

Northern Ireland Affairs Committee

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

Wednesday 30 October 2019

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Watch the meeting

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

Questions 71-115

Witnesses

[I](#): Mark Lindsay, Chairman, Police Federation Northern Ireland, Gareth Jenkins, Assistant Secretary, Police Federation Northern Ireland, Raymond White, Chairman, [Representative sub committee](#) Northern Ireland Retired Police Officers Association, and Chris Albiston, Member of the Executive Committee, Northern Ireland Retired Police Officers Association.

Examination of witnesses

Witnesses: Mark Lindsay, Gareth Jenkins, Raymond White and Chris Albiston.

Q71 **Chair:** Good morning, gentlemen, and thank you for joining us at the Select Committee this morning. You are welcome. For the record, would you like to introduce yourselves, maybe with your title or role? That would be helpful. I suppose one lucky colleague has decided to make a few opening statements, so I will give the floor to whoever has won first prize in the lottery. I will then throw you to the tender mercies of my colleagues on the Committee. The microphones are not necessarily there for amplification, so it is always very helpful if people enunciate. We are broadcasting, so this is for the record, as they say.

Mark Lindsay: Chair, thank you very much. My name is Mark Lindsay, and I am chair of the Police Federation for Northern Ireland, which is the organisation that represents the rank and file officers up to and including the rank of chief inspector in the PSNI.

Gareth Jenkins: I am Gareth Jenkins, assistant secretary of the Police Federation for Northern Ireland.

Raymond White: I am Raymond White, and I am a civilian. I am retired since 2002, and I chair a small legacy working group on behalf of the Northern Ireland Retired Police Officers Association.

Chris Albiston: I am Chris Albiston, retired police officer. I retired in 2003. I sit on Raymond's legacy committee, and I also sit on the executive committee of the Retired Police Officers Association.

Q72 **Chair:** Thank you. Mr Lindsay, I think you are going to open the batting.

Mark Lindsay: Thank you, Chair, and our thanks again to the Committee for inviting the Police Federation for Northern Ireland to appear and give evidence to you today.

Identifying the wrongs of the past, what should and should not have happened, and who or what was to blame was always going to be a fraught and frustrating exercise. Without a superhuman effort, there is a danger of taking the route of seemingly least resistance by pointing the finger of accusation at the police. To some, the temptation to pillory and condemn officers for cases they investigated during 35 years of a vicious terrorist onslaught is irresistible.

The Police Federation has grave concerns that the draft Bill will lead to injustices and be a source of much anxiety for many of our serving and retired members. We are concerned that Northern Ireland will be a place where police officers retire from sterling service to communities only to be automatically branded as suspects.



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This draft has been compiled by academics and technocrats without any regard for the views of the practitioner, and as such is inherently flawed. Furthermore, there are no provisions in the proposals to provide any avenue to fund legal defence for retired or serving officers in respect of the tsunami of allegations that will inevitably follow should this draft become law. We are also opposed to an HIU, which will create a parallel police service. We contend that a properly resourced PSNI would be the most effective mechanism to deal with historical cases.

There seems to be an intention to rewrite the history of 35 years of a terrorist campaign, equating the actions of terrorist groupings with the lawful actions of police officers. Legacy has drifted from well-established criminal justice practices, and with the proposed offence of non-criminal police misconduct, there is a real potential for serving or retired officers to be investigated for something that is not even a crime and for which there is no definition, while others are not held to account for some of the most heinous crimes, including murder.

We see the Bill as perverse because the proposals run the risk of equating the actions of murderers and bombers with the actions of those who worked to bring them to justice and create the conditions for peace. That is offensive as it could allow the terrorists to tell their story without fear of sanction or prosecution, delivering a one-sided narrative where their actions could be explained as somehow justified.

If justice were treated this way, it would begin to resemble injustice. That would be very harmful for Northern Ireland and, I believe, severely taint the United Kingdom's international reputation for equality, rights and justice. The danger of justice deviating from established norms is that you pander to populism and stand accused of having been politicised. This is the type of justice we should be avoiding, not implementing.

We look to Westminster to call time on this draft Bill in its entirety, because, far from resolving the issues, this proposed legislation will merely perpetuate the suffering of all innocent victims and their families, with the very real prospect that there will be no closure or answers possible. Thank you, Chair.

Chair: Thank you, Mr Lindsay. Mr Shannon.

Q73 **Jim Shannon:** Welcome, gentlemen. I apologise: I am meeting a Minister in 15 minutes' time—that is already in my diary—so I will have to leave then. I wholeheartedly agree with what you just said, Mark. I couldn't have written the script better; that would have been my viewpoint in its entirety. I suspect, over the last period, many of us have seen some political parties trying to rewrite history to try to put their political tint on events that happened in the past. The investigations—they want to see them as politically motivated. I think that is what they are about.

I want to ask you one quick question, which is probably the kernel of where we are: what would be your preferred approach to legacy cases? I am very mindful, because many police officers have come to me over the



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years whose recollection of what happened 25 or 30 years ago is not as good as it was way back. They are asked to recall events that took place, which is quite unfair—events, by the way, that there never was an investigation into, but there suddenly seems to be an investigation now. I believe it is totally unjust to pursue police officers for alleged incidents that have taken place over the years when there is no evidence whatsoever to prove that there was something done to start with. When it comes to legacy cases, what would you see as the best way to investigate them?

Mark Lindsay: I will be brief and then hand over to Raymond or Chris. Certainly, we believe there should be no hiding place for somebody who has broken the law. If somebody has committed a criminal offence—whether it is a police officer or a member of the public—they should be held accountable under the law. Our opposition to this Bill is that it moves away from those principles. Criminal justice has served the United Kingdom very well, and it has evolved into a system that is envied throughout the world, but here we are going to deviate from it. First off, we should have all cases investigated with criminal justice principles as they now sit.

We believe also that a properly resourced PSNI is the appropriate authority to investigate. The Chief Constable has the authority to uphold law and order in Northern Ireland, and we believe that to set up any other parallel police force would set out a dangerous principle. We also have concerns about the timeframe: we think that could lead to some rushed reports or rushed judgments. I know that Mr White and Mr Albiston have very extensive views on this as well.

Raymond White: Mr Shannon, what is being investigated actually are unresolved murders that were all investigated at the time to the best of the police's ability in the context of the time—and that was an armed conflict situation. So it is right and true to say that what you would be doing in an ordinary, shall we say, civilian peacetime investigation—these things were denied us. When it took us maybe two or three days to recover a body, to talk about examining a crime scene in great detail was just not in the question, because within a short period of time those who were at the crime scene were actually becoming targets themselves. So I think the contextual issue has to be recognised. As I say, these were murders that were investigated.

You are now starting, I think, to challenge the whole legal process by asking for investigations that were carried out 50 years ago to be put through a criminal justice process where the standards are fundamentally different—where, as I say, forensics recovered 30 or 40 years ago were not stored in a way that was, as it were, DNA-proof—so a lot of material that may be there will never make it across the threshold in terms of being evidence. A lot of lawyers have actually looked at it and say that witnesses' recall after 30 and 40 years is just totally unreliable as to what you could use. So all the, shall we say, principles of proof that the legal justice system would seek to use would all be tremendously challenged by any case.



If you look at what the HET did, they reviewed 1,200-odd cases. Out of those 1,200-odd cases, I think three materialised as cases that might actually run. The HIU is now faced with 1,700-odd cases. If you extrapolate that out, you are not looking at anything more, maybe, than about 10 cases that might come. So I think sometimes there is a hard justice and a hard truth in it, to tell the public of Northern Ireland that really the criminal justice investigatory process has run its course in terms of its capacity to deliver.

Q74 Jim Shannon: There is another thing I am aware of from the police officers I have spoken to. How many investigations can you have into one incident? On the recollection of memory and, to be fair, the health of the officers who were involved, a great many of those who have come to me have aged. As you age your body breaks down and isn't as fit, so are you able to cope with physical, emotional and mental pressure? What consideration do you think should be given to former officers who have not got the physical capacity they once had? Do you think that is important?

Raymond White: We have talked at length on this matter, Mr Shannon, to psychologists because there seems to be a firewall between what you would call those in the legal profession and those in the psychology sciences. For 30 or 40 years, people have been studying issues of memory and memory recall. About four years ago, I think, at Queen's University Belfast, we had a number of psychologists come across to address members of the legal profession on the very issue of memory and memory recall. Most of the psychologists will tell you that even five years after what you may call a traumatic incident, 50% of the capacity to recall the detail has gone, and gone irretrievably. You are now talking about cases that are 40 or 50 years old, and you are talking to people who were, probably, very junior in service at the time and weren't decision makers. The decision makers are dead and gone from the point of view of interviewing these people. It is just not there.

If people are asked to rely on their memory, the big problem is that it is the most fallible friend that you have, because your memory continuously rewrites itself. As you read an article in a book or watch a programme on television, you absorb that. If I am talking in conversation to a colleague who has actually been at some issue, I will defer, in my memory, to his recollection of it, because he was there and he can speak with that element of authority. Most psychologists will tell you: walk very carefully when you are talking about issues that are based on memory recall alone. The simple retelling and retelling again of a story creates a memory in its own right. As I say, there has been good advice given down the line to the legal profession by the institute of British psychologists, saying, "Do not base your beliefs on those that are very affirmative as regards their memory and memory recall." It is probably the worst witness you may have, because they may honestly believe in something they were not present at. You only have to look at one or two of Hillary Clinton's statements in the past, where she claimed to be at a certain situation



where she never was at all. That was memory recall, and that was of a recent date.

Q75 Jim Shannon: Chris, do you have any thoughts?

Chris Albiston: The professional advice on memory at the moment, taken in the legal context, seems to be that if you have a witness to an event that took place many years ago, the more detailed and better the recollection they appear to have, the more suspicious you should be as an adjudicator about the quality of that evidence. Indeed, later today Raymond and I are going to see some experts on memory to take this matter forward. We are not experts, but that seems to be what the current standing is.

Q76 Mr Campbell: I have a couple of things on the whole issue of legacy. I was looking at the figures, and obviously every death was a tragedy, but there were more people killed in the first six or seven years of the troubles than died in the 40 years afterwards. That is quite a big figure. I suppose it bears out what you have said in terms of recollection from such a dim and distant past.

This first question is to Mr Lindsay. You spoke about the need for a fully resourced police service to conduct the legacy issues. I can see why the police service would argue that that is the case. I can also see the counter-argument. I fully accept the need for a fully resourced police service, and we have looked at that with the Chief Constable and others before, but do you accept that the important thing is that the premise for investigating those legacy issues has to be got right? You raised the fact that the security services per se, police included, were under exceptional strain and pressure at the time and were responding to this terror campaign, so whoever looks at it cannot begin to equate the response to terror with those who carried out the terror in the first place?

Mark Lindsay: I would totally agree. From the perspective of what was occurring in those times, as Raymond has rightly said, on many occasions it simply was not feasible either to remain at the scene or to take what would be seen now as normal investigative processes. They simply were not possible, because you were putting, potentially, additional lives at risk. I think the context is very important. I think it is also important to recognise that normal investigative practices start with trying to prove or disprove an allegation. So an investigator, a detective, will look at all investigative strands. They do not start with the result they want and work backwards to get there. I think that is the real danger—that we have the result and will then move back to try and prove that.

I will, if I may, give an example of one former officer who was involved in an incident 27 years ago. He has been investigated twice, exonerated twice, and was informed three and a half years ago by the police ombudsman he would be interviewed again. No one has come near him to speak to him about the incident. This person's life is disintegrating in front of his eyes. I see a marked difference every time I see him. That is the difficulty, and what we see then is that element of, "We want to prove something; we just don't know how we want to do it yet," instead of



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saying, “Right, let’s close down this investigative avenue”—because it is either taking us somewhere or it isn’t. That is, I think, a very important principle—as well as looking at the context.

Mr Campbell: I want to try to crystallise the issue of who, and how many people, would be required to do what you have indicated. Both the Chief Constable and, I think, you have indicated that in the wider police service, current policing—policing for today rather than trying to go back in history—would require the Patten numbers to be made up, which is about 600, 700 or 800, or something of that order. That was not taking account of any legacy issues. If your proposition is that a properly resourced police service should conduct that, and given that, without that, the police service requires something of that order, how many in total do you think would be required to have a fully resourced police service for the present as well as to do what you have suggested for the past?

Mark Lindsay: A piece of exploratory work was done by the Department of Justice; they brought a senior detective over from the Metropolitan police to look at this. He estimated that in the region of 500 people would be involved in an HIU, as it was devised. That could potentially take up to five years to set up—to get the people, the processes and silly things such as the buildings all in place. There are a number of ways that they can do it. You could recruit police officers in Northern Ireland as part of the PSNI. You could appoint a Deputy Chief Constable with responsibility for legacy, working to the current Chief Constable, and then resource that through a mixture of retired detectives, detectives from other services seconded in, or indeed our own people. But to set it as a totally autonomous, separate body sets real risk of precedent. The difficulty there is that if the PSNI can be seen or portrayed as not being trusted to deal in a fair way with events in the past, somewhere down the line the question may be asked, “Well, if those detectives can’t be trusted to deal with stuff that happened 30 or 40 years ago, how are they getting it right when they’re trying to prosecute the terrorists and the criminals we have on the streets today?”

Q77 **Mr Campbell:** To summarise, does that mean that, in a generic sense, Northern Ireland probably requires something of the order of 1,000 to 1,200 extra personnel to deal with current and legacy issues?

Mark Lindsay: In that sort of model, yes. The Chief Constable can give you exact figures for what he needs, but that is my understanding.

Q78 **Chair:** I am going to ask a devil’s advocate question, if I may, following on from Mr Campbell’s line of questioning with regard to your suggestions for who might populate the HIU. How would you address the obvious point that some in the community will make, which in essence is that that is effectively either serving police officers or retired police officers marking their own homework?

Raymond White: The organisation itself would be subject, one would think, to the inspection of Her Majesty’s inspectorate of constabulary, so there would be an overview there in terms of standards. We have looked at the notes that accompany the draft Bill, and one thing that stands out is



that nobody seems to have done any homework at all on what it will take to populate. It is not just police officers you are talking about; these are homicides that have to be revisited and reinvestigated, so you are looking at homicide detectives, and they are the cream of the cream. There is a massive shortage of those people in the whole of the UK at the moment. We have made a very crude estimate that, if you are going to work even roughly within the five-year timeframe, you are looking at about 650 detectives of that quality reworking these cases. You cannot say, "Well, we'll give you three weeks, or two weeks, to do that"; it could run well into months or more. As I say, finding the people and populating it is something that needs to be borne in mind.

If this legal leviathan is sold to the public of Northern Ireland as being the answer to all the problems, people are going to be doubly let down, first when it doesn't fly, and secondly when you cannot actually populate it with people of the quality that is needed to do the work. It is not just a matter of taking young detectives, putting them in and saying, "Get on with it." If you want to do this properly, you need to properly staff it with people who have a proven record in murder investigations and can understand the old investigative processes that were used. We went through a number of phases, from the MIRIAM system to the HOLMES system and HOLMES 2. Some of that is in paperwork, some of it is on computer systems and everything else. All that would have to be appreciated and be capable of being revisited. You cannot just present it to them and say, "Well, carry on." The reality of what is being devised here needs to be set alongside how it can be populated with the right people within the right timeframe to deliver as you would wish it to be.

Mark Lindsay: To add to that, Chair, your comment about marking their own homework is a very good way of putting how some would perceive it. But what if we put it like this? Many of the people who would be investigating events and tragic incidents that happened in the '70s and early '80s were not even born then. So this is not people coming in and looking at what they did a number of years ago. These are completely new people, working under current practices. It's not a case of the same detectives who worked on those cases coming back to have a look at what they did and seeing how they can improve it. In fact, you might have people who were not born and people who were not serving then; there are now very few police officers left who even served in the '80s. That is why we would not agree with that analogy.

- Q79 **Chair:** Can I tease something out from that? I take your point entirely about the management of expectation and the probably significant likelihood of disappointment. I think there are quite a lot of people who would expect a review of a historical case, but only because we all watch the TV programmes where modern DNA and forensic stuff suddenly cracks the case that has been bedevilling a community for 40 or 50 years, don't we? We have all seen those programmes. There is an expectation that the modern, the contemporary, is better than the ways of the past, so there is bound to be an expectation that any case that is peer reviewed, for want of a better phrase, would use contemporary



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standards rather than retrofitting those that prevailed at the time, because almost by definition—unless there was the most egregious error—one is bound to arrive at the same conclusion if one uses the same methodology. There has to be a huge challenge in terms of manpower and actual physical investigative resource, but also of expectation.

Chris Albiston: Expectation is certainly one of the problems that all of us—not just the police—are trying to grapple with in Northern Ireland. Mention was made of a parallel police force and that this was something that in principle was undesirable, but if we cast our minds back to the late 1990s, when, difficult as you may find it to believe, Chairman, Raymond and I were serving police officers—

Chair: I presume you were just young beat constables at that time—fresh faced and just starting out on a career.

Chris Albiston: You're very kind, Chairman.

Chair: Although I am told there is a branch of Specsavers somewhere on Victoria Street—

Mr Campbell: He's a charmer!

Chris Albiston: To be fair, we were getting towards the end of our service, but we were both members of Ronnie Flanagan's senior team, and we all unanimously and without reservation supported the proposals of the late Dr Maurice Hayes for the creation of a body that would be independent of the police service to investigate complaints against the police. Of course, at the time, we believed its main purpose to be the investigation of current complaints rather than historical matters.

I am not so sure that, if I had my time again, I would be quite so enthusiastic, because of the way things turned out, but what we actually did in creating the Office of the Police Ombudsman—perhaps we'll have a chance to discuss this later—in many respects might be replicated by the HIU under the current proposals. When we created the Office of the Police Ombudsman, we did in fact create a parallel police force, because in order to discharge his or her functions effectively, the police ombudsman has to have all the powers of a Chief Constable. Indeed, the police ombudsman, quite properly, exercises the power of arrest and detention, interrogation under PACE provisions, the use of covert facilities under RIPA, and all these things. But uniquely in the United Kingdom, there is no means of making a complaint against the conduct of the police ombudsman or any of his or her staff. This lacuna in the legislation—about which our association has protested for some 14 or 15 years to anyone who would listen, including people in this building—has not been addressed. Worse still, it appears to be perpetuated in the proposed new legislation.

Perhaps I can quote a man whom, for obvious reasons, you will suspect I am not given to quoting very often: Professor Kieran McEvoy. When he sat here a few weeks ago, he said: "If you already know that there is a design flaw there, why make the same mistake again?" He was not referring to the same matters that I am referring to, but if that is a principle that the



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Committee wishes to take up, I suggest that we look at the parallel police force that is proposed in the HIU in the same way that we look at the parallel police force that was created in the Office of the Police Ombudsman.

None of us ever challenged the idea of independence. Indeed, Northern Ireland was in the vanguard of the United Kingdom in developing an independent police complaints mechanism. However, the body that exists in England and Wales has a number of means of accepting and investigating complaints against its members, which is done independently of the body. But if I want to complain about the conduct of the police ombudsman or of his or her staff, short of making an allegation that one of them has committed a crime, I have nowhere to go except to the police ombudsman itself.

That is a clear breach of article 13 of the European convention on human rights. Whatever the people in this building may decide about our future over the next few months, I do not believe that there is any plan to leave the Council of Europe. If we remain in the Council of Europe, we will remain adherent to the European convention on human rights. If the Committee has time, I can give you a litany of breaches of that convention that are implied in the draft legislation for the HIU.

Q80 Chair: It might be helpful if you submitted that as a written document for our report.

Chris Albiston: Yes, we can certainly do that.

Raymond White: Mr Campbell made a point earlier about the number of deaths in the '71-'76 period. Our calculation is that there were roughly 1,400. That was when the military were in charge of security. In 1972, for example, there were 10,631 shooting incidents and 1,853 explosions or bombs. A large number of the contentious deaths lie within that very narrow band.

You mentioned that you have been looking at the television. If you lived in Northern Ireland, you could watch "Pop Northern Ireland", which is on at the moment. It is hard to believe, as people who lived through it, that that was the environment we were in. We were as near to civil war as we could possibly be. Even some of the bodies were not recovered but we were having them delivered by taxi to the various mortuaries and hospitals. People were bringing victims and dropping them off, and we were recovering them from border areas.

Within that policing environment, which is just as close to civil war as you can take it, with shootings going on continuously, you just cannot replicate the investigative processes that you would have loved to put in place, or recover the material. You really are setting yourself an impossible task to try to reinvestigate those matters to the standards that you would accept within the court systems of today and that the judiciary would quite rightly demand.



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I think there has to be a contextual dimension built into this. That is one thing that seems to be missing among the principles outlined: that everything happened within a state of armed conflict in N Ireland, which very seriously impacted on the capacity both of the military and of the police to provide a service. Mr Campbell made the point that there was a period in the '70s where a substantive amount of murders took place that, today, you would certainly say were contentious.

Gareth Jenkins: To bring this back to the initial question about the appointments to the HIU from within the PSNI, we would have to query why detectives from PSNI should be an issue. Why should it be an issue for them to be employed in investigating legacy issues, especially when you take into consideration the level of political and public support in Northern Ireland today?

As police officers, and particularly as detectives, I want to emphasise that we follow the pathways of investigations. We speak to witnesses, we attend scenes and we gather material for forensics, all to find evidence and put that through. It doesn't matter whether you are a police officer or a detective from 40 years ago or from four months ago. That is what you learn, and that is what you do, and you do it without favour to anyone.

Q81 **Lady Hermon:** Thank you very much for coming to give evidence this morning. I feel I should say at the very beginning of this session that my late husband was the longest serving Chief Constable of the Royal Ulster Constabulary, and was enormously proud of the Royal Ulster Constabulary. He often said that they were extraordinary men and women doing an extraordinary job during the worst of times in the troubles.

Over 300 RUC officers were murdered during that time. Could you enlighten the Committee on the number of successful prosecutions in relation to those police officers, many of them your colleagues, who were murdered during the troubles?

Raymond White: I am pulling the figure off the top of my head, but I think 215 of those murders have yet to be resolved and are still unresolved in terms of people being made amenable. We know, and did know, from intelligence who a lot of those people responsible were, but there is a big gap from an intelligence perspective.

We were not able to prevent the deaths of 302 of our own officers. There were 440-odd military personnel murdered during that period as well as 203 members of the UDR murdered. We could not even protect ourselves. That was one of the big issues in terms of protecting civilians as well. I keep saying that you must remember the context of the time and what was feasible from a policing perspective.

Q82 **Lady Hermon:** Under the draft legislation that we are considering, you have been very critical of the Historical Investigations Unit. I want to look at the other proposals in a minute or two, but have you any confidence at all that this new investigations unit will be successful in bringing prosecutions for any of your murdered colleagues, military personnel and



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members of the UDR? Are you confident that it will see successful prosecutions?

Raymond White: Our confidence will be established on the basis of what the HET achieved. As I said, I think it reviewed something like 1,200-odd cases.

Lady Hermon: That was the predecessor.

Raymond White: Yes, the Historical Enquiries Team. Out of that, about three cases, if memory serves me right, were raised from their investigations. It sets an impossible barrier to revisit these.

As I said, these are not uninvestigated crimes. It is not like a domestic murder where there is a relationship between the victim and the perpetrator, or even contact between them. An individual may have been shot at a distance of 100 metres on a laneway, and whenever you go to investigate the scene you are lucky if you recover two or three cartridge cases and a piece of trampled ground. There is no contact between the deceased and the perpetrators—they are gone. They learned from the court system, as well as anybody else, that you divest yourself of the clothing that you wear, so within 15 minutes you can expect both the vehicle and the clothing they wore to be burned. After that, you are not going to get eyewitnesses, because they just do not exist, so all you are left with is an admission by the perpetrator somewhere down the line that he did it, because all the other forensics that you would have expected 40 and 50 years ago were simply fingerprints. Blood was simply assessed as being of a certain blood group, but since, as I say, 30% of the public had certain types of blood groups, it was really no advance. We did not foresee that, 30 years later, DNA analysis would come down the line.

You are asking those you are sending back to reinvestigate what may often amount to nothing more than a curtailed statement regarding where the body was recovered from, perhaps with an autopsy report attached to it, maybe an inquest document and a short list of one or two suspects who were interviewed. Where do you start reconstructing that—especially when the police officers of the day are deceased and gone and cannot be spoken to again? You would not want to knock down anything. I am simply saying that physically, I think the task that you would be handing over to the HIU would be an immense one, with an expectation that you would get prosecutions out of it.

- Q83 **Lady Hermon:** So do you think that false expectations have been built up that this new investigations unit will be more successful or better—whichever adjective you want to use—than the Historical Enquiries Team or indeed the PSNI? Is it the case that expectations have been built up and you, collectively, have no confidence that they can be met in terms of prosecutions for anyone who was murdered? Everyone has suffered—all communities suffered across Northern Ireland. More than 3,000 people were murdered during the troubles, and the vast majority of those crimes are still unresolved. Do you think false hopes and expectations have been built up that cannot possibly be delivered by this new investigations unit,



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however sophisticated it may be and whatever the criteria are for serving within the unit? The reality of the situation is that it will not lead to successful prosecutions. Is that the conclusion you have come to?

Raymond White: The Attorney General and successive DPPs—

Lady Hermon: In Northern Ireland?

Raymond White: Yes, in Northern Ireland—have all said that you are really on a beaten docket to some degree in respect of being able to reach the evidential standards that you would now have to build in to a prosecution file to make these people amenable. I think these people need to be listened to, but at the same time I appreciate that there is a massive pressure there, and people still want access to a justice system that allows those matters to be investigated. The harsh reality has to be that, 50 years on from these events, if we have not solved it by now, the chances of its being solved are extremely slim. There has to be a harsh and hard honesty from our political representatives to say to people, “You really are expecting more from the criminal justice process than the criminal justice process can fairly deliver to you.”

Chris Albiston: Could I add to Raymond’s answer, Lady Hermon? The problem of expectation, which the Chairman raised earlier, is a big one. Raymond and I can only speak for our community of retired police officers, but I think I can tell this Committee without equivocation that there is no real expectation among our community of a rash of new prosecutions resulting from the work of the HIU. We cannot speak for all the people of Northern Ireland. I suspect that among the broader community, the expectation level of new prosecutions is very similar, but I cannot say that positively. What I can say is that if you look at the draft legislation and all the paragraphs that refer to the HIU, it seems clear to us that the expectation of those who contributed to and did the drafting had nothing to do with solving outstanding murders and everything to do with blaming police officers for not preventing the murders or not investigating the murders thoroughly.

The reason I say that is, if you look at the draft, you will not find the word “terrorism” in there anywhere. You will find the expression “non-criminal police misconduct” littered throughout the document—I think it occurs something like 43 times. Just the existence of the document may give rise to apprehension among members of the public that there was a great raft of non-criminal police misconduct taking place from 1969 until some magic date at the beginning of this century when everything became perfect again. It is simply not the case, and it is very offensive that the legislation is drafted in this way.

We do not see any mention anywhere of non-criminal politicians’ misconduct, or non-criminal civil servants’ misconduct, or non-criminal military misconduct, or non-criminal terrorist misconduct, so why mention non-criminal police misconduct? Because the legislation has been drafted to satisfy the agenda of a particular political grouping within Northern Ireland, and we object to it.



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Q84 **Lady Hermon:** And which political grouping do you have in mind?

Chris Albiston: I would say it is the people who are making a fortune out of legacy inquiries, through the legal aid system and everything else. By the way, there is no mention in this legislation of any assistance of any kind for either serving or retired police officers who find themselves on the wrong end of an investigation.

Q85 **Lady Hermon:** I want to ask you, Mr Lindsay, if you could elaborate on that. In your opening remarks, you mentioned that you expected an avalanche—I think that was the word you used—of claims made against retired, and indeed serving, police officers. One of the issues that you identified as missing from the legislation was the fact that there is no avenue for legal representation or support for those police officers, retired or still serving. Is that something that you have raised already with the Northern Ireland Office? I presume that it has been raised with them. If so, has that issue fallen on deaf ears?

Raymond White: Well, we asked—

Lady Hermon: Sorry. Because it was Mr Lindsay who made the remarks, could I address it to him?

Raymond White: The non-criminal misconduct probably affects retired officers more. When we got the draft Bill and read it, our members were saying to us, "What does this mean: non-criminal police misconduct?" We sat back and had a good analysis of it. We can clearly say to you that it does not deal with conduct that relates to any criminal issue. In other words, anything surrounding the crime of murder itself—aiding and abetting, counselling or procuring, providing weapons, intelligence or anything else—that is all criminal, so we are told that it does not touch on that.

We then looked to see whether it was referring to some of the disciplinary issues that would have been applicable to us when we were serving. There is no mention at all in the Bill of the police regulations of 1988, which would have governed discipline within the police service during our time and which, as I say, had its own investigatory process, its own due process in terms of a disciplinary tribunal where the evidence against the officer was heard. That is not touched upon in the Bill at all.

We then said, "If it's not associated with the crime, is it associated with criminality that the police could have been engaged in as part of their conduct of an investigation?" We looked at the wide range of offences there—abuse of process, abuse of power, perjury, taking false statements, assaults, perverting the course of justice—to see whether they touched on them, but again, they don't. They don't embrace them. We therefore asked ourselves, "What is it that the Northern Ireland Office actually wants to achieve here?"

Q86 **Lady Hermon:** And the answer is?

Raymond White: We came to the conclusion that, really, they don't want anything that has due process attached to it. They want to graft on to the



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legislation that is proposed here a system that simply does not require anybody making an allegation to point their finger at any criminal issue or any misconduct that might fit in under the myriad offences that sit there relative to the crime or relative to the conduct of police officers. We have come to the conclusion that the only purpose of this is to facilitate those who wish to make allegations of collusion, where you don't have to be specific in any shape or form; you just make the allegation, "We believe there was collusion there." You do not have to specify it, because if you specify it you are only going to be asked, "Well, are you saying that this was conspiracy or that this was aiding and abetting?" You are likely to be pinned down.

The other aspect we looked at is this mythology now that, somehow or other, the state had so many agents who were so prolific among the IRA and among the UDA and the UVF that in actual fact the state, through those agents, was running terrorism. The argument now runs that terrorists themselves should not be blamed for things they did because it was the state, through its agents, that was organising these things.

Those are the two sides of the argument that are out there. We believe that this piece of legislation, which is very carefully drafted, simply creates what you would call an investigative gateway for those who wish to make these broad claims that there was either collusion or that something happened because there was protection of an informant. When that happens, as I say, it sets in motion a process that has no due process associated with it whatsoever.

Q87 Lady Hermon: Presumably, those are the points that you made when you saw the legislation and when you subsequently met Northern Ireland Office officials. You are all nodding your heads.

Raymond White: For two years, we asked the Northern Ireland Office as all through our service, if we were seeking new legislation, I had to go to the Home Office with a large basket of offences or issues that I could not investigate or charge people with because I did not have the appropriate legislation. We have asked the Northern Ireland Office, "Please give us concrete examples of those issues that you think are so grave—so exceptional—that are closely related to a murder yet can't be investigated as crimes, either by police officers themselves or as part of the actual investigation of a murder in terms of all the associated crimes that sit around it." We have not had one example given to us in any shape or form.

Q88 Lady Hermon: Have your representations fallen on deaf ears in the Northern Ireland Office?

Raymond White: I don't think, quite frankly, that the Northern Ireland Office knows exactly what it is, or else it is immensely reluctant to come out with a series of examples. I do not know whether the Committee has been provided with a basket of clear cases that illustrate what this "misconduct" actually is. We look at the Bill and we see that it says that non-criminal police misconduct is "misconduct that is closely related to a



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death" and includes "misconduct comprised in a course of conduct leading to the death"—one might assume that is failure to prevent—or "following from the death", and misconduct that relates to any investigation of that death, any arrest or arrests made concerning the death, or any prosecution that concerns the death. Now that is a massive area of investigation.

As I said before, we—the police, military and security services combined—failed to prevent over 3000 murders. You are going to review and allow for allegations of conduct that may be defined as non-criminal misconduct but not by any finding that an independent tribunal arrives at; these investigations are started by the director of the HIU on his decision, and they are adjudicated upon by the director of the HIU. In fact, I as a living former officer do not need to be spoken to at all, unless, as I say, somewhere down the line, the director having got his file back again, decides that he is going to significantly criticise me. At that point, I will have 30 days given to me to rebut what the alleged misconduct is. It is only at that point that the misconduct will actually be revealed to me.

What of the deceased police officer who is 20 years under the soil? His service record will be exhumed in place of himself. It will be examined and the director will decide, not with any information from the officer himself or anybody else, that this individual warrants significant criticism. Who is the 30-day notice going to be served on in that case?

If these things are so grave and exceptional, is it the expectation that police widows will have members of the HIU arriving at their door, saying, "We're investigating something we believe your husband was connected with. Do you mind if we search your home because this issue is deemed to be so grave and so exceptional"? Or is it the case, if there will be no significant criticism, but just criticism alone, that the first any officer or family member will know is when the local newscaster reads out from a family report that the director of the HIU has seen fit to criticise the investigations conducted by late detective inspector so-and-so, or that the divisional commander in J division or K division failed to prevent a death and is now being criticised for that?

That is all done in-house. There is no disclosure. You ask yourself, "Where is due process in terms of making you aware of what is being investigated? Where's the presumption of innocence? Where's the burden of proof that is required here? Is it beyond reasonable doubt? Is it on the balance of probabilities? Or is it just to the satisfaction of the director of the HIU?" Nobody knows those things. They are not within the Bill in any shape or form that we can study. We have no right of access to documentation. There is no right of disclosure or discovery being given to any officer as a civilian—I cannot go to the Chief Constable of PSNI and say I want access to records that I know existed 40 years ago. I will just not get them.

As I say, all that is sitting there. That is the system that is proposed in terms of this non-criminal offence, but which is of such magnitude that it sits so close, as Chris has said, to the offence of murder itself, that it



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warrants investigation. It is so grave and exceptional, but it cannot be captured under the myriad criminal offences that sit there.

- Q89 **Lady Hermon:** I have one last question about what I think you have described—you can confirm or otherwise. Mr Lindsay, you have said that the expectation is that there will be an avalanche of claims brought against them. The detail that you have given, Mr White, is the sort of avalanche—that is what you are anticipating if the legislation goes through. Is that the case?

Mark Lindsay: Yes. Raymond has articulated it very well there. Where we sit, clearly, is that the funding mechanisms for the people who find themselves at the wrong end of this, whether they are a widow or widower, or a retired officer, having to defend their reputation against very easy accusations to make, have to do that from their own pension. Whereas the accusers, in many cases, will be backed and funded by very well-funded pressure groups and by the legal aid system. We have seen that the Ministry of Defence have stepped up to the plate and said that they will support soldiers who are going through the trial process at the moment. Nothing similar exists for police officers. You are very much on your own.

- Q90 **Lady Hermon:** Would it make a critical difference to your attitude to this legislation if the Northern Ireland Office and the Government were to say, “We see the point you’re making. We see your concerns. We are going to put in place a fund that would support those officers who are accused of myriad offences which are not offences. They come close to being criminal offences, but they are non-criminal offences—whatever comes within the scope of that.” Would it make a difference if a fund were to be established?

Mark Lindsay: Not necessarily, no. I do not think it would. We believe it is fundamentally flawed.

Lady Hermon: Right. We have got to the point.

Mark Lindsay: I think the first time there was a legal defence to it, it would bring the whole thing crashing down because it would show the folly of what has been put in place, or what is proposed to be put in place.

Lady Hermon: Fundamentally flawed and a folly—I think that is the strapline.

Raymond White: If you compare that with the actual perpetrator, the perpetrator is protected by due process, and by PACE legislation and all that sits with that. The perpetrator cannot be named unless he is convicted, so he will be presumed innocent until proven guilty. However, the police officer who investigated the murder can be named and shamed without being capable of mounting any defence himself, so you finish up in this curious situation where the actual perpetrator of the murder is protected by the law and those who investigated the murder, or had the duty of policing the area where the murder happened, are not.



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I do not know of any police officer during the troubles who uniquely could be said to have been in a position to prevent a murder. That was a multi-disciplined exercise that had to be carried out where there were threats, so to arrive at a judgment as the director of the HIU you would need the wisdom of Solomon to be able to say authoritatively, "The late Mr So-and-So, as divisional commander, was deficient in his duty to the point that I should now significantly and publicly criticise him through the publication of a family report."

You ask yourself, "What did he take on board? Did he take the context of the time into account? Did he know there were five other threats of a similar nature in the area? Did he know what the resources of the individual officer were at that time, in terms of manpower, military support and everything else?" There is so much that you would need to gather in to give an impartial, fair and professional judgment on those matters, and I do not think those matters are capable of being recovered from the records of the systems as they stand.

Q91 Ian Paisley: Gentlemen, you are all very welcome; thank you for your evidence so far. Mr White and Mr Albiston, if I could turn first to yourselves, you gents are the embodiment of the rank-and-file people who really are the true heroes of the peace process in Northern Ireland. You guys stood the line and stopped what was being done in Northern Ireland. Too often that is overlooked or forgotten, so I personally thank you for your record of service and what you have done.

Could I ask you, very directly—I hope you do not mind me asking this—how many times did the IRA try to kill you?

Raymond White: I can think of at least three incidents that come to mind, and I was not as exposed as many of my colleagues. I was not full time in uniform. I served across all three disciplines—uniform, CID and special branch—but, like every other police officer, I lived with the threat. Every day, you were examining your vehicle or your wife's vehicle for an under-car booby-trap device. You sat with a firearm in your lap as you drove out of your avenue and as you returned to your home. Just in getting to your place of work, you ran an element of risk. As special branch officers, we would have been a very attractive target because we knew names of informants and things of that nature, so your entire life was disrupted.

This is the very question, Mr Paisley, that rank-and-file officers are asking of us. They are asking a very simple question: "What is it that Her Majesty's Government now want from the officers of the RUC?"

Ian Paisley: I will come back to that point, but—

Chair: Just before you do, I am slightly conscious of time, because we have Northern Ireland questions later. We are having really good, short questions, which are great. Could we have full, but slightly truncated, answers?

Q92 Ian Paisley: Mr Albiston, what about you? How many times have the



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provos tried to murder you?

Chris Albiston: The short answer is that I don't know. I was not aware of any. We did occasionally, whether we were in special branch or outside special branch, get warnings that were specific to ourselves. I have to tell this Committee that the warnings I got in relation to me came from the other side.

- Q93 **Ian Paisley:** From loyalist paramilitaries. How does it make you feel—that the political representatives of the people who tried to murder you guys and your officers and colleagues helped write this legislation?

Chris Albiston: We are very disappointed with where we think the influences for the drafting have come from. You can see what the wider agenda is—I am sure that you as a politician are better placed than I am to say this, although I think Mr Campbell hinted at this at the beginning of the session. One of your previous witnesses made his position quite clear: if you are going to break down the murders during the troubles in the conventional way, which says that 10% of the killings—not murders—were attributable to the security forces, whereas 90% of the killings, which were clearly murders, were attributable to terrorists, you can then say, "Well, republicans were responsible for 60% and loyalists for 30%." One of your witnesses went on to say, "But, of course, the 30% by loyalists were really just the state by another means," and the whole thing therefore begins to look balanced.

- Q94 **Ian Paisley:** It is like *Alice Through the Looking-Glass*, isn't it? It's that type of work. Let me just come back to Chris on this one. It must be very frustrating from your point of view that you have this knowledge, you have this history, and some people would say you have this baggage of the past—baggage is not a bad thing necessarily, although sometimes it is described as bad—but your argument appears to be lost on the NIO. How frustrating is that for you and your officers and former colleagues?

Chris Albiston: It is frustrating, because we have met representatives of the NIO at a fairly senior level regularly for 10 to 12 years now. We have made clear our concerns, long before the HIU, about some of the human rights issues that I alluded to earlier, and about which we can supply information if the Committee requests it. We feel that we get told, "You did a great job, chaps," and we get tea and biscuits, but we do not actually see any positive outcomes to our meetings.

- Q95 **Ian Paisley:** Can I use the word "expendable"? Is the history of your organisation expendable?

Chris Albiston: If you wish to put a cynical interpretation on the events of the last 15 years, I would say yes, that is probably the case.

Raymond White: This is the very question, Mr Paisley, that our rank-and-file people are asking us. What more do the former members of the Royal Ulster Constabulary George Cross have to give? We gave 30 years. We gave the lives of 302 of our colleagues. As I said, 10,000 of our members suffered injuries—some had horrific injuries that they are still suffering from today. We were intimidated, bombed and burned out of our homes.



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Many hundreds of officers had to flee in the middle of the night, taking their families and possessions—taking their children away from school and everything else. We struggled on, we provided a policing service and we had good success, because we prosecuted very fairly across the board. If anybody chooses to look at the statistics, we were actually charging loyalists at a rate of 2:1. For every one republican who we put in prison in relation to a civilian murder, we were locking away two loyalists for civilian murders. Our charging rate was very equal across the board. When you look at it, 59% of those being charged were loyalists and 34% were republicans.¹ One can hardly say we were favouring one side of the community over the other.

But it doesn't end there. You took away our name at the end of it. With the development of the PSNI, we gave up the title of the RUC for the betterment of the community. We support 100% the PSNI, but 20 years on we went through a system of accountability from public inquiries, police ombudsman investigations, civil suits, legacy inquests—and now we have arrived at a point 50 years after the troubles started, 20 years after the ceasefires and the Good Friday agreement, and people are saying to us "What was it that successive Chief Constables of the RUC presided over, condoned, authorised or whatever else, in the form of conduct, that now, 20-plus years on from the ceasefire, is being looked upon as 'Oh, we must investigate this'?"

Q96 **Ian Paisley:** Mr White, do you think you are being witch hunted?

Raymond White: I think we are just being scapegoated, quite frankly. I think there is nothing there. The collusion argument has been floating around, and it has been examined in the public inquiries that we have had, and nothing has been established. All we are left with is the sad conclusion that what is being proposed here is to provide an investigative gateway, but hide it within what you would call the investigative process that is associated with the actual investigation of the murder itself—but you can't trigger that unless you have fresh evidence, and credible evidence.

Q97 **Ian Paisley:** I understand. Very briefly, the legislation that has been presented to you—do you feel that it has been written by your enemy as opposed to by a neutral person?

Raymond White: It certainly wasn't written by a friend.

Q98 **Ian Paisley:** That is a very good answer. Mr Lindsay and Mr Jenkins, from what I have picked up from your evidence today, you are basically saying that no matter what way the legacy matters are handled, it is going to cost significant money, significant resources and significant manpower. Therefore, stick to normal principles and processes to address

¹ Written clarification from Mr White 31/10/2019: 1983-1996 loyalists murdered 279 civilians - 111 murders resulted in persons charged = 40% of murders cleared.

1983-1996 republicans murdered 270 civilians - 62 murders resulted in persons being charged = 23% of murders cleared.

This period represents the period of the troubles when for the first time loyalist murders of civilians equalled or just surpassed the numbers of civilians murdered by republican groups



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unresolved murders, otherwise you risk breaching article 13 and other issues that have been identified. Is that a fair summary of what you are telling us?

Raymond White: Very much.

Q99 **Ian Paisley:** How do we then address the difficult issues like, for example, the Finucane case? How would you address that under this process that you have identified?

Mark Lindsay: These inquiries are all very complicated. They are very public, and I have to say they are very political. I think we have to look at proper evidence—evidence which shows that somebody was directly or indirectly involved in the murder of any person, whether it be a solicitor, a police officer or an innocent member of either community. We have to actually look at “Is there evidence?” I think we can dig forever. We can have assumptions. We can have assumptions not based in fact, or not based in law. I think that is where the difficulties come—that in a lot of these cases we just keep pushing and pushing and pushing.

Ultimately I don’t think there is closure for a lot of people. I think the closure they expect doesn’t sit at the end of this rainbow, because in a lot of cases the people who were responsible for the murders were either brought to justice at the time, or their associates, who are roaming freely and speaking very freely on all sorts of television programmes—they are the people who know who killed people. They are the people who know who are responsible for the thousands of atrocities—not necessarily the people who were involved in trying to prevent this on a daily basis, which we all were. I have over 30 years in the police, and when I joined the police I was involved in working to protect all communities. We got intelligence from special branch, which was obviously well filtered, but it was primarily to go and protect all communities. I cannot see how—sometimes there may be no closure in any of this, because some of that is just—

Q100 **Ian Paisley:** Let me take the other end of the spectrum. You mentioned a case earlier on—I think it was either to Mr Campbell or to Mr Shannon, about an officer who had been investigated two or three times. I am assuming that was an incident that happened in County Down, where a police officer was involved in an incident and a terrorist lost his life.

Mark Lindsay: Yes.

Ian Paisley: That particular case is very traumatic for the individual officer, who was doing his duty and has been scapegoated or witch hunted ever since. How many other officers are in a similar position to him, where their actual hands-on service that they provided to protect people and property is now being thrown back in their teeth?

Mark Lindsay: I have many serving officers who will come and express deep frustrations around their work being, if you like, criticised without any foundation whatsoever. Basically, it is just thrown out that this wasn’t done or that wasn’t done, without taking in any context, as Raymond said earlier. Retired officers who leave, officers who retire with very severe

psychological trauma from what they are now being subjected to, were inherently good people.

Q101 **Ian Paisley:** Are they getting any help?

Mark Lindsay: There is very little help for them, and I can add to where we are. We have officers going through that, but we also have issues with relatives, with widows. I want to mention one, who was a personal friend of mine. He rang me one day to say, "The ombudsman wants to search my mother's house." His father did 42 years in the police, had been retired 25 years and had been dead 10 years, and his mother was 80, but the ombudsman wanted to search their house for evidence of something that may or may not have been there—documentation from between 1967 and 1973, when he was a serving officer somewhere else. This was two years ago. That poor lady was thrown into a spiral of despair about that.

Q102 **Ian Paisley:** What sort of stress does that put on officers' family lives? Are you dealing with a number of marital break-ups, or family break-ups, from stress? Does that come back up to you in the federation? Are you able to document that?

Mark Lindsay: We see it on a constant basis, probably, to be perfectly honest, with a lot of the retired officers. When people are in the organisation, they feel—not always rightly—that they are protected from a lot of these allegations. When they retire, they feel very isolated. As Raymond alluded to earlier, they cannot get access to records and they have no legal funding. They cannot go to appropriate legal representation to say, "Will you defend my name here, because this is actually what happened?" The organisation does not defend them, and it is very difficult. As you can see, retired officers in their 60s, 70s or even 80s, who have spent their whole service protecting and saving lives, are now to be sullied with someone saying, "No, you didn't. What you were doing there was actually covering up." But we did not sit around tables at breakfast or at lunchtime to discuss how we were going to cover up crime; we set out to deter crime and to investigate it.

Q103 **Ian Paisley:** Going forward, how does it affect your current body of men and women serving in the police? What impact does this legacy stuff have hanging over you? What impact does that have on officers and on how they do their duty today? Is there a reluctance to do things, for fear of what might come in 10, 15 or 20 years from now if you do your duty?

Mark Lindsay: I think we are in a very different place today, as far as how policing is carried out. With a lot of the processes that are in place now—whether that be computerisation or records management—policing has become overtly, and probably to the extremes, about making sure that all the i's are dotted and the t's are crossed, which is right and proper. The biggest part for me is how serving officers are so disappointed that 20 years on from Good Friday, 25 years on from the ceasefire, our current policing, and probably our future policing, has been tainted by this. We are now in the Police Service of Northern Ireland, incorporating the Royal Ulster Constabulary. That was agreed on and supported by all the political strands, but that support now seems to be waning on the back of



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a lot of the—I would go as far as to say—propaganda of legacy in society today. It is tainting policing; there is no doubt about that.

Gareth Jenkins: Members have stated to me, today and in recent months, that they are concerned. In 20 years' time, will their work be viewed in the same way as the work of detectives and other police officers in the RUC during the troubles is looked at now? Technology will move on, things will be done differently, and procedures and processes will be different. Whenever they talk to me now, they ask, "Is that what's going to happen to me if I don't do this?", because of some new technological advance in some area—DNA, for example—or some way in which to progress a piece of evidence that is not available to them now, but will be in 20 years. Will they be criticised in the same way as our RUC colleagues in the '60s, '70s, '80s and '90s were?

Ian Paisley: Thank you, and I genuinely meant what I said; I think you guys are the embodiment of true heroism.

Q104 **Kate Hoey:** Thank you all very much for coming. I add my tributes to what both Sylvia and Ian have said about the work done over the years. It is sad that so few people on the mainland actually understand just what it was like out on a border road on a dark night, knowing that there were people there with one motive: to kill you. Your evidence this morning has been incredibly useful and helpful.

I know that there is one area in the legacy Bill that you are not happy with: the oral history project. I am certainly not happy with it, apart from all the other things in the Bill that I am not happy with. It sounds like another bit of sanitisation. Are there concerns that it will end up being very one-sided, because police officers, for all sorts of reasons, are not necessarily going to be able to give their true record of what they feel?

Raymond White: We would point to Carl Beech, in Operation Midland, being able to come forward with very convincing claims and statements about being the subject of abuse. The oral history thing, we believe, is just an open door for those fantasists out there who can come in and state what they wish to. Any international individual could sit and listen to somebody talking about lost lives and creating a picture around those deaths, and they could paint the most fantastic story that they like to seek to justify what they were about. It will be terribly hard to validate just what sort of weight that you could put on such a record.

Q105 **Kate Hoey:** What are the problems with the police themselves being part of it?

Raymond White: We have engaged for some time with an oral history record of surveyed officers that will form part of our own museum, showing what people experienced in that respect. If you are going to come in as a paramilitary individual and start to give a history of it—

Q106 **Kate Hoey:** But doesn't the Official Secrets Act stop some things from being told anyway?



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Raymond White: Certainly, we as retired officers would be very respectful still of the oath that we took in relation to official secrets. We ran people within paramilitary organisations. Until my dying day, I will say that they were extremely brave people, and we owe them the protection of not naming them now, because they are out there in society with families of their own and everything else. We are duty bound to not tell that aspect of it, and that is right and proper. The records of what we did are there within the proper agencies. I do not think that those matters are a subject for oral history.

Q107 **Kate Hoey:** So you think it really is just a waste of time?

Raymond White: The ordinary member of the public out there who was touched by terrorism through the loss of a business or a family member, or something, has a right, for 30 seconds, to have recorded what their family suffered. The oral history might, in that way, allow those people to say, "Look, we suffered for 30 years with the troubles. Nobody from officialdom came anywhere near us. This is the way it impacted on me, my family, my siblings—we lost our father."

Just to tell their own story would be satisfaction for an awful lot of people who just want the world to stop for that 30 seconds as they say what they suffered, to get that little bit of official recognition and to get the markers down. If the oral history archive is heavily focused in that respect, I would certainly support it, to allow people to have their say and to have it recorded for posterity.

Q108 **Kate Hoey:** In answer to a couple of questions, you talked about the Northern Ireland Office having lots of cups of tea but very little else. May I ask about your relationship and dealings with Secretaries of State over the past 10 years or so? Have any of you found any of the Secretaries of State interested in listening, in the way that we are listening this morning, to something that is clearly quite distressing for many of you, in terms of what is happening to you collectively? The new Secretary of State has not been there long and may not be there much longer with a general election coming, but what about previous Secretaries of State?

Chris Albiston: We have had meetings over the past 12 to 15 years with every Secretary of State, and I think every shadow Secretary of State—I cannot be 100% certain about that. We have not met the present ones—we had a meeting arranged with the current Minister of State, but strangely, more urgent matters seemed to be taking place on this side of the water than in Northern Ireland, and that meeting had to be put back. As you say, it may now never take place.

Our experience with Secretaries of State has been perhaps of a different order, but of the same outcome, as our discussions. One thing that is perhaps different when we see Secretaries of State, Ministers, and shadow Ministers, compared with when we see Northern Ireland Office officials, is that we come up against the problem of devolved power. In relation to the functions of the police ombudsman and the impact on national security, we have come up against a backwards and forwards batting of

responsibility between Westminster and Stormont. What is a devolved responsibility, and what is not?

While we recognise the realities that you people have to deal with in making political decisions, we as retired police officers are able to enjoy the luxury of taking a purist position, which states that many of the matters that are legacy issues are, by their very nature, also national security issues. We have difficulty with national security issues being discussed and examined by devolved bodies. That is not because we take a political position on the role of devolved bodies; it is simply because traditionally, national security has always been a reserved matter.

When we went into special branch, for example, the delineation of responsibility was made clear. Naturally, with political developments since the ceasefires there has been a blurring of those issues, but if you look at the proposals for the HIU, it will clearly be a devolved body, given its areas of financial accountability, its accountability to the policing board, and so on. Many of the issues that it will be looking at will be national security issues. We know the make-up of the policing board, and we know what responsibilities are proposed for the HIU.

Q109 Sir Desmond Swayne: I am still struggling with the concept of non-criminal conduct. Mr Albiston, you implied that you were not expecting a rash of new prosecutions, but clearly the consensus is about a rash of investigations. If the bar is so exceptional and grave, clearly that would constitute a criminal offence, even if only a common law offence such as misconduct in a public office.

Chris Albiston: What we have said countless times, and I was glad to hear our colleagues from the Police Federation say the same thing, is that none of us at this table hold any brief for any police officer—serving or retired—who committed criminal offences. When the myth of collusion is raised as a great spectre by certain elements in society, we want to say, “What do you mean by this?”

We don’t want some hoary old Judge Cory or Lord Stevens-type definition. We want to say, “Do you mean that police officers were engaged in conspiracy to murder, or incitement to murder, or conspiracy to pervert the course of justice? Because if you do, we will support you and assist you in any way we can in bringing these people to justice.” But this has been tried for years and years and years, and Lord Stevens had I don’t know how many years, and how many millions of pages of evidence, and all the rest of it.

Lord Stevens came up with a suggestion of collusion. Uniquely, as far as I know, the Director of Public Prosecutions in Northern Ireland came out with a public statement saying, “Look, there is no offence of collusion. If you want to say these police officers were engaged in criminal conduct, give me the evidence and I’ll put it in front of a court.” This has been tried by various inquiries and by the police ombudsman over a period of years, and there have been no prosecutions. What we see is that the HIU is a mechanism to try and get to the same result without having to go through



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the tiresome process of actually producing any evidence that will convince anybody.

Mark Lindsay: Non-criminal police misconduct, as Chris and Ray have mentioned, is mentioned so many times throughout the document, but we are actually looking at something that doesn't even meet the threshold for a crime. If this legislation is to bring people and make them accountable for serious crime, the focus seems to be on putting something into the legislation that doesn't even meet a minor crime, and putting that almost above some of the most terrible atrocities carried out by others.

No matter who it was that committed the crime, they should be held accountable under the law, and police officers and soldiers have been prosecuted in the past who have gone off. But this is not just one or two rotten apples that people are trying to portray now; there are barrels of rotten apples, or orchards of rotten apples. This is potentially where this could end up, which is simply not the case.

Q110 **Kate Hoey:** Perhaps it is an oversimplification, but could it be said also, then, that this whole legislation—whether it was designed to or not, and probably not—would have the effect of simply trying to rewrite history?

Mark Lindsay: We are very much of that view—that this is an attempt to rewrite history, to equate what the law enforcement agencies at the time—whether it be police, and that's who we have responsibility for, or the military, or the other services—did, and to say that they were equally responsible for the crime. The people who have the answers to that are walking freely around Northern Ireland, having been released from prison, and now they are potentially looking to put the people who put them there into prison in their place for offences, and opening up stuff that simply cannot be proved. I have real, real concerns that this is all about rewriting history and bringing some sort of equivalence to a conflict that affected everybody. It affected every single community, including the third community, which is police officers.

Q111 **Kate Hoey:** It was interesting when you mentioned how little the word "terrorism" was used in the whole thing.

Finally, and it is really a yes or no question, do you think—all of you—that the best thing that could happen would be that this whole legacy Bill plan was simply dropped and we started again? Can it be changed enough to make it acceptable, or is it better to drop it?

Mark Lindsay: I believe it is so seriously flawed that it needs to be dropped in its current form completely and rethought from the inception.

Chris Albiston: *indicated assent.*

Raymond White: *indicated assent.*

Kate Hoey: Thank you.

Chair: Lady Hermon, you indicated you wanted to come back with a very quick supplementary—I stress the words "very quick" and



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“supplementary”.

Q112 **Lady Hermon:** I will try to be respectful—and to sidestep those two requirements. *[Laughter.]* But ever so delicately.

There are two very serious issues. Following on from the reply that you have just given to my colleague Ms Hoey, you described this legislation as fundamentally flawed, and you said it should be abandoned. Can I take you one step further, because you mentioned earlier Attorneys General in Northern Ireland? The current Attorney General—I hope I am not misquoting him—suggested at some stage that he thought a line in the sand should be drawn and that we do not go back over legacy issues. I see heads nodding. Can I ask for a very concise—the Chairman is listening—reply? Is that the view of the Police Federation and the Retired Police Officers Association? Should a line in the sand be drawn?

Mark Lindsay: I represent serving police officers. They are male, female, Protestant, Catholic, Unionist, nationalist. They have very different views around this. While some are absolutely sick to the teeth of legacy corrupting normal day policing and just want to move on, there is also a very considerable group of people who have suffered very deeply previously, and are still suffering, and I think they would be opposed to a line in the sand. The answer that would cover that is that if there is evidence of criminal offences, it should be pursued and there should be no line in the sand for anybody who has committed criminal offences.

Q113 **Lady Hermon:** That is very clear. Thank you. And the Retired Police Officers Association?

Raymond White: Exactly the same. If there is credible evidence that can be investigated, then let the agencies that are there with the experience at the moment get on and do it. But I don't think those demanding justice should have the right to suppress those who wish to have other forms of either information recovery or anything else made available to them.

Q114 **Lady Hermon:** On another critical question, a consultation document about legacy omitted any reference to a statute of limitations for veterans. There was a considerable response—17,000 responses or thereabouts—to the consultation document, and a large percentage of those did not wish to see a statute of limitations for veterans. However, the Prime Minister and the current Government, going into a general election, have indicated that they would be in favour of some form of statute of limitations for veterans. Could I ask again how the Police Federation and the Retired Police Officers Association feel about and respond to any suggestion of a statute of limitations for veterans?

Chris Albiston: Heads are turning towards me. In summary, our view is that there should be no hiding place for people who have committed criminal offences. Intuitively, as serving or retired police officers, we believe that justice should be pursued, though the heavens may fall and all the rest of it, so we have no problem with that. We have explained what our difficulties are with the HIU.



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In so far as the statute of limitations is concerned, it seems to be very much a military matter. We have many contacts among the retired military community. While it must be for them to give their evidence to this Committee, I could summarise their position by saying that the ones who live on the mainland of Britain are in favour of a statute of limitations. The ones who live with us in Northern Ireland do not want that, and the reason is the same reason that we don't want it. We don't want our children or our grandchildren saying to us, "You were up to no good, but the only reason that you are not in prison is because there was a statute of limitations." We say, "Bring it on." If you have got evidence that I did something that was wrong, present it to me and I will take my chances.

Q115 **Lady Hermon:** That is really interesting. And the Police Federation?

Mark Lindsay: It is exactly the same. I don't need to elaborate any further.

Chair: Before we close the meeting, on behalf of the Committee, I thank the four of you for your evidence and for giving us a lot to think about today.

It would be remiss of me, if you can bear with me for a moment, not to put on record that, while most of us will cast ourselves before the electorate in a few weeks' time, you, Kate, will be stepping down as the Member of Parliament for Vauxhall. You have been a doughty champion not just of your constituents, but of the people of Northern Ireland. You have been a long-standing member of this Committee. You stood in as Chair when Dr Murrison stepped down. Your service, attention to detail, and probing and forensic questions are legion and well known. I am sure that all who have served with you on this Committee over the years have found it a great pleasure to do so. We will miss you. Whatever you intend to do, we wish you well. I am tempted to say that, after all these years on the Committee, you have finally found the escape tunnel, and you are almost under the wire to get away. We all warmly thank you very much for all that you have done. We are most grateful.