

SEPTEMBER 2018

Submission to the Northern Ireland Office

By the

Police Federation for Northern Ireland

On 'Addressing the Legacy of Northern Ireland's Past'



Dedicated to police officers who made the ultimate sacrifice in protecting
the people from the pestilence of terrorism

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The Police Federation for Northern Ireland

The Police Federation for Northern Ireland (PFNI) are the statutory representative body for police officers within the Police Service for Northern Ireland (PSNI). The PFNI have a responsibility to represent the interests of 98% of all NI police officers, from the rank of Constable to Chief Inspector. We have been in existence since 1971 and therefore have represented police officers from both the Royal Ulster Constabulary George Cross (RUCGC) and the PSNI.

Our remit revolves around issues of welfare and efficiency which affect our membership; we do this through the management of a number of benefit and support schemes. We perform many of the functions of a trade union, including negotiating on issues of pay, terms and conditions, however under statute, we are prevented from engaging in industrial action.

Whilst our membership is drawn solely from serving police officers, we retain a continued interest in the wellbeing of our retired members. Indeed, we regularly provide legal representation and provide support for treatment for retired police officers. Therefore, whilst this submission is made in representation of our serving members, we are mindful of the impact of legacy on our retired colleagues and are cognisant of the fact that today's serving officers will be tomorrow's retired officers.

Context

The issue of the legacy of the NI Troubles is evocative, emotional and often fraught with division. As previous attempts to deal with this legacy have shown, it has the ability to re-traumatise and cause great pain to victims, survivors and their families.

Handling the past and moving forward remains a pivotal part of the unfinished business stemming from the 1998 Belfast Agreement. This has defied all previous attempts to reach a satisfactory outcome with many people, from across our society, holding fast to the view that it is politically insoluble.

Discussions surrounding legacy readily call into question a range of sensitive issues for victims of terrorist violence. In the case of policing in Northern Ireland, 302 officers were murdered, and thousands injured. More than 200 terrorist murders of police officers remain unsolved. Many police survivors were left physically and psychologically scarred – the impact of which remains visible today, twenty years on from the signing of the Belfast Agreement.

The search for a way forward is blighted by political agendas, and the PFNI believes that the search for a successful outcome that will satisfy all sides will ultimately prove elusive. Our position on the issue of legacy has remained the same over time - we do not, and will not, countenance a situation where the actions of men and women who served the community somehow equate with those who sought to murder them. Such an attempt would be perverse and grossly offensive. Furthermore, it is our view that drawing a line in the sand turns the rule of law on its head; it would produce a hierarchy of victims, serving to placate some yet delivering injustice to others.

Attempts continue unchecked to demonise the police officers who delivered the circumstances for peace to develop. They are held up to ridicule, derided and condemned in order to suit a selective

narrow narrative; a narrative which is notable for its omissions or references to appalling acts of barbarity by terrorist groupings.

Similarly, the use of the word ‘collusion’, which has no legal standing, is readily quoted by many in order to concoct and reinforce false claims of wrong-doing. We do not, and never will, condone law-breaking; the law is there to be upheld and those who break it should be held to account and, where there is evidence, brought to justice. There are no exceptions to this position – our intent is not to protect wrongdoers – we are against amnesties, for any group of people.

Summary

Having studied the draft Northern Ireland (Stormont House Agreement) Bill through the optics of justice principles, we are left with no option but to reject it in its entirety. The basis for this rejection is founded in the following eight key points:

1. The ‘parity of esteem’ principle outlined within the Belfast Agreement did not make it into the legacy structures and the principles of proportionately and balance in the Stormont House Agreement did not make it into the draft legislation. Both discriminate against one group of local people, police officers. **The current legacy setup has been heavily biased against the state; this is a flawed approach which is sure to be exploited under the draft Bill.**
2. Legacy has been a travesty for the rule of law, criminal justice, equality, and basic human rights. Its institutions have marginalised the police family, damaged the reputation of officers and the police organisation, mostly with an ambiguous word ‘collusion’ that sits outside the law. The draft Bill fixes this; **‘non-criminal police misconduct’ is the new ‘collusion’ as set in legislation, and even though the draft Bill cannot define it, a HIU Director will.** It is certain to incite complaints against police and flood the courts with civil claims by making officers (serving, retired and dead) retrospectively liable.
3. **The Police Federation for Northern Ireland completely oppose the creation of a parallel police service and are therefore fundamentally opposed to the HIU.** It is our position that the PSNI, suitably resourced, should investigate all murders, regardless of date, with normal criminal justice practices and offences fixed in law. The same is true for police misconduct. There should be no parallel ‘police’ agency and no deviance from rule of law norms.
4. **Equating terrorists to police officers is morally wrong.** Yet this has been a major feature of the current legacy mechanisms and this is set to continue throughout the proposed structures.
5. Imbalance in legacy has left the state in deep deficit. **Parity in investigations should be sought, as measured in cost, time and prosecutions, on a 1:9 security forces/terrorists ratio.** The current proposals must also address the oversight which has excluded injured victims of terrorism in NI from seeking the truth.
6. Serving and retired police officers must have **access to a funding scheme which ensures they are financially capable of mounting a proper defence,** when the need arises. Currently, police

officers are left financially liable for the legal cost of such a defence, whilst those making spurious and often vexatious claims have the legal aid system at their disposal.

7. **National security is not a local (devolved) matter. It should be immune to changing circumstances.** However, this is not the case in the draft Bill and as a result legal challenges and unsolicited disclosures will ensue.
8. **Truth recovery, history and reconciliation should not sit within or alongside investigations.** This can only serve to erode criminal justice, disadvantage police officers because of legal restrictions on what they can say, and as such is sure to favour a narrative which is deeply hostile of them, therefore furthering the current biased legacy narrative.

This paper outlines, in detail, the Police Federation for Northern Ireland's position on both the current and proposed systems for dealing with the legacy of the NI Troubles. These seven key areas will be reiterated throughout the paper. However, by way of a brief overview, we have provided a table below outlining our response to each of the seventeen consultation questions.

Please note: this table provides a snap shot overview of our position – our substantive response to the proposals are contained within the extended body of this submission.

Theme	Question	Yes	No	Response
Q1: Current systems for addressing the past	<i>Do you consider that maintaining the current system for dealing with the issues of the past through legacy inquests, PSNI and OPONI investigations is the right approach, or do you think there is need for reform?</i>			The current legacy arrangement is heavily biased and has not afforded police officers the same rights as every other citizen. Our request is simple – we want discrimination against our members to stop.
Q2: Stormont House Agreement Proposals – engagement with legacy institutions	<i>Does the proposed approach help to ensure all groups of people can effectively engage with the legacy institutions?</i>		X	Police officers have been uniquely singled out for investigation – a key barrier to engagement with the HIU. Officers are unable to engage with other bodies because of legal restrictions – fuelling biased narratives.
	<i>If no, please suggest additional measures that would improve this for specific groups</i>			PSNI (properly resourced) should conduct all necessary legacy investigations. PSNI are the appropriate body to provide information about the Troubles. Future legacy landscape must ‘make-up’ current deficit in legacy investigations.
Q3: HIU remit	<i>Should the HIU’s remit include deaths which took place between the signing of the Belfast Agreement n 10th April 1998 and 31st March 2004?</i>		X	The responsibility for investigating all criminality, including murder, should rest with the PSNI – regardless of the date of the offence.
Q4: HIU – Director deciding about investigations	<i>Do you think that the process set out is the right way to assess whether an investigation into a Troubles-related death has taken place or whether investigation is needed?</i>		X	The proposed process mirrors that of the Police Ombudsman – we view this approach as controversial, and in our view promotes too much autonomy held by one individual.
Q5: HIU – disclosure appeals mechanism	<i>Do you think that the proposed mechanism to appeal disclosure decisions to a judge provides adequate opportunity to challenge decisions by the UK Govt. to protect information?</i>		X	National security is not a devolved matter – the best judge of whether intelligence can be disclosed is the agency that holds the proprietary rights.
Q6: HIU – overall view	<i>Does the HIU provide a method to take forward investigations into outstanding Troubles-related deaths in a proportionate, victim-centred manner with an appropriate structure and safeguards?</i>		X	How can the planned HIU be proportionate when it has two ways of starting an investigation – one solely for police officers? How is creating new offences and applying them retrospectively an appropriate safeguard?
Q7: Independent Commission on Information Retrieval	<i>What actions could the ICIR take to support families who seek information about the death of their loved one?</i>			This storytelling approach simply detracts from criminal justice. Furthermore, how can families receive information when a key group – police officers – are unable to tell their stories due to legal restrictions?
Q8: Independent Commission on Information Retrieval	<i>Do you think ICIR is structured correctly, with the right powers and protections, in a way that would provide victims and survivors with the chance to seek and receive information about the deaths of their loved ones?</i>		X	We are deeply concerned about the ICIR and how it will work in accordance with Article 8.

Theme	Question	Yes	No	Response
Q9: Oral History Archive	<i>Do you think that the Oral History Archive proposals provide an appropriate method for people from all backgrounds to share their experiences of the Troubles in order to create a valuable resource for future generations?</i>		X	Police officers are left entirely disengaged from this process due to the legal restrictions under which they operate – thus continuing to fuel the biased narrative surrounding legacy.
Q10: Oral History Archive	<i>What steps could be taken to ensure that people who want to share their experiences of the Troubles know about the Archive and are encouraged to record their stories?</i>			The OHA risks being a platform for those who refuse to assist in criminal investigations.
Q11: Commissioning the academic report on themes and patterns	<i>Do you think that ESRC should be engaged to commission academic work on patterns and themes to ensure independence, impartiality and best practice in academic research?</i>		X	Whilst the ESRC is a reputable institution, it is clear from its portfolio that it does not have a history of studying issues in this area – RAND Europe, Policy Exchange or UK Defence Academy would be more suitable.
Q12: Implementation and Reconciliation Group	<i>Do you think the IRG is appropriately structured to allow it to review the work of legacy institutions, to commission an independent academic report and promote reconciliation?</i>		X	We are concerned about moral equivalence and how this works as part of a reconciliation project and through independent academic reporting.
Q13: Stormont House Agreement proposals – overall view	<i>Do you think that the package of measures proposed by the Stormont House Agreement provides an appropriately balanced and planned way to move Northern Ireland forward that can command the confidence of the community?</i>		X	We believe that the 5-year timespan is entirely unrealistic, especially in light of a well document shortage of detectives in British policing. Balance is sorely lacking from the draft legislation.
Q14: Other views on the past	<i>Do you have any views on different ways to address the legacy of Northern Ireland's past, not outlined in this consultation paper?</i>			New legacy arrangements must consider the impact of hindsight bias, false memories and context framing. Funding must be available for police officers to mount their defence, when the need arises. Injured victims cannot simply be forgotten.
Q15: Impact of the current system	<i>What are your views on the impact of the current system for addressing the past (as outlined in Part one) for different groups as described by Section 75 of the Northern Ireland Act 1998?</i>			The current system is, in our opinion, in violation of both Article 14 and Section 75. One local group have been unfairly singled out – police officers.
Q16: Impact of the Stormont House Agreement proposals	<i>What are your views on the impact of the Stormont House Agreement proposals (as outlined in Part 2) for different groups as described by Section 75 of the Northern Ireland Act 1998?</i>			It is our view that the discrimination against police officers will worsen under the new proposals.
Q17: Equality of opportunity or good relations	<i>Is there an opportunity to better promote equality of opportunity or good relations?</i>			Solely focussing on police officers does the opposite of promoting equality of opportunity or good relations.

Question responses

1. Question 1: Current system for addressing the past

Do you consider that maintaining the current system for dealing with the issues of the past through legacy inquests, PSNI and OPONI investigations is the right approach, or do you think there is need for reform?

Response: No we do not consider the present arrangement is working and yes, we believe that it needs reformed.

- 1.1. The Police Federation for Northern Ireland (PFNI) hold the view that the current legacy arrangement is heavily biased and has not afforded police officers the same rights as every other citizen.
- 1.2. The PFNI contend that it could be interpreted that it was politically convenient for all sides – main political parties and HMG – to build bias into the Belfast Agreement. The ‘parity of esteem’ referenced within this Agreement simply did not extend to local police officers¹, rather local police officers have been singled out for investigation through the creation of statutory institutions and new laws. In contrast, other institutions and laws have seen fit to issue ‘amnesties’ to terrorists (a concept we utterly oppose, for *any* group).
- 1.3. It is perhaps unsurprising that over time and through experience, our members have lost confidence in the statutory bodies set up in the Belfast Agreement to investigate the past. Indeed, statutory authorities investigating police officers have been criticised in court rulings for exceeding their “powers in reaching conclusions” that were “unsustainable in law,” denying the officers’ the “protection of due process”².
- 1.4. Experience has highlighted how these investigations can deviate from normal criminal investigative procedures, particularly through the use of an abstract term, such as ‘collusion’, to describe wrongdoing. This is clearly not transparent and as such, contravenes a key principle of the Stormont House Agreement. Furthermore, this sits outside the law, is changeable and is open to interpretation. We totally oppose this kind of approach, institution and structure. In our opinion, it has undermined the pursuit of justice.
- 1.5. Police officers, serving and retired, their families, police widows and officers injured by terrorists (physically and psychologically), feel abandoned by Government. Whilst we agree with the Secretary of State in her letter to the Defence Committee (4 July 2018) that legacy justice is “unfair and disproportionate on members of the Armed Forces and RUC”³. We

¹ Matchett, W. 2015, p28.

² Belfast Telegraph, 21.12.2017 ‘*Damning Loughinisland massacre report unfair, court rules*’

³ Letter from Secretary of State to Rt. Hon. Dr Julian Lewis MP, Chairperson, Defence Committee. House of Commons, 4 July 2018.

disagree with her belief that the proposals are the best way to address this. It is our view that the current proposals have the very real potential to exacerbate the issue.

- 1.6. We hold the view that the current legacy arrangement has disproportionately focussed on the state, with statutory institutions resistant to challenge, difficult to change and an exorbitant drain on public funds. During the Troubles, security forces were responsible for 10% of total deaths; almost all of them lawful killings (soldiers 9%, police officers 1%). Terrorist organisations were responsible for 90% of deaths (republican 60%, loyalist 30%), all of them murders. From a statistical standpoint the ratio of killings during the Troubles is 1:9 security forces / terrorists. Consider this in absolute terms; from 1968-2004, the period the consultation proposes, police officers were responsible for 51 deaths and terrorists 3,251⁴.
- 1.7. Outside of investigations are; inquests, public inquiries, judicial reviews, legal aid, civil claims and court appeals, 'supergrass' trials and QC-led reviews, almost all of which heavily concentrate on the state. In terms of money, investigative hours, new laws and prosecutions the legacy arrangement has not mirrored the 1:9 split.
- 1.8. Also absent from the current debate are the multitude of laws drafted for terrorists: early release from prison; immunity from prosecution for destroying evidence in decommissioning and locating the bodies of people they disappeared along with amnesty for those who evaded justice.
- 1.9. As such it is our position that the current approach to investigating the past is in dire need of reform. Our request is simple - we want discrimination against our members to stop. We want them treated equally.

⁴ McKittrick D. et al, 2004, p1553

2. Question 2: Stormont House Agreement proposals – engagement with legacy institutions

Does the proposed approach help to ensure all groups of people can effectively engage with legacy institutions?

Response: No

- 2.1. 'All groups of people,' we assume, includes police officers? We raise this because the Police (NI) Act 1998 at Section 51 (4) (b) talks of "the confidence of the public and of members of the police force" in a statute authority tasked with investigating the past – i.e. the Police Ombudsman - whereas the draft bill has, crucially, left out the police aspect. Indeed, clause 7 (e) (ii) of the draft legislation *only* refers to "the confidence of the public in HIU" and Clause 60 (7) is solely set on securing "public confidence in the IRG".
- 2.2. We find this difficult to reconcile with the proposed legislation that has uniquely singled out police officers for investigation. This is, in itself, a major barrier to engagement for an entire group of people, namely police officers - both serving and retired.
- 2.3. All four of the proposed institutions effectively discourage police officers from engaging with them, especially the Historical Investigations Unit (HIU). In our view, the HIU is an upgraded Police Ombudsman, both in structure and approach; an approach that has already done so much to alienate the police family. Indeed, many police officers (both serving and retired) simply do not trust historical institutions and it is our view that this situation will not be remedied through the current proposals.
- 2.4. As for the Oral History Archive (OHR) and the Independent Commission on Information Retrieval (ICIR), many police officers simply *cannot* engage as the Official Secrets Act binds them from discussing certain matters. And for almost every officer, a confidentiality culture in everyday police work regarding suspects, criminal investigations and suchlike prevents them from telling their story. Furthermore, both serving and retired officers have very real concerns regarding their personal and their family's security. Not only does this prevent any meaningful engagement from within the police family, their absence will inevitably fuel the biased narrative which we are sure will emanate from such institutions.
- 2.5. Furthermore, given that some political parties (including those who condone certain Troubles related murders, particularly those of police officers) will have representatives on the Implementation and Reconciliation Group (IRG), this too will act as a major chill factor to engagement for our members.
- 2.6. Equating terrorists to police officers is a feature of current legacy structures and it is our position that this will continue under the new proposals. This, in our view, is wholly wrong and deeply insulting to our members. Research shows that police officers and their families already

feel “alienated in post-agreement Northern Ireland”⁵. This echoes the viewpoint the Federation holds.

- 2.7. The police family suffered greatly from terrorist violence and propaganda. Local police officers were the softest security targets for terrorists; thousands were injured in approximately 15,000 bombings and other terrorist attacks. These victims have been largely ignored by the Victims Commission, alienated by a definition unique to Northern Ireland that equates an active terrorist to the innocent people they murdered. The draft Bill and NIO proposals do not seek to redefine this. This remains an enormous barrier that prevents the police family from engaging with the proposed legacy institutions.
- 2.8. The Police Federation cannot claim to speak for all groups of people. However, for a police family already marginalised by legacy institutions, these proposals simply compound the issue.

If no, please suggest additional measures that would improve this for specific groups

- 2.9. The Police Federation are strongly opposed to the creation of any parallel police service. We believe that the PSNI, that is the *Police Service* of Northern Ireland, are the appropriate body to undertake investigations into criminal activities, including murder, regardless of the date. There is no need for an extra ‘super’ police agency with sweeping powers, working upon abstract terms for wrongdoing and under new laws. If legislation gives the authority of constable, as the Draft Bill does, the people it gives it to should be actual police constables. That is, members of the PSNI. There is no need to deviate outside the normal criminal justice system, indeed we are deeply concerned about any institution, set in legislation, which would set such a precedent.
- 2.10. As such, we believe that the HIU concept should be discarded, and the PSNI should be *properly resourced* in order to carry out all necessary legacy investigations. This ensures investigations are conducted based upon criminal offences as set and defined in law, as well as established disciplinary processes, with misconduct offences set and defined in codes and regulations. Independent complaints and oversight mechanisms are already established (albeit OPONI will need reformed) and the PSNI Legacy Investigation Branch (LIB) is already up and running.
- 2.11. Concepts such as ‘truth recovery’, ‘history projects’ and ‘reconciliation’ are outside of criminal justice and criminal investigations. To mix the two is, in our opinion, certain to cause confusion, controversy and will be a drain on the public purse through costly legal processes.
- 2.12. Therefore, in place of the Independent Commission on Information Retrieval (ICIR), we suggest that the PSNI are the body responsible for providing information about Troubles-related deaths. This should be done via a report composed by the PSNI, redacted where necessary, enabling a thorough analysis of the context within which the incident took place. A concise, fact-based report complimented with relevant intelligence reports, appropriately sanitised

⁵ Southern N. 2018, p263.

and considerate of Articles 2, 6 and 8 is a baseline option – this would at least, provide families of victims with something, whilst remaining rooted in fact. This proposal also eliminates the risk of someone confessing to crime, implicating others and the confusion this would cause in respect of the HIU being informed, as well as legal defamation issues.

- 2.13. In the interest of balance, fairness and transparency (concepts which are said to be at the core of this consultation), it is imperative that the academic reporting element of both the Oral History Archive (OHA) and the Implementation and Reconciliation Group (IRG) is conducted by reputable and independent academics. The primary data used in both of these forums should include documents on policing and security held by both the UK and ROI Governments, incident reports, captured terrorist documents, propaganda newsheets – anything less will be deemed to be tainted with bias.
- 2.14. The PFNI are strongly of the view that the future ‘legacy landscape’ must make-up the current imbalance in legacy investigations between those relating to the state and those attributable to terrorist groups. This should be based upon the metrics of money, working hours and prosecutions across the entire legacy landscape. When such a parity is reached, investigations should proceed on a 1:9 security forces / terrorist ratio for deaths.
- 2.15. Finally, we believe that the proposals should adopt the European definition of victim which excludes the perpetrator of crime⁶.

⁶ The Victims’ Rights Directive 2012/29/EU reads: “As defined by article 2 of the directive, a victim is a natural person who has suffered harm, including physical and mental or emotional harm or economic loss which was directly caused by a criminal offence.” Natural person is not a terrorist.

3. Question 3: HIU remit

Should the HIU's remit also include deaths which took place between the signing of the Belfast Agreement on 10 April 1998 and 31 March 2004?

Response: No

- 3.1. As per paragraph 2.9, the PFNI are totally opposed to the creation of a parallel police force in Northern Ireland. The responsibility for investigating all criminality, including murder, should remain with the PSNI, regardless of the date of the offence. As such, it is our position that the investigation of deaths which took place between April 1998 and March 2004 should be investigated by the Police Service for Northern Ireland. Investigations answer to the rule of law and not time limits imposed by political agreement.
- 3.2. We are concerned that taking historical cases away from the PSNI implies that the organisation and its officers are biased or in some way unfit to conduct a fair, effective and impartial investigation. It sets a worrying precedent and invites the same argument into current and future investigations conducted by the PSNI.
- 3.3. Given how the reputation of the RUCGC and some of our former members have suffered in legacy, which the Federation holds to be grossly unfair, we are fearful that this will also be visited on the PSNI and our current members.

4. Question 4: HIU Director assessing previous investigations and deciding whether further investigation is needed

Do you think that the process set out is the right way to assess whether an investigation into a Troubles-related death has taken place or whether investigation is needed?

Response: No

- 4.1. We do not believe that the proposed investigative approach is the correct way forward as it mirrors that of the Police Ombudsman. We view this approach as controversial and, in our opinion, promotes too much autonomy held by a single individual. Our experience of this process has us greatly concerned about a lack of appropriate governance over such decisions, notably a lack of oversight, leading to decision-making which defy the fundamental principles of criminal justice procedures.
- 4.2. Ambiguous terms retrospective in nature leave us greatly worried. A lack of independent accountability and subjective decision-making have us deeply concerned. Together, these call any assessment of whether appropriate investigations have taken place, or if they need to take place, into disrepute. Within the current system the Police Ombudsman can deploy the ambiguous term 'collusion' to trigger an investigation, a process used primarily against police officers and exclusively the security forces. We have no doubt that if this was applied to any other section of society, there would be uproar.
- 4.3. As opposed to attempting to fix the obvious flaws in the current system, the proposals expand upon it by adding five new terms for wrongdoing, entered into law:
 - Non-criminal police misconduct;
 - New evidence
 - Conduct of P (person);
 - Avoidance of justice, and;
 - Improper purpose.
- 4.4. None of these terms are defined in the draft Bill, or indeed, anywhere else in law or in disciplinary regulations. It is our reading that these relate mostly, if not exclusively, to police officers (serving and retired) and that they are to be applied retrospectively. It will be left to the Director of the HIU to define what these mean.
- 4.5. The Chief Constable has similar autonomy in Schedule 3 (7) of the draft legislation, which legislates for the Chief Constable to decide what constitutes 'avoidance of justice', 'conduct of P' and 'improper purpose' as grounds for re-investigating cases already completed. Clause 8 legislates for 'non-criminal police misconduct' linked to: "(i) the gravity of the misconduct, or (ii) exceptional circumstances."
- 4.6. This wording is lifted from Section 60 (1) (b) of the Police (NI) Act 2000 where it reads: "an inquiry ought to be held under this section into that matter or any related matter [our emphasis] disclosed in the report by reason of the gravity of the matter or exceptional

circumstances.” What we underscore is what ‘non-criminal police misconduct’ has replaced. Uniquely, this is a civil case with a lower burden of proof – balance of probabilities.

- 4.7. The scope here is wide-ranging, calamitous in a criminal justice context as it invites multiple interpretations, like much in the draft Bill. Here the HIU director decides what ‘non-criminal police misconduct’ is and what grave and exceptional circumstances are.
- 4.8. A single abstract definition of wrongdoing (‘collusion’), set outside the law, has started countless investigations. Many revolve around ambiguity, with supposition and woolly language masquerading as evidence. The McCloskey judicial review was scathing of the approach⁷. From the perspective of the Police Ombudsman, it contends that it has the lawful authority to behave as it did, based on its interpretation of the Police (NI) Act 1998⁸. The legal action which started in August 2016 has yet to conclude.
- 4.9. Now consider, five abstract terms set in law? This will create a situation where virtually any issue against police can launch an investigation in a regime where a sole arbiter decides when this happens, what it is and if it occurred. The Federation are of the view that this patently flouts fundamental human rights, notably Articles 6 and 7 and we do not want this repeated in a new legacy arrangement.
- 4.10. Another concern we have relates to Clause 24 (1), Clause 35 (1), Clause 36 (1) and Schedule 7, 2 (1) that gives the Director and HIU personnel the power of constable. The concern is not the power, but that it is not tempered with independent oversight and complaints mechanisms common in UK policing. On the PONI website under ‘How to complain about the office,’ it reads: ‘We will look into your complaint and send you a written reply.’ They investigate themselves. This is unacceptable.
- 4.11. Other forms of accountability including Clause 30 - ‘Complaints and discipline,’ Clause 31 - Internal Systems and Schedule 14 (1) - ‘Inspection of the HIU’ by the Chief Inspector of Criminal Justice are below the UK standard for independent oversight and complaints mechanisms.
- 4.12. Despite Schedule 14 (2) introducing the prospect of “Power of Inspectors of Constabulary to inspect the HIU”, this relies upon “an appropriate authority,” like the Secretary of State. The ‘appropriate authority,’ however, has rarely intervened.
- 4.13. Of note, we are compelled to believe that the opening of Schedule 1 ‘Powers and procedure,’ that states: “The HIU may do anything that it thinks necessary” is a drafting error.
- 4.14. The independent accountability required of a public authority falls well short of the norm, leaving us gravely concerned, especially given the huge leeway the HIU Director is afforded in defining wrongdoing in order to start an investigation.

⁷ McCloskey, *Judicial Review*, paragraph 70.

⁸ McCloskey, *Judicial Review*, paragraph 95.

5. Question 5: HIU – disclosure appeals mechanism

Do you think that the proposed mechanism to appeal disclosure decisions to a judge provides adequate opportunity to challenge decisions by the UK Government to protect information?

Response: No

- 5.1. The Police Federation hold the view that the best judge of whether intelligence, sensitive information or secret practices can be disclosed is the agency that holds the proprietary rights.
- 5.2. National security is *not* a devolved matter, it is the preserve of the Central Government. However, Clause 4 of the draft legislation identifies the HIU as a devolved institution. As such, we hold that it sits outside the national security umbrella. The draft Bill, however, appears to have handed responsibility for such matters to the local Northern Ireland Policing Board, mirroring the situation that the Police (NI) Act 1998 created for the Police Ombudsman.
- 5.3. When looking at disclosure, national security is the main concern of the PFNI. It falls under “sensitive information” in Clause 39. We feel safe to make the working assumption that the “Police Service which engages in intelligence activities” includes the RUCGC (especially Special Branch) and the PSNI (especially Crime Operations Branch). Nevertheless, statutory bodies investigating the past have inveigled their way into issues of national security, a space that, during the Troubles, was the sole preserve of police intelligence professionals bound by the Official Secrets Act. Central Government did not, effectively, get in the way. This has meant that the public and indeed, local statutory bodies setup to investigate historical cases, have been conditioned to accepting this as the norm.
- 5.4. Pressure groups and legacy law firms (part of a growing legacy ‘industry’) will undoubtedly, on behalf of families they advocate for, contest any redaction or withholding of information on national security grounds. This is only to be expected given the precedent already set. Court appeals and judicial reviews are destined to be common, controversial and costly. The proposed appeal mechanisms will lead to an intensification of this process.
- 5.5. Furthermore, outside of lawful disclosure there is a history of unsolicited leaks and carelessly written reports by statutory bodies who have conducted historical investigations. Our concern here relates to the identification of police officers and ‘informers’ with obvious Article 2 and Article 8 risks. Indeed, paragraph 21 of the Explanatory Notes omits police officers (serving or retired) from appealing against disclosure likely to impact on them.
- 5.6. Terrorists continue to target both serving and retired officers and murder self-disclosed ‘informers’. The PFNI is of the opinion that the legacy setup for disclosure has abjectly failed to protect the human rights of police officers and the proposed regime is even worse. We also wonder if there are data protection issues, especially in light of the new General Data Protection Regulations.

6. Question 6: HIU – overall view

Does the HIU provide a method to take forward investigations into outstanding Troubles-related deaths in a proportionate, victim-centred manner with an appropriate structure and safeguards?

Response: No

- 6.1. How can the planned HIU be proportionate when it has two ways to start an investigation, one of them solely for local police officers? How is creating new offences and applying them retrospectively an appropriate safeguard?
- 6.2. Clause 8 (1) reads: “(a) the investigation of any criminal offences relating to the death, and (b) the investigation of any non-criminal police misconduct relating to the death...” Non-criminal police misconduct, contrary to the wording, implies crime. It is prominently positioned in the draft Bill and proliferates it, cited 21 times. There is nothing similar for soldiers, Security Service personnel, civil servants, politicians, terrorists (republican and loyalist) and their political parties. This is discriminatory and in our opinion, a violation of Article 14 and by default, Section 75 of the Northern Ireland Act 1998 central to questions 15 and 16.
- 6.3. We do not regard Clause 12 - ‘Separate conduct of criminal and police misconduct investigations’ - proportionate or an appropriate structure in going forward. We also hold the same view for Clause 10 (4) where the HIU Director, in appointing staff in an investigation, considers “work related conflict of interest” that arises from their “activities in any previous employment.” This is cloned from OPONI ‘Article 2’ policy that clarifies the issue.⁹ OPONI has a professional ban on police officers who served in the Troubles and it is our assessment that the HIU will have a similar professional ban. Whilst this negatively impacts upon our members searching for career opportunities when they retire, it is also exceptionally short-sighted, cutting out of the investigative process the very people who have the requisite investigative skills required.
- 6.4. The proposed HIU is a powerful statutory authority. It decides what to investigate. Defines wrongdoing. Determines what to publish. These are not safeguards, unlike crimes fixed in law and misconduct fixed in the Police Code of Ethics.
- 6.5. Paragraph 64 in the Explanatory Notes of the draft Bill states: “The HIU must first form a view as to whether both kinds of investigation are needed before it starts” and at paragraph 68 ‘Police misconduct investigations: procedure and report’ demand that the “HIU must ensure that any such procedures are consistent with PSNI and Police Ombudsman procedures.” However, when measured against these the proposed procedures are inconsistent.
- 6.6. For instance, the Police (NI) Act 1998 for the Police Ombudsman at Sections 58 and 59 instruct, only after an investigation into alleged criminal behaviour has finalised is the ‘police disciplinary’ aspect considered. And the PSNI Code of Ethics defines ten Articles that constitute

⁹ OPONI, 2018

- misconduct, as opposed to the Chief Constable, which is what would happen if the PSNI mirrored the HIU.
- 6.7. Further, Clause 9 has three conditions to help the Director “decide” on what triggers an investigation. Two of them involve ‘non-criminal police misconduct.’ Clause 39 relates this to conduct before, during and after the death, as well “any investigation, arrest or prosecution which concerns the death.” It even includes deceased police officers at Schedule 5 (8).
- 6.8. The Police Federation is worried by a proposed structure where it is unclear what happens to a serving officer under investigation for ‘non-criminal police misconduct’ who retires. In this context the Explanatory Notes at paragraph 68 talks of “current and former police officers.” What is planned for the latter gives us grave cause for concern. When a person joined the RUC or PSNI, the conditions of service made them subject to police discipline regulations and a range of misconduct offences. They knew these rules and what behaviour broke them. On retirement they become a private citizen and are no longer subject to this. Legislation that subjects retired officers to a regime armed with a new misconduct offence that did not apply in their conditions of service when they were in the police is, in our opinion, contrary to the rule of law.
- 6.9. Given that the PSNI Code of Ethics does not bind former officers and the draft bill does not define ‘non-criminal police misconduct.’ Where does this leave them? What is the tribunal mechanism? The sanctions? Appeal process? How do they defend themselves? How do they access their original statement and suchlike, or are they even entitled to? Do they get legal aid? Legal representation? If, what constitutes ‘misconduct’ is identified at the outset, are they (the accused person) identified at the same time and told what the ‘misconduct’ is before voluntarily giving an interview? And how does all of this fit in with the consistency the proposals insist on when there is nothing remotely like it in the PSNI or, indeed, any other police service or investigative authority in the UK or ROI?
- 6.10. Many historical cases involve the families of a murder victim. What they bring is third-party accounts, beliefs and expectations based on these. We fully accept that people’s perceptions should be acknowledged. That said, it seems, when an allegation is lodged against the police in abstract terms with no specific crime identified, as Matchett states “The filter of healthy scepticism normally found in assessing the validity of a complaint is missing”¹⁰. A normal investigation follows evidence, not hearsay or belief.
- 6.11. We see the HIU disproportionately focused on one group of local people – police officers – with unsound safeguards and structure. We cannot reconcile this with Article 14 and any sense of natural justice or common law fairness.

¹⁰ Matchett, W. 2016, p241.

7. Question 7: Independent Commission on Information Retrieval

What actions could the ICIR take to support families who seek information about the death of their loved one?

- 7.1. The Independent Commission on Information Retrieval (ICIR) seems to be based on truth recovery and storytelling from places like South Africa. Its appropriateness in a context where terrorist organisations committed 90% of all killings is questionable. As with ‘non-criminal police misconduct,’ this approach simply detracts from criminal justice, which we believe should be the priority.
- 7.2. Furthermore, we question how families are able to receive the information sought if many police officers are unable to tell their stories due to legal restrictions, including the Official Secrets Act and data protection legislation. As a result, we firmly believe that this body will become little more than a vehicle used by former terrorists to provide biased and often false and malicious accounts of historical incidents. As we reported in paragraph 2.4, it is our belief that the effective exclusion of police officers from this body will fuel the biased narrative which dominates much legacy dialogue.
- 7.3. We are conscious of impediments for a family looking to know what happened a lost loved one. Passage of time, refusal of terrorists to provide honest accounts - as this would put them in prison - national security restrictions and security forces who do not engage because they have lost confidence in legacy institutions (see our response to question 2 and question 5).
- 7.4. Whilst the ICIR will have no prosecutorial function, a local academic of the Transitional Justice Institute (TJI), Mallinder, argues that, essentially, it should have for specific issues; “there should be penalties for people who provide false information ... or people who otherwise obstruct the commission’s work perhaps by destroying documents”¹¹. As terrorists tend not to keep records of their activities, it is clear that the main target is the police.
- 7.5. Furthermore, according to McGrattan it is possible that the investigatory body [HIU] may be undermined by “beefing up the truth-recovery” aspect of the proposals. Here he identifies the potential for terrorists to exploit the ICIR through “non-admissible” testimony to “effect immunity for themselves” and former colleagues¹². We share McGrattan’s concerns.
- 7.6. The ICIR is a truth recovery and storytelling body, sure to reinforce a biased narrative predominately critical of the state. We oppose the concept, chiefly because police officers are severely impeded from engaging.

¹¹ McGrattan, C. in Dudgeon, J. 2018, p59.

¹² McGrattan, C. in Dudgeon, J. 2018, p59.

8. Question 8: Independent Commission on Information Retrieval

Do you think ICIR is structured correctly, with the right powers and protections, in a way that would provide victims and survivors with the chance to seek and receive information about the deaths of their loved ones?

Response: No

- 8.1. In response to this question we defer to commentary provided by Neil Faris, with which we are in agreement. According to Mr Faris Article 8 has been interpreted to “include protection of reputation: in particular, imparting information that a person has committed a criminal offence interferes with the right to private life if the person in question has not been convicted... Thus it must follow that the proposed disclosure to victims of findings of fact amounting to determinations of guilt other than a court of competent jurisdiction (i.e. a criminal court) would constitute a breach of Article 8. Thus, if the draft Bill fully and properly protects ‘reputation’ in accordance with Article 8 of the European Convention on Human Rights, it will fall to be struck down in the courts for ‘incompatibility’ under the Human Rights Act 1998”¹³.
- 8.2. The legal interpretation of what amounts to defaming reputation applies throughout the draft Bill, particularly the police misconduct element and HIU publishing reports.
- 8.3. Faris continues, stating that the “ICIR is not subjected to judicial review, Freedom of Information, Data Protection and National Archives legislation in either jurisdiction. So to oust the jurisdiction of our courts runs defiantly counter to the principles of the rule of law that everyone should be ... entitled to the benefit of laws publicly made... and publicly administered in the courts”¹⁴.

¹³ Faris, N. in Dudgeon J. 2018, p15.

¹⁴ Faris, N. in Dudgeon J. 2018, p32.

9. Question 9: Oral History Archive

Do you think that the Oral History Archive proposals provide an appropriate method for people from all backgrounds to share their experiences of the Troubles in order to create a valuable resource for future generations?

Response: No

- 9.1. The Police Federation for Northern Ireland accept that there is more than one narrative of the Troubles. It is a contested space. As such, the historical narrative must be shared, not only to help Northern Ireland but other nations suffering similar civil emergencies.
- 9.2. However, thinking specifically about the purpose of the Oral History Archive (OHA) and the nature of involvement, we once again find ourselves questioning how police officers will be able to engage given the legal restrictions under which they operate. As such we are forced to conclude that this body is *not* a body where 'people from all backgrounds' can share their experience – in fact, by the nature of the jobs held by the members we represent, a key group are explicitly excluded from participation. Again, we are of the opinion that this will ultimately encourage the continuation of a biased narrative of the NI Troubles. So long as a key demographic, such as police officers, are unable to engage and tell their story it is impossible for a balanced narrative to emerge.
- 9.3. The Police Federation do, however, favour the input of academics and historians in the creation of research projects, albeit such persons must be deemed appropriately independent. Even the briefest review of extant literature shows a tendency in academia to write unfavourably of security policy. The PFNI is therefore worried at academic moral equivalence that would give equal weight to terrorists and security forces. Highly respected historians put in charge would offset much of our concern. One means of ensuring this is for all applicants to present their previous works to a suitably convened panel who ultimately selects the academics to participate.
- 9.4. Furthermore, Clause 57 deals with "immunity from suit for prosecution," leading one legal mind to ask "[h]ow are those against whom allegations are made in such oral history 'narratives,' expressly or by implication, to protect themselves? And, Why should those making malicious allegations in such 'narratives' be protected against defamation claims"¹⁵. We also share these concerns with regards to any OHA.

¹⁵ Faris, N. in Dudgeon, J. 2018, p26.

10. Question 10: Oral History Archive

What steps could be taken to ensure that people who want to share their experiences of the Troubles know about the Archive and are encouraged to record their stories?

- 10.1. The Police Federation are of the opinion that the bulk of people looking to tell their story will come from the section of society that refused to assist criminal investigations, whilst the silent majority will be less willing to engage.
- 10.2. As expressed in our reply to question 9, OHA risks going down a well-worn path preferred by certain pressure groups, local academics and political parties. As a concept, the OHA simply cannot work as intended without vital input from police officers.

11. Question 11: Commissioning the academic report on themes and patterns

Do you think that ESRC should be engaged to commission academic work on patterns and themes to ensure independence, impartiality and best practice in academic research?

Response: No

- 11.1. The Economic and Social Research Council (ESRC) is the “UK’s largest organisation funding research on economic and social issues, supporting independent, high quality research which influences business, the public sector and the charity and voluntary sector”¹⁶.
- 11.2. Whilst we appreciate that the ESRC is a reputable institution, it is clear from its portfolio that it does not study policing, security, ‘armed conflict’ or terrorism, particularly in the context of contemporary history. If it has conducted research in these areas, we were unable to locate it. For this reason we believe that RAND Europe, Policy Exchange or the UK Defence Academy may be better suited to undertake this role.
- 11.3. The terms of reference for themes and patterns which form the basis of this academic reporting are determined by the draft legislation. As it stands, we are confident that these will be primarily critical of the state, with police misconduct the dominant theme. We suggest the following as themes and patterns we would like to see included:
- Unlawful terrorist organisations and political partners;
 - Human rights in civil emergency;
 - Legacy - cost and beneficiaries and;
 - Security and policing: lessons learned.
- 11.4. According to Faris; “[p]atterns and themes inevitably involve the conduct of people. How could evidence of the same be protected in a manner that protect individuals, and what would be the value of a Report from academic experts chosen in this political fashion and working within the political constraints of the Stormont House Agreement?”¹⁷ We are again in agreement with the analysis conducted by Faris.
- 11.5. Irrespective of the commissioning institution, the research will depend on the academics that undertake it, a point which we have covered in question 9.

¹⁶ UK Government, 2018

¹⁷ Faris, N. in Dudgeon, J. 2018, p26.

12. Question 12: Implementation and Reconciliation Group

Do you think the IRG is appropriately structured to allow it to review the work of legacy institutions, to commission an independent academic report and promote reconciliation?

Response: No

- 12.1. The PFNI are deeply concerned about moral equivalence – equating terrorists to police officers – and how this works as part of a reconciliation project and through an independent academic report.
- 12.2. In defining a ‘victim’, the current legacy arrangement has sought to equate terrorists injured by their own hand with the very people they murdered. Nowhere else is the word victim described in such a manner. Aughey writes of “moral inversion: where terrorists have become victims; where those who enforced the law are now held to be criminals; where those who refused to support violence are to be held in debt to those who did; and where dealing with the past has come to mean underwriting a narrative of subversion” ¹⁸.
- 12.3. The Police Federation are of the opinion that, as long as some political parties cannot condemn all Troubles murders, and their elected members are included in a group with ‘reconciliation’ in its title, reconciliation will seem little more than an illusion and the commissioning of an academic report seemingly susceptible to bias.

¹⁸ Aughey, A. in Dudgeon, J. 2018, p127.

13. Question 13: Stormont House Agreement proposals – overall view

Do you think that the package of measures proposed by the Stormont House Agreement provides an appropriately balanced and planned way to move Northern Ireland forward that can command the confidence of the community?

Response: No

- 13.1. At Clause 49 (6) the draft Bill estimates that legacy caseload will be dealt with in 5-yrs. From a practitioner viewpoint, this is outrageously ambitious. We estimate that it will take far longer and cost a lot, lot more.
- 13.2. With the well-documented shortage of experienced detectives in British policing, it will be extremely difficult for any investigative authority to recruit suitably qualified investigators¹⁹.
- 13.3. We hold the view that, principles of proportionately and balance expressed in the Stormont House Agreement did not make it into the draft legislation proposed, and that this does little for public confidence in dealing with the past. Indeed, the word ‘terrorism’ or ‘terrorist’ do not even appear in the Stormont House Agreement, a strong indication that terrorist organisations will not feature heavily in legacy moving forward. Balance has been badly missing in investigating the past, and this gives the PFNI no assurance that this will change under the current proposals.

¹⁹ The News Letter, 1.08.2018 ‘New Legacy body won’t cope with scale of workload: former top investigator’

14. Question 14: Other views on the past

Do you have any views on different ways to address the legacy of Northern Ireland's past, not outlined in this consultation paper?

- 14.1. In response to this question we draw attention to the impact of hindsight bias, false memory and context. Hoffrage and Pohl explain 'hindsight bias' as a psychological condition where, after an event people often think they would have known the event was coming before it happened, had they been present before it happened or had they reason to pay attention to what was occurring in the lead up²⁰.
- 14.2. Research in psychology has studied how "false memories arise in the brain" and contrary to popular belief, "human memories are malleable, open to suggestion and often unintentionally false"²¹. The failings of memory have been applied in a criminal justice context with historical cases, some, 40-years old.
- 14.3. The Police Federation steadfastly believe that it is imperative that any new legacy arrangement considers the impact of hindsight bias, false memory and context framing. This should be factored into any and all staff training, investigations, interviews, decision-making and report writing.
- 14.4. Furthermore, and in reference to our response to question 2, the Federation also believe that in dealing with the issue of NI's legacy, the following measures should be taken:
- No parallel police force - the HIU concept should be discarded, and the PSNI should be *properly resourced* in order to carry out all necessary legacy investigations.
 - The future 'legacy landscape' must make-up the current deficit in legacy investigations. When such a parity is reached, investigations should proceed on a 1:9 security forces / terrorist ratio for deaths.
 - This consultation gives no consideration to the plight of the many injured victims of the Troubles. We believe this is a glaring oversight which urgently requires rectifying.
 - The current system provides for the full weight of the legal aid system to be available for anyone seeking an investigation into or against the actions of the police. In contrast, serving and retired police officers are left to their own devices to defend themselves against unfounded allegations which require refuting. We believe that a separate funding scheme should be made available to serving and retired police officers, to ensure they are financially capable of mounting a proper defence of their actions; actions which were carried out in protection of society.

²⁰ Hoffrage, U. and Pohl, R. 2003

²¹ Wired, 22.07.2017, 'False memories and false confessions: the psychology of imagined crimes'

- The proposals should adopt the European definition of victim which excludes the perpetrator of crime.
- In place of the Independent Commission on Information Retrieval (ICIR), we suggest that the PSNI (properly resourced) are the body responsible for providing information about Troubles-related deaths.
- The academic reporting element of both the Oral History Archive (OHA) and the Implementation and Reconciliation Group (IRG) must be conducted by reputable and independent academics.

15. Question 15: Impact of the current system

What are your views on the impact of the current system for addressing the past (as outlined in Part one) for different groups as described by Section 75 of the Northern Ireland Act 1998?

- 15.1. The Police Federation for Northern Ireland are deeply concerned about the current and proposed legacy arrangements. The key basis for this concern emanates from the fact that one local group has been unfairly singled out, and it is our position that this is set to continue under the draft legislation. This group are, of course, police officers - both serving and retired. We have made our concerns known to Government and to successive Chief Constables, without anything noteworthy resolved. An opportunity to stop this is the draft Bill, however we do not see that happening.
- 15.2. Clause 1 of the draft legislation sets out the principles of upholding the rule of law, complying with human rights and balance which we cherish, however this does not manifest thereafter in Clauses, Schedules or Explanatory Notes.
- 15.3. We hold the view that the draft legislation has failed to identify obvious flaws in the current legacy arrangement, let alone fix them. This significantly disadvantages our members.
- 15.4. The Federation is aware that some individual police officers did commit crimes. Where this happened, we completely condemn it. Where there is evidence of it, we support them being pursued in criminal proceedings and we are totally opposed to amnesties, for any group. Our position on this has been consistent and our intent has never been to protect wrongdoers. The Federation has nothing to hide. But how historical investigations have employed ambiguous definitions directed toward police that heavily imply serious criminality, without supporting evidence to support prosecution, is wrong.
- 15.5. For our members, we simply want what every other person has - justice, fairness and equal protection under the law. The draft legislation does not give us this. Our experience of legacy justice has left us fearful that more opportunities to rewrite history at the expense of the police family will be created and eagerly seized upon.
- 15.6. Statutory authorities in historical reports have defamed individual officers as well as the organisation. Controversial findings caused distress for police officers (both serving and retired) and their families. This is unacceptable. The processes undertaken by certain statutory bodies when investigating historical cases are in breach of Article 6, the Salmon principles²²

²² The Salmon Principles read: "1) before any person becomes involved in an inquiry, the Tribunal must be satisfied that there are circumstances which affect him and which the Tribunal propose to investigate. 2) Before any person who is involved in an inquiry is called as a witness, he should be informed of any allegations, which are made against him and the substance of the evidence in support of them. 3) (a) He should be given an adequate opportunity of preparing his case and of being assisted by his legal advisers. (b) His legal expenses should normally be met out of public funds. 4) He should have the opportunity of being examined by his own solicitor or counsel and of stating his case in public at the enquiry. 5) Any material witness he wishes called at the enquiry should, if reasonably practicable, be heard. 6) He should have the opportunity of testing by cross-examination conducted by his own solicitor or counsel any evidence which may affect him."

and normal statutory duty on public authorities as expressed in Section 75 of the Northern Ireland Act 1998. A recent court judgement shows this, as well as other violations of fundamental human rights²³.

- 15.7. The PFNI contends that, so far, legacy has discriminated against local police officers and this, in our opinion, is in violation of Article 14 and Section 75. It has also been extremely difficult and costly for the Federation (and our members when they retire) to challenge statutory authorities and protect police officers from litigation.

²³ McCloskey, *Judicial Review*.

16. Question 16: Impact of the Stormont House Agreement proposals

What are your views on the impact of the Stormont House Agreement proposals (as outlined in Part two) for different groups as described by Section 75 of the Northern Ireland Act 1998?

- 16.1. In 1998 the 'parity of esteem' principle in the Belfast Agreement excluded police officers and singled them out in new legacy legislation. In 2014, the Stormont House Agreement repeated the process, contrary to Section 75.
- 16.2. In our view, discrimination against police officers will get worse if the draft Bill as it stands is implemented.

17. Question 17: Opportunity to promote equality of opportunity or good relations

Is there an opportunity to better promote equality of opportunity or good relations?

- 17.1. In our view, solely selecting police officers for special attention does not promote equality of opportunity. We cannot ignore the views of our members, as the draft Bill has done. Promoting equality and good relationships to heal the pain of the past is not served by contorting the criminal justice system with new and vague definitions of wrongdoing for one group of local people (police officers), retrospectively applied.
- 17.2. True equality would have new definitions for wrongdoing to begin an investigation apply to each protagonist – republican terrorists, loyalist terrorists, political parties that supported and excused terrorism, soldiers, MI5, civil servants, policy makers and politicians. This is not an exhaustive list. This same applies to the Republic of Ireland. But neither Dail Eireann, Irish civil servants, Garda nor Irish Army are lawfully obligated by the draft Bill.
- 17.3. In moving forward, we seek full recognition of the contribution and roles performed by murdered and injured officers. To this end, equality of opportunity is better promoted, in our view, by abandoning the proposals, as they are not fit for purpose.
- 17.4. In addressing the annual Police Federation for Northern Ireland conference in May 2018, the PFNI chairman stated “it would be the most monstrous injustice to our murdered men and women if we were to accept some half-baked idea that resulted in the names of our colleagues being sacrificed for the sake of political expediency”. In the intervening months, having studied almost 250-pages of NIO proposals for a fresh legacy arrangement, ‘monstrous injustice’ was an understatement.

Abbreviations and Common Terms

ESRC	Economic and Social Research Council
HIU	Historical Investigations Unit
ICIR	Independent Commission on Information Retrieval
IRG	Implementation and Reconciliation Group
LIB	Legacy Investigations Branch
NI	Northern Ireland
NIO	Northern Ireland Office
OHA	Oral history Archive
OPONI	Office of Police Ombudsman for Northern Ireland
PFNI	Police Federation for Northern Ireland
PSNI	Police Service of Northern Ireland
ROI	Republic of Ireland
RUC	Royal Ulster Constabulary
RUCGC	Royal Ulster Constabulary George Cross
TJI	Transitional Justice Institute
UK	United Kingdom
UN	United Nations
Clause	Sections in the draft legislation proposed by the NIO
Schedule	Sections in the draft legislation proposed by the NIO
Draft bill	Draft Northern Ireland (Stormont House Agreement) Bill
Explanatory Notes	Northern Ireland (Stormont House Agreement) Bill
Federation	Police Federation for Northern Ireland (PFNI)

Article	Convention articles in Human Rights Act 1998 that integrated the European Convention on Human Rights 1950 into UK law.
Article 2	Right to life
Article 6	Right to a fair trial
Article 7	No punishment without trial
Article 8	Right to respect private and family life
Article 13	Right to an effective remedy
Article 14	Prohibition of discrimination

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