

## APPENDIX D



**Jon Boucher**  
Chief Constable

**OPERATION  
KENOVA**

Force Headquarters, Woburn Road  
Kempston, Bedford, MK43 9AX

Email: [jon.boucher@bedfordshire.pnn.police.uk](mailto:jon.boucher@bedfordshire.pnn.police.uk)

### OFFICIAL

Legacy Policy Team  
Northern Ireland Office  
Stormont House  
Stormont Estate  
Belfast BT4 3SH

5 October 2018

### Response to the Consultation Paper

#### Addressing the Legacy of Northern Ireland's Past

I am the Chief Constable of Bedfordshire Police and lead Operation Kenova an investigation into a number of offences committed during the Troubles in Northern Ireland, the terms of reference for which and other associated information is provided on a website set up to inform victims, their families and wider interested parties about the investigation. The website can be found at [www.opkenova.co.uk](http://www.opkenova.co.uk).

1. This submission will address questions raised within the consultation paper based on experiences gained during Operation Kenova, a legacy investigation commissioned by the Chief Constable of Northern Ireland following the issuing of a series of Section 35(5) Justice Act (NI) 2002 referrals by the Director of Public Prosecutions (NI) to the Chief Constable of the PSNI. The Kenova investigation is well placed to pass comment on investigative advances in historical murders due to the ongoing search for evidence in such historical matters.
2. In contemplating legacy cases it must be made clear from the outset that with such a considerable passage of time since these tragic events occurred the likelihood of a successful criminal justice outcome in such cases will be limited. That is not to say prosecutions are out of reach, however, a sensible level of expectation as regards prosecuting those responsible needs to be applied. It is ever clearer to me that the circumstances of how a person died and the events around that death can be pieced

together when the security forces and those in the community who have information disclose fully what they know. This may or may not achieve a prosecution, but will almost certainly allow the families to finally be told 'how' and 'why' their loved ones were killed, the importance of which should not be lost on anyone.

3. I wish to make clear that any comments or observations made in this submission are in no way intended to criticise the security forces, any political party, organisation, or interested party regarding what has occurred previously by way of an investigation or legacy review. I am very aware that the original investigations took place in circumstances and at a time that inevitably meant the recovery of evidence and information was extremely challenging and unlikely to be to the levels of completeness that victims and families would ordinarily be entitled to. The reasons for this are multiple and complex including, but not limited to, some people not trusting the security forces, the danger of the operating environment for the security forces limiting their ability to recover evidence from scenes and to conduct fulsome local enquiries, the intimidation of victims and witnesses by paramilitaries and some political parties and the lack of sufficiently robust information sharing across policing (internally and externally) and wider information sharing across the security forces.
4. The confidence of victims, their families and of interested parties in the independence and professionalism of an investigation is critical to the success of that investigation, and this will be the same with the forthcoming HIU. In an effort to provide such confidence and reassurance in Operation Kenova I established an Independent Steering Group (ISG) from the outset of the investigation. This group, consisting of internationally renowned investigative experts, provides a layer of critical scrutiny ensuring that the strategic direction of the investigation is comprehensive, and that all major investigative opportunities are being exploited.
5. There is no regulatory or statutory requirement for the ISG. This is a voluntary group commissioned by me to provide additional expertise to the Operation Kenova investigation. The purpose of the ISG is to reassure victims, their families and interested parties that the investigation is being conducted properly, without bias, fear or favour. The ISG has been extremely useful to the investigation and has undoubtedly provided those families that might have been sceptical about the bona fide and independence of Operation Kenova with additional levels of confidence. I would suggest that a similar structure be considered as part of any future HIU construct.
6. The Secretary of State, in her foreword remarks in the consultation document, comments on the importance of seeking a way forward that meets the needs of the victims and survivors. I whole heartedly support the six general principles set out in the Stormont House Agreement (page 21).
7. It is essential that these principles must apply to all victims of the Troubles including those in the Republic of Ireland and the mainland of the United Kingdom. It should also not be forgotten that victims exist from further across Europe. It would be wrong not to seek agreement to a mechanism that Stormont, Dublin and Westminster are able to support with appropriate legislation put in place that enables a framework to be implemented that allows all victims to have access to these legacy mechanisms.

8. The Secretary of State in her foreword (page 4) identifies four important things that should be considered to find the best way to address the past; *beginning with the need to meet the needs of victims and survivors, to promote reconciliation, to build a shared future for all and that proposals must reflect broad political consensus and be balanced fair and equitable and crucially proportionate, finally that the proposals must follow the Rule of Law.*
9. To truly comply with these pillars it is critically important that victims of the Troubles, regardless of the geography of where murders were committed, have access to the legacy institutions in an equitable way. A consensus across Stormont, Dublin and Westminster would be a powerful indictment of the determination of each parliament to support the legacy process. It would also mean that access to information and the rights of victims would be equal and fair.
10. There have been instances during Operation Kenova whereby the jurisdictional issues associated with requesting access to witnesses and evidence from an international partner, have been frustratingly slow and cumbersome. The relationship between Operation Kenova and the Garda Síochána is a positive one and I will comment later in this response in that regard. A legal framework allowing access across jurisdictions to the legacy institutions and that permits the HIU to operate equitably in the Republic of Ireland, the United Kingdom and Northern Ireland would be a significant indictment as to the commitment to this process and have a significantly positive impact on the likely success of the HIU. This should also allow for staff to be recruited from the ROI and include access to HIU premises for families based in the Republic. This would likely assist the Garda Síochána (as it will the PSNI) in providing a mechanism to address legacy crimes that does not cause a drain on current policing resources.
11. I established an independent victims group, the Victims Focus Group (VFG), from the outset of Operation Kenova. The principal role of the VFG is to advise on engaging with families, intermediaries and Non-Government Organisations (NGOs) representing different victims groups. The VFG is independent of the Operation Kenova investigation. Its overriding purpose is to ensure Operation Kenova is supporting victims; their rights, needs and interests. The VFG also offers advice to the investigation on how information, support and protection should be provided to victims and their families. This international group consists of people who are advocates for victims and victim issues. The VFG are in the process of conducting a survey of the Op Kenova families. This is a reflection of the commitment to ensure the victims' needs are being focused upon.
12. The HIU might benefit from a similar arrangement to ensure that the needs of the victims remain paramount throughout its lifespan. The existence of this group has also afforded the Kenova families an additional level of reassurance that their needs as victims are being considered throughout the investigative process.
13. Later in this document I will deal with operational independence and the importance of it to any future Director HIU, critical oversight as provided by the ISG and VFG in many ways provides a safeguard to that independence, at the same time ensuring a broad set of views and values are considered.

14. Many families enjoy the support of NGO victim groups and/or solicitors. For families that choose not to have recourse to such mechanisms, the VFG ensures that the needs and interests of those families are at the forefront of the thinking of Kenova. This accords with the Stormont House Agreement commitment to victims and survivors. (The information of the members of the VFG and the ISG are on the Kenova website.)
15. As mentioned the Operation Kenova Terms of Reference can be viewed on line at [www.opkenova.co.uk](http://www.opkenova.co.uk). The website and the information placed upon it affords new and unprecedented levels of transparency to victims. The terms of reference and associated material being placed in the public domain demonstrate to victims that Operation Kenova is an investigation for those victims. The website shows an intent to do things differently, seeking to demonstrate a more open and transparent relationship between a legacy investigation and victims.
16. There are currently a number of murder and abduction cases that engage the terms of reference of Operation Kenova, all of which are subject to continual review and evaluation. The investigation team is resourced by Senior Investigators, Investigators, Intelligence and Forensic subject matter experts, and major incident room trained staff. The team are a combination of serving officers and experienced (retired police officers) contractors, individually recruited in line with Operation Kenova policy. Operation Kenova also has access to senior legal counsel advice and support.
17. The Investigation is supported by the use of CT HOLMES, a nationally accredited major enquiry system, which allows the management of numerous simultaneous associated enquiries and sensitive information. The investigation also has access to several other secure systems of communication and sensitive material retention up to and including Top Secret. Each of the systems adopted by Operation Kenova has been put in place with a view to a seamless transition to the HIU.

In this submission I would like to directly address questions 1, 3 and 4 of the consultation process.

**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 challenges faced by current arrangements are articulated on pages 51/52 of the consultation paper. The consultation document correctly, in my view, identifies key issues relating to the timeliness of investigations/inquests; capability and capacity challenges (the past v the here and now); and issues of primacy and independence.

18. The timeliness of investigations is a very real challenge for any historical case. Evidence is in multiple locations and held by multiple organisations and is not well indexed, this necessitates painstaking information trawling.

19. Many involved in events dating back to 1968 are now in the twilight of their lives (or sadly deceased). With age comes not only issues regarding memory recall, but also medical/mental capacity challenges that need careful handling/management. The locating of potential witnesses with the passage of so much time is in itself a challenge.
20. The expertise and capabilities required to manage such vulnerable victims and witnesses are not readily available in policing. There is an interview process for victims and witnesses; Achieving Best Evidence in criminal proceedings (ABE) that requires specialist training, and enables best evidence from vulnerable and intimidated witnesses. Within policing there exists real challenges as to how such skills/expertise should be deployed due to a recognised lack of specialist/detective officers in UK policing. A challenge for any future model will be ensuring personnel in the HIU can fulfil such challenging roles. This issue can have a direct impact on delivering successful outcomes in a timely fashion. Consolidating the existing expertise and capabilities in Operation Kenova will allow for a targeted approach more quickly within the HIU. This skillset comes with additional training, accreditation and therefore cost.
21. I understand the rationale for placing a time limit on the life of the HIU, however, these types of investigations take time and require care and must not simply become a process map exercise. It is my strong opinion that all murders committed during the Troubles which have not been subject to a criminal justice outcome, and whether substantially completed as an investigation or not (as mentioned in the consultation document, page 25), should be the subject of an independent review by the Director of the HIU. The extent of any such review should be for the Director to determine.
22. People have gained confidence in Operation Kenova with the passage of time and continue to come forward often stimulated by specific activity or a visit from the investigation team. As the HIU embeds this should also be the case. More people will be inclined to engage with the HIU as the confidence of families and stakeholders grows. This inevitably means that information might well emerge after the HIU have passed a report to a family. It should be made clear to families that the HIU will always pursue information and have mechanisms in place to search the HIU database as any new information emerges. The HIU should be structured in a way that permits new information to be assessed to identify investigative opportunities and links to all legacy cases.
23. The review process would be considerably simplified through the digitalisation of records. As the HIU evolves and makes investigative progress, this will lead to more information coming to light during its tenure, and this new and emerging information will lead to further offences being solved.
24. It is more important to have an HIU that is regarded as thorough and gains the confidence of stakeholders, rather than a unit that delivers reports in a timely fashion. It is not in anyone's interests to compromise the accuracy and fullness of a report for the speed of that report. I am very conscious of the need to provide the families with answers before sadly more loved ones pass away. In my view, through a process of meaningful updates to families by the HIU as an investigation progresses, this will reduce the necessity of receiving a report by a specific deadline date.
25. The Police Service of Northern Ireland are unique in regards the level of demand for legacy matters to be addressed, both through criminal investigation or civil litigation. There are significant complexities facing the current investigative arrangements.

Allegations of collusion involving state agents and wrongdoing by security forces often necessitates the need for parallel investigations. While PSNI can investigate their civil population, any malfeasance by military or other state actors is not currently catered for.

26. The Office of the Police Ombudsman for Northern Ireland (OPONI) is the only organisation currently mandated to deal with allegations against serving or retired police officers. Unlike England and Wales there is no ability within the legislative framework for OPONI to delegate investigations to the police, either entirely or under their supervision as is the case with the Independent Office for Police Conduct (IOPC), formally the Independent Police Complaints Commission (IPCC). This arrangement creates an immediate issue relating to both organisations duty of disclosure under Criminal Procedures and Investigation Act 1996 (CPIA) as well as creating challenges in seeking access to 3<sup>rd</sup> party material. Currently dual investigations might have an individual categorised as a potential witness for OPONI, whilst being categorised as a suspect by a parallel police investigation. The constraints created by the current legislative framework is not conducive to achieving best evidence or finding the truth in complex cases.
27. The perceived independence/integrity of any investigative unit is a critical success factor regarding the willingness of communities to trust, accept and engage with an investigation. The RUC/PSNI and the communities of Northern Ireland have seen many legacy enquiries since the Troubles. The elements of distrust of the RUC by some sections of the community have not completely disappeared with the introduction of the PSNI. Furthermore, some of the retired policing community have a lack of confidence in the ability of the OPONI to deal with legacy issues.
28. In light of these complex and enduring issues, it would clearly be advantageous to have a single unit empowered to deliver on all legacy matters; equipped with a published mandate; supported by appropriate legislation and with access to a consolidated cross-government legacy 'data warehouse'.

**Question 3:** *Should the HIU's remit also include deaths which took place between the signing of the Belfast Agreement on the 10<sup>th</sup> of April 1998 and 31st March 2004?*

29. Wherever a capability gap exists of providing families with a meaningful investigation into Troubles related murders there must be an investigative response put in place. The Director of the HIU should be given responsibility into deaths that occurred between 10<sup>th</sup> April 1998 and 31<sup>st</sup> March 2004. The principle of law should always be upheld whilst reconciliation is promoted alongside that pursuit of Justice. To deny a family a review of an investigation would cause animosity and a sense of unfairness that could act to undermine the work of the HIU, and would act against the broader objectives of the Stormont Agreement.

**Question 4:** *Do you think the process set out for Director assessing previous investigations and deciding whether further investigation is needed is the right way to assess whether an investigation into a trouble related death has taken place or whether investigation is needed?*

30. The proposals for the remit of the HIU are set out at page 23-26. It is my submission that these policy decisions are operational matters that should be determined by the Director of the HIU. This assertion is based upon the fundamental difference between

a desktop office based review and a full proactive criminal investigation into an historical offence.

31. Operation Kenova is re-investigating many murders and abductions, the majority of which had previously been the subject of a HET review. I am unable to expand in detail about specific cases, but will address the areas in which I think Operation Kenova has taken the investigation forward since the closure of the HET.
32. Access to third party material - The HET did not enjoy the same access to third party material as has been secured for Operation Kenova. As such, there is an enduring risk that reports or details of investigations already furnished to families are incomplete regarding records/representations of what is now known of their loved ones murder.
33. I recommend a well-structured investigative review process is applied, using the learning outlined below, to all legacy cases. It is not acceptable to merely have a policy position of passively awaiting new evidence or intelligence to come forward to justify the launch of a new investigation. Any passive stance would not be conducive to the spirit of this consultation '*to meet the needs of victims and survivors*', or indeed the pursuit of justice. There should be a positive burden on the Director of the HIU to seek new evidence on cases previously examined by the HET in accordance with the learning of Kenova.
34. The key themed areas that Operation Kenova has secured additional information are;
  - Previously undisclosed records from across the security forces.
  - Information including witness statements from senior officials, members of the security forces and those previously involved in paramilitary activity.
  - New scientific evidence due to the advancements in forensics, particularly the use of DNA.
35. Taken together these factors offer significant investigative opportunities not previously available to the HET or other legacy investigations. These factors justify the Director of the HIU assuming responsibility for decision making on all legacy cases. These offer considerable further opportunities that every family deserves to have considered.

### **Forensics**

36. Operation Kenova employs a full time forensic co-ordinator who has considerable experience in the field of cold case reviews. The forensic co-ordinator is a key member of the investigation team, and has access to the case files and exhibits from both the PSNI forensic storage facility and the Forensic Science Laboratory Northern Ireland. Advances in forensic techniques provide investigative opportunities not available to previous inquiries. Examples include the development of DNA (17) in 2016. This advancement enables DNA profiles to be obtained from minute quantities of cellular material deposited upon exhibits. This, combined with ever evolving finger mark techniques, has resulted in new forensic evidence being retrieved on a number of Operation Kenova cases.
37. There are a finite number of forensic scientists who are able to conduct work utilising DNA (17) or advanced fingerprint techniques, and a similar constraint regarding facilities to do so. As such, the Director HIU would need to devise a matrix of priorities based upon an objective assessment of the potential benefits of a full forensic re-examination,

and be able to justify to families the decision making as to the level of resource devoted to complete that aspect of their case.

38. In certain legacy cases, forensic opportunities might exist through the Garda Síochána where offences either in planning or in part, were committed in the ROI and a process should be put in place to ensure such opportunities are fully exploited.

### **Intelligence**

39. The HET had processes in place to seek disclosure of third party material held by partners concerning the specific murders they were examining. The results of such HET requests were dependent upon each partner conducting a robust search for material.
40. Operation Kenova has sought to be proactive in the recovery/discovery of third party material, embedding its staff into the PSNI estate. An intelligence cell of Operation Kenova staff, established in Northern Ireland, has primary access to thirty-seven different PSNI computer systems, registry depositories and databases. Access includes to the most sensitive material held by partners. There is complete freedom of movement within PSNI for Operation Kenova staff and access to all material. This is especially important when linked lines of investigation become apparent, or when examining intelligence shared from other security stakeholders such as the military.
41. Operation Kenova have adopted a similar posture in its relationships with the Military and MI5. Through development of existing relationships, Operation Kenova have discovered new relevant material, the existence of which was not known to other legacy investigations.
42. I am of the view that the level of engagement and access granted by third parties to Operation Kenova of their sensitive material archives is unprecedented in historical investigations. This will partly be due to the ongoing passage of time since these incidents occurred, a robust approach to acquiring that information and a more forward leaning and positive approach by those agencies than previously.

### **Records**

43. Operation Kenova has discovered a significant number of documents generated during the Troubles, which were created during the pre-digital era. The locating of relevant documents has been a cumbersome process. The security forces should invest in systems for the filing and cataloguing of the paper and microfiche records they hold. There is currently a lack of good record keeping and of user friendly document retrieval mechanisms and this needs to be addressed.
44. This disparate record keeping is an acute and ongoing challenge within all of the organisations, and is made worse with the passage of time and the diminishing corporate memory within those organisations as people retire. This can lead to an unhelpful drip feed of disclosure adding to potential suspicion of transparency and concerns that information is being withheld. There will inevitably be material not yet disclosed relevant to the cases examined by HET. The Director of the HIU must be allowed to conduct a review process of all legacy cases, as such material could necessitate the case being re-investigated.



45. To improve the recovery process, consideration should be given to the digitalisation of records held by organisations (this is a major issue for microfiche records as the plastic material degrades). This in itself will result in an active recovery of information process. This process alone would represent a conscious demonstration to seek all available information on those unsolved murders within the HIU remit, including those already subject to a HET report.
46. Any existing position regarding an assessment that legacy investigations are complete is, in my view, flawed on the basis of previously undisclosed information that Operation Kenova continues to recover.
47. There is also a need to fully exploit the information and evidence held in legacy cases by the Garda Síochána. In Operation Kenova there are a number of enquiries and cross border issues that are being progressed with the Garda who have recently and helpfully invested resources in archiving records that will assist legacy investigations. The recent progress made between Operation Kenova and the Garda needs to be built upon to ensure that access to all relevant material in legacy cases is made available to the HIU.
48. In early meetings with the families of Operation Kenova it became abundantly clear that the families did not trust that information held by the security forces and government departments would be shared with the Operation Kenova investigation. Indeed this concern was repeated and underlined in the media by journalists and commentators. The most consistently asked question by families and the media of me is whether I am being given access to all the information the various organisations hold. There have been some frustrations in obtaining information based on organisational culture and logistics however each time there has been a difficulty the issue has been overcome and the information obtained.
49. Access to material held by all organisations, including sensitive and secret material, is a critical success factor for the HIU and a mechanism whereby the Director of the HIU has unfettered access to such material should be considered a legal right. It is for the Director of the HIU to conduct any relevancy test as to whether information is to be of use to the HIU, not the host organisation.
50. A sensible way forward for such a mechanism to work might involve the shared ownership of the material relating to the Troubles between the Director of the HIU and the host organisation. It is an interesting aside that, due to the complexities of Northern Ireland's Troubles, there remain circumstances of one agency holding information on behalf of another, and to gain access to such material requires multiple permissions that can involve delay. The joint ownership of information with the organisation holding the material and the Director of the HIU would go some way to providing families with the confidence that information is not being withheld and that a meaningful and proper process is in place.
51. The consultation document (page 35) states that *the HIU could not do anything that might prejudice the national security interests of the United Kingdom* – This must not be misinterpreted, it must be remembered that everyone is subject to the Rule of Law, it is possible that some might view this as a 'get out clause' for the security forces regarding any wrongdoing on their part. This must not be the case. The vetted Director of the HIU should be allowed access to all material in order to make any judgments about National

Security issues in consultation with the relevant organisation and legal advisors. I have been granted such access, and this must be continued for the Director of the HIU.

### **Witness Management and Community Engagement**

52. The lack of trust in the criminal justice system and the security forces by those communities divided by years of the Troubles, coupled with fear and intimidation, have been the primary reasons why people have failed to come forward and provide information. There is a need for transparency and a demonstration of fairness from legacy processes. In Operation Kenova this has necessitated a fresh approach with those categorised as potential suspects, victims or witnesses. The overriding aim in Operation Kenova is to get to the truth. Significant investment is afforded to building trust and confidence with people, whatever 'category' they might come into, and to explain the terms of reference and the balanced investigative approach.
53. By publishing the Terms of Reference and setting out the legal authority to act in Northern Ireland, and establishing the victim focus group and an independent steering group, those assisting Operation Kenova feel more informed and empowered.
54. It is the policy of Operation Kenova to meet with anyone who may be able to assist in the search for the truth. The investigation team will engage anyone who might have information regardless of their status or history. Everyone is subject to the Rule of Law, including those within the Executive, law enforcement, the judiciary, the security forces and paramilitaries. Indeed, the approach by Operation Kenova has been to pursue information wherever it might be found and at every level of an organisation.
55. It has been evident that many in the security forces believe that legacy investigations disproportionately focus on the military and the police. Operation Kenova is investigating all those that might have had a role in the murders and serious crimes under investigation, whatever role a person might have had, from committing the crime of murder to allowing the offence to take place. The tone and approach is the same to everyone. Legacy investigations will inevitably focus upon paramilitaries as they were responsible for most of the deaths.
56. In dealing with suspects Operation Kenova will, where suitable, require they attend for a voluntary interview under caution. This approach stops the trauma and stress of suspects and their families having the physical presence of the police at their homes, and yet achieves the principle aim of Operation Kenova to put questions to the suspects in an environment best suited to getting to the truth. Where suspects do not comply or respond to requests for interview, arrests will take place as is necessary and justified in law. This approach is equally applied across the various groups from where suspects might come.
57. The approach has been very well received in Northern Ireland by all sides of the community, and with the Military, Her Majesty's Government, Security Services and PSNI.
58. We have had significant co-operation from individuals who have welcomed the approach coming forward, despite the passage of time and previous reviews of their cases. We have developed relationships with trusted community figures and solicitors representing the various groups, and deliberately sent messages to seek engagement with subjects

of interest who had never spoken to police and had a default position of never speaking to authorities.

59. We have policies and agreements with various agencies, giving undertakings where required to get access to the most sensitive material, ensuring we are able to manage any sensitivity and use the information in a manner acceptable to them, this negates the redaction and editing that previously occurred when material was being sanitised before being passed to investigation teams that examined legacy cases in the past.
60. I fully support the need for the implementation of the Historical Investigations Unit. There will be some challenges of an Independent Commission on Information Retrieval and the Oral History Archive running simultaneously. The relationship, if any, between the various elements of the future legacy components needs explaining. Clarity is required on what happens when some members of a family seek answers from the ICIR and others go to the HIU, these issues will need to be worked through. There is an overarching need to serve justice where possible and importantly to provide families with a fulsome account of what happened to their loved ones to give them closure.
61. The need to extend the HIU remit to encompass 1998 to 2004 is clear, to have a meaningful investigation into Trouble related deaths can only be achieved if we encompass all the recognised deaths.
62. I took the deliberate decision not to initially recruit any staff from the RUC/PSNI, the Military or the Intelligence Agencies within Operation Kenova. This decision was taken to demonstrate, to an understandably cautious cohort of families, the independence of Operation Kenova. Due regard must be applied to the recruitment, retention and progression of the HIU workforce, to ensure the myriad of victims have confidence in those who are examining what happened to their loved ones. In addressing the Human Resource challenge of a larger HIU, an approach must be focused on the capability to maintain the confidence in the unit across communities.
63. Some care has gone into educating the investigation team on Operation Kenova and providing Continued Professional Development (CPD) for the officers both as investigators, but also as regards the operating environment, the history and the different groups whom the team will come across. There is an absolute focus on putting the families at the heart of everything that is being done. These will be essential requirements of the HIU.

#### **Ancillary Issues - Role of Director HIU and Operational Independence**

64. It is recognised that Northern Ireland is quite unique in its significant litigious activity surrounding the Troubles. There is a risk that the more the role of the Director of the HIU is constrained by rules laid down in statute or other similar provision, the greater the opportunity for legal challenge. The rule applied to the autonomy of Chief Constables across the UK could be utilised to positive effect to the role of Director HIU. The constitutional status of the Commissioner of the Police had never been defined by statute or the courts. The matter was dealt with by Lord Denning in the case of *R v Commissioner of Police of the Metropolis, Ex parte Blackburn* 1968. The fundamental principles of this ruling should be adopted for the role of Director of HIU. In doing so this would limit the opportunity for litigation.

### **Role of the Policing Board**

65. Page 58 of the consultation document details the proposed role of the Policing Board in terms of monitoring and holding to account the HIU for its performance. To avoid any confusion and to support operational independence, the same rules that apply in its oversight of the Chief Constable PSNI should be applied in its oversight of the Director of HIU.

### **Sentences for Troubles Related Offences**

66. The proposals within paragraph 7.4 of the document suggest an amendment to the Northern Ireland (Sentences) Act 1998, extending the reduced sentencing provisions to deaths occurring from 1968 as opposed to the current 1973. Consideration should be given to extending the offences covered by this legislation. Under the current provisions, defendants convicted of mass murder could serve a 2 year term, whilst perversely public officials could serve far longer terms of imprisonment for less serious offending.

### **Appeals Process**

67. Paragraph 7.7 details a proposed appeals process in circumstances where the Secretary of State seeks to withhold information that the Director HIU wishes to make use of. The proposal in its current format is incoherent, as the family would not be entitled to disclosure of GPMS material of Secret or above, thus negating their ability to appeal any non-disclosure decision by the Secretary of State.
68. It is often the perception of bereaved families and communities in legacy cases that documents are withheld, not on grounds of National Security, but because of reasons of organisational embarrassment or culpability. I recommend an independent and streamlined appeals based approach to address this issue.

### **Conclusion**

69. There is undoubtedly an evolution of learning from Legacy investigations, and Operation Kenova is now part of that process. There will inevitably be further lessons to be learned and more revelations regarding information that will be forthcoming. This document in broad terms, sets out the learning so far of Operation Kenova, I again repeat that in no way do I criticise any organisation, previous investigation or interested party.
70. Having met a considerable number of families from both communities who have lost loved ones, I am compelled to comment on just how remarkable these families are, their fortitude, bravery, resilience and understanding is unmatched by any group of people I have encountered in my 35 years of policing.
71. Every family has a tragic and moving story, and each deserve to know the truth of what happened to their loved one. It is for the families that we do this. It is essential that the Director of the HIU and staff understand the importance of this endeavour, and that those recruited to be part of this have the correct motivation and attitude.
72. In Operation Kenova we have had the benefit of the knowledge and experience of a number of stakeholders across all communities and the security forces. I am enormously grateful that many people have taken the time to speak to my team to help

and educate us in this incredibly challenging, but critically important investigation. From the beginning of the investigation these stakeholders from across various groups, have reminded everyone in Operation Kenova of the importance and impact of reinvestigating these matters for families, of the risks of re-traumatising people and of the honestly held but opposing views of different groups in Northern Ireland.

73. I submit this letter to the Legacy Policy Team in order that lessons learnt by Operation Kenova can be shared. I am happy to advise or discuss further should the team require any further specifics or information. I look forward to seeing the outcome of the consultation and the decision of the people of Northern Ireland.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Jon Boutcher', written in a cursive style.

**Jon Boutcher**  
**Chief Constable**