

**Response by Traditional Unionist Voice - TUV**

**This response should be read subject to and in conjunction with our accompanying analysis of the draft Bill.**

**Question 1:** Do you consider that maintaining the current system for dealing with the issues of the past through legacy inquests, PSNI and OPONI investigations is the right approach, or do you think there is a need for reform?

The system is skewed against security force personnel and innocent victims of terrorism, with 1615 cases closed down unless the death was 'caused' by the security forces, resulting in 900 cases that involved security forces being prioritised, along with Saville cases - the intent is obvious.

We would observe that the HET process was little more than a paper exercise for ALL victims with most getting nothing more than a booklet containing factual information about the murder of their loved one. To only re-examine the cases involving the security forces is totally wrong and one sided.

Similarly, we note that one of the factors driving this legislation is the large case load of the Police Ombudsman (4.3) with the Historical Investigations Directorate (HID) having a current caseload of 400 and growing with 163 complaints in the last 2 years.

Finally, we note that one of the driving forces is the pressure on the coroner's service with currently over 50 legacy inquests relating to almost 100 deaths in the system and special funding promised. The preponderance of these cases involve investigating security force operations, again adding to the bias against a sector that did the most to protect all the community against terrorism.

**A system set up primarily to address issues such as this will by its very nature focus disproportionately on the actions of the security forces.**

The current system requires reform but this consultation completely ignores why it is flawed and unable to deliver for the vast majority of innocent victims - the perversion of justice by the political process in Northern Ireland. There is nothing here about bringing those guilty of crimes who received "letters of comfort" to justice and there is nothing which suggests that there will be renewed vigour to bring terrorists to justice.

**Question 2:** Stormont House Agreement proposals - engagement with legacy institutions

Does the proposed approach help to ensure all groups of people can effectively engage with the legacy institutions?

If no, please suggest additional measures that would improve this for specific groups.

Under 6.1 it is stated that the legacy institutions will operate in ways which are “balanced, proportionate, transparent, fair and equitable”. Similar language runs throughout the consultation document but no where is it defined, nor does it gather credible traction when the thrust of the proposals are examined. **It also embraces, as a guiding principle, the perverse definition of 'victim' which equates the perpetrator with their victim - something which lies at the heart of the failure to address victims' issues in a fair and equitable manner. This irredeemably flaws the entire edifice of the Bill, rendering it incapable of securing justice for the innocent.**

It is our view that once these institutions are established innocent victims who suffered at the hands of terrorists will very quickly lose confidence in them, if they have any confidence at the outset, because of the undue focus on the state for the reasons outlined above in response to question 1 and on which we will elaborate below.

**Question 3:** Should the HIU’s remit also include deaths which took place between the signing of the Belfast Agreement on 10 April 1998 and 31 March 2004?

Even 31/3/2004 is too early.

The premise for the 31/3/2004 cut off is that all deaths since were adequately reviewed. We do not accept this. On the contrary, preserving "the process" has infected the depth of scrutiny, for example, in the murders of Robert McCartney, Paul Quinn and Kevin McGuigan.

As TUV noted in response to the Stormont House Agreement this will leave infamous paramilitary murders such as that of Robert McCartney (31st January 2005) and Paul Quinn (20th October 2007) outside the remit of the structures.

**Question 4:** Do you think that the process set out above is the right way to assess whether an investigation into a Troubles-related death has taken place or whether investigation is needed?

No. The putting of non-security force killings in a box marked “done” because they have gone through the HET process, which has been judged inadequate, is totally wrong and in telling contrast to the treatment of the small minority of non-paramilitary killings. Why should innocent victims who have gone through the HET process have to be satisfied with an inferior process?

It is worth noting that as no one is currently investigating these crimes it is highly unlikely that new evidence is going to come to light.

We also note that one of the grounds for a completed HET or HID case to come within the HIU remit is if the HIU director believes there is evidence of non-criminal police misconduct, again pointing towards the bias in these proposals towards investigating the state.

**Question 5:** HIU - disclosure appeals mechanism Do you think that the proposed mechanism to appeal disclosure decisions to a judge provides adequate opportunity to challenge decisions by the UK Government to protect information?

Yes, **but how is the withholding of information by IRA/Sinn Fein to be tackled?**

**Question 6:** HIU - overall view Does the HIU provide a method to take forward investigations into outstanding Troubles-related deaths in a proportionate, victim centred manner with an appropriate structure and safeguards?

It is our view that this process is totally unbalanced. While HM Government is committing to “fully disclose all relevant material that the HIU request” (7.6) there is no such commitment - nor will there ever be - from terrorist groups. This will result in a totally unbalanced process.

Even if the Secretary of State wishes to hold back material that decision will be open to challenge in the High Court. This all speaks to the one sided nature of the proposals and the gross rewriting of the past which they will result in.

**Question 7:** Independent Commission on Information Retrieval

What actions could the ICIR take to support families who seek information about the death of their loved one?

See commentary in our analysis of the draft Bill.

The ICIR archive will not be subject to search or requisition by the police, judicial review, Freedom of Information, Data Protection or National Archive legislation (8.2). What a contrast with the commitments to open up HM Government archives dealt with above!

It is our view that the ICIR will produce nothing more than a terrorist version of the “truth” in relation to any murder they have carried out. Such information is more likely to hurt and traumatise victims, particularly given that any information which may emerge will not be usable by the courts.

**Question 8: Independent Commission on Information Retrieval**

Do you think the ICIR is structured correctly, with the right powers and protections, in a way that would provide victims and survivors with the chance to seek and receive information about the deaths of their loved one?

No. It will traumatise victims and create material which plays to a self-serving and self justifying narrative for terrorists.

**Question 9: Oral History Archive** Do you think that the Oral History Archive proposals provide an appropriate method for people from all backgrounds to share their experiences of the Troubles in order to create a valuable resource for future generations?

No, again it permits terrorists and their highly organised sympathisers to orchestrate their rewrite of history.

**Question 10: Oral History Archive**

What steps could be taken to ensure that people who want to share their experiences of the Troubles know about the Archive and are encouraged to record their stories?

No. This achieve, as made clear in 9.1, will include victims, members of the security forces, emergency services and paramilitaries. Grouping all of these together and treating them as equally valid narratives of what happened is totally wrong and immoral. There is a fundamental difference between the man who went out to plant the bomb and the man who drove the ambulance to the scene of the bombing. To equate the two in this fashion is perverse.

It is our belief that the structure of the achieve will discourage innocent victims, security force members and members of the emergency services from taking part. We do, however, recognise that terrorists will have no such qualms and that the material generated by the scheme, like that produced by the HIU process, will hugely aid the rewriting of history due to the sheer volume of material both will produce and the bias in where it will come from - all of which will then be fed to the IRG to shape its lasting conclusions.

**Question 11: Commissioning the academic report on themes and patterns**

Do you think that the ESRC should be engaged to commission the academic work on patterns and themes to ensure independence, impartiality and best practice in academic research?

Given that the material will be generated by the totally unbalanced work of the bodies dealt with above we do not agree with this proposal. It will not examine any of the important themes in the PIRA campaign but rather focus on the state which will produce a totally biased account of what happened in Northern Ireland.

**Question 12: Implementation and Reconciliation Group**

Do you think the IRG is appropriately structured to allow it to review the work of the legacy institutions, to commission an independent academic report and promote reconciliation?

No. These proposals will deepen divisions in Northern Ireland and leave those who suffered at the hands of terrorists feeling betrayed as the entire structure is geared towards justifying the actions of the primary victim makers.

**Question 13: Stormont House Agreement proposals - overall view**

Do you think that the package of measures proposed by the Stormont House Agreement provides an appropriately balanced and planned way to move Northern Ireland forward that can command the confidence of the community?

No they do not. They lay the groundwork for a rewriting of history and offer nothing to innocent victims of terrorist violence. Our detailed response to the Stormont House proposals following their publication can be read here <http://tuv.org.uk/tuv-commentary-on-the-stormont-house-agreement/>

**Question 14: Other views on the past**

Do you have any views on different ways to address the legacy of Northern Ireland's past, not outlined in this consultation paper?

These proposals are not motivated by any sudden desire by HM Government to address the needs and concerns of victims after 20 years of ignoring them. Rather they are designed, as indeed the entire political process has been, to satisfy the demands of the Republican movement.

If there was any real desire to deliver for victims:

- i) The perverse definition of victim would be changed so that the perpetrator is not classified the same as the innocent victim;
- ii) There would be a recognition in this document that the early release of terrorist prisoners caused huge hurt to victims. There is none of that and
- iii) There would be an addressing of the special treatment which some terrorists have received by way of "letters of comfort" and the damage that did to public confidence in the justice system's ability to deliver for victims with the collapse of the Downey trial. Again there is no mention of that.

There are many other points which could be made but those are some of the most obvious. The fact that none of them are addressed and that HET reports are deemed good enough for victims of PIRA terrorists while those who lost a family member due to the actions of the Army or the RUC automatically go into this new system is

testament to the fact that these proposals are nothing more than the next stage in appeasing Republicanism.

NB the response to this question should also be taken to address questions 15 - 17 dealing with equality and good relations.