



SUBMISSION ON BEHALF OF THE ELY CENTRE

**IN RESPONSE TO THE GOVERNMENT CONSULTATION ON
“ADDRESSING THE LEGACY OF NORTHERN IRELAND’S PAST”**

Foreward:

The Ely Centre is a Registered Charity specialising in the provision of multi-disciplinary support services for civilians, security force personnel and their families, who have experienced bereavement and injury as a result of the "Troubles".

The Ely Centre is committed to serving innocent victims and survivors, ex service personnel, their families and carers by providing evidenced based outcome focused treatments, prevention and support services that address issues of declining psychological, physical health, social and financial difficulties arising as a result of terrorism

As an organisation formed in the Aftermath of the Enniskillen Remembrance Sunday Bomb 1987 This submission is dedicated to the memory of all Innocent Civilians murdered on that day and to all Civilians, British Armed Forces and Security Force Personnel who were murdered as a result of Terrorism during The Troubles and their families who continue to suffer as a result of their loss.

Furthermore we remember those who continue to live with psychological and physical injuries as a result of terrorism. The truth of what happened and the suffering the Troubles has caused must never be forgotten.

"Let each of you look not only to his own interests, but also to the interests of others"

Introduction:

On behalf of the Ely Centre, we welcome this opportunity to respond to the consultation paper published by the Northern Ireland Office and to comment upon the proposals contained within it. This consultation has also provided the opportunity to comment upon other Legacy matters relating to The Troubles.

The Ely Centre concur with the view expressed by the British Prime Minister, Victims and Veterans Charities and Associations and Representatives from many Political Parties that the current arrangements for investigating our past are one sided and unacceptable to all innocent victims.

At present there is a total investigatory imbalance, with a focus on the activities of the Armed Forces and the RUC with a lack of focus upon the vast amount of single and multiple fatality Republican Terrorist atrocities including

- The Enniskillen Remembrance Sunday Bombing 1987
- The Narrow Water Massacre 1979
- The Corry Square Mortar Attack 1985
- The La Mon Massacre 1978
- The Kingsmills Massacre 1976
- The Ballygawley Bus Bombing 1988 and sadly many, many others inflicted on innocent Protestant and Catholics at the hands of terrorists.

This investigatory imbalance is evidenced in the work of the Legacy Branch of the PSNI, High Profile Inquiries, The Police Ombudsman of Northern Ireland, The Public Prosecution Service and Legacy Inquests. Coupled with this imbalance the Northern Ireland population and wider afield, increasingly are being fed a negative narrative designed to undermine the credibility, reputation, honour and sacrifice of the Armed Forces and the Police whilst sanitising the actions of terrorist and paramilitary organisations.

A continuation of the current situation will result in a further rewriting of this narrative of the “Troubles” in Northern Ireland. When one considers the historical fact that terrorists were responsible for over 90% of the murders during the Troubles, (Approx. 2,500) and state forces linked to less than 10% (355) of killings, an inevitable outcome of the current direction of investigative arrangements would lead to a clear distortion of what actually happened here and add further insult to the memory of all innocent victims and their families and colleagues. If this or any Legacy proposal is to be deemed acceptable and fair to the general populace then that murder/killing ratio of 14:1 must be applied within the investigation process.

As an organisation working with victims and survivors of terrorism on a daily basis, we find the current definition of a victims and survivors offensive to all innocent victims. In our opinion there is a clear distinction in law between a terrorist perpetrator and their innocent victims. To equate the two which currently occurs is morally wrong and unforgivable.

There can be no satisfactory way of dealing with the past unless the present definition of a victim is changed. We cannot accept any definition under which a perpetrator, a terrorist, can be classified as a victim. Someone who blows himself up with his own bomb or is shot while engaged in terrorism is not, by any acceptable definition, a victim.

We call upon local politicians to endorse this widespread opinion and the UK Government to bring forward legislation to change the definition of a victim to ensure there is enshrined in law a clear distinction between the Republican and Loyalist terrorist and paramilitary and victims and to prevent them and the groups that represent them from benefitting from their illegal and criminal activities.

Whilst we desire change and peace within our country and to have the implementation of new arrangements to deal with our past, we implore the legislators to ensure that Victims & Our Veterans are placed front and centre of this process. Tantamount in this positioning is the support available to the both throughout this process to ensure their experience is matched with the highest quality of support and care which they deserve.

As an organisation we implement a model of *“Wrap around Support”* this approach must be employed throughout any Legacy process. Victims and Ex Forces involved within Legacy institutions must have structured, evidenced based support and care (pre, during and post involvement) which may include

- Financial Assistance and Support
- Access to Advocacy Support
- Access to Evidence Based Psychological Therapies and Health and Well Being Support.

Most practitioners employed within the field believe that with the introduction of new Legacy Bodies the probability for unearthing and increasing the prevalence of psychological trauma is greatly increased.

All multidisciplinary support to manage and mitigate against this risk for victims, veterans and their families must be heavily resourced and invested in at the outset as the personal physical and psychological costs are very high for many who may be effected by any proposals to address the past.

If experience is anything to go by current funding levels will not cater for the demands of this process, organisations on the ground are already at capacity in dealing with victims issues and with such a focus upon the past as these institutions will create the capacity for groups engaging with victims will have to be matched with investment to deal with demand.

It is our opinion that this proposed legislation if passed would not have Royal Assent until 2019 at the earliest, followed by a 2 year implementation phase, which means that these institutions may not be operational until 2021 at the earliest. VSS and Peace funding is due for cessation or review at this time therefore to ensure continuity of support to is provided to victims throughout this process we call for Peace 5 and VSS funding to continue until

2030. This we believe is a reasonable timeframe for legislation, implementation, investigation and closure of these institutions to be carried out.

There are now a number of observations we wish to make about the Governments proposals, outlined overleaf.

KEY ISSUES CONCERNING THE HISTORICAL INVESTIGATIONS UNIT (HIU)

The Ely Centre fully support Victims in relation to the pursuit of Justice and obtaining resolution in respect to their individual cases and welcome that this consultation has identified this Judicial process is an extremely important area to many victims and survivors.

However, the HIU as outlined within the consultation document contains in our opinion a number of concerns. It is clear that what victims and indeed normal society demand and require is the pursuit of justice in relation to Murder or Serious Injury could be perceived as not the main *raison d'être* for the HIU's existence, but rather, it could be construed as an attempt to rewrite the history of the Troubles by its lack of proportional attention upon the perpetrators and the associated media and civic furore that would follow this unfair scrutiny upon the state forces.

In honest terms as the HIU is currently proposed and is being perceived may not, indeed could not work in a "way that is fair and honestly reflective of the past and therefore questions its requirement at all. In review of the document and in consultation we have identified a number of key issues of concern.

Dangerous Precedents

- It is contrary to principles of British Justice for anyone to be identified within an HIU report with a verdict of guilt unless the guilt is proven in court beyond reasonable doubt. The overall reports issued to families will not name the perpetrators whether they are dead or alive, however it is not clear if same level of protection will apply to officers being investigated for Non-Criminal Police Misconduct (HRA /DPA
- As proposed the HIU will produce Annual Reports which may identify perpetrators even where a prosecution cannot be brought and undertake investigations into alleged non-criminal police misconduct again identifying the officers concerned even if long retired.

Governance:

- Creation of HIU is in effect the creation of another Police Force within NI investigating Legacy Issues. The consultation paper does not cover comprehensively the oversight mechanisms of this body. There is no investigation mechanism for dealing with complaints against HIU officers.
- HIU must be accountable as a publically funded body subject to an overriding authority such as the Chief Constable of the PSNI who will audit and correlate the information gathered throughout its lifespan.
- If this proposal in its current format is to go ahead it must be crystal clear how the HIU will be held responsible to the people of Northern Ireland. A vague suggestion that the head of the new organisation will make suitable arrangements is simply not acceptable.

Powers & Remit:

- We welcome that the proposed HIU will have full Police powers of investigation and arrest in contrast to the HET which merely had a case review function. It is essential that the HIU is properly resourced with experienced and qualified investigators to fulfil its important role and that there is full co-operation with the PSNI and Irish State Forces to ensure that they have access to modern evidence gathering techniques and other technical capacity to conduct thorough investigations.

Balanced Justice:

- It is imperative that innocent victims are treated correctly and their cases given proper recognition. The work of HIU must be proportionate and reflect the historical facts.
- Over 90% of murders during the Troubles were committed by Terrorist Organisations. Investigation must be proportionate to the statistics and not targeted towards the RUC and Army. There must be no hierarchy of victims with preferential treatment given to those killed, often legitimately by the Police and Armed Forces.
- We are told that the HIU will only examine some 1,700 deaths but that all deaths at the hands of the security forces will be examined. During the Troubles terrorists murdered approximately 2,500 people, the army and RUC killed 355. **If this investigation is to be fair then that ratio of 14:1 should be maintained.** If all killings by the security forces are to be investigated then all deaths, without exception, must be investigated. Anything else is unacceptable and a blatant attempt to rewrite history.
- HIU must work in chronological order, with HET undertaking a case review basis and with most murders occurring during the late 60's, 70's and 80's we favour HIU commencing at the beginning to investigate the Troubles, were the families have requested this and there is the potential for new evidence to emerge this could lead to a prosecution.
- By returning to the beginning to opportunity to gather evidence establishing linkages in relation to weapons/ personnel and munitions may prove more beneficial when investigating later crimes.
- We fear from the proposals that HIUs focus may be primarily focused upon the RUC rather than terrorist organisations. Primarily due to the fact that HIU can access potentially greater quantities of records and information from the police and security forces, with less available on the terrorist side.
- Since the terrorists have no experience of cooperating in the past, with the investigators and government agencies will be required to by law, the proposal for fairness in the investigation process flies out the window and the odds will be heavily stacked against members of the security forces under investigation.

Remit:

- HET Conducted Reviews unlike what is proposed under HIU. For the Troubles to be accurately investigated the WHOLE PERIOD must fall within the Remit of HIU and a thorough review conducted chronologically up to the cessation of the Troubles.

Equality of Access.

- Serious consideration should be given to individuals who were seriously injured (Loss of Limb/sight/hearing/employment capabilities) to access the services of HIU. Furthermore, those murdered in GB, And Mainland Europe by UK Terrorist Organisations should also be part of the investigation process. In respect of those seriously injured in incidents (loss of limb, sight, hearing, employment) during the troubles we believe that such individuals should be granted the opportunity to access support and have their incident investigated under HIU.
- Whilst we understand the financial implications of this position we believe that the seriously injured, and those seriously injured during single and multiple fatalities incidents deserve the right of investigation. Furthermore by including the seriously injured who survived by the grace of God the full and real impact of the terrorist campaign upon the population of Northern Ireland and further afield will be evidenced more accurately and counteract the current narrative.

Wrap Around Support:

- The risk of increased psychological trauma as a result of investigating the past, must be matched by increased investment into the Health and Well Being Support Services, currently being accessed by victims.

Long Term Funding:

- We anticipate this process will not realistically reach its conclusion until 2030 at the earliest. Therefore Investment in Victims Services must run in parallel with this process.

All Island Reciprocity:

- Many victims murdered during the troubles were killed by terrorist units operating across the Border, sometimes with the collusion of the Irish State Forces. It is therefore essential that the Irish Government co-operates fully with the HIU and makes available all documentation held in respect of cases that have a cross border dimension. Within this proposal and the Irish Governments proposal there is little mention upon the requirements upon the Irish State Forces. To ensure the best possible outcome to this process, there must be an All Island Approach and Reciprocity of information, the Irish Government must commit to the process and institutions, moving legislation which compels full and transparent co-operation.

Recruitment:

- Retired officers within the RUC should not be excluded from recruitment to the HIU. This exclusion breeds the Republican Narrative of a corrupt force. All experienced

and qualified personnel employed by HIU should be recruited on the basis of merit and not discriminated against unfairly.

Support:

- The Ministry of Defence and the Police will be placed in an impossible position since they will be required to facilitate the investigations while at the same time exercising their duty of care towards their former members. An independent body to ensure former soldiers and police are properly supported and legally represented would be required.
- The PSNI and MOD are stakeholders within this process. How can the MOD on the one hand use their staff to locate and provide the evidence to the HIU in order to possibly convict ex colleagues and on the other hand provide a level of welfare support to them. There is an obvious conflict of Interest here.
- The HIU in particular the Family Support Workers must work collaboratively with Health and Well Being Support groups to ensure that all engaging within such process are provided with access to all areas of support required to reduce and manage risk.

Further comments.

- Investigations into the conduct of police officers should remain with the PONI.

KEY ISSUES CONCERNING THE INDEPENDENT COMMISSION ON INFORMATION RETIREVAL (ICIR)

- We recognise and support victims that wish to pursue the retrieval of information about the circumstances resulting in the murder of their loved ones, in considering what is currently proposed we do not have confidence that this mechanism as it currently stands offers victims the opportunity to obtain the truth.
- Firstly, we have no confidence that the various terrorist organisations can and will co-operate in a meaningful way to provide detailed and truthful information about why individuals and incidents occurred to the satisfaction of victims requirements.
- There will be no mechanism for the families to verify if the information they have received is true. Also information released will be at the discretion of ICIR, Therefore the truth will be heavily sanitised and inadmissible in court as information is not evidence. Victims should be able to challenge the findings of the ICIR and should have input into its reports.
- For this proposal to work the IRA and all terrorist organisations must disclose all written records of its terrorist campaign, the perception that they have no/brief records is farcical clearly evidenced by the 100's of volunteer details provided when OTR and Royal Prerogatives of Mercy were offered and similarly by reviewing the detailed structures and process outlined within their volunteers handbooks.
- With a wealth of material available from the state evidenced by the Chief Constables recent remarks the emphasis for disclosure from all side must be evidenced for the truth to be obtained.
- Furthermore for a Terrorist, ICIR Involvement is purely voluntary, and contrary to the rules of most terrorist organisations. Therefore it is highly improbable that Terrorists or Indeed Victims will engage within this process or if Terrorists do they may do so for an ulterior motive.
- It is important that a format for written reports produced by ICIR is agreed in response to requests for information. This is essential so that the state is not required to release volumes of paperwork whilst terrorist organisation offer little in return.
- We concur with the proposal that providing information to the ICIR does not render an individual immune from prosecution and in all circumstances those guilty of criminality should be pursued.
- Similar as with the HIU Proposals, ICIR need to be subject to vigorous oversight and clear accountability. We find the proposal that the ICIR will possess the same legal Status as a Diplomatic Embassy very unusual and warrants further explanation as to why this requirement upon it is has been proposed.
- Furthermore, we perceive difficulties in accessing information from defunct terrorist organisations and how information from these bodies is to be obtained by ICIR .
- Terrorist Organisations will not engage due to fear of reprisals and convictions (Boston Tapes Saga) and new terrorist legislation in the future.
- Victims should have full, unfettered, unredacted access to all information gathered by the ICIR. There should be no restrictions on the way they use the information supplied to them.

KEY ISSUES CONCERNING THE ORAL HISTORY ARCHIVE:

A FORGOTTEN TRUTH.

- Firstly we welcome all initiatives and proposals which highlight the importance of storytelling and provide a platform to give innocent victims a voice to tell their story. As an organisation over many years we have gathered the stories of 100's of victims in digital format and it has been evidenced the clear psychological benefit of storytelling and ensuring that victims and how they and their family have suffered is never forgotten and how the terrorist narrative is counteracted against.
- In considering this proposal, those within this and our partner organisations who have amassed decades of experience in collecting and collating witness statements from terrorist incidents conclude that even when taken immediately after the events in question no two ever perfectly coincide. *Oral history without detailed analysis and comment is not history, it is perspective;* any historian worth their salt knows that.
- Without detailed analysis we are deeply concerned that testimonies, even when made with the best will in the world, have the potential to be accepted as gospel truth. Other accounts will no doubt be complete fabrications designed either to manipulate history or to confuse future historians.
- The narrative produced in any Archive must reflect the truth and the facts of the Troubles. The Archive must be similarly proportionate to the work of the HIU, reflecting the 14:1 ratio of deaths occurring as a result of Terrorist Organisations.
- Engagement: With what is currently proposed many victims may be reluctant to engage due to the feelings of intimidation and deterred from speaking out particularly along the border regions because of fear of reprisal or worse. A consideration of the risk incurred by such a process should be assessed and clearly mitigated against before such a process was implemented.
- To address the above point Archive Recording Centres which obtain the trust of victims and provide the wrap around support necessary to mitigate and manage risk which storytelling can unearth should be considered as a necessary component to any initiative such as this.
- Similarly to the above proposals, the OHA should be subject to vigorous oversight and accountability mechanisms.
- Within such a proposal Victims should be able to review all oral reports and attach an addendum to them where appropriate. It may be appropriate that victims should be able to take some form of legal action for defamation in relation to these reports.
- They should also be able to have some input into the OHR's reports.
- Within this proposal we would recommend that The OHR's final report should be published.
- Increased Risk of Defamation of Ex Police Officers and Army Personnel through this process due to absence of detailed analysis of accounts. Legal Support must be provided to those ex officer who wish to challenge unevidenced assertions against them must be made available in any such process.

- It is likely that the glorification of terrorism will be provided an opportunity to express itself within the OHA without any prospect of formal challenge.
- It is the duty of any society to care for victims, their experiences need to be shared to produce an accurate portrayal of the troubles and also to record the impact of terrorism on a personal level to ensure such actions are never again repeated upon this country. Any archive must be victim centred, and grounded in facts.
- Similarly to engagement with the HIU & ICIR , wrap around support for victims engaging within archives are important to ensure the victim does not suffer detrimentally or negatively due to engagement with the archive.

KEY ISSUES CONCERNING THE IMPLEMENTATION AND RECONCILIATION GROUP (IRG)

- The Ely Centre is proud of the history of our Security and Armed Forces and we will continue to promote the valiant and heroic records on behalf of those we support. Justice and truth are important for our members and we will continue to support them in accessing this should it be required, whilst supporting efforts to build good community inter and intra community relation across Northern Ireland and Further afield.
- If the Government decides to proceed with these proposals we will monitor their implementation closely to ensure fairness, impartiality, balance and that victims are placed front and centre where they must be.
- In relation to the work of IRG we would wish to see Victims / Veterans or their representatives appointed to this body to ensure that they have a voice and a say in the implementation of the proposed legacy bodies and the work to build reconciliation.
- Reports produced by the Academic Group and IRG will form the History of the Troubles and future Schools Curriculums surrounding it. Therefore it is vital that the reports produced are balanced and proportionate to the facts of the Troubles.
- As it stands, the IRG's final report for the Troubles will be written by academics who are limited in what they can consider. Unless they are completely unrestricted the end result is likely to be an unvarnished attempt to rewrite the history of the Troubles and justify terrorism.
- We would wish such a group the very best in its attempts to reconcile the irreconcilable, but have to say that an appointment to it be a very poisoned chalice indeed.
- The truth must not be sacrificed to obtain political expediency or justification of illegal or terrorist activities. It must be awarts and all reflection of what happened here or the risk of it repeating is greatly increased.
- There must be oversight from an International Group of Academics who can provide oversight to the reports produced to ensure fairness and partiality.

REALISTIC EXPECTATIONS.

We believe that in the pursuit of truth and justice, made available through legacy bodies, many victims will be faced with the following conclusion

This realistic conclusion of what many will face through such processes must be made aware to them before they commence this process, to ensure that false expectations are not raised which could further retraumatise them.

Such processes on the ground must be sensibly and realistically handled and a strong duty of care and responsibility must be upon those dealing with victims and their families.

In many Legacy cases, rightly or wrongly, there will inevitably be a stronger public interest in protecting national security in contrast to their or the public interest in openness and transparency relating to Cases.

Some Information a victim is seeking could adversely impact on any investigative process and may jeopardise future prosecutorial process and thus may be released in a very tempered version.

Also consideration will be given to the impact of release of information and what it may bring to the wider community specially members of the security forces not just in northern Ireland but globally and to the general public, therefore tempered versions of what actually happened may be produced.

And furthermore the information sought whilst of importance to the victim and of historical interest, the health and safety of individuals and their families within the case must be taken into account especially were the release of certain information would be likely to endanger the physical or mental health of an individual and therefore the victim will most likely receive a family report containing a story which they already know.

This realistic outcome of what many who seek to know more in respect to their cases must be made fully aware at the onset. It is for the individual person (S) to decide alone if they wish to proceed but their decisions must be fully informed.

FURTHER COMMENTS

- We believe Victims in Great Britain and Europe should not be excluded from accessing these legacy bodies in pursuing truth and justice for their loved ones.
- Due to the increasingly prevalence of Psychological Trauma and related disorders we support the establishment of the Regional Trauma Network and that investment and resources match the demands that have the potential to be placed upon it and on the ground organisations dealing with the frontline of victim support.
- Furthermore we support the provision of a pension for the severely injured victims with the strong caveat that this pension should not be made available to perpetrators injured as a result of their terrorist activities.

CONCLUSION:

The Ely Centre is honoured to pledge to the Armed Forces Covenant. We acknowledge and understand that those who currently or in the past served in the Armed Forces, and their families, should be treated with fairness and respect in the community, economy and society they served and protected with their lives, this commitment to the Armed Forces and the Police who braved the darkness, suffered so greatly and defended the people from terrorists has underpinned our response and similarly must be reflected in this or any Government proposal or consultation process.

If the Government decides to proceed with these proposals we will monitor their existing commitments and implementation closely to ensure fairness, impartiality, balance and that victims and veterans are placed front and centre where they deserve to be.

In reflection this has been a workable attempt at the legislation, **however as an organisation we have serious concerns as indicated above with the current proposals as they stand and would strongly urge that our concerns be considered in any proposed legislation.**

This legislation will never satisfy the very real and genuine demands of Victims and their families and a realistic management of expectations surrounding this must be considered before we deem this process necessary.

Any historical record must not be subject to any form of government veto or even scrutiny and no attempt must be made to prevent or delay its publication. In that way we might even get to the truth.

We trust that the views and concerns we have shared and the suggestions made on our behalf will be given serious consideration by the Northern Ireland Office and by Parliament.