

**Victims and Survivors matter. Listen to them.**

Within our role as Advocates there is much talk about Stormont House and the sections within it that are supposed to deal comprehensively with the past.

The Stormont House agreement was formed towards the end of 2014 and has sat gathering dust ever since, while still being hailed by the great and the good as the answer to all of our “Legacy” needs.

The Legacy part of it is divided into 3 main sections and sold as

The Historical Investigations Unit (HIU) “an independent body to take forward investigations into outstanding “Troubles-related deaths”.

An Independent Commission on Information Retrieval (ICIR) “to enable victims and survivors to seek and privately receive information about the deaths of their next of kin”

An Oral History Archive “to provide a central place to share experiences and narratives related to the Troubles”

The above all looks fine and ‘dandy’ until it is examined more closely and we consider how victims have been treated both in the past and today.

The HIU will have a greater remit than the HET, (Historical Enquiries Team), they will have investigative powers and plan to look at the remaining cases not reached by the HET from 1987 and have said they will look at older cases where new evidence can be produced or adequate questions raised regarding it. So once more the burden of investigations is left with the families.

Those who were injured in terrorist incidents will continue to be ignored. They apparently weren’t relevant enough to warrant a HET report and certainly aren’t relevant enough to warrant an investigation into the attempt on their life, which in many instances has left them with a lifetime of physical pain and psychological trauma. These men and women have every right to know what investigation took part at the time and just what investigation is possible now.

The ICIR does not fill many victims with confidence. Just how can those who did so much damage and have justified it for so long be trusted to tell the truth, especially when one group of perpetrators received On the Run Letters and Royal Prerogatives, which when discovered years later caused so much untold hurt and distrust. Neither government or the movement which received these letters have done anything to build confidence, especially when we see the fight the Hyde Park families have had to embark on to achieve legal aid to bring a civil action against John Downey who also received an OTR letter. The families were turned down for legal aid 4 times and then suddenly awarded it at the end of January. John Downey received legal aid on his first application, when he was arrested and charged with the Hyde Park atrocity.

Strands 3 is relatively uncontroversial. Story telling is something which I personally advocate for but more than that I would like to see victim’s stories as part of the civic curriculum so our young people can learn the reality and consequences of terrorism and to help prevent what we lived through to ever happening ever again.

In September 2017 and again only a few weeks ago there was talk about a consultation process regarding the legacy part of the Stormont House. This is being encouraged by many including the Commission of Victims and Survivors.

However, before we have a consultation, there must come a commitment with action from the UK Government that OTR letters will be rescinded through the passing of legislation, the Dublin and London Governments must make legal aid available to victims.

There also needs to be confirmation from both Governments that cases already reviewed by the HET will also be open to investigation by the HIU and those that were injured are treated in an equal manner as the bereaved with obtaining information, truth, justice and acknowledgement.

If and/or when the consultation process does open I urge all of you to make your voices heard. **Your** opinion matters. **YOU** matter. **Your** family matters.

**Ann Travers**



# Advocacy for Innocent Victims Newsletter



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**Dear Member**

I recently was present at a meeting in the House of Commons with Kenny Donaldson and Yasmin Wright; it was also attended by MPs, legal support and members of the bereaved families of the Hyde Park atrocity. A strong case was presented to the MPs as to why the Hyde Park families should get legal aid, and those MPs carried forward our views into the House of Commons business. We also presented our opinion in the House of Lords. Previous presentations had been made to Dr. Andrew Murrison, the chairperson of the Northern Ireland Affairs Committee, and a media strategy supported the case.

Legal aid had been refused four times by the Legal Aid Agency (LAA), citing different conflicting reasons each time, and it was with some surprise and relief that on the fifth application, legal aid was granted. We are pleased to acknowledge that the combined team of the Hyde Park families, cross-party support in both the House of Commons and Lords, lawyer Matt Jury, and advocates from AfIV exerted enough pressure that resulted in the LAA accepting the case was worthy of support. They knew it was the right thing to do.



(L-R) Matt Jury, solicitor, Mark Tipper—brother Simon murdered in the atrocity, Laurence Robertson, senior Conservative MP, Kate Hoey, senior Labour MP, Ken Funston)

We must not underestimate or undervalue how important this breakthrough has been, and how it should embolden us all in our future quest for truth, justice and acknowledgment.

Kind Regards

Ken

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## If it Looks Like an Amnesty, Smells Like an Amnesty.

### Then It's an Amnesty

I remark with some unease that the DUP have revisited the issue of a Statute of Limitations (SoL) for Members of the Security Forces. Despite my understanding that Arlene Foster had disagreed with some of her party members citing significant concerns she holds. She has recently stated, *"We have to be very careful that you don't end up in a situation where you end up giving an amnesty, by the back door, to people who committed some of the most heinous crimes anywhere."* However, it appears that a number of DUP MPs have decided to press ahead with support for the measure. I am obviously unsighted as to why they have taken this stance, especially when it is clear there is very little support for a SoL amongst both serving and retired members of the Security Forces.

If I can refer to a report presented to Haass-O'Sullivan entitled Dealing with the Past in Northern Ireland: Amnesties, Prosecutions and the Public Interest by Professor Kieran McEvoy et al, University of Ulster, it clearly states: - *"The European Court of Human Rights has not had much opportunity to adjudicate directly on amnesties. In its Tarbuk v Croatia case, the Court held that the State is justified in enacting, in the context of its criminal policy, any amnesty laws it might consider necessary, with the proviso, however, that a balance is maintained between the legitimate interests of the State and the interests of individual members of the public. This restates the finding of the European Commission's admissibility decision in Dujardin and Others v France."*

Quite clearly this document is advising that any amnesty or SoL will also have to be available to non-state 'actors' - terrorists. Actions during the Troubles have never been referred to the UN as being war crimes, meaning the duties of the United Kingdom are primarily regulated by the European Convention on Human Rights (ECHR). That is where future cases will go, pushed by 'pound chasing' law firms, and funded by our own Government through legal aid. The Northern Ireland Human Rights Commission (NIHRC) have also advised that a SoL restricting the prosecution of state actors would amount to an amnesty.

Indeed, the Labour government of the time attempted to introduce The Northern Ireland (Offences) Bill 2005 that would have become law but for Sinn Fein and the SDLP withdrawing its' support when they realised that any amnesty introduced would also have to include members of the Security Forces. I understand there was also opposition to the bill from the MoD as they did not ask or wish to be treated in the same way as terrorist organisations.

Under the Northern Ireland (Sentences) Act 1998, paramilitaries were eligible for release after serving two years. The NIHRC have stated that given the uncertainty surrounding the 1998 law, it recommends *"a review, and if necessary amendment, to ensure the legislation is applied equally and fairly to all perpetrators of conflict-related offences"*.

I am aware that former soldiers and police officers would be reluctant to be tried under the NI Sentences Act as it was obviously drafted for paramilitary use. However, if convicted they could still apply to the Sentences Commissioners for early release, availing of the two year sentencing, and not serve a life sentence as suggested by some politicians. The reality is that very few retired members of the Security Forces will ever stand in a court of law, these cases must meet the evidence test in the same way as any other case. We upheld the law, and the attempted introduction of collusion into the mix by the Police Ombudsman is merely to 'muddy the waters', make unfounded allegations not supported by fact, and unfortunately some will believe in it.

(continued)

In a report published in April 2017, the Defence Committee recommended: *"...the enactment of a statute of limitations, covering all Troubles-related incidents, up to the signing of the 1998 Belfast Agreement, which involved former members of the Armed Forces."* The Committee report went on to say: *"... we would encourage the next Government to extend this provision to include former members of the Royal Ulster Constabulary and other former security personnel."*

There is a level of cross party support for this legislation but it lacks a clear understanding of the potential implication of such a bill. I fear that this proposed measure could ultimately rebound on the Security Forces. We have received our own legal advice that if this new Statute become law, then it probably will result in all sides availing of the measure. However, the European Court of Human Rights (ECtHR) is likely to still be challenged in the future to indict retired members of the Security Forces, as the state is held to a higher level of responsibility.

It has been suggested that there is a possibility that a SoL discussion element will be inserted into the soon to be released consultation process on the SHA; we are unsighted if this will happen or not. It certainly is something that our members must be wary of.

What is interesting and it is something that frustrates and annoys people in equal measure, is that republicans and loyalists have to a certain extent got 'away with it'. They availed of early release measures, royal prerogatives of mercy, OTR letters, the list goes on but they cannot understand the irony in their own words. Convicted terrorist, Gerry Kelly, recently said the suggested proposal of a SoL was, *"... an insult to victims and survivors. There can be no immunity for people who have murdered Irish citizens. Everyone should be equal before the law and no one should be above the law."* Kelly received a royal prerogative of mercy, yet he still maintains no-one should be above the law. Yet these are the type of people we do not want to be equated with. And by introducing a SoL, we are being associated with the terrorist, thereby legitimising their actions. The rule of law must be paramount, and if a member of the Security Forces has committed a crime, he/she must expect to face the exactitude of the State. We never agreed with the secretive measures introduced by the Blair government that circumvented the law, and the repercussions of those acts are still being felt today.

MLA Doug Beattie stated, *"We need to be very careful that in our desire to prevent former police officers and soldiers from being the victims of a witch hunt, we do not inadvertently open the door to an amnesty for the very terrorists they risked their lives to defeat."*

Even if the conditions on ensuring the rights of victims were met, it would be difficult to apply such an amnesty to state actors alone while meeting the state's legal obligations in international law to prevent impunity. The reality is a SoL would probably produce an 'across the board' amnesty at a local level, whilst our veterans could still end up in the European courts.

**Ken Funston**