



OPERATION KENOVA

Record of meeting

AUTHOR		Liz Charters	
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TITLE	Operation Kenova Governance Board held on 01 November 2022		
SUMMARY	Record of discussions and recommendations made by the Board		
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Minutes of Meeting held on 1ST November 2022 in Europa Hotel, Belfast

Present

Iain Livingstone – IL (Chair)

Bertha McDougall – BM (until 16:40)

Rev. Harold Good – HG

Fr. Martin McGill – MM

Jon Boutcher – JB

Keith Surtees – KS

Liam O'Brien – LO

Monica McWilliams – MMW (joined the meeting at 14:55)

Guests

Tony Fuller - TF

Andrew Mortimer - AM

Minutes

Liz Charters

Apologies

Phil Wells – PW



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1. Introduction

Apologies were noted from PW.

MMW had notified the meeting that she would be delayed.

2. Minutes of Extraordinary Board Meeting held on 30th June 2022

An error in the attribution of comments made was raised a **Board member** in advance of the meeting and was further flagged. It was agreed that the minutes would be corrected, with this exception the minutes were agreed as an accurate record of the meeting.

3. Legacy and Reconciliation Bill

JB referred to the committee stage of the Bill and the positive references made to Operation Kenova.

JB noted that whilst all parties reference the work completed by the Operation, the Bill does not replicate the Kenova model.

JB updated that the Bill has been passed through from the House of Commons to the House of Lords without amendment and was scheduled to be heard in the House of Lords during September. Due to the sad passing of Her Majesty Queen Elizabeth II and the recent political turmoil there has been a period of inactivity. It is anticipated that the Bill will be heard in the House of Lords towards the end of November but this is unconfirmed. The new Secretary of State for Northern Ireland (SoS) has engaged Kenova in an authentic way. Lord Jonathan Caine will present the Bill to the House of Lords on behalf of the Government.

JB highlighted Kenova's main points of concern in respect of the Bill:

- The Bill speaks of reviews in the main. Kenova takes this to mean investigations which are both legally and technically different to a review; these differences have been highlighted to the Northern Ireland Office.
- Regarding information provided by the authorities, Kenova currently has unfettered access to material, however, the Bill refers to material being provided by the Security Services if they considered it to be reasonable and relevant. This has caused significant concern as establishing the relevance of information should be a matter for the Chief Commissioner of the new unit not the agencies providing materials.
- The Bill speaks of providing immunity from prosecution to those who come forward and provide an account. This part of the Bill is poorly drafted in such a way as it provides protection to terrorists.
- Under the provisions of the Bill, the SoS would be the decision maker and arbiter for reconciliation of disputes. Kenova has suggested that an independent body similar to the Kenova Governance Board, a group of Archbishops or the Chief Commissioner to the Northern Ireland Human Rights Commission should undertake this role to provide practical independence, reassurance and a demonstration of good faith.



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- The Bill has been criticised in the media; the Bill needs to be considered as a way to provide the truth to families and it is suggested that the Government should take a different approach to engagement.

JB stated the Government intention remains to commence the implementation of the Bill in May 2023. If the Bill is enacted on schedule this would mean that Kenova would cease to operate. Work required following decisions to prosecute can continue provided those decisions are made before the start of implementation. It is hoped that the House of Lords will propose amendments to allow the work on the Glenanne Gang (Operation Denton) to conclude.

JB has meetings scheduled with several members of the House of Lords to explain the Kenova position.

Chair recognised the complexities and also the uncertainty surrounding the Bill and noted that given the current political situation a hearing in November followed by implementation in May 2023 appears optimistic.

Board Member considered that the uncertainty around the Bill suggested progress and consideration of the points which have been raised. He noted the robust stance of the US administration in respect of the Bill and thanked JB for his concise contributions to Government in respect of the Bill.

JB confirmed that at a recent meeting held with the SoS, he had appeared receptive to the concerns raised by Kenova. The SoS is, however, advised on these matters by the Permanent Secretary and civil servants from NIO.

KS updated that a meeting hosted by the Victims Commissioner to brief members of the House of Lords in respect of the Bill was not well attended.

JB confirmed that the Kenova position is supported by Lord Anderson (a former reviewer of counter terrorism legislation) and also by Julian Smith MP. Rt. Hon. Johnny Mercer MP, Minister for Veteran's Affairs, recently joined a meeting in Belfast attended by several families of victims. Mr Mercer was moved by the testimony of the groups who provided him a different perspective to help shape his thinking.

Board member noted that for victims, families and veterans Legacy is more complex than simply putting the past where it belongs.

4. Protocol for publication of Kenova Interim Report

JB explained that the protocol had been published as the interim report is now complete. The protocol marks the start of the publication process and provides a process map for the security clearance and checking of the report. Responses have been received from various stakeholders expressing concerns. JB has sought to reassure partners without compromising the Kenova position. The Maxwellisation process (set out in the Government Treasury Counsel document to be circulated) is part of the protocol which will allow for those criticised within the report the right to respond.

JB further explained that the Kenova protocols for information sharing with partner agencies do not allow for the sharing of material without prior permission. This safeguards the security of agency information. In the context of the interim report decisions regarding such matters should be resolved through the judiciary as would be the case in regular criminal proceedings.

JB explained that the report would be shared with the group prior to publication.



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JB highlighted the value of publishing reports that objectively highlight mistakes made in the past and in doing so providing organisations an opportunity for service delivery improvement.

JB stated that the interim report is a high level document which does not go into the specific detail of any case. The draft report has been scrutinised by two senior Kings Counsel (KC) to ensure that it isn't inadvertently prejudicial to any Public Prosecution Service NI (PPS) prosecution or decision making process.

JB stressed that he would not publish a report which might risk prejudice in respect of cases under consideration for prosecution.

JB stated that the report would be delivered to the Cabinet Office for scrutiny in the coming weeks and it is anticipated that all stages of the protocol will be complete and the report ready for publication by Chief Constable PSNI by the beginning of February 2023.

Chair recognised the challenges faced by Kenova. The protocol and responses by interested parties have been published on the Kenova website and are available to be viewed by anyone.

Chair anticipated some resistance to the publication of the report, however, noted the robust procedures which provide all the necessary checks and balances and will have been followed as laid down in the protocol.

Chair queried whether KC has considered the report in respect of other, non-Kenova investigations, and the potential precedent that is being set.

JB agreed to flag this with KC.

A board member :

- a. Queried the choice of terminology "protocol" and the potential for confusion with the Northern Ireland Protocol addressing broader issues relating to the United Kingdom's EU exit.

JB explained that the terminology was adopted when the first draft was published and had been retained to provide consistency.

- b. Queried whether JB is entitled to flag the recommendations from previous reports which are security classified.

JB stated that this would be established as a part of the security checking process. He noted that previous reports had highlighted systemic failures arising from the unique challenges faced by the security forces but also that in general the security forces had done good work.

(Board Member (MMW) joined the meeting.)

- c. **Board Member** queried the timescale for publication of the interim report.

JB explained that the work on the protocol had delayed publication due in part to other commitments of the KC's advising the Operation.

Chair considered that given the eight stages of the protocol the report will go through, the aim to publish in the spring of 2023 is optimistic. He recognised the importance of prudence in all matters relating to the protocol.



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Board Member noted the difficulties caused when published timescales are delayed and suggested that a timeline which highlights the potential risks of delay would be helpful.

JB agreed to incorporate this to the risk register which would be updated and circulated to the Board.

A Board member expressed concern regarding the time available for Board members to scrutinise the protocol to satisfy themselves of Kenova compliance and also suggested improvements which could be made to the administration of the Board.

Board Member queried the requirement for an interim report.

JB confirmed that he had undertaken to produce a report prior to the publication of the proposals contained within the Legacy and Reconciliation Bill. The interim report was in recognition of and a response to the extreme slowness of the prosecution system in Northern Ireland and the obligation to fulfil Article 2 ECHR responsibilities with regards prompt and effective investigations. In the event of a decision to prosecute in respect of these cases it is anticipated that the prosecutorial process would take in the region of five years based on current PPS/judiciary timescales; the interim report will provide some information to the families of those involved many of whom are now very elderly. In the eventuality of prosecution decisions being confirmed, it will be the decision of the CC PSNI (with appropriate legal advice) as to whether the interim report will be published or postponed pending trial completion.

Board Member queried the information that is contained within the report and whether it adds more information than is already known by families.

JB explained that many families are not aware of the truth of what happened to their family members, the report will set out the events at the time and the factors leading to the things that happened.

JB acknowledged the frustration of Board members regarding the timescales for publication but also explained that there is no precedent for this type of report and so it was very difficult to provide precise timing for publication.

A Board Member thanked JB for explaining to the Board the obstacles and milestones in publication and noted that the expectation of the broader group of stakeholders would be better managed if the Board are made aware of public announcements and delays relating to the protocol.

A Board Member queried whether the final report with full details would be published.

JB explained that the detail is contained within the files submitted to the prosecutor and much depends on the decisions of the PPS. In the eventuality of a non-prosecution decision it remains Kenova's intention to provide families with a more detailed Family Report.

Chair reminded the Board of the initial instructions/Terms of Reference provided to Operation Kenova which had been largely completed and had resulted in the 35 case files being submitted to the PPS.

Chair suggested that the shortcomings of the prosecution system/judiciary that have delayed the decisions and prosecutions in respect of these files has also contributed to the delay in publishing the report.

A Board Member explained that she had been flagging the failings of the PPS over a number of years and that it is thought that the delays are due to a lack of available resources.

JB explained that the report cannot be shared with the Board before the corresponding stage in the protocol as it must pass through the security checking process. The Board will have the opportunity, however, to scrutinise the processes so that when published there can be confidence that the report has received proper challenge and checking against the stages of the protocol.



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Chair noted the significant variables outside the control of Kenova prior to publication of the report. In a normal criminal justice process the facts and circumstances surrounding cases would be heard and tested in a public court and when the prosecution of the cases were concluded a review would highlight any outstanding issues to be addressed.

Board Member reminded the group of the political context of spring 2023; the 25th anniversary of the Good Friday Agreement and the planned visit to Ireland by the President of USA.

ACTION: Review and update the risk register. (AM)

ACTION: Provide an indicative timeline to inform the Governance Board including the milestones and caveats to delivery. (JB)

ACTION: Ensure that the Board is informed by the Beds Police press officer of press and public releases in advance. (JB)

5. Kenova Interim Report

This item was covered in discussion at item 4.

6. Kenova Update

i. PPS Cases

KS provided an overview of the 35 cases which have now been submitted to the PPS. The Director remains committed to making decisions in respect of these cases prior to the scheduled Royal Assent of the proposed Legacy and Reconciliation Bill. The investigation team anticipate that there will be some decisions published before the end of 2022.

Work is underway to prepare family reports.

JB clarified that to comply with legal requirements these reports would be provided to families after the prosecution decisions had been made.

A Board Member noted that potential legal challenge to the public reports represents a further risk to publication.

JB summarised the legal arguments in respect of fairness in the prosecution of some cases whereby evidence has been found recently as a result of Kenova investigation.

Discussion took place in respect of new evidence discovered and the public interest.

KS reported that a prosecutorial decision will not be required in all 35 cases presented to PPS NI.

ii. Operation Denton Update

LO updated that 93 cases are subject to review by Operation Denton. Concerns have been raised regarding the continuation of this work post implementation of the Legacy and



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Reconciliation Bill. An indicative timeline to completion of the Barnard Review has been set as May 2024.

iii. Information Sharing

LO updated that a Statutory Instrument for the sharing of information between the An Garda Siochana and the Operation is now in place and officers from Denton are now actively reviewing AGS material.

JB stated that the Statutory Instrument had been drafted and put in place relatively quickly and information is now being provided via the process agreed.

LO highlighted that the Operation Denton work has been mandated by a court so it is unlikely that it wouldn't continue particularly as Operation Denton is an analytical review not an investigation and the work will be well advanced by spring 2023 when the Bill is expected to be implemented.

LO reported that the Operation works with partner agencies under the same protocols as established for Kenova.

(Board Member (BM) left the meeting)

iv. Finance Update

Apologies were received from Phil Wells.

JB updated:

- Current pressures on public spending have resulted in pressure on the Kenova budget allocation by PSNI for Financial Year 2023/24. PSNI face £60m unfunded pressures.
- Kenova office accommodation costs in London have previously been met by partners from National Counter Terrorism Policing HQ (NCTPHQ). Due to restructuring within NCTPHQ the lease for the current premises will cease at the end of March 2023 and it is not yet determined whether this year's accommodation costs can be met by NCTPHQ. In future financial years, Kenova will have to pay for accommodation costs adding further financial pressure. A comprehensive review of the budget is currently underway.

AM confirmed that funding pressures, including accommodation costs, are a standing item on the risk register.

Legal costs have increased significantly.

JB explained the Kenova funding structure and the financial and staffing responsibilities undertaken by PCC Bedfordshire Police on behalf of Kenova; he further explained that the monies provided to PSNI are specifically for Kenova funding.

The Board discussed the summarised budget lines for the Operation and it was agreed that Phil Wells who is the Accounting Officer for the Operation would be invited to provide a more detailed explanation of the financial accounts at the next meeting.

JB updated the Board that the current Chief Constable of Bedfordshire Police will retire in January 2023. A recruitment process is underway for his successor. It is hoped and anticipated that the incoming Chief Constable will continue to support Kenova.



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ACTION: Invite the incoming Chief Constable of Bedfordshire to a Governance Board Meeting in 2023. (JB)

v. Any other business

Board Member noted the pressures upon JB and the Kenova Team and expressed his appreciation for their work.

JB thanked the Board for their continued support and commitment to Kenova and the scrutiny and transparency they provide to the Operation.

Chair reiterated the value of the contribution made by the Governance Board.

5. Date of the next meetings:

JB suggested that additional Governance Board meetings might be required as the protocol is advanced and the Interim Report nears publication. JB Team will contact Board members to arrange future meeting dates.