

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM

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### FEIDHMIÚ CHOMHAONTÚ AOINE AN CHÉASTA

### JOINT COMMITTEE ON THE IMPLEMENTATION OF THE GOOD FRIDAY AGREEMENT

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*Déardaoin, 22 Márta 2018*

*Thursday, 22 March 2018*

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Tháinig an Comhchoiste le chéile ag 2.10 p.m.

The Joint Committee met at 2.10 p.m.

Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Declan Breathnach,	Frances Black,
Maureen O'Sullivan,	Mark Daly,
Brendan Smith.	Frank Feighan.

Teachta /Deputy Seán Crowe sa Chathaoir/in the Chair.

## **Business of Joint Committee**

**Chairman:** There are several matters I want to raise in private session, for which I ask members to wait after the public session.

### **Legacy Issues Affecting Victims and Relatives in Northern Ireland: Discussion (Resumed)**

**Chairman:** I welcome Professor Duncan Morrow, lecturer in politics and director of community engagement at Ulster University; Professor Kieran McEvoy, professor of law and transitional justice in the school of law and senior research fellow at the Institute of Conflict Transformation and Social Justice at Queen's University, Belfast; and Dr. Anna Bryson, senior lecturer in the school of law, Queen's University, Belfast. I will invite them to make opening statements which will be followed by questions from committee members.

I remind members, guests and those in the Visitors Gallery to ensure their mobile phones, tablets, etc, are switched off completely for the duration of the meeting as they cause interference, even when left in silent mode, with the recording equipment in committee rooms.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable.

I invite our guests to make their opening statements.

**Professor Kieran McEvoy:** Dr. Bryson and I have been working with colleagues at Queen's University and the University of Ulster and the main human rights non-governmental organisation, the Committee on the Administration of Justice, for approximately six years on legacy related issues. Our role has been to try to inform the discussion on what are complex, controversial and sensitive issues by providing technical, legal information to allow people to make up their own minds from as informed a position as possible. In doing so we have worked very closely with the Northern Ireland Office, the Department of Foreign Affairs and Trade, a broad cross-section of victims' organisations, ex-combatant groups, former police officers and across civil society, as well as the political parties, to provide solution-based papers and documents to try to help all of the political actors and civil society.

In 2014 the Stormont House Agreement proposed four mechanisms to deal with the legacy of the conflict in the North. We have been waiting for a public consultation process on the legislation to enact its contents. In 2015 my colleagues and I worked very closely with a parliamentary draftsperson and produced our own best guess of what that legislation might look

like in order to help to inform the public debate. It was launched in the House of Lords in 2015 and called the Model Bill. We worked very closely with the Northern Ireland Office and others and encouraged the creation of what we think of as a little nerd community which grasps the detail and complexity of all that is involved and has had lots of nerdy conversations with the various actors between the two Governments. The Secretary of State has told us the consultation process will go public after Easter, but we were told many times before that it was coming.

We will list a few headline points for which to look out. The committee has seen a detailed paper prepared by me and Dr. Bryson on benchmarks to be used in assessing the legitimacy of what is contained in the proposed legislation. The first is in respect of the Historical Investigations Unit, HIU, the proposed investigative element of the Stormont House Agreement mechanisms, merging the work previously done by the Historical Enquiries Team and the legacy unit of the Police Ombudsman's Office. Points for which to watch are its level of independence, its capacity to receive information and issues about onward disclosure which I will discuss in the context of national security. There has been some discussion in the ether, arising, in particular, from an intervention by the leader of the Ulster Unionist Party, UUP, in a debate that we thought had been resolved, of whether the body should include former RUC personnel in its investigators. We thought the matter had been resolved because there have been several High Court judgments in recent years - two in 2017 - which, in effect, stated the presence of former RUC officers on the Historical Enquiries Team made the work being done on the cases being addressed unlawful in human rights terms. It did not comply with the investigative elements of Article 2 of the European Convention on Human Rights. The leader of the UUP has argued that the inclusion of former RUC officers as investigators in the unit is a political benchmark. That makes us quite nervous because there have been several judicial interventions which make it clear that it is probably unlawful. Why would someone seek to legislate for anything that they know is unlawful in the first place? It looks to us like politicking.

Members will also be aware of the key litmus test in the public debate about the legislation leaked in 2015, prepared by the British Government, which proposed mechanisms to deal with issues of national security, in particular the capacity of the Government to redact information that would be given to families, particularly from the Historical Investigations Unit, and widespread powers for the Secretary of State to redact information on the grounds of national security which, as the committee knows, has no statutory definition.

Rather than just complain about this, we worked closely with other colleagues, particularly NGOs which work with victims of state violence, the constituency potentially most affected by the national security provisions, Relatives for Justice and the Pat Finucane Centre. We came up with a model wherein a judge would make the final determination on what was or was not a national security consideration. It is quite technical, but it is important because it was proposed in the legislation leaked in 2015 that if there was an appeals mechanism built into the process in respect of what was or was not a legitimate national security concern, it would be of the standard of a judicial review which, in effect, would say a decision was so unreasonable that no reasonable Secretary of State could have made that determination. In our view, that is a very high bar; therefore, we proposed a different bar whereby a judge would be involved in making determinations in examining the granular detail of intelligence and other information and making judgments on what were or were not legitimate national security concerns. I can go into it in some more detail, but that is another benchmark issue for which to look out in terms of the credibility of the proposals made.

The other issue, of which members will be aware and that has been in the ether, is that of a

proposed amnesty for state actors. That was not included in the Stormont House Agreement, but the proposal came from the UK defence select committee last year. I gave evidence to the select committee. I have done lots of work internationally on amnesties and their lawfulness and otherwise. The outworking of that proposal is that in 2018 the Northern Ireland Office indicated that it was minded to include the issue, even though it was not included in the Stormont House Agreement, in the consultation process. I am given to understand that it featured heavily in the most recent round of failed negotiations. Again, it is an issue for which to look out. From my perspective, what it would mean, first, is that we were stepping outside the terms of the Stormont House Agreement. None of the five local parties argued for its inclusion during the negotiations, nor did the two Governments. Therefore, No. 1, it is coming from a particular constituency in the Tory Party and elements of the Democratic Unionist Party. Second, having done the nerdy stuff as a lawyer and looked in some detail at the practical consequences of introducing an amnesty for state actors, it could not be done in a context in which one was trying to exclude truth recovery, namely, the Article 2 investigative truth recovery components of dealing with the past. If one were to try to have such an amnesty, it would be unlawful, in effect, and against international law. One could not have an amnesty of that nature which would apply only to state actors. The legal consequences of such an amnesty, in effect, would be that prosecutions would become impossible for non-state actors. The chairman of the UK defence select committee, Dr. Julian Lewis, more or less seemed to acknowledge in an article in the *Belfast Newsletter* that he realised it was quite a big ask and would be a high price for victims in North Ireland to pay to accept it, but if it was the price that had to be paid to give protection to state actors who had served in Northern Ireland, they might have to pay it. From my perspective, that is a huge price for victims to pay because across the community there is a significant demand for justice and prosecutions, although everybody recognises that under the Good Friday Agreement no one serves more than two years for conflict related offences. Again, this will be a huge issue and everyone will have their eyes on it.

I will hand over to Dr. Bryson to speak about oral history.

**Dr. Anna Bryson:** I bid everyone a good afternoon. I thank the joint committee for giving me the opportunity to speak to it.

As Professor McEvoy has said quite a bit about the Historical Investigations Unit, HIU, and the Independent Commission on Information Retrieval, ICIR, among other things, I take the opportunity to highlight some of the key issues related to one of the other mechanisms agreed to under the terms of the Stormont House Agreement, namely, the Oral History Archive, OHA. I will also touch a little on the Implementation and Reconciliation Group, IRG.

In some ways, there has probably been a sense that the Oral History Archive is the least contentious of the mechanisms and perhaps the easiest on which to get some consensus and agreement. Sometimes that perhaps is based on a misguided assumption that it is a soft or an easy option, but that takes away from the important work it could do, if fashioned correctly. What I want to say, first, is why I think it matters. It can do something different from the other mechanisms, in particular, the prosecutorial and truth recovery mechanisms. It can broaden the canvas for dealing with the past. We can get to gender related dimensions and rural experiences of conflict to take in the experiences of a very wide range of victims and survivors across Britain and Ireland, all of which is very important.

We know internationally about the work of oral history and storytelling mechanisms and how powerful they can be. Having worked on different projects related to the conflict and served on the advisory boards of oral history projects, I know just how important it can be to

provide these opportunities and give voice to people who have been either silenced, occluded or ignored. Such projects give space to the messy, complex reality of their experiences that defies monocausal explanations of conflict. That said and I hope having touched on some of the reasons it matters and is important, what we have been concerned to do is highlight the importance of getting it right and some of the problems we saw in the shape of the mechanism as leaked versions of the draft legislation unfolded and in our tick-tacking with the various key players.

First, it was agreed, rightly, in the Stormont House Agreement that the archive should be independent and free from political interference. I think we all agree that that is vitally important. That said, we were a little concerned that in the outworking when it began to meet it was tentatively agreed early on that the archive would be housed in the Public Record Office of Northern Ireland and, more particularly, that its direction would be guided by the deputy keeper of the Public Record Office of Northern Ireland. The deputy keeper is the Minister of the parent Department. That rang a few alarm bells for us in terms of the political independence of the archive. Although in the draft legislation that was leaked it was suggested the deputy keeper not take direction from the Minister, there were other clauses that said, nonetheless, that all of the rules guiding the functions of the archive, its remit, acquisitions policy and other issues would, in one way or another, be subject to the diktat of the Minister. That is what we felt amounted to something of a fig leaf of independence. Overall, it gave the feel of something that was top-down and state-centric. Looking at truth commissions around the world, we know how easily these mechanisms can be labelled as exclusionary and how people can self-exclude. If one is to reach out to a broad range of people, one has to get out of the building and engage in the painstaking work of building trust. To date, that is not something of which the Public Record Office of Northern Ireland would have had a lot of experience.

One of the things Professor McEvoy has mentioned is that we have been very pragmatic in our work. We accepted that we would work within the remit of that which had been agreed to politically. Accepting that the archive was probably going to be located in the Public Record Office of Northern Ireland, we said that at least there should be checks and balances. We looked at what else we could do to curb our fears. We argued very strongly in favour of a steering group that would hold the deputy keeper to account. It is very important that it not just be a talking shop and that the steering group have real powers to agree to the remit and vision of the archive and to agree to what can be destroyed, count as being of historical significance and, therefore, admitted into the archive and so forth.

On the point of having a bulwark against what could be a case by case fragmented approach, the steering group could play a very important part in mapping out the vision for the archive and how it would deliver on issues related to reconciliation. That brings me to the link with the Implementation and Reconciliation Group, IRG. As members are aware, the group is a mechanism that has been designed to establish themes. It is the big picture. At the end of five years there would a report on patterns and themes. That raises two key issues for us. It is an 11 strong body which is made up of political appointees. It has been a little vague. There is not much detail in the Stormont House Agreement about how the academics who will do the grunt work that will create the evidence base for the report on patterns and themes will be appointed or how they will do their work. I wish to raise two issues in that regard, the first of which relates to the importance of what is contained in the legislation. Currently, the sense we are getting is that all of the responsibility is on the individual academics to act independently and with the necessary rigour, but we want to ensure the criteria will be established in legislation to ensure the mechanism will be designed in such a way that we will not be in fear of the political appointees saying

that although a certain academic is a bona fide academic, he or she should take out paragraph 11 and thus interfere with the work of the academics. There are plenty of good models for how one can do that. If I want to be admitted to the arts and humanities research council peer review college or the Royal Irish Academy, there are well established procedures. There are models which can be followed to establish the criteria to act as a really important brake.

The other point I want to raise in relation to the IRG partly concerns how the big picture stuff relates to the evidence base. This is something that concerned us. In the Stormont House Agreement it was anticipated that the evidence base to be used in compiling the key report at the end would be referred to the IRG under any of the legacy mechanisms. In some ways, that makes sense. If there is a slew of evidence before the ICIR of collusion, for example, one will expect it to be a pattern or theme that will be investigated. What concerns us is the suggestion that perhaps that it will be applied a little too rigidly and there might come a point where the evidence base could only come from the legacy mechanisms. If one thinks of collusion, it seems bizarre to us as academics that one might be told that one could not refer to the De Silva review or the Smithwick tribunal report. Instead we think the academics should have access to all of the relevant and available evidence and that we should trust them to go through the secondary sources, as they would. That brings me back to my point about the Oral History Archive. We are getting a sense that an attempt could be made to limit the evidence coming through to inform the vitally important report on patterns and themes. If that is correct, the point I made about the Oral History Archive matters a great deal because the vision for it - the acquisitions policy and who decides what qualifies as a story of "historical significance" - will matter in terms of the evidence base to inform the vital report on patterns and themes.

The next point is linked. Members will be aware that the Stormont House Agreement includes a reference, albeit only a couple of sentences in length, to the effect that the British and Irish Governments will be expected to make statements of acknowledgement at the end of this process and that others will be expected to do likewise. However, if we do not get the Implementation and Reconciliation Group right and do not have confidence that the report on patterns and themes has been followed through on correctly, is sufficiently independent and vigorous and so forth, how can the Irish or British Government be asked to apologise, given that the question it will ask is for what is it apologising.

My final point is that all of these elements are organically linked and interdependent and one will have a knock-on effect on the other.

**Dr. Duncan Morrow:** Fortunately, I am the final delegate to speak. I will not delay the joint committee as I only have a little to add to Dr. Bryson's comments.

My interest in the paper is that everything that happens around victims is turned into a re-criminatory process and part of the problem we face is that the reconciliation group needs to ensure it will be brought back to the fundamental purpose set out in the Good Friday Agreement, namely, to enable a future-oriented process, rather than only a past-oriented process. The location of all of the work of the Historical Inquiries Unit and the Oral History Archive must, therefore, be set out in a charter which will establish much of what Dr. Bryson described in terms of the Implementation and Reconciliation Group, IRG. Further detail must be given on how the appointment will be made, how active academics will work and the independence of the appointments and reporting processes and full access must be provided to all of the material the IRG will require to make these judgments. Unless that happens, the risk is that even what we now have, no matter how it is brought forward because of the IRG and whether it will achieve all that it wishes, will turn into yet another re-criminatory process and deepen the sense

of frustration and alienation.

The critical element is focusing on the legislation being brought forward in parliament to ensure it will be put through properly. Any move to restrict or change what was in contained in the Stormont House Agreement or take it outside the framework of the Agreement which I fear is at risk as a result of the Brexit process, ongoing interference across these matters and the absence of any institution inside Northern Ireland, means that the Irish Government must place particular emphasis on ensuring the legislation will conform exactly with what was agreed to at Stormont House and will be in conformance with what I view as the core of the issue, namely, the statement in the Good Friday Agreement on the purpose of the role of victims. I have laid out this view in the paper.

**Chairman:** Normally, three members ask questions to which delegates then respond. The first speaker is Senator Frank Feighan who will be followed by Deputy Declan Breathnach and Mr. Chris Hazzard, MP.

**Senator Frank Feighan:** I thank the delegates for their submissions. We have heard about political interference from various sides. On the Oral History Archive, we had a similar archive here in different periods, much of which was very anaemic. Sometimes when one goes through the papers of 70 or 80 years ago, the testimony is very vague. In the light of the duty to report crime, a republican or a loyalist paramilitary will have a difficulty in trusting the process. While I acknowledge that safeguards should be in place, as we saw in the case of the Boston tapes, with which I am not as familiar as I should be, this will be very difficult. It is helpful that people want to tell their stories, both on the island of Ireland and further afield. However, we will not get to the core of the issue if complete independence is not guaranteed. Judging by the delegates' comments, it does not appear that this independence has been provided for. I ask them to elaborate.

**Deputy Declan Breathnach:** I thank the delegates for their presentations. I have a couple of questions on the issue of legacy, particularly the possibility of an amnesty. I come from a Border county and deal with many people on both sides of the conflict who were victims. In the context of an amnesty, has anyone explored the possibility of encouraging people to come forward on the basis that families or victims of murder or other heinous crimes during the Troubles agree that they only want to find out the truth? If a number of cases were taken, even on a trial basis, to see how this approach would work, some families might get closure. As this is not happening for them, the legacy goes on. The committee has on previous occasions discussed the generational impact of this legacy.

Particularly in dealing with cross-Border legacy crimes that were committed in one location and where the evidence ended up south of the Border or *vice versa*, to what degree does co-operation take place in such inquiries? I have seen a number of inquiries on both sides that have not enthused me in terms of the level of co-operation provided. How is it intended to deal with this matter to ensure synergy between the North and the South?

I am quite taken by the idea of an oral history archive. We heard that it will be evidence based. Given that when people reminisce, a certain amount of folklore enters the story - every tale is added to in the telling - how does one ensure that in creating an oral history archive, some of the stories are not embellished?

**Mr. Chris Hazzard:** I thank the delegates for their presentations. I will give some of my thoughts and perhaps ask one or two questions. I have noticed that Dr. Morrow's paper includes

an idea regarding protocols for commemorations. That is an interesting proposal, on which I ask him to elaborate.

On the Statute of Limitations, having recently engaged with Dr. Julian Lewis and some of his colleagues on the defence committee at Westminster, I was genuinely astonished by the lack of understanding of what had been proposed in the Stormont House Agreement. I wondered whether there was even an awareness of what was taking place. I was also surprised by the extent to which some of those proposing an amnesty were aware that it would mean an amnesty for everybody. They did not shy away from that point and when it was put to them, they understood exactly what the legal ramifications were. We will meet the committee again when we travel to London with a range of victims. It should be an interesting meeting.

On the Oral History Archive, about which I spoke recently, is there a good international model for approaching this task? Archives of this nature have been attempted in the Balkan states and elsewhere. Are there examples we could consider and can lessons be learned from what has happened elsewhere?

I am very worried about the idea of patterns and themes, which brings us back to the issue of an amnesty and the idea that there is somehow a witch hunt under way. We talk ourselves into themes in public life, which results in the other side arguing that a counter-theme is necessary. When these themes and counter-themes develop, questions arise about who is in control of them. I would like to see an archive separate from that and if stories are told, and if it is folklore, so be it. That is someone's story, and that is it. It stands alone. It is in there with everything else. One of the big things, certainly looking at how we deal with the past, has been the complete lack of gender perspective. I raised with Judith Thompson when she was in here lately that the failure of the British and Irish Governments to incorporate the North into their national action plans on United Nations Security Council Resolution, UNSCR, 1325 needs to be addressed and the likes of an archive and some of these other structures can help apply that gender perspective.

Apologies, I suppose much of that was rambling thoughts rather than questions. I thank everyone again for their presentations.

**Dr. Anna Bryson:** Maybe I will start with Senator Feighan's question. To some extent, I share the Senator's fears about it becoming quite an anodyne and risk-averse archive. When the Senator mentions the former combatants, I would stress the ICIR is really the place where people should go with that information. The Oral History Archive is not really primarily designed to be the place where ex-combatants would go and tell their story. However, that is not to say that those issues will not be there. The Senator quite rightly identified that the Boston College project has engendered a chill factor - it certainly has - but much good work will continue to be done within the confines within which we work. What we do is train people to understand that there is a limit to that. One cannot include information about crimes that have not been processed and duly determined and one would reiterate that. One takes appropriate measures to ensure that does not happen. To some extent, that perhaps limits some of the stories but going back to the point that has just been made, I would emphasise that the Oral History Archive is probably about broadening out much more widely and including the stories of a much wider range of people and it should not be a kiss of death to the archive. At the same time, I would take the Senator's initial point and share my broader sense that if it has this bureaucratic risk-averse approach with little imagination or creative vision, I would worry that that would for different reasons narrow and curb its potential.

Does Professor McEvoy want me to go on or does he want to take the next question?

**Professor Kieran McEvoy:** Sure.

**Dr. Anna Bryson:** On the point that was made then about folklore, I suppose I would tend to agree with Mr. Hazzard MP that in some ways that is fine because it is people's stories. When I did oral history interviews for my PhD, I accepted people told lies but I became very interested in that. It is the job of the historians to come in afterwards and state that the lies and the gaps are interesting and they will footnote what actually happened so there is a narrative building up for that individual or for that community, and that is all interesting. There is a whole lot written about how untruths, gaps and omissions can be interesting for lots of reasons but the point is that it is that person's story, it is his or her interpretation, and it is not a kiss of death to the value of the material if persons misremember for various reasons because it is subjective to an extent. Every type of evidence is taken on its own merits with its own pros and cons, etc. For me, where it has crossover into folklore and stuff would not be too much of a concern.

Does Professor McEvoy want to go on to the point and I will come back on the international matter?

**Professor Kieran McEvoy:** I will address the amnesty questions. Deputy Breathnach's question on this arrangement to which families would sign up to it is a good one. In effect, the mechanism which we did not talk much about, the Independent Commission for Information Retrieval, ICIR, which is in the Stormont House Agreement, is more or less that. No one knows whether or not that will work. It is modelled on the commission that was established to recover bodies of those who were disappeared which has basically worked. There have been 13 bodies returned out of 16. Deputy Breathnach's constituents would be well aware of this. That is the model. The idea, basically, is that the process is triggered by a family member approaching that commission. In doing so, the family member will be aware that any information that comes back from an armed group or from a state body about what happened to his or her loved one cannot be used for prosecutorial purposes. All the information in that is sealed and it is designed to help people come to terms with the past. Whether or not it works we will not know, I guess, until we are roadtesting it. That is the way that mechanism was designed. Those families know that any information coming out of that process cannot be used for prosecution. If evidence emerged from another process, for example, the investigative work of the historical investigations unit, people could still be prosecuted as a result of that, but any information that comes out of the process of the disappeared commission is airtight. That process will not work unless it is airtight. One of the reasons, from my perspective, the work of the disappeared commission has been excellent is that the process has been airtight, there has been no leakage and there have been no prosecutions. That has done a huge amount. Relationships of trust, in effect, have been built up between armed groups, in particular, the IRA and the INLA, in the recovery of those bodies and those relationships of trust could only happen if the guarantees of non-prosecution were airtight. That is the way that mechanism is designed.

Deputy Breathnach's second question was on cross-Border co-operation. It is an excellent question also. We would do a lot of work with victims from across the community. A big concern for victims in the North, particularly victims from the unionist community, is whether information would be forthcoming about IRA activities that happened south of the Border with people going across the Border and coming back. It is also a concern for victims here in the Republic. For example, as the Deputy will be aware, the families of the victims of the Dublin and Monaghan bombings have been very frustrated about the lack of information coming from authorities in the North. Both Governments recognise that for it to work both of them have to

apply themselves with goodwill in a cross-Border situation. In fairness, there has been a significant amount of work done, for example, in terms of the provision of information from the Department of Justice and Equality towards the inquest system in the North and in the development of protocols for the sharing of information, etc. There is quite a lot of nerd stuff. There is a lot of logistical work to be done on all of that but these mechanisms will not work precisely and will not have credibility in either jurisdiction unless, as the Deputy hinted at, there is effective and real cross-Border co-operation between the authorities on both sides of the Border.

On the statute of limitations question of Mr. Hazzard, it was quite interesting that when I gave evidence to that committee I outlined the three components of what an amnesty looks like and the chair of that committee stated that the committee did not like to call it an amnesty and preferred to call it the statute of limitations. I said that as a lawyer, my view was that if it walks like a duck and quacks like a duck, it is a duck. If it negates criminal and civil liability for serious offences, it is an amnesty. What they are talking about is an amnesty and they know that. In fairness to that committee, it took the legal and technical arguments about the consequences if one introduces that. One simply cannot, for example, as I stated earlier, introduce a statute of limitations which negates people's right to truth under Article 2 of the investigative elements of that. Second, if one is doing this, one must know that one is saying that it would be very difficult to mount any successful prosecution against the non-state actors, loyalists and republicans, because of the legal arguments for the introduction. That style of an amnesty is called a self-amnesty. It is the kind of amnesty that was introduced by the military dictatorships in Argentina, in Chile and in Brazil. Indeed, Robert Mugabe introduced a similar style of self-amnesty for ZANU-PF activists. That is the kind of company one is keeping with this version of a self-amnesty. Courts will obviously look at that, look at the context of what one is doing there and judge it accordingly. Then if anyone tries to mount a prosecution, for example, of a non-state actor in the context of such an amnesty, of course, the lawyers who are representing the non-state actor in that context will talk about equality of arms and collusion. They will raise all the issues which will make it, in effect, impossible to successfully prosecute non-state actors. That honest conversation with victims, which, in fairness, Dr. Julian Lewis was having, is the realm that we are in. In some ways what one saw in this debate was, while some of the DUP MPs were pushing hard on this issue, there was a degree of blow back from some elements. For example, I saw some correspondence from a victims' organisation which is called the innocent victims network in Northern Ireland which became understandably concerned that the consequences of the DUP MPs pressing for this for those victims would be that, as far as they are concerned, IRA terrorists would never be successfully prosecuted as a result of this amnesty. There is probably a bit of political pressure coming from grassroots unionist victims' groups on the DUP and the Ulster Unionist Party around this issue. I do not know where that will play out. We are talking here about is a self-amnesty which will have the consequence of a *de facto* amnesty for non-state actors as well. If we are to have conversation with victims, honesty is the key to all of this in terms of public credibility.

**Dr. Duncan Morrow:** Sitting beside lawyers is always an interesting experience for me because the nerds take over and they know more than I do, namely, the facts. As somebody who thinks of this politically and has worked in the community for a long time, my concern about all of this is that as we get more technical, the restorative purposes in terms of the reason we are doing it may be lost. In terms of the purpose of this process, we need to shift the focus, and this is why the Implementation and Reconciliation Group, IRG, is critical, away from the prosecutorial to the restorative by which I mean that the critical issues in restorative justice are addressing harm, taking responsibility and restoring relationships afterwards. If we do not shift from a punitive to a restorative model, effectively, all of this will go down the toilet, so to speak,

in the way mentioned earlier, which is that the themes will become recriminatory and people will say that certain individuals got amnesties and others could not be prosecuted. We can see that rolling out in front of us already.

Alongside the very important work on detail, which I am not “dissing” in any way, something has to be said about re-establishing the reason we are doing this. It is not to drag it out of anybody. It is essential that we address these matters. The word is “reconciliation” but the focus should be on the future, not the past. The point about reconciliation is that it is possible to move from somewhere to somewhere else, and that has to be facilitated.

On the fundamental issues raised, the question in Northern Ireland, or the North of Ireland if the members prefer that term, is control of the narrative. In any of these issues, control of the narrative has to be addressed. As far as it is possible for us to do, we must move on to a more objective, measurable, challengeable process. That means it must be judicially challengeable but also, in terms of the oral archive, that the principles are established at the outset and can be challenged and measured.

Mr. Hazzard spoke about the folklore. There is very good academic work on how to do oral history. It is not just a case of somebody explaining what happened to them in a wee corner of a booth. It needs to be done properly. It has been pioneered internationally but it has also been done quite well by local community organisations.

**Professor Kieran McEvoy:** I think Dr. Bryson literally wrote the book on it.

**Dr. Duncan Morrow:** Exactly. The critical issue for me is that at some level there needs to be a visible willingness to stand back from the political control of the narrative because if it is only about that, the process will enter disrepute even before it starts. There is a political imperative to acknowledge that that is an issue, to say that this is what we are doing and then, at some level or other, to stand back from that. The best thing we have are international judicial standards of evidence gathering from academia and professional standards monitored by professionals who are able to then uphold whether they are being followed. If we do not go down that road, all the mechanisms we have will fall back into the political control.

Mr. Hazzard asked me specifically about the commemoration issue. I have been thinking that commemoration is also about the control of the narrative. At some level or other it is part of this process, but it is never addressed. The right to remember is given in the agreement but it is also about how we remember in a society in which harm is a complex process to be understood in multiple ways. Are there ways that would allow us move forward and say, “This and no further”? Could this be an agreed way that would not be used simply as a mechanism for further politicisation by any side but that we would have some kind of protocols? That would also ride into how we do our cultural celebration and address the “How to” question.

We would have to be compliant with human rights in the context of freedom of expression but in a divided society a very good case could be made that there should be at least a charter of norms that people can be held against that would allow everybody, with some degree of freedom, move forward on that issue without more victimisation and retraumatisation. I fear that this process threatens to become one of retraumatisation. That is the reason everything goes back to “Let us not talk about it at all”, which means it festers and comes out in other ways.

The critical issue for me is that the pathways are established and the Implementation and Reconciliation Group is given a proper remit to report on the process more than every five years

in terms of whether it is being upheld, whether the question of independence is being upheld and so on to ensure some assurance is being given to people through the entire process. If we are talking about real risks rather than theoretical or legal risks, the entire process will become nugatory if it becomes another *cause célèbre* for how a state or any particular group tried to nobble it for its own purposes.

My emphasis in all of this would be the oral history archive, in terms of the historical investigations unit, HIU, and ensuring that the IRG is given sufficient oversight potential to ensure it upholds the standards set out in law and in the Stormont House Agreement.

**Deputy Maureen O’Sullivan:** I thank Professor Morrow for being so frank, even though he is painting an extremely depressing picture in that, after all these years and all the initiatives, the organisations, the units, the funding and everything that has gone into it, we do not seem to be further advanced. From what Dr. Morrow is saying, there does not appear to be that much hope of further progress. Some of us are involved with the issue of the Dublin and Monaghan bombings and it is very difficult to listen to the relatives of the victims. We are now hearing from the grandchildren of those who lost their lives in the Dublin and Monaghan bombings, so how soon is “soon” because we have been hearing that for so long?

The current system in the North does not help. I am not talking about the political impasse, which is one aspect, and Brexit will not help, but what is happening now with prisoners and the revoking of licences. The parole commissioners system is one of the most unjust systems one could have in a democracy and what happened with the Boston tapes would not lend reassurance to those who want to tell their stories.

It strikes me from what Dr. Morrow said that the guarantee of non-prosecution across the board to everybody, not just in terms of cross-Border co-operation but across the Irish Sea co-operation, is shelving reconciliation just to get the stories out and getting rid of the national security question. It is mind-boggling that they come out with this issue of national security yet we know there is so much infiltration of all the organisations that they know everything even before the people have decided what they will do.

Going back to the international aspect, which we discussed previously, and giving Cambodia and Rwanda as examples, is there anything to learn from that?

Also, while we are waiting on the stories to come out, are the witnesses examining the effect of the atrocities on women and families over the more than 30 years of the conflict? We may not be getting the stories out but we can examine the effects of the atrocities on everybody.

**Ms Michelle Gildernew:** The witnesses are very welcome. It is great to see them here, especially Dr. Anna Bryson. Very few women give evidence to this committee so it always a welcome development.

I will direct my first question to Dr. Bryson. I have supported families from Tyrone in court over decades and we had paper coming out heavily redacted. Sometimes 60%, 70% or 80% of the script was redacted. One of those families is the family of Roseanne Mallon, who was murdered close to my home. The time and resources that went in to ensuring that family did not get next or near the truth are immoral. We hear people talking about the cost of these court cases, inquiries and so on. The reason they are so expensive is because the British Government has spent millions of pounds trying to keep the truth from the families. That is one issue, and it is depressing. I agree with Deputy Maureen O’Sullivan on that.

Professor Kieran McEvoy's paper references the forthcoming legislation, the 2015 leaked legislation and the fact that that is not likely to change. Could he give us more detail on that?

The retraumatisation mentioned by some of the witnesses is hugely regrettable. Victims who have already suffered, wherever they come from in our society and whatever part of the conflict, are sometimes treated despicably by elements within the media. People are used and abused and then left to one side when whatever purpose they have been wheeled out for has been achieved. Our victims are treated appallingly at times. People are traumatised over and over again. What are the witnesses' views on that?

**Deputy Brendan Smith:** I welcome the presentations by Dr. Bryson, Professor McEvoy and Professor Morrow. They are stark and unfortunately present a very accurate picture of the position we are in. Professor Morrow's statement that after 20 years we must conclude that we have collectively and individually failed to take the Good Friday Agreement seriously is a fairly damning statement but unfortunately an accurate one. Dr. Bryson referred to omissions and to people mis-remembering. Professor Morrow said the supply of truth is even shorter on the ground. As time goes on, even when people want to tell the truth, memories can be dimmer because people's memories fade. They may not be as accurate as they wish they were. Every day that goes past it is getting more difficult to establish a just process in regard to legacy issues. In our last visit to the Wave trauma centre in Belfast we met victims and advocates for the victims. There are people there who have been without any proper appreciation of their huge injuries and suffering. They have had no proper health service, pensions or disability payments. It is absolutely appalling that for decades these people have suffered and continue to suffer. The one political mandate all of us in the 32 Counties have is to implement the Good Friday Agreement. It was endorsed by more than 94% of the people in our State and by more than 72% of the people in Northern Ireland. It was a huge political mandate for the people in public life, both North and South, to implement. I fear that as time goes on people, understandably, will become ever more disillusioned. The truth diminishes when the memories of people who want to be truthful fade. We had that discussion with the Commission for the Location of Victims' Remains. Every day that goes by memories are lost and people pass away to their eternal reward. There are family members who will never see any truth or secure any justice for the loss or suffering of loved ones.

Dr. Bryson mentioned tragedies not being investigated in this jurisdiction. My colleague, Deputy Maureen O'Sullivan, referred to the Dublin-Monaghan bombings. I represent Cavan-Monaghan. What has happened is appalling. On three occasions, the Dáil unanimously passed motions calling on the British Government to give access to eminent international legal experts to all papers and files pertaining to the Dublin-Monaghan bombings. Successive British Governments, to their eternal shame, have ignored the pleas of sovereign parliaments from a neighbouring jurisdiction. It is absolutely appalling that the British Government has treated these matters in this way. In my immediate area, a bombing resulted in the death of two young teenagers in Belturbet, County Cavan, in December 1972. There has been no co-operation from the authorities in Northern Ireland. People have pointed the finger at who was responsible for that carnage on that dreadful night.

On a day like this, I also want to remember Aidan McAnespie. My constituency colleague, Deputy Caoimhghín Ó Caoláin, arranged for Aidan's father, John and two brothers, Vincent and Sean to make a presentation to us here today. There is unanimous agreement at the justice committee that a report that was carried out by Assistant Commissioner Crowley would be released to the family. There are many cases of justice being delayed for families and the truth being

kept from them for decades. It is important that we reflect on the fact all of us are getting older by the day and people continue to suffer. It is an appalling situation.

With the political institutions not working in Northern Ireland, are the Fresh Start agreement and the Stormont House Agreement dormant for all intents and purposes? The witnesses have outlined the academic work and the work that has to go on alongside trying to implement the purpose of these agreements. In reality, is all of that dormant until we have institutions working again?

**Professor Kieran McEvoy:** There is a lot in those questions. I will address those asked by Deputy Maureen O’Sullivan and Ms Michelle Gildernew. Deputy O’Sullivan asked whether we could draw on the international experience of other jurisdictions. She mentioned Rwanda and Cambodia. I have worked in both of them and ten or 12 other places. The way we went about our work in trying to feed into these debates in Northern Ireland was to see where we could draw on lessons. One cannot transpose the model from one place to another. That is common sense. What we have worked on is bespoke solutions for bespoke problems. On issues like Rwanda in particular Dr. Bryson spoke about the dangers of State-centricity. In Rwanda there was a big focus on community-driven justice and community-driven approaches to the past. That fed into our thinking about the prominence of civil society in all of these discussions.

I detect a strain of pessimism in the questions Deputy Smith and Deputy O’Sullivan asked. I do not agree with it. The consultation on this legislation will be a defining moment in how mature our civil society is. The last time we had a moment like this, which some may remember, was the launch of the Eames-Bradley process - which was a debacle - and what ensued afterwards. Our civil society was not up to the task in terms of dealing with it and having mature and sensible conversations around these issues. I think we are in a different place now. We have better leadership across the victim sector. I do not think victims can be as easily manipulated politically as they were. Time will tell. There was a question about whether all these things are dead in the water. They are not, but this is our last chance. Assuming this consultation goes forward and assuming it is also followed up by legislation - those are two big assumptions - we are at a defining moment in the history of coming to terms with the past on the island. We will see whether our civil society can hold up. I am more optimistic than I used to be about our capacity to have grown-up, sensible conversations on these issues. I just finished a project in which we did 60 interviews with victims from across the political spectrum. There are significantly increased levels of maturity and reflectiveness among victim activists so we will see whether we are up for this. I am an optimist by nature. We are in a better place than we were when the Eames-Bradley process was launched.

Ms Gildernew and Deputy O’Sullivan asked about the national security and redactions and so on. That is how we have approached the conversations with the Northern Ireland office in particular. A community with a history of seeing redactions made by the British State, in particular, is being told to trust the British State that it is because of a legitimate national security concern. There is no abundance of trust in our jurisdiction. That is a political reality that we must face. We approach it in a very problem-solving kind of way. As I said earlier, we came up with this model which was supported by the two key NGOs working with families of victims of State violence that said families could live with this model. The model accepted that states have legitimate national security concerns but it is not a blank cheque. Looking at a way in which we could break that down, we said no one really has a problem with the State’s obligations to protect lives. Naming names in reports that could lead to reprisals is a very big test to pass. The Ombudsman does it all the time and goes through the process of reflecting on his office’s Article

2 responsibility. It is not beyond our legal imagination to find ways of squaring the circle. That is one thing. No one really has an issue with protecting lives. We will park that. The right to protect life is one issue. If a judge was making a determination and the interests of families were represented - probably in a closed legal hearing because it is very sensitive information - the arguments would be knocked back and forward and the judge makes a determination against particular criteria.

**Professor Kieran McEvoy:** One cannot use national security to protect unlawful activities. If people are involved in something unlawful, be they State or non-State actors, or agents of the State in that penumbra between State and non-State, national security cannot be used to protect that. Take that off.

We try to drill into what are the legitimate concerns of the officials who are working on this. They said they are concerned that information may go in to the public domain about what they are doing around contemporary counter-terrorist strategies with regard to dissident republicanism, al-Qaeda, ISIS and so on, and that this is a legitimate State concern. We said that we would take this seriously. One could build in criteria; for example if they are looking at obsolete counter-terrorist practices that are not relevant, is that a real legitimate security concern? A judge would make a determination. I do not know if the members are aware of the size of a bugging device from the 1970s compared to what people can do now. We are living in a different world. A judge, making a determination after legal arguments back and forward, could say: "Come on lads, that is not a legitimate counter-terrorist practice." We could, however, have a sensible, grown-up conversation within a legal process for that. All of these issues are resolvable with a degree of legal imagination and political will. I believe that the national security issue is one of those, but it will require political will. It will probably be the issue where we will really see whether the British Government is serious about seeking to address the past. It is a touchstone issue and it goes well beyond Northern Ireland; it is across the British State. The read-across implications for the Ministry of Defence, MI5 and MI6 are something that the Northern Ireland Office really must consider. This has read-across consequences. We thought of a way of possibly including on the face of the legislation text such as: "For the purposes of dealing with the past in Northern Ireland the following criteria shall be used to assess what is or is not a legitimate national security concern." None of these issues is irresolvable. With goodwill and a bit of legal imagination we could actually do this. I am not pessimistic in the way others are.

Reference was made to the gender issue, which is a very important point. One of the flaws in the Stormont House Agreement is the fixation and exclusive focus on deaths. Some members of this committee will have met people who have been seriously injured who are campaigning for pensions. It is a disgrace on our body politic that we have been unable to resolve that. Again, with a degree of political imagination this issue is very resolvable. We have worked with colleagues in the women's movement in Northern Ireland who are very exercised by the lack of energy directed towards gender-based issues. If we only focus on deaths in the conflict and if through the mechanisms, for example from the oral history archive, a pattern or theme of domestic violence or gender based crimes is established or comes forward to the Implementation and Reconciliation Group, IRG, are we seriously going to tie the hands of the group by saying that in the 21st century a dealing with the past mechanism is not going to address gender-based violence? That would be out of sync by 30 years with truth commissions and any other bodies who deal with these issues. Are we going to rule out dealing with the seriously injured because of our focus in the Stormont House Agreement on the deaths? During discussions on this when we were coming up with the model Bill, our solution was that in addition to the focus on deaths in the conflict a degree of space would be created for the directors of the different

mechanisms and if there was an overriding and compelling public interest the director of the oral history archive, for example, could suggest doing more on gender violence or looking more at the issue of torture - which is a very topical issue. People may not have died due to torture but it is a significant theme and pattern within our conflict, from both State and non-State actors. Sensible people would be appointed to the directorates of those institutions and given a degree of flexibility with issues of an overriding public interest. This would allow them to go beyond just the deaths. Again, this issue is resolvable with a bit of imagination.

**Dr. Anna Bryson:** I wish to add a comment on gender. I suspect it will not be overruled. I wholeheartedly agree with the point raised by Deputy O’Sullivan, and it was also raised by Mr. Hazzard, that the Oral History Archive is a space where we could do a lot more around gender issues. Consider the witness statements that were collected in this jurisdiction in the late 1940s and 1950s and how profoundly they have influenced the writing of the history of the revolution and the Civil War period, and rightly so. It has provided really rich material. Some 8% of the statements were from women. When we consider how skewed and distorted some recollection can be, it brings in to sharp relief the importance of that type of collection. People do not line up outside the public records office. There will be no orderly queue formed that is duly representative of themes and patterns as mentioned, or representative of the experiences of women. A lot of work has to go into actually making it happen.

Following on, if the Chairman does not mind, I would also link this back to Mr. Hazzard’s query about international examples. I have spent a lot of time looking at what has been done in this regard in countries such as Croatia, and if there were models of such situations in the South African archive and so on that we could draw on. UN Special Rapporteur Pablo de Greiff, who was very keen that not enough attention had been paid to the archive and so on, pointed me to a project in Galicia in Spain called Names and Voices. It has a distinct gender project within it. It is hard to find one project, other than knowing that the political interference in the top-down State-centric archives are not necessarily where we want to look to. I was looking for a model rather than a specific project. Sometimes it is easy to lose sight of things. A lot of good work has been done in collecting women’s and families’ stories. Some of it is becoming obsolete because there is nowhere for the material to be stored and it is in people’s drawers.

Much powerful cross-community work is being done by community groups telling really important stories. A lot has been happening at community level. Perhaps part of what we need to look at is aggregator models, such as in the United States of America with the digitisation of the public library, which is almost like a franchise model, for example like McDonalds, with legal and ethical standards. Dr. Morrow is correct that there would be very specific professional standards. We would need specific standards around working with vulnerable people and victims. At the same time, one does not want to constantly reinvent the wheel. We want to find a way of working. A train the trainer module was part of that. This happens in transitional justice all the time with the collecting of new stories, but what about working with people and harvesting the statements? There is a fear by many of these organisations, whose funding is now being cut, that a big oral history archive in the public records office is like Tesco or Walmart coming to town. There is a terrible fear that we are going to be hoovered up. We need to be mindful of that. I did not find a specific project. In one of the articles I referenced I went through a number of different international projects and I critiqued them, but it is probably more instructive to look at some kind of model, such as the aggregator model used in the digitisation of the public libraries in the United States of America that enables us to work with and through existing groups.

We also have to acknowledge that a former RUC officer is going to be more comfortable telling his story to a former colleague who has been trained. We need to find ways of acknowledging that some victims want to talk to certain people who they trust, perhaps with and through their advocate support worker as we have proposed. All of this could be looked at. We could find a more sophisticated model that would enable us to do all of this. This came to mind when Deputy O'Sullivan spoke of the importance of collecting the stories of women. Some of this has already been done and we do not want to lose it.

**Dr. Duncan Morrow:** This reinforces the absolute certainty that without the involvement of community-based organisations in the collection of the Oral History Archive I do not think it will come off the ground at all. I do not believe this is simply a centralised professional model. There are professional standards and practices that have to be applied but the engagement of local agents, and also the people doing the recordings and the actual interviews and the work, is, in many cases, critical to people's willingness to speak. One of the consequences of conflict is not simply the consequence for the individual victim; it is about trust and the absolute catastrophe of trust leaving and, therefore, one has to have a person who is a trusted intermediary to whom these people can speak. We must be very clear about this; the Oral History Archive is going to have to be a delicately constructed process that allows people to enter it at different points, but the standards have to be central. That is a start.

The second aspect goes back to the question of the Good Friday Agreement. There is the assumption that this only works if it is seen as the reading into practice of a commitment already given to the Good Friday Agreement, that it does not exist independently, that dealing with the past only exists in relation to the decision to make a peace process and that a political commitment is there to make it work. Other than that I do not believe it exists independently, or it fits into the politics of its time - which are different politics. The issues we are dealing with, therefore, are not just technical. They are the profound political crisis that was referred to earlier here; are we still really on this process at all? I am a bit more pessimistic than Professor McEvoy but, like him, I believe that this is a test case.

One could turn that around. The test case will show what kind of process of dealing with the past we actually come up with. Does it begin to deal with people's need for truth, as has been referred to? Does it begin to access pensions as a real possibility? Does it begin to deal restoratively with the real harms? Does it try to find ways to do so? This is about finding ways. It cannot simply be a control process. It must be a process which throws up questions about what we are going to do subsequently.

I want to touch on the notion of restorative practice around the themes. People think about these themes in a very politicised, historical or political way. That is probably my own way of doing it academically. Nevertheless, we also need to think of these themes as social themes. One example is gender. The way in which people of different genders experienced conflict, harm and the consequences of these things, and the way they coped, is a massively important theme which needs to be explored and opened. There are other themes like it. The intergenerational theme seems to be really quite serious. What have the consequences been? We are seeing patterns of suicide and trauma in the second generation. There is no doubt whatsoever that the consequences of losing a parent or relative in that context were massively important for those around the loss. That is another theme.

Locality is a theme. Northern Ireland, or the North of Ireland, is not a single unit. Neither is the jurisdiction across the Border. There are real issues arising from patterns of locality. The conflict has had very specific and profound effects on the way places operate, which we have

to deal with. I refer to mental health. Mental health, and the way in which we are now able to use trauma in the mental health framework, could be an escape valve. It could also be a way to throw light on the real harms. This is linked to issues around domestic abuse and other patterns. That would be very interesting and important to look at.

Possibly along with intergenerational themes, the issue of gender is probably the critical one that would open the conflict up. It would allow us to see it not simply as an experience for a small, narrow group of people, but as something with consequences which engage everybody. This is not just the victims asking for something. This is us coming to terms with the extremely complicated legacy of the past around the Border. That would also allow the questions of who is being served and what services are about to be much more open questions. It would allow these questions to be mainstreamed across health, education and all the different areas affected. For me, that is important.

I am no longer on it, but I sat for 20 years on the Sentence Review Commission. I was a sentence review commissioner. This was the process through which early relief of prisoners was managed in the Good Friday Agreement. When I went on it, I remember thinking that in a sense it was the best available political compromise that we could have. It allowed for the two-year minimum sentence for conviction, and at the same time it allowed people to say that those who were released continued to hold licences. The life sentence prisoners all continued to hold licences. This was all right as a step. However, we need to complete the question of what transition we expect. Are people who were released to be ex-prisoners always, or is there a mechanism through which they can be, returned and restored to the community? We need to think about all of those steps as part of making our violent conflict something which belongs to an identifiable period, rather than a continuing reality which continues to infect and affect absolutely everything that happens.

I will return to the issue of the Good Friday Agreement. I refer to it all the time, but I contend that the second paragraph of the agreement, which in practice is essentially the first paragraph, sets a tone which now appears terminally naive and romantic. That is what worries me. It says:

“The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start [which is paradoxical, since we had to have another one in 2015], in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.”

When people say that the Good Friday Agreement has been superseded, I am less focused on specific institutions than on that. I want to know if we are setting that aim aside. Is that gone? Are we no longer aiming at those particular aims? We now talk in Northern Ireland of outcomes-based accountability. For all the institutions and legal frameworks that seem to flow from the agreement, the outcome has to be reconciliation, tolerance, mutual trust, and the vindication of human rights of all. If that is not the outcome then the processes are all distortion. Everything that we do should have that at the beginning. The test of viability of these things needs to go back to those aims. That is a slightly naive and silly thing to say at this point. However, it strikes me that given the hiatus in the institutions that we currently have, the restoration of the institutions should not simply be about the restoration of the institutions. The restoration of the institutions has to be about the renewal of their purpose as well.

My concern is not that the institutions have gone, but that the purposes underpinning them have been lost. Under the aegis of those purposes, it would be possible for politicians to argue

in favour of making certain decisions in their own communities. Those decisions may appear difficult, but they are in pursuit of a higher cause to which everyone has signed up, a cause which is contained in the Good Friday Agreement. If that framework is lost, it becomes increasingly difficult for politicians in any political party to argue that they are acting in the best interests of their communities and that those interests are actually articulated in the agreement.

I am only labouring this point because I know it is about victims today. If that is lost, I predict that all of this will become another recriminatory process. That will be manifest in the failings and the limitations of the legislation, the way in which people are handled and their degree of trust in the Oral History Archive. There is something here which is not just legal. It requires us to invest a certain amount of political capital. It requires us to ensure that what comes out of these is aligned to that purpose. That is complex in the current situation, but I nevertheless want to put it back into the equation. If it is not, I fear that some of this is simply talking for the sake of feeling that we can do this. The outcomes will not be what we want. This will not be outcome-based.

**Senator Frances Black:** I will keep it very short. I thank Professor Morrow very much for his presentation. I was not going to ask a question, but he touched on an area that I am specifically interested in, that of trans-generational or intergenerational trauma. Everybody is impacted in some way, whether they have lost somebody or somebody in their family has been injured, whether it is mental or emotional. Everybody has been impacted in some way, and that is carried down through the generations. From Professor Morrow's perspective, how important is the work that needs to be done on intergenerational trauma? I have Young People's Trans-generational Issues in Northern Ireland before me. It was a report prepared for the Commission for Victims and Survivors by Queen's University Belfast. Is that becoming a more prominent topic now? How much interest is there in it, and how important is it?

**Deputy Declan Breathnach:** We can talk about optimism or pessimism. The reality is that the people who would be interested in the report of this meeting here today are the families who have been impacted. I would like to ask about timescales involved in setting up the statute the witness referred to, that is, the legislation for the Independent Commission on Information Retrieval. It is not up and running. We are here talking about it. Can we give any hope to the people who are listening here today about timescales within which we can get to a stage of optimism?

**Mr. Chris Hazzard:** Professor McEvoy said he thought we were approaching a moment for civil society to stand up. I have a great fear that civil society in the North is as polarised as it has been in a long time. I am also concerned that we do not have a sufficiently big safe public platform, and enough educated voices and academics who are not crackpots getting on media platforms. It is a lot more common for crackpots to get on than the likes of the witnesses here. I support informed, expert voices but we do not hear enough of them. As a political representative, one often finds oneself due to go on a show and the show would be pulled if there was not an opponent to go on too. It is possible to speak on an issue without an opponent but the shows are not interested because they want a row. We are talking about hugely sensitive issues, and are coming to an important moment but I do not feel that our media is mature enough now to be able to deal with some of these issues. A colleague of the witnesses from Queen's University Belfast has recently challenged media personalities on it. That feeds in to the broader situation. Do the witnesses feel there is a safe public space for these conversations and to talk about these issues in such a way that one will not be pitted against someone who says "black" just because one says "white"?

**Chairman:** A victims' group recently made the point to us about the difficulty it has in relation to some of its members who are in a bad way physically and mentally. They worry about welfare changes that might be coming in the future and that there is no definition of who is a victim. The witnesses were speaking earlier about who decides what is important. I would like to think collectively as a society; surely victims should be at the top of the list of priorities but they have been left behind in a row over a handful of people who may get some sort of pension. These are big issues. I would encourage the witnesses to feed in another submission. The witnesses spoke about the prisoners. We are not finished on this issue. It is something that we are trying to get through and we will produce an interim report. We do not think that it will be a solution but we are seeking recommendations and would be interested in what the witnesses think will work, and what might narrow the big gaps that exist on these issues.

**Dr. Duncan Morrow:** I will respond to Mr. Hazzard; having worked in civil society, his challenge is one which should be made. There is always a complex relationship between civil society and the political elected class because there is always a degree to which people who are not elected wish to be taken more seriously than they feel they are. Unless there is a wider conversation in society it just becomes far too narrow. We may now be reaching a point where that is consistently the case. However, there are mechanisms there. PEACE IV exists. The International Fund for Ireland still has funds. There is a Community Relations Council. The Victims Commissioner has a role. There are all sorts of things.

Politicians have seriously argued that they need to hear a more mature conversation in civil society and would like to see that being fostered and owned. Some of that involves having a space for risk and for a complex and open political conversation, and a renewed space, what used to be called a "safe space", to discuss this kind of stuff. It is a complex issue and must be done in different places, and what is safe for one person may not be safe for another and so on. Nevertheless, there is a genuine need at this point to improve the quality of the dialogue, its complexity, its evidence base and its emotional intelligence, which would introduce a context within which an oral history archive, truth recovery or even the question of investigation starts to look like an answer. I do think that platform should now be formally encouraged because it is not coming through in the media. The media is becoming more and more like a Punch and Judy show which is not helpful.

**Professor Kieran McEvoy:** A number of interesting points have been raised. Specifically on the timescale, I will give an idea of the best-case scenario. If the British Government puts the legislation out for consultation after Easter as it has suggested, the consultation period would be completed by the end of June. Then the British Government would give a response to that in September so that legislation could be tabled in the House of Commons by November. That could be through the Houses by May 2019 and institutions would be live by winter 2019. That is with political will, with the Brexit parliamentary timetable for tabling legislation, and all those issues. The best-case scenario timescale is that the mechanisms are live by winter 2019.

I agree with Mr. Hazzard on the civil society space, particularly in the media. On the project I mentioned earlier where we have done a lot of work with victims, one thing we have done is looked at how victims are treated by the media and their experiences of the media. We have been interviewing them about that. One thing we will produce from that, working with the very well-known and well-respected journalist, Susan McKay, is a set of guidelines which we hope print and broadcast media will sign up to, which will outline how they promise to treat victims. We will launch that at a conference on victims and legacy which will take place in Queen's University Belfast in May. It arises precisely because of the issues which Mr. Hazzard addressed,

with people being baited and retraumatised. Nothing can be compulsory, but our idea has been to talk to victims about their experiences and look at analogous guidelines. For instance, there are interesting guidelines on how the media should treat the victims of suicide, doing so respectfully. It is about putting some meat on that and establishing an architecture around the respectful and ethical treatment of victims. We are in the middle of doing that.

Mr. Hazzard is correct that historically there have been very antagonistic relationships between victims from different sectors of the community. However, in the past year, in particular, there have been improved relations in different sectors of the community. The victims forum, a body which was set up and is overseen by the victims commission, is functioning much more effectively. Myself and my colleagues, Dr. Cheryl Lawther and Dr. Lauren Dempster conducted a workshop event in partnership with the victims commission where we had victims from across the sector, with very different experiences and community backgrounds. However because they were in the shared space in speaking about their experience of the media we got very interesting discussions with people of very different political perspectives agreeing on the same things. I am more optimistic on the capacity for agreement, with a bit of leadership across the political divide and within civil society and among the victims themselves.

On prisoners and former combatants, members will be aware of issues around people who have been seriously injured and the question of pensions. That issue has been hung up on there being a very small number of former combatants who may potentially qualify for a pension because they were seriously injured. It would not require a huge amount of imagination to have parallel processes whereby ex-combatants were treated as ex-combatants and their needs were addressed and met as such, the kind of thing to which Professor Morrow referred earlier, while victims were treated distinctly and differently. That takes one out of the politics of the definition of victims and treats ex-combatants as ex-combatants and addresses their needs as such. My colleague, Dr. Luke Moffett and I wrote a blog on *Sluggertoole.com* a while ago suggesting a model precisely around this and we will be holding some meetings in coming weeks on the matter. We are talking about a very small number of ex-combatants. It is the politics of victimhood that have prevented this from happening. I have friends and colleagues who are among the seriously injured and it is an absolute disgrace on our body politic that that issue has not been addressed and has been politicked, as the victims would be the first to tell the committee. I am sure they have done so. It is a disgrace. It just needs a wee bit of imagination and a wee bit of political will to fix that one.

**Dr. Anna Bryson:** I do not have a whole lot to add. I am pretty much in agreement with what has been said.

I absolutely agree with Senator Frances Black about the importance of young people and the intergenerational issues. In particular, as Dr. Morrow states, there is, through PEACE IV, quite a big focus on young people. One will now see in victims and survivor services, VSS, intergenerational projects coming to the fore.

I would add that it is an area where the Oral History Archive can play a particularly important role because it is not time bound. The Independent Commission on Information Retrieval, ICIR has to do the Implementation and Reconciliation Group, IRG within five years. They are very much time bound. It is the one that can take that longer view and can acknowledge that people's stories unfold. Within families, they unfold. One might want to revisit the same story. Alan McBride will tell one that he was frozen as the Shankill bomb widower, that was his story in the media; that was how he was positive and when he engaged in that kind of storytelling work, he was able to put it in the longer context that he grew up in a loyalist estate in north

Belfast. He stated that was important but it happened over a period of time. One can see then, when one has that facility, younger people can respond to that within the same family. That mechanism could create the space, if it is designed properly, for some of that work to develop. That is really all I have to add on that.

**Chairman:** I thank the witnesses. It is clearly a complex area of work. We appreciate their help today in answering questions so comprehensively. I wish them well in the future with the work, which is valuable in assisting us to understand the complex issues that face this joint committee and others in dealing with the past. We appreciate their time and effort here today. If there is something they want to add to their submission, they should by all means send us a submission.

I propose the committee go into private session to deal with the business of the committee. Is that agreed? Agreed.

The joint committee went private session at 3.52 p.m. and adjourned at 4.55 p.m. until 2.15 p.m on 19 April 2018.