

Oireachtas Committee on the Implementation of the Good Friday Agreement

11 April 2019

Speaking Note

Introductory Comments

- I would like to thank the Committee for inviting myself and members of the Victims and Survivors Forum to come and speak to you today.
- The purpose of the Commission is to support me in ensuring that the needs of victims and survivors are represented at the heart of all decision making by government. The Victims Order (NI) 2006, which underpins the work of the Commission, states that “The Commissioner shall make arrangements for a forum for consultation and discussion with victims and survivors.”
- The Victims and Survivors Forum was established in 2012 and is part of the infrastructure detailed in the Victims and Survivors Strategy to ensure “the views of victims and survivors are based at the very heart of the agenda.” The Forum therefore is a broad representation of victims and survivors’ experiences for the purpose of consultation and discussion on key areas of work being undertaken by the Commission including:
 - Services
 - Dealing with the ‘past’; and
 - Building for the future.

- This is the second time that I have addressed this Committee and I believe it is timely for me do so in the context of the Northern Ireland Office's recent consultation on the Stormont House Agreement's legacy proposals, the ongoing Brexit negotiations and the ongoing implementation of the PEACE IV Programme.
- I would like to start by providing some brief commentary on these important developments for victims and survivors of the conflict/Troubles, particularly in relation to legacy-related matters.

Context

- In the twenty one years that have passed since the Belfast Agreement there have been a number of substantial attempts to address the harm that was caused during decades of conflict; none of these have so far resulted in the passing of the legislation which is needed to address the need of victims and survivors, and of society more generally, for truth, justice, acknowledgement and reparation.
- The fact is that bereaved families who wish to access judicial processes come from every part of society and from across the United Kingdom, Ireland and beyond. At present victims and survivors are told that they must wait decades before a case can be progressed, if at all. This has a growing cost to justice organisations in Northern Ireland in terms of loss of trust and confidence and I have heard the same frustration and loss of trust from victims of the troubles who live, and lost people they loved, in

Ireland. Judicial Reviews and other legal actions have also a growing financial cost. In fact, it is more expensive in the medium to long term to leave things as they are in Northern Ireland than it would be to try to introduce new institutions that could deliver better outcomes for victims and survivors and indeed all of society.

- It is almost universally accepted that the current system is not able to address this situation; it was not designed to do so. The cost of this failure is evident at many levels. For the many individuals, families and communities across these islands who were impacted by violence there is still acute pain and loss which is now accompanied by a strong sense that they have been ignored for decades by those with the power to act.
- This is why 'dealing with' the legacy of the past cannot be achieved by measures which fail to fully address the many complex and difficult issues. It is also very clear that in the context of the high levels of disillusionment and low levels of trust which exist across different political constituencies in Northern Ireland and in Ireland, any approach must be balanced, transparent, must operate within the rule of law and above all be victim-centered. People who suffered harm have waited too long for effective organisations to be established to address their rights and needs. This must be the focus of any legislation and of the way we implement it.

Legacy advice

- In May 2018 the UK Government published its consultation paper entitled “Addressing the Legacy of Northern Ireland’s Past” which set out the draft legislation for implementing the Historical Investigations Unit, the Oral History Archive, the Independent Commission for Information Retrieval and the Implementation and Reconciliation Group which had been envisaged in the 2014 Stormont House Agreement. The consultation drew 18,000 responses from across the United Kingdom, Ireland and beyond. As we await the outcome of this consultation victims and survivors continue to be frustrated by the failure to deliver appropriate legacy mechanisms.
- While recognising that the delays are linked to the current political impasse in Northern Ireland I continue to strongly impress upon all our political representatives the importance of reaching agreement on legacy. There are aspects of the proposed legislation which cause concern for some, and I wish now to reflect on some changes to the proposals which I believe would enable a much more victim-centered approach to the legacy of the past.
- In January 2019 I offered advice to the UK Government on the proposed legislation. This policy advice paper set out the Commission’s views in relation to the four proposed mechanisms with recommendations for the UK Government on what measures should be implemented to ensure they meet the needs of victims and survivors.

- My policy advice paper also provides comments for consideration by the Irish Government on how to ensure the needs of victims and survivors are met in the Republic of Ireland. When talking to people affected by the conflict across United Kingdom and Ireland, it is clear that their experiences and needs are very much the same. I believe that these needs should be addressed in an inclusive way and that this means that choices and options open to those who live in Northern Ireland should also be open to those who live elsewhere. That is why, for the first time, I have shared my advice with the Government of Ireland as well as offering advice to the Secretary of State for Northern Ireland.
- The recommendations in my policy advice paper have been made after extensive engagement with the Victims and Survivors Forum, individual victims and survivors, strategic partners, elected representatives, policy makers, organisations funded to deliver services and wider civic society. The Commission's engagement process has been carried out across the United Kingdom and the Republic of Ireland.

Key Guiding Principles

- My policy recommendations address how each of the four mechanisms proposed in the draft legislation should be implemented in line with the 'Key Guiding Principles for Existing and Proposed Organisations and Processes Dealing with the Past' as developed by members of the Victims and Survivors Forum in 2016. These key principles were agreed by the VSF as follows;

Co-design and collaboration: There is a need for a co-designed and collaborative approach between victims and survivors and the relevant department/stakeholders in order to ensure that processes are designed with the wishes and needs of victims and survivors in mind.

Victim-centred and victim-led: A victim-centred and victim-led approach ensures that the needs, interests, views and wishes of the individual takes priority. For operational delivery, this means there is empathy and understanding of the impact of the Troubles on victims and survivors and that an emotionally intelligent approach is taken in detailing the competencies and skills required from those delivering services.

Inclusive: There are many victims and survivors who have previously been excluded from the scope of legacy processes. Action is required to acknowledge victims and survivors outside of Northern Ireland. There is a sense of isolation and inequality felt by victims and survivors outside of Northern Ireland who often experience a lower level of access to justice, advocacy and health and wellbeing support.

Independent and impartial: Trust is paramount for victims and survivors. It is critically important that trust is built between victims and survivors and those delivering truth, justice, acknowledgment and reparation measures, so institutions and processes should be independent, impartial and transparent.

Fit for purpose: All mechanisms, existing and proposed, require an appropriate and realistic budget and sufficient time to deliver an effective service.

General Issues to be addressed in relation to “Addressing the Legacy of Northern Ireland’s Past”

- In the NIO consultation document, the Secretary of State has clearly detailed that any proposals must, first and foremost, meet the needs of victims and survivors, that they must seek to promote reconciliation and that they must also reflect broad political consensus and follow the rule of law. I welcome these broad principles. However, whilst I am of the view that these proposals currently offer the best opportunity to address the legacy of the past, there are significant changes that need to take place to make sure they meet with the Victim and Survivors Forum’s five principles.
- The purpose of Historical Investigations should not be defined narrowly in terms of the number of prosecutions envisaged. It is evident from previous and ongoing investigations that new information and evidence can be uncovered and that families who want answers can be better served than they have been, even if the evidence is likely in most cases to be insufficient to secure a conviction. The critical issues for many families and communities are access to information about the circumstances leading to the death of people they loved and acknowledgement of harm. I have sought in my advice to draw out what the implications of this focus on families should be for the objectives, structure, staffing and processes of the proposed Historical

Investigations Unit and for legacy investigations relating to deaths in other jurisdictions.

- It is often pointed out that different people have different wishes and needs; it is right, therefore, that the proposed package of measures offers choices and options to individuals and families. However, those choices and options must be accompanied by support and information in order that people are enabled to make the decisions that are right for them.
- Advocacy services are needed for people when they engage with legacy institutions, and health and wellbeing support must be available before, during and after they do so. My recommendations seek to ensure that these services build on what currently exists and are designed into the way institutions operate.

Specific references and areas of note for the Irish Government

- Whilst all 47 recommendations in my policy advice will be of interest to the Irish Government, there are a number of areas of specific areas for consideration.

Historical Investigations Unit

- The Historical Investigations Unit will carry out investigations into troubles related deaths occurring only in Northern Ireland. I have requested that the Irish Government establish a mechanism whereby Troubles related deaths within Ireland are

investigated. People here have described to me the same feelings of loss, of pain and of being excluded from access to justice and to acknowledgement of the harm they suffered as I have heard across the United Kingdom. Often the harm they have suffered is connected to events.

- I have also heard from bereaved families both in Ireland and across the UK whose access to both civil (e.g. Inquests) and criminal justice processes is dependent on close collaboration between Justice organisations in different jurisdictions. I welcome the development of legislation by the Irish Government to facilitate exchange of information for Legacy Inquests and believe that new organisations will need to develop very effective information sharing processes if they are to be effective and build trust with victims and survivors.
- For both Governments there are issues regarding information regarded as sensitive in relation to national security, and for both governments there is a need to establish fully transparent and accountable processes for determining what information can be withheld on these grounds. Victims and survivors across the UK and Ireland, for very understandable reasons, fear that governments will use redaction on the grounds of national security as a cloak behind which to hide unpalatable facts.

Independent Commission for Information Retrieval

- The Independent Commission for Information Retrieval is based on a treaty between the UK and Irish Governments and is accessible to people across both jurisdictions.
- I have recommended that a Victims and Survivors Steering Group should be established to ensure the work of the Independent Commission for Information Retrieval meets the needs of victims and survivors. In addition, I believe the same structures that we have recommended to support victims and survivors through the Historical Investigations Unit should be replicated in the Independent Commission for Information Retrieval; this includes a Family Liaison Unit within the Independent Commission for Information Retrieval with clear processes for communication with organisations providing support and advocacy for families.
- I have recommended that the Independent Commission for Information Retrieval interlocutors should engage with families, to assist them in deciding what questions should be asked regarding the death of their loved one.
- I have recommended that a proactive outreach strategy should be developed and delivered to reach out to those individuals who otherwise may not have enough information to make a decision as to whether to engage with the Independent Commission for Information Retrieval.

- I have recommended that an appeals process, similar to the Historical Investigations Unit process, should be put in place by the UK Government which will allow victims and survivors to appeal decisions to redact information on national security grounds. The Commission requests that the Irish Government also gives this consideration.
- I recognise that the danger of information 'leaking' between the Independent Commission for Information Retrieval and the Historical Investigations Unit must be removed. At the same time I am concerned that sequencing the Historical Investigations Unit and Independent Commission for Information Retrieval would effectively remove the option of the Independent Commission for Information Retrieval from family members who are ageing and may not feel they have time to wait.
- One of the key issues to be addressed is the impact of incomplete or incorrect information about the death of a loved one. To minimise the risk of this I have recommended adequate testing of the veracity of information by using other sources.
- I have recommended that there is an extension to the proposed timeframe for the Independent Commission for Information Retrieval and that this is included in the draft Bill; experience from the Independent Commission for the Location of Victim's Remains indicates that this process takes time to deliver results.

Oral History Archive

- I have recommended that both governments clarify whether any individuals who have signed the Official Secrets Act can give information to the Oral History Archive.
- There is a perception that those who have signed the Official Secrets Act, in both jurisdictions, will be unable to engage and that this may impact on the balance of narratives collected.

Implementation and Reconciliation Group

- The Implementation and Reconciliation Group has representation from both the UK and Irish Governments. I have recommended that the membership of the Implementation and Reconciliation Group should also include an individual who can represent the voice of victims and survivors.
- I have recommended that clear criteria are developed for the nomination of an individual to the Implementation and Reconciliation Group and in addition to this that there should be clear guidance on the circumstances in which an individual can or should be removed from their duties as a member of the Implementation and Reconciliation Group .
- I have recommended the Implementation and Reconciliation Group develops and uses clearly defined parameters to allow for the assessment and evaluation of how the Historical Investigations Unit, Independent Commission for Information Retrieval and

Oral History Archive impact on the lives of victims and survivors and promote reconciliation and anti-sectarianism in order to secure public confidence.

- I have recommended that the timeframe for the Implementation and Reconciliation Group is reviewed.

Other issues to consider

- In relation to accessing services outside Northern Ireland, I have welcomed the arrangements for support services outside of Northern Ireland being facilitated by PEACE IV funding. It needs to be noted that this support is limited and only guaranteed to 2021.
- The Victims and Survivors (Northern Ireland) Order 2006 contains no legal impediment to engaging and supporting victims and survivors outside Northern Ireland. There remains a difference in accessing support for those living outside Northern Ireland. I understand there are both resource and administrative constraints that need to be considered further. However, with the cross-border nature of the proposed mechanisms, conversations with the Irish Government on how best to address this issue will be required.

Paramilitarism

- I would like to comment briefly on the very serious issue of ongoing paramilitarism. Since the signing of the Good Friday Agreement over 150 individuals have lost their lives as a consequence of violence. Further, we must also be mindful of those who have been subjected to brutalising attacks by paramilitary organisations.
- As an enduring conflict legacy issue, paramilitarism can be viewed as a significant factor perpetuating the trans-generational impact of the Troubles, with serious consequences on mental and physical health. In addition to the routine orchestration of paramilitary style attacks including on children and young people, attacks on security force personnel coupled with high levels of gun and bomb attacks reinforces a sense of insecurity and anxiety among many victims and survivors.
- This can lead to enduring human tragedy for many families resulting in death and injury. It can also generate an escalating financial cost linked to increasing security budgets and the loss of business creation in communities where paramilitary organisations continue to exert control. Equally, there is both a human and financial cost linked to individuals and families who come forward to the Commission and the Victims and Survivors Service requesting assistance following exposure to paramilitary-related threats and murder.

Brexit

- The timing of this appearance is important in the midst of future uncertainty linked to ongoing Brexit negotiations and the scale and extent of impact on the peoples of Ireland - north and south.
- Clearly, of particular concern as Commissioner for Victims and Survivors is the potentially destabilising effect of Brexit on the border and the wider peace process. In relation to the future implications emerging from the final negotiated settlement on the UK exit from the European Union – I would just like to make a few comments.
- At the outset, I welcomed the references within the UK Government's Position Paper published in August 2017 to 'upholding the Belfast/Good Friday Agreement in all its parts'. Equally, it is reassuring that there is consensus between the British Government and the European Union around the need for the land border to be 'seamless and frictionless'.
- Clearly, further significant negotiation will be required relating to cross-border trade, tariffs and the Customs Union as well as the Common Travel Area. There will also be difficult conversations around the potential changes relating to Strand Two of the Belfast Agreement as well as references to the European Convention on Human Rights. Ultimately, it is extremely important that the final negotiated settlement respects the rights of all citizens including the approximately 30,000 individuals who live and work along the Border. We need to see a settlement that does not in any way

contribute to a heightening of communal tension in Northern Ireland and in turn play into the hands of elements who would wish to drag us back to the darker days of the past.

Services: Regional Trauma Network & PEACE IV Funding

- A range of services are currently funded in Northern Ireland and the Border Region of Ireland to specifically address the varied and often complex needs of victims and survivors. Victims and survivors of the conflict may be eligible for practical help and support that is tailored to them and is needs based. My role and the work of the Commission is focussed on ensuring that support services are appropriate, fit for purpose and victim-centred. This work is informed by an active research programme, ongoing engagement with service users and issuing policy advice to government.
- Given the scale and complexity associated with the mental health legacy of the Troubles/Conflict, ensuring victims and survivors have timely access to high quality effective trauma services is clearly a key priority for the Commission, the Victims and Survivors Service and the Victims and Survivors Forum.
- In September 2015, the then Health Minister (in Northern Ireland) announced, in line with a key political commitment contained in the 2014 Stormont House Agreement the establishment of a comprehensive Regional Mental Trauma Service for Northern Ireland. Given the significant level of conflict-related mental health needs among many individuals and families affected by their exposure to Troubles-related violence, there

remains a very clear need for the implementation of a co-ordinated evidence based response to the mental health needs of victims and survivors. This needs to be available to victims of the troubles on both sides of the border and I would strongly suggest that the two governments look at this as an area of healthcare where there should be close collaboration and shared resources.

- After an initial funding delay linked to the current political impasse in Northern Ireland I am pleased that money has been made available to support the ongoing development and implementation of the new Regional Trauma Network. I look forward to continued work with colleagues in the Department of Health, The Executive Office, the Victims and Survivors Service and across the victim's sector in developing a world class trauma service that can effectively address the mental health legacy of the Conflict/Troubles.
- PEACE IV funding (approximately €17.6m up to 2021) of Health and Wellbeing Case Managers and Health and Wellbeing Case Workers is providing a new tier of highly professional, qualified assessors to identify and address the needs of victims and survivors. The HWB Case Managers will form an integral part of establishing dedicated care and support pathways as part of the Regional Trauma Network. This trauma-focussed network integrating expertise, experience and resources from the statutory and community sectors will improve referral processes, service coordination and case management. Ultimately, this new innovative, pro-active and targeted approach supporting recovery and building resiliency will provide much needed

support in reaching some of the most vulnerable and marginalised people in a society continuing to transition from decades of conflict-related violence.

Commission Research (PEACE IV Research Programme)

- Finally, as part of the PEACE IV Victims and Survivors Programme, the Commission, working with the Victims and Survivors Service as lead partner, are managing three significant research studies in the years ahead. All three research projects in the areas of Trauma Services, Advocacy Service Delivery and Trans-generational Legacy and Young People will enhance understanding of the continued psychosocial impact of the conflict's legacy on victims and survivors. As many of you will know very well, since 1995 the PEACE Programme has made an invaluable contribution to supporting the peace process including victims and survivors in Northern Ireland. The PEACE IV Programme continues this tradition by funding the professional health and wellbeing and advocacy case managers who will make a real difference in supporting individuals and families in the years ahead across NI and the Border Region of Ireland.

Concluding Comments

- Most importantly of all, the aim of addressing the legacy of the past must be to build a better future. At a civic and political level there continues to be a war of words about the harm inflicted on different individuals and communities during the Troubles which in itself is often to the detriment of those who suffered. My recommendations seek to ensure that the combined impact of this package of measures is to offer what is

achievable in terms of truth, justice, acknowledgement and reparation to people who were harmed and to do this in a way that is victim-centred and respectful of all those who suffered.

- The proposed mechanisms are designed to address the outstanding impact of the conflict upon the people, communities and institutions of Northern Ireland. This is a difficult process which is uncomfortable for us all but it will deliver outcomes which have been sought for many years and without which civil society in Northern Ireland will continue to be anchored to the trauma and division which the Troubles wrought.
- Twenty one years after the signing of the Good Friday Agreement these measures are our best chance of dealing with unfinished business and delivering the best outcome for victims and survivors. I hope that through the work of my office and the Forum working collaboratively with a whole range of stakeholders that we can collectively improve the wellbeing of victims and survivors and build a better and more reconciled society for victims, their families and the wider population across these islands.
- I and members of the victims and survivors forum would be happy to take your questions.