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## Record of meeting

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TITLE	Operation Kenova Governance Board		
SUMMARY	Record of discussions and recommendations made by the Board		
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### Minutes of Meeting 28<sup>th</sup> April 2021 Video Conference

#### Present

Jon Boutcher (Interim Chair) - JB

Iain Livingstone – IL (Chair)

Liam O’Brien – LO’B

Phil Wells - PW

Bertha McDougall - BMc

Monica McWilliams - MMc

Sir John Chilcot - JC

Rev. Harold Good – HG

Fr. Martin McGill - MM

#### Guests

Tony Fuller - TF

Suzanne Jordan - SJ

Andrew Mortimer - AM

Laura Cormack - LC

#### Apologies

Keith Surtees

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### **1. Appointment of Chair**

Mr Livingstone was proposed as the chair for the Group by JB. The motion was unanimously carried.

### **2. Minutes of last Board Meeting November 2020**

The minutes were agreed as an accurate record of discussions.

### **3. Matters arising**

**Action 3/20/GB** - NPCC Lead reviewers to present review findings at next meeting.

Action Discharged.

**Action 4/20/GB** - NPCC Lead reviewers to present review findings at next meeting.

Action Discharged

**Action 5/20/GB** - VFG members to present their findings and speak at next meeting.

Carried over - Judith Thompson is finalising the review report.

**Action 6/20/GB** -Strategic Risk Register to be presented at next Board Meeting circulated and to be discussed at Agenda Item 9

Action Discharged.

**Action 7/20/GB** - Operational summaries to be provided to Board members in advance of the meeting.

Action Discharged

**Board Member** enquired as to whether there had been any feedback on the KGB minutes that were published on the Kenova website

**JB** reported that no comments or enquiries had arisen since publication.

A short discussion took place regards the ongoing funding arrangements for the Investigation.

**Board Member** asked if funding was agreed for the current financial year.

**JB** stated that the investigation were still awaiting formal notification that the reduced budget requirement had been agreed.

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**Board Member** once again called for the need for financial security rather than the current year to year funding arrangements. The narrative emanating from government and other people of responsibility is on the one hand supportive of Kenova then on the other hand have spoken of the cost and no prosecutions. They are quantifying it differently to the various interested parties. The Secretary of State is applauding Kenova. Need to keep a careful eye on this.

**Chair** stated that this was a recurring issue for the investigation and had been the subject of discussions with the devolved administration in Stormont.

**Board Member** enquired as to how the investigation are able to carry forward any underspend into the next financial year.

Chair stated that PW will address this matter in the financial update

#### 4. ECHR Review of Kenova: Alyson Kilpatrick BL

**Chair** introduces Alyson Kilpatrick BL, a distinguished Human Rights Lawyer.

**AK** provided the Group with a resume of her involvement in Legacy. In 2016, AK had been appointed as a Human Rights Lawyer by the Policing Board of NI to examine PSNI's Article 2 compliance in the way it conducted legacy investigations. Following the launch of Operation Kenova the investigation was attracting a lot of attention and subsequently AK was instructed to conduct a review of Kenova to report both to the Policing Board and publicly.

**AK** stated there was a significant degree of healthy scepticism as to the potential effectiveness of the Kenova model and as such she and senior Policing Board members visited the London Offices to see first-hand the mechanics of the set up. **AK** stated that she was immediately impressed by the professionalism and attitude of staff who were openly committed to high levels of victim engagement and care. As time has passed this victim centred approach has become the 'trademark' for the investigation and it is AK's opinion that there is no current alternative investigative capability that she has encountered that is as Article 2 compliant as Kenova. As such Kenova is being openly discussed as a template for future Legacy investigations in NI.

In interviews with families **AK** has witnessed high levels of trust in the investigation. When pressed as to why they trust Kenova, families commented that the senior team, "weren't from round here". Families were impressed by the updates that they are given and believed that Kenova understood and tried to address their concerns. **AK** remarked, in a moving meeting with a family, it was stated that Kenova had given them, "the last hope we have".

JB has given full unhindered access to his policy log to **AK** which is reassuring and helpful in understand the thinking behind decisions and the strategic approach adopted by Kenova. **AK** commented that in her final report, the opening statement will highlight, that no one engaged with Kenova has criticised the investigation.

**Chair** on behalf of the Governance Board thanked **AK** for her work and looked forward to receiving the final report. Chair invited questions of **AK** from Board Members.

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**Board Member** inquired if Article 2 ECHR compliance is a Treaty responsibility of HM Government.

**AK** responded that it is the ultimate responsibility of the State. The State will discharge its' responsibilities through public bodies such as the police, PPS, HM Coroners and the like. The Government has an enduring responsibility to ensure compliance with all aspects of Article 2 including those articles relating to the speed and effectiveness of an investigation. This is a particular challenge for HM Government given the pace of historic legacy inquests.

**Board Member** asked was **AK** permitted to state that Kenova was the best way to address the need for future Article 2 compliant investigations.

**AK** responded by stating it is the best solution to the issue that she has seen and that she is content to be quoted on that. Nothing alternative has been proposed that would meet the standards set by Kenova.

**Board Comment** - stated **AK's** findings were important as it demonstrated that the Board had taken Counsels advice prior to commending Kenova as the preferred future legacy mechanism.

#### **5. The NPCC Homicide Working Group Review of Kenova: ACC Tim Forber, Paul Fullwood and DCS Kevin Southworth**

**Chair** invited ACC Forber to address the Board.

**ACC Forber**, as Vice Chair of the NPCC Homicide Working Group, thanked the Board for the invitation to present the review findings. ACC Forber outlined the rationale for the appointment of the senior Review Team; Paul Fullwood to draw upon his significant Homicide investigation experience and Detective Chief Superintendent Kevin Southworth with his extensive CT/National Security background.

**ACC Forber** reported that **JB** gave the Review Team unfettered access to all parts of the investigation. What was clearly evident to the Review Team, despite the scale, complexity and sensitivity of the investigation, was the fact that Kenova has universally gained the confidence of families and communities across Northern Ireland. In this context, ACC Forber stated that the recommendations are not intended as a criticism, but rather to assist the investigation maintain the sustainability of the Kenova model, improve where possible service delivery and share best practice with other historical enquiries. ACC Forber invited Paul Fullwood to deliver the Review findings with the Board.

**Paul Fullwood** commented, that it was absolutely clear to the Review Team, that the personal investment from the Kenova Leadership Team was unlike anything that they had witnessed before and it was this level of commitment that has made the difference to bereaved families and NGOs. **JB** has formed 3 independent bodies to provide accountability and rigour to the Kenova approach. The level and intensity of scrutiny is multi layered and clearly effective in shaping the investigative approach. Investigations are of the highest standard, compared to Homicide and CT investigations.

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Family engagement is exceptional. Kenova have the trust and confidence of all walks of society not only those that are seeking a criminal justice outcome, but for those that are merely seeking the truth as to what happened to their loved ones. Operation Kenova is delivering on that.

The challenge to the investigation comes from within other organisations. Kenova necessarily seek material which is embedded with the Security Services, MOD and other Government Offices. This has required robust negotiation and the formulation of bespoke Information Handling Protocols. These arrangements are heralded nationally as best practice. In addition Operation Kenova are delivering value for money. The Kenova approach has been compared with 3 other forces investigating homicide. Kenova are delivering exceptional value.

**DCS Kevin Southworth** would like to link to AK's input. The key for Kenova has been its ability to conduct homicide legacy investigations in a national security setting context. Everyone on the Kenova team has CT and/or a homicide investigation background. The approach is a hybrid model that delivers effectively.

**Chair** thanked the review team for the thoroughness and detail of the review.

**Board Member** remarked that it is a good day for Northern Ireland. The Board could not be anything other than impressed by what had been discovered by the Review Team and further remarked that it is a comfort and privilege to be part of it.

**Board Comment** - Kenova has reached a section of the community that have been previously hard to reach.

## 6. Operational Updates

### **Kenova Deputy SIO Andy Mortimer**

At the final stages of the investigation of the original Kenova suite of offences. When launched in 2016 there were approximately 100 murder/abductions that required consideration/investigation against the published Terms of Reference. The current operational position is as follows;

31 case files have been submitted to the PPS:

15 murders

12 abductions

4 ancillary offences

Another 2 case files will be submitted imminently. The team are engaged with the PPS case workers and already responding to requests for further evidence/information.

A case file has been submitted to the PPS with regards Operation Turma. A file is being prepared on progress made on the Mizzenmast investigation.

**Chair** remarked that the quality of the detective work and the progress made in terms of file submissions was a tremendous achievement.

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### **Denton Review- SIO Liam O'Brien**

The Barnard Judgement in 2019, provided a mandate to review a series of incidents between 1972-78, both in the North & South of Ireland. The Dublin and Monaghan attacks remain the largest loss of life incident throughout the history of the Troubles. We have adopted an investigative approach. Our main task is to better understand the composition and broader activities of the 'Glennane Gang' a defined gang who acted with joint endeavour.

Another objective of the Review is to uncover the full extent of any collusion between the perpetrators and authorities - to include the Government in Ireland and the UK. The investigation has recruited skilled investigators and reviewers to commence the process. COVID-19 has held us back but the investigation is entering an interesting phase.

91 incidents have been identified as in scope for review. Concentrating on drawing on those cases to paint an early picture of the gang membership composition. DCI Suzanne Jordan is the Family Liaison Lead. Hope to bring to conclusion in two years plus

**Chair** thanked LOB for the helpful update

**Board Comment** - reiterated the tremendous work as reflected in the reports. Legacy is so complex and it is a credit to JB and the team that so much progress has been made.

### **7. Interim Report – Jon Boucher**

JB e-mailed all stakeholders on 5 April to inform them of the content of his recent affidavit (in relation to the Group Civil Action – Keeley et al) and his intention to publish an interim report.

**Affidavit** - There have been a number of actions filed in the Civil Courts against the CC PSNI and MOD. Families are frustrated by the lack of progress and want to know what is happening. The Civil Court require disclosure from PSNI and MOD who are subtly shifting the responsibility to Kenova. This is a significant and resource intensive process and as such would divert Kenova staff away from their core role. As such JB is reluctantly seeking a stay on the civil case so that the criminal justice case can take its course. JB will share the affidavit with the Board on a confidential basis.

**Interim Report** - The report will be high level lessons learned. It will make comment upon the Steak Knife cases, the murders of the Police officers (Op Turma) and the killing of Jean Smith-Campbell (Op Mizzenmast).

The files submitted to the PPS discussed earlier, are very detailed and complex (in excess of 40000 pages). The PPS have not been able to deal with them in a timely fashion due to the lack of a legacy framework. Our understanding is that the PPS won't be able to provide decisions on the files until the end of next year and if the decision to prosecute is made it will most likely take 3 more years to come to trial. It is for these reasons that families have a legitimate expectation that Kenova will publish its interim findings before any prosecutions. The report will not speak to the individual cases will Kenova will seek advice of Counsel and the Director of Public Prosecutions prior to publication.

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**Board Comment** - it is important that it is an 'interim' report and not a findings report. Further enquired as to how the report would be structured.

**JB** emphasised that the report would be thematic.

A discussion ensued as to the most effective way to formulate the Interim Report and the contribution that the Board could make in communicating and commending the findings of the Report.

**JB** reported that Government has signalled its intention to introduce a legacy framework and provide draft legislation in July. The Queen will make a brief reference to legacy in her speech. If that goes wrong it could add fuel to the fire.

**Board Member** stated that the Lambeth Palace meeting was interrupted by COVID19 but the conversation continues. NIO want another consultation and are under pressure to produce something for the summer asking assistance from civic society. This requirement has been provided added impetus due to the resignation of Armed Forces Minister, Jonny Mercer, and the recent trial of 2 former soldiers.

**TF** reported that the First Minister has just tendered her resignation. It is a volatile political situation.

**JB** stated PSNI sent a letter on 28 March asking to pause the work on the Hooded Men, an iconic case from 1971. **JB** was asked by CC Byrne to take on the work in November 2019. Kenova, working with families and solicitors, were about to achieve an agreement on the ToR. The PSNI have since signalled their intention to challenge the notion that they are incapable of conducting Article 2 ECHR compliant legacy investigations. The case is listed for hearing in the Supreme Court and **JB** has learned that a Superintendent from the PSNI legacy branch has sworn an affidavit saying that **JB** acted on his own intention to undertake the investigation. The families have registered a complaint of perjury against the Superintendent with the PSNI.

**JB** has raised the matter with CC Byrne who has conceded that the affidavit is factually incorrect but has yet to withdraw or amend it.

**Board Comment** - this could pose a reputational risk for Kenova and proffered the assistance of the Board in this regard.

**Chair** stated that it could be viewed as questioning **JB's** integrity and CC Byrne has recognised it needs to be changed.

Decision: **JB** to write to CC Simon Byrne and ACC Mark Hamilton to highlight need for affidavit position to be resolved.

**Chair** stated the matter will come back before the Board.

The Risk register was reviewed – nothing raised by way of exception.

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## 8. Finance – Phil Wells

Beds Police provide Kenova financial services support as a Home Office Force. As such Beds are able to carry over any underspend into a general reserve. As of end 2021 there is £1.96M reserve. This is due to effective management of budgets, the effects of COVID19 on operational spends/activities and financial support provided by the NCTPHQ.

**PW** stated Kenova are seeking a reduced budget of £6M for financial year 2021/22. The budget provided to PSNI to support Kenova is traditionally met by the Dept. of Justice, NI.

**Board Member** reported that the narrative being proffered is that neighbourhood policing has suffered as a consequence of Kenova.

**Chair** reassured the Board that it would be inaccurate and misleading to suggest Neighbourhood Policing has suffered as a consequence of Kenova.

## 9. AOB

**Board Members** voiced their support for the appointment of IL as Chair.

Carried unanimously.

Meeting closed.

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Governance Board – Action Register		
Action	Title	Status
1/20/GB	<i>All Board members to provide short Biography suitable for inclusion in any media release and for posting on the Kenova website.</i>	Discharged – 4 November 2020
2/20/GB	Minutes of Meeting 4 June 2020 to be published on Kenova Website	Discharged – 24 November 2020
3/20/GB	Messrs Fullwood and Southworth to present review findings to next Board meeting.	Discharged – 28 April 2021
4/20/GB	NPCC Review Final Report to be made available to Board Members	Discharged – 19 January 2021
5/20/GB	VFG members to present their findings to the next Board meeting	Carried Over
6/20/GB	Strategic Risk Register to be presented to next Board Meeting	Discharged – 28 April 2021
7/20/GB	Operational Summaries to be provided to Board Members in advance of meetings	Discharged – 28 April 2021

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