



PROPOSALS FOR PARADES & PROTESTS, FLAGS, AND DEALING WITH THE PAST

March 2014

Introduction

The Ulster Unionists and SDLP did more than any other political parties to bring forward the Belfast Agreement in 1998 and the consequent opportunity to build a new Northern Ireland, offering an inclusive future for all, and addressing the toxic legacy of our past.

To quote from the Agreement's opening Declaration of Support:

*The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and **mutual trust**, and to the protection and vindication of the human rights of all. (Our emphasis)*

Much has been made in subsequent years of the need for "mutual respect" and "parity of esteem" between the two traditional communities. We agree, but above all the Ulster Unionist Party sees the creation of "mutual trust" as the key to positively transforming how we do political business.

The last year has seen instances where mutual distrust has been the order of the day, due to events such as the decision by Belfast City Council regarding its flag flying policy; the Castlederg parade commemorating terrorists in a manner that deeply offended their victims; and the continuing hostility towards some cultural expressions.

It is also worth reminding ourselves that the Agreement secured the approval of the people via Referendum (in the Northern Ireland Referendum, 71.1% voted "Yes" in an 81.1% turnout, while in the Republic of Ireland, the "Yes" vote was 94.4% off a 56.3% turnout); international support was headlined by the awarding of the Nobel Peace Prize to the then Leaders of the Ulster Unionist Party and SDLP, David Trimble and John Hume.

It is a matter of deep regret that almost 16 years later, the toxic legacy of our Troubles remains, and that Northern Ireland remains in a Post-Troubles, rather than Peaceful state, as seen by ongoing republican and loyalist terrorism and criminality, educational underachievement, poverty, deprivation and dereliction.

The Ulster Unionist Party believes the three key areas requiring work to address the deficit in delivering on the promise of 1998 are Dealing with the Past, Reconciliation and a Shared Future. In that context, we have never regarded the talks chaired by Dr Richard N Haass as in any sense definitive; however, the issues of Flags and Parades are important, and any agreement based on mutual respect would inevitably add to the mutual trust required to overcome the issues not on the Haass agenda.

Clearly, flags and parading are "Strand One" issues, to use the language of the Belfast Agreement, and as such, there is no role for the Government of the Republic of Ireland in addressing these. Dealing with the Past is qualitatively different, involving questions to be asked of, and answered by, the Dublin Government on issues such as, but not exclusively, the role of Irish government Ministers in the birth of the Provisional IRA; collusion between agents of the Irish state and the Provisional IRA; the provision, through acts of commission or omission, of a safe haven from which the

Provisional IRA mounted attacks on Northern Ireland; the dysfunctional nature of extradition arrangements.

Ulster Unionist Party Commitment

The Ulster Unionist Party is committed to Doing what's right for Northern Ireland; that test is as applicable during the Haass talks as at any other time or in regard to any other issue. This means putting the interests of the country ahead of the interests of the Party.

It is of course a politically reality that the DUP are now the dominant Party within Unionism and responsibility falls primarily on them to use their mandate to secure just and acceptable outcomes on this occasion.

The Ulster Unionist Party is determined to use our political mandate to find ways to allow society to move forward in the manner we envisaged in 1998, but not at the cost of disrespecting the rights and needs of victims, or disregarding the rule of law.

Flags

Part of the failure of the Haass process was the deliberate confusing by some of sovereignty and identity.

The Ulster Unionist Party respects the right of all our citizens to declare their identity to be British, Irish, or other; all should be respected equally. That was a core commitment in the 1998 Belfast / Good Friday Agreement.

But identity is not the same thing as sovereignty.

In our analysis, the vote taken by Belfast City Council on 3rd December 2012 in regard to the flying of the Union Flag at the City Hall was unnecessary and unnecessarily provocative; its timing was also disastrous for local traders and resulted in what all should have known would lead to a negative global news story.

In 1998, the Agreement defined the particular form of democracy we wished to see in Northern Ireland, namely democracy based on consensus, which is typically characterised by proportional electoral systems with multimember constituencies, more than two major parties and coalition cabinets or executives. This is not a majoritarian form of government.

While consensual government was not compulsory for local government, cross-community working was clearly at the core of the spirit of the Belfast Agreement. In this context, it is worth noting that the Ulster Unionist Party was responsible for the first act of consensualisation at local government level, when, 25 years ago, Ulster Unionists on the then Dungannon District Council decided to share power with nationalists, voluntarily rotating the position of Council Chair on a six monthly basis. This local government unit was also first to deploy the D'Hondt process now used at the Northern Ireland Assembly to allocate government department in the Northern Ireland Executive.

In that broad context, the 3rd December vote was not consensual, in that no unionist councillor supported the proposal; rather, it was a form of majority rule, albeit through a coalition of Sinn Féin, SDLP and Alliance members. We regret the deep damage to good community relations caused by this decision, together with the reaction of the Alliance Party Leader, David Ford, who called the outcome a "clear victory" for his party. Subsequent events confirm it was a clear disaster for Northern Ireland.

<http://allianceparty.org/article/2012/006908/ford-praises-alliance-belfast-council-group>

We now find ourselves in a position where there are at least four distinct policies for the flying of the Union Flag:

- Some Councils, such as Fermanagh and Derry City Council do not fly the Union Flag;
- Some Councils, such as Ards and North Down, fly Union Flags 365 days a year in defined locations;
- Belfast City Council, through its vote of 3rd December, supports Designated Days, using the list defined by the UK Government's Department Culture Media and Sport;

- The Northern Ireland Assembly supports Designated Days, but not the list supplied by DCMS, rather a bespoke list of days Flags, as defined primarily by the (Northern Ireland) Order 2000, amended by the Flags Regulation (Northern Ireland) (Amendment) 2002.

The fact there are a multiplicity of protocols for the flying of the Union Flag gives visible illustration to the fact we live in a country where a Shared, rather than a Shared Out, future remains an aspiration. This process offers the opportunity to bring consistency to the flying of the Union Flag, in a manner that brings meaning to the policy objective of achieving a Shared Future.

The Ulster Unionist Party proposals in this regard are as follows:

- All political parties reaffirm Northern Ireland’s constitutional position as part of the United Kingdom and the mechanism for change (i.e. only the people of Northern Ireland can vote for new constitutional arrangements);
- All political parties accept that there is only one sovereign Flag that reflects the constitutional status of Northern Ireland. That flag is the Union Flag and legally, politically and indeed literally it must fly above any debate on symbols and emblems, or any other flag;
- Legislation introduces a protocol known as Statutory Plus. There will be an agreed list of days when the Union Flag is flown from official flagpoles on all main government buildings in Northern Ireland, including, but not exclusively: Parliament Buildings; the registered Headquarters of every Government Department; the Headquarters of each Local Government Council; Hillsborough Castle; the Headquarters of the Northern Ireland Office;
- Where there is political support, Councils may agree additional days;
- The one exception would be Belfast City Hall, which, as a totemic structure, and main civic building of our capital city, should revert to the policy of 365;
- Enabling legislation shall also state explicitly that no other sovereign flag shall be flown from official flagpoles, except as is accepted in international protocols.

Flags should be treated respectfully at all times. This is not always the case in Northern Ireland. Our solution is an awareness campaign, based on community engagement, studying, among other things:

- The study of the protocols used in other national territories for the flying of their sovereign flags;
- The role of the Union Flag in the funeral of a member of the Armed Forces killed in action. This would include reviewing a video of the repatriation and the subsequent funeral service and interment.

Such steps are essential to address the destabilising perception that, having reluctantly accepted the inevitable fact that Northern Ireland is part of the United Kingdom, with no prospect of change in the foreseeable future, Republicans have a policy of ensuring Northern Ireland does not look British.

Parades & Protests

The Ulster Unionist Party believes that our streets belong to the people, who should be free to assemble as they wish, in a lawful and respectful manner.

Who wants a Northern Ireland where you cannot assemble in public, be it to parade, protest, or promote an interest about which you feel passionately?

The right to assemble is enshrined in Article 11 of the European Convention on Human Rights:

1. *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*

In short, there should be a presumption in favour of public assembly.

However, as Article 11 makes clear, the right to assembly, which includes parading and protesting, is not absolute, but qualified by concerns including the prevention of disorder.

One of the problems with the current regime governing parades is illustrated by what happened at Ardoyne in Belfast in 2012 on the 12th of July:

- A parade was subjected to restrictions that made it physically impossible for those involved to participate fully in the events of the day, including a religious service;
- Those protesting against the parade engaged in rioting, including a gun attack.

<http://www.belfasttelegraph.co.uk/news/twelfth/belfast-riots-20-psni-officers-injured-as-violence-erupts-in-ardoyne-after-orange-parade-28770526.html>

<http://www.bbc.co.uk/news/uk-northern-ireland-18928571>

Yet, the following year, the Parades Commission punished the parading community, by banning their return parade! This is a perversion of Article 11, which clearly directs the 2013 protest should have been banned, not the parade.

We accept the need for a regulatory regime. This must include:

- An Administrative Body that deals with the huge majority of parades and other assemblies that cannot, reasonably, be deemed in any way contentious. This body should operate in a manner that is focused on making the process as easy as possible for our citizens;
- A new Adjudication Body, operating in a fully transparent and accountable manner, including the application of set criteria in reaching determinations;

- An Appeals process, independent of the Adjudication Body;
- Voluntary Codes of Conduct for those engaged in parades and protests.

Administrative Body

Any new administrative body should be concerned solely in the Who, What, When, Where and Why of an event, together with the contact details of the organiser(s), in the event public services, including the police, need to contact them.

Adjudication Body

This body, which would replace the Parades Commission, would operate in an open, transparent and accountable manner.

Key would be set criteria on which adjudications are made. This would focus on:

- The presumption of the right to assemble and process;
- Whether the parade, or protest, is traditional in nature;
- Any past record of the organisers of the parade or protest in producing lawful and respectful events;
- The impact both of allowing a parade or protest on the community through or in which the parade or protest would take place, and the impact of not allowing a parade or protest on the community organising the event. In other words, the impact on good relations;
- The efforts of the organisers of a parade, or protest, to minimise disruption to normal life;
- The engagement of representatives of all interested groups, organisations, businesses, community leaders, church leaders and others that any decision will have a direct impact on, and who have a definable, relevant and appropriate mandate or legitimate interest.

Appeals Process

There should be an Appeals Process available to those who feel they have not received a just adjudication. A separate, judge-led Appeals Process should be established, operating openly, transparently and independently, in a manner designed to build community confidence.

Code of Conduct

The Ulster Unionist Party encourages all the loyal orders to consider publishing their own voluntary Code of Conduct, making clear how they expect all involved in parades under their aegis, participants and supporters alike, to demonstrate their commitment to lawful and respectful assembly.

We equally call on representatives of the community and voluntary sector, particularly those representing community groups and associations, to publish a voluntary code of conduct for those participating in protests. We commend Derg Valley Victims' Voice for the code of conduct they

promoted last year, faced with the provocation of a commemoration to terrorists in Castleberg on 11 August 2013.

www.facebook.com/dergvalley.victimsvoice

The Ardoyne and Drumcree Parades should be allowed to complete their routes. This will create a new dynamic and demonstrate a generosity of spirit not seen before. Dialogue is the only way forward. We believe that dialogue combined with generosity of spirit have the potential to create a new environment within which communities can address previously intractable issues.

Dealing with the Past

As previously stated, our commitment to find ways for Northern Ireland to move on will not be at the cost of disrespecting the right and needs of victims and survivors of the Troubles, or disregarding the rule of law.

The Ulster Unionist Party was appalled by the use in the Haass process of the phrase "government and non-government" bodies. This equated PIRA, the UDA, UVF and the other terrorist groups with NGOs, such as the British Red Cross and Christian Aid.

Surrender the language and you corrupt history. It is that simple.

The Provisional IRA was the main terrorist group during the Troubles, accounting for some 60% of all murders. Given the No Warning Bomb was a weapon of choice, the percentage of injuries attributable to PIRA is certain to be much, much higher.

It must also be remembered that PIRA and loyalist groups terrorised the communities they purported to represent, through "tarring and feathering", "punishment" shootings, summary executions, and "disappearing" people, the latter denying families even the opportunity to mourn.

It is a matter of record that on a very small number of occasions, agents and operatives of the State broke the law, including committing acts of murder, but this does not change the fundamental difference between the Regular Army, UDR, RUC and the rest of the security services on the one hand, and PIRA, the UVF, UDA and the rest of the terrorist groups on the other. A former senior RUC officer encapsulates the difference in recounting a conversation with a former senior IRA member:

Ex-policeman: "I never got up in the morning, thinking 'Who can I kill today'"

Ex-IRA man: "Ah, but I did."

It is not for the Ulster Unionist Party to define what is, or is not, terrorist activity.

It is spelt out in the **2000 Terrorism Act**, which makes clear that actions or the threat of actions designed to influence governments or intimidate the public are acts of terrorism. Therefore, it is wrong to attempt to restrict anyone from using the terms 'terrorism' and 'terrorist'. To those who say this Party is "getting hung up" on a single word, we say we are standing firm against a destructive concept.

<http://www.legislation.gov.uk/ukpga/2000/11/section/1>

It is noteworthy that the 2000 Act, at (2) (c) makes a distinction between a person committing an act of terrorism and those endangered by the action, something that the definition of a victim could, but does not do.

<http://www.legislation.gov.uk/nisi/2006/2953/2008-05-23>

What happened during the Troubles was **not a 'war'**. War has been variously defined in national and international law. It has been described as 'a state of forcible contention', 'an armed contest between nations', 'a state of hostility between two or more nations or states' or 'the use of violence and force between two or more states to resolve a matter of dispute.' The Troubles fell into none of these categories. Instead the people of Northern Ireland and farther afield faced a terrorist onslaught where the only thing that stood between this country and anarchy were the lawfully engaged services of the United Kingdom. A violent minority with no legitimacy tried to impose their will on the peaceful majority of the population.

The Haass process failed to address the question of the causes of the Troubles. This was a fatal flaw.

This is not an academic question. We maintain that terrorism is absolutely wrong, under any circumstances. Sinn Féin try to justify PIRA's terrorism as a reaction to the "conditions" of the time. While they may claim that "conditions" no longer apply, former colleagues of theirs, the so-called "dissidents" justify contemporary terrorism by claiming the "conditions" still apply. Hence, the terrorist murders of Mark Quinsey and Patrick Azimkar, Stephen Carroll and Ronan Kerr, and David Black. **Terrorism is terrorism, and all terrorism is wrong.**

The Ulster Unionist Party support a policy of Dealing with the Past (DwP) that upholds the rights of victims and survivors and also challenges the devolved government to meet their many needs. We also recognise the requirement to address this area in a manner that allows society to move on, and the inevitable tension between these two objectives.

Nor is there agreement about the definition of "victim". This must be resolved, to distinguish between those who chose to commit terrorist acts and the innocent victims of that criminality. Again, we note the possibilities to define this difference from the example of (2) (c) of the 2000 Terrorism Act.

There are also ongoing and potentially irreconcilable tensions within the group known as victims and survivors. Victims and survivors are not a homogeneous group. In the Party Leaders discussions and public discourse post-Haass, politicians from all five parties have accepted no one can claim to represent all victims and survivors. There is, therefore, a danger in trying to impose a politically inspired solution. Rather, we propose listening to victims and survivors and those who champion their various needs.

Needs

Victims and survivors are individuals, with particular needs, but research by many, including the Commission for Victims and Survivors Northern Ireland (CVSNI), has identified common ground in terms of needs.

In February 2012, CVSNI identified seven defined areas:

- Health and wellbeing;
- Social support;

- Individual financial needs;
- Truth, Justice and Acknowledgement;
- Welfare support;
- Trans-generational issues and young people;
- Personal and Professional development.

Again, it is noteworthy CVSNI's makes clear the seven categories above are listed in priority order; thus, Truth, Justice and Acknowledgement, while the almost exclusive focus of the Haass process, ranks 4th of 7 identified areas of need.

The Ulster Unionist Party believes victims and survivors feel badly let down by the state and its support services. At the moment they became victims and survivors, they had a reasonable expectation the state would "form the wagons in a circle" and do whatever was necessary to protect and support them. Often, the actual experience was the exact opposite; they were ignored, isolated and forgotten.

The Party proposes a pragmatic approach based on a limited, but significant number of actions addressing two key areas:

- Practical support for victims and survivors;
- Information gathering while most who lived through the Troubles remain in a position to record their memories.

Specifically, the Ulster Unionist Party support:

- (a) **A Pension for those severely injured in the Troubles.** Many received compensation based on a life expectancy that they have long since exceeded. Research into such a scheme, begun by the WAVE Trauma Group and picked up by CVSNI is at an advanced stage. <http://www.cvsni.org/index.php/policy-and-research/research-projects/205-severely-injured-pension-research-project-2013-14>;
- (b) **A major initiative to improve the mental health and wellbeing of our citizens.** There is a robust evidence base that Northern Ireland has shockingly bad levels of poor mental health and wellbeing. Such an initiative should recognise that communities as well as individuals have needs in this regard (something clearly identified in, *inter alia*, The Cost of the Troubles - 1999, Mike Morrissey, Marie Smyth & Marie Therese Fay);
- (c) **Victims and Survivors of the Troubles being exempt from reassessment under Welfare Reform.** They have already been forced to face physical and mental injury created by traumatic events. The UK Government has written into legislation that victims of 7/7 and other terrorist incidents should be exempt from the effects of Welfare Reform. The Northern Ireland Executive should ensure that future legislation passing through the Assembly gives equal effect to Victims and Survivors of the Troubles.
- (d) **An Historical Clarification Group.** We propose a factual timeline be established, from the early 1960s to the Present Day. The facts will be the spine upon which citizens will be invited to record their experiences and impressions, in a subjective manner, constrained only by the law and their own preferences (e.g. they may wish their remarks not to made public during

their lifetime, etc). This would be an online archive, which we believe would be both an appropriate Legacy project and a powerful learning tool for future generations;

- (e) **Acknowledgement Statements.** The Ulster Unionist Party is certain in the knowledge that the only people responsible for the terror campaign that plagued Northern Ireland for over 30 years are the terrorists. However, we must have open minds regarding whether there was more we, other local political parties, churches, civil society and governments (domestic and foreign) could have done. Where the evidence is found, no one should be found wanting in offering a sincere acknowledgement, not only of the act of commission / omission, but also of its impact;
- (f) **Reconciliation Initiative.** We propose using the coming years of 2014-2018 to educate the children of this island about the common service and sacrifice of their forefathers during the Great War. This educational programme would include trips to Thiepval, the Ulster Tower, and Guillemont, to study the memorials to the 36th Ulster and 16th Irish Divisions and the many others who laid down their lives. We would also study carefully proposals for any other event falling within this "Decade of Centenaries", bearing in mind the reconciliation process will be very slow, at best, and at worst non-existent in an environment where some have the objective of making Britishness join the ranks of the "Disappeared";
- (g) **Co-operation and Co-ordination with victims and survivors in Great Britain.** We must never forget that Great Britain suffered grievously in the Troubles, in terms of (i) the huge numbers who served in Northern Ireland as members of the Army and other security services (ii) those who lost their lives or suffered significant injury in the course of their service (iii) those military and civilian citizens killed and injured in bombings and other terrorist attacks in GB. The recent focus on the Hyde Park Bombing in 1982 has re-awakened the sense of anger and outrage at PIRA's terror campaign, felt in Great Britain.

One practical way to develop better co-operation and co-ordination with GB would be through a formal link with the Peace Centre in Warrington (which hosts the Tim Parry Jonathan Ball Foundation for Peace). The Ulster Unionist Party was shocked to learn the Warrington Peace Centre claim they were not spoken to by OFMDFM during the consultation on the proposed Peace Building and Conflict Resolution Centre (PbCRC) at the Maze.

At present, truth and justice are administered through a series of instruments that add up to an incomplete, imperfect and imbalanced manner. For many years, we understood the instruments to be:

- Public Inquiries;
- Office of the Police Ombudsman for Northern Ireland (OPONI);
- Legacy Coroners Courts;
- The Historical Enquiries Team (HET).

Our concern was that (i) Public Inquiries tend to investigate alleged wrong-doing by the State, whether it be the Widgery / Saville Inquiries into Bloody Sunday, or the Hutton report into the death of Dr Kelly, (ii) OPONI by definition only investigates alleged wrong doing by police officers, (iii)

Legacy Coroners' Courts tend to focus on controversial killings rising from actions of the police or army, and (iv) while the HET reviews the files on all Troubles killings, it tends to focus on the efficacy of the police investigation rather than those responsible for the terrorist act. Further, the public tends to judge investigations against contemporary standards, without due regard to the near impossible investigatory conditions of the time.

For example, in the Northern Ireland of 2014, it is hard to imagine anyone would use the knowledge that security forces would attend the scene of a terrorist explosion to mount a secondary terrorist attack, but this tactic was not uncommon (perhaps most famously, at Narrow Water, Warrenpoint, 1979. 18 soldiers died, six members of the Parachute Regiment in the initial explosion, the others in a second bomb detonated after members of the Queen's Own Highlanders arrived to tend the wounded of the first bombing).

The inevitable outcome of this terrorist tactic was to severely limit the ability of the security forces to create a "crime scene" and harvest evidence as would be the case today.

The incomplete, imbalanced and imperfect processes listed above put an almost exclusive focus on the state and the security services, leading to the inevitable re-writing of history and the addition of a new layer of mutual distrust, bitterness and resentment.

As a contemporaneous example, we cite the so-called "Good Samaritan Bombing" in Londonderry in 1988. PIRA abducted a member of Catholic Nationalist Republican community and booby trapped his accommodation, in the hope of murdering the RUC officers they hoped would call to investigate the man's disappearance. Instead, neighbours who were concerned they had not seen the gentlemen for some days became the victims of PIRA's bomb. But today, the focus is not on who was responsible for this outrageous act of terrorism against the Catholic Nationalist Republican community; rather, it is on a contested report from OPONI into an allegation the RUC had information that could have led to them doing more to prevent the bomb being detonated (this is well documented in the OPONI report and a paper from the NI Retired Police Officers Association).

The re-writing of history is a red line for the Ulster Unionist Party. As stated in our original submission to Dr Haass, we see no difference between the attacks on the United States of America by al Qaeda on "9/11", the loyalist bombing of McGurk's Bar, PIRA's Remembrance Day bombing of Enniskillen, or the so-called "dissident" bombing of Omagh, in that they are all acts of terrorism, period.

In short, the four processes put an almost exclusive focus on the state and the security services, a perversion of the fact that the state was responsible for no more than 10% of all killings, and few of those are actually contested.

As of February 2014, our understanding of the instruments used in the area of truth and justice has been shattered by the revelations concerning the existence and scope of the so-called Administrative Scheme for on the run terrorist suspects, or OTRs, introduced by the Labour Government sometime in the early 2000s, and continued by the Coalition Government after the 2010 General Election.

Unless and until we are aware of all instruments and understandings in use and previously in use, the Ulster Unionist Party has no confidence in the good faith of those who will be required to agree any changes in how we deal with the past.

We reject the organisational solution as proposed in the Haass process, making these comments:

- The Historical Investigation Unit (HIU) would have been a parallel police force, with full powers of arrests, totally independent of the Chief Constable, and operationally accountable to no one;
- We now know the HIU would have been unable to effectively investigate PIRA, given the majority of their weapons are already beyond use evidentially, and, it must be presumed at the time of writing, many of their key members are subject to the protections of an "Administrative Scheme";
- The HIU would have taken a minimum of five years to set up, bearing in mind the requirement for complicated and challenging legislation and the likelihood of legal challenge;
- The HIU would have been an extremely expensive option;
- The proposal for the Independent Commission for Information Recovery (ICIR) contained, in one draft, a recommendation to use "exculpatory evidence". This was evidence Republicans proposed to use as a further protection to PIRA members, as it could have been used to lay down alibis for those who might come under investigation by the HIU.

Our other main concern with the ICIR was that there is nothing to suggest that individuals seeking information from PIRA and the other terrorist groups, would be told the truth. Rather, the evidence base suggests they would be told only what the terrorists wanted them to hear. As proof of this, we cite:

- Decommissioning. We understand weapons and munitions that were alleged to have been destroyed have been used in contemporaneous criminality in NI and RoI, including murder;
- The Saville Inquiry into "Bloody Sunday", where Martin McGuinness infamously made clear there are matters he will not discuss "under any circumstances";
- The Smithwick Inquiry into the murders of RUC officers Harry Breen and Robert Buchanan, where Judge Smithwick reported that PIRA engaged at their own speed and on their own terms (significantly, refusing to make themselves available for cross-examination) and that he did not believe their evidence;
- The Independent Commission for the Location of Victims Remains. After 15 years, eight of the sixteen bodies had been recovered because of information supplied by republicans.

Given this evidence base, it is hard to avoid the conclusion that entering such a process would be other than engaging in a lottery, with no certainty that the outcome will be other than what those responsible for the incident in question want to tell you, on their terms, in their own time. There would be huge scope for withholding truth and telling lies. It is, for us, a prime example of the failure to build the mutual truth aspired to in the 1998 Belfast Agreement.

In the absence of the creation of the "mutual trust" that was at the heart of the 1998 Belfast / Good Friday Agreement, there is little that can be done that will carry the confidence of the population.

The Ulster Unionist Party proposes that the key avenue remains the normal legal process. We reject the Attorney General's suggestion that we "draw a line under the past". This would be the ultimate betrayal of victims and survivors. Contrary to what Mr Larkin appeared to understand, we know victims and survivors are only too aware of the limited chances of seeing an arrest, never mind a conviction of the person(s) who hurt them - and this was before the revelation regarding the OTRs.

But there is a critical distinction between having little hope and having all hope cut off. The case of John Proctor refers; murdered in 1981, his killer was not convicted until 2013. Mr Proctor's widow spoke of how her family can now "move on with our lives".

<http://www.newsletter.co.uk/news/regional/ruc-man-john-proctor-s-widow-tells-how-killer-kearney-lived-just-a-mile-from-her-home-1-5719758>

The "elephant in the room" of the Haass and Party Leaders' processes is this: Who is going to pay if changes are agreed?

The best route to justice is the criminal justice system. No one should argue otherwise. The key question is whether the organs of that system are properly resourced, and also fair and equal to all. The answer is clearly "no".

The PSNI does not have the complement identified by the Patten Review as the minimum required to police a totally peaceful Northern Ireland (and Northern Ireland is far from totally peaceful). The HET is not fit for purpose. The Coronial Courts are badly under-resourced, with a question mark over the appropriateness a Coroners' Court dealing with some of the cases on its lists. These are areas that need urgent redress.

In legacy terms, we repeat that victims and survivors are all too well aware that few have realistic hopes of seeing a conviction of the person(s) who hurt them. But the first principle is to leave open the possibility. The second is to commit to making available appropriate resources to complete legacy issues as soon as possible.

It was striking how little debate has been focused on where the money is coming from to fund any new processes. (The Haass proposals made no reference to resources until the 7th and final draft and even then it was a mere aside). Given the issues facing the Health Service, to name but one other area, the Northern Ireland Executive is hardly in a position to deliver significant extra funding to the past.

Proposals

- The early completion of the review of Troubles related murders. The HET is two-thirds of the way through its work. To start again would simply prolong the process to the point where an end would not be in sight;

- The HET needs significant reform. The Chief Constable of the PSNI has plans to address all reasonable criticisms and return the unit to a fit-for-purpose organisation;
- The Northern Ireland Policing Board (NIPB) currently has oversight of HET, as a part of the PSNI. To further remove politics from policing (NIPB having 10 political representatives on its 19 person Board), we recommend oversight of the work of the HET be transferred to the Association of Chief Police Officers (ACPO);
- A fit-for-purpose HET may need to re-visit a number of previously completed reviews, but only after completing its outstanding work programme. It would be for ACPO to define the criteria that would be used to trigger a second review;
- The establishment of accessible Advocacy Services for all victims and survivors. This is one of the many areas where justice, and access to justice, is currently seen to be delivered on an uneven, and therefore unfair, playing field. Significant investment is required in providing expert support, bearing in mind the 2009 Victims and Survivors Strategy (November 2009) affirms the right of individuals to access single-identity support and services. It is a matter of fact that such services are not currently equally accessible to our two traditional communities;
- The resources currently directed to "supergrass" processes, under the Serious Organised Crime and Police Act (SOCPA) 2005 should end. The history of these trials is of unreliable testimony, collapsed trials, the consequent waste of legal resources on a massive scale and the undermining of community confidence in the criminal justice system. Where "informants" wish to assist the police and courts, they should not be immune from prosecution, rather their co-operation should be a factor in their sentencing, if guilty;
- OPONI's legacy work should be independently reviewed, with a particular focus on an appropriately stringent test of whether there is sufficient evidence to warrant a legacy investigation;
- The European Courts are engaged regarding the application of Article 2 of the European Convention on Human Rights (ECHR) to legacy coroners' courts. It is our belief, not least because Article 2 requires "timely" investigations, that coronial courts require particular protocols;
- Any case where an OTR letter was issued, it is rescinded and the OTR's case is re-opened and fully examined.

<http://www.theguardian.com/uk/2012/feb/22/belfast-supergrass-trial-loyalists-cleared>

The application of Article 2 is judge-made law from the European Court of Human Rights in Strasbourg. It appears to us that the case law that has defined how Article 2 is applied in the courts of Northern Ireland has resulted in unintended consequences. It is our belief that Article 2 has a different meaning in the case where the state has full control, i.e. in the death of a prisoner in a police cell. However, the Strasbourg Court appears to apply its interpretation of the Article 2 procedural duty with full force retrospectively in the case of any death caused by 'agents of the state' in Northern Ireland during the course of the terrorist campaign.

That has led to the extensive re-opening of inquests with satellite litigation by way of judicial review on the part of victims' families seeking all records and themes or patterns of police and other security forces actions and conduct.

In addition, the Strasbourg Court appears insistent that these investigations be given priority of attention on the part of the government and courts. Again, this leads to an uneven playing field. It must be remembered that the security forces were responsible for a relatively small percentage of all deaths and few of that number can be considered in any way contested or controversial.

Regrettably, the Haass process did not seem receptive to our submissions that this unfairness of approach was a matter that required correction, even if that would involve seeking, by due legal process, that the Strasbourg Court would re-calibrate its rulings on the Article 2 procedural duty, at least with reference to the specific circumstances in Northern Ireland in defending society against terrorism.

Conclusion

The overarching ambition must be to complete the processes as quickly as possible. Our citizens deserve the opportunity to move on to enjoy the peaceful and prosperous society we envisaged in 1998. The proposals above are by no means complete, but they are achievable, practical and capable of generating the momentum that builds the trust, confidence and hope that devolved government can work.

Instead, we have the continuing drive to re-write history and overturn agreements already made.

In 1998, we promised the people of Northern Ireland respect for everyone's identity, a peace dividend to boost the economy and better government than Direct Rule.

It is time to deliver.