



Simon Hoare
Chair, Northern Ireland Affairs Committee
House of Commons
London
SW1A 0AA

7 January 2021

Dear Simon,

Addressing the Legacy of Northern Ireland's past: the Government's New Proposal (Interim Report)

At our recent very constructive meeting with committee members I undertook to write to you to outline our response to the committee's recent interim report on addressing the legacy of Northern Ireland's past.

The Commission identified the issue of delay across a number of areas in its first submission and remains deeply concerned at the lack of detail contained within the March 2020 Written Ministerial Statement and the indication that it seeks to significantly resile on commitments made in the Stormont House Agreement. The Commission is further concerned at the lack of any progress by the NIO since the Minister's written statement, especially given the references to 'moving at a fast pace'. This was reinforced in initial meetings with officials where it was stressed to us that there was a need for momentum and that we would now be moving into an engagement rather than consultation phase. While officials and the Minister Robin Walker have remained in touch we remain none the wiser as to how the 'effective and thorough but quick' approach will be applied in practice and how such arrangements can be made compatible with the requirement to undertake an Article 2 ECHR compliant investigation.

The Commission has already highlighted its concerns that the proposed new body for investigation may not meet the requirements of Article 2 ECHR. Given the lack of detail in relation to the proposed institution, the Commission restates that it remains deeply concerned about compliance with Article 2 ECHR. The Commission

recognises the similar concerns of the Committee that, “delay and uncertainty perpetuate an unacceptable situation that has already gone on too long”.¹ The Commission has expressed these views to the Secretary of State and therefore continues to recommend that the Stormont House Agreement is fully and promptly implemented and in a way that is fully compliant with human rights law. This includes recognising cases where individuals have died at the scene of a conflict-related incident and introducing a mechanism or procedure to deal with investigations of allegations of torture, inhuman and degrading treatment.

The Commission notes from the Committee’s interim report that legacy issues in Northern Ireland will now be decoupled for the Overseas Operations (Service Personnel and Veterans) Bill.² This is a welcome development. The Commission reconfirms that any steps regarding the investigation or prosecution of veterans in Northern Ireland or elsewhere should not amount to an amnesty, including the introduction of a statute of limitations or other undue or insurmountable barriers to prosecution for human rights violations and abuses, such as violations of Articles 2 and 3 ECHR.

As outlined earlier, the Commission echoes the Committee’s concerns about the lack of consultation and engagement by the NIO, in contrast to the public consultation process of the draft Stormont House Bill, and the recommendation that “the Government must conduct a transparent and meaningful consultation with victims’ groups” among others. The Committee has noted that “victims and families will be failed by a process that results in legal challenge and further delay”³ and the Commission agrees with this conclusion. The Commission recommends that if the UK Government remains wedded to its 18 March statement then it should set out in detail how the new arrangements will work and meet human rights obligations and then extensively consult with key stakeholders on those arrangements.

The Committee has identified a number of areas surrounding the proposed new legacy body in which further information and detail is required, in particular with regard to reinvestigation and the closure of cases which “raises profound legal, ethical and human rights issues”.⁴

The Commission also notes with great interest a recent interview given by Jon Boucher to the Belfast Telegraph in which he stated that ‘The proposal to close down investigations of murder in legacy cases after a quick review process where the cases could not be reopened would, I believe be a legal novelty in the United Kingdom for serious crimes such as murder. In light of the opportunities identified by Operation Kenova this proposal should be approached with extreme caution, especially as regards the processes applied to establish what information exists

¹ House of Commons Northern Ireland Affairs Committee, Addressing the Legacy of Northern Ireland’s Past: the Government’s New Proposals (Interim Report) HC 329 (26 October 2020) para 6

² Ibid, para 20

³ Ibid, para 42

⁴ Ibid, para 38

about these cases. An investigation/review which starts and finishes with only the information available at the outset does not allow the development of lines of inquiry would not be Article 2 compliant. It should never be the case that those responsible for crimes such as murder are protected by a lack of thorough examination of the facts.⁵

In that interview Jon Boutcher also acknowledged the reality that there will be very few prosecutions and that in his experience most victim's families are generally realistic about this.

In light of the above the Commission recommends that the new legacy body should have the remit to ensure that all previous investigations into 'Troubles-related' deaths are Article 2 ECHR compliant. This should include the ability to assess the compliance of cases completed by the Historical Enquiries Team, Legacy Investigations Branch and the Police Ombudsman NI and the ability to re-investigate if non-compliance is identified.

Good luck with the further work on a final report and the Commission is happy to offer whatever further assistance would be helpful to your committee.

Yours sincerely,



Les Allamby
Chief Commissioner

⁵ Belfast Telegraph, 'Jon Boutcher urges 'extreme caution' over closing down Troubles investigations', 28 December 2020