



## 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 17 November 2021, 1pm - Europa Hotel, BelfastPresent

Iain Livingstone – IL (Chair)

Bertha McDougall - BMc

Rev. Harold Good – HG

Fr. Martin McGill – MM

Jon Boutcher – JB

Keith Surtees – KS

Liam O'Brien – LO'B

Phil Wells – PW (via Microsoft Teams)

Guests

Tony Fuller - TF

Andrew Mortimer - AM

Apologies

Monica McWilliams - MMc



### 1. Tribute to Sir John Chilcot

**Chair** formally recognised the significant contribution to public life made by Sir John Chilcot throughout his distinguished career as a Civil Servant and beyond. Sir John was an exemplar of the highest standards of professionalism and integrity in a public office and was universally respected by those who worked with him. He will be missed by Board colleagues and everyone who knew him.

### 2. Minutes of last Board Meeting 16 July 2021

The minutes were agreed as an accurate record of discussions.

### 3. Matters arising from last meeting

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

Discharged – Agenda Item 4

**Action 1/21/GB** – Board members to be provided copy of letter from Mr Boutcher to Chris Flatt (NIO)

Discharged – Board members provided copy of letter 16 July 2021.

**Action 2/21/GB** – Board members to be provided with Mr Boutcher's media responses to questions specific to the issue of the proposed statute of limitations.

Discharged – Board members provided copies of articles 16 July 2021.

Due to **PW** joining via Microsoft Teams, Chair proposed an amendment to the published agenda. The Board would be updated on the Kenova Financial Report by Phil Wells.

### 4. (Agenda Item 12) Kenova Finance Report

**PW** reported that the headline budget requirement for Kenova 2021/22 was **£7.654M**.

**Invoice to the Police Service of Northern Ireland (PSNI)** - Costs incurred by Bedfordshire Police will be recharged to the Police Service of Northern Ireland. These costs are estimated at **£5.390M**.

Underspends at year end will be added to the Operation Kenova Reserve and any overspend will be funded from the same reserve.

**Direct Costs Incurred by the PSNI** - estimated at **£0.610M**. These include local travel and accommodation costs, the salary and on-costs of the officer in charge and costs of the Crown Solicitor's Office. Any over or underspends at year end will be absorbed into balances by PSNI.

**Operation Kenova Reserve** - Bedfordshire Police have built up a reserve over the life of Operation Kenova from accumulated underspends, as at 1<sup>st</sup> April 2021 this reserve had a balance of **£1.654M**.



On the current trajectory PW is forecasting a £250K underspend (due largely to Kenova running with vacancies) and assuming that Counter Terrorism Policing Headquarters (CTPHQ) continues to offer financial support to Kenova.

**PW** highlighted a number of Risks to the Board;

- Direct Costs Incurred by PSNI, budgeted at £0.610M is wholly managed by PSNI rather than Kenova;
- If CTPHQ are (for whatever reason) unable to afford continued financial support to Kenova.

**PW** reported that of the £26M PSNI allocated to Bedfordshire Police, throughout the life-span of Kenova, a £2M contingency fund has been accrued and held by Bedfordshire Police in reserve. It will be these monies that would be drawn upon in the eventuality of a funding shortfall.

**JB** commented that Kenova costs are descending as the original terms of reference investigations reach their conclusion.

**Chair** formally acknowledged the significant contributions made by CTPHQ and Bedfordshire Police.

**Chair** also noted that Kenova do not have access to Capital Budget despite there being a clear requirement for such.

## **5. VFG Survey findings and Report**

**Chair** welcomed Ms Judith Thompson (member of the Kenova Victim Focus Group) to the meeting and invited her to present her findings.

Ms Thompson provided the Board with a brief resume of her extensive career in victim advocacy and support. Ms Thompson then outlined the approach adopted by the VFG in conducting its victim survey and composing the final review report and accompanying recommendations.

The VFG structured their report around victim's legal entitlements, in terms of Northern Ireland Legislation and the European Convention on Human Rights. The report was comprised of four component parts;

- A victim survey;
- A review of Alyson Kilpatrick's ECHR compliance report;
- A review of the NPCC Homicide Working Group Review; and
- The evidence provided by JB to the NI Select Committee.



As a consequence of the examination of these matters, the VFG concluded that Kenova had demonstrated the following key achievements:

- Their independence of government and the PSNI;
- Their transparency through use of multiple communication platforms, both personal and IT based;
- Their commitment to a victim centred approach that was both fair and impartial; and
- The accessibility and quality of Kenova Senior Leadership and Investigators engendered trust and confidence.

Ms Thompson then provided a brief resume of the VFG's recommendations which the Chair invited members to note.

**Chair** thanked Ms Thompson for her presentation and for the broader contribution she has made in many years of service to victims' rights in Northern Ireland.

**Board Member** commented that the report and subsequent findings were an excellent piece of work and of great value to the Board.

**Board Member** enquired upon levels of resourcing within the PPS. Ms Thompson acknowledged the very difficult role of the PPS and how the backlog in legacy cases has and continues to cause problems. Ms Thompson also alluded to broader political challenges for the holder of Director of Public Prosecutions.

**Board Member** commented despite these obvious challenges, it was very hard to comprehend the Westminster Government's current position on legacy, which has attracted wholesale opposition from all parties in Northern Ireland and the Irish Government.

**Chair** placed on record the thanks of the Board for the valuable contributions and work of the Victims Focus Group. The Board acknowledged and were supportive of the recommendations of the VFG Review.

## 6. Operational Updates

**KS** provided Board members with a brief resume of operational progress in relation to the original Terms of Reference cases. KS reported that he anticipated all original Terms of Reference cases would be concluded by the end of March 2022.

**LO'B** provided the Board members with a progress update on the Operation Denton 'Barnard Judgement' Review. The review continues to examine 93 incidents, 126 victims and 350-360 survivors over the period of 1972-1978. Mr O'Brien estimated work would take another 2 years and there is the ability within the framework to make referrals to the PSNI recommending criminal investigations.

**JB** reminded the Board of his intention to publish an Interim Report that would identify themes and findings in what was a difficult operational context for the security forces. This would be discussed in greater detail later in the meeting.



**JB** updated the Board on discussions ongoing to facilitate the release of information from the AGS regarding Operation Denton. **JB** has met with Commissioner Harris who has explained the advice that he [Commissioner Harris] has received suggesting there is no mechanism for sharing such intelligence with a 'review' as opposed to a criminal investigation. This appears to be contradictory to the advice Kenova received from its Counsel.

It is clear to **JB** that Commissioner Harris wants the Attorney General to sanction such exchanges of information. **JB** remarked that the scheduled ISG meeting in Dublin in January 2022 would be an opportunity for these matters to be discussed as the Taoiseach and the Minister for Justice are both scheduled to attend.

**TF** remarked that these difficulties were a microcosm of what would endure should the governments' intended legislation be enacted, as investigations would struggle to gain legitimate access to relevant material.

Chair placed on record the thanks of the Board for the quality and the integrity of the Kenova investigations. He further remarked that Kenova had achieved significantly more than was initially thought possible at the outset.

Comfort break at 15:05 hours.

#### **7. Independent Steering Group Letter to the Secretary of State Northern Ireland and subsequent response.**

**Chair** provided a brief context and rationale for the ISG composing this letter and their particular opposition to the proposed Statute of Limitations. **Chair** asked that the contents of the letter and the accompanying reply by the Secretary of State be noted by the Board.

#### **8. Kenova Draft Protocol**

**JB** provided the Board with an update on the current position with regards the draft protocol with the overall objective of publishing a public facing report. Kenova has received (as of date of meeting) circa 25 responses, which are broadly within two categories:

- Questions on Kenova's ability to ensure transparency and integrity in their report;
- Questioning legitimacy of Kenova (**JB**) writing such a report.

**JB** has instructed and received legal advice as to his legitimacy to publish a public facing report and is confident there is a sound legal basis to do so.

**Board Member** enquired as to whether the government and/or PSNI could prevent publication? **JB** replied that, on the basis of the legal advice received, he can prepare an interim report but publication is a matter for the Chief Constable PSNI.



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**Chair** remarked that the report should remain a draft version with a view to responding to any emerging legislation lodged by the NIO.

#### **9. Group Civil Cases – Justice Horner Directions**

**JB** provided the Board with an explanation of terminology utilised in the civil cases, and in particular the differential between inherited materials, other materials and working papers. **JB** has provided the Courts with a series of affidavits and positional statements that set out Kenova's position on the ongoing civil cases. Justice Horner has recently ruled that the application to stay proceedings has failed and there now is a duty placed upon the PSNI and MOD to commence the process of disclosure to the Special Advocacy Office.

**JB** has outlined his directions in this regard and Kenova will provide assistance to PSNI and MOD to enable them to discharge their disclosure obligation duties.

#### **10. AGS Response to Kenova on Information Sharing and Draft Protocol**

As previously discussed Commissioner Harris has formally responded to Kenova with reference to the draft protocol. It remains the AGS's position that the sharing of intelligence and its use in any public facing report is subject to advice/guidance from the Attorney General in Eire.

**Chair** invited the Board to note the AGS comments with regards information sharing and the draft protocol.

#### **11. The Quarterly Update to Chief Constable Byrne (PSNI)**

**JB** provided Board members with a brief resume of the quarterly report. In particular, he made reference to a letter from Chief Constable PSNI in September 2021 stating the intention to conduct a PSNI review of Kenova. **JB** remarked that this was the first time such a proposal had been brought to this attention, and was somewhat surprised given the fact that the NPCC Homicide Working Group had conducted a comprehensive review very recently, of which Chief Constable Byrne had received a copy.

**JB** expressed a wish that as a matter of good practice Chief Constable Byrne should liaise with Bedfordshire Police on the proposed Terms of Reference of this review. As of the date of this meeting Kenova has not received a response to this request.



## 12. Risk Register

**AM** provided the Board with an update on matters contained within the Risk Register. All risks are being managed appropriately.

**Chair** invited Board members to note the contents of the Risk Register.

## 13. Government's Response to Legacy

**JB** provided the Board with an up-to-date position as is. All indications remain that Westminster Government intends to publish draft legislation prior to the Christmas recess or early in 2022.

**Board Member** remarked that the Board needs to remain vigilant on the issue of the Command Paper. The Paper does not enjoy the support of any of the political parties and/or victim groups in Northern Ireland, is strongly opposed by the Irish Government and does not enjoy the support of the United States Government.

**Chair** confirmed that the members of the Board strongly endorsed the observations and findings of the VFG survey/review, and the contents of the Independent Steering Group's letter to the Secretary of State.

**Board Member** stated the only opportunity to influence on this important issue is when draft legislation is published, and at that point we can make the case for broader objections and amendments.

**Chair** confirmed that it is not the role of the Governance Board to lobby government for changes to their White Paper.

## 14. Any Other Business

**Chair** raised the void created by the untimely passing of Sir John Chilcot, and sought the views of Board members as to the appropriateness of filling the vacancy left by Sir John. After a brief discussion it was agreed that Board members would consider the appropriateness of replacing Sir John and potential candidates for the role.

**Board Member** remarked that the members should consider gender balance across the board when considering potential replacements.

## 15. Date and Time of Next Meeting

To be confirmed.

**Chair** thanked Board members and Kenova team for their hard work and dedication. The date of the next meeting will be announced in due course (dependent upon the publication of draft legislation).

Governance Board – Action Register		
Action	Title	Status
<b>1/20/GB</b>	<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
<b>2/20/GB</b>	Minutes of Meeting 4 June 2020 to be published on Kenova Website	Discharged – 24 November 2020
<b>3/20/GB</b>	Messrs Fullwood and Southworth to present review findings to next Board meeting.	Discharged – 28 April 2021
<b>4/20/GB</b>	NPCC Review Final Report to be made available to Board Members	Discharged – 19 January 2021
<b>5/20/GB</b>	VFG members to present their findings to the next Board meeting	Discharged - 17 November 2021
<b>6/20/GB</b>	Strategic Risk Register to be presented to next Board Meeting	Discharged – 28 April 2021
<b>7/20/GB</b>	Operational Summaries to be provided to Board Members in advance of meetings	Discharged – 28 April 2021
<b>1/21/GB</b>	Board members to be provided copy of letter from Mr Boutcher to Chris Flatt (NIO)	Discharged – 16 July 2021
<b>2/21/GB</b>	Board members to be provided with Mr Boutcher's media responses to questions specific to the issue of the proposed statute of limitations.	Discharged – 16 July 2021