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**PFNI rejects draft Legacy Bill in its entirety**



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# 'Scrap this effort to fix the past before

**The Police Federation for Northern Ireland (PFNI) has made a detailed 32-page Submission to the Government's Consultation on 'Addressing the Legacy of Northern Ireland's Past.'**

**Commenting on the initiative, the PFNI Chair, Mark Lindsay, has set out how the Consultation is flawed and why the organisation rejects it in its entirety.**

**Mr Lindsay said: "There are too many deficiencies, too much imbalance, too little acknowledgement of the role played by former and serving Officers, and an underlying dangerous desire to placate those who wrought havoc and destruction.**

**"The bomber and gunman cannot be viewed on a par with the RUC GC and the PSNI. If this consultation is taken forward into draft legislation, all it will achieve is to provide an immoral equivalence between the terrorist and the Police Officer, which we find morally repugnant and indefensible.**

**"Our history cannot be re-written to suit the murderers and bombers at the expense of brave men and women who delivered the peace.**

**"The Government has enough to contend with at present without the toxic mix of the past. It should scrap this effort to fix the past before it becomes an uncontrollable monster."**



## Rejection based on eight key points

**Eight key points make up the reasons why the PFNI is rejecting Northern Ireland (Stormont House Agreement) Bill in its entirety. The draft Bill was studied through the optics of justice principles and the organisation said it was left with no option but to dismiss it.**

The eight key points are:

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.

# it becomes an uncontrollable monster'

## Overview of PFNI position

The Consultation asked a series of questions and here are the PFNI responses in this table overview.

Theme	Question	Yes	No	Response
<b>Q1: Current systems for addressing the past</b>	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?			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.
<b>Q2: Stormont House Agreement Proposals – engagement with legacy institutions</b>	Does the proposed approach help to ensure all groups of people can effectively engage with the legacy institutions?		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.
	If no, please suggest additional measures that would improve this for specific groups			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.
<b>Q3: HIU remit</b>	Should the HIU's remit include deaths which took place between the signing of the Belfast Agreement On 10th April 1998 and 31st March 2004?		X	The responsibility for investigating all criminality, including murder, should rest with the PSNI – regardless of the date of the offence.
<b>Q4: HIU – Director deciding about investigations</b>	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?		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.
<b>Q5: HIU – disclosure appeals mechanism</b>	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?		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.
<b>Q6: HIU – overall view</b>	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?		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?
<b>Q7: Independent Commission on Information Retrieval</b>	What actions could the ICIR take to support families who seek information about the death of their loved one?			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?

Theme	Question	Yes	No	Response
<b>Q8: Independent Commission on Information Retrieval</b>	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?		X	We are deeply concerned about the ICIR and how it will work in accordance with Article 8.
<b>Q9: Oral History Archive</b>	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?		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.
<b>Q10: Oral History Archive</b>	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?			The OHA risks being a platform for those who refuse to assist in criminal investigations.
<b>Q11: Commissioning the academic report on themes and patterns</b>	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?		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.
<b>Q12: Implementation and Reconciliation Group</b>	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?		X	We are concerned about moral equivalence and how this works as part of a reconciliation project and through independent academic reporting.
<b>Q13: Stormont House Agreement proposals – overall view</b>	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?		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.
<b>Q14: Other views on the past</b>	Do you have any views on different ways to address the legacy of Northern Ireland's past, not outlined in this consultation paper?			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.
<b>Q15: Impact of the current system</b>	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?			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.
<b>Q16: Impact of the Stormont House Agreement proposals</b>	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?			It is our view that the discrimination against police officers will worsen under the new proposals.
<b>Q17: Equality of opportunity or good relations</b>	Is there an opportunity to better promote equality of opportunity or good relations?			Solely focussing on police officers does the opposite of promoting equality of opportunity or good relations.

# Way forward blighted by political agendas

In a section in the Submission entitled 'Context', the PFNI explains why this latest effort to address the past will fail to deliver. It states: 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.





# Editorial

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The past has always presented challenges to the way Northern Ireland deals with the present. Competing agendas are played out. Violent and dreadful incidents are recalled. Families re-live the trauma of what was done to loved ones.

All previous attempts to deliver answers and construct new institutions have run into the sands. To many, our troubled past is simply too difficult to resolve.

The Government's Consultation on 'Addressing the Legacy of Northern Ireland's Past' is also a doomed initiative. The PFNI has made a detailed Submission which leaves Ministers in no doubt as to where this organisation stands. We reject the draft Northern Ireland (Stormont House Agreement) in its entirety.

Others have made similarly robust and candid Submissions. The 'Police family', including the Superintendents' Association and the Retired Police Officers' Association, are on the same page. We have not choreographed our views and recommendations; independent of each other, we have arrived at the same conclusions that the heroic work done by Officers during the 'Troubles' should not be debased or sacrificed on the altar of political expediency.

We oppose all attempts by any new team of biased script-writers to re-write what happened and to demonise and vilify the immense contribution made by the RUC GC to deliver the circumstances for albeit a somewhat imperfect peace to take root.

Put simply, you cannot equate what Officers did to safeguard communities with the murderous actions of republican and loyalist terrorists who delivered nothing but anarchy and misery. The obnoxious attempt to equate the terrorist with the Police Officer is a moral faultline. It is a step too far, and one that causes great hurt and very deep resentment.

All the proposed new institutions in this draft Bill favour the terrorist. A Historical Investigations Unit (HIU) or a parallel and separately resourced Police Service, is no more than a PONI on steroids.

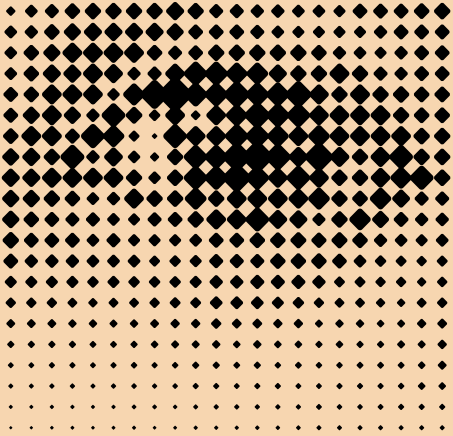
The ambiguous word 'collusion' doesn't exist in law, but that hasn't prevented it being used. The draft Bill comes up with a new 'collusion' in the form of a proposed 'non-criminal police misconduct' offence. The draft Bill cannot define it, but that won't prevent a new HIU from doing so. As we say in our Submission, this 'non-criminal police misconduct' instrument is certain to 'incite complaints against Police and flood the Courts with civil claims by making Officers (serving, retired and dead) retrospectively liable.'

Current legacy arrangements are heavily biased against the State and discriminate against Police Officers. They represent a travesty for the rule of law, criminal justice, equality and basic human rights.

Similarly, the proposal to create an Independent Commission on Information Retrieval (ICIR) is a storytelling approach fraught with difficulty. It will detract from criminal justice and raises legitimate questions whenever Officers are unable to tell their stories due to legal restrictions. It is akin to telling the history of Belfast without referring to shipbuilding and aircraft manufacturing.

The draft Bill contains other flaws and deficiencies. Our view is that we are opposed to amnesty or an arbitrary line in the sand. The rule of law cannot be subverted. Where substantive evidence exists, the wrong-doer must be made amenable, irrespective of allegiance or belief.

What is needed is a re-think of how Northern Ireland addresses the vexed question of the past. This draft Bill fails to do that and should be left to gather dust on a shelf somewhere in the basement of the Northern Ireland Office. To progress legislatively would add further insult to injury.



## In my view.....

By Mark Lindsay  
Chairperson, Police Federation  
for Northern Ireland

The pay merry-go-round continues. PSNI pay is aligned with England and Wales which meant that we should have seen the new award in September's payslips.

Just as happened last year, the pay increase didn't touch down. In fact, our Officers had to wait eight months for their meagre increase to be implemented. Now, there's a concern that we will witness yet another unacceptable delay in getting the increase into bank accounts.

There is, however, one glimmer of hope that the wait will not be as drawn-out as before. It comes in the form of a statement made by the Secretary of State to the House of Commons.

In the absence of devolved Ministers, Karen Bradley announced more flexibility for senior civil servants to administer Northern Ireland. The High Court Judgement that blocked Arc 21 inhibited the scope for civil servants to make decisions. Paralysis ruled.

The Secretary of State, recognising this difficulty, stepped in to restore the ability

of civil servants to make decisions that were 'unavoidable, necessary and in the public interest.'

That could mean that Police pay could be sorted out by the Permanent Secretary in the Department of Justice sooner rather than later without it dragging on for months on end. The impediment is no longer there, so there is no reason to further stall the process.

That said, we have been told that employers are unable to bring forward pay remits for 2018-19 until the NI Public Sector Pay policy has been determined. This complicates an already frustrating situation.

Another aspect of pay that caused us concern was the manner in which the government discarded the 3% recommendation of the independent Pay Review Body in England and Wales. This causes disquiet and annoyance, and calls into question the very purpose of an independent body which has its advice and recommendations turfed out by the Home Office.

The refusal to make a 3% pay increase came in for stinging criticism from the Metropolitan Police Commissioner, Cressida Dick, who described it as 'a punch on the nose'. This rebuke by someone so senior is embarrassing for Ministers who are keen to utter warm words of praise for safeguarding communities and countering lethal terrorist attacks, but when it comes to adequately rewarding Officers, their actions are hollow.

Commissioner Dick said the decision would make it harder to recruit and retain Officers. The decision, she added, will affect morale, adding she didn't want the Government to wait until policing was struggling like the Prison Service "with chronic understaffing."

She also said she was "extremely disappointed" by the decision to go against the 3% recommendation of the Pay Review Body. This flew in the face of evidence and rational argument. For a second year in a row, the independent

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*... 2% hike fails to match the current inflation rate and when you take past pay awards into account, it means that pay, in real terms, has slipped by a staggering 18.5% in just eight years.*

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PRRB recommendation had been rejected which, in her view, left the whole process "in tatters."

It's never easy for a Chief to so openly criticise Ministers, and here I have to applaud the Commissioner her forthright, frank and candid assessment.

The Commissioner knows that a 2% hike fails to match the current inflation rate and when you take past pay awards into account, it means that pay, in real terms, has slipped by a staggering 18.5% in just eight years. This is an outrageous and unacceptable state of affairs.

The Department of Justice should actually do the honourable thing and implement the recommendations of the Pay Review Body in full. That would mean a 3% increase and would go some way to addressing the disgraceful situation whereby Police officers in Northern Ireland have actually had their pay cut by 1% on 1st September.

With the current review of CRTP still ongoing, there is a very real risk that Police pay could be further cut by £1200 per year. We are working closely with PSNI in presenting evidence that would enable the allowance to be retained. It would be simply unpalatable, if this allowance were to be removed in the current economic climate.

It is no longer acceptable to expect efficiencies in policing to be taken out of the pockets of those delivering an invaluable policing service to the community. In Northern Ireland, and at Westminster, we will continue to lobby Government to stop treating Officers with something that's close to disdain.