



House of Commons  
Northern Ireland Affairs  
Committee

---

# Addressing the Legacy of Northern Ireland's Past: the Government's New Proposals (Interim Report)

---

Third Report of Session 2019–21

*Report, together with formal minutes relating  
to the report*

*Ordered by the House of Commons  
to be printed 21 October 2020*

## Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

### Current membership

[Simon Hoare MP](#) (*Conservative, North Dorset*) (Chair)

[Caroline Ansell MP](#) (*Conservative, Eastbourne*)

[Scott Benton MP](#) (*Conservative, Blackpool South*)

[Gregory Campbell MP](#) (*Democratic Unionist Party, East Londonderry*)

[Stephen Farry MP](#) (*Alliance, North Down*)

[Mary Kelly Foy MP](#) (*Labour, City of Durham*)

[Robert Goodwill MP](#) (*Conservative, Scarborough and Whitby*)

[Claire Hanna MP](#) (*Social Democratic & Labour Party, Belfast South*)

[Ian Paisley MP](#) (*Democratic Unionist Party, North Antrim*)

[Stephanie Peacock MP](#) (*Labour, Barnsley East*)

[Bob Stewart MP](#) (*Conservative, Beckenham*)

### Powers

© Parliamentary Copyright House of Commons 2020. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at [www.parliament.uk/site-information/copyright-parliament/](http://www.parliament.uk/site-information/copyright-parliament/).

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/niacom](http://www.parliament.uk/niacom) and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

### Committee staff

Mems Ayinla (Second Clerk), Nick Beech (Clerk), John Hitchcock (Committee Operations Manager), Simon Horswell (Committee Specialist), George James (Committee Specialist), Ffion Morgan (Assistant Clerk), Sam Nariani (Committee Specialist), Chloe Smith (Apprentice Inquiry Manager), Kelly Tunnicliffe (Committee Operations Officer), Rebecca Usden (Committee Specialist) and Tim West (Media Officer).

## Contacts

All correspondence should be addressed to the Clerk of the Northern Ireland Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 2173; the Committee's email address is [northircom@parliament.uk](mailto:northircom@parliament.uk).

You can follow the Committee on Twitter using [@CommonsNIAC](https://twitter.com/CommonsNIAC).

# Contents

---

<b>Summary</b>	<b>3</b>
<b>1 Government engagement with legacy issues</b>	<b>4</b>
Background	4
Lack of information	4
<b>2 Stormont House Agreement</b>	<b>6</b>
Current legacy arrangements	7
A change in policy?	8
Irish Government responsibilities	9
Overseas Operations (Service Personnel and Veterans) Bill	10
<b>3 Consultation and legislation</b>	<b>12</b>
<b>4 Proposed new legacy body</b>	<b>14</b>
Resources	14
<b>5 Investigations</b>	<b>16</b>
Threshold for triggering reinvestigation	16
New evidence	17
Closing cases	18
ECHR Article 2 obligations	19
<b>6 Information recovery</b>	<b>21</b>
<b>7 Operation Kenova</b>	<b>23</b>
<b>Conclusions and recommendations</b>	<b>25</b>
<b>Formal minutes</b>	<b>29</b>
<b>Witnesses</b>	<b>30</b>
<b>Published written evidence</b>	<b>31</b>
<b>List of Reports from the Committee during the current Parliament</b>	<b>33</b>

## Summary

On 18 March 2020, the Secretary of State for Northern Ireland published a Written Ministerial Statement (WMS) announcing new proposals to address the legacy of the Troubles. This followed a commitment by the Government to introduce legislation to Parliament within 100 days as part of the New Decade, New Approach agreement in January. Having raised expectations, the Government has failed to provide any further policy detail on this critical issue in the following seven months. The two-page WMS remains the only source of information on the new policy. Survivors, victims' families and, more widely, the people of Northern Ireland experienced immense suffering during and after the Troubles. The WMS was not informed by meaningful consultation with victims' groups, Northern Ireland political parties or the Irish Government.

Key practical questions remain unanswered about the role and function of the proposed new legacy body. For example, the Government has not clarified its plans to close permanently cases not meeting the threshold for full investigation or explained why it now plans to form a single body to handle both investigations and information recovery. We were unable to obtain answers to the outstanding questions, because our planned oral evidence session on 16 September with the Secretary of State and NIO officials was postponed at the Government's request.

This Report is necessarily an Interim Report, a decision taken in the hope that it may be able to shape the policy that emerges following the publication of the WMS. We will complete this inquiry with a final Report, when the Government has articulated the policy detail; in the meantime, we shall maintain our scrutiny brief.

# 1 Government engagement with legacy issues

---

## Background

1. In a Written Ministerial Statement (WMS) published on 18 March 2020, the Secretary of State for Northern Ireland, Rt Hon. Brandon Lewis MP, outlined the Government's new legislative proposals to tackle the legacy of the Troubles in Northern Ireland.<sup>1</sup> Following this, the Irish Government published its view on how it would be handling certain named cases.<sup>2</sup> The WMS was published two months after the publication of *New Decade, New Approach*, which contained a commitment by the Government to "publish and introduce legislation in the UK Parliament to implement the Stormont House Agreement" within 100 days.<sup>3</sup> A new approach to addressing Northern Ireland's past was an important unimplemented element of the 2014 Stormont House Agreement. The WMS stated that the new framework would contain "significant changes" from the previous Stormont House Agreement draft Bill.<sup>4</sup>

2. Following the publication of the WMS, the Committee launched its inquiry on 29 April.<sup>5</sup> We received a broad range of written submissions on the proposals, including from victims' groups, academics, police representatives and veterans.<sup>6</sup> We took oral evidence in public on a virtual platform from a number of witnesses in five oral evidence sessions held between June and September.<sup>7</sup> We are grateful to all those who took the time to contribute to the inquiry bearing in mind the difficulties caused by the covid-19 pandemic.

## Lack of information

3. Disappointingly, the Government abandoned convention and chose not to submit written evidence to this inquiry. Likewise, the Committee has not received a formal response to the WMS from the Irish Government. To date, we have not received a formal submission to our inquiry from the UK Government, although we understand that this is forthcoming. We would also welcome formal input from the Irish Government, given the partnership nature of the Stormont House Agreement. Both contributions will be very helpful in helping the Committee come to its final conclusions. We had been due to question the Secretary of State for Northern Ireland on the Government's new proposals at an oral evidence session on 16 September, but in the week before this meeting, the Secretary of State wrote to the Chairman to postpone the session. He stated that the Department was "currently at an important stage of policy consideration, including sensitive engagement with key stakeholders" and therefore would be "unable to provide answers with the openness and clarity that the Committee would expect without risking the progress of

---

1 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

2 [Programme for Government, Our Shared Future](#), p 105, June 2020

3 Paragraph 16, Annex A, [New Decade New Approach](#) agreement

4 [Draft Northern Ireland \(Stormont House Agreement\) Bill](#)

5 For the inquiry's Terms of Reference, see: [Addressing the Legacy of Northern Ireland's past: The UK Government's New Proposals](#), Northern Ireland Affairs Committee

6 Published written evidence submissions to the inquiry can be read [here](#).

7 The Committee took oral evidence from: the Commission for Victims and Survivors Northern Ireland, WAVE Trauma Centre, South East Fermanagh Foundation, Northern Ireland Retired Police Officers Association, Justice for Northern Ireland Veterans Original, Police Service of Northern Ireland, Jon Boutcher, Lord Caine, Lord Hain, Baroness Ritchie and Lord Empey.

such a sensitive issue”.<sup>8</sup> While Government engagement post-WMS is welcome, we would have expected this to have been undertaken during the summer. As some of the content of the WMS represents a radical policy departure, meaningful consultation with key stakeholders would have been welcome before publication of the WMS. Consultation is vital given the importance and sensitivity of this subject.

4. While acknowledging the challenges caused by the covid-19 pandemic in terms of departmental resource and public engagement, we would have expected further detail to be made available on the Government's plans by this point, seven months after the WMS and more than nine months since the commitment in New Decade, New Approach to implement the Stormont House Agreement within 100 days. The two-page WMS released in March remains the only source of policy detail and raises many questions, still unanswered, regarding the role and function of the proposed new legacy body. The lack of information provided by the Government made it difficult to scrutinise the proposals properly. In hindsight, the Government may have been unwise to make a commitment to a 100-day deadline in New Decade, New Approach, which it was subsequently unable to fulfil.

**5. We are disappointed that the UK Government has decided not to submit, to date, written evidence to our inquiry, but we look forward to receiving it, just as we would look forward to formal submissions from the Irish Government. In addition, the planned oral evidence session with the Secretary of State was postponed at the request of the Government. This Report is necessarily an Interim Report, in which we set out our recommendations and conclusions with a view to informing the future policy. We hope that the Government will use its response to this Interim Report to address the outstanding questions in this policy area and keep in mind the principles of the Stormont House Agreement and New Decade, New Approach.**

**6. Too many key questions remain regarding how the proposed new institution would operate and function. It is deeply worrying that since 18 March, when the Government announced its new legacy proposals, it has been unable to provide any further policy detail. While covid-19 has presented a challenge across government, policy development has continued across Whitehall, and the Northern Ireland Office has digital platforms to facilitate its work. The information lacuna is especially regrettable given the sensitivity of the issues and the period since many of the events occurred. Delay and uncertainty perpetuate an unacceptable situation that has already gone on too long.**

---

8 [Letter from the Secretary of State for Northern Ireland to the Chair relating to matters to be raised at the oral evidence session on Wednesday 16 September](#), dated 11 September 2020.

## 2 Stormont House Agreement

---

7. The Stormont House Agreement (the Agreement) was agreed and published in December 2014 following weeks of talks between the UK and Irish Governments and political parties in Northern Ireland.<sup>9</sup> It covered a range of issues and included a framework for dealing with the legacy of the Troubles in Northern Ireland. The Agreement followed previous attempts to design a new system to deal with the past, including the 2009 Eames-Bradley report and the Haass-O'Sullivan talks in 2013. The Stormont House Agreement set out six general principles:

- promoting reconciliation;
- upholding the rule of law;
- acknowledging and addressing the suffering of victims and survivors;
- facilitating the pursuit of justice and information recovery;
- is human rights compliant; and
- is balanced, proportionate, transparent, fair and equitable<sup>10</sup>

The Agreement proposed four new institutions to take forward responsibility for legacy:

- Historical Investigations Unit (HIU) to take forward outstanding investigations into Troubles-related deaths;
- Independent Commission on Information Retrieval (ICIR) to enable family members to seek and privately receive information about the Troubles-related deaths of their relatives;
- independent Oral History Archive (OHA) to enable people from all backgrounds to share experiences and narratives related to the Troubles; and
- an Implementation and Reconciliation Group (IRG) to promote reconciliation and anti-sectarianism, and to review and assess the implementation of the other legacy institutions proposed.<sup>11</sup>

8. The new institutions had not been established when the Executive collapsed in January 2017. The Northern Ireland Office (NIO) held a public consultation from May to October 2018 on how to implement the legacy proposals in the Agreement. The consultation received more than 17,000 responses, with the NIO publishing its analysis in July 2019.<sup>12</sup> Alongside the consultation paper, the Government also published a draft Bill.<sup>13</sup>

9. Our predecessor Committee in the previous Parliament held an inquiry examining the draft Bill, but that inquiry was curtailed by the general election in December 2019 before

---

9 [Stormont House Agreement](#)

10 Paragraph 21, [Stormont House Agreement](#)

11 Paragraphs 21–55, [Stormont House Agreement](#)

12 [Addressing the legacy of Northern Ireland's past: Analysis of the consultation responses](#), Northern Ireland Office, July 2019

13 [Draft Northern Ireland \(Stormont House Agreement\) Bill](#)

a Report could be published.<sup>14</sup> A range of views was expressed in response to that inquiry. Concerns were raised about the role and powers of the bodies in the Bill, particularly the HIU. Key disagreements included the extent of the investigatory powers of the HIU, the inclusion of cases of “non-criminal police misconduct” in the HIU’s remit and the ICIR’s ability to verify information.<sup>15</sup> Submissions to our 2020 inquiry similarly included a range of views on the Stormont House Agreement and the draft Bill. Some believed that the Stormont House Agreement proposals still provided the best way forward.<sup>16</sup> However, other witnesses welcomed the change in direction.<sup>17</sup> In the WMS, the Secretary of State for Northern Ireland stated that the Agreement was “an important milestone, but it did not stop the debate continuing”.<sup>18</sup>

## Current legacy arrangements

10. Responsibility for legacy investigations in Northern Ireland is currently held by separate bodies. Investigations into Troubles-related deaths are carried out by the Legacy Investigations Branch (LIB) of the Police Service of Northern Ireland, which replaced the previous Historical Enquiries Team (HET) in 2015 and took over its entire remaining caseload relating to nearly 1,200 deaths.<sup>19</sup> Historical allegations of police criminality and misconduct are handled by the Historical Investigations Directorate (HID) of the Office of the Police Ombudsman for Northern Ireland (PONI), and inquests are carried out by the Coroners Service for Northern Ireland. Separate investigations into specific cases are being carried out under Operation Kenova (see Chapter 7).

11. The current arrangements for investigating the past were challenged by, among others, Lord Caine, who served as a lead Government negotiator on the Stormont House Agreement. He told the Committee that one of the problems with the system was that the mechanisms had “grown up ad-hoc” and were “disjointed”.<sup>20</sup> The Commission for Victims and Survivors stated:

It has been almost universally accepted that the current system is not able to address the legacy of our past; therefore, it is necessary to introduce new mechanisms that would deliver better outcomes for victims and survivors.<sup>21</sup>

---

14 [Terms of Reference](#), Consultation on Stormont House Agreement inquiry, Northern Ireland Affairs Committee (2017–19)

15 For example, see Ulster Human Rights Watch (SHA0015), Northern Ireland Retired Police Officers Association (SHA0035)

16 For example, see: Stormont House Model Bill Team ([LEG0027](#)); Pat Finucane Centre and Justice for the Forgotten ([LEG0028](#))

17 For example, see: Ulster Human Rights Watch ([LEG0013](#)), South East Fermanagh Foundation and Innocent Victims United ([LEG0016](#)), Neil Faris and Peter Smith CBE QC ([LEG0014](#))

18 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

19 Northern Ireland Office, [Consultation Paper: Addressing the legacy of Northern Ireland's Past](#) (May 2018), p 14

20 [Q273](#)

21 Commission for Victims and Survivors Northern Ireland ([LEG0010](#)) para 38

## A change in policy?

12. The Government confirmed its continuing commitment to implementing the Stormont House Agreement in the Queen's Speech in December 2019:

To deal with NI legacy issues we will seek the prompt implementation of the Stormont House Agreement in order to provide both reconciliation for victims and greater certainty for military veterans ... In parallel with the Stormont House Agreement institutions we will tackle the inappropriate application of the Human Rights Act to issues that occurred before it came into force.<sup>22</sup>

This commitment to seek the "prompt" implementation of the Stormont House institutions was reaffirmed in New Decade, New Approach (NDNA) in January 2020. As part of NDNA, the Government committed to publishing and introducing legislation within 100 days.<sup>23</sup>

13. In the WMS, the Secretary of State for Northern Ireland outlined a new framework to address legacy issues in Northern Ireland, including "significant changes" from the Stormont House Agreement.<sup>24</sup> Referring to the NIO's 2018 public consultation on the draft Bill, he stated:

We have carefully considered each and every one of these [consultation responses], and sought to identify a way forward that will deliver for all those affected by the legacy of the Troubles and enable all sides of the community to reconcile and prosper. It is clear that, while the principles underpinning the draft Bill as consulted on in 2018 remain, significant changes will be needed to obtain a broad consensus for the implementation of any legislation.<sup>25</sup>

Key changes laid out in the WMS included the move to a single, independent body to oversee the new legacy arrangements. The body would be responsible for carrying out both investigations and information recovery, as opposed to the separate HIU and ICIR institutions described in the Stormont House Agreement. A greater emphasis would also be placed on information gathering for families. Cases that do not meet the threshold for a full police investigation would be closed permanently under the new plans, with a legal bar on future investigations.<sup>26</sup> The Government's new proposals are discussed in greater detail in Chapter 4.

14. The WMS asserted that the proposals had "evolved to remain true to the principles of the Stormont House Agreement".<sup>27</sup> Some submissions to our inquiry challenged that assertion. The Northern Ireland Human Rights Commission described the proposals as a "radical departure" from the Stormont House Agreement.<sup>28</sup> The Model Bill Team

---

22 Prime Minister's Office, [Queen's Speech December 2019: background briefing notes](#), p 128

23 Paragraph 16, Annex A, [New Decade New Approach](#) agreement

24 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

25 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

26 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168, "[UK Government sets out way forward on the legacy of the past in Northern Ireland](#)", Northern Ireland Office press release, 18 March 2020.

27 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

28 Northern Ireland Human Rights Commission ([LEG0034](#)) para 4.5

expressed the view that the new proposals represented a “unilateral abandonment” of the Agreement.<sup>29</sup> WAVE Trauma Centre, a voluntary organisation offering care and support to people affected by the Troubles, told us that it believed the proposals were not consistent with the principles outlined in the Stormont House Agreement.<sup>30</sup>

**15. The Committee welcome the Government’s desire to legislate to address the legacy of the past in Northern Ireland. Our predecessor Committee’s inquiry in the previous Parliament identified flaws in the draft Bill which would have prevented its receiving broad support in Northern Ireland. However, the new proposals represent a unilateral and unhelpful departure from the Stormont House Agreement rather than positive and progressive evolution. *The Government must, as soon as possible, introduce legislation that is consistent with the six principles of the Stormont House Agreement:***

- *promoting reconciliation;*
- *upholding the rule of law;*
- *acknowledging and addressing the suffering of victims and survivors;*
- *facilitating the pursuit of justice and information recovery;*
- *complying with human rights; and*
- *being balanced, proportionate, transparent, fair and equitable.*

## Irish Government responsibilities

16. The Stormont House Agreement referred to co-operation between the UK and Irish authorities on unresolved legacy cases:

The UK and Irish Governments recognise that there are outstanding investigations and allegations into Troubles-related incidents, including a number of cross-border incidents. They commit to co-operation with all bodies involved to enable their effective operation, recognising their distinctive functions, and to bring forward legislation where necessary.<sup>31</sup>

However, the WMS did not refer to the appropriate role and responsibilities of the Irish Government in relation to the new legacy body. As there is uncertainty, we invite the UK Government to address this issue specifically in its response to this Interim Report.

---

29 Stormont House Agreement Model Bill Team ([LEG0027](#)), paras 1 and 5

30 WAVE Trauma Centre ([LEG0024](#)), para 12

31 Paragraph 55, [Stormont House Agreement](#)

17. Witnesses noted that certain cases will require the co-operation of and a “proactive” approach from the Irish Government, including cases involving cross-border criminality.<sup>32</sup> Kenny Donaldson, Director of Services, South East Fermanagh Foundation victims and survivors group, said:

The southern state, in many ways, has adopted a position over the years where it has almost suggested that it was an independent onlooker to events that were unfolding within Northern Ireland.<sup>33</sup>

He added that if the Republic of Ireland were not to engage with the legacy structures, “those we represent are going to continue to be treated in an unfair and unjust manner”.<sup>34</sup> Advocacy Support Manager Ken Funston concluded that the organisation had found it “nigh on impossible to get anything” from the Irish authorities on legacy cases.<sup>35</sup> The then Victims Commissioner Judith Thompson highlighted the role of the Irish Government in dealing with legacy cases:

they [the Irish Government] are engaged not only as parties in the Stormont House Agreement and as signatories regarding information retrieval, but also as a Government who hold information and evidence that are of great significance and importance to many people awaiting investigations, both in the Republic of Ireland and in the north of Ireland. I put it to the Irish Government not only that their partnership was involved in solving this, but that their action as party to this exercise and as a party that holds legal evidence is also critical. They face many of the same challenges as the UK Government do.<sup>36</sup>

**18. The Irish Government will have a role to play in parts of a new legacy process. It will need to maintain a collaborative approach to help resolve legacy cases, which we heard has not always been the case in the past. That will best be achieved by the UK Government adopting a policy of meaningful and appropriate engagement with the Irish Government as envisaged in the Stormont House Agreement.**

## Overseas Operations (Service Personnel and Veterans) Bill

19. The WMS was published alongside the Overseas Operations (Service Personnel and Veterans) Bill.<sup>37</sup> The Bill addresses legal proceedings against Army personnel in relation to military operations served overseas, including a presumption against prosecution for allegations dating back more than five years. The Government has made it clear that the Bill does not apply to events in Northern Ireland, and we welcome this clarification.<sup>38</sup>

---

32 [Q132](#) [Northern Ireland Retired Police Association]

33 [Q90](#)

34 [Q92](#)

35 [Q87](#)

36 [Q7](#)

37 The WMS stated that “today the Government announced the introduction of legislation to provide greater certainty for service personnel and veterans who serve in armed conflicts overseas. Alongside this, we are setting out how we propose to address the legacy of the past in Northern Ireland”. Explanatory notes describe the Overseas Operations (Service Personnel and Veterans) Bill as representing “one strand of the Government’s approach to addressing the problem of “Lawfare” (the judicialisation of armed conflict) and to ending the cycle of reinvestigation of historic events. The Government is intending to introduce separate legislation covering operations in Northern Ireland”. [Explanatory notes to the Overseas Operations \(Service Personnel and Veterans\) Bill \[Bill 117 \(2019–21\)-EN\]](#)

38 [Overseas Operations \(Service Personnel and Veterans\) Bill \[Bill 117 \(2019–21\)\]](#)

The Government included an assurance to legislate against “vexatious legal claims that undermine our Armed Forces” in its 2019 election manifesto, without ever defining the term vexatious.<sup>39</sup> The Secretary of State for Northern Ireland has also promised to deliver “equal treatment of Northern Ireland veterans and those who served overseas” in the WMS.<sup>40</sup> Judith Thompson argued that operations in Northern Ireland should be treated differently from overseas operations:

Do not conflate what happened to UK citizens on UK soil in a situation that the Government were very clear was not a war with what happened overseas in other theatres and other places.<sup>41</sup>

**20. The Government is right to recognise the unique circumstances in Northern Ireland by decoupling Northern Ireland legacy issues from the Overseas Operations (Service Personnel and Veterans) Bill. Any attempts to conflate the two must be resisted.**

---

39 Conservative Party, [Conservative Party 2019 election manifesto](#) p 52

40 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

41 [Q52](#). See also Professor Brice Dickson ([LEG0008](#)), para 10

### 3 Consultation and legislation

---

21. Many witnesses referred to the lack of stakeholder engagement before and after the publication of the WMS.<sup>42</sup> Judith Thompson stated:

I would highlight that there has been no further public consultation on the detail of the changes, and no schedule for legislative processes.<sup>43</sup>

When asked when the Commission was first made aware of the new proposals, Judith Thompson answered that she “saw the press release during its embargo period on 18 March. I had no pre-sight or foresight of that announcement.”<sup>44</sup> This view was shared by Sandra Peake, CEO of WAVE Trauma Centre, who described the WMS as a “bolt out of the blue”:

We were waiting for Stormont House. We thought there was an agreement between the British and Irish Governments and the Assembly, and we were waiting for an action on that. We had no warning. All of a sudden, in the middle of Covid, a two-page statement came out ... with absolutely no warning, at a time when victims and survivors were most vulnerable.<sup>45</sup>

Speaking to the Committee, PSNI Chief Constable Simon Byrne stated that he was still awaiting further detail on the content and implications of the WMS.<sup>46</sup> He said that the PSNI was “surprised” that it was not more closely involved given its responsibility for legacy investigations, adding:

I think some earlier sense of what was coming, and the departure from the current proposals around the Stormont House agreement, would have at least been helpful to help us think that through.<sup>47</sup>

The Chief Constable confirmed that a policy working group had been set up by the NIO to consider the proposals in late March, although the PSNI declined to take part due to concerns about the need to remain impartial.<sup>48</sup> The Committee does not necessarily concur with that decision and believe that the policy could have been significantly helped by PSNI involvement.

22. The commitment to legislate on legacy issues included in New Decade, New Approach promised that the Government would “now start an intensive process with the Northern Ireland parties, and the Irish Government as appropriate, to maintain a broad-based consensus on these issues”.<sup>49</sup> However, it was clear from parties’ reaction to the WMS that a broad-based consensus had not yet been reached on the proposals and that limited, if any, consultation had taken place before the WMS’s publication.<sup>50</sup> Shortly after

---

42 For example, Northern Ireland Human Rights Commission ([LEG0034](#)), para 4.4

43 [Q1](#)

44 [Q27](#)

45 [Q63](#); [Q64](#)

46 [Q209](#)

47 [Q234](#)

48 [Q210](#)

49 Paragraph 16, Annex A, [New Decade New Approach](#) Agreement

50 Statements were released by the [SDLP](#), [Sinn Féin](#), [Alliance](#) and [UUP](#) in response to the WMS publication.

the publication of the WMS, the then Irish Tánaiste and Minister for Foreign Affairs and Trade, Simon Coveney TD, released a statement calling for the implementation of the Stormont House Agreement:

Where the UK Government are proposing significant changes to that framework, these must be discussed and agreed by both Governments and the parties to the Northern Ireland Executive.<sup>51</sup>

The Government confirmed that it had spoken to the Irish Government and party leaders in Northern Ireland immediately before the WMS was published on 18 March.<sup>52</sup> We note that 'spoken to' is very different from 'conferred with'. We understand that engagement is ongoing, and we hope that it is meaningful and open-ended.<sup>53</sup> We welcome the Government's confirmation that it would seek a legislative consent motion from the Northern Ireland Assembly on the legislative proposals.<sup>54</sup>

23. Some witnesses suggested that the Government's approach may have damaged trust.<sup>55</sup> Healing Through Remembering, an organisation set up to examine how to deal with the legacy of the past in Northern Ireland, stated:

any new institution could generate significant good will and confidence at the grassroots if it started out with an inclusive approach that invites engagement from those that have felt excluded or poorly treated by previous processes. The Government proposal rather perpetuates the feelings of exclusion and mistreatment.<sup>56</sup>

**24. We are dismayed by the lack of consultation and engagement with representative groups by the NIO on its new proposals both before and after the publication of the WMS in March 2020. The WMS was a unilateral and emphatic announcement of intent rather than part of a meaningful consultation process. This issue demands serious and sustained engagement by the Government. Peacebuilding in Northern Ireland has historically been based on establishing consensus and agreement. Merely telling parties or organisations what Government either has done or is about to do is not consultation. We invite the Government to set out in written and/or oral evidence its engagement with the Irish Government, an invitation of which the Irish Government is also welcome to avail itself, if it so wishes. *In order to ensure that its new legacy proposals are fit for purpose and capable of drawing support from all communities, the Government must conduct a transparent and meaningful consultation with victims' groups, Northern Ireland political parties and, to the extent necessary, the Irish Government before publishing legislation.***

---

51 [Statement by Tánaiste on UK Government Legacy Announcement](#), 18 March 2020

52 [PQ 69626](#), Northern Ireland Office, 9 July 2020

53 In answer to a written question on 15 October 2020, Minister of State Robin Walker confirmed that the Secretary of State had met with the Irish Government's Minister for Foreign Affairs on 8 October, "to discuss a range of issues, including legacy". [PQ 102123](#)

54 [PQ 41536](#), Northern Ireland Office, 4 May 2020

55 For example, see Stormont House Agreement Model Bill Team ([LEG0027](#)), para 1; [Q77](#) [WAVE Trauma Centre]

56 Healing Through Remembering ([LEG0030](#))

## 4 Proposed new legacy body

---

25. The WMS set out a broad framework for a new institution to be established to take forward unresolved legacy cases in Northern Ireland. The independent body would “oversee and manage both the information recovery **and** investigative aspects of the legacy system” [emphasis added].<sup>57</sup> This is a key departure from the Stormont House Agreement, which included a separate Historical Investigations Unit (HIU) and Independent Commission for Information Retrieval (ICIR).<sup>58</sup> The Secretary of State said this would ensure “the most efficient and joined up approach”, but no further substantiation of the efficiency point, or explanation as to the merits of joined-up versus separate and free-standing institutions have so far been provided.<sup>59</sup> The Government’s new approach apparently prioritises information-gathering as the main service for families, but adds that investigations which are “necessary” would be effective and thorough, although there is no definition of the term “necessary”.<sup>60</sup> A press release by the NIO published alongside the statement added that a “central resource” for people from all backgrounds throughout Ireland and the UK to share narratives and experiences related to the Troubles would also be created.<sup>61</sup> It must be assumed that this is to fulfil the function of the Oral History Archive proposed in the Stormont House Agreement, although no further detail has been provided on this new resource.

26. The legacy structures proposed under the Stormont House Agreement included an Implementation and Reconciliation Group to, inter alia, promote reconciliation and examine themes from the conflict. It is the only structure not referred to in any way in the WMS or otherwise around the 18 March. We invite the Government in its response to this report to set out the rationale for this redaction of the Stormont House Agreement and how the deficits that arise are to be addressed.

27. Witnesses set out differing views on the potential merits and demerits of consolidating the investigatory and information recovery bodies into one institution. Professors Siobhan O’Neill and Brandon Hamber from the University of Ulster stated that it could reduce the complexity of the process for those who engage with it.<sup>62</sup> However, the Northern Ireland Human Rights Commission questioned the approach, believing that it could lead to a loss of focus on specific areas which “in turn will lead to an ineffective implementation of the aims and objectives of each individual approach identified in the Stormont House Agreement”.<sup>63</sup>

### Resources

28. Witnesses told us that any new legacy body will face challenges in relation to resources.<sup>64</sup> Chief Constable Simon Byrne stated:

---

57 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

58 [Stormont House Agreement](#)

59 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

60 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

61 [“UK Government sets out way forward on the legacy of the past in Northern Ireland”](#), Northern Ireland Office press release, 18 March 2020

62 Professor Siobhan O’Neill and Professor Brandon Hamber ([LEG0022](#))

63 Northern Ireland Human Rights Commission ([LEG0034](#)), para 4.2

64 For example, Ulster Human Rights Watch ([LEG0013](#)), part B

any growth in the investigative scope and capacity for dealing with legacy will be drawn from a pool of trained investigators that is already under strain. Nationally, there is evidence of a significant shortage in accredited investigative capacity for current UK policing demands. Recruiting sufficient accredited and experienced investigators will therefore be a challenge in this difficult context.<sup>65</sup>

He said “whilst important in its own right”, the significant investment of time, finance and physical resource required for legacy “undermines the full potential of our ambitions to grow and embrace neighbourhood policing”.<sup>66</sup> He added that it would be a struggle to achieve Article 2 compliant investigations in a “timely” manner within the current resource base, and that “to go through the LIB list alone, which is not all the 3,500 deaths, would take over 20 years from a standing start now on the current resource base”.<sup>67</sup> The WMS referred to “swift” investigations, which will require significant resources.<sup>68</sup> The Government’s proposals for legacy investigations are discussed in Chapter 5.

29. ***The Government must:***

- a) ***set out the rationale for its decision to abandon the model of a separate Historical Investigations Unit and Independent Commission for Information Retrieval proposed in the Stormont House draft Bill; and***
- b) ***explain the potential merits of forming a single organisation to perform both investigations and information recovery.***

30. ***The aspiration for the new body “to move at a faster pace” set out in the WMS will be achieved only if it is matched by appropriate funding. The Government must ensure that any new legacy institution has sufficient funding to carry out its work thoroughly and efficiently.***

---

65 [Q205](#)

66 [Q205](#)

67 [Q206](#), [Q217](#)

68 [“UK Government sets out way forward on the legacy of the past in Northern Ireland”](#), Northern Ireland Office press release, 18 March 2020

## 5 Investigations

---

### Threshold for triggering reinvestigation

31. The WMS stated that “investigations which are necessary are effective and thorough, but quick”, with the body conducting “swift final examinations of all the unresolved deaths”.<sup>69</sup> The Secretary of State for Northern Ireland added:

Only cases in which there is a realistic prospect of a prosecution as a result of new compelling evidence would proceed to a full police investigation and if necessary, prosecution. Cases which do not reach this threshold, or subsequently are not referred for prosecution, would be closed and no further investigations or prosecutions would be possible.<sup>70</sup>

The NIO referred to that provision as a “legal bar” to future investigations.<sup>71</sup> The Secretary of State said this approach would “give all participants the confidence and certainty to fully engage with the information recovery process”.<sup>72</sup> Families would be provided with a family report containing information on the death of a loved one once investigations are concluded. The WMS did not describe how decisions on cases being closed or progressed to a full investigation would be taken, and nor is it clearly defined what would constitute “new compelling” evidence.

32. Witnesses told us that the likelihood of prosecutions at this stage is slim.<sup>73</sup> The Northern Ireland Retired Police Officers Association pointed out that although advances in forensic science and investigatory standards may help, “in the vast majority of cases it is very unlikely that a new investigation after several decades will produce a better outcome in the absence of genuine and significant new developments.”<sup>74</sup> Jon Boutcher, Officer in Overall Command of Operation Kenova, told us that it was “important that all those with an interest in addressing the legacy of Northern Ireland’s past are realistic about the practicability and utility of prosecutions”.<sup>75</sup> More information on Operation Kenova can be found in Chapter 7.

33. Several witnesses questioned what “swift final examinations” would mean in practice, with some concerned that the process could be a “desktop review” with little depth.<sup>76</sup> Healing Through Remembering argued that “substituting swift examinations for reinvestigations” indicated a “lack of equity” in the system and would result in some cases receiving less scrutiny than merited.<sup>77</sup> Jon Boutcher said that swift, final examinations are achievable, but that that should not “be at the cost of comprehensiveness”.<sup>78</sup>

---

69 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

70 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

71 “UK Government sets out way forward on the legacy of the past in Northern Ireland”, Northern Ireland Office press release, 18 March 2020

72 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

73 For example, see Police Federation of Northern Ireland ([LEG0039](#)); Healing Through Remembering ([LEG0030](#))

74 Northern Ireland Retired Police Officers Association ([LEG0004](#))

75 Jon Boutcher ([LEG0041](#)), para 6.5

76 For example, see [Q61](#) [WAVE Trauma Centre]; Stormont House Agreement Model Bill Team ([LEG0027](#)), para 13

77 Healing Through Remembering ([LEG0030](#))

78 [Q255](#)

34. Other witnesses welcomed the introduction of thresholds for investigation. The Police Federation of Northern Ireland stated that

the proposed approach by the Government under the new proposals has the potential to be a more equitable process than that envisaged under the Stormont House Agreement.<sup>79</sup>

It welcomed the omission of non-criminal police misconduct from the WMS and agreed with the proposed investigatory principle of a realistic chance of prosecution as a result of new compelling evidence.<sup>80</sup> The Northern Ireland Retired Police Officers Association similarly stated that the Government's new approach to the reinvestigation of cases would "provide a much greater degree of equity and fairness than the present arrangements".<sup>81</sup>

## New evidence

35. Many witnesses stated that any process to examine cases should actively seek new, relevant information to enable the identification of possible investigative opportunities or new evidence.<sup>82</sup> Judith Thompson told us that "any process that does not take a proper look at each case will not know where there is a prospect [of prosecution] and where there is not".<sup>83</sup> Raymond White, Northern Ireland Retired Police Officers Association, stated:

That review cannot finish at an assessment of just the evidence that is on the table. If families and others believe there is fresh, credible evidence to be produced, that needs to be embraced as well.<sup>84</sup>

36. Several witnesses highlighted the challenges in obtaining access to information and records during investigations.<sup>85</sup> Jon Boutcher told the Committee that access to records had been a challenge for previous investigations and for Operation Kenova. He described a "systematic failure to disclose information to investigators".<sup>86</sup> He explained that

No investigation should be hampered by agencies or authorities failing to share sensitive information and yet in the Northern Ireland context this has undoubtedly happened in the past and it remains an ongoing challenge for Operation Kenova. We have already obtained official contemporaneous records identifying those responsible for murders and other crimes which were not shared with the original or subsequent investigations.<sup>87</sup>

---

79 Police Federation of Northern Ireland ([LEG0039](#))

80 Police Federation of Northern Ireland ([LEG0039](#))

81 Northern Ireland Retired Police Officers Association ([LEG0004](#))

82 For example, see Jon Boutcher ([LEG0041](#)), para 6.7; [Q61](#) [WAVE Trauma Centre]

83 [Q25](#)

84 [Q134](#)

85 For example, see WAVE Trauma Centre ([LEG0024](#))

86 Jon Boutcher ([LEG0041](#)), para 6.8

87 Jon Boutcher ([LEG0041](#)), para 6.8

## Closing cases

37. Many witnesses expressed concern about the Government's plans to close permanently cases not reaching the threshold for full police investigation.<sup>88</sup> The South East Fermanagh Foundation and Innocent Victims United, an umbrella group of 23 victims' and survivors' groups, stated:

The Government now intend to further step away from its responsibilities by attempting to close down unsolved cases of murder, which will once again completely let down the victims and survivors, and potentially leave the Government vulnerable to challenge by breaching both the Human Rights Act and the European Convention on Human Rights (ECHR).<sup>89</sup>

It noted that it was "not inconceivable that new evidence may come to the fore at any time in the future that may warrant a prosecution".<sup>90</sup> Lord Hain believed that the permanent closure of cases could embolden dissident republicans, loyalists and criminal gangs "if they think that, if they wait long enough, their crimes could be written off".<sup>91</sup> WAVE Trauma Centre also said case closure:

sends a dangerous message to dissident republican or any other paramilitary groups who wish to perpetuate further violence. Case minimisation and closure suggests that these groups can operate undeterred with no prospect of ever being held to account before a court.<sup>92</sup>

Jon Boutcher described the plans as a "legal novelty".<sup>93</sup> Lord Caine told us that he had "serious misgivings" about this element of the Government's proposals.<sup>94</sup>

**38. The permanent closure of a case in which a serious crime has been committed raises profound legal, ethical and human rights issues. There is considerable doubt whether such closures are the right approach. Before the Government introduces legislation, it must clarify its policy on:**

- a) *whether cases could be reopened if new, compelling evidence comes to light;*
- b) *what would happen to evidence and files in cases that are permanently closed;*
- c) *whether decisions on case closure would be subject to a right of appeal;*
- d) *what practical actions "swift final examinations" would entail;*
- e) *who would be responsible for making decisions on which cases merit a full police investigation;*
- f) *whether the new body would be responsible for undertaking such investigations; and*

---

88 For example, see [Q273](#) [Lord Caine]; Stormont House Agreement Model Bill Team ([LEG0027](#)); [Q46](#) [Commission for Victims and Survivors Northern Ireland]

89 South East Fermanagh Foundation and Innocent Victims United ([LEG0016](#))

90 South East Fermanagh Foundation and Innocent Victims United ([LEG0016](#))

91 [Q271](#)

92 WAVE Trauma Centre ([LEG0024](#))

93 Jon Boutcher ([LEG0041](#)), para 7.5

94 [Q273](#)

- g) *how to ensure that bodies that hold information do not simply run down the clock by withholding material.*

39. **There may be merit in using normal and prevailing tests for prosecution. However, the WMS indicates a potential alternative approach. Were the Government's plans to be adopted, we stress the importance of the need to build confidence in that approach across the community in Northern Ireland and in the Republic of Ireland. *The tests to be met include the clarification of:***

- a) *the threshold for "new compelling" evidence meriting a full investigation;*
- b) *setting a legal bar on cases that do not meet the threshold being reopened in the future; and*
- c) *whether the proposed new system is secure against possible legal challenge.*

***Given the importance of this issue, we again invite the Government to address these points in both written and oral evidence to the Committee.***

## **ECHR Article 2 obligations**

40. Several witnesses considered whether the Government's plans would comply with obligations under Article 2 (Right to life) of the European Convention on Human Rights (ECHR), which requires cases where a person has been unlawfully killed to be effectively investigated.<sup>95</sup> The Northern Ireland Human Rights Commission (NIHRC) commented that it was "deeply concerned that the new approach to legacy investigations may not readily meet the requirements of Article 2 ECHR".<sup>96</sup> The Stormont House Model Bill Team agreed that "It is difficult to see how permanently closing the majority of cases after a desk-based review would meet the standards required under Article 2 of the ECHR for an effective investigation".<sup>97</sup>

41. The PSNI told us that legal challenges through inquests and civil litigation currently consume two-thirds of its annual legacy budget.<sup>98</sup> Several witnesses highlighted that a failure to fulfil Article 2 obligations could result in legal challenge and further delay for families seeking information and redress.<sup>99</sup> The NIHRC stated:

Any failure to achieve an Article 2 compliant process is likely to lead to litigation and further delays, an outcome which is not in the interests of anyone who has been adversely impacted by the conflict in Northern Ireland. The longer the delay, the greater the frustration, pain and anger among those affected whether they seek justice, truth, reparations or other closure.<sup>100</sup>

42. **We expect the Government to abide by its obligations under the ECHR to ensure that investigations conducted by the new legacy body are Article 2 compliant. Victims**

95 Article 2, [European Convention on Human Rights](#). See also Northern Ireland Human Rights Commission ([LEG0034](#))

96 Northern Ireland Human Rights Commission ([LEG0034](#)), para 3.8

97 Stormont House Agreement Model Bill Team ([LEG0027](#)), para 14

98 [Q213](#)

99 For example, see [Q1](#) [Commission for Victims and Survivors Northern Ireland]

100 Northern Ireland Human Rights Commission ([LEG0034](#)), para 3.10

**and families will be failed by a process that results in legal challenge and further delay. This will cause frustration to those who have already waited too long to find out what happened to their loved ones. *In setting up any legacy institution, the Government must publish guidelines setting out the steps the body and its staff will take to ensure that its investigations are ECHR compliant.***

## 6 Information recovery

43. The WMS included a change of emphasis in the Government's approach to information recovery:

Our view is that we should now therefore centre our attention on providing as much information as possible to families about what happened to their loved ones - while this is still possible ... Our proposals have therefore evolved to remain true to the principles of the Stormont House Agreement but with a greater emphasis on gathering information for families; moving at a faster pace to retrieve knowledge before it is lost; and doing more to help individuals and society to share and understand the tragic experiences of the past.<sup>101</sup>

44. A number of witnesses commented on the importance of providing families with as much information as possible on the circumstances of the death of a loved one.<sup>102</sup> However, some noted that the statement was “wholly ambiguous as to how information retrieval and dissemination are to work in practice”.<sup>103</sup> Information would also be provided to families at the conclusion of investigations via family reports.<sup>104</sup> It is not yet clear how the operation of the proposed information recovery mechanism will compare with the Independent Commission on Information Retrieval described in the Stormont House draft Bill.<sup>105</sup> The ICIR would have allowed family members to request and privately to receive information about the deaths of their relatives. It was to be jointly established by the UK and Irish Governments, who signed a treaty to enable its establishment in 2016, with its remit covering both jurisdictions.<sup>106</sup>

45. Several witnesses discussed the inherent challenges to an information recovery process such as the one set out in the ICIR. They raised concerns about the lack of detail on how information given to the body would be verified.<sup>107</sup> Judith Thompson stated:

If you have one body deciding that it will do a desktop review, that it will tell the family then that they do not think there is a decent prospect of a conviction, so it is being closed, and then inviting the family to go into an information-retrieval process not based on robust evidence and without them—this is important—having some robust information against which to judge the fullness, accuracy and truthfulness of what is disclosed to them through information retrieval, that is flawed<sup>108</sup>

Professor Brice Dickson questioned whether “former combatants will volunteer information to any institution, regardless of what guarantees of immunity from prosecution or civil

101 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

102 For example, see Jon Boutcher ([LEG0041](#)); Baroness Ritchie ([Q278](#)); [Q1](#) [Commission for Victims and Survivors Northern Ireland] and [Q59](#) [WAVE Trauma Centre]

103 Dr Conall Mallory, Dr Sean Molloy and Mr Colin Murray, academics at Newcastle University ([LEG0011](#)) para 4

104 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

105 Part 3, [Draft Northern Ireland \(Stormont House Agreement\) Bill](#)

106 [AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF IRELAND ESTABLISHING THE INDEPENDENT COMMISSION ON INFORMATION RETRIEVAL](#), Paragraphs 41–50, [Stormont House Agreement](#)

107 For example, see Ulster Human Rights Watch ([LEG0013](#)), para 4; South East Fermanagh Foundation and Innocent Victims United ([LEG0016](#))

108 [Q40](#)

suit may be provided to them”.<sup>109</sup> Lord Hain, who served as Northern Ireland Secretary between 2005 and 2007, argued that a truth recovery process would be best provided through an investigation process similar to Operation Kenova (see Chapter 7 “Operation Kenova”):

An article 2 compliant investigation, in my view, is needed to get to the truth. There is a very good model for that. That is the model of Operation Kenova.<sup>110</sup>

**46. The Government is right to recognise the importance of providing families that seek it with as much information as possible about the death of a loved one. Many families seek not redress, but merely to be treated with respect and to obtain information. Unfortunately, the WMS did not explain the operation of the proposed information recovery mechanism and the intervening period of radio silence has been thoroughly unhelpful.**

***47. The Government must, with some urgency, set out how its proposed information recovery mechanism will operate, including the means by which it will obtain information. The needs of victims and survivors, for truth, accountability and for reconciliation will be deeply damaged if information is not fully available without impediment to legacy structures. For this to be successful, transparency and access to relevant information are key and the positive and proactive engagement of the relevant actors and agencies would be required. We heard that historically the operational culture has not always met this test and ask those concerned to reflect carefully on this point.***

---

109 Professor Brice Dickson ([LEG0008](#)), para 5

110 [Q271](#)

## 7 Operation Kenova

48. Witnesses praised the approach of Operation Kenova, under the leadership of Jon Boutcher, to establishing positive and trusting engagement with families during its legacy investigations.<sup>111</sup> Responsibility for investigations into the alleged activities of the Army agent codenamed 'Stakeknife' during the Troubles were passed to Jon Boutcher, then Chief Constable of Bedfordshire Police, by the PSNI in 2016. Operation Kenova is separate and independent from the work of the PSNI's Legacy Investigations Branch, with its work confined to cases within Northern Ireland. Announcing Operation Kenova, the then PSNI Chief Constable George Hamilton said that he decided that an external team funded by the PSNI was the most appropriate way forward due to the scale and complexity of the investigation.<sup>112</sup> Since then, the collection of cases managed by Jon Boutcher's team has expanded to include Operation Mizzenmast, Operation Turma and the Barnard Review, encompassing the examination of 236 killings in total.<sup>113</sup>

49. Operation Kenova has a number of oversight and governance mechanisms to oversee and scrutinise its work and to ensure ECHR compliance. Those mechanisms include an independent steering group made up of policing leaders and investigators who provide challenge and scrutiny to investigations and decision making, a governance board to oversee business accountability and review public-facing reports ahead of publication and a victims focus group to scrutinise victim-related issues.<sup>114</sup>

50. The then Victims Commissioner Judith Thompson told us:

What we see in Operation Kenova is the application of good-quality, modern victim engagement, victim liaison and family liaison, and good investigation into some of the most painful cases that emerged from the conflict.

She added that "in many ways, it is a prototype for how investigations can be carried out".<sup>115</sup>

51. The Committee heard from Mr Boutcher on the work and approach of Operation Kenova at its oral evidence session on 2 September. He stated that "maintaining the trust and confidence of families is paramount" to Kenova.<sup>116</sup> He said that in the past families sometimes had had little or no contact with the police and little information on investigations, which led to "significant mistrust for many families" with the authorities.<sup>117</sup> He added that in his experience "families want to be listened to, acknowledged and told the truth of what happened", with Operation Kenova demonstrating that the truth can be uncovered in many unresolved legacy cases.<sup>118</sup> He said that as a result of the process having gained the trust and confidence of families, those families had been able to provide "direct evidence and information about matters under investigation, including the identities of suspects" not given to previous investigations.<sup>119</sup> However, he stressed the importance of respecting the wishes of families:

111 For example, see [Q1](#) [Commission for Victims and Survivors Northern Ireland]; WAVE Trauma Centre ([LEG0024](#))

112 [Stakeknife: Actions of IRA members, agents, Army and police to be examined](#), BBC News, 10 June 2016

113 Jon Boutcher ([LEG0041](#)); [Q243](#) [Jon Boutcher]

114 Jon Boutcher ([LEG0041](#))

115 [Q33](#)

116 Jon Boutcher ([LEG0041](#)), para 2.15

117 [Q243](#)

118 Jon Boutcher ([LEG0041](#)), para 7.6

119 Jon Boutcher ([LEG0041](#)), para 2.16. See also [Q71](#) [WAVE Trauma Centre]

I speak to families who would say they do not want me to look at what happened because it would re-traumatise them. They have moved on and dealt with their loss in a way that means they simply would not want to opt into a process.<sup>120</sup>

52. The WMS claimed that it would “put victims first” in the revised legacy system, with “the needs of the individuals most affected at the heart of the process”, although it has not yet been detailed how the new body would seek to engage with and support families.<sup>121</sup> WAVE Trauma Centre stated:

We have yet to see any evidence in relation to this new proposal which suggests that it could garner the level of confidence and trust required, nor is there any focus on the wellbeing of victims and survivors or the support they will require to engage with this newly proposed legacy body.<sup>122</sup>

53. **Any new legacy process must command the trust and confidence of those engaging with it. Although no scheme will ever command universal support, the Government must have at the heart of its thinking the objective of maximising trust across the traditions and ensuring full compliance with all legal requirements. We are pleased that the Government has promised to put the needs of those most affected at “the heart of the process”, but we note that no further detail has been provided on how families will be able to engage with the new process. The evidence that we received suggests that the Government can learn lessons from Operation Kenova when developing its own legacy system.**

54. *The Government must examine:*

- a) *how Operation Kenova has engaged with victims’ groups and families;*
- b) *whether Operation Kenova could be scaled up to deliver across the piece; and*
- c) *whether aspects of Operation Kenova’s approach could usefully be replicated or reinforced in any new legacy body or bodies, including its use of investigative governance and victims oversight mechanisms to provide independent scrutiny and build public confidence and the way in which it has fostered positive and trusting relationships with families.*

55. **The Commissioner for Victims and Survivors in Northern Ireland performs the duties set out in the Victims and Survivors (Northern Ireland) Order 2006. Those duties include promoting and safeguarding the interests of victims and survivors and reviewing laws, practices and services. We note that this key role has been vacant since 31 August 2020. We respectfully urge, given that the appointment of the Victims Commissioner is a devolved competence, the First Minister and Deputy First Minister in the Northern Ireland Executive to fill the position of Victims Commissioner as speedily as possible.**

---

120 [Q246](#)

121 Addressing Northern Ireland Legacy Issues, Written statement by Brandon Lewis MP, 18 March 2020, HCWS168

122 WAVE Trauma Centre ([LEG0024](#))

# Conclusions and recommendations

---

## Government engagement with legacy issues

1. We are disappointed that the UK Government has decided not to submit, to date, written evidence to our inquiry, but we look forward to receiving it, just as we would look forward to formal submissions from the Irish Government. In addition, the planned oral evidence session with the Secretary of State was postponed at the request of the Government. This Report is necessarily an Interim Report, in which we set out our recommendations and conclusions with a view to informing the future policy. We hope that the Government will use its response to this Interim Report to address the outstanding questions in this policy area and keep in mind the principles of the Stormont House Agreement and New Decade, New Approach. (Paragraph 5)
2. Too many key questions remain regarding how the proposed new institution would operate and function. It is deeply worrying that since 18 March, when the Government announced its new legacy proposals, it has been unable to provide any further policy detail. While covid-19 has presented a challenge across government, policy development has continued across Whitehall, and the Northern Ireland Office has digital platforms to facilitate its work. The information lacuna is especially regrettable given the sensitivity of the issues and the period since many of the events occurred. Delay and uncertainty perpetuate an unacceptable situation that has already gone on too long. (Paragraph 6)

## Stormont House Agreement

3. The Committee welcome the Government's desire to legislate to address the legacy of the past in Northern Ireland. Our predecessor Committee's inquiry in the previous Parliament identified flaws in the draft Bill which would have prevented its receiving broad support in Northern Ireland. However, the new proposals represent a unilateral and unhelpful departure from the Stormont House Agreement rather than positive and progressive evolution. *The Government must, as soon as possible, introduce legislation that is consistent with the six principles of the Stormont House Agreement:*
  - *promoting reconciliation;*
  - *upholding the rule of law;*
  - *acknowledging and addressing the suffering of victims and survivors;*
  - *facilitating the pursuit of justice and information recovery;*
  - *complying with human rights; and*
  - *being balanced, proportionate, transparent, fair and equitable.* (Paragraph 15)
4. The Irish Government will have a role to play in parts of a new legacy process. It will need to maintain a collaborative approach to help resolve legacy cases, which we

heard has not always been the case in the past. That will best be achieved by the UK Government adopting a policy of meaningful and appropriate engagement with the Irish Government as envisaged in the Stormont House Agreement. (Paragraph 18)

5. The Government is right to recognise the unique circumstances in Northern Ireland by decoupling Northern Ireland legacy issues from the Overseas Operations (Service Personnel and Veterans) Bill. Any attempts to conflate the two must be resisted. (Paragraph 20)

### Consultation and legislation

6. We are dismayed by the lack of consultation and engagement with representative groups by the NIO on its new proposals both before and after the publication of the WMS in March 2020. The WMS was a unilateral and emphatic announcement of intent rather than part of a meaningful consultation process. This issue demands serious and sustained engagement by the Government. Peacebuilding in Northern Ireland has historically been based on establishing consensus and agreement. Merely telling parties or organisations what Government either has done or is about to do is not consultation. We invite the Government to set out in written and/or oral evidence its engagement with the Irish Government, an invitation of which the Irish Government is also welcome to avail itself, if it so wishes. *In order to ensure that its new legacy proposals are fit for purpose and capable of drawing support from all communities, the Government must conduct a transparent and meaningful consultation with victims' groups, Northern Ireland political parties and, to the extent necessary, the Irish Government before publishing legislation.* (Paragraph 24)

### Proposed new legacy body

7. *The Government must:*
  - a) *set out the rationale for its decision to abandon the model of a separate Historical Investigations Unit and Independent Commission for Information Retrieval proposed in the Stormont House draft Bill; and*
  - b) *explain the potential merits of forming a single organisation to perform both investigations and information recovery.* (Paragraph 29)
8. The aspiration for the new body “to move at a faster pace” set out in the WMS will be achieved only if it is matched by appropriate funding. *The Government must ensure that any new legacy institution has sufficient funding to carry out its work thoroughly and efficiently.* (Paragraph 30)

### Investigations

9. The permanent closure of a case in which a serious crime has been committed raises profound legal, ethical and human rights issues. There is considerable doubt whether such closures are the right approach. *Before the Government introduces legislation, it must clarify its policy on:*
  - a) *whether cases could be reopened if new, compelling evidence comes to light;*

- b) *what would happen to evidence and files in cases that are permanently closed;*
  - c) *whether decisions on case closure would be subject to a right of appeal;*
  - d) *what practical actions “swift final examinations” would entail;*
  - e) *who would be responsible for making decisions on which cases merit a full police investigation;*
  - f) *whether the new body would be responsible for undertaking such investigations; and*
  - g) *how to ensure that bodies that hold information do not simply run down the clock by withholding material. (Paragraph 38)*
10. There may be merit in using normal and prevailing tests for prosecution. However, the WMS indicates a potential alternative approach. Were the Government's plans to be adopted, we stress the importance of the need to build confidence in that approach across the community in Northern Ireland and in the Republic of Ireland. *The tests to be met include the clarification of:*
- a) *the threshold for “new compelling” evidence meriting a full investigation;*
  - b) *setting a legal bar on cases that do not meet the threshold being reopened in the future; and*
  - c) *whether the proposed new system is secure against possible legal challenge.*

*Given the importance of this issue, we again invite the Government to address these points in both written and oral evidence to the Committee. (Paragraph 39)*

11. We expect the Government to abide by its obligations under the ECHR to ensure that investigations conducted by the new legacy body are Article 2 compliant. Victims and families will be failed by a process that results in legal challenge and further delay. This will cause frustration to those who have already waited too long to find out what happened to their loved ones. *In setting up any legacy institution, the Government must publish guidelines setting out the steps the body and its staff will take to ensure that its investigations are ECHR compliant. (Paragraph 42)*

### Information recovery

12. The Government is right to recognise the importance of providing families that seek it with as much information as possible about the death of a loved one. Many families seek not redress, but merely to be treated with respect and to obtain information. Unfortunately, the WMS did not explain the operation of the proposed information recovery mechanism and the intervening period of radio silence has been thoroughly unhelpful. (Paragraph 46)
13. *The Government must, with some urgency, set out how its proposed information recovery mechanism will operate, including the means by which it will obtain information. The needs of victims and survivors, for truth, accountability and for reconciliation will be deeply damaged if information is not fully available without*

*impediment to legacy structures. For this to be successful, transparency and access to relevant information are key and the positive and proactive engagement of the relevant actors and agencies would be required. We heard that historically the operational culture has not always met this test and ask those concerned to reflect carefully on this point. (Paragraph 47)*

### Operation Kenova

14. Any new legacy process must command the trust and confidence of those engaging with it. Although no scheme will ever command universal support, the Government must have at the heart of its thinking the objective of maximising trust across the traditions and ensuring full compliance with all legal requirements. We are pleased that the Government has promised to put the needs of those most affected at “the heart of the process”, but we note that no further detail has been provided on how families will be able to engage with the new process. The evidence that we received suggests that the Government can learn lessons from Operation Kenova when developing its own legacy system. (Paragraph 53)
15. *The Government must examine:*
  - a) *how Operation Kenova has engaged with victims’ groups and families;*
  - b) *whether Operation Kenova could be scaled up to deliver across the piece; and*
  - c) *whether aspects of Operation Kenova’s approach could usefully be replicated or reinforced in any new legacy body or bodies, including its use of investigative governance and victims oversight mechanisms to provide independent scrutiny and build public confidence and the way in which it has fostered positive and trusting relationships with families. (Paragraph 54)*
16. The Commissioner for Victims and Survivors in Northern Ireland performs the duties set out in the Victims and Survivors (Northern Ireland) Order 2006. Those duties include promoting and safeguarding the interests of victims and survivors and reviewing laws, practices and services. We note that this key role has been vacant since 31 August 2020. We respectfully urge, given that the appointment of the Victims Commissioner is a devolved competence, the First Minister and Deputy First Minister in the Northern Ireland Executive to fill the position of Victims Commissioner as speedily as possible. (Paragraph 55)

# Formal minutes

---

**Wednesday 21 October 2020**

Virtual Committee Meeting

Members present:

Simon Hoare, in the Chair

Caroline Ansell	Mr Robert Goodwill
Scott Benton	Claire Hanna
Mr Gregory Campbell	Ian Paisley
Stephen Farry	Stephanie Peacock
Mary Kelly Foy	Bob Stewart

Draft Report (*Addressing the Legacy of Northern Ireland's Past: the Government's New Proposals (Interim Report)*), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 55 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Third Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available (Standing Order No. 134)

[Adjourned till Wednesday 4 November at 8.45am]

## Witnesses

---

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Wednesday 24 June 2020

**Judith Thompson**, Commissioner for Victims and Survivors Northern Ireland; **Emmett McConomy**, Member, Victims and Survivors Forum; **Mary Moreland**, Member, Victims and Survivors Forum

[Q1–53](#)

### Wednesday 1 July 2020

**Sandra Peake**, Chief Executive Officer, Wave Trauma Centre; **Cathy Curran**, Advocacy Worker, Wave Trauma Centre; **Rev Dr David Clements**, Board Member, Wave Trauma Centre

[Q54–79](#)

**Kenny Donaldson**, Director of Services, South East Fermanagh Foundation; **Ken Funston**, Advocacy Service Manager, South East Fermanagh Foundation; **Iona Gallagher**, Advocacy Support Worker, South East Fermanagh Foundation

[Q80–118](#)

### Wednesday 15 July 2020

**Raymond White**, Chairman, Northern Ireland Retired Police Officers Association; **Chris Albiston**, Member of the Executive Committee, Northern Ireland Retired Police Officers Association

[Q119–153](#)

**Robin Horsfall**, Member, Million Veterans March; **Gavin (Harry) Wragg**, Member, Rolling Thunder for Soldier F; **Paul Young**, Member, Justice for Northern Ireland Veterans Original Group

[Q154–203](#)

### Wednesday 2 September 2020

**Simon Byrne**, Chief Constable, Police Service of Northern Ireland; **Bobby Singleton**, Detective Chief Superintendent, Police Service of Northern Ireland

[Q204–242](#)

**Jon Butcher**, Head of Operations, Operation Kenova

[Q243–269](#)

### Wednesday 9 September 2020

**Lord Caine**; **Lord Empey**; **Lord Hain**; **Baroness Ritchie of Downpatrick**

[Q270–307](#)

## Published written evidence

---

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

LEG numbers are generated by the evidence processing system and so may not be complete.

- 1 Amnesty International UK ([LEG0040](#))
- 2 Anonymous, Anonymous ([LEG0038](#))
- 3 Church of Ireland Church and Society Commission (Mrs Janet Maxwell, Head of Synod Services and Communications) ([LEG0019](#))
- 4 Commission for Victims and Survivors Northern Ireland (Peter Mann, Policy Officer) ([LEG0010](#))
- 5 Cubbon, Mr John ([LEG0031](#))
- 6 Dickson, Professor Brice ([LEG0008](#))
- 7 Doug Beattie MC MLA, on behalf of the Ulster Unionist Party ([LEG0033](#))
- 8 The Ely Centre ([LEG0026](#))
- 9 Faris, Neil ([LEG0014](#))
- 10 Green, John ([LEG0009](#))
- 11 Hamber, Professor Brandon ([LEG0022](#))
- 12 Harper, the Right Reverend Alan ([LEG0006](#))
- 13 Healing Through Remembering ([LEG0030](#))
- 14 Hoey, David ([LEG0037](#))
- 15 Horsfall, Mr Robin ([LEG0001](#))
- 16 Justice for Northern Ireland Veterans Original Group, Rolling Thunder for Soldier F Group UK, Million Veterans March group, UK Veterans One Voice, and Justice for British for British Armed Forces gro (Mr Derrick Paul (called Paul) Young) ([LEG0020](#))
- 17 Kotecha, Birju ([LEG0036](#))
- 18 KRW LAW LLP (Christopher Stanley, Litigation Consultant) ([LEG0007](#))
- 19 Mallory, Dr Conall ([LEG0011](#))
- 20 Malone House Group ([LEG0035](#))
- 21 Mason, Rev. Dr. Gary ([LEG0006](#))
- 22 Methodist Church in Ireland (Rev David Clements, Chair – Council on Social Responsibility) ([LEG0021](#))
- 23 Molloy, Dr Sean ([LEG0011](#))
- 24 Morgan, Dr Austen ([LEG0005](#))
- 25 Murray, Mr Colin ([LEG0011](#))
- 26 NIRPOA Ltd (NIRPOA Ltd Norman Millar, Office Manager) ([LEG0004](#))
- 27 Northern Catholic Bishops ([LEG0032](#))
- 28 Northern Ireland Human Rights Commission ([LEG0034](#))
- 29 O'Neill, Professor Siobhan ([LEG0022](#))
- 30 Operation Kenova (Jon Boutcher, Officer in Overall Command) ([LEG0041](#))

- 32 Addressing the Legacy of Northern Ireland's Past:  
the Government's New Proposals (Interim Report)
- 31 Pat Finucane Centre and Justice for the Forgotten ([LEG0028](#))
- 32 Police Federation for Northern Ireland ([LEG0039](#))
- 33 Presbyterian Church in Ireland (Miss Karen Jardine, Public Affairs Officer) ([LEG0015](#))
- 34 Queen's University Belfast Human Rights Centre (Queen's University Belfast Luke  
Moffett, Member) ([LEG0017](#))
- 35 Ringland, Trevor ([LEG0012](#))
- 36 Roche, Mr Patrick John ([LEG0023](#))
- 37 Smith CBE QC, Peter ([LEG0014](#))
- 38 South East Fermanagh Foundation and Innocent Victims United ([LEG0016](#))
- 39 Stormont House Agreement Model Bill Team ([LEG0027](#))
- 40 Traditional Unionist Voice ([LEG0025](#))
- 41 Ulster Human Rights Watch (Mr Axel Schmidt, Advocacy Manager) ([LEG0013](#))
- 42 Wave Trauma Centre ([LEG0024](#))
- 43 Yeates, Pdraig ([LEG0009](#))

## List of Reports from the Committee during the current Parliament

---

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2019–21

First Report	Unfettered Access: Customs Arrangements in Northern Ireland after Brexit	HC 161
Second Report	New Decade, New Approach Agreement	HC 160
First Special Report	Unfettered Access: Northern Ireland and customs arrangements after Brexit: Government Response to the Committee's First Report of Session 2019–21	HC 783
Second Special Report	New Decade, New Approach Agreement: Government Response to the Committee's Second Report of Session 2019–21	HC 792