

We are again submitting evidence to the Northern Ireland Affairs Committee (NIAC) on the matter of the government's new proposals on legacy legislation.

The Malone House Group's contributors and associates range over the academic, legal, journalistic and political worlds, as well as representatives of victims, and bereaved individuals themselves. Current key participants are myself, Jeffrey Dudgeon MBE, a former Ulster Unionist Party Belfast City councillor, author and human rights activist, Belfast solicitor Neil Faris, Ulster University political scientist Professor Arthur Aughey, expert in government administration Bill Smith, and William Matchett a former RUC officer and writer. Some in the Group will be making individual submissions to NIAC.

We submitted evidence to the Committee on 1 June 2018 in relation to its previous inquiry on the subject, entitled *Addressing the Legacy of Northern Ireland's Past* but were not called as witnesses to give evidence. We are more than happy to do so during this inquiry, as a group or individually. We offer a view that is distinctly different from the conventional wisdom in the media and the academy in Northern Ireland.

As part of our evidence, then, many copies of our book, *Legacy: What to do about the Past in Northern Ireland?* - which was essentially the proceedings of the legacy legislation conference held at Malone House in Belfast on 3 March 2018 - were forwarded. It was launched in the House of Commons in July 2018. The title, published by Belfast Press in April 2018 remains available on Amazon and Kindle.

Over the last two years, since the conference, many articles and opinions, both individually and as a group, have been published. In pursuit of our objectives, we have also held regular meetings with government officials, both in Northern Ireland and London, and submitted responses to the consultation of the Northern Ireland Office (NIO) on its 2018 draft Legacy Bill. We have also held discussions with British parliamentarians and the Republic's Department for Foreign Affairs, as well as spoken at consultation meetings on the NIO's draft Bill.

At the 2018 conference, facilitated by Brian Garrett (solicitor and arbitrator), speakers came from a range of backgrounds and political outlooks. The titles of their contributions Neil Faris (Belfast solicitor): *Misconceptions on "Truth & Justice" – an Overview*; Dr Cillian McGrattan (Ulster University): *"The possibilities are endless": Republican strategy and transitional justice*; Dr. Andrew Charles (community and voluntary sector): *The Past Being the Future*; Dr Austen Morgan (barrister and historian): *The Past: Drawing a Line?*; Ken Funston (Advocacy Manager South East Fermanagh Foundation (SEFF)): *The Victim's Perspective*; Trevor Ringland (solicitor, 'One Small Step'): *Dealing with the Past – Properly or Not At All*; Danny Kinahan (former Ulster Unionist MP for South Antrim): *Getting the Legislation Right*; and Ben Lowry (Deputy Editor of the Belfast News Letter) *Mishandling of Legacy – One of the Biggest Scandals in the UK since the 2nd World War*.

Under the sub-title *The Shadow of the Past*, the text on the book's cover stated:

"The speakers and authors published here are from a range of backgrounds and political outlooks. What they share in common is a deep concern over the inadequate or one-sided political, legal and academic agenda on the

matter of addressing the Past in Northern Ireland. They also share a belief in the necessity of the rule of law and the protection of civil liberties.

This book is refreshingly different from all other publications on the matter, particularly those issued by NGOs and the universities. It fills a huge gap which we hope can reshape the agenda and the direction of travel on legislation. The notional Legacy Bill and its proposed Haass-type bodies are deeply flawed and over-complex, indeed unworkable. They do not serve the needs of victims. We believe it would be preferable that the issues are approached in different, simpler and better ways than through the Stormont House Agreement. To that end we aim to develop a new consensus on alternative structures to address the Past.” You will see therefore this is a radical view of the NIO/DOJ proposals. Our basic position could be summed up by our agreed view that they will take vastly more time to conclude than is currently envisaged, at an enormous and unforeseen cost, while they will not achieve anything like truth or justice. There have to be better and simpler ways forward.”

It is worth noting that many prominent individuals have called into question, in different ways, how government has proposed to address the past, and have sought to draw a line in some form, whether on prosecutions alone, or on the whole legal and investigative process. They include John Larkin, the NI Attorney General, Barra McGrory the former DPP, Peter Sheridan a former Deputy Chief Constable of the RUC, Dennis Bradley of the Eames Bradley Report, and the late and highly esteemed civil servant Maurice Hayes. Any informed observer of Northern Ireland affairs will agree that none of these people can be reasonably described as of the Unionist community. Those involved in Malone House are also drawn from both communities. The Lord Chief Justice and the former Chief Constable George Hamilton have also expressed their concerns about the current approach to legacy.

The first thing that must be said is that the outline of proposals of 18 March made by the Secretary of State for Northern Ireland are far from clear and it is too early to give a definitive response. However we welcome the direction of travel and the apparent common sense approach. We therefore must make some assumptions.

The Stormont House Agreement (SHA) is no longer to be dogmatically followed. It of course was not agreed by all parties, indeed by two only. It has been overtaken by events, most particularly by Covid-19 and the colossal costs of the pandemic. Wasteful legacy inquiries with no discernible value or useful outcome may have been put behind us. The Past may no longer be our Future.

It is important also to realise that the draft 2018 Bill was not the SHA made flesh but had chunks silently added, like the HIU’s role in (uniquely) investigating the non-crime of historic police misconduct. This proposal was an outrage against human rights let alone fairness. We are pleased to note that the SHA no longer has cross community support in regard to that element and that the government also seems to wish that that body does not come into existence.

We now briefly answer the committee’s questions:

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

We are seriously concerned about the failure of the Northern Ireland Executive to make the necessary arrangements for victims’ payments. This calls into question the basis of the current devolution arrangements. We urge Ministers to act immediately and make the unusual, if plainly difficult decision, to agree to spend money from the block grant without seeking a further contribution from the Treasury beyond whatever proportioned amount is

required for those injured or killed outside Northern Ireland. Dealing with the needs of victims, otherwise, is intimately tied in with the other arrangements in the proposed legislation.

*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*

We have no doubt that the new body as envisaged will so comply, especially if investigatory powers are kept within the PSNI and not mixed up with adjudicatory ones. We are unaware of where the new proposals might conflict with the Belfast Agreement. In relation to the ECHR, this is a contentious issue open to debate. Presently there is a great deal of dogmatic assertion around Convention rights but no consensus.

A further question to be asked by the Committee concerns the likelihood, regardless of any new legacy law and bodies, of continuing and unremitting lawfare, much of it hinged to an over expansive interpretation of Article 2, the Right to Life section of the European Convention on Human Rights and the consequent jurisprudence on ‘effective’ investigation. Despite sanguine views to the contrary, there appears to be no end to this process, while the courts remain open, as they will, to demands for the re-opening of many more inquests, civil suits for damages, judicial reviews, challenges on convictions, requests for new public inquiries, and indeed further Strasbourg cases. The value and cost of this activity needs questioned.

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

We note the likely differences and related improvements, which we commend especially in relation to HIU. We reiterate that the 2018 draft bill went further even than the SHA.

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

In truth, legacy or lawfare do not promote reconciliation. Whatever arrangements ensue will be seen by some as so unsatisfactory that campaigning will continue. The best that can be achieved is an agreement to differ.

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

If these arrangements make for a speedier and less costly operation, we favour them. The complexity of the previous proposed arrangements was so extreme as to be risible.

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

We have had an amnesty, certainly a one-sided amnesty, in all but name. Despite Amnesty International’s rigorous opposition to an amnesty, one has happened without a breach of the European Convention. It is recognised that there will never now be more than a handful of prosecutions on reinvestigation of murders – ‘where there is new evidence’. It must also be said that even government officials accept, at least implicitly, that the previous proposals

would not be able to bring about truth, reconciliation or justice. The new framework may be less deleterious to these concepts and that should be welcomed. They may enable the past to be put behind us, faster than previously envisaged.

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

The Overseas Operations (Service Personnel and Veterans) Bill tabled in the House of Commons on 18 March, with its explanatory notes, goes a long way to meet these needs. However it applies only to actions outside Northern Ireland. It would be discriminatory, to say the least, and justiciable, not to extend its provisions to those who served in Northern Ireland, in whatever function - civilian, military or police. It may be that the Bill needs certain amendments, both to make it more comprehensive and to meet the UK's human rights commitments. It will not satisfy some of the veterans' advocates or others in Northern Ireland but is a coherent attempt to draw certain lines in the never ending legal war over the military conflict, one that largely ended a quarter of a century ago.

*1 June 2020*