



House of Commons
Defence Committee

Investigations into fatalities in Northern Ireland involving British military personnel

Seventh Report of Session 2016–17

*Report, together with formal minutes relating
to the report*

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The Defence Committee

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1 Introduction

1. Between August 1969 and July 2007, over 300,000 soldiers served in Northern Ireland as part of Operation Banner, the longest continuous campaign in the history of the British Army. Those soldiers were deployed to support the Royal Ulster Constabulary (RUC) and other security forces. At its height, more than 27,000 military personnel operated out of bases in more than a hundred locations across the Province.

2. On 1 August 2005, following a statement by the IRA that it was ending its armed campaign, the then Secretary of State for Northern Ireland, Rt Hon Peter Hain MP announced a two-year plan to scale down its presence in Northern Ireland from 10,500 to 5,000 by August 2007.¹ A year later, on 28 March 2006, the Army published a timetable for the withdrawal of troops and closure of bases, from 40 to 14 sites, by the summer of 2007.²

3. Operation Banner resulted in the death of 1,441 serving personnel, 722 of whom were killed in paramilitary attacks. Over the same period, British soldiers were responsible for the deaths of around 300 people, over half of whom were civilians. Those deaths have been the subject of investigation by the Police Service of Northern Ireland's (PSNI) Historical Enquiries Team (HET) and the Legacy Investigations Branch (LIB), as part of broader investigations into Troubles-related deaths.

4. Our Report, *Who guards the guardians? MoD support for former and serving personnel*, highlighted the serious failings of IHAT in its investigations into alleged criminal activity in Iraq. That Report concluded that:

With the prospect of investigations into British deployments in Afghanistan and Northern Ireland, the Government must prove both in private, but especially in public that in adhering to the pursuit of justice and the rule of law, it does not lose sight of its moral responsibility and its commitment to the Armed Forces Covenant with those who have served.³

5. The PSNI's investigations and the disproportionate focus on former service personnel reinforced the concerns raised in that Report. We therefore decided to hold a short inquiry into the matter, the purpose of which was to establish the options available to the UK Government to protect those who served in Operation Banner from having investigations reopened long after the events concerned.

6. On 7 March 2017, we took oral evidence from Professor Philippe Sands QC, Professor Kieran McEvoy, Professor Peter Rowe and Professor Richard Ekins. We also sought written evidence from the PSNI, Professor Jonathan Tonge and Professor McEvoy. We had planned to take evidence from Ministers from both the Northern Ireland Office and the Ministry of Defence. However, the decision of the House to call an early General Election has necessitated a truncated evidence programme and Report.

7. In our Report on the conduct of IHAT, we stated that in adhering to the pursuit of justice and the rule of law, the Government must not lose sight of its moral responsibility and its commitment to the Armed Forces Covenant. This responsibility is just as

1 BBC News (1 August 2005), [Demilitarisation moves ahead](#)

2 BBC News (28 March 2006). [Troop withdrawal plan published](#)

3 Sixth Report from the Defence Committee, *Who guards the guardians? MoD support for former and serving personnel*, Session 2016–17, HC109.

important for veterans who served decades ago in Northern Ireland as it is for former and current service personnel who served in more recent conflicts. Our Report sets out the steps the Government must take in the next Parliament—as a priority—to protect former service personnel facing investigations into historical allegations arising from Operation Banner. If it does not, then the spectre of another IHAT debacle will become all too real.

2 Investigating historic allegations in Northern Ireland

The Historical Enquiries Team

8. The Historical Enquiries Team (HET) was established in 2005, by the then Chief Constable of the Police Service of Northern Ireland, Sir Hugh Orde, with the following objectives:

to assist in bringing a measure of resolution to those families of victims whose deaths are attributable to “the troubles” between 1968 and the signing of The Belfast Agreement in April 1998;

to re-examine all deaths attributable to “the troubles” and ensure that all investigative and evidential opportunities are subject to thorough and exhaustive examination in a manner that satisfies the Police Service of Northern Ireland’s obligation of an effective investigation as outlined in Article 2, Code of Ethics for PSNI; and to do so in a way that commands the confidence of the wider community.⁴

9. The HET was established with a team of 100 investigators and a budget of over £30m. Its first objective was to review and investigate the 3,000-plus unsolved murder cases from the period 1969–1998 with a deadline of 2011. This was subsequently extended to meet the concerns raised by investigators working to that timetable.⁵

10. In 2012, acting upon the request of the Chief Constable of the PSNI, the then Justice Minister of Northern Ireland, David Ford MLA, asked Her Majesty’s Inspectorate of Constabulary to review the HET in order to establish whether the HET’s investigations conformed to current policing standards, whether there was an appropriate level of consistency in cases, and—in respect of cases relating to state involvement—whether the investigations were compliant with the ECHR.

11. The HMIC report found that the HET treated cases relating to state involvement differently and “less rigorously” than cases where there was no state involvement and that its approach to state involvement cases was “inconsistent with the UK’s obligations under Article 2 ECHR”.⁶ HMIC further found that the deployment of former RUC and PSNI officers in state involvement “easily gives rise to the view that the process lacks independence”.⁷ In 2014, it was announced that, as part of a broader restructuring of the PSNI, the HET would be wound up and replaced with a smaller Legacy Investigation Branch (LIB).⁸

4 HMIC (2013), [Inspection of the Police Service of Northern Ireland Historical Enquiries Team](#), p.7

5 Commission for Victims and Survivors (2012). [Research on Historical Investigations and Information Recovery](#), p.8

6 HMIC (2013), [Inspection of the Police Service of Northern Ireland Historical Enquiries Team](#), pp.100–101

7 HMIC (2013), [Inspection of the Police Service of Northern Ireland Historical Enquiries Team](#), pp.100–101

8 Cromie, C. (30 September 2014). [PSNI cuts 300 jobs and axes Historical Enquiries Team](#), Belfast Telegraph

12. Furthermore, following the HMIC report into the HET, the then Chief Constable of the PSNI, Sir Matt Baggott, directed that the 32 completed reviews of deaths attributed to Security Forces be re-examined as “public confidence in the HET’s handling of military cases had been challenged”.⁹

The Legacy Investigations Branch

13. More than 3,200 unsolved homicides were committed in Northern Ireland during the period in question. The review of these cases and, where credible evidence exists, the further investigation of them is the responsibility of the LIB of the PSNI. The LIB has four overarching strategic objectives:

- a) Review and Investigate—our commitments to detecting offenders;
- b) Record and Communicate—our commitments to preventing crime;
- c) Identify and Cooperate—our commitments to protecting communities; and
- d) Manage and Engage—our commitments to efficiency, effectiveness and legitimacy.¹⁰

14. Cases are managed and progressed according to a Case Sequencing Model, which focuses on factors such as whether a case involves contemporary persons of interest, forensic potential, criminal justice status and case progression.¹¹ In its written evidence to the Committee, the PSNI provided details as to the number of cases that have either been completed or are currently ongoing.¹²

Table 1: Completed Caseload

Attribution	
Republican	1,038
Loyalist	536
Security Forces	32
Unknown	9

Source: Police Service of Northern Ireland (IFB0003)

Table 2: Remaining Caseload

Attribution	
Republican	379
Loyalist	230
Security Forces	283
Unknown/None	31

Source: Police Service of Northern Ireland (IFB0003)

9 IFB0003

10 [Legacy Investigation Branch](#)

11 Police Service of Northern Ireland Legacy Investigation Branch (October 2015), [Case Sequencing Model](#), p.2

12 IFB0003

Table 3: Active Caseload

Attribution	
Republican	8
Loyalist	1
Security Forces	5

Source: Police Service of Northern Ireland (IFB0003)

15. There are 55 detectives in the LIB who are divided into four teams. Only one, Team C, is focused on investigating deaths attributed to the Army. Team C consists of 13 detectives and is investigating the killings of 13 civilians by members of the Parachute Regiment on Bloody Sunday. It is also investigating the murders of 10 Protestant men by the IRA at Kingsmills in 1976.¹³ While these figures show that investigations into former army personnel account for a minority of LIB cases, they still amount to a disproportionately high number of investigations (30% of investigations) when compared to the total level of killings attributed to the Army (10%).

The status quo: a skewed system?

16. As we mention earlier in this report, concerns were raised about the balance of the investigations conducted by the HET, and similar concerns have arisen about the LIB investigations. James Brokenshire, Secretary of State for Northern Ireland expressed his concern in the following terms:

The existing mechanisms for investigating incidents which occurred during the Troubles are disproportionately focused on the actions of the Armed Forces and former police officers, rather than the terrorists who were responsible for 90 per cent of deaths.¹⁴

17. During a Westminster Hall debate on the Stormont House Agreement on 10 January 2017, Sir Jeffrey Donaldson MP claimed that LIB's investigations had focused disproportionately on the Army:

The reality today is that 90% of the resources of the Legacy Investigation Branch—I stand open to challenge on this—are devoted to investigating 10% of the deaths during the troubles, and 10% of its resources are devoted to investigating 90% of the deaths.¹⁵

On 2 February 2017, the BBC challenged these claims. According to its analysis, killings by the Army account for about 30% of its legacy workload. For example, of the 1,118 deaths not previously reviewed, or completed, by the HET, “530 were carried out by republicans, 271 by loyalists and 354 by the security forces”, with 33 unknown.¹⁶

13 IFB0003

14 [WQ60649](#) (23 January 2017)

15 Sir Jeffrey Donaldson MP, HC Deb (Hansard), 10 January 2017, [col.68WH](#)

16 Kearney, V. (2 February 2017), [Troubles legacy cases bias disputed by figures](#), BBC News

LIB: an independent investigation?

18. On 3 March 2017, the Northern Ireland High Court ruled that the PSNI-led LIB lacked the necessary independence to oversee further enquiries into the death of Jean Smyth-Campbell, a woman suspected of being shot dead by the military in west Belfast in 1972. At the time of her death, the RUC told her family that the assailant was probably an IRA gunman, with the HET reaching the same conclusion in 2008. However, it has been suggested that the Military Reaction Force (MRF) may have been responsible.¹⁷ Delivering his judgement, Mr Justice Maguire ruled that the PSNI's Legacy Investigation Branch (LIB) "lacks the requisite independence" required by Article Two of the European Convention of Human Rights.¹⁸

The potential for prosecutions

19. The PSNI's written evidence stated that "the older a case is the harder it is prosecute", and that "judicial closure [was] increasingly unlikely in the majority of cases".¹⁹ The number of prosecutions therefore are extremely low,²⁰ but the LIB is now bringing cases to trial.

20. Following the attempted murder of John Pat Cunningham in 1974, Mr Dennis Hutchings, who was serving in the Life Guards, was subject to an investigation by the RUC and the Director of Public Prosecutions. No charges were brought but Mr Hutchings was investigated again in 2011 by the HET. He was told then, that no further action was taken. Despite this, in 2015 the LIB reopened the case. Mr Hutchings, who is now in his 70s and is suffering from cancer, was arrested during a dawn raid—41 years after the incident—and taken to Northern Ireland and charged with the attempted murder of John Pat Cunningham. In March 2017, Mr Hutchings was told that he would stand trial.²¹

21. In 2016, the Public Prosecution Service announced that it would be prosecuting two retired soldiers from the Parachute Regiment, for the death of IRA Commander John McCann in 1972.²²

The Stormont House Agreement and a Historical Investigations Unit

22. In 2014, the Stormont House Agreement (SHA), reached between the Northern Ireland Executive parties and the UK and Irish Governments, agreed to establish a Historical Investigations Unit (HIU), underpinned by legislation, "to take forward investigations into outstanding Troubles-related deaths". According to the terms of the

17 Preston, A. (21 March 2017) [With PSNI barred from probe into 1972 killing of Jean, family hoping for justice at long last](#), Belfast Telegraph

18 Preston, A. (21 March 2017) [With PSNI barred from probe into 1972 killing of Jean, family hoping for justice at long last](#), Belfast Telegraph

19 IFB0003

20 Ross, A. (8 December 2016), [No new inquiry into killings by British troops, say Northern Irish police](#), The Guardian

21 Willetts, D. (21 March 2017). [Late terror leader Martin McGuinness praised by politicians... as dying British Army veteran, 75, faces trial over IRA death in 1974s](#), The Sun

22 MacDonald, H. (16 December 2016). [Two British soldiers to be charged over IRA leader's 1972 murder](#), The Guardian

SHA, “the body will take forward outstanding cases from the HET process, and the legacy work of the Police Ombudsman for Northern Ireland (PONI).”²³ The HIU will combine the outstanding cases into one chronological list.

23. The timeframe for establishing the HIU was originally October 2016. However, progress on implementing this aspect of the SHA has stalled amid the broader problems with power-sharing in Northern Ireland which have seen the collapse of the Executive and failure, following an extraordinary election, to fill the offices of First and Deputy First Minister within the statutory period. Nonetheless, the Prime Minister has re-affirmed the Government’s commitment to the scheme and, in particular, to investigating cases in a chronological order.²⁴

24. So far, the overall process of investigations into fatalities in Northern Ireland has been deeply unsatisfactory. The instability of the investigatory bodies, the limited resources and manpower provided to them, and continuing question marks over the independence of the investigations has delivered a vicious cycle of investigation and re-investigation that fails both former service personnel and the families of those who died.

25. It is clear that the status quo is not sustainable. The Legacy Investigation Branch was never intended to be more than a short-term mechanism to bridge the gap until the Stormont House Agreement was implemented. It is morally indefensible for former service personnel to be caught in limbo, with the threat of investigation hanging over them. The Government in the next Parliament must bring forward legislative proposals—as a matter of urgency—to remedy the situation. We outline a menu of possible options in the final chapter of this report.

23 [Stormont House Agreement](#), p.6

24 Theresa May, HC Deb (Hansard) 22 February 2017, [col.1015](#)

3 The legal framework underpinning historic investigations against former service personnel

26. Investigations into historic allegations against service personnel in Northern Ireland take place under a legal framework which is underpinned by the European Convention on Human Rights (ECHR) and case law emanating from the European Court of Human Rights (ECtHR).

27. The United Kingdom is a founding member, and architect of, the ECHR and in 1998 incorporated into UK law the rights of the Convention through the Human Rights Act.²⁵ As a result of the 1998 Act, all public bodies have to comply with Convention rights, although the Act does not grant the UK Courts the power to strike down primary legislation made at Westminster. Instead, in the event of an Act being non-compliant with Convention rights, the Courts have the power to issue a ‘declaration of incompatibility’ such a declaration does not affect the validity, continuing operation or enforcement of the said Act/provision.²⁶

28. The ECHR forms an important part of the 1998 Good Friday Agreement (GFA). Compliance with the ECHR forms part of Strand One of the Agreement, while it also committed the UK Government to incorporate the ECHR “into Northern Ireland law [...] with direct access to the courts, and remedies for breach of the Convention”.²⁷

29. Human rights policy is devolved to the Northern Ireland Assembly (by virtue of being neither a reserved nor an excepted matter). However, the Assembly is prohibited from legislating in a way that would be incompatible with Convention rights and Ministers of the Northern Ireland Legislative Assembly are not permitted to modify the Human Rights Act 1998 (HRA 1998).²⁸ As a result, both the ECHR and the HRA 1998 are entrenched within Northern Ireland’s devolution settlement and can only be modified by an Act of the UK Parliament. Furthermore, it is unclear whether legislative consent would be expected should the need arise to amend the Human Rights Act.²⁹

30. Article 2 of the ECHR enshrines the ‘right to life’:

Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- in defence of any person from unlawful violence;

25 [Human Rights Act 1998](#)

26 See: Horne et al. (19 May 2015) [A British Bill of Rights?](#) House of Commons Library Briefing Paper No.7193, pp.5–7

27 [The Good Friday Agreement 1998](#), pp. 7–18

28 Northern Ireland Act 1998, sections [6\(2\)](#) and [7\(1\)](#)

29 House of Lords European Union Committee, [The UK, the EU and a British Bill of Rights](#), 12th Report of Session 2015–16, 9 May 2016, HL 139, paras. 162–183

- in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- in action lawfully taken for the purpose of quelling a riot or insurrection.³⁰

31. In 1995, the case of *McCann v United Kingdom* was considered by the European Court of Human Rights (ECtHR). That case first articulated the claim that, within the terms of Article 2, a signatory to the ECHR was under an obligation to carry out some form of effective official investigation into deaths where lethal force had been used against individuals by agents of the state.³¹

32. The effect of Article 2 was debated among our witnesses. Professor Richard Ekins criticised the “unsound construction” of Article 2 by the ECtHR. By contrast, Professor Philippe Sands QC emphasized the basis of the Court’s rulings in the member states’ domestic law.³² Despite this difference of view, there was agreement that the ECtHR ruling on *McCann v United Kingdom* and subsequent rulings provided an obligation on Member States to conduct “independent, effective, transparent” investigations where there has been a loss of life as a result of the use of force.³³

What constitutes an effective investigation?

33. ECtHR’s case law in this respect raises a question of what constitutes an “independent, effective, transparent” investigation”. This is important in the context of the PSNI’s current investigations into fatalities in Northern Ireland. According to Professor McEvoy, the effectiveness of the investigations conducted at the time of those killings went to the “absolute crux” of the need for the current investigations.³⁴

34. Professor McEvoy argued that there was “reason to believe” that proper investigations for a number of cases, were not carried out at the time. In particular, he highlighted the agreement between the Royal Ulster Constabulary—which ran from 1970 to 1973—that in investigations concerning fatalities caused by serving personnel police investigators “would not be involved in the interrogation of British soldiers”, but would be conducted by the Royal Military Police. The agreement was terminated in 1973, following both “strong suggestions in case law” and wider concerns at that time, that the investigations “were not effective”.³⁵

35. In order to test the meaning of an independent investigation, the Chairman presented the following scenario:

An incident happens 40 years ago, where somebody shoots at a soldier, the soldier draws his gun and shoots the person dead. He then reports what has happened and the matter is looked into by the service authorities. They find that the soldier acted perfectly properly. That is not an independent investigation, is it?³⁶

30 [European Convention on Human Rights, Article 2](#)

31 O’Neill, A. (19 October 2009). [The European Court and the Duty to Investigate Deaths](#), The Journal

32 Qq2–3

33 Q2; McEvoy, K. and L. Mallinder, (2013). [Truth, Amnesty and Prosecutions: Models for dealing with the past](#). Queens University Belfast, pp.2–3

34 Q11

35 Q12

36 Q21

36. Professor McEvoy asserted that such a scenario did not constitute an independent investigation,³⁷ while Professor Sands believed that an independent investigation would still be required in order to “ascertain what the facts are”.³⁸ Professor Ekins also agreed that the original investigation would not satisfy the ECtHR’s interpretation of an independent investigation. However, he was not certain that a failure to re-open an investigation into such a scenario would be seen as a “new or a continuing breach” by the Court.³⁹

37. In a 2013 paper on models for dealing with the past in Northern Ireland, Professor McEvoy and Dr Louise Mallinder noted that although ECtHR’s case law had created a duty to investigate deaths arising from the activities of state actors, it did not bring with it “a duty to prosecute”.⁴⁰ This point was also highlighted by Professor Philippe Sands QC:

It is not an obligation to take any particular steps. It is simply an obligation to find out the facts of what has happened, and ascertain.⁴¹

38. Professor McEvoy concluded that the Government’s room for manoeuvre therefore lay not at the investigation stage—“families have a right to an Article 2-compliant investigation”—but with the “space for legal imagination” on further action, if any, once the investigation had concluded.⁴²

37 Q21

38 Q25

39 Q25

40 McEvoy, K. and L. Mallinder, (2013). [Truth, Amnesty and Prosecutions: Models for dealing with the past](#). Queens University Belfast, pp.2–4; see also: European Court of Human Rights, Case of Finucane v The United Kingdom (2003), Reports of Judgments and Decisions 2003-VIII, para 89, European Court of Human Rights, Case of Brecknell v The United Kingdom (2007) All ER(D) 416 (Nov), para 66.

41 Q3

42 Q25

4 The space for legal imagination: options for the Government

39. As we mention in the previous section, the obligation to investigate fatalities at the hands of state actors, under the ECtHR’s Article 2 case law, does not amount to an obligation to prosecute.⁴³ However, the cases of Mr Dennis Hutchings and others have demonstrated that prosecutions can take place. If the Government is to provide suitable support for former serving personnel, to borrow Professor McEvoy’s phrase, the “space for legal imagination” resides, in responding to historic allegations against former service personnel.⁴⁴ This chapter explores this space for legal imagination and the possible options for the Government to protect service personnel. We do not believe that the status quo is a credible option and note that the Secretary of State for Northern Ireland, Rt Hon James Brokenshire MP, has himself claimed that it is unsustainable.⁴⁵

Option One: A statute of limitations

40. During an Opposition Day debate on historical cases involving Armed Forces personnel on 23 February 2017, Sir Jeffrey Donaldson MP raised the idea of a statute of limitations. Such a statute would not, he insisted, amount to an amnesty and would only apply to soldiers and police officers who have “previously been the subject of full police investigations”.⁴⁶ As such, it would not create a reciprocal protection, or amnesty, for former paramilitary combatants. As Sir Jeffrey emphasised, the Stormont House Agreement “made clear that there would be no amnesty for terrorist-related crimes”.⁴⁷ Rather, he stressed, that the proposal for a statute of limitations was an attempt “to protect the men and women who served our country” and who were not provided with the “special provision” that had been previously made for terrorists (see paras. 46–47).⁴⁸ This is in contrast to proposals made in 2013 by the Attorney General of Northern Ireland, John Larkin for legislation enacted either at Stormont or Westminster, “to end all prosecutions, inquests and public inquiries related to the Troubles”.⁴⁹

41. During our evidence session we questioned our witnesses on whether a statute of limitations could be permissible under the UK’s existing international obligations. According to Professor McEvoy and Professor Rowe, any such statute would need to apply to both state and non-state actors, and would need to incorporate a truth recovery mechanism.⁵⁰ Were a statute of limitations to apply to just state actors then it would leave the UK open to the charge of state impunity.⁵¹ With regards to truth recovery,

43 McEvoy, K. and L. Mallinder, (2013). [Truth, Amnesty and Prosecutions: Models for dealing with the past](#). Queens University Belfast, pp.2–4; see also: European Court of Human Rights, Case of Finucane v The United Kingdom (2003), Reports of Judgments and Decisions 2003-VIII, para 89, European Court of Human Rights, Case of Brecknell v The United Kingdom (2007) All ER(D) 416 (Nov), para 66.

44 Q25

45 James Brokenshire, HC Deb (Hansard) 23 February 2017, cols.1193–99

46 Sir Jeffrey Donaldson, HC Deb (Hansard) 23 February 2017, cols.1190–92

47 Sir Jeffrey Donaldson, HC Deb (Hansard) 23 February 2017, cols.1190–92

48 Sir Jeffrey Donaldson, HC Deb (Hansard) 23 February 2017, cols.1190–92

49 See: Kearney, V. (20 November 2013). [NI attorney general John Larkin calls for end to Troubles prosecutions](#), BBC News

50 Qq98, 108–110

51 Q108

they suggested that any statute of limitations could be coupled with a body such as the Independent Commission on Information Retrieval which was proposed in the Stormont House Agreement.⁵²

42. We also questioned our witnesses on the viability of a statute of limitations which covered all service personnel, rather than just those who served in Northern Ireland, for activities that happened, for example, over twenty years ago. According to Professor Rowe, any such statute would need to include certain exceptions to avoid engaging the Rome Statute and the International Criminal Court. For example, it would not be legally permissible for such a statute to exempt soldiers for prosecutions from war crimes, crimes against humanity and genocide.⁵³

Option Two: Implement the Stormont House Agreement

43. The Government's favoured approach is to carry on, as at present, investigating and prosecuting cases from up to almost 50 years ago under the terms of the Stormont House Agreement. On 17 January 2017, the Secretary of State for Northern Ireland gave a statement to the House of Commons updating Members on the early Northern Ireland Assembly election that would be held following the collapse of the power-sharing Executive. In that statement, he argued that the proposed Historical Investigations Unit represented a "fair, balanced and proportionate approach" to dealing with the legacy of the past.⁵⁴

Option Three: Implement the SHA and review the Northern Ireland Sentences Act 1998

44. An alternative option, put forward by Professor McEvoy, would be to 'let the rule of law run its course', albeit in a context where the terms of the Stormont House Agreement are implemented in full and where the terms of the Northern Ireland Sentences Act are reviewed. Under this model, the Stormont House Agreement would be fully implemented, with great care taken to ensure the investigatory mechanisms are Article 2 compliant and where the HIU is able to undertake its work free from political interference. If those investigations result in sufficient evidence, then cases would be referred to the DPP who would then make the decision whether to prosecute in the usual fashion.

45. While this would allow the Government to fulfil its Article 2 obligations to investigate killings by state actors, Professor McEwen suggested that the Government could reform sentencing procedures to take into account factors such as the age and health of the defendants, the amount of time that has lapsed since the offence and whether the individual in question has, for example, cooperated fully with the ICIR.⁵⁵

46. One potential platform through which to do this could be the Northern Ireland (Sentences) Act 1998. The Act makes provision for the early release on licence of prisoners convicted of 'scheduled offences'. Qualifying prisoners apply to the Sentences Review Commission (SRC) for early release and have to satisfy the following conditions for eligibility:

52 Q108

53 Qq113–114

54 James Brokenshire MP, HC Deb (Hansard) 17 January 2017, [col.783](#)

55 IFB0002

- that the sentence was passed in Northern Ireland for a qualifying offence, and is one of imprisonment for life or for a term of at least five years;
- that the prisoner is not a supporter of a specified organisation;
- that, if the prisoner were released immediately, he would not be likely to become a supporter of a specified organisation, or to become concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland; and
- that, if the prisoner were released immediately, he would not be a danger to the public.⁵⁶

47. While the Act has been associated with the release after two years of former paramilitaries, Professor McEvoy argued that there was nothing in the Act that prevented it from applying to former police officers and soldiers too.⁵⁷ Indeed, he highlighted that, at the time the Act was passed, there were two soldiers in prison, with an expectation that those two individuals would be released under the process. Instead, they were released via the Royal Prerogative of mercy.⁵⁸

48. Professor McEvoy argued that the criteria used by the Sentences Review Commission could be amended to include a number of additional criteria including the age and health of the defendants and the time that has elapsed since the offence took place. This could be combined with the Independent Commission on Information Retrieval, with compliance with this body a potential additional criterion that the Commission could consider.⁵⁹

Option Four: Cease investigations

49. A final option would be to cease investigations into former service personnel and stop complying with the ECtHR's interpretation of our Article 2 obligations. A precedent for such an approach would be the ECtHR's decision in *Hirst v UK No.2* and *Greens and MT* that the UK's blanket ban on prisoner voting was in breach of Protocol 1 Article 3 of the ECHR. Despite these rulings the UK still maintains the ban.⁶⁰

50. Should the UK cease investigations and the ECtHR judge that this constituted a violation of Article 2, the UK could be open to sanctions, including suspension or expulsion from the Council of Europe (CoE) or from the Parliamentary Assembly of the Council of Europe (PACE). For example, Turkey was suspended from PACE following a military coup in 1980, while the voting rights of the Russian delegation to PACE were suspended in 2014 following the annexation of Crimea.⁶¹ A far more likely outcome, however, would

56 Northern Ireland (Sentences) Act 1998, section 3

57 Q101

58 Q101

59 IFB0002

60 See; Simson Caird, J. (15 February 2016). [Prisoners' voting rights: developments since May 2015](#), House of Commons Library Briefing Paper: Number CBP 7461

61 Miller, V. (18 April 2011). European Court of Human Rights rulings: are there options for governments, House of Commons Library Standard note: SN/IA/5941; Gardner, A. (10 April 2014). [Russia suspended from Council of Europe body](#), Politico

be the potential for litigation resulting in the UK Government being ordered to pay “just satisfaction”, a form of compensation. For example, in October 2005, the ECtHR awarded Hirst €23,000 in costs and expenses.⁶²

51. It is clear from the experience of these legacy investigations that, unless a decision is taken to draw a line under all Troubles-related cases, without exception, they will continue to grind on for many years to come—up to half-a-century after the incidents concerned.

52. Accordingly, we recommend the adoption of Option One—the enactment of a statute of limitations, covering all Troubles-related incidents, up to the signing of the 1998 Belfast Agreement, which involved former members of the Armed Forces. This should be coupled with the continuation and development of a truth recovery mechanism which would provide the best possible prospect of bereaved families finding out the facts, once no-one needed to fear being prosecuted.

53. Although it is beyond the strict remit of the Defence Committee, we would encourage the next Government to extend this provision to include former members of the Royal Ulster Constabulary and other former security personnel. It will also be a matter for the next Government to decide, after appropriate consultations, whether the statute of limitations should also cover all Troubles-related incidents.

54. If the 1998 legislation had not ensured that future convictions for terrorist crimes—however heinous—would result in nothing more than a short prison sentence, then there would be a case for arguing that natural justice required investigations to continue, no matter how long after the event.

55. We believe that to subject former Service personnel to legal pursuit under the current arrangements is wholly oppressive and a denial of natural justice. It can be ended only by a statute of limitations. Our expert witnesses agreed that the UK Parliament has it entirely within its power to enact such a statute and we call upon the Government in the next Parliament to do so as a matter of urgency.

62 See: Miller, V. (18 April 2011). European Court of Human Rights rulings: are there options for governments, House of Commons Library Standard note: SN/IA/5941

Conclusions and recommendations

Introduction

1. In our Report on the conduct of IHAT, we stated that in adhering to the pursuit of justice and the rule of law, the Government must not lose sight of its moral responsibility and its commitment to the Armed Forces Covenant. This responsibility is just as important for veterans who served decades ago in Northern Ireland as it is for former and current service personnel who served in more recent conflicts. Our Report sets out the steps the Government must take in the next Parliament—as a priority—to protect former service personnel facing investigations into historical allegations arising from Operation Banner. If it does not, then the spectre of another IHAT debacle will become all too real. (Paragraph 7)

Investigating historic allegations in Northern Ireland

2. So far, the overall process of investigations into fatalities in Northern Ireland has been deeply unsatisfactory. The instability of the investigatory bodies, the limited resources and manpower provided to them, and continuing question marks over the independence of the investigations has delivered a vicious cycle of investigation and re-investigation that fails both former service personnel and the families of those who died. (Paragraph 24)
3. It is clear that the status quo is not sustainable. The Legacy Investigation Branch was never intended to be more than a short-term mechanism to bridge the gap until the Stormont House Agreement was implemented. It is morally indefensible for former service personnel to be caught in limbo, with the threat of investigation hanging over them. The Government in the next Parliament must bring forward legislative proposals—as a matter of urgency—to remedy the situation. We outline a menu of possible options in the final chapter of this report. (Paragraph 25)

The space for legal imagination: options for the Government

4. It is clear from the experience of these legacy investigations that, unless a decision is taken to draw a line under all Troubles-related cases, without exception, they will continue to grind on for many years to come—up to half-a-century after the incidents concerned. (Paragraph 51)
5. *Accordingly, we recommend the adoption of Option One—the enactment of a statute of limitations, covering all Troubles-related incidents, up to the signing of the 1998 Belfast Agreement, which involved former members of the Armed Forces. This should be coupled with the continuation and development of a truth recovery mechanism which would provide the best possible prospect of bereaved families finding out the facts, once no-one needed to fear being prosecuted.* (Paragraph 52)

6. *Although it is beyond the strict remit of the Defence Committee, we would encourage the next Government to extend this provision to include former members of the Royal Ulster Constabulary and other former security personnel. It will also be a matter for the next Government to decide, after appropriate consultations, whether the statute of limitations should also cover all Troubles-related incidents. (Paragraph 53)*
7. If the 1998 legislation had not ensured that future convictions for terrorist crimes—however heinous—would result in nothing more than a short prison sentence, then there would be a case for arguing that natural justice required investigations to continue, no matter how long after the event. (Paragraph 54)
8. *We believe that to subject former Service personnel to legal pursuit under the current arrangements is wholly oppressive and a denial of natural justice. It can be ended only by a statute of limitations. Our expert witnesses agreed that the UK Parliament has it entirely within its power to enact such a statute and we call upon the Government in the next Parliament to do so as a matter of urgency. (Paragraph 55)*

Formal Minutes

Tuesday 24 April 2017

Members present:

Rt Hon Dr Julian Lewis, in the Chair

Douglas Chapman Rt Hon John Spellar

James Gray Bob Stewart

Gavin Robinson

Draft Report (*Investigations into fatalities in Northern Ireland involving British military personnel*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 55 read and agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 25 April 2017 at 10.45am.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 7 March 2017

Question number

Professor Richard Ekins, Tutorial Fellow in Law, Oxford University, and Head of Policy Exchange's Judicial Power Project, **Professor Kieran McEvoy**, Professor of Law and Transitional Justice, Queen's University Belfast, **Professor Peter Rowe**, Professor Emeritus of Law, Lancaster University and **Professor Philippe Sands QC**, Professor of Law, UCL

[Q1-115](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

IFB numbers are generated by the evidence processing system and so may not be complete.

- 1 Professor Jonathan Tonge ([IFB0001](#))
- 2 Professor Kieran McEvoy ([IFB0002](#))
- 3 PSNI ([IFB0003](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2016–17

First Report	Russia: Implications for UK defence and security	HC 107 (HC 668)
Second Report	UK military operations in Syria and Iraq	HC 106 (HC 1065)
Third Report	Restoring the Fleet: Naval Procurement and the National Shipbuilding Strategy	HC 221 (HC 973)
Fourth Report	Exposing Walter Mitty: The Awards for Valour (Protection) Bill	HC 658 (HC 1000)
Fifth Report	Open Source Stupidity: The Threat to the BBC Monitoring Service	HC 748 (HC 1066)
Sixth Report	Who guards the guardians? MoD support for former and serving personnel	HC 109 (HC 1149)
First Special Report	Shifting the goalposts? Defence expenditure and the 2% pledge: Government Response to the Committee's Second Report of Session 2015–16	HC 465
Second Special Report	Beyond endurance? Military exercises and the duty of care: Government Response to the Committee's Third Report of Session 2015–16	HC 525
Third Special Report	An acceptable risk? The use of Lariam for military personnel: Government Response to the Committee's Fourth Report of Session 2015–16	HC 648
Fourth Special Report	Russia: Implications for UK defence and security: Government Response HC 973 to the Committee's First Report of Session 2016–17	HC 668
Fifth Special Report	Restoring the Fleet: Naval Procurement and the National Shipbuilding Strategy: Government Response to the Committee's Third Report of Session 2016–17	HC 973
Sixth Special Report	Exposing Walter Mitty: The Awards for Valour (Protection) Bill: Government Response to the Committee's Fourth Report	HC 1000
Seventh Special Report	UK military operations in Syria and Iraq: Government Response to the Committee's Second Report	HC 1065

Eighth Special Report	Open Source Stupidity: The Threat to the BBC Monitoring Service: Responses to the Committee's Fifth Report	HC 1066
Ninth Special Report	Who guards the guardians? MoD support for former and serving personnel: Government Response to the Committee's Sixth Report	HC 1149

Session 2015–16

First Report	Flexible response? An SDSR checklist of potential threats and vulnerabilities	HC 493 (HC 794)
Second Report	Shifting the goalposts? Defence expenditure and the 2% pledge	HC 494 (HC 465)
Third Report	Beyond endurance? Military exercises and the duty of care	HC 598 (HC 525)
Fourth Report	An acceptable risk? The use of Lariam for military personnel	HC 567 (HC 648)
First Special Report	Ministry of Defence Annual Report and Accounts 2013–14: Government response to the Committee's Eighth Report of Session 2014–15	HC 365
Second Special Report	Re-thinking defence to meet new threats: Government response to the Committee's Tenth Report of Session 2014–15	HC 366
Third Special Report	Decision-making in Defence Policy: Government response to the Committee's Eleventh Report of Session 2014–15	HC 367
Fourth Special Report	Flexible Response? An SDSR checklist of potential threats and vulnerabilities: Government Response to the Committee's First Report of Session 2015–16	HC 794