



House of Commons
Defence Committee

**Investigations into
fatalities in Northern
Ireland involving British
military personnel:
Government Response
to the Committee's
Seventh Report of
Session 2016–17**

**Third Special Report of Session
2017–19**

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The Defence Committee

The Defence Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Ministry of Defence and its associated public bodies.

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Committee reports are published on the [Committee's website](#) and in print by Order of the House. Evidence relating to this Report is published on the [relevant inquiry page](#) of the Committee's website.

Committee staff

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Third Special Report

The Defence Committee published its Seventh Report of Session 2017–19, on the [Investigations into fatalities in Northern Ireland involving British military personnel](#), [HC 1064] on 26 April 2017. The Government's response was received on 26 October 2017 and is appended to this report.

Appendix: Government response

The Government is grateful to the Defence Committee for completing its Report *Investigations into Fatalities in Northern Ireland Involving British Military Personnel* in time for publication before the election, even, as the Committee acknowledges, in truncated form. It is a timely contribution to an important debate.

Government response to the Committee's Conclusions and Recommendations

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)

The Government does not accept the characterisation of the IHAT's work as a 'debacle'. The Armed Forces Act 2006 requires credible offences involving the Armed Forces to be investigated. Similar obligations arise under international law. While the Al-Sweady Inquiry demonstrated that some allegations are exaggerated or even false, other incidents—such as the serious ill-treatment of detainees at Camp Breadbasket and the death of Baha Mousa—serve as a reminder that a small number of serious offences were undoubtedly committed. It is necessary and appropriate that allegations against the UK's Armed Forces are properly investigated. Failure to investigate them properly could have led the International Criminal Court—which has been conducting a preliminary examination into these allegations since 2014—to assert jurisdiction.

The IHAT was established in 2010 because the Service Police lacked the resources necessary to investigate with the requisite promptitude the very large number of allegations. That number of allegations increased dramatically, and to unprecedented levels, in 2014–2016.

The Solicitors Disciplinary Tribunal's decision in February 2017 to strike off Phil Shiner materially changed the assessment of whether investigations might yield a prosecutable case. The vast majority of the investigations have been discontinued and the IHAT closed on 30 June 2017. The Service Police Legacy Investigations team—led by the Royal Navy Police, supported by the Royal Air Force Police—expects to complete those investigations which remain by the end of 2018.

In respect of the Armed Forces Covenant, the Government fully agrees with the Committee on its obligation under the Armed Forces Covenant to protect the interests of those who served their country in the Armed Forces in Operation Banner just as it is rightly required to do in the case of those who served more recently.

The Armed Forces Covenant is a promise from the nation that those who serve and have served in the Armed Forces, and their families, will be treated fairly and face no disadvantage in accessing public and private services, with special provision made for those who have sacrificed the most, such as the bereaved and injured. The Covenant applies throughout the United Kingdom, with specific implementation according to local and regional factors particularly in the devolved jurisdictions.

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)

There is broad agreement within Northern Ireland that current systems and structures are not delivering enough for victims, for survivors and for wider society. Making progress on these matters is a priority for the Government, and this response sets out in detail our plans for doing so.

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 Government recognises the significant difficulties with the status quo.

For example, the closure of the Police Service of Northern Ireland's Historical Enquiries Team left hundreds of cases outstanding. Many of these cases still require investigation but there is general agreement that the current mechanisms in place to address outstanding cases need to be more balanced, proportionate, transparent, fair and equitable, and deliver outcomes more quickly. In addition, the Office of the Police Ombudsman for Northern Ireland (OPONI) has a remit to investigate alleged misconduct or criminal action by police in Northern Ireland, including in respect of Troubles-related incidents. The OPONI Historical Investigations Directorate's caseload currently sits at around 400 cases and continues to grow, with some 167 complaints in respect of historical investigations received in the past two years.

The Stormont House Agreement in December 2014 reached broad political consensus to establish four institutions to address the past after eleven weeks of intensive talks between the UK Government, the five largest parties in the Northern Ireland Assembly, and, where appropriate, the Irish Government. The institutions proposed by the Stormont House

Agreement are designed to address different aspects of the legacy of the Troubles. The Government believes that these institutions provide the best way to address the legacy of Northern Ireland's past.

In order to take forward implementation of the Stormont House Agreement, the Government has engaged intensively with all of the main political parties in Northern Ireland. Whilst agreement has not been reached on every detail of the proposals, the Government considers that the draft Northern Ireland (Stormont House Agreement) Bill takes account of the many views expressed and that sufficient consensus has now been reached to seek the views of the public. The draft Bill will be published shortly, along with a consultation document seeking views on the Government's proposed approach.

The institutions proposed by the Stormont House Agreement include the Historical Investigations Unit (HIU)—an independent body to take forward outstanding investigations into Troubles-related deaths. The HIU would take on the outstanding work of the Police Service of Northern Ireland's Historical Enquiries Team and the outstanding legacy work of the Police Ombudsman for Northern Ireland. The initial caseload is estimated at around 1,800 deaths. The HIU would aim to complete its work within five years of its establishment and would be required to act in a way which is balanced, proportionate, transparent, fair and equitable.

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)

The Government notes the Committee's comment.

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)

While the Government believes that the most effective option to address Northern Ireland's past is to implement the proposals set out in the Stormont House Agreement, the Government acknowledges that others have different views on the best way forward, including approaches such as that proposed by the Committee which do not involve recourse to the criminal justice system.

As such, the Government intends to include within its forthcoming consultation on the draft Northern Ireland (Stormont House Agreement) Bill a section entitled '*Alternative approaches to addressing the past*'. This section of the consultation will discuss alternative ways forward and include a description of the Committee's recommendation. The consultation will invite respondents to give their views on 'the potential effectiveness and appropriateness of alternative approaches such as amnesties and a statute of limitations to address the legacy of Northern Ireland's past'. Following the consultation's conclusion, the Government will consider all views carefully to inform next steps.

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)

The Government notes the Committee's comment. As set out above, the forthcoming consultation will provide an opportunity for respondents to give their views on alternative approaches to the past, including the proposal put forward by the Committee.

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)

The Government notes the Committee's comment.

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)

The Government notes this final comment and thanks the Committee for its report.