there is a differential in the Bill is that it is applied to members of the RUC but not members of the armed forces, so investigations into "grave and exceptional" misconduct can take place for former RUC officers but not in relation to members of the armed forces. I think that is just a replication of the status quo, but it does leave a very obvious differential.

Kate Hoey: One final very quick question—



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Chair: Kate, before you go on, if one more of us leaves we will cease to be quorate, so I am going to ask for a very quick final question. There's no need to bang on. I have got two quick questions, then Lady Hermon. If we could all just stick like glue to our seats, that would be good.

Q53 **Kate Hoey:** Are you aware that there are a lot of people who consider you as a group of academics who are particularly anti-state? Over the years, you have spent a lot more time working with Relatives for Justice and Amnesty. The victims of terrorism perhaps do not feel that your group of academics have in any way genuinely been interested in them.

Professor McEvoy: I kind of get frustrated by this. I have got to be honest. We have held a lot of events and we have had a very broad cross-section of people coming along to those events. I can name off the organisations if you want, who came. For example, we had a victims conference last year organised by myself and Cheryl Lawther, at which myself and the Chief Constable spoke, and we had at that the innocent victims network, the Disabled Police Officers Association NI, Ulster Human Rights Watch and veterans' organisations.

Q54 **Kate Hoey:** So this is just a perception.

Professor McEvoy: It is a perception, Kate. It is not true—we have made an offer as experts in this area: we will give advice to anyone for free, and you make up your own mind after that what you want to do with that advice. You cannot really do much more than that. We have worked very hard on this, so it is an unfair perception.

Q55 **Chair:** Can I just ask—of course I can, I am Chair of the meeting; I can do what I like. A quick question with a yes or no answer—is the five-year timespan proposed for the HIU reasonable or not, and if it is not what should it be?

Daniel Holder: I have yet to meet anyone, including within the current Police Service and other places, who thinks that this can be done in five years.

Q56 **Chair:** The answer is no. How long?

Daniel Holder: It is very difficult to put a timeframe on it.

Q57 **Chair:** Let me press you. Let's say you have to. What should it be?

Daniel Holder: You would have to have a situation whereby the time period can be reviewed and prorogued at a later period on the basis of what proportion of the caseload has managed to be completed, and also what amount of new evidence has potentially led to other evidential leads, that has led to other cases being re-examined. It is complicated.

Q58 **Chair:** So the timings should be dictated by the workload, rather than the workload sculpted to meet a timeframe.

Daniel Holder: Yes, and we cannot have an arbitrary cut-off point, because we would be left with the status quo. We would be going back to a situation of the—



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- Q59 **Chair:** Okay. The oral history archive: fantastically important as a receptacle of experience and a cathartic sharing of pain. How worried should people be that it becomes in its entirety, depending on which end of the telescope you are coming from, a “recruiting sergeant” for the old divides? “Listen to this: that’s what they did to us. We must mobilise,” or “Listen to this, because that’s what they did to us.” It could be abused, as well as being enormously helpful. How is it intended to monitor its abuse or to protect against its potential misuse?

Professor McEvoy: Obviously there would be guidelines and standards of practice, in terms of how the mechanism would run, but broadly my instincts are we have to be open to listen to people’s stories. That is the whole point of oral history—learning from the diversity of those experiences. If we build a credible mechanism that has legitimacy across the community—“If we build it, they will come”, you know.

- Q60 **Chair:** Professor, I appreciate that, but there are two types of learning that could come from it, aren’t there? One is perfectly noble, which is “Learn from the mistakes of the past and commit to not repeating them”, or using it as kindling for the next generation, post the 21 years of the Good Friday Agreement, to say “This is what your uncles and your aunts and your grannies and your grandads went through; we’ve got to mobilise.” Do you see the point I am making?

Professor McEvoy: Absolutely, 100%.

- Q61 **Chair:** So there is the noble purpose which nobody would challenge, but what I want to try to get a handle on is that there is an alertness to its abuse, and that there is some thinking at this stage as to how that can be attenuated.

Professor Mallinder: I think in the proposals that we put forward to the NIO we called for a strong role for a steering group on this committee that could try and proactively think about the types of information the oral history archive will gather. So we do not envisage the archive being a largely passive repository of information that comes to it; but they think about the types of experiences of the past that would be useful for this archive to gather, the types of story, the multiplicity of voices that should be heard, and the types of inclusive narratives that can be built from that. There is a role for a responsible steering group in thinking about precisely those questions from the time the oral history archive is designed. Some of these issues also play out in the role of the academic group exploring themes and patterns, when we get to that stage of the process.

Professor McEvoy: I think what you are getting to is the capacity for violence entrepreneurs basically using partial histories—

- Q62 **Chair:** As a recruiting sergeant?

Professor McEvoy: Yes, exactly. I have never believed or advocated that we will get a complete agreed truth of what happened during the conflict. We are living through this period of Brexit; do you think that in 10 years’ time we will have an agreed version of leavers’ and remainers’ versions? We are never going to get to that. All these contests around rewriting



history are a healthy thing for me. What we do in all this work, including the oral history archive, is to narrow the space for permissible lies. By narrowing that space in which people can use and advocate partial versions of history as a recruiting sergeant for the next generation, all this work is designed to mitigate against that. The oral history archive is part of that buttress—if, as Louise suggests, it is properly managed and properly delivered.

Daniel Holder: There are already oral history archives in existence. It may be the case that at present, a lot of those archives are located within a community—that could be the policing community as much as a particular geographical community—and may not be much heard outside that particular community, although I am sure there are outreach initiatives and other things. That is where having an overarching oral history archive gives that important point of allowing the possibility of hearing other people’s narratives that some groups would not necessarily hear on a regular basis, provided of course that it is structured and managed to address the issues you raise.

Chair: I think I will be comforted as long as somebody is alert to the fact that it can be a very good thing, but it can also be a rather unmanageably bad thing. Lady Hermon, I will ask you to close our questioning session with your questions. As I say, I am very conscious of both time and quoracy.

Lady Hermon: We are all terribly keen to hear more evidence from these wonderful witnesses this morning, so we are all going to sit and we are going to remain quorate.

Chair: Right, I’m off. *[Laughter.]*

Q63 **Lady Hermon:** There are several things that I just need some clarification on. Kieran, can I come back to you and the survey that was conducted of 1,000 people in Northern Ireland and the Republic of Ireland? You said that there was a real appetite among people for apologies to be made and sorry to be said. My beloved husband, who died 11 years ago, was the longest serving chief constable of the Royal Ulster Constabulary. He was enormously proud of the extraordinary men and women who did an extraordinary job during very difficult times indeed. Who is going to say sorry to the RUC widows? There might be an appetite for it, but who is going to say sorry? The IRA men? The Red Hand Commandos? The UVF? Loyalist and republican terrorists did enormous damage to families right across the country. Who is going to say sorry?

Professor McEvoy: We could talk about this for a long time. The “who” question is one of the issues that we have been looking at very closely. For example, you used the republican example there. In that context, the current generation of the Sinn Féin leadership do not have an IRA background, so do they have the credibility to stand up and apologise on behalf of republicans? It is a really complicated issue. I will say that we did a survey of the general public and we have also interviewed victims of the conflict, and there is an appetite for this stuff. It is extremely sensitive and



extremely difficult, and the “who” question is very important, but it is just one of many questions that we have been looking at. I am happy to come back to you on that if you are interested in getting more detail on that.

Lady Hermon: Yes, I am. I am very interested, because it leads into the second question, touching on what the Chairman and my colleague Kate have asked. There is a fear, and it is a very real fear, I have to say, I think particularly among the Unionist community, that this will be used as a vehicle to rewrite history. What mechanisms have been written into this legislation to address those fears, and they are deep-seated, real fears, that this will be an opportunity to make it look as though there was an equality in a terrorist campaign—and it was a terrorist campaign—that went on for 30 long years, with over 3,000 people in early graves and many other thousands of people wounded, both physically and living with the mental scars of the suffering they or their loved ones had to bear? How do we prevent this mechanism from being used to rewrite that history?

Professor McEvoy: I get asked that question a lot, particularly by members of the Unionist community, and you are right.

Q64 **Lady Hermon:** Good! We have to address it.

Professor McEvoy: We do. My response, as you will have picked up earlier, is that seeing all these mechanisms as a whole is designed to prevent partial versions of what went on or, as I said, to narrow the space for permissible lies. All this work will make it intellectually indefensible to make arguments like that. One of the reasons people are able to make partial arguments is that they are not sufficiently challenged. If you put all this work together—if the implementation and reconciliation group does its work and the academics working for that do their work—all the elements of the conflict will be pulled together and it should not be possible to do that. I understand the concern, but this is designed to gather the truth of what went on and all the ugliness. Republicans were responsible for killing 2,000 people. It is hard to obfuscate that.

Lady Hermon: Thank you—exactly.

Professor McEvoy: The point of all this is to make that reality and to capture the reality. We will not get a unified agreed truth, but the point is to capture the reality—not just the stats and the numbers but the personal suffering: the real stories of real human beings and how they were affected by it. The vision of the Stormont House Agreement mechanisms is to deliver that.

Q65 **Lady Hermon:** Louise?

Professor Mallinder: If we fail to implement the Stormont House Agreement, what are we going to do? Are we going to continue with the status quo? Right now in Northern Ireland we have the problems you are talking about. We have the continual contestations over our history. We have these continual battles. The perceptions of the current processes are imbalanced and unfair. The Stormont House Agreement is the best



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possible mechanism for addressing that, for the reasons Kieran has outlined.

- Q66 **Lady Hermon:** Well, the alternative, which has been mooted by some very prominent people, is that we draw a line in the sand. Is that something you would find acceptable?

Professor Mallinder: I would not find it acceptable morally. Families from all across the community in Northern Ireland have waited a long time for answers. I would not find it possible legally—the UK’s obligations cannot simply be eradicated by domestic legislation—and I would not find it possible practically. No society in the world has successfully managed to draw a line under its past. We can have a constructive process where we try to come together to establish a way of dealing with the difficult past, or we can have a vacuum where the past continues to disrupt our present. That is a more damaging alternative.

- Q67 **Lady Hermon:** Kieran?

Professor McEvoy: I agree with all of that. I have said several times that I think this is our last chance to pull this off. We will not get the political energy back together again to come up with an alternative set of mechanisms for dealing with the past, and victims will be betrayed if that happens. It would be morally atrocious if that happened.

- Q68 **Lady Hermon:** Morally atrocious. Daniel?

Daniel Holder: I fully agree. There are other models and mechanisms that could be looked at—truth commissions and things like that—but they were looked at and ruled out by the UK Government and others at a very early stage. We have been on a long journey to come up with a set of mechanisms, and we really need to get on with this. Time is running out for a lot of people.

- Q69 **Lady Hermon:** Yes, but you are unanimous, as a team here today, in saying to us that drawing a line in the sand is morally indefensible.

Professor Mallinder indicated assent.

Daniel Holder indicated assent.

Professor McEvoy: Morally and legally indefensible.

Lady Hermon: Thank you.

- Q70 **Chair:** Can I just make one closing comment in response to what Professor McEvoy said about current leadership not being responsible and so on? There are plenty of examples of leaders of organisations, Governments and so on who, by dint of holding the office, have apologised for events and actions in which they had no involvement—they were not even born at the time. I do not think that should be used as a screen to hide behind—“We weren’t there; it was nothing to do with us.” If you are leading an organisation that was involved, there is a window, if people wish to explore it, to position—to address Lady Hermon’s point—



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Professor McEvoy: Can I just clarify that? I agree 100%. My issue with that was more around the “who” question and the management of one’s own constituency. For example, if the current leadership of Sinn Féin apologised for actions by the IRA, you would not want older generations of IRA people to come back and say, “Who are you to apologise on behalf of me?” It is a constituency management issue. That is the point. I certainly was not talking about spaces to hide.

Chair: Yes, and let me also be clear: I was not seeking to rank *pari passu* a Prime Minister and somebody who had been involved in terrorist activity. May I thank the three of you for coming?

Lady Hermon: Yes, thank you—very useful.

Chair: To state the blindingly obvious, this is a very sensitive issue. I think we will all be reconciled around—this may sound a fool’s errand—trying to arrive at a point whereby all participants and both communities can turn around and say, “I can see that this thing is robust, clear and transparent. We may not like everything that it is doing, but we can have faith in its independence, its robustness, its clarity of thought and so on.” If we do not, it just provides a bit more ammunition to another side to say, “It was always slanted against us”—whoever the “us” is. Thank you for finding the time to come and see us. I wish you a safe journey home.