

‘ADDRESSING THE LEGACY OF NORTHERN IRELAND’S PAST’

THE NORTHERN IRELAND OFFICE CONSULTATION PAPER

Northern Ireland Office

List of consultation questions in the Consultation Paper

(Deadline 5 October 2018 @ 5pm)

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?

***Proposed response:** I believe the current system is the right approach for dealing with the past, but improvements must be made to the rules and procedures applied by both the PSNI and OPONI. A reform of the overall structure of the system for dealing with the past is not needed. What is required is an improvement of the mechanisms that are already in place for investigating the past, to make them more efficient for victims of terrorism and society in general.*

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?

***Proposed response:** The proposals will not ensure all groups of people can effectively engage with legacy institutions. They are unfair to former members of the security forces, such as retired police officers and army personnel (who may themselves be victims of terrorism) since the Historical Investigations Unit will have access to security forces records while there will be no terrorist records available. As a result, investigations will be directed against members of the security forces rather than against terrorists.*

The proposals are unfair to victims of terrorism, since the door is wide open for terrorists and their sympathisers to recount their exploits while vilifying the security forces using the Oral History Archive.

The proposals are unfair to victims of terrorism who will be unable to verify or challenge the information released by the Independent Commission on Information Retrieval while terrorists will be able to “confess” to their crimes in all impunity using that body.

The proposals are unfair to all law-abiding citizens since the patterns and themes that will be developed over five years by the HIU, ICIR and OHA and sent to the Implementation Reconciliation Group may serve to justify terrorism and rewrite the history of Northern Ireland. This will only retraumatise victims of terrorism.

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

***Proposed response:** The fairness of the investigation process implemented by the Police Ombudsman Historical Investigations Directorate should be reviewed so that retired police officers can engage with investigations related to allegations of misconduct. The proposals concerning the HIU, the ICIR, the OHA and the IRG are not helpful for victims of terrorism and law-abiding citizens and should be abandoned.*

Any further comments:

Proposed response: *Please see my response to question 14 concerning the proposed alternative.*

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?

Proposed response: *The families who have cases related to the Troubles between these dates should have the option to have their cases passed on or not to the HIU.*

Any further comments:

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

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?

Proposed response: *The Director of the HIU should not be given such power. All cases of deaths should be investigated whenever there is an opportunity to do so and where there are lines of inquiry open.*

Any further comments:

Proposed response: *The HIU should not only investigate deaths related to the Troubles but also all serious injury cases.*

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?

Proposed response: *The disclosure of information concerning national security to the HIU should only be made possible in order to serve the unveiling of the truth in relation to the investigation of Troubles-related incidents. Disclosure should never happen when it could undermine national security and the necessary fight against terrorism. It should definitely not be done for the benefit of those who engaged in acts of terrorism against the State of the United Kingdom. If the Secretary of State decides not to release information because of national security interests, the proposed mechanism will allow these decisions to be challenged. Safeguards should be included in the appeal mechanism so as to prevent security forces being undermined in their responsibility and duty to combat terrorism. The mechanism should also help victims of terrorism to access the truth freely in relation to terrorist incidents that have affected them.*

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?

Proposed response: *This is impossible since the interpretation of a victim according to The Victims and Survivors (N.I.) Order 2006 equates victims of terrorism with perpetrators of acts of terrorism. The criminal investigations to be carried out by the HIU would disproportionately target retired members of the police and of the Army, since HIU would have access to all records concerning the security forces' actions, while there will be no records available in relation to terrorist actions. Retired police officers may be unfairly accused in reports by the HIU of alleged misconduct, when there is not sufficient evidence for a criminal prosecution.*

Any further comments:

Proposed response: *It would not be fair or appropriate that a number of investigations concerning deaths will continue to be dealt with by the PSNI and PONI while other cases would be transferred to the HIU. The HIU would also have to investigate serious injury cases to be fair to all those affected during the Troubles as a result of terrorist activity. All cases for which an HET Report was issued should be reviewed and investigated, not only some of them.*

The HIU should not investigate the conduct of police officers and at the same time the crimes committed by terrorists. These are two different functions that should be investigated by two different bodies. It is not fair or appropriate that retired police officers whose actions are investigated would not be provided with any support, nor their families.

It is not fair or right that the HIU would produce a 'secret' report on patterns and themes after 5 years that would be sent to the Implementation Reconciliation Group (IRG) and not made available to the public, especially to victims of terrorism.

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?

Proposed response: *The ICIR should not be an international body set up by the British and Irish Governments. Exceptional legislation should not be introduced to protect terrorists willing to "confess" to their crime from any form of legal action that could otherwise be available to victims of terrorism.*

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?

Proposed response: *It is not right for victims of terrorism not to be entitled to direct access to any information received by the ICIR. It is not right either that information received from the ICIR would never be certified as evidence to the same standard as it would be in the criminal justice system. Victims of terrorism would never be able to verify the information received from ICIR. The Secretary of State should not be able to withhold information without any possibility of appeal.*

The ICIR should not be unaccountable, since no-one will be able to take a complaint to any court against its conduct or sue for damages, even if they were libelled or treated in an unfair way in any report issued by the ICIR.

It is not fair and right for the ICIR to produce a 'secret' report on patterns and themes that would be sent to the Implementation and Reconciliation Group (IRG) after five years and not made available to the public.

Any further comments:

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?

Proposed response: *It is not acceptable that, the OHA would accept experiences submitted by just any individual, even if they libel or treat others unfairly.*

It is not fair or right that no legal action in defamation would be possible against the Deputy Keeper (PRONI) in relation to the OHA, as would be the case for any other activity carried out by the Deputy Keeper.

Any further comments:

Proposed response: *It is completely unacceptable that exceptional legislation would be introduced in order to facilitate terrorists and their sympathisers recounting their stories.*

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?

Proposed response: *The introduction of exceptional legislation to develop a historical archive is unnecessary. Under the Public Record Act (Northern Ireland) 1923 anyone in Northern Ireland can share his/her experience of the Troubles by way of the Public Record Office in Northern Ireland (PRONI) and this body should be used to gather genuine stories concerning the Troubles.*

Any further comments:

Proposed response: *There would be no possibility for families of victims of terrorism to check the veracity of the information received by OHA. However, under the present legislation, with the development of appropriate guidelines, this will be possible.*

It is not fair or right for the OHA to produce a 'secret' report on patterns and themes that will be sent to the Implementation and Reconciliation Group (IRG) after five years and not made available to the public. Under the present legislation there is no need for such a report to be issued.

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?

Proposed response: *Those engaged in carrying out academic research and ensuring independence and impartiality should be counter-terrorism experts who will be able to provide a clear assessment of what happened in Northern Ireland and what should be done to prevent terrorism and radicalisation in the future. It is unlikely that the ESRC would have this kind of expertise. The 'secret' reports on patterns and themes to be received by these experts should in any case be made public. In any case an academic group, whoever it comprises, will be unlikely to produce a fair and unbiased final report that will resolve all issues. Furthermore, the group of researchers should be free to consult any resources they wish to refer to and not be provided with a limited number of documents relating to the Troubles while barred from considering any others, as is proposed.*

Any further comments:

Proposed response: *The group of experts should be genuinely independent and have competence in this area, and should not be used to attempt to re-write the history of Northern Ireland to suit the purpose of those who engaged in terrorism and their sympathisers.*

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?

Proposed response: *The IRG would be made up of people appointed by politicians. It is unlikely that such a body would be able to promote reconciliation.*

Any further comments:

Proposed response: *The Irish Republic should not have any involvement in the IRG as long as there are no equivalent bodies to investigate the past in the Irish Republic.*

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?

Proposed response: *The proposals would not provide an appropriate, balanced and planned way to move Northern Ireland forward and will not command the confidence of the community. These proposals are clearly biased in favour of those who were engaged in terrorism and their sympathisers who would be able to use the HIU, the ICIR, the OHA and the IRG to justify the campaign of terrorism and undermine the security forces, police and army. Victims of terrorism would be marginalised and discouraged from engaging with these processes. The proposals would prove to work for those who wish to undermine the State and its representatives but would not serve the interests of the victims of terrorism or of society in general.*

The early release scheme for prisoners convicted of certain scheduled offences related to the Troubles (for offences committed between September 1973 and 10 April 1998) should not be

amended to include those convicted of Troubles-related offences committed between 1st January 1968 and August 1973.

Any further comments:

Proposed response: *These proposals should be abandoned and replaced by a proper alternative that is outlined in my answer to question 14 below.*

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?

Proposed response: *If implemented, the HIU should deal only with criminal investigations concerning all historical cases, including deaths and injuries. Improvements should be made to the rules and procedures that would be applied by this investigating body. The Historical Investigations Directorate of the Police Ombudsman for Northern Ireland should continue to deal separately with all historical cases where there are allegations of police misconduct. However, the rules and procedures applied by the Police Ombudsman should be reviewed so as to be fair towards retired police officers who may be investigated and their families.*

A new body should be established dedicated to investigating requests made by victims of terrorism concerning the involvement of dead terrorists in major fatality or injury incidents. On the basis of intelligence held by the security forces in the United Kingdom, this body should have the power to release the names of dead terrorists to the families who lost loved ones with the view of bringing them closure.

PRONI should open a 'Legacy of the Past' record, while determining guidelines for stories and experiences to be received and verified with the view of making them available to the public. This should be done in compliance with the Public Record Act (Northern Ireland) 1923.

A new body made up of a group of academics and counter-terrorism experts should be created to develop policies for governments to implement and educational programmes for schools and universities to deliver drawing on the experience of the Troubles, in order to prevent a repeat of terrorism and radicalisation of Northern Ireland society in the future.

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?

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?

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

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

Proposed response: *The only way to promote equality of opportunity and good relations within a society that has been divided as a result of a campaign of terrorism is to acknowledge that terrorism can never be justified and that democracy within a peaceful society must be respected.*

Signature..... Date.....

Print Name.....

**Please return to NIO Legacy Policy, Northern Ireland Office, Stormont House, Belfast BT4 3SH before
5 October 2018.**