



# SEFF

SOUTH EAST FERMANAGH  
FOUNDATION

## **Response to the Northern Ireland Office Consultation Paper**

### **‘Addressing the Legacy of Northern Ireland’s Past’**



## **South East Fermanagh Foundation (SEFF)**

### **Introduction**

As part of our response to the NIO Consultation, it is necessary to explain the functions of the South East Fermanagh Foundation (SEFF), and its role, both as a victims and survivors group, and within wider society.

SEFF was founded on 15<sup>th</sup> August 1998 to provide practical and emotional support in the area of South Fermanagh for a large number of individuals who had been through traumatic experiences caused by terrorism.

Over the last twenty years, SEFF's development as a provider of services for victims/survivors has somewhat evolved, and the organisation has expanded from its original geographical base. It now has staff located across Northern Ireland providing the core support needed by victims and survivors of terrorism in the Northern Ireland context.

In the last four years, additional focus has been given to developing the case of need for victims/survivors based in Great Britain and Republic of Ireland, ensuring they also have access to support services alike their Northern Ireland counterparts. SEFF now has two members of staff based in London, providing that same level of support to GB victims and survivors.

The organisation now stands at over 1,040 individual members and their associated families. The membership reflects the ethos of the organisation – those, who 'through no fault of their own' were affected in some way by the terror waged on the community in the past.



SEFF defines its mission statement as, ‘**Supporting Victims and Survivors, Strengthening Communities.**’

Additionally, SEFF has the following aims and objectives:-

- To represent and lobby on behalf of the innocent victims and survivors of terrorism in effecting positive change for such individuals around the areas of Justice, Truth, Acknowledgement and overall Service provision.
- To develop services and programmes which improve the physical and mental health & wellbeing of the innocent victims and survivors of terrorism.
- To develop Transgenerational/Youth services which seek to educate society as to the on-going legacy of 40 plus years of terrorism.
- To improve the financial circumstances of innocent victims and survivors of terrorism through tailored welfare services and skills-based programmes.
- To develop strategic partnerships with community/voluntary/statutory sector based organisations for the purpose of ensuring quality and sustainable services are provided for the innocent victims and survivors of terrorism.
- To offer services in an accessible, localised manner which will enable the individual needs of innocent victims and survivors of terrorism to be best met.
- To provide opportunities for Volunteers to develop their skills, so enabling them to be an intrinsic part of the overall service delivery model within SEFF.
- To empower those whom we support to make the transition from ‘Victim’ to ‘Survivor’ as part of an overall process of individual healing and recovery.
- To strengthen the organisation’s ties within the broader community and to develop and/or participate in initiatives which help deliver a shared future.

As indicated, our values are enshrined within our vision and mission statement, and underpin everything we do, as well as *how* we do it.

These values include:-

- ***Providing the highest quality of service*** - ensuring that our work is delivered to high standards and our members are treated with equality;
- ***Collaborative*** - working with our individual members, and with additional organisations to ensure the expressed needs of victims and survivors are addressed;
- ***Person-centred and respectful*** - we will safeguard and protect the autonomy and decision-making rights of our members at all times to ensure that they receive an independent and impartial service that is focussed on their goals. We will ensure that our members are treated compassionately and respectfully at all times;
- ***Inclusive*** - in ensuring that the unique nature of violence inflicted on our society is recognised and not forgotten, by working collectively on behalf of members in addition to individual support;  
**AND**
- ***Listening & Learning*** - ensuring that we listen to, and are guided by, the expressed will of those members who engage with us in the development and management of our organisation.

SEFF is also one of 23 groups attached to the Innocent Victims United umbrella organisation with a combined membership of over 11,500 individual victims survivors based in Northern Ireland Republic of Ireland, Great Britain and mainland Europe.

SEFF's core services for victims/survivors are listed below in diagram format; the organisation also contributes to the building of the community through a range of youth, older people and cultural diversity/good relations themed programmes.



## Public Consultation

# Addressing the Legacy of Northern Ireland's Past

### **Prelude**

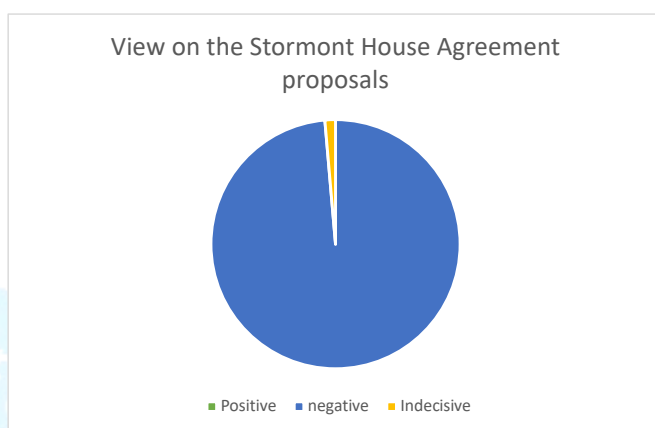
The SEFF organisational response to the Public Consultation, “Addressing the Legacy of Northern Ireland’s Past” is in the following pages. We are fully aware that the current system does not meet the needs of victims and survivors, the question is, will the Draft NI (Stormont House Agreement) Bill achieve those aims?

The SEFF membership includes many bereaved by both Republican and Loyalist terror, and many, many more physically and/or psychologically disabled or affected by the actions of those terror organisations. Many of these direct victims and survivors felt unable to respond to the consultation document, quoting a number of reasons, including that they didn’t understand the questions, it was too long, that the decisions had already been made, or their voices didn’t matter.

During the months of June and July, SEFF organised a series of events across NI, the RoI and GB, to which members of academia, legal experts, the NIO and the Irish DFA were invited. These events were attended by upwards on 1,000 people, the vast majority being victims and survivors. It was clear by the emotions displayed by the attendees both vocally and in feedback sheets, that there is widespread dissatisfaction with the proposals in their present format. Our response has therefore been informed by the membership, and is not merely the views of a few.

The collation of the feedback sheets from attendees at the Consultation events indicated the following:-

172 persons took the time to complete the feedback sheets, no-one had a positive view on the proposals, 4 persons were indecisive, and 168 had a negative view.



People were asked three questions:-

- 1) What was their general view of the proposals?
- 2) What was missing from the legislation?
- 3) What could improve it?

The most prevalent responses to the questions indicated the following:-

- 1) Victims have been forgotten about, there is nothing in this for victims, the legislation is a way to condemn the Security Forces, it is a bill for the victim makers, it equates the victim with the terrorist, and it is confusing, vague and unclear.
- 2) The definition of a victim must be changed was cited by almost 50% of respondents. There were also a number of people who stated there was nothing in it for GB and RoI victims.
- 3) The most popular answer was the legislation cannot be improved as it is irrevocable. A number of people believed that the legislators need to understand the views and needs of victims, and this legislation will not deliver on those needs.



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## Consultation Questions Template

	Yes	No
<b>Question 1: Current system for addressing the past</b>		
<b>Do you consider that maintaining the current system for dealing with the issues of the past through legacy inquests, PSNI and OPONI investigations is the right approach, or do you think there is a need for reform?</b>		X
<ul style="list-style-type: none"> <li>The current system is largely dominated by the Police Ombudsman (PONI) and the PSNI Legacy Branch (LIB). They do not have the capacity or focus to investigate the past. The structure does not deliver truth and justice for innocent victims, and deals predominantly with cases involving the Security Forces. There have been very few 'investigations' into cases by the LIB where innocent victims have lost their lives through terrorist action. SEFF currently only have one active case being dealt with by LIB, as LIB have been concentrating on cases where the Security Forces have taken life, such as 'Bloody Sunday', and PONI only deal with cases that involve complaints against the police – either serving or retired.</li> <li>There is a general lack of confidence in the LIB, and this is partly due to a number of statements made by the Chief Constable of the PSNI. He has a duty to deliver on behalf of the public, but consistently states that the PSNI have neither the desire nor the resources to deal with the past. Mr Hamilton recently stated at the West Belfast festival, <i>"The police service simply doesn't have the financial or the human resources to deal with some of these judgements as they currently stand, and on occasions the judgements, I believe, are actually contradictory and unworkable."</i> This undermines public confidence in the police service, and in reality, the PSNI LIB will continue to be responsible for legacy in the foreseeable future in the absence of any other structures.</li> </ul>		

- Legacy Inquests have not been included in the documentation or anywhere in the draft bill. These inquests appear to be proportionally high in terms of allegations against the State. Out of approximately fifty Article 2 Inquests, only a few of these are challenging the terrorists, the rest are based on the State taking of life. Article 2 Inquests appear to be compulsory when the State takes life, and these type of inquests are significantly more extensive and rigorous than those Inquests where terrorists have taken life. There is therefore an obvious imbalance, and potentially this inquest list will grow without proper control. It must be considered that the Legacy Inquests should be moved under the umbrella of the HIU, and controlled by that organisation. This will also allow the coronial inquest system to move forward with the backlog of non-legacy cases.
- The current legislation of limiting actual custodial time to two years in the event of a successful prosecution for murder demeans and undermines the concept of justice. This draft legislation states that it should reflect six general principles, one of these being 'that the rule of law should be upheld.' The rule of law has been undermined for the last twenty years since the Belfast Agreement, and this legislation will only succeed in continuing in that vein. Amnesties, OTR letters and Royal Prerogatives of Mercy have been issued to many involved in terrorism, thereby eroding public confidence even more.
- The courts demand that present evidential standards apply, and this will continue to undermine the chance of legacy convictions. Procedures that were applicable at the time of the offence must be considered as acceptable rather than demanding modern day standards.
- The current process ignores the many thousands of other serious crimes, such as attempted murder, and the new legislation will continue in the same way. Serious thought must be given to address the needs of the injured.
- The Legacy cases in GB, mainland Europe and the RoI have been ignored in the past and will continue to be ignored under these new proposals.

<b>Question 2: Stormont House Agreement proposals - engagement with legacy institutions</b>	<b>Yes</b>	<b>No</b>
<b>Does the proposed approach help to ensure all groups of people can effectively engage with the legacy institutions?</b>		<b>X</b>
<p>If no, please suggest additional measures that would improve this for specific groups:</p> <p>The proposed approach is not a holistic process and excludes many different groups of victims:-</p> <ul style="list-style-type: none"> <li>• Those with disabilities/serious injuries from Troubles related incidents are excluded from engaging and using the HIU or the ICIR. They will only have access to the OHA.</li> <li>• The aim of the Stormont House Agreement (SHA) is to remove all the legacy work from the PSNI and PONI and transfer it to the HIU. The injured will still have to direct their enquiries through the PSNI Serious Crime Branch as they are excluded from these structures.</li> <li>• The victims/survivors based in GB/RoI and Europe where crimes were committed in those jurisdictions, do not have equitable access to the proposed HIU</li> <li>• The Irish Government need to be clear of their obligations in an equal and balanced way. They must be fair and equitable to all victims, including those murdered in their jurisdiction, and to those whose murderers escaped back to their jurisdiction. They must put in similar measures as proposed by Stormont House. A Garda task force similar to the HIU and access to information retrieval similar to the ICIR, along with a similar appeals process for the timely forwarding of information to families. This would go some length to ensure a holistic process, and build confidence within the victims' community.</li> </ul>		

- The British government also needs to set up similar institutions for those murdered and injured in mainland Britain. The British and Irish governments should make demands upon their respective police services to conduct serious crime reviews into Troubles related cases that happened within their jurisdiction. Consideration should be given to working with the respective police force of the European countries in order to assist with the investigations into the fifteen murders committed in mainland Europe by the PIRA.
- Potentially, ex-members of the security forces could find the wording within this document hostile, and understandably find difficulty with engaging with either the HIU or the ICIR.
- It almost seems that if the State investigate a murder committed by a terrorist, in the interest of appeasement they must also investigate a death caused by the State, even if there is no perceived crime. Conversely, therefore, human rights legislation is circumvented, as deaths caused by the State are deemed of greater significance than those caused by the terrorists.

**Any further comments:**

It is difficult to understand how the RoI can become involved with the implementation of the legislation when the HIU – or a comparable structure - will have no role within their jurisdiction. It would be wrong to give them joint responsibility when they are failing to honour the obligations made under the Stormont House Agreement.

Question 3: HIU remit	Yes	No
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?		X
<p><b>Any further comments:</b></p> <ul style="list-style-type: none"> <li>• No real benefits for these families as they will have to wait longer due to chronological order model, with the reliability of witness evidence been further eradicated over these extended periods of time.</li> <li>• We would question the motivation of it being introduced at this time.</li> <li>• There is nothing to prevent the PSNI Serious Crime Branch conducting reviews over this extension period by applying the same review model that was introduced in April 2004. The rationale suggested by the Chief Constable is the review model as approved by ACPO. This actually highlights the fact that any reviews conducted by the HET could not have met the required standards.</li> <li>• The general and accepted consensus of the Northern Irish population is that the Troubles officially ended in 1998, this would somewhat 'muddy' the waters on this recognised concept.</li> <li>• This extension takes the HIU outside the timeline adhered to by the ICIR and the OHA.</li> <li>• Potentially because of this extension, it may lead to pressure to take the prisoner early release scheme up to 2004. Certainly, this is the thinking amongst innocent victims, and this will be the next natural step as suggested, once again undermining true justice for innocent victims of terrorism.</li> </ul>		

- Where does it stop? Do we have another piece of legislation in 5 to 10 years in the future, with dissident groupings entering into a ceasefire (when their members are getting too old), only to be replaced by a splinter group carrying on the campaign of violence. These terrorists will be treated with leniency, creating a constant cycle of violence with no terrorists ever facing true justice. This will further highlight the disparity between the acceptable level of “Northern Irish domestic terrorism” in comparison to acts of international terrorism occurring in the rest of the UK.



<b>Question 4: HIU - Director assessing previous investigations and deciding whether further investigation is needed</b>	<b>Yes</b>	<b>No</b>
<b>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?</b>		<b>X</b>
<p><b>Any further comments:</b></p> <ul style="list-style-type: none"> <li>For every part of the HIU caseload, the Director will determine the extent to which an investigation is required, and how this investigation will be carried out. Prior to the release of the consultation we were led to believe that all cases that had not received a HET review would have the right to a full investigation by the HIU. It appears now that many families will only receive a report in the same way as they would have from the HET, unless they make a complaint against the State. So, there is more likelihood of an investigation in a case where there is alleged State involvement as records will identify members of the security forces allegedly involved.</li> <li>We are aware of many cases that had a cross-border aspect that were reviewed by the HET. In a number of these cases, the Garda Síochána failed to assist the reviews or did not produce the documents requested by the HET. There is nothing in these proposals that would indicate the RoI intend to introduce measures that would necessitate them assisting in the future. Because of the failures of the RoI state, the HIU must look at these botched reviews and consider a new investigation.</li> <li>The British State are signatories to the ECHR and compliant to Article 2, whereas terrorist organisations carried no such responsibilities. They hold no records that will identify their actions.</li> </ul>		

- No HET review met ACPO standards, so all these cases should receive a proper HIU investigation. It is debatable whether all families will liaise with the investigative authorities in these cases, but that does not remove the onus on HIU to continue with their investigation as dictated by British law and the ECHR.
- The HIU Director has too much discretion in that s/he will have sole responsibility and control over decisions regarding levels of investigation.





Question 5: HIU - disclosure appeals mechanism	Yes	No
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?		X
<p><b>Any further comments:</b></p> <ul style="list-style-type: none"> <li>• There needs to be clear direction in relation to proceedings, and a timescale to prevent the overall process being unreasonably delayed by the judicial system. Republicans have already indicated they will challenge the State in all instances where information is with-held. The resulting appeals will cause a backlog in the system, and could cause huge delays and expense.</li> <li>• By challenging the State in the courts, this will imply wrongdoing as the State holds records. Terrorists obviously have no records on their past. Constant court cases will portray extensive wrong-doing by the State and take the pressure off the terrorist organisations, thereby portraying further imbalance.</li> <li>• The dissemination of secret and sensitive information will potentially create Article 2 issues following the divulging of identities. This information cannot be guaranteed protection once it is passed to a second or third party.</li> <li>• The obligations placed on the RoI are not included within the proposals. There is no appeals procedure there, and the Garda have complete autonomy over what information is released to investigative bodies before disclosure is even considered. There will have to be constitutional change within the RoI to allow that to happen, and there is no likelihood of that.</li> </ul>		

Question 6: HIU - overall view	Yes	No
Does the HIU provide a method to take forward investigations into outstanding Troubles-related deaths in a proportionate, victim-centred manner with an appropriate structure and safeguards?		X
<p><b>Any further comments:</b></p> <ul style="list-style-type: none"> <li>• We believe this is not a balanced process as it stands and without reform will be viewed as unfair, and will collapse, thereby once more letting down some of the most vulnerable in our society.</li> <li>• Neither is it 'victim centred' as it excludes many, including those who had loved ones murdered outside of Northern Ireland. The injured and those who were, for example, threatened out of their homes, also need to have some access to information or acknowledgement.</li> <li>• Families who went through the HET review process must have access to an HIU investigation. Article 2 compliant investigations should be the right of all, not just when the State have taken life.</li> <li>• There is no provision or procedure for families to have simple questions answered regarding their cases.</li> <li>• The appeals process is unfair and unbalanced as the State hold records and terrorists do not.</li> <li>• The Irish Government does not have its obligations clearly set out within the proposals. Both Governments must agree to act in a timely manner to give confidence and demonstrate good faith.</li> </ul>		

- As the proposals stand, the only investigations will be into allegations against the State. Retired police officers and security forces personnel need to be advised of procedures for redress against any allegations made against them.
- The Director of the HIU has a very wide remit and too much control regarding investigations: Perhaps there needs to be a panel making these decisions, which must be free from political influence and be impartial.
- There also needs to be a simple and straightforward method of appeal for families against these decisions.



#### 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?**

- The ICIR should highlight the different organisations that will provide advice and support in engaging with the ICIR; if required they can correspond on behalf of the victims and survivors.
- The ICIR should endeavour to give confidence to the families that any information provided to them will be validated; what is the method on how these checks will be done and how will the information be presented?
- If there is some doubt as to the validity of information, will this be passed to the families, with concerns re the reliability being highlighted? When engaging with victims, the ICIR should clearly state who they will be seeking information from, and this will be from the outset. The position in relation to the obligation on persons to provide or not provide information should be outlined.
- There is a likelihood that terrorist organisations 'intermediaries' will deliberately engage with the ICIR to give their version, or a sanitised version of events.
- Regular periodic updates should be given to the family, along with a realistic timeline on how long the process is likely to take.

Question 8: Independent Commission on Information Retrieval	Yes	No
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?		X
<p>Any further comments:</p> <ul style="list-style-type: none"> <li>Although there is an assurance that information provided to the ICIR won't be admissible in court proceedings, there is little incentive for former terrorists to come forward with information, due to the possibility of the information subsequently being obtained by other means e.g. by HIU.</li> <li>In any individual case, the HIU must have completed their work before the case moves to the remit of the ICIR. If this doesn't happen, it is likely that perpetrators will not engage with ICIR, and also, potential HIU evidence could be contaminated by ICIR exposure.</li> <li>It is unlikely that former terrorists would be willing, or permitted to engage with the ICIR, unless it is for ulterior motives.</li> <li>It is unlikely that families will receive the information they really want as names of those who gave information, names of alleged perpetrators etc. will not form part of the family report.</li> <li>There is a concern about the credibility of the information given to the ICIR, and the means they will use to verify the credibility of this information. The ICIR will not assess information to the same standard as for criminal proceedings.</li> </ul>		

Question 9: Oral History Archive	Yes	No
Do you think that the Oral History Archive proposals provide an appropriate method for people from all backgrounds to share their experiences of the Troubles in order to create a valuable resource for future generations?		X
<p><b>Any further comments:</b></p> <ul style="list-style-type: none"> <li>• Overall there is a lack of information relating to how it will be decided what submissions will be included or excluded; or how they will be collated, collected and stored.</li> <li>• Potentially, it will be a worthwhile venture for innocent victims to tell their story, but terrorists will also be allowed to recount their narrative. It feels therefore that this is putting victims and terrorists on an equal footing.</li> <li>• Innocent Victims could well be reluctant to engage as they are sceptical that it will be a continued distortion of the truth, for which they will only be providing a small token input into what will be an overall justification for terrorist atrocities.</li> <li>• Innocent victims will tell the truth, will the terrorist do the same?</li> <li>• It should be treated as a blank canvass. There are serious reservation relating to previous works completed; many have been written with pre-conceived agendas and theories, being selective in the information that is included; rather than being truly objective. Will these works be included within the archive?</li> </ul>		

#### **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?**

- Families and individuals need to feel confident that they can trust the person recording their story to include the full version and not edited. They must also feel safe in how their story is stored and who will have access to it.
- Innocent victims have expressed to us that they would be unhappy to share their story if it is on an equal platform with those terrorists who have hurt them. To prevent this there need to be structures in place that corroborate and validate stories from people who carried out criminal acts, to be factual and not glorifying terrorism. Justification of murder in this life experience telling process runs a very real chance of traumatising families and future generations as they research their family history. Due care and safeguards surrounding innocent victims must be paramount, they have suffered enough.
- Can one central archive meet the needs of a disparate population with conflicting attitudes and views of the past? Will the archive have some level of proportionality or can it be populated by one skewed narrative?
- There will be a reluctance by ex-members of the security forces to give their testimonies due to security concerns.

#### **Any further comments:**

More information is needed on how stories will be validated or corroborated.

Funding and resources should be considered for victims' groups in order to facilitate them taking testimonies about life experiences.

Question 11:	Yes	No
<b>Commissioning the academic report on themes and patterns</b>		
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?		<b>X</b>
<p><b>Any further comments:</b></p> <ul style="list-style-type: none"> <li>• It is of the utmost importance to ensure independence, impartiality and best practice in academic research. However, we are not familiar with the work of the ESRC so it is therefore difficult to answer this question.</li> <li>• Were other groups considered for this piece of work?</li> <li>• Why is the ESRC being solely considered? Are they impartial? Will there be a proper tendering exercise implemented?</li> <li>• The work conducted by the ESRC will only be as good as the information given to it by the IRG. If they receive reports from the other organisations through the IRG that show a level of bias, can they question these, or quite simply evaluate accordingly?</li> </ul>		



Question 12: Implementation and Reconciliation Group	Yes	No
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?		X
<p><b>Any further comments:</b></p> <ul style="list-style-type: none"> <li>• The documents continually talk about being ‘victim centred’, no-one really knows what that means, is it merely a colourful term that makes victims feel they are being included? Rather than being ‘victim centred’, this should be ‘justice centred’ hence having the rule of law at the core. The overseeing body of the IRG is neither, it will be a group of politicians/representatives of terror organisations with their own ideological agendas that will have a trade-off in order to have their own wish list included. We should consider appointing victims and survivors to the IRG.</li> <li>• Reconciliation is another of the oft-used terms that people like to use out of context, without really understanding its meaning. Maybe if there was a clearer understanding of reconciliation by the policy makers, it would not simply be used as a ‘filler’. Reconciliation, without having a clear direction, is a difficult and complex process that will often involves failures and setbacks, and is a difficult course to follow.</li> <li>• A ‘Statement of Wrongs’ by the terror organisations could be the start of a reconciliation process, and needs to be included within the IRG’s reports. If these organisations were prepared to concede on this, it would indicate a level of commitment on their part.</li> </ul>		

- The thematic reports produced by the IRG needs to have descriptors of terms such as ‘ethnic cleansing’ and ‘collusion’. The border areas in particular suffered from ethnic cleansing; will this be properly researched, or will it be dismissed as merely a view rather than a reality?
- The IRG’s work should include case studies on the formation and growth of the terrorist organisations, their structures, strategies, investigation of their methodologies such as their use of torture and execution of prisoners must be included.



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Question 13: Stormont House Agreement proposals - overall view	Yes	No
Do you think that the package of measures proposed by the Stormont House Agreement provides an appropriately balanced and planned way to move Northern Ireland forward that can command the confidence of the community?		X
<ul style="list-style-type: none"> <li>As the HIU stands, it does not offer the confidence required that it is a balanced organisation, it will continue to be disproportionate, with the focus on the actions of the Security Forces.</li> <li>The Republic of Ireland must show commitment to the proposed structures, and not simply pay 'lip-service' as they have so far indicated. There were many hundreds of murders with a cross-border aspect that will be ignored unless the Irish show that proper commitment. Additionally, the Irish citizens who were murdered during the Troubles deserve equality with those British citizens who were also murdered.</li> <li>The ICIR and OHA, unless managed properly can potentially be used for further rewriting of history, and distortion of the truth.</li> </ul> <p>Several key areas not mentioned in the proposals are:</p> <ul style="list-style-type: none"> <li>A Statement of Wrongs</li> <li>Definition of a Victim, this is the constant recurring theme, with many finding the inclusion of terrorists within the definition as totally unacceptable. This is at the core of dealing with the past, and the 2006 Victims Order must be changed in order to remove this aberration.</li> </ul>		

- Pensions for the seriously injured that has been stalled due to the inclusion of terrorists. The definition of a victim is the underlying problem again.
- Mental Trauma Service
- Rights of the injured with regard to truth and Justice
- Community based reconciliation strategy



#### 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?**

- GB/ROI are not included in the HIU investigative process. Therefore removing any real opportunity for truth, justice and acknowledgement, something must be put in place to redress the fact so that their victims will also be able receive a review/investigation.
- Both damning critical reports and the inadequate review process proved the HET to be a failed organisation, necessitating that victims be given the option of having a proper HIU review/investigation.
- The HIU should review all cases to include those seriously injured – not everyone will want to avail of this.
- A more balanced prioritising of investigations.
- All cases must be investigated to a certain point before the consideration is made whether a family report is to be prepared or the case is further investigated.
- The inclusion of a Statement of Wrongs would help to prevent the re-occurrence of the past.
- The definition of a victim must change. We make no apology of repeating this, it is totally wrong to equate the terrorist with the innocent victim.

- Sanitisation of language – use of terminology such as ‘terrorist, terrorism’ is nowhere in the documents. The Secretary of State refers to terrorism in her preamble, yet it is not mentioned anywhere else in the document. This must therefore have been a deliberate decision and an attempt at appeasement.
- The proposed institutions do not have the needs of the victims at their core.
- The 6 principles of the Stormont House Agreement will not be met by this legislation. To suggest that the rule of law will be upheld by this potential legislation, and the pursuit of justice will be facilitated, is pure nonsense. The last principle, that ‘the approach to dealing with Northern Ireland’s past should be balanced, proportionate, transparent, fair and equitable’, will achieve absolutely the opposite unless there are fundamental changes made.
- The proposed HIU will be an investigatory body, with the powers of a police force. There is no guarantee that they will be fit for purpose, and might be in a similar vein to the discredited HET. Has there been consideration given to resourcing the PSNI to conduct the legacy investigation role? If the resources were given to the Chief Constable, a new unit could be formed fairly quickly, funded and managed by the PSNI, but with a level of autonomy

**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?**

- The current system has a negative impact on those who were injured/disabled during the Troubles. They did not have access to a HET report, and they cannot get access to an investigation by LIB.
- These structures were designed to deal with the legacy of the past, yet by excluding the injured from this process, they will continue to engage with the PSNI, thereby remaining on the workload of that organisation.

**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?**

- The disabled/seriously injured are unfairly excluded and will not be able to engage with the HIU/ICIR in the current proposals.
- There is the potential for the Stormont House Agreement to be exploited by sections of the community that will undermine reconciliation and lead to further division.
- The Stormont House Agreement will impact negatively on the innocent victims of violence who suffered as a consequence of terrorist violence as the proposals will quite simply be a charter for investigating those who sought to uphold the rule of law.

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

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

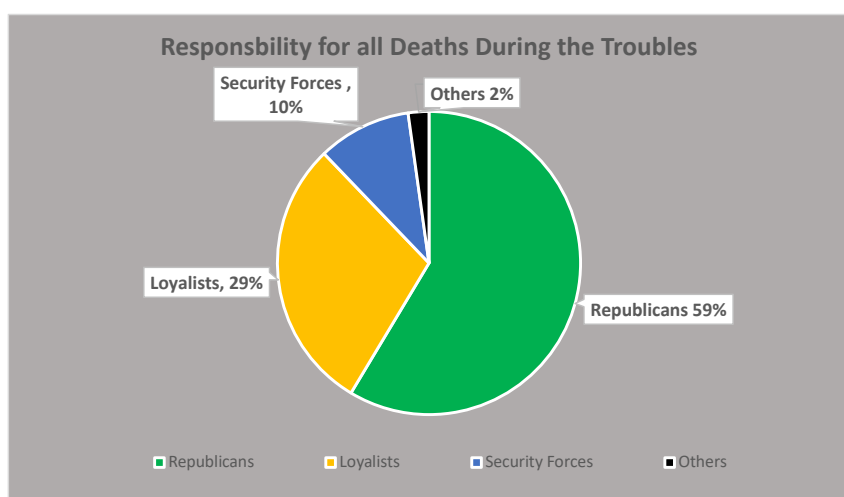
- Proposals as they stand appear to be academically based, imposing what victims are perceived to need, as opposed to what they really need.
- Unless the Irish Government fully commit to the proposals, then there will be a continued perception of unbalance and cover up. Fully embracing all the proposals will help promote equal opportunity and good relations.
- There needs to be an acknowledgement from terrorist organisations that no one had the right to take another life or hurt another because of their job, religion or where they socialised, for true healing and reconciliation, i.e. A Statement of Wrongs. Good relations cannot be promoted until this has been accepted.

**Commented [PM1]:** The proposals appear to be academically based, imposing what victims are perceived to need as opposed to what they really need. The ROI Government seems to point out when it suits them that NI is a different jurisdiction, putting themselves on some higher moral ground as if they had no part or influence in any of the troubles. Overall, they do not appear to be fully committed to the proposals, especially the access to information they hold. The IRG final reports need to be factually evidenced based, not relaying what certain sections of the community want to hear, or merely trying to please everybody.



### **Pie Charts Indicating Responsibility for Deaths**

We have included in this response document a number of diagrams that highlight who was responsible for deaths during the Troubles, and have sub-divided them to include each area where life was lost. It is clearly evident who was responsible for the vast majority of deaths, and how the HIU must direct its future workload.

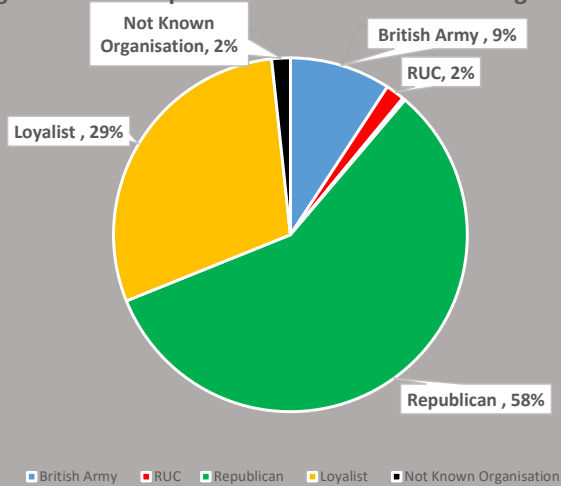


Republicans	2148 <sup>1</sup>
Loyalists	1071
Security Forces	365
Others	81

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<sup>1</sup> Data collected from Lost Lives

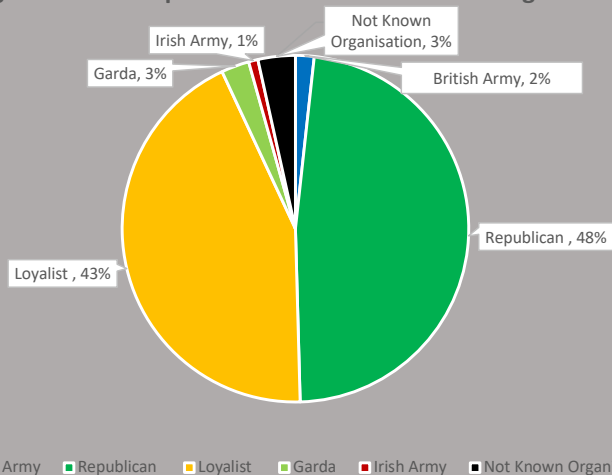
Organisations Responsible for Deaths in NI during the Troubles



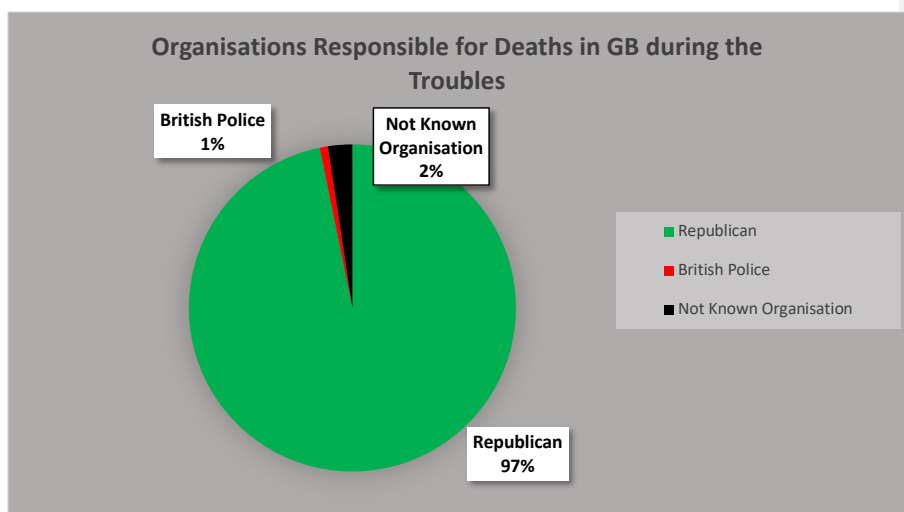
Commented [PM2]: 9 + 2= 11% see chart before 10%

British Army	293
RUC	55
UDR/USC/RIR	8
Republican	1831
Loyalist	933
Not Known Organisation	54

Organisations Responsible for Deaths in ROI during the Troubles



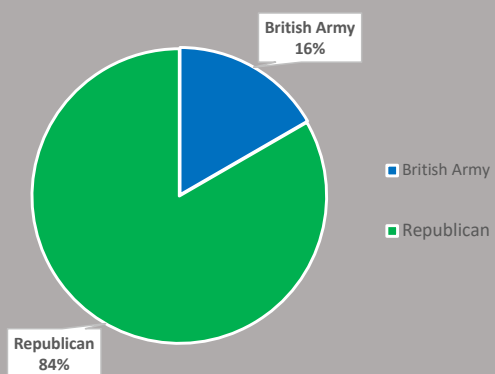
British Army	2
Republican	55
Loyalist	50
Garda	3
Irish Army	1
Not Known Organisation	4



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Republican	121
British Police	1
Not Known Organisation	3

### Organisations responsible for killing in Europe during the Troubles



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British Army	3
Republican	16

### **Support and Resourcing of the Legislation**

Representatives of the Irish Department of Foreign Affairs (DFA) attended a number of SEFF's consultation events. What was somewhat surprising, was the attitude of the Irish Government towards this legislation, considering they take such a keen interest and involvement in NI affairs. A member of the DFA actually stated that this was legislation by a 'foreign' government and they could not intervene. It appears that the difficulties presented by this proposed bill makes it easier if the Irish government takes a 'step back'.

When we hosted an event in Dublin, a considerable number of Irish victims and survivors of both republican and loyalist terror in the RoI, made it clear their views on the lack of support from their own government.

The lack of a parallel organisation in the RoI to work alongside the HIU makes it impossible for that organisation to conduct its investigations into the many hundreds of case with a cross-border aspect. Many other cases can be clustered due to shared weapons, individual personalities and the safe houses used.

The PSNI are not trusted by a section of the NI population to investigate the past, likewise there is a considerable section of that public who do not trust the Garda Síochána. To have confidence that these cases are investigated thoroughly, the Irish state must fund and resource a unit that can work alongside the HIU. This new unit must be given full access and disclosure to Irish state files in the same way the HIU is legislated for in the UK. If this does not happen, there is no likelihood of the HIU neither being an effective body, nor receiving the support of all the population.

Presently, the UK government have committed £150m to support the proposed structures. We do not know how that finance will be sub-divided between the four units but we expect that the HIU will use the majority share. However, we also do not know what level of resourcing the Irish republic is committed to? As co-signatories of the Anglo-Irish and Belfast Agreements, they must commit to financially supporting this legislation.

The Irish government consistently act as an advocate for the nationalist community in NI, but we have never heard them support unionists, especially those who have been attacked in the border areas. Many families were financially cleansed from those border areas by terrorists

using the Irish republic as a safe haven. The Irish must consider the setting up of a displacement fund to offer reparations to those families who had to move home, and sell their properties off cheaply.

### **Summary and Recommendations**

It is clear from the Consultation Paper and the associated expansive Draft Bill, that they are worded in such a way as to make it difficult for the average person to understand, hence the requirement for associated explanatory documents. As useful as these documents are, they do not contain the specifics and minutiae that are in the Draft Bill document, hence the necessity for also reading the Draft Bill. I think very few will have read the full bill document in order to grasp the complete complexities of the proposals.

We are understandably unsighted as to what has taken place since the Stormont House Agreement (SHA) in 2014, and how the NIO moved forward with the proposals from that agreement. The reality is that the SHA was a reworking of Eames-Bradley 2009, with a level of tinkering. It has been somewhat unhelpful that the SHA legislation lay dormant for quite some time, and then appears to have been rushed out by the NIO over the summer months. Many people have shown a great deal of interest in what has been proposed, but the level of despondency is inordinate. Indeed many commentators have suggested that decisions have already been made, and the legislation will be enacted unchanged, thereby adding to the level of dejection felt.

We can understand the level of work that has taken place to produce these documents, but one must question who was giving the expert advice to the policymakers? Was it ever considered that maybe the correct direction of travel might have been to engage with representatives of victims organisations? The Secretary of State (SoS) in her foreword stated, *“First, and foremost, any way forward must seek to meet the needs of victims and survivors.”* These proposals in their present format will not meet those needs, and unfortunately, no one talked to victims and survivors to gauge a level of understanding of what they want.

The SoS continued, *“it must promote reconciliation so that, in coming to terms with the past, we enable the people of Northern Ireland to move on to build a better future.”* It is somewhat regrettable that the design of this legislation will produce the opposite. It is difficult to understand how reconciliation will be promoted when it is clear that the proposed structures by design will exonerate those responsible for thirty years of death and destruction, whilst the

law-abiding people will be ignored. Additionally, those whose role was to keep us safe, the Security Forces, are now being condemned by ideologists, and this legislation will assist them in that pathway.

It is by these proposals, that the SoS third aspiration, *“in order to build a shared future for all, the proposals must reflect broad political consensus and be balanced, fair, equitable, and crucially proportionate,”* will fail.

Lastly, the SoS states that the proposals must follow the rule of law. Ms Bradley quotes from the Government’s manifesto for Northern Ireland at the 2017 General Election.

*“We also continue to believe that any approach to the past must be fully consistent with the rule of law. Conservatives in government have consistently said that we will not introduce amnesties or immunities from prosecution.”* This statement does not appear credible, when there have only been two members of Republican terror organisations convicted in the last twenty years, and these two individuals had fallen out of favour with their parent terror organisation, PIRA. The hundreds of On the Run (comfort letters) issued to republicans, the vast majority of whom were living freely in the RoI, have deliberately not been tested, yet the Government continue to insist they worthless. Few trust this Government view. Many others received Royal Prerogatives of Mercy, an amnesty in another name, yet we are unsighted to the identity of the recipients but are led to believe they were responsible for many hundreds of murders. Extraordinary processes have consistently undermined the rule of law, and this legislation will continue in that vein.

It almost seems that organisations and individuals are being pressurised into thinking that this legislation will deliver on victim and survivors issues. We are being led to believe that this is the last chance, and it has to be better than what went before. The question we must ask is, are they any better?

SEFF have responded to the seventeen questions in this document as presented by the NIO. We found these questions repetitive; their wording was deceptive, and ultimately failed to ask the most pertinent questions. We are critical of the legislation in a number of places, and the wording in many places potentially leave it open to interpretation and abuse. An example of this is when the HIU Director decides that further investigation might lead to, *“non-criminal police misconduct relating to the death and the gravity of the misconduct or exceptional circumstances.”* What does this statement mean, how can it be defined? It is certainly



obvious that the majority of the HIU workload will be investigating the Security Forces, and not the terror organisations.

The HIU will therefore have the power to accuse and identify retired police officers and soldiers within family reports. The normal burden of proof is beyond reasonable doubt, yet in these cases the HIU will be using the balance of probabilities. This has already been recognised as wrong in the courts as in the case of the Retired Police Officers *versus* the Police Ombudsman, and the findings of that Judicial Review will be ratified in the near future. If the HIU family reports name and accuse police officers and soldiers in this way, and they are not given rights to challenge, then the system will potentially come to a standstill will continual Judicial Reviews.

The PSNI Chief Constable has consistently said that his service is not resourced to investigate thoroughly the legacy of the Troubles. However, it is a modern professional police service with well-established structures meeting the standards set by the Association of Chief Police Officers (ACPO). It seems much more sensible and practicable that if the PSNI were properly resourced, they could commit to taking on the proposed role of the HIU. We do not know if the HIU will potentially fail in the same way as the HET, and it will not be scrutinised in the same way as the PSNI. Recruitment of investigators for the HIU will also be extremely problematic, meaning the timeframe for the commencement of that unit could be quite some time in the future. Creating a separate unit within the PSNI, with its own command structures, but answerable to both the Chief Constable and the policing board, makes practical sense.

The HET has been recognised by all as a failed organisation, although its demise was caused by the views of an ideological academic. None of its work was fit for purpose and its reviews would not meet Article 2 compliancy, nor ACPO standards for a serious crime review. Therefore those who suffered through the HET process must be given the chance of justice by receiving a thorough investigation by either the HIU or the PSNI.

If the HIU takes on these extra cases, consideration must be given to sub-dividing the investigation teams. One team starts where the HET finished, believed to be 1987 and works forward chronologically, and a second team begins at the start of the Troubles, 1969.

The definition of a victim must change and is morally corrupt. A criminal, a terrorist, a perpetrator cannot be viewed in the same way as an innocent victim, and this remains the most contentious issue amongst victims and survivors. The repeal of the 2006 Victims Order is a necessity and it continues to hinder all the community moving forward. There should be consideration given to a UK definition of a victim that will encompass victims in the NI context alongside the most recent victims of Islamic inspired terrorism. This should form part of the new legislation. It is quite simply wrong to consider that a member of a terrorist organisation can be classed as a victim.

The many thousands of injured have not been considered within the legislation and are actually excluded both from access to pensions, and truth, justice and acknowledgement. The definition of a victim is the major cause of the mostly severely injured not being able to avail of a pension. We understand that resourcing will struggle to meet the demands of all the injured by facilitating them with a full investigative process. However, thought must be given to the production of a report that informs them of the circumstances of how they came about their injuries, in similar way that the ICIR will conduct its business.

The ICIR cannot function in its present format if it conducts an inquiry on behalf of a family and this takes place before the HIU/PSNI criminal investigation, or alongside this investigation. It is not practicable to work in this way, and any potential assistance from perpetrators will not happen, or the information given could corrupt any criminal investigation, and will result in challenges in the same way John Downey used his OTR letter to avoid prosecution.

The Oral History Archive appears to be a worthwhile venture, but will potentially be open to abuse. There must be strict guidelines in place to prevent the justification or glorification of terrorism or other criminal acts. Perjury and slander must be restricted by verification and removal. If there is not the threat of criminal prosecution for those who purposefully slander, then the OHA will assist those with a revisionist agenda.

A Statement of Wrongs by all terrorist organisations must be included in the work of the IRG. If these organisations cannot agree that the taking of life for the furtherance of political aim was wrong, then it will remain difficult as a society to move forward.



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