



Submission by the Ulster Unionist Party
to the Northern Ireland Office
Consultation Paper –

**ADDRESSING THE LEGACY OF
NORTHERN IRELAND'S PAST**

October 2018

Ulster Unionist Party and Legacy

Introduction

“They see the extent to which society here is being subverted. People are sleep walking into a Province governed by apologists for terror and murder.

These legacy proposals mean the terrorists and law breakers will get away with their murder and anyone who wore a uniform or operated in a state organisation can expect to be called to account.”

Anne Graham, sister of Edgar Graham

Belfast Newsletter, Sat 22 September 2018

- 0.1 The Ulster Unionist Party is part of the fabric of Northern Ireland and we fully understand the suffering that this country and its people endured as a result of the 30-year terrorist onslaught on democracy and the rule of law.
- 0.2 Amongst the victims of terrorism are many of our members. These include a former Speaker in the Northern Ireland Parliament Sir Norman Stronge and his son James who himself was a former Stormont MP, Stormont Senator John Barnhill, a Member of Parliament Rev Robert Bradford; Assemblyman Edgar Graham; Councillor Charles Armstrong; and numerous members and activists, unfortunately too many to list here. In addition, our Party Headquarters in Glengall Street in Belfast City centre was a regular target for terrorist bombers.
- 0.3 At the outset it has to be said that the entire process of dealing with the past in Northern Ireland seems to be predicated on the assumption that a system needs to be put in place where the Police and Army need to be investigated and

punished, with the primary example being the determination to introduce the charge of 'non-criminal police misconduct.'

- 0.4 It is what we would expect to see in a country where an investigation was being conducted into the activities of a military led junta now gone, and replaced by a democratic government. This is of course close to the thinking of republicans and those who wish to rewrite the past and portray some kind of 'war' between the IRA and the Police and Army.
- 0.5 This entirely, quite deliberately, and shamefully misses the key point that what was going on in Northern Ireland was a struggle between the rule of law in the form of the UK Government and its legitimate forces, and illegal violent terrorist gangs hell bent on anarchy.
- 0.6 At a press conference to launch Sinn Fein's response to the consultation, Gerry Kelly said that "*They (the British Government) were the main protagonists. They are a government. They had 31,000 troops. They have a standing army of 150,000.*"
- 0.7 This claim is not a 'different narrative of the past', it is utter fantasy. It completely missed the fact that the British Government is the lawful authority within the United Kingdom. Their authority comes from being elected by the British people. They have a seat at the UN and on the Security Council. They are signatories to international treaties. Like every other democratic Nation State, they have a standing army.
- 0.8 As the Prime Minister, Theresa May recognised in the House of Commons 12 September 2018

"We owe a vast debt of gratitude to the heroism and bravery of the soldiers and police officers who upheld the rule of law, and themselves were accountable to it

– and that is something that that has set them apart from the terrorists, who during the Troubles were responsible for the deaths of hundreds of members of the security forces.”

- 0.9 The fact is that over the 30 years of the Troubles, the Police and the Army displayed incredible restraint in the face of the terrorist onslaught. They were targeted on and off duty. Some were targeted as they drove school buses or tended to cattle. As they left churches on a Sunday morning. As they shopped with their wives and children. As they sat in their homes. One was abducted, murdered and his body has still not been returned. One was even shot in Germany along with his six-month old baby. This was the IRA's idea of how to prosecute a war. And yet they and their allies now want to talk about human rights?
- 0.10 If the security forces had adopted the same tactics, then one can only imagine what the outcry would have been. And what the death toll would have been.
- 0.11 According to the book 'Lost Lives' the Army was responsible for 301 deaths in the Troubles, the Police for 52 and the combined total of deaths caused by the security forces was 367. Republican terrorists murdered 2,139 people and Loyalist terrorists murdered 1,050.
- 0.12 Indeed also according to 'Lost Lives' the IRA was responsible for the deaths of 402 Catholics. The truth is that the self-proclaimed defenders of the nationalist community actually murdered and oppressed the very people they claimed to defend.
- 0.13 Let that sink in. Republican mythology peddles as fact the idea that the “British War Machine” was let loose on a defenceless nationalist population for nearly thirty years. What they are in effect saying is that the best trained soldiers on earth and the finest anti-terrorist police force in the shape of the RUC - went toe

to toe with the IRA and the nationalist population for thirty years and somehow were responsible for 10 per cent of Troubles deaths. Or one per month. And many of those were when armed terrorists were engaged whilst on murder bids and were perfectly lawful shootings. Whilst illegal terror gangs killed an average of nine people per month, with every single one of those deaths being unlawful.

- 0.14 No other Army or Police force on earth would have shown the restraint and adherence to the rules of engagement that the British Army and RUC did. The proof of the restraint shown by the British Government in its response to IRA violence is very evident in the shape of senior Sinn Fein figures like Mr Kelly who were once in the IRA, were convicted of terror offences, jailed, released and are still alive and well today.
- 0.15 In fact tens of thousands of terrorists - loyalist and republican - were arrested, brought before courts, convicted, sentenced and ultimately released from prison, able to resume their lives. That is in stark contrast to the fate of the IRA's victims who faced no court, no prison sentence with the prospect of release, and who were simply tortured and murdered. So who really spent 30 years abusing human rights?
- 0.16 It is nothing short of madness and a cowardly betrayal for any Government to acquiesce in any process that seeks to sacrifice the reputation of its police and soldiers, simply because the very terrorists they defeated have managed to put on suits and acquire some votes. There is no question that the current system for dealing with the past is not acceptable, but that is no reason to replace it with something even worse.

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 a need for reform?

- 1.1 The Troubles left scars on the whole of our society and affected all those who lived through that period of our history.
- 1.2 The Ulster Unionist Party believes that the current system for dealing with the past is not working. Change is necessary but it must be an improvement, be workable and also deliver what this society needs.
- 1.3 We have serious concerns about a number of aspects of the legacy proposals and in particular we will not stand by and permit the rewriting of history or the promotion of a narrative that at its core has the sole intent of undermining the State and the security forces, in order to suit a republican agenda and appease the IRA.
- 1.4 For one thing, the word 'terrorism' does not feature anywhere. This is a shocking omission and indicative of how the entire debate about dealing with the past has been insidiously skewed to minimise and sanitise the role played by terrorist groups whilst simultaneously seeking to place the Police and Army in the dock.

The Terrorism Act 2000 defines Terrorism as follows:

Terrorism: interpretation.

(1) In this Act "terrorism" means the use or threat of action where—

(a) the action falls within subsection (2),

(b) the use or threat is designed to influence the government [or an international governmental organisation] or to intimidate the public or a section of the public, and

(c) the use or threat is made for the purpose of advancing a political, religious [racial] or ideological cause.

(2) Action falls within this subsection if it—

(a) involves serious violence against a person,

(b) involves serious damage to property,

(c) endangers a person's life, other than that of the person committing the action,

(d) creates a serious risk to the health or safety of the public or a section of the public, or

(e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

(4) In this section—

(a) "action" includes action outside the United Kingdom,

(b) a reference to any person or to property is a reference to any person, or to property, wherever situated,

(c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and

(d) "the government" means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.

(5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation

- 1.5 We utterly reject any and all attempts to facilitate the notion that there was any equivalence between the lawful forces of the State, subject at all times to the rule of law, and illegal terror groups whose every action and very existence, was illegal. The RUC, Regular Army and UDR are not equivalent to the terror gangs. Just because republicans say so does not make it true.
- 1.6 We also wish to place on record our frustration that this consultation has made no effort to change the definition of a victim, which is fundamental to any society that is governed by the rule of law.
- 1.7 It is both ludicrous - and morally indefensible - that someone who made a conscious choice to plant a bomb or set out to shoot someone, and who was injured in the process, should be classed as a victim in the same manner as someone who was blown up or shot whilst out shopping or enjoying an evening out.
- 1.8 It is essential that we do not lose sight of the importance of establishing a meaningful definition of a victim that distinguishes between innocent victims and perpetrators. Terrorists are not victims. They created victims.
- 1.9 This is particularly important in the context of providing pensions for the most seriously injured victims of the Troubles. The Ulster Unionist Party supports the provision of pensions for innocent victims, but not for those who were injured as they themselves sought to carry out acts of terror.
- 1.10 People in this society made choices. Some chose to bring up their families to respect law and order and never caused harm to their neighbours or fellow citizens. Some who perceived inequalities with the governance arrangements of

Northern Ireland sought to pursue political reform through exclusively peaceful means. Others chose to involve themselves in illegal organisations whose raison d'être was to maim and murder, spreading terror whilst skulking around in the dead of night wearing masks and hiding in the shadows, often deliberately targeting civilians as they sought to impose their will on society by violence. There is a word for that. It is fascism.

- 1.11 The law-abiding citizens of this country have been asked to accept a great deal in the name of the 'peace process.' A prime example of just how far we have been asked to travel from reality was highlighted in March 2018, when it was revealed that one of those appointed to serve on the Victims & Survivors Forum had himself been convicted of bombing offences and served 12 years of a 20-year prison sentence and who stated in a 2011 TV documentary that he was 'immensely proud' of having joined the IRA.
- 1.12 This almost parallel universe is further evident as we are regularly lectured about the rights of victims by Sinn Fein, a party has within its ranks people with terrorist convictions who planted bombs that killed and injured innocent people.
- 1.13 The narrative is that the crimes of republican terrorists should be allowed to pass into history for the sake of peace, but all manner of investigations and inquiries should be pursued into the actions of the Police and the Army.
- 1.14 In stark contrast, to the illegal acts of terror gangs - republican and loyalist - the rule of law was upheld during the Troubles by men and women who were brave enough to put on the Uniform of the RUC, UDR and Regular Army and make themselves targets for those who sought to use violence to pursue their aims.
- 1.15 The rule of law must not be sacrificed in times of peace to appease the terrorists and their apologists. We are most emphatically NOT all equally guilty or to blame for what happened here and must not fall for the lies of those who have the most

to gain from repeating the republican mantra of a 'just war.' Once again, it is worth stating that every single terrorist act – republican or loyalist - was unlawful, whereas the State and its actors does have the right to use legitimate force.

- 1.16 There also needs to be a recognition that the position we start from in Northern Ireland is one of imbalance. Terrorists have been able to avail of early release from prison; sixteen received Royal Prerogatives of Mercy or Royal Pardons for premeditated crime including murder between 1998-2002, and over 200 people were also given so-called 'letters of comfort' by the Blair Government, and these were sufficient to either halt court action against, or prevent the arrest of a number of high profile IRA suspects.
- 1.17 90 per cent of deaths in the Troubles were due to terrorist action (60 per cent by republicans, 30 per cent by loyalists), and 10 per cent were due to the Police or Army. In addition to the death toll, 47,000 people were injured and there were 15,000 terrorist bombings causing hundreds of millions of pounds' worth of damage as well as casualties. These figures only take account of victims and violence in Northern Ireland. That figure will obviously rise when we include terrorist attacks in Birmingham, Deal, Guildford, Warrington, Manchester, London, Germany and Holland.
- 1.18 Finally, in any study of the past it is crucial that we take account of context. In 1972 alone - the worst year of the Troubles in terms of deaths - 476 people lost their lives. In that year the IRA killed 100 soldiers, wounded 500 more and carried out 1,300 bomb attacks.
- 1.19 The period between 1971 and 1976 saw an extremely high death toll when compared to latter years and it is all too easy to judge the actions of the Police and Military at that time and place, and in those circumstances, from the comfort and safety of an armchair in 2018.

- 1.20 The Police were dealing with a spiralling death toll and trying to investigate daily murders, attempted murders plus multiple shootings and bombings, whilst at the same time trying to prevent future deaths. It should also be borne in mind that attacks often occurred in areas where follow up house to house inquiries were impossible, due to the threat posed by terrorists in those areas, both to the Police and to anyone who co-operated with them. Furthermore, in many instances the security forces, especially the Police were warned not to linger at terror incidents for fear of snipers and/or secondary explosions, as happened at Narrow Water in 1979.
- 1.21 It is hardly surprising that legal niceties so beloved of some academics and self-proclaimed human rights experts of today, were sometimes secondary to the business of stopping the murder campaigns of terror gangs. But for that we must blame the terrorists not the security forces.
- 1.22 The Ulster Unionist Party is under no illusions that in dealing with the past we must resist the concerted attempts being made to rewrite history and further the republican agenda.
- 1.23 This is not merely a unionist perception. In The Journal on 19 April 2015. Fianna Fail Leader Micheal Martin said of Sinn Fein;
- “This is part of their wider agenda of trying to falsify recent Irish history and claim legitimacy for the sectarian campaign of murder and intimidation which they carried out for 30 years.”*
- 1.24 Sinn Fein’s Legacy consultation response said the British state has ‘*always sought to conceal, deny and cover up its central role in the Irish conflict.*’ We can think of no better description of Sinn Fein’s own actions for decades.

1.25 In the foreword to the legacy consultation process the Secretary of State says that legacy proposals must be 'balanced, fair equitable and crucially, proportionate.' For the sake of the dead and injured, and all those who bravely stood up to fight terrorism, we must hold her to that.

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 the legacy institutions?

- 2.1 No. There is no question that the public have not been sufficiently engaged in what is a hugely important and complex set of proposals.
- 2.2 Put simply, the proposed approach will not serve the best interests of innocent victims or former members of the security forces. It will not deliver justice and it will lead to an imbalanced and unfair process which will unfairly brand the Police and Army as the villains of the piece.
- 2.3 Furthermore, it is clear that the public have not been sufficiently engaged in what is a hugely important exercise. No public meetings were organised by the NIO, and the original consultation period was through July and August. This is the opposite of good practice in Northern Ireland.
- 2.4 Given that whatever legacy arrangements that are enacted by the Government will affect us for decades to come, it is essential that they have widespread support and buy-in. There needs to be a greater focus on engaging with those in Great Britain and those who would not necessarily class themselves as victims or survivors but as members of the public touched by events in Northern Ireland and well beyond.

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

- 2.5 The entire approach needs to be rethought, and there then needs to be a serious attempt to encourage greater public participation.
- 2.6 The Belfast Agreement saw every household receive a copy of the Agreement. Yet for this important consultation little has been done to engage the public and I would suggest that every household should have received a copy of the legacy proposal outlining all the mechanisms, the effect it will have on our society and the shortcomings of the mechanisms.
- 2.7 The people of the Republic of Ireland also need to understand that their government was part of the problem and they also need to know what part the Irish Government will have in helping bring truth and justice to victims, survivors and their families.

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?

- 3.1 The HIU is fundamentally flawed and its remit is a major issue.
- 3.2 Our concerns go far beyond what deaths it should investigate and indeed one of the flaws is the very fact that the HIU will only investigate some deaths - not all – and yet will manage to investigate every death in which the Police or Army were involved, unless as victims.
- 3.3 When considering the need for the HIU and its usefulness, it is also worth noting the comments of the then Justice Minister David Ford, reported in the Newsletter on 7th October 2015 as saying the HIU “might at best produce one or two prosecutions”.
- 3.4 The same newspaper also reports that a spokesman for Mr Ford confirmed that he did not see HIU getting many prosecutions. *“During a short discussion on the proposed Historical Investigations Unit, the minister said that he wanted the HIU to be as thorough and transparent as possible but it was unlikely that there would be a large number of prosecutions.”*
- 3.5 With that in mind, it is perfectly reasonable to question why we need it in the first place? £150m is a rather expensive price tag for one or two prosecutions.
- 3.6 The HIU will be a parallel police force under the direction of an all-powerful independent director, with the same powers as the PSNI in terms of arrest and investigation, but, as outlined earlier, we believe it will target its activities against former soldiers and police officers, not least because of the existence of accurate and reliable historical operational archives and records that the HIU can freely

access, whereas no equivalent files are held by the terrorist groups. As a result, the HIU focus will fall on the police and the army with the director having unparalleled powers to decide which case he believes should be investigated based on available evidence.

- 3.7 Once again, it is worth stating that every single terrorist act – republican or loyalist - was unlawful, whereas the State and its actors does have the right to use legitimate force.
- 3.8 Furthermore, a major flaw in the proposed HIU is that it only addresses a relatively small number of victims – in fact it only addresses some fatalities.
- 3.9 If you analyse the numbers, you will see that the investigatory mechanism of the legacy proposals – the HIU – will examine 1,700 fatalities out of a total of over 3,500 deaths and it will within this number re-examine every killing by British military personnel and members of law enforcement agencies. Yet, for some reason, it will not re-examine every killing where British Military personnel and members of law enforcement agencies were the victims. Another obvious inequality arises from the fact that the now defunct and flawed Historical Enquiries Team (HET) conducted ‘reviews’ not investigations.
- 3.10 It is simply not acceptable that the 47,000 people who were injured are to be ignored and that 15,000 terrorist bombings will not be investigated.
- 3.11 99 per cent of victims were caused by terrorists, and all bombings were the work of terrorists. Terrorists were also solely responsible for human rights abuses such as tarring and feathering; the Disappeared; no-warning car bombs and so-called punishment attacks. Why can’t the HIU investigate these?
- 3.12 At the outset it is surely reasonable to ask why we even need a HIU? If the PSNI Chief Constable says he does not have the resources to deal with legacy, then

why not give him the resources? Why can't the necessary resources be given to the PSNI to ensure that the legacy Investigation Branch can do the job?

- 3.13 If the argument is that Her Majesty's Inspectorate of Constabularies (HMIC) found that the PSNI is not sufficiently independent, then why are all legacy cases not being handed over to the HIU? How can we say that the PSNI are not independent enough to investigate deaths yet serious, life changing injuries are to remain on the PSNI case load to be investigated if there is new evidence? This simply makes no sense and adds to the confusion created by having a parallel police force operating in Northern Ireland.
- 3.14 Indeed, establishing a parallel force like the HIU infers that those who support it have no confidence in the PSNI's ability to police the past. And what are the implications of this for the future of policing in Northern Ireland?
- 3.15 One of the biggest flaws with regard to the HIU is that it will almost inevitably facilitate the rewriting of history and serve a republican agenda.
- 3.16 The lack of credible historical records from terrorist groups – republican and loyalist - inevitably means the focus of investigations will fall on the State and its actors, because the State, the Police and the Army all routinely kept operational records which can be accessed.
- 3.17 Indeed, this very point was made most eloquently by Sinn Fein President Mary Lou McDonald in the Belfast Telegraph on Wednesday 19 September 2018.
- 3.18 In response to the question as to whether or not convicted IRA man Martin Morris, who was named in connection with sexual abuse allegations was a member of Sinn Fein, the Sinn Fein President responded:

“He was of course a former prisoner; he was a person who was very active on the ground so I can’t discount that he may have been a member. Our record-keeping was not as it is now 20 years ago and there is no record of any suspension of him.”

- 3.19 Her response to the question of whether or not Sinn Fein kept records of any members who may be involved in criminality was even more illuminating -

“It would not be appropriate for any political organisation... It would not be appropriate to hold records like that.”

- 3.20 Without a doubt no HIU investigators will be conducting investigations or carrying out door to door inquiries in Crossmaglen, Jonesborough, Cullyhanna or anywhere along the border. Instead their stomping ground will be the National Archives where a disproportionate amount of evidence will be found relating to the State while terrorist activity is largely ignored. The HIU will therefore facilitate the rewriting of history and serve a republican agenda.

- 3.21 This will only exacerbate the current imbalanced situation and in the process fail the NIO's own test of being ‘balanced, fair, equitable and proportionate.’

Any further comments

- 3.22 There is no question that the current methods of dealing with the past are imbalanced, unfair and piecemeal, but nobody should be in any doubt that the proposed HIU – the brainchild of DUP negotiators - has the potential to make things much worse. Of particular concern is the lack of a definition of ‘non-criminal police misconduct.’

- 3.23 The statistics on fatalities are dramatic enough on their own, but the Police Service of Northern Ireland (PSNI) openly admit that there were over 47,000 victims of the troubles, many of them left disfigured, limbless or suffering severe mental trauma. Others – mostly in Northern Ireland – have suffered ‘Troubles’ related sex crimes that again will not be re-examined. In all many thousands of victims, mostly created by republican and loyalist terrorists, will never be given even the prospect of justice as the PSNI have stated in letters to service personnel that they do not have the resources to examine the incident that has left them a victim of the troubles.
- 3.24 We find it unacceptable that the tens of thousands of people who were injured – often very seriously – are forgotten. And that nothing is to be done about the 15,000 explosions that were caused by terrorists – the vast majority the work of the Provisional IRA - during the Troubles.
- 3.25 It is of course hardly surprising that Sinn Fein and the IRA should want the focus to be on fatalities only. It’s a relatively small number – certainly when compared to 47,000 injured victims - and helps create a false perception that terrorist actions were somehow not quite as bad as many would believe.
- 3.26 Closer scrutiny leads us to a different conclusion. In terms of deaths, 90% were the work of terrorist groups (60% the work of republicans, 30% by loyalists) and 10% the responsibility of the State - the vast majority when security forces engaged terrorists. When you factor in the 47,000 victims who were injured but not killed, this would equate to 98% of victims being due to terrorist activity, but this is being ignored as part of a pernicious campaign to rewrite the history of the Troubles.
- 3.27 In February 2018 the UK Supreme Court ruled in the John Worboys case that the Metropolitan Police breached the human rights of John Worboys’ victims by failing to properly investigate reports of his crimes. I believe that in focusing

solely on fatalities and in failing to properly investigate the injuries caused to the many thousands of victims of terrorism, the human rights of terror victims are also being breached.

- 3.28 It is important to note that the consultation is open to everyone in the U.K. The Ulster Unionist Party has major reservations about the structure and role of the proposed HIU and have no confidence that it will meet the needs of many victims and survivors.
- 3.29 In choosing a policy of ignoring serious crimes - up to and including attempted murder – the PSNI is setting a course that will inevitably lead to legal action by victims and not just those living in Northern Ireland. Over 6,000 soldiers were wounded by terrorist actions. Every one of them should engage with the legacy consultation and they should be encouraged to do so. As should Regimental Associations, military charities, victims' groups in Birmingham, London and Manchester, and every single family who lost a loved one, whether they were members of the military or civilians.
- 3.30 As a final point, the cut-off date of 31 March 2004 would exclude murders such as those of Police Officers Stephen Carroll (2009) Ronan Kerr (2011) and Prison Officers David Black (2012) and Adrian Ismay (2016).
- 3.31 What is needed is balanced, transparent justice for all taking into account all those who were victims of the Troubles, not just fatalities.

Non-criminal police misconduct

- 3.32 Other major flaws in the HIU include the investigation of ‘non-criminal police misconduct’ which appears in the draft Bill under the sub heading ‘Exercise of the investigatory function.’
- 3.33 This is essentially a catch all clause whereby even if no evidence can be found to charge a serving or former police officer with a criminal offence in relation to a death being investigated by the HIU, then this could be introduced.
- 3.34 Obviously no similar charge exists for former terrorists – there will be no attempt to investigate tens of thousands of non-fatal terror attacks - ensuring that HIU’s ‘investigatory function’ will be directed against those who sought to hold the line against terrorism and meaning that the scales of justice are weighted even more heavily against the State’s forces.
- 3.35 Furthermore, included in the list of matters which do not prevent the Director of HIU from pursuing a prosecution of a person or the initiation of disciplinary proceedings against a person includes ‘*the death of that person since the time when the criminal offence or non-criminal police misconduct occurred.*’
- 3.36 One wonders just how many former RUC officers who are now dead and unable to defend themselves, are being sized up for proceedings to be taken against them should the HIU come into being.
- 3.37 The Ulster Unionist Party would have little or no confidence that this would in any way help achieve the Bill’s stated principle that the approach to dealing with Northern Ireland’s past should be ‘*balanced, proportionate, transparent, fair and equitable.*’

HIU members and officers

3.38 We fully support the principle of Conflict of Interest and agree that they should be avoided. In a section headed 'HIU members and officers' the draft bill states that in employing and seconding persons to be HIU officers, the HIU must ensure that (as far as it is practicable) the HIU officers include

(a) Persons who have experience of conducting criminal investigations in Northern Ireland, and

(b) Persons who do not have that experience but have experience of conducting criminal investigations outside Northern Ireland.

3.39 The next line says that 'in complying with that duty, the HIU must have particular regard to the principle in section 1(f) *'that the approach to dealing with Northern Ireland's past should be balanced, proportionate, transparent, fair and equitable.'*

Obviously those referred to in (a) will be people who have served in either - or both – the RUC and PSNI.

3.40 A complication arises later in the bill in the section headed 'Avoiding conflicts of interest.'

There it states that the Director *'may require an HIU officer, or a person who is being considered for appointment as an HIU officer, to provide the HIU with information about any matter which might reasonably be expected to*

(a) Give rise to conflicts of interest

(b) Otherwise affect the person's ability to carry out his or her duties fairly and impartially.

- 3.41 Further, the Director *'must make arrangements to secure that each of the HIU officers involved in the investigation of a particular death that is within the HIU's remit does not have and could not reasonably be perceived as having a conflict of interest in relation to that investigation.'*
- 3.42 There is also the stipulation that at least one of the HIU's investigation units *'does not include any HIU officer who has, or could be perceived as having, a work related conflict of interest in respect of the investigation of any of the deaths within the HIU's remit.'*
- 3.43 Finally, the Director must also consult the family of the deceased *'and have regard to their views in allocating the investigation'* to a particular investigation unit.
- 3.44 In reality what this means is that anyone with 'a perceived conflict of interest' will be prohibited from investigating certain deaths, and in practical terms that will mean that anyone who has served in the RUC or PSNI will be set to one side. One would also reasonably assume that any HIU member who has investigatory experience with an English, Scottish or Welsh Police force in an area where an IRA bomb killed or injured people would be excluded. And anyone who ever served in the Military or had family members who served.
- 3.45 It is also rather ironic - if not bordering on the ridiculous - that a former RUC officer has just been deemed suitable to become head of the Garda yet would not be permitted to be in an HIU team investigating certain Troubles deaths.
- 3.46 We suspect that the HIU will have real difficulties when it comes to recruitment sufficient numbers of investigators - it needs several hundred – and we will be

watching closely to ensure that applicants from an RUC/PSNI or former Military background are treated in a 'balanced, proportionate, transparent, fair and equitable' manner.

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

- 4.1 Do you think that the process set out above is the right way to assess whether an investigation into a Troubles-related death has taken place or whether investigation is needed?
- 4.2 It is clear from the draft legislation that a lot of power is to be concentrated in the hands of one person and begs the question as to who will be the arbitrator between the HIU Director and the PSNI Chief Constable if there is a conflict in investigations?
- 4.3 Who scrutinises the Director's decisions and what is the process for a right of appeal? Who decides if a case which has had a HET report can – with enough new evidence - be included in the HIU caseload? If it is the Director, how does he come to this decision if HET investigations are not part of his remit? Will he be invited by the PSNI to add this case to his HIU caseload and what if he declines?
- 4.4 As stated earlier, we are extremely concerned that the complete lack of records from terrorist groups – republican and loyalist - inevitably means the focus of investigations will fall on the State and its actors – the Police and Army, where reliable historic operational records are available.
- 4.5 As a result, the HIU will therefore inevitably facilitate the rewriting of history and serve a republican agenda and is totally unacceptable to the Ulster Unionist Party.

Any further comments

HIU Director

4.6 The Stormont House Agreement states that the HIU will be overseen by the Northern Ireland Policing Board and further guarantees the HIU will be an independent body.

4.7 When one examines the draft Act it is clear that the Policing Board has a role in terms of keeping accounts in relating to the funding of the HIU.

It must also

(a) *'monitor the performance of the HIU in the exercise of functions in relation to transferred matters and*

(b) *hold the HIU to account for its performance in that respect.*

The Board must also *'keep itself informed of statistical information relating to the caseload of the HIU'* and issue a report relating to the HIU's activities for the year.

4.8 The Director has 'operational control over the exercise of the HIU's investigatory function'. This includes the powers to decide

(a) The extent to which it is necessary for the investigatory function to be exercised in relation to a particular death, and

(b) The manner in which the investigatory function is to be exercised in relation to a particular death.

4.9 This is absolutely central to the work of the HIU – the Director alone will decide what murders to investigate and how. The powerful nature of the post of HIU Director is also made clear in the section of the Bill relating to Police discipline.

4.10 As we have already stated, included in the list of matters which do not prevent the Director of HIU from pursuing a prosecution of a person or the initiation of disciplinary proceedings against a person includes *'the death of that person since the time when the criminal offence or non-criminal police misconduct occurred.'*

4.11 Indeed, the Director of HIU becomes more powerful than the Chief Constable of the PSNI in certain aspects. For example, the Director may direct the Chief Constable to bring disciplinary proceedings. Although the Director 'must consult' the Chief Constable before giving such a direction, if such a direction is given,

(a) the Chief Constable must comply with the direction, unless the Director waived this requirement; and

(b) the Chief Constable must not discontinue the Police disciplinary proceedings that are brought, unless the Director gives leave to do so.

No-one should be in any doubt that what is being established here is a parallel police force whose primary role will inevitably be to investigate the past actions of the RUC and PSNI.

4.12 And of course the names of former soldiers and police officers will be made public in any proceedings, whereas on 26 September 2018 the Court of Appeal backed the coroner's decision NOT to name suspects at fresh inquests into the 1974 Birmingham pub bombs which left 21 dead and 182 injured.

4.13 Hugh Southey QC, representing the families, told the appeal judges: “*There is the utmost public interest in the proper investigation of who was responsible for the Birmingham bombings.*”

“The families of the deceased said to the appellant (Sir Peter) that the investigation of this issue was so important to them that if it did not form part of the scope of the inquest ‘we may as well not have an inquest at all’.”

4.14 Once again we see one rule for former Police officers and soldiers and another for former terrorists as the concerns of innocent victims are dismissed once again in a manner that is neither ‘balanced, proportionate, transparent, fair or equitable.’

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?

- 5.1 We have already outlined in some detail our reservations about the establishment and operation of the HIU.
- 5.2 We are fully supportive of efforts to ensure that any information relating to National security is not divulged, given that the first duty of any State is to protect its people.
- 5.3 However, the legacy mechanisms compel the UK government to provide every scrap of information for the Historical Investigations Unit (HIU) investigations and will be redacted only when the family report is written. This means all evidence is available which could lead to prosecutions. We have very real concerns as to the security of sensitive information being leaked.
- 5.4 Furthermore, the Irish Government are not compelled to provide all information and what they do provide will be redacted before investigation meaning organisations such as the Irish Directorate of Military Intelligence, the Irish Government and the Garda can remove vital information that could implicate its members. Questions therefore arise as to just what mechanism would be put in place to appeal against information from the Irish Government that is redacted prior to investigation? The lack of reciprocity from the Republic of Ireland when it comes to these proposals is a major flaw. It is noteworthy that both the South East Fermanagh Foundation and the Pat Finucane Centre are highly critical of the fact that the Republic's Government will not introduce an HIU in its jurisdiction.

- 5.5 This is one of the many issues that are undermining the HIU along with issues around the hundreds of murders and attacks which took place in Northern Ireland but originated in the Republic, not least the Omagh bomb. It also seems to ignore the fact that many IRA attacks in border areas ended with the Republic being used as an escape route and the fact that for decades the Republic was the venue for numerous IRA arms dumps and training camps and a place of refuge for republicans on the run from the security forces in Northern Ireland, most notably Martin McGuinness.
- 5.6 When one factors in the suspicions about the involvement of senior politicians in the Republic in the late 1960s and early 1970s - not least the arms trial – and adds to that the findings of the Smithwick Inquiry into the murders of Chief Supt Harry Breen and Supt Bob Buchanan in an IRA ambush in March 1989 in south Armagh as they returned from a meeting in Dundalk Garda station, it is clear to us that the authorities in the Republic of Ireland have a major role to play, and not the bit part they seem to have been allocated thus far.
- 5.7 We also have cases where crimes were committed in the Republic but which originated in Northern Ireland. Cases such as Captain Robert Nairac GC, Denis Donaldson, Jean McConville and the other disappeared will not be investigated by the HIU and neither will the Irish Government convene anything similar to investigate these murders.

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?

- 6.1 It most certainly does not.
- 6.2 As we have already stated in some detail, the HIU is fundamentally flawed, not least because it ignores the injured and will focus disproportionately upon the Police and Army because that is where accurate historical operational records exist. Indeed, it will only focus on selected “Troubles related deaths” and “non-criminal police misconduct.”

Any further comments

- 6.3 The HIU will be a separate police force – the finance should have been given to the PSNI. This would prevent duplication, save finite resources and ensure there is not conflict within the investigatory sphere.
- 6.4 Furthermore, a major flaw in the proposed HIU is that it only addresses a relatively small number of victims – in fact it only addresses some fatalities. It will do nothing for the 47,000 victims who were injured as a result of terrorist activity.
- 6.5 If you analyse the numbers, you will see that the investigatory mechanism of the legacy proposals – the HIU – will examine 1,700 fatalities out of a total of over 3,500 deaths and it will within this number re-examine every killing by British military personnel and members of law enforcement agencies. Yet, for some reason, it will not re-examine every killing where British Military personnel and members of law enforcement agencies were the victims.

- 6.6 Certain parties have a very selfish interest in limiting the numbers being investigated, because that suits a particular narrative. The reality is that there were over 47,000 victims of the troubles, the vast majority - around 98% - down to terrorist activities including 15,000 bombings. Yet incredibly and shamefully, none, absolutely none of these, will be taken into account by the proposed HIU if they did not result in a fatality.
- 6.7 Where else in the world would attempted murder not be seen as a serious crime worth investigating except here in Northern Ireland? This was the outworking of a deal between the DUP and Sinn Fein as part of the Stormont House Agreement.
- 6.8 While Her Majesty's Inspectorate of Constabularies (HMIC) found the HET was a flawed process, those from a security force background who have had a HET report will not have their cases re-examined and it is clear some of these investigations were not ECHR Article 2 compliant.
- 6.9 These proposals WILL tackle the actions by the State and its actors, but will NOT deal with the crimes of terrorists. Pursuing Human Rights compliance is a nonsense when it comes to terror gangs.
- 6.10 The Ulster Unionist Party is clear in its belief that the HIU will not be balanced, it will not be credible and it will not hold those who terrorised Northern Ireland to account.

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 We note the use of the word ‘information’ rather than ‘truth’. This dates back to the Eames Bradley Consultative Group on the Past, which acknowledged that ‘truth’ is not attainable. There are very real concerns that the information received will not be verified and the ICIR process be used to provide a platform for certain groups and individuals to perpetuate propaganda, not least as part of the ongoing campaign to demonise the security forces.
- 7.2 Furthermore, history tells us that republicans in particular are strangers to the truth and have a major credibility problem:

Gerry Adams was never in the IRA

Martin McGuinness was, but left in the early 1970s

The Saville Report was wrong when it said Martin McGuinness was “probably armed with a Thompson sub-machine gun” but right when it criticised the actions of British soldiers

Initially the IRA denied responsibility for the murder of Garda Jerry McCabe in Adare

The IRA denied responsibility for the Kingsmills Massacre

The IRA denied responsibility for the Northern Bank robbery

The IRA denied responsibility for the Disappeared

The IRA denied responsibility for the Colombia Three

The IRA denied responsibility for the Florida gunrunning

The IRA denied responsibility for the murder of Frank Kerr in Newry in 1994

Martin McGuinness told Saville that his oath to the IRA meant he could not tell the truth about IRA activities

- 7.3 Indeed, in giving evidence to the Saville Inquiry into Bloody Sunday, Martin McGuinness demonstrated just how telling the truth for republicans is an impossibility.

He refused to answer some questions regarding the activities of other IRA members at the time of Bloody Sunday because:

“.... there is a Republican code of honour For me to identify who these people are would be a betrayal I have a duty, in my view, stretching back 30 years, to those people and I am not prepared to break my word to them under any circumstances.”

The key phrase there is clearly ‘Under any circumstances.’

- 7.4 The Smithwick Tribunal into the 1989 IRA murders of RUC officers, Chief Superintendent Harry Breen and Superintendent Bob Buchanan is a further reminder to anyone who needed it, of the IRA’s bloody past which cannot be whitewashed or wished away and exposed three major weaknesses - regarding the IRA at any rate - which impact upon efforts to find the truth.

- 7.5 Firstly, the IRA chose to engage with Smithwick only on THEIR terms and they specifically refused to be cross-examined, which is the very process at the heart of verifying statements in our legal system.
- 7.6 Secondly, the IRA chose to engage at their own timing and Justice Smithwick expressed his frustration at the length of time it took the IRA to respond.
- 7.7 Thirdly, the Smithwick report was further proof that the IRA tell lies. Their evidence was not found to be credible and provided further proof – if any were necessary - that a Truth Commission will not work.
- 7.8 Given the republican movement’s past record, unionists will be forgiven for being hugely sceptical when faced with any information that is presented to them as ‘the truth.’
- 7.9 Indeed, it is not just unionists who have doubts as to how committed the so-called republican movement is to telling the truth. In the Belfast Telegraph on Thursday 20 September 2015, Fianna Fail Leader Micheal Martin said:
- “I think the Sinn Fein response has lacked honesty from the outset and continued to show this impulse to protect the IRA and protect Sinn Fein at all costs.”*
- 7.10 Loyalist representatives have repeatedly made clear their members will not engage with an information recovery process while any possibility exists that they could be prosecuted for the actions the truth recovery process is focused upon. Further, Barra McGrory as Director of Public Prosecutions, detailed the practical impossibilities of running the HIU and ICIR simultaneously.
- 7.11 Furthermore, how does the ICIR propose to ensure their family reports are not at odds with reports produced by the PSNI in relation to crimes that may well overlap? We could well find that the ICIR will implicate a particular grouping over

a death only for the PSNI to identify a different group operating in the same area that may well have been responsible.

- 7.12 What of the injured? If a report is given to a family over the death of a loved one what if there were multiple non-fatal casualties? How does the ICIR propose to ensure they are given sight of the report if they have not approached the ICIR for information? The proposals do not take account of the different needs of victims and survivors, for example, when one member of a family wants to engage with the ICIR and another does not. How do you prevent the trauma of the former disclosing unwanted information to the latter?
- 7.13 How will the ICIR stop miscarriages of justice? If they have information which they cannot divulge to the HIU, yet the HIU investigation is flawed and comes up with an outcome that is incorrect with the ICIR hold the key to ensure individuals are not charged, then how can this information be given to the HIU to ensure justice is done?
- 7.14 What if in asking the ICIR for information and on receiving it, the families decide they want justice and ask the HIU to investigate? How do we then stop families from divulging information?
- 7.15 If evidence points to a retired Police Officer not having fulfilled his role to the best of his ability – how will that officer have the right to reply within the 30 days' notice, given he is not going to be given access to the information that has implicated him?
- 7.16 There are very real questions as to how fairness will be achieved.

Question 8: Independent Commission on Information Retrieval

Do you think the 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 one?

- 8.1 No – for the very reasons given earlier. Firstly, former terrorists will not come forward to the ICIR with information and provide the truth for families of victims.
- 8.2 It will not overcome the IRA code of silence so information received in the ICIR would never be verified fully as accurate.
- 8.3 Furthermore, the ICIR does not give protections for any retired police officers named and acts in a sense like investigator, judge and jury with their findings going unchallenged.

Any further comments

- 8.4 The ICIR raises more questions than it gives answers. Where will the ICIR operate from, who will be its members, how will they investigate, what measures will be in place to prevent vexatious claims and how do you verify information without engaging directly with the community?
- 8.5 In simple terms will we see ICIR teams knocking doors in Crossmaglen, Jonesborough, Cullyhanna, the Falls and Shankill Roads, carrying out investigations to ensure that information received can be verified? Or will the ICIR stomping ground be the National Archive pouring over state papers?
- 8.6 And the families of those murdered by the IRA along the border such as the families of the Kingsmills victims will be wondering why the Republic of Ireland is not obliged to reciprocate by opening its archives to reveal what the Republic

knew about those who used their territory to plan and carry out attacks in Northern Ireland.

8.7 It is our opinion that the ICIR will not be able to deliver for families, and will not deliver anything that approximates to evidence that helps identify the perpetrators who killed their loved ones.

8.8 It will however be a useful vehicle for those who wish to denigrate the RUC and Army and paint the State and its agents as the villains of the Troubles.

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?

- 9.1 The implementation of an OHA must be ever mindful of the various dangers of being flooded with false information: propaganda from an organised campaign from people determined to present a one-sided analysis of the past; individuals whose testimony would represent defamation of character and; unreliable witnesses (what Martin McGuinness often called “Walter Mitty” figures).
- 9.2 Robust steps must also be taken to ensure the correct balance is maintained, reflecting the percentage of deaths and injuries attributable to the various terrorist organisations and the security forces. This would entail a pro-active campaign to engage some hard-to-reach elements in our society, not least veterans and retired security personnel.
- 9.3 While an OHA has many intrinsic difficulties and dangers, these can be addressed, if properly implemented.
- 9.4 There can be no agreed narrative of the past. In terms of the “Who, What, When, Where and Why”, the “Why” is contested, while the “Who” is known more for the name of the organisation responsible rather than the individual(s) involved.
- 9.5 But the “What, When and Where” are largely known, e.g. a bomb was detonated on a certain date and time in a particular location. We advocate the OHA sets out all Troubles - related incidents chronologically, like a virtual spine.

9.6 Individuals can then add their recollections, like ribs to the spine, either giving their impressions of specific incidents, or a more general commentary on the Troubles.

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 It is perfectly reasonable that there should be some kind of body that adds context to all experiences that are shared. However, if we look purely at this as a series of vignettes and personal accounts we will miss the wider implications.
- 10.2 For example, how did the issues around the world affect what was going on in Northern Ireland? - the Vietnam war protests, the civil rights movement in the USA, the rise of counter revolutionary warfare though Europe in the form of ETA, The Red Army Faction, PLO and many more, that influenced the outbreak of violence here?
- 10.3 It would also be crucial to assess how the terrorist campaign evolved, the UK response to it, and the political issues of the time. All of this gives important context to our Troubles which cannot be seen in isolation as a set of individual stories.
- 10.4 There needs to be some means of assessing stories, because if all accounts are accepted uncritically as being equally valid, there is a very real risk that storytelling becomes nothing more than propaganda.
- 10.5 In order to ensure fairness and balance, the Government needs to actively seek out the innocent victims and survivors of the Troubles. It needs to engage with civilian groups, the RUCGC Foundation, Police Federation of Northern Ireland, Regimental Associations and other similar organisations, and ensure that it is receiving a full picture, rather than listen to the siren voices of well-organised and

well-resourced republican pressure groups, pursuing an anti-state political agenda.

- 10.6 It is worth understanding that everyone in Northern Ireland has been touched in some way by the Troubles. Thus the definition of a victim and survivor in the context of the Troubles needs to be a priority for the government. As stated earlier, there has to be an attempt to arrive at a satisfactory definition of a victim which ensures that perpetrators and victim makers are not given the same status as their victims.

Question 11: Commissioning the academic report on themes and patterns

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

- 11.1 The ESRC is a well-respected body in the field of academic research and its reputation is well deserved. However, academics themselves do come with their own bias, and this is especially true in Northern Ireland. Indeed, Richard Haass was highly sceptical of the value of historians, given said bias.
- 11.2 There is obviously a very real danger that the 'themes and patterns' could be utilised in a partisan way.
- 11.3 Unionists would obviously be keen to see close scrutiny of the IRA's campaign of ethnic cleansing along the border and also the targeting of particularly part time UDR and RUC personnel whilst off duty and in their own homes. Another area worthy of exploration is the ease with which terrorists were able to operate in the Republic and mount attacks in Northern Ireland, escaping back south across the border, once they had done their worst as highlighted for example, in the academic Henry Patterson's excellent work "Ireland's Violent Frontier".
- 11.4 As we have stated earlier, the absence of any accurate historical records relating to terrorist groups would inevitably mean that investigations would focus on the actions of the Police and Army, due to the existence of reliable historic records.
- 11.5 This would inevitably reinforce the inherent imbalance in investigating the past, and the 90 per cent of Troubles related deaths caused by terrorist action would be set aside, as investigators followed the only reliable evidence available to them and focused instead on the 10 per cent of deaths that were due to the Police and Army.

Question 12: Implementation and Reconciliation Group

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

- 12.1 As we do not support the HIU and ICIR, there is no need for an implementation group, and as for reconciliation, that is the job of the politicians.
- 12.2 The IRG is a body that will react to both the HIU and the ICIR by collating information to produce themes. It is difficult to see how it can be balanced if the information from investigations is mainly state generated. If themes concentrate around issues such as collusion, without a clear definition of collusion and without individuals or organisations such as the PSNI having recourse to challenge information given to the ICIR, it will again lead to an unbalanced narrative.
- 12.3 Clearly ethnic cleansing along the border is a theme but statistics alone will not allow this to be used for reconciliation unless republicans are prepared to be open about their tactics during the Troubles. One example worthy of closer attention would be the IRA campaign mounted in the Castlederg area from the late 1970s to the early 1990s, and another would be the exodus of thousands of Protestants from the west bank of the Foyle in Londonderry in the early 1970s.
- 12.4 As stated earlier, given their track record, we have little confidence that any process is capable of getting truth from republicans.
- 12.5 As outlined earlier Gerry Adams still denies he was ever in the IRA, Martin McGuinness said he left in 1975 and at the Saville Inquiry Martin McGuinness

said that his IRA oath meant he would not discuss certain matters - quote - "under any circumstances" - by definition this includes HIU and ICIR.

- 12.6 Indeed, listening to Sinn Fein representatives, the average bystander could be forgiven for wondering if anyone was ever in the IRA and who exactly was responsible for the litany of atrocities committed by that organisation including Kingsmills, La Mon, Enniskillen and Teebane. It is obvious that Sinn Fein are attempting to re-write the history books and give the impression that the IRA did nothing wrong.
- 12.7 Sinn Fein in Northern Ireland is demanding the State reveals all, whilst the IRA invokes a code of omerta that would do credit to the Sicilian Mafia. They will not tell what they know, yet demand others do so.
- 12.8 The Ulster Unionist Party is in no doubt. The crimes committed by the republican movement cannot be downplayed or allowed to pass into history. These crimes and their consequences should haunt them to their graves.

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?

- 13.1 In a word, NO. We have already outlined our major reservations about the legacy proposals that formed part of the Stormont House Agreement.
- 13.2 Republicans are attempting to re-write history in a bid to promote the narrative that they fought some kind of 'just war', instead of a sectarian campaign of terrorism that saw them inflict some of the worst human rights abuses imaginable over a period not of years but decades. This must be resisted by way of an information campaign that challenges this narrative.
- 13.3 The HIU in particular is a very dangerous development.
- 13.4 At the outset it is surely unreasonable to ask why we even need a HIU? If the PSNI Chief Constable says he does not have the resources to deal with legacy, then why not give him the resources?
- 13.5 There is no question that the current methods of dealing with the past are imbalanced, unfair and piecemeal, but nobody should be in any doubt that the proposed HIU – the brainchild of DUP negotiators - has the potential to make things much worse.
- 13.6 It will be a parallel police force under the direction of an all-powerful independent director, with the same powers as the PSNI in terms of arrest and investigation, but, as outlined earlier, we believe it will target its activities against former soldiers and police officers, not least because of the existence of accurate and

reliable historical operational archives and records that the HIU can freely access, whereas no equivalent files are held by the terrorist groups.

- 13.7 Furthermore, a major flaw in the proposed HIU is that it only addresses a relatively small number of victims – in fact it only address fatalities.
- 13.8 If you analyse the numbers, you will see that the investigatory mechanism of the legacy proposals – the HIU – will examine 1,700 fatalities out of a total of over 3,500 deaths and it will within this number re-examine every killing by British military personnel and members of law enforcement agencies. Yet, for some reason, it will not re-examine every killing where British Military personnel and members of law enforcement agencies were the victims.
- 13.9 We find it totally unacceptable that the tens of thousands of people who were injured – often very seriously – are forgotten. And that nothing is to be done about the 15,000 explosions that were caused by terrorists – the vast majority the work of the Provisional IRA - during the Troubles.
- 13.10 It is hardly surprising that Sinn Fein and the IRA should want the focus to be on fatalities only in order to minimise the true scale of terrorist crimes.
- 13.11 In choosing a policy of ignoring serious crimes - up to and including attempted murder – the PSNI is setting a course that will inevitably lead to the UK Supreme Court as thousands of victims of terrorist violence demand that their cases be properly investigated and their human rights be recognised.
- 13.12 Republicans demand truth, justice and inquiries galore when it comes to the actions of the Police and Army, but are strangely reticent when it comes to the litany of deliberate crimes of the IRA.

- 13.13 One of the major problems we face is that some people are seeking to apply current standards to the standards of the time.
- 13.14 The early 1970s in particular saw the Police stretched to breaking point by the volume of attacks. There were 472 Troubles related deaths in 1972 alone and 1,100 died in the next four years.
- 13.15 Context is crucial. The sheer volume of terror attacks, shootings, bombings and civil unrest in the early 1970s in particular, meant that the Police were having to investigate an unprecedented case load whilst at the same time desperately trying to prevent further loss of life. This must be borne in mind when anyone tried to judge the actions of the past by the standards of today and from the comfort and relative safety of 2018.
- 13.16 It was no easy task for the Police to conduct door to door follow up inquiries in areas where they themselves faced the very real threat of death. This must be borne in mind by anyone judging past investigations by modern standards.

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 The draft bill itself says that the general principles of the Act include the principle that ***“the approach to dealing with Northern Ireland’s past should be balanced, proportionate, transparent, fair and equitable.”***
- 14.2 As we have outlined earlier, this process cannot deliver any of the above, and unfortunately it so badly flawed it should be abandoned.
- 14.3 The British Government is in danger of sleep walking into a set of arrangements that can only do damage to the United Kingdom and the reputation of the security forces who bravely held the line against terrorism and suffered grievously for it.
- 14.4 Having defeated terrorism on the streets of Northern Ireland, it would be the ultimate betrayal if the Government was to set in train a process whereby the lawful forces of the State - RUC and the Army - were to be subjected to some kind of quasi-judicial process which saw them subjected to a degree of scrutiny that was not applied to the terrorists who they faced down.
- 14.5 This is Northern Ireland, an integral part of the United Kingdom, where the lawful forces of the State faced down and defeated a terrorist conspiracy to change the constitutional status of part of that State by violent means and against the clearly expressed will of the majority of its people.
- 14.6 Republicans and the local human rights industry seem to have lost sight of the fact that this was about defending democracy and the rule of law against violent fascists who had no concept of either. As one commentator has said, the Government must beware fostering a pro-terrorist anti-state view of the Troubles.

- 14.7 Rather than pander to those who wish to rewrite history – whether by accident or design - the Government needs to show some self-confidence, stand by the men and women who fought the fight they were asked to, and not lose nerve and prepare to buckle now.
- 14.8 The Government should provide adequate resources to the PSNI's Legacy Investigations Branch and ensure they have the tools they need to do the job.
- 14.9 These proposals simply will not command confidence.
- 14.10 The mantra 'nothing is agreed until everything is agreed' has become very counter-productive. The lack of agreement on truth and justice has hampered progress on areas where there is consensus, such as mental health and wellbeing.

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 In terms of Section 75 groups, we have particular concerns as to how people who have disabilities arising from Troubles related incidents are affected by the current system for dealing with the past. Innocent victims have in many cases been left to get on with it, rather than receive the help and support they need and deserve.
- 15.2 More broadly, as we have already stated, we are concerned that the current system for addressing the past is biased and promotes a certain narrative in an effort to rewrite the history of the Troubles.
- 15.3 In particular, current legacy arrangements focus disproportionately on the activities of the Police and the Army and do not enjoy the confidence of those who are opposed to the re-writing of history in an effort to malign those who defended law and order and to rehabilitate the reputations of those who used terrorism to further their aims.
- 15.4 We are in no doubt therefore, that the current legacy arrangements fail to “have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.”

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 Both the current system and Stormont House Agreement proposals clearly discriminate in favour of terrorist groups and against the Police and Army.
- 16.2 This is evident in the decision only to pursue some Troubles related deaths – and this is 90 percent of the total - but to include all cases where the Police and Army were involved other than as victims - 10 per cent of the total.
- 16.3 They also discriminate against the 47,000 people who were injured and who will not benefit from the HIU, which is only interested in (some) victims who are dead.
- 16.4 The process will therefore only exacerbate the unfairness and imbalance that exists at present and will do nothing to remedy this or promote public confidence.

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 Measures to deal with the past in a 'balanced, proportionate, transparent, fair and equitable' manner and which deliver justice for the victims and their families certainly could be said to promote equality of opportunity, but crucially only if they were applied fairly and equally across the board.
- 17.2 However, these proposals as they stand – especially the HIU - will produce an imbalance, focus disproportionately on the State, follow a republican agenda.
- 17.3 There is no question that such a flawed process will not promote good relations, and it is a matter for debate as to whether or not any process that actually does deliver the truth would promote good relations. We note the warning from Eames Bradley when they made their interim report at the then Science Park, not to expose the number of informants as this would serve to "rip the fabric of society".
- 17.4 It is the case that some people simply will not accept the truth, if it does not conform with the version of events they already believe, something confirmed by advocacy groups such as the Pat Finucane Centre. This is the sad reality of Northern Ireland today, where the past has itself become a new theatre of conflict.

Conclusion

- 18.1 The legacy proposals are structurally flawed – particularly the HIU – and the Ulster Unionist Party cannot support them. The proposed legacy legislation is extremely descriptive and prescriptive which would not allow for substantive change.
- 18.2 They don't address the definition of a victim; families who had received an Historical Enquiries Team (HET) review won't be given the opportunity to have a HIU investigation; those injured during the Troubles will be ignored by legislation purely because they survived, as outlined by the Human Rights Commission; and those families whose loved ones were murdered outside Northern Ireland will not receive an investigation under the HIU. We could list many more issues which make the proposals unacceptable.
- 18.3 The PSNI is the police service that all five main political parties support, at least in public. In dealing with legacy it should be properly resourced to the level envisaged by the Stormont House Agreement, staffed to the level envisaged by the Patten report and supported by government legislation that will stop vexatious complaints or endless judicial reviews by some who are using the legacy of the Troubles to line their pockets.
- 18.4 We simply cannot accept that truth and justice are commodities that can or should be bartered away because it may be politically convenient or expedient for some. We owe it to those who paid the highest price during the Troubles not to allow their suffering to be minimised by sitting silent as the reputation of the Police and Army is besmirched and terrorists are elevated to a status whereby they gain some kind of equivalence to lawful forces.
- 18.5 For three decades the Police and Army stood bravely between terrorists and the civilian population they sought to terrorise, and paid a very high price. We owe it

to those who once defended us – and to future generations - to stand by them now, and not to acquiesce in an imbalanced process that will rewrite the history of the Troubles and minimise or ignore the crimes of the terrorists responsible.

ENDS

Robin Swann MLA, Party Leader

Doug Beattie MC MLA, Justice Spokesperson