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ADDRESSING THE LEGACY OF NORTHERN IRELAND'S PAST – JULY 2021 COMMAND PAPER – COMMENT FROM THE PARACHUTE REGIMENTAL ASSOCIATION

Reference:

A. HQPRA_NI_Legacy_003 letter dated 1 Oct 2018 (attached) – Reply to the 2018 Northern Ireland Office Consultation Paper.

EXECUTIVE SUMMARY

- General.** The new proposals outlined are broadly welcome. Association Members feel that the current system is not working and that they have been unfairly victimised for political expediency. A reappraisal is necessary.
- Information Recovery Body.** The proposal for an Information Recovery Body is broadly supported. The following concerns remain over the mechanics of its operation:
 - The process of 'Opting out' requires appropriate safeguards to prevent its abuse.
 - The range of families included must be all-embracing.
 - The information made available must have appropriate limitations placed upon it.
 - The comparison with South Africa could be useful shorthand but is not without risk.
 - If effective and truthful reconciliation is to be achieved, the issue of compensation must be explicitly removed.
- Oral History Initiative.** An Oral History Initiative is broadly welcomed. The following risks are highlighted:



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- The primary risk is that narrative contributions from those no longer residing in Northern Ireland, primarily ex members of the Security Forces, will be subordinated (in both scale and focus) to the narratives of those still residing in the Province.
- There are additional risks in drawing too direct comparisons with initiatives taken in other parts of the world. The legacy of Northern Ireland is unique and the Crown must guard against inadvertently painting itself as the villain of the piece.

4. **Statute of Limitations.** A Statute of Limitations is assessed as necessary and is supported.

5. **Inquests and Civil Cases.** The proposal relating to Inquests and Civil Cases is supported.

INTRODUCTION

6. Following your request, this letter provides cumulative comment from The Parachute Regimental Association on the issues raised in the Government 2021 Command Paper. It should be considered in parallel with the individual comments of veterans.

7. Reference A, submitted in response to an earlier consultation, dealt with many of the issues that are raised in the new Command Paper. It reached many of the same conclusions as the new Command Paper and this current response. It is attached for additional information.

COMMENT

8. The Command Paper states that *“The current system for addressing the events of that dark and difficult period of our national history is not working for anyone”*, that *“the intense focus on divisive legal processes continues to drive wedges between communities...(and) stifle the critical information recovery and reconciliation”*, and that *“the prospect of successful criminal justice outcomes is vanishingly small”*. This echoes previous comment by the PSNI that *“Judicial closure is increasingly unlikely in the majority of cases”*.

9. These observations provide the starting point for the proposals made in the Command Paper; ***continued prosecutions are no longer appropriate and that alternative arrangements are necessary.***

10. This analysis is further reinforced by the history of recent prosecutions and the increasing perception by veterans that they are not being treated fairly. The ‘McCann trial’ collapsed because the only evidence submitted by the prosecution was deemed inadmissible, leading to the acquittal of the two accused. Subsequently, at the ‘Bloody Sunday’ related trial of ‘Soldier F’, the prosecution case was withdrawn following the McCann ruling.

11. In the McCann case, the judge found it “remarkable” that the two accused were neither arrested nor interviewed by police before being placed on trial for murder. Not only did this demonstrate that basic procedures had not been followed, it confirms for many veterans their view (rightly or wrongly) that the determination to get this (nearly 50 year old case) to court was politically motivated.

12. The ‘Bloody Sunday’ trial also raised uncomfortable questions. The Saville Inquiry into ‘Bloody Sunday’ was based on an undertaking given by the then Attorney General that *“no evidence given by a witness before this inquiry would be used against that witness in any criminal proceedings”*. Whilst the detail of this undertaking may have been observed, it has not been observed in spirit. The publicity surrounding the publication of Saville, led to a call for prosecutions. It appears to many veterans that prosecutors were keen to satisfy this call and were subsequently prepared to rely on flawed evidence.



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13. Veterans therefore take an increasingly jaundiced view of the motives behind prosecutions in Northern Ireland, a process that appears increasingly political in nature. This appears to have been confirmed by the reservations expressed by government ministers themselves, notably James Brokenshire, who, as Secretary of State for Northern Ireland stated that *“existing mechanisms for investigating incidents during the troubles are disproportionately focused on the actions of the Armed Forces and Police rather than the terrorists, who were responsible for 90% of deaths.”*

14. Even the acquittal of the accused in the McCann case and the discontinuation of the Bloody Sunday case has not brought the endless saga of investigations to an end. In the McCann case, McCann’s solicitor has stated that *“there will be an Appeal to the Attorney General to open an inquest into the death”*. In the Bloody Sunday case, an application for Judicial Review of the decision not to prosecute was granted on 8 July.

15. Meanwhile, the only parties to the Northern Ireland Troubles that appear to cooperate fully with The Historical Investigations Unit (HIU) are the British Security Forces and the Police. They are the ones with the records, the ones who can be readily identified, and the ones who have been actively and sometimes misleadingly (for example in the letters sent to veterans which implied that they were obliged to give evidence) encouraged to cooperate with the HIU investigations.

16. At the same time, those who were responsible for the majority of murders during the Troubles (including many of those who were released under the Good Friday Agreement and those who received ‘comfort letters’) have continued to frustrate all efforts to investigate them. Many live abroad (including in Eire or the USA) and are thus not available for interview. Intimidation continues to play a part in keeping local communities silent. And of course, paramilitary organisations keep no logbooks and hand nothing over on request.

17. Nevertheless, those same forces are very willing to use the judicial process for their own ends. In parallel, they seek to develop a new narrative, as part of a coherent attempt to discredit everything linked to the British State. They have achieved some success; the Ballymurphy shootings have been recast as the ‘Ballymurphy Massacre’ and despite compelling evidence that multiple gunmen in the Ballymurphy actively engaged British troops in a running gun battle during Operation Motorman, this has been largely written out of the narrative of a peaceful idyll suddenly disturbed by British Forces. The British Authorities have been slow to provide a counter-narrative setting out the true context of operations during these early days of the Troubles – a country on the brink of civil war with gunmen openly walking the streets, Crown Forces under constant attack and providing the only obstacle to complete anarchy.

18. The perverse result is that our veterans, who sacrificed so much over more than three decades, feel they have become the targets of political expediency. Many have lost faith in the willingness of the State, for which they risked all, to now protect them. They feel they are the victims of double standards. As one well-known journalist wrote about the prosecution of Service Personnel: *“The application of such a flagrantly iniquitous double standard seems an act of self-hatred”*.

19. Thus, a set of new proposals is urgently required. Not just to aid recovery and reconciliation but to restore faith of those who served and sacrificed for our Nation. Our Northern Ireland veterans need to know that this Country is, at last, prepared to treat them fairly.

THE PROPOSALS

20. Given the background described above, a new approach is long overdue. The cornerstone of this must be to draw a line under the never-ending cycle of investigation and prosecution, for all. We fully agree with the recommendation of a statute of limitations, as is being proposed. However, it is equally clear that this can only happen if some alternative mechanism is put in place to establish the truth. In principle therefore, the new proposals are welcome. Nevertheless, we have reservations about both the



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oral history initiative and the new independent body to let individuals seek and retrieve information about troubles related deaths. Both require goodwill on all sides, and it is far from clear that this exists.

The proposed Information Recovery Body

21. The body proposed will be independent of government and focused on helping families get answers about what happened to their loved ones – including unanswered questions about allegations of wrongdoing by the State.

22. In principle we support this proposal, but it must have safeguards built in to make sure it is genuinely inclusive and that it does not simply become another vehicle to highlight perceived wrongdoing by the State. There are many ex-paramilitaries who fail to buy in to the genuine concept of reconciliation and will, if allowed to, simply use all new mechanisms as political tools to further their own ambitions. Concerns include:

a. The idea that families can ‘opt out’ of the process. Care needs to be given fully understand how, precisely, this will work. Families could easily be pressurised to pursue all allegations against the State and, conversely not those against terrorist organisations. And having opted out, they nevertheless avail themselves of the information provided through the Information Recovery body (IRB) but without being constrained by the attendant rules. We would wish to understand how this risk will be mitigated.

b. Which families will be included? The Association believes it must be all Troubles related families – including those of Armed Forces personnel as well as those killed in terrorist atrocities committed outside of Northern Ireland, whether in Eire, the UK, the Continent or anywhere else. It is not currently clear that this is the case.

c. If it is proposed that the body is to have “*Full access to information from UK state agencies*”, there is a real danger that this will load the narrative unfairly against the State; there are no PIRA or UVF archives. How will that obvious imbalance be addressed? Furthermore, what does “*full access*” mean? Does it include access to information held by GCHQ and other Intelligence Agencies? Does it mean that Security Force personnel and informers will be identifiable? If so, the dangers to personnel outweigh any benefits, as there remain those who would still wish them ill. In addition, it remains important that the *modus operandi* of state actors remains classified lest dissident republicans/unionists seek to reignite tensions. This sweeping proposal in its present form is therefore not supported; clear limitations on the accessibility of information must be set.

d. Whilst the South African model remains useful shorthand to demonstrate what is envisaged, it also has its dangers. South Africa was a country with an oppressive regime which had relinquished power. It cost the new government nothing to establish a commission that exposed all the shortcomings of the old government – which is where its focus lay. The same is not true of Northern Ireland - yet the proposed recovery body will assuredly be used by some to paint it in the same light. In short, the comparison with South Africa risks becoming another weapon in the hands of those who wish harm to the Union.

e. The issue of compensation is not mentioned. Will it be claimable based on what emerges from the IRB? This needs to be addressed in the new proposals as it could have a profound effect on what people do or say. Only by removing the prospect of compensation (and therefore disincentivising reward seekers) is anything approaching a true narrative likely to emerge. All findings of the IRB must therefore be ruled inadmissible in any claim for compensation

The Oral History Initiative



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23. The Command Paper states that a key element of the proposed legacy package would be the establishment of a major oral history initiative to create opportunities for people from all backgrounds to share their experiences and perspectives related to the Troubles - and to learn about those of others.

24. As with the Information Recovery Body, this is broadly welcome; it is a logical extension of the Oral History Archive agreed in the Stormont House Agreement. However, once again there are dangers; the new archive must not be allowed to become a tool for those seeking to undermine the State.

25. The very term 'oral archive' suggests that it could become an archive of what people feel and think rather than of fact – another way of peddling their truth rather than the truth. Some thought needs to be given to how this new initiative will be safeguarded and by who (a real *quis custodiet* question), how it will be promulgated and what measures can be put in place to ensure that it captures the stories from across the communities and from the Security Armed Forces. Given that most of these the Forces are no longer in the Province, that almost all who served at the critical period are now retired, dispersed across the United Kingdom and beyond, and rarely - if ever - speak with a single coherent voice, their contribution could easily be overlooked or underrepresented. This cannot be allowed to happen.

26. Comparisons are made in the Command Paper with previous initiatives in Germany, Argentina, and Bosnia that sought to achieve reconciliation. Again, as shorthand to explain what is being proposed, this serves a purpose. However, as mentioned in paragraph 22d, there are real dangers here – of presenting the State as the villain rather than the organisation that maintained a functioning society whilst under violent and sustained attack. This contrasts with Germany, Argentina, and Bosnia where the State (or one part of the State) was responsible for the majority of the violence and death. By using these analogies, the UK risks inadvertently painting itself - and our soldiers - in the worst possible light.

Statute of Limitations

27. Even though a Statute of Limitations involves considerable compromise, this initiative is unreservedly supported. Even though there exist numerous unsolved murders of Association members and friends, we recognise that it offers the only sensible way out of the current impasse.

Inquests and Civil Cases

28. This proposal is also supported. Unless measures are taken to draw a line under civil cases and inquests in tandem with the proposed Statute of Limitations, they will simply provide an alternative avenue to continue the endless cycle of litigation.

CONCLUSION

29. The current cycle of investigation and prosecution in Northern Ireland serves no one and feeds continued division. If it is to cease, an alternative mechanism must be put in place. The Command Paper suggestions appear broadly sensible, but how to implement them fairly remains largely unexplained. This requires a great deal more work to prevent the creation of a flawed model that history judges badly. The substantive and critical issues raised must be addressed if the proposals are to fly – and particularly how ex paramilitaries can be encouraged to participate with the genuine goodwill required to make the proposal fair and workable. Finally, the Parachute Regiment Association is genuinely grateful for the opportunity to comment on the Command Paper.

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Executive Committee
The Parachute Regimental Association