

The Government's approach to legacy as outlined by Secretary of State, The Rt. Hon. Brandon Lewis on 18th March was a positive step in addressing legacy issues in Northern Ireland.

The original Stormont House Agreement proposals on 'legacy' excluded any review of decades of terrorist destruction and consequent trauma, removing context and trying to write past conduct as if present reality.

The Stormont House proposals also shifted the weight of inquiry of legacy towards allegations against members of those who had sought to maintain order at a time of chaos – that context, of chaos, excluded.

While there was talk of new 'evidence' in the proposals from Stormont House, the construct of the agencies such as the HIU meant that this would include supposition around intent. Worse, new 'non-criminal' offences would retrospectively criminalise behaviour on the basis of subjective reasoning, with no access to redress or challenge by those accused.

The narrow nature of the inquiry would mean that any final review of all cases, within the legislative framework, would inevitably lead to a review sanitised of the past in context or action, almost wholly focused on State action.

In the five years since the Stormont House Agreement there has been a perceptible increase in what is described as 'lawfare', using legal challenge as a campaigning tool. The process has almost exclusively been focused on perceived State failures, a view of law without context of operational challenges of the past, and an apparently ready access to legal aid and the support of funded campaign groups that are ironically funded handsomely by the UK taxpayer. These groups have captured the public space, with other voices regularly berated for being 'anti-rights'.

The focus on state failures has detracted from practical consequence of successive Government policy that effectively provides an amnesty for terrorists. The closure of the HET, largely on the basis of a single academic report, removed the only route to factual, evidential, review of the past. The Bloody Sunday Inquiry, only provided a partial truth recovery; IRA figures openly defied efforts the Inquiry's truth recovery process by placing the organisation's oath of Omerta above all else.

The purpose of this submission is to bring focus on the way in which the context of events in the past are being lost in deliberations on the past. Parliament's Northern Ireland Affairs Committee has posed a number of questions on the Government's most recent proposals;

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

With an de facto amnesty in place for terrorists, truth is the greatest victim. In the absence of context, truth is without meaning. While lawfare continues, driven by a

vicious effort to rewrite history, the wounds of victims and their families will be picked on like a scar to continue to inflict pain on those who have endured a life sentence of loss. IRA omerta assures the totality of truth will never be told.

- 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;

Any new legacy body needs to stick to the facts, look only at evidence, and avoid subjective unfounded musings with that serve a political campaign but have no foundation in Law.

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

A step in the right direction, but still a long way to go.

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

The past five years has seen an escalation in the effort to diminish and demean those who held a line between order and chaos. There is little sign that reconciliation is in any way a part of that political strategy. The campaigns to weaken legal and public institutions by questioning every aspect of administration and the undermining the Rule of Law need to be challenged robustly, legally and with greater energy than previous UK Governments have shown.

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

Or none. Had the HET not been so summarily abandoned, the five years since could have seen a near completion of the task of evidential review.

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

There is no equity where the information is almost exclusively single source; i.e. State records.

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

"Vexatious claims" extend beyond those directed at Veterans. It is an entire industry, publicly funded directly or indirectly, and at its heart lies a political campaign to rewrite history and undermine the Rule of Law; to weaken the State. While what has been proposed is welcome, there is a long way to go to reverse this direction of travel, and to call out violent criminal challenge to the State for what it was.

3 June 2020