

SUMMARY

We at WAVE Trauma Centre remain deeply concerned by this new direction of travel in addressing the Legacy of Northern Ireland's Past, as outlined in the Secretary of State's Written Ministerial Statement of 18th March 2020. We have given a more detailed account in our full submission, in line with the terms of the Northern Ireland Affairs Committee Inquiry, but have summarised our key concerns below for expediency.

1. The lack of clear information beyond the written ministerial statement is a major issue of concern for us. Given that this new proposal marks a significant departure from the proposals contained within the Stormont House Agreement, we would have expected the publication of a document outlining the particulars of this new approach, accompanied by a period for further consultation. Unfortunately we believe this will only garner mistrust and undermine any goodwill that existed towards this process.
2. It is crucial that any new legacy institution is independent, free from any political influence or interference, in order to command the trust and confidence it requires. There must be clear processes of accountability and an appropriate degree of transparency and public scrutiny. Critically it must be victim centred with all staff fully trauma informed, underpinned by a strong code of ethical behaviour and adequate support services available for those engaging.
3. The families of the bereaved need acknowledgement. Many cases have never been subject to a thorough and effective investigation, leaving families bereft of any sense that their loved one mattered. It is absolutely imperative that families have access to a fully article 2 compliant investigation. In the absence of this, the trauma and injustice of the past will continue to transfer to the next

generation. WAVE recommends Operation Kenova as a model of good practice in this regard.

4. We have grave concerns about the proposal to close cases without a fully article 2 complaint investigation. We believe it is morally wrong and symbolises a de facto amnesty.

There is no legal precedent for such a measure, which would undoubtedly be met with legal challenges. Furthermore, to frame case closure as a condition of access to an information recovery process is an affront to the rights of families who are entitled to truth *and* justice.

5. To build meaningful reconciliation, the legacy of the past needs to be fully addressed, especially for those who are bereaved. Anything less will be damaging for individuals, families and communities, and could serve to advance violent campaigns from dissident and loyalist paramilitary groups emboldened by a failure to address the past.

WAVE Trauma Centre, June 2020.

MAIN SUBMISSION

WAVE Trauma Centre is the largest and one of the longest serving voluntary organisations providing services to victims and survivors of the Troubles on a cross community basis.

Established in 1991 to offer help and support to those bereaved, injured and/or traumatised by the 'Troubles', WAVE currently delivers services across five regional centres in Belfast, Ballymoney, Armagh, Omagh and Derry /Londonderry. In addition to this the organisation has numerous satellite projects connected to each local centre providing services in response to local need.

Each year WAVE works with around over 3000 individuals providing a comprehensive range of services including, counselling and psychotherapy, one to one case work, mentorship and support, complementary therapy, youth engagement, social support, advocacy and lobbying on behalf of victims and survivors.

WAVE delivers educational programmes, conferences, seminars and oral history programmes to enable individuals and communities to share their stories. A BSc (Hons) Psychological Trauma Studies course at Queen's University, Belfast (QUB) is delivered collaboratively by the School of Nursing and Midwifery at Queen's University and WAVE. A post graduate Diploma in Trauma Studies is delivered collaboratively with University College Cork.

WAVE is also involved in an innovative victim/ survivor professional development programme, delivered with Queen's University, Ulster University and Further Education Colleges, within medicine, nursing and midwifery, social work, counselling and teacher training programmes. The aim of this teaching is to ensure that these students are sensitive to the needs of those who have been directly impacted by the Troubles and whom they may meet in their professional working life.

A number of peer support groups are encompassed within WAVE. Examples of these are a dedicated support group for those injured including a Campaign for Recognition for the injured and their carers. WAVE also supports the Families of the Disappeared, a support and advocacy group for those whose loved ones have been abducted and secretly buried in the course of the Troubles.

The organisation also actively works to support individuals and families engaging in investigative processes including Operation Kenova.

The ethos of WAVE is one of 'openness' and 'inclusivity' and this is central to the way in which the organisation conducts its business.

The demand for services from WAVE has increased year on year, with over 50% of the current referral caseload from individuals presenting with issues from incidents which occurred in the late 1960's, 1970's and 1980's. WAVE received over 900 new referrals in 2019-2020 from the ages of 4 to 98 years of age. The impact of failing to address the past is clearly visible on the next generation. The hope that time and mortality will bring closure on our past is a vain one

We very much welcomed the consultation on Addressing the Legacy of Northern Ireland's Past, brought forward by the Northern Ireland Office in 2018, and consequently undertook broad consultation with our members to capture their views, hopes and concerns in order to deliver a reflective and constructive submission on behalf of victims and survivors.

However it is with great concern that we note this new direction of travel from the Secretary of State, which has effectively abandoned the legacy proposals set out in the Stormont House Agreement, and rendered the consultation process invalid.

We are now tasked with responding to a new proposal, the substance of which has not been published, nor has any further consultation taken place. Our response therefore has to rely upon the limited details contained within the Secretary of State's ministerial statement of 18th March 2020.

We also feel it important to note from the outset the most inopportune timing of this announcement, in the midst of a global health crisis. Bearing in mind that many victims and survivors are also coping with complex mental, emotional and physical health needs which will no doubt be exacerbated during this crisis, it is unrealistic and unreasonable to expect this matter to be given the time, scrutiny and consideration it deserves, particularly by those whose voice should be heard the loudest.

Terms of reference

Whether the Government's proposed approach will meet the needs of victims, survivors and their families;

Many victims and survivors have struggled with the consequences of the failure to provide the often promised comprehensive and inclusive process to deal with the past as set out in successive initiatives from the Bloomfield Report in 1998, to Bradley/Eames in 2009, Haass/O'Sullivan in 2013 and the Stormont House Agreement in 2014. (Subsequent documents 'A Fresh Start' and 'New Decade, New Approach' of 2015 and 2020 respectively, both reaffirm commitment to the Stormont House Agreement and the need to address the legacy of the past.)

The arbitrary scrapping of the Historical Enquiries Team (HET) without a viable alternative to replace it, further compounded the frustration and grief of families who looked to the HET as the only mechanism through which they could get information about their loved one's death.

The current system for dealing with the past falls far short of what victims and survivors require and deserve. The Troubles have left a deep and indelible legacy for many individuals and families across Northern Ireland and in other areas impacted by the violence. It is deeply misguided to assume that an expedited desktop review process followed swiftly by preclusion from criminal justice, as is currently proposed, will offer a meaningful process to access truth, justice or acknowledgement.

Under the Stormont House Agreement, provisions for dealing with the legacy of the past were underpinned by 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
- human rights compliance
- balanced, proportionate, transparent, fair and equitable.

Unfortunately we do not believe that the new proposals remain true to these principles despite this assertion in the ministerial statement.

Rather than seeking to meet the needs of victims and survivors, the catalyst for this shift in direction would seem to be the legislative timetable for the Overseas Operations (Service Personnel and Veterans) Bill and the desire to protect veterans from prosecution. By the same token, any paramilitaries who have perpetrated these crimes will benefit from the closure of cases.

This will not best serve the interests of the great majority of victims and survivors, including the many families who lost loved ones while serving in the security forces.

These people have yet to receive any form of justice, truth or acknowledgment, and this new approach only places their needs in competition with the desire to prevent veterans from facing prosecution.

In our view the majority of victims and survivors coming to WAVE with issues regarding their loved one's case are not primarily concerned about the legislative framework.

What they are concerned about and need to have is:

- Confidence in the process.
- Clear information of how and when they can access the process.
- Trust that those working for them will do so ethically and safely.
- Trust that the process will work for them.

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.

What steps the Government can take to ensure that the proposed new legacy body is independent, balanced and open, and complies with the Belfast/Good Friday Agreement and ECHR commitments;

It should be a priority of any new legacy body to command the trust and confidence of those who engage with it, without this it will be a tick box exercise which will only serve to facilitate the

perpetuation of trauma across generations. It is crucial that any legacy body established not only meets all legal requirements and commitments under ECHR and GFA, but that it is seen to be independent, effective, and designed with a focus on the needs of victims and survivors.

As we recommended in our submission to the 2018 consultation on Addressing the Legacy of Northern Ireland's Past, we believe that any legacy architecture should be underpinned by three key elements:

- Code of Ethical Conduct: We strongly recommend that a Code of Ethical Conduct for all staff across the legacy institutions, placing the duty of care to the client right at the heart of the institutions. This should provide clear guidance to staff on conduct and personal responsibilities and offer the client accountability and assurances that they will be treated with dignity, respect and sensitivity throughout the process. This code should be informed by the basic principle of 'do no harm', and should identify the qualities and behaviours expected of those working with victims and survivors of conflict. While this may not deliver answers or justice for families, it will contribute to a much needed process of acknowledgement, promote confidence and trust in the institutions, and mitigate the potentially difficult and re-traumatising experience of engaging with a legacy process.

- Trauma Informed Practice: we believe it is essential for all staff working within legacy institutions to undertake trauma awareness training. Staff will be dealing directly with individuals and families who have suffered complex and traumatic loss. This training should provide staff the opportunity to become trauma informed, and to develop key skills and knowledge in how to work sensitively and appropriately with those who have suffered such traumas.

- Adequate Support Services: Our experience is that there is a danger of re-traumatising people when they receive information that they do not want or did not expect to hear. Adequate resources must be put in place to provide support to individuals and families engaging with any new legacy institution.

This means a high level of therapeutic and advocacy support to clients engaging in legacy processes right from their commencement. Ideally this would be facilitated through an integrated referral process which allows the legacy institution to work seamlessly with support organisations for the benefit of those engaging.

We consider a victim centred approach essential in designing any legacy institution, and believe it will not only complement the substantive legal and investigative work of the institution but will enhance the experience of those who engage with it.

Unquestionably the foundation of any effective investigative body is full compliance with article 2 of the ECHR. While there is no definitive model for such an investigation, we believe there is significant merit in considering that of Operation Kenova.

Established in 2016 to investigate a range of activities surrounding an alleged individual codenamed 'Stakeknife', the Operation Kenova team has since expanded to investigate and review a number of other high profile legacy cases.

WAVE have supported a number of families engaged with this investigation and have observed first-hand the working practices of Operation Kenova, from individual family meetings with investigative liaison staff, engagement with members of senior leadership team and oversight steering groups.

Under the leadership of former Chief Constable Jon Boutcher, Operation Kenova has been largely successful in gaining the confidence and trust of those families connected to the investigation, by taking a considered and bespoke approach to the needs of individuals and families. The investigation is independent from the PSNI, and staffed by police and former police personnel from outside the PSNI.

Each case is allocated a specific liaison team, who maintain regular contact with individuals and families. In addition to this, families meet with Jon Boutcher at regular intervals and have access to him as they require. Families' expectations are established, discussed and managed throughout the process, and they have ample opportunity to raise any issues or concerns.

The terms of the investigation, along with all other relevant information are freely available to families and on the Operation Kenova website, in the public domain.

The investigation itself is subject to oversight via two independent steering groups who offer strategic advice and expertise on victims' issues and the investigative procedure respectively.

An independent review of Operation Kenova was recently undertaken to examine article 2 compliance. The review found that Operation Kenova was an exemplar in adhering to article 2 obligations. The author, Alyson Kilpatrick BL notes "I can say at the outset, for the reasons set

out below, that I have observed exceptional dedication to the imperative of an article 2 compliant investigation of matters of the utmost importance, sensitivity and complexity.”

The review also notes the various aspects of Operation Kenova which characterise an article 2 compliant investigation:

- Independence: free from political or institutional influence or interference, the investigation must have operational independence and the ability to investigate all actors of the conflict where required.
- Adequate funding and resources: anything less could be interpreted as an attempt to stifle the capacity for a fully compliant investigation.
- The investigation must be effective: in that it must have the means and capacity to undertake all investigative duties promptly, thoroughly and professionally. This has particular relevance where a death occurred as the result of state force, or force used by an agent of the state.
- Credibility: A degree of transparency and public scrutiny of the investigation should be present and would go some way to garnering public confidence, a rebuilding of confidence in the state and its commitment to the rule of law, and potentially contribute to a process of reconciliation.
- Full cooperation of any bodies or institutions which may hold information, and the autonomy of the investigation to seek its own, unfettered access to this information.

As with so many legacy cases and the passage of time, the likelihood of prosecution is diminished. However, crucially, in the case of Operation Kenova the prospect of criminal justice has never been removed from those who seek it and are entitled to it. While there is a clear emphasis on information retrieval, and providing families with answers, there has never been any doubt that where the evidential test is met, cases will be presented to the PPS for consideration.

We are deeply concerned about the proposal to close cases and caution against any attempts to preclude cases from future investigation. There is no precedent for the closure of criminal cases and this would almost certainly be subject to legal challenges. We fear that this would stagnate the entire process and potentially render this attempt to address the past a futile exercise.

We are also concerned that this could be damaging at a psychological level for victims and survivors. In the absence of a full investigation many will feel this is a further injustice and betrayal of their loved ones death and memory. The last thing victims and survivors need is more delay or disappointment. Access to truth or any information retrieval process should not be conditional upon the closure of a criminal case. Truth and justice are not mutually exclusive.

We would also contend that the closure of cases 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. This undermines the principles of the peace process and rule of law.

Unconditional access to justice should remain a core tenet in addressing the legacy of the past and ensuring that victims and survivors have access to the full complement of truth and justice mechanisms available to them.

The differences between the Government's new proposals and the draft Stormont House Agreement Bill;

It remains extremely difficult to fully examine the differences between the government's new proposals and the draft Stormont House Agreement Bill as we have not been furnished with any further details in writing about the new proposals.

The Stormont House Agreement in December 2014 reached broad consensus from the 5 main political parties and the Irish Government after 11 weeks of intensive talks. The Agreement proposed the establishment of four institutions to address the past.

The Stormont House Agreement Bill reflects the six general principles set out in the Stormont House Agreement, which underpin the approach to addressing the past:

- reconciliation should be promoted;
- the rule of law should be upheld;
- the suffering of victims and survivors should be acknowledged;
- the pursuit of justice and the recovery of information should be facilitated;
- human rights obligations should be complied with; and
- the approach to dealing with Northern Ireland's past should be balanced, proportionate, transparent, fair and equitable.

The legacy institutions would be required to act consistently with these general principles in exercising their functions. This would, in turn, lead to the institutions commanding support and confidence from victims and survivors of the Troubles.

The public consultation from May 2018 to October 2018 on the Stormont House Agreement proposals resulted in almost 18,000 responses. For the first time, many of the victims we deal with were given hope that their voice would be heard, and they felt that they would finally get closer to the truth, justice and acknowledgement they so rightly deserve. It is extremely devastating for victims and survivors to feel that the NIO and the UK government have ignored the consultation responses, and ignored their voice once again. Many victims now feel that their expectations were needlessly raised regarding the government's commitment to introduce effective legacy mechanisms.

Given that no substantive detail on the government's new proposals have been published, it is difficult to make a comparative assessment, however it is apparent that the new proposals as in the Written Ministerial Statement of 18 March 2020 herald a change in direction from the Stormont House Agreement. The 2018 consultation on the proposals under the Stormont House agreement had victims as the focal point in any proposals for dealing with the past. On the other hand, the new proposals appear to focus on the needs of veterans as the priority. The Written Ministerial Statement was released at a time when the government had moved to provide legal protections for British armed forces who have served overseas. The new proposals appear to result from pressure on the UK government to implement legislation which will prevent prosecutions of former British soldiers involved in killings during the Troubles. This latest development is very disappointing for victims and survivors in Northern Ireland. They have been let down again. It is worth noting that there has been no consultation with victims, political parties or the Irish government regarding these new proposals.

The new proposals see another shift from those within the Stormont House Agreement with regard to investigations into unsolved murders. Under the Stormont House Agreement proposals, the Historical Investigations Unit (HIU) would have full police powers to carry out a full and independent investigation into all unsolved murders, and justice would be pursued where possible. Under the new proposals, there is a shift in focus from investigations to information recovery. It is proposed that unsolved murders will undergo a quick, desk top review by a new independent body, with only a small number proceeding to full investigation where there is new and compelling evidence, and a realistic prospect of prosecution. We believe that such a swift review of these cases will not uncover the necessary evidence to allow the case to proceed to full investigation. To get access to such evidence, those undertaking the review need to have unfettered access to all sensitive and confidential records held by inter alia PSNI, MOD and MI5. Such access is afforded to Operation Kenova, and that is one of the reasons why it has been so successful in obtaining information which was not made available to previous investigations. The new proposed approach fails to give fair and open access to the pursuit of justice for all. In fact, it feels that the option of justice is being shut down altogether for victims and survivors.

Other differences between the new proposals and those contained within the Stormont House Agreement include a proposal to close the case if there is no new and compelling evidence, and no realistic prospect of prosecution, with a bar on re-opening the case in the future, even if new evidence does become available. There is no legal precedent for such closure in any other criminal cases. This seems grossly unfair, and appears again to be focusing almost exclusively on protecting veterans rather than focusing on the needs and rights of victims and survivors in Northern Ireland.

Finally, the Stormont House Agreement proposed that the HIU and the Independent Commission on Information Retrieval (ICIR) would be two separate, independent bodies with very different remits. The new proposals suggest that these functions should be carried out by “one independent body to ensure the most efficient and joined-up approach...” We will look at this proposal later in this document.

The Written Ministerial Statement says that the new proposals “remain true to the principles of the Stormont House Agreement...” We do not agree with this, and believe that the new proposals will not deliver an approach to dealing with Northern Ireland’s past which is balanced, proportionate, transparent, fair and equitable.

Whether and how the Government's proposals will promote reconciliation in Northern Ireland;

Reconciliation in a post conflict society is a complex and multi-faceted process. To make a constructive contribution to reconciliation, any attempt to address the legacy of the past must be meaningful, thorough and give voice to victims and survivors. Anything less than this will be seen as superficial and will reflect a shallow commitment to reconciliation on the part of the government, and would potentially do more harm than good. This is why it is so important to get this right.

We are concerned that the government's proposals will not afford victims and survivors the opportunity they deserve to engage in a process that offers the acknowledgement or recognition they need. Without this, trauma will continue to filter down through the generations.

The proposals make no reference to the SHA Implementation and Reconciliation Group, which was designed to provide some oversight on the legacy mechanisms with a view to contributing to reconciliation, nor is there any reference to the Oral History Archive, which had the potential to harness the power of many personal stories, testimonies and narratives for the purposes of acknowledgement, reconciliation and posterity.

We can only assume that reconciliation is an afterthought to these new proposals. The underlying objective to move swiftly through an investigative review and information recovery process will benefit those who are protected from prosecution, fail victims and survivors and will not promote reconciliation.

The potential merits of consolidating the bodies envisaged in the Stormont House Agreement into a single organisation;

The Stormont House Agreement proposed the establishment of the Historical Investigations Unit (HIU) which would be an independent, investigative body responsible for investigating all

the unsolved murders from the Troubles. We were provided with details about how the HIU would operate, the remit of the HIU, main duties of the HIU, how it would be staffed etc. We were also given details about the establishment and operation of the Independent Commission on Information Retrieval (ICIR), an independent international body established by treaty by the UK and Irish governments. The ICIR would enable victims and survivors to seek and privately receive information about the Troubles-related death of their loved one. These two bodies would each have their own staff, and they would work totally independently of each other.

The Written Ministerial Statement proposes that the above functions will be carried out by “one independent body.” It continues by saying that “This body will oversee and manage both the information recovery and investigative aspects of the legacy system...” However, no further detail has been provided regarding how these two very distinct functions will be undertaken by one body. For the investigative mechanism and the information recovery mechanism to function properly, victims need to be convinced of their independence from each other. How can institutional independence be maintained if both functions are being overseen and managed by the one body? How can this dual remit be managed effectively? We believe that this new proposal will not garner the trust and confidence of victims and survivors, and indeed those who could possibly supply information to the information recovery mechanism. It appears again that this approach is designed to favour veterans, while putting victims and survivors at a disadvantage.

In conclusion, we see no potential merits in consolidating the bodies envisaged in the Stormont House Agreement into a single organisation.

The equity of the Government’s proposed approach to the re-investigation of cases;

The ministerial statement makes no reference to the case load of this proposed new institution, and if it will constitute cases that have previously been reviewed by HET or the PSNI’s Legacy Investigations Branch. Nor does it indicate if there is any process by which individuals or families can request that their case is re-examined, if it has already been subject to a review that they are dissatisfied with.

We must also question the equity of prioritising the need to protect veterans from prosecution, over the needs of victims and survivors. The institution must be seen to be fair, balanced and proportionate in its approach, yet we fear that the desire to preclude cases from further criminal

investigation in order to avoid any potential prosecution indicates that the institution is designed to treat one group of people favorably, and to the disadvantage of others.

The process should have no bias, and should not be designed with outcomes in mind, but rather a fair and robust process will itself be the very thing that instils confidence and trust for those who engage with it, and wider society.

What legislative steps the Government can take to address what have been described as vexatious claims against veterans.

It appears that over recent times a witch-hunt narrative has been developed by supporters of the military which claims that former members of the security forces are increasingly becoming the victims of vexatious claims. So, what is a vexatious claim? It appears that there is no legal definition for such a term. A google search of the term **vexatious litigation** suggests that it is “*legal* action which is brought solely to harass or subdue an adversary”. This continuing narrative about vexatious claims against veterans suggests that the PSNI, HET, LIB, PPS etc. have all been engaged in instigating and pursuing vexatious investigations into former members of the security forces. The perception is given that these bodies are pursuing legal action against veterans in cases where there is no merit, and perhaps out of revenge. This would amount to unprofessional behaviour, and certainly brings into question the integrity of our criminal justice system as a whole. The narrative undermines confidence in the rule of law and the administration of justice.

This narrative about a witch-hunt and vexatious claims is often perpetuated by the UK Government. In May 2018, Prime Minister Theresa May stated that “the only people being investigated” for Troubles related deaths were former members of the armed forces, and those who served in law enforcement in Northern Ireland. Her claims were contradicted by official figures from the PSNI which showed there was no disproportionate focus on ex-security force members. The Chief Constable at the time, George Hamilton, stated that Theresa May’s claims were not backed up by statistics.

In January 2017, the then Northern Ireland Secretary, James Brokenshire, insisted there was a “disproportionate focus” on the State. The DPP at that time, Barra McGrory, strongly rejected claims that prosecutors are part of a “witch-hunt” against ex-soldiers. He said “there is no imbalance in approach within the PPS.”

In the recent report from the Committee on the Administration of Justice (CAJ) “Prosecutions, Imprisonment and the Stormont House Agreement”, Professor Kieran McEvoy from Queen’s University Belfast and the team looked at the statistics in relation to the number of investigations focused on former soldiers. They concluded that “...there is no historical or contemporary evidence to support the claim of a witch-hunt in terms of the proportionate number of legacy investigations or prosecutions against state actors.”

We do not believe that any legislative steps need to be taken by the government regarding this matter. The UK government should not be seeking to protect former British soldiers from being held accountable for their actions if they stepped outside the law whilst serving in Northern Ireland during the Troubles. No one should be above the law. Full investigations should take place no matter who the alleged perpetrator is, and this should lead to a decision to prosecute where the test for prosecution is met.

1 June 2020