



DEBATE PACK

Number CDP-2017-0061, 22 February 2017

Armed forces and investigation and prosecution of historical cases

Opposition Day Debate Main Chamber, 23 February 2017

An Opposition Day debate on a motion relating to Armed forces and investigation and prosecution of historical cases will be held in the Commons Chamber on Thursday 23 February 2017. The debate will arise on a motion in the name of the Democratic Unionist Party.

The text of the motion is:

That this House acknowledges the service and sacrifice of the armed forces and police during Operation Banner in Northern Ireland as well as in other theatres of conflict in Iraq, Kosovo and Afghanistan; welcomes the recent decision to close down the Iraq Historical Allegations Team; and calls on the Government to take steps to ensure that current and future processes for investigating and prosecuting legacy cases, whether in Northern Ireland or elsewhere, are balanced and fair.

The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

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1. Introduction

This debate concerns the investigation and prosecution of former members of the armed forces for alleged offences in Northern Ireland during the Troubles.

The Legacy Investigations Branch (LIB) of the Police Service for Northern Ireland (PSNI) is currently reviewing all deaths attributable to the security situation that occurred in Northern Ireland between 1968 and the Good Friday/Belfast Agreement in 1998.

Any decision by the LIB to prosecute is referred to the Director of Public Prosecutions for Northern Ireland. This is an independent process, without UK Government involvement.

The DPP for Northern Ireland recently confirmed that investigations into three cases involving former Army personnel had been concluded, and that in two of those cases the decision to prosecute had been taken. The MOD has stated that any member of the military affected by this process will be supported and receive free MOD legal representation.

A debate was held in Westminster Hall on 10 January 2017 on [*Implementation of the Stormont House Agreement*](#), in which much comment was addressed to the subject of these investigations. The Debate Pack prepared on that occasion, [CDP-2017-0008](#), and the debate itself, will be of interest.

2. Media

2.1 Press releases

MOD

[Defence in the media](#)

11 February 2017

Extract:

IHAT

The Defence Secretary Sir Michael Fallon's announcement that IHAT will close by the summer is widely covered across all the newspapers, including in The Times, The Daily Mail which carries the Defence Secretary's Op-Ed, The Financial Times, The Daily Mirror, The Independent and The Telegraph.

Defence Secretary Sir Michael Fallon said:

It was the MOD that supplied the main evidence that got Phil Shiner struck off for making false allegations against our Armed Forces. Exposing his dishonesty means many more claims he made can now be thrown out and the beginning of the end for IHAT. This will be a relief for our soldiers who have had allegations hanging over them for too long. Now we are taking action to stop such abuse of our legal system from happening again.

Chief of the General Staff General Sir Nicholas Carter, said:

The Army's Leadership Code requires the highest values and standards. It is right therefore that on the occasions that there are credible allegations of unacceptable behaviour they should be investigated. However, a significant number of claims made against our soldiers have not been credible. The recent exposure of unscrupulous law firms and vexatious claims has clearly shown this to be the case.

Mutual trust is at the heart of the Army Leadership Code as is the care of soldiers and their families. We therefore welcome the Government's commitment to ensuring we have the Nations confidence and the tools to do our jobs effectively on operations, free from the burden of unjust litigation.

MOD

[Defence in the media](#)

30 January 2017

Extract:

Northern Ireland Investigations

There is widespread coverage of comments made by Northern Ireland Secretary James Brokenshire in the [Sunday Telegraph](#) where he wrote that investigations into killings during the Troubles are 'disproportionately' focused on members of the police and army and that the current system is 'not working'.

A UK Government spokesman said:

This Government is fully committed to implementing legacy bodies in the Stormont House Agreement which will ensure a more fair, balanced and proportionate way of addressing the issues of Northern Ireland's past, recognising that 90 percent of deaths during the Troubles were caused by terrorists.

Public Prosecution Service

[PPS confirms prosecution decision against two former soldiers](#)

16 December 2016

The Public Prosecution Service (PPS) has confirmed a decision has been taken to prosecute two former soldiers in relation to the death of Mr John Joseph McCann in 1972.

A PPS spokesperson said: "Following a careful consideration of all the available evidence it has been decided to prosecute two men for the offence of murder.

"The charge relates to the death of Mr John Joseph McCann who was shot by an army patrol in Joy Street, Belfast on Saturday 15th April 1972.

"The two defendants in the case are surviving members of the army patrol which shot Mr McCann. A third member of the patrol who also fired at Mr McCann died in the intervening years. At present these individuals are not being named and are identified as Soldier A and Soldier C.

"The decision to prosecute is the outcome of a review which was undertaken after the case was referred to the Director of Public Prosecutions by the Attorney General for Northern Ireland in March 2014. The decision was reached following an objective and impartial application of the Test for Prosecution that was conducted in accordance with the Code for Prosecutors and with the benefit of advice from senior counsel."

The original RUC investigation in this case was conducted in 1972 and subsequently a decision, based on the evidence then available, was taken not to prosecute any individual.

The Historical Enquiries Team (HET) published a review in 2012 of the original investigation.

In March 2014 the Attorney General for Northern Ireland, following a request for a fresh inquest, referred the matter to the Director of Public Prosecutions and this resulted in a formal review of the case.

As criminal proceedings have now commenced we would ask that there is no reporting, commentary or sharing of information online which could in any way prejudice these proceedings.

Note to Editors

The Test of Prosecutions are initiated or continued by the PPS only where it is satisfied that the Test for Prosecution is met. The Test for Prosecution is met if:

- (i) the evidence which can be presented in court is sufficient to provide a reasonable prospect of conviction - the Evidential Test; and
- (ii) prosecution is required in the public interest - the Public Interest Test.

More details on the Evidential Test and Public Interest Test can be found on Page 9 of the [PPS Code for Prosecutors](#).

Right to Review

Guidance on the right to request a review of a prosecution decision can be found on Page 23 of the [PPS Code for Prosecutors](#).

Committee on the Administration of Justice

[NI legacy: UK must respect the rule of law](#)

13 December 2016

The indefinite postponement of the implementation of the Stormont House Agreement dealing with the past provisions threatens the rule of law, says CAJ, Northern Ireland's leading human rights NGO.

Secretary of State James Brokenshire announced the delay on the very day that the Council of Europe Committee of Ministers called for swift action to investigate the past. The European Court of Human Rights called for proper investigation into a range of Northern Ireland cases back in 2001. The Committee of Ministers, which is part of the Council of Europe (an entirely separate entity to the EU) and oversees the judgements of the European Court of Human Rights, on Monday issued a number of decisions which:

- Expressed concerns about the delay in establishing the independent Historical Investigations Unit (HIU) provided for under the Stormont House Agreement and called upon the UK authorities to take forward consultation, the legislation and establishment the HIU 'without any further delay'

- Strongly urged the UK authorities as a matter of urgency to take all necessary measures to ensure the Legacy Inquests blueprint by the NI Lord Chief Justice is properly resourced and that it receives full cooperation from statutory agencies. [\[i\]](#)

CAJ is outraged that rather than commit to the discharge of the UK's international legal obligations the Secretary of State yesterday, the very day the Council of Europe pressed the UK to establish the HIU 'without any further delay', instead announced a further and potentially indefinite delay to its establishment. The Secretary of State also

introduced a pre-condition of ‘political consensus’ between NI parties for any further progress, essentially providing for a veto for those opposed to independent investigations.^[ii] The refusal also follows a recent UN expert report which called for, among other matters, the implementation of the Lord Chief Justice’s legacy inquest blueprint.^[iii]

CAJ also has serious concerns regarding the risks to local lawyers discharging their functions in conflict-related cases following last week’s press coverage in the *Sun* and *Daily Mail*, which coincided with the Committee of Ministers’ deliberations. Both papers referred to investigations into soldiers as ‘witch hunts’ and falsely portrayed the establishment of the PSNI’s Legacy Investigation Branch (set up from January 2015) as a new development. The *Mail* juxtaposed its headline with a previous comment from the Prime Minister Theresa May stating she would never again let human rights lawyers ‘harass’ the military. A *Sun* article at the weekend named and produced photographs of NI lawyers working on conflict related cases. Given our history and circumstances we believe these actions place local lawyers at risk and have referred the matter under an urgent action procedure to the UN body responsible for the safety of defence lawyers.

In the *Sun* a spokesperson for the Secretary of State James Brokenshire states the UK government believes in the rule of law but then qualifies this belief with a ‘concern’ regarding investigations focusing on the police and military.

CAJ deputy director Daniel Holder stated:

“We have seen a range of attacks on the rule of law of late – whether it is the blockage over funding legacy inquests to prevent a whole area of the rule of law being applied, or the granting of a veto over the implementation of the Stormont House mechanisms.”

“We are equally concerned over the newspaper attacks conflating lawyers with their clients’ causes and the assault on Supreme Court judges in sections of the media regarding the BREXIT process case in which we are one of the parties.”

“The UK does not regard itself as an international outlaw and cannot pick and choose which of its obligations to implement; it needs to respect the rule of law in its entirety, including living up to its legal obligations to protect the independence of the judiciary and legal profession”

^[i] The full statement can be read here: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016806c51c5

^[ii] <http://www.bbc.co.uk/news/uk-northern-ireland-38147206>

^[iii] See the report of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Grief <http://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/CountryVisits.aspx>

Police Service of Northern Ireland

[PSNI clarify position in relation to legacy investigations](#)

8 December 2016

Assistant Chief Constable Mark Hamilton, Head of the PSNI's Legacy and Justice Department, said: "For clarification purposes, the HET was formed in 2006 to review all Troubles related deaths, including those attributed to the military. By 2013, a number of cases had been reviewed, not all of which were military.

"In July 2013, the HMIC report into HET raised significant concerns, some of which related specifically to the military cases, which the then Chief Constable took very seriously. Due to the concerns raised, the decision was taken to re-examine military cases to ensure the quality of the review reached the required standard.

"This was announced as part of our response to the HMIC report at the time, it is not a new development. It was communicated publically in July 2013 and is a matter of public record.

"Between 1 January, 1969, and 1 March, 2004, there were more than 3,200 homicides in Northern Ireland. The review of all these cases and, where investigative opportunities are identified, the further investigation of them, is the responsibility of the PSNI's Legacy Investigation Branch.

"There is no new single probe or bespoke inquiry into deaths attributed to the British Army. All Troubles related deaths will be reviewed by LIB using the Case Sequencing Model which does not prioritise military cases. This is not a new decision.

"If there is a political decision to establish a Historical Inquiries Unit, LIB's responsibilities will pass to it."

Public Prosecution Service

[PPS confirms prosecution against a former soldier to proceed](#)

10 November 2015

The Public Prosecution Service (PPS) today (TUESDAY 10th NOVEMBER) confirmed that a decision has been taken to prosecute a former soldier in relation to the death of a man in County Tyrone in 1974.

After a careful consideration of all the available evidence in the case against 74-year-old retired soldier Dennis Hutchings, it has been decided to prosecute him for the attempted murder of John Patrick Cunningham.

Mr Cunningham (27) was shot dead by an Army patrol as he walked close to his home at Carrickaness, Benburb, on 15th June 1974.

A PSNI investigation into Mr Cunningham's death was re-opened after the Director of Public Prosecutions, Barra McGrory QC, requested a fresh examination of the circumstances surrounding the shooting under Section 35 (5) of the Justice (Northern Ireland) Act 2002.

As a result of this new investigation, Mr Hutchings was arrested. He was charged with attempted murder by police in April 2015 while the PPS carried out a full review of all the available evidence in the case.

The PPS confirmed today that its examination of the file is now complete. Prosecutors have decided there is sufficient evidence to prosecute the defendant with the attempted murder of Mr Cunningham.

PPS Assistant Director Michael Agnew said: "The PPS has carried out a careful examination of all of the available evidence and information in this case. We have concluded that there is a reasonable prospect of conviction and that the Test for Prosecution is met. "

ENDS

Notes to Editors:

*Dennis Hutchings first appeared in court in April 2015 when he was charged with the attempted murder of John Patrick Cunningham. This was a holding charge from the

PSNI, who arrested him earlier the same month. The PPS received the full police file in June 2015 and has now completed an examination of all the available evidence in the case.

*The defendant's case is due to be mentioned at Armagh Magistrates Court today (TUESDAY 10th NOVEMBER) at which it will be confirmed the PPS has decided to prosecute him on the charge of attempted murder in relation to the death of Mr Cunningham.

*Mr Cunningham's death was first the subject of a review by the Historical Enquiries Team (HET) after his family made a submission to the Attorney General requesting he direct the Northern Ireland Coroner to hold a new inquest.

*The Attorney General in turn referred the matter to the Director of Public Prosecutions (DPP) Barra McGrory QC, and requested a review of a decision taken by the then Department of Public Prosecutions in 1974 not to prosecute any soldiers in connection with the death of Mr Cunningham.

*After considering the HET report in 2013, Mr McGrory agreed that the case should be reviewed and that the PSNI should carry out further investigations into the circumstances surrounding the shooting.

*Using Section 35 (5) of the Justice (Northern Ireland) Act 2002, the DPP wrote to the PSNI Chief Constable in December 2013 to formally refer the matter for further investigation.

*In every case considered, the PPS takes a decision by applying what is known as the Test for Prosecution. The prosecutor must decide whether there is sufficient evidence to put a person on trial. The Test for

Prosecution has two elements. It involves an assessment as to whether the available evidence provides a reasonable prospect of conviction - and also whether prosecution is in the public interest.

Amnesty International

[Northern Ireland: re-branded HET is not the solution to investigating past abuses](#)

4 December 2014

Responding to the Chief Constable's announcement today of a new Legacy Investigations Branch (LIB) within the PSNI to replace the Historical Enquiries Team (HET), Patrick Corrigan, Northern Ireland Programme Director of Amnesty International UK, said:

"We are studying with interest today's formal announcement by the Chief Constable of the establishment of a Legacy Investigations Branch within the PSNI. While the LIB, essentially a re-branded and pared down HET, may well be what the PSNI believes it can contribute, the fact is society in Northern Ireland and the victims of human rights violations and abuses need an altogether more comprehensive approach.

"International human rights law demands prompt, thorough, effective, independent and impartial investigations where victims of human rights violations and abuses enjoy effective access. The HET failed on many of those counts, not least on independence. We remain unpersuaded about how the LIB would, as it stands, meet the test of independence. The Assistant Chief Constable has also made it clear that the LIB is unlikely to be prompt in its work given resource and staffing constraints.

"Amnesty International remains firmly of the view that what Northern Ireland needs is a single comprehensive mechanism capable of addressing the past. Political leaders need to act decisively; further complacency can only lead to more fragmentary and incremental additions to the piecemeal way we have tried to deal with the past in Northern Ireland."

2.2 Articles and blogs

Commission for Victims and Survivors

[Time to step up and deal with the past](#)

Judith Thompson 14 February 2017

Daily Mail

[Sir Michael Fallon: members of our armed forces were victims of a charismatic conman who exploited vulnerabilities in the legal system](#)

Sir Michael Fallon 10 February 2017

Belfast Telegraph

[Legacy issues can't be faced without stable Executive, says Northern Ireland Office](#)

Noel McAdam 10 February 2017

Belfast Telegraph

[Pursuit of Troubles-era soldiers a bid to rewrite history, says Foster](#)

9 February 2017

Irish News

[Gerry Adams hits out at British government over legacy issues](#)

Andrew Madden 6 February 2017

RTE.ie

[Ex-soldiers say PSNI should probe Troubles attacks](#)

5 February 2017

BBC online

[Troubles legacy cases bias disputed by figures](#)

Vincent Kearney 2 February 2017

Independent

[Investigations into Troubles' deaths 'disproportionately' focusing on army, Northern Ireland Secretary claims](#)

Siobhan Fenton 29 January 2017

Sunday Telegraph

[We must not allow the past to be rewritten in Northern Ireland](#)

James Brokenshire 29 January 2017

Telegraph

[British soldiers are being failed by Troubles inquiry, Northern Ireland Secretary concedes](#)

Robert Mendick 28 January 2017

Irish News

[Figures dismiss army 'witch hunt' allegations](#)

Allison Morris 27 January 2017

BBC online

[Troubles killings: police deny soldier 'witch hunt'](#)

Vincent Kearney 9 December 2016

Politics Home

[Theresa May says investigations into troops who served in Northern Ireland are 'wrong'](#)

Kevin Schofield 8 December 2016

Guardian

[No new inquiry into killings by British troops, say Northern Irish police](#)

Alice Ross 8 December 2016

Telegraph

[British troops 'to be investigated' over killings during the Troubles in Northern Ireland](#)

Martin Evans 8 December 2016

Independent

[Ireland calls for investigation into Troubles legacy to support victims 'let down' by historic inquests](#)

Michael Mchugh 8 December 2016

Irish News

[Former RUC officers no longer helping with legacy investigations into Troubles killings](#)

Raymond McCord 2 June 2016

Irish News

[PSNI to give priority to some Troubles cases](#)

Connla Young 27 January 2016

Irish News

[Agreement fails to offer comfort to victims](#)

Allison Morris 18 November 2015

BBC online

[HMIC concern over accountability of PSNI's Legacy Investigations Branch](#)

Colletta Smith 24 June 2015

TheJournal.ie

[Those involved in the Troubles should not be part of investigating unresolved deaths](#)

Brian Gormally 12 June 2015

Rights NI

[The Historical Investigations Unit \(HIU\): why the devil will still be in the detail](#)

Daniel Holder 6 January 2015

3. Parliamentary Business

3.1 Debates

[Northern Ireland: Political Developments](#)

HC Deb 10 January 2017 c175-88

[Stormont House Agreement: Implementation](#)

HC Deb 10 January 2017 c64-80WH

[Legacy Issues: Northern Ireland](#)

HC Deb 13 December 2016 c294-301WH

3.2 Parliamentary Questions

[Armed Forces: Northern Ireland](#)

Asked by: Lord West of Spithead

To ask Her Majesty's Government, in the light of the progress on ensuring natural justice for UK servicemen accused of alleged historic crimes in Iraq, whether similar measures are being taken in respect of Northern Ireland; how many investigations are underway involving UK servicemen for alleged incidents in Northern Ireland during the Troubles; and how many investigations the Police Service of Northern Ireland are conducting into alleged atrocities by the IRA and splinter groups during the same period.

Answered by: Lord Dunlop | Department: Northern Ireland Office

The Northern Ireland Office does not hold this information.

Operational matters relating to criminal investigations in Northern Ireland are the responsibility of the Chief Constable of the Police Service of Northern Ireland.

The Government is committed to the implementation of the bodies set out in the 2014 Stormont House Agreement which will be under legal obligations to examine legacy issues in Northern Ireland in ways that are fair, balanced and proportionate.

16 January 2017 | Written questions | HL 4686

[Terrorism: Northern Ireland](#)

Asked by: Tim Farron

To ask the Secretary of State for Defence, how many letters his Department has sent in the last two years asking soldiers to come forward with any information that could help the Police Service of Northern Ireland in its historical investigations.

Answered by: Mike Penning | Department: Ministry of Defence

Over the last two years, the Department has sent eight letters to veterans asking them to supply any information in respect of historic investigations by the Police Service of Northern Ireland.

8 December 2016 | Written questions | 56837

4. Organisations and further reading

[Legacy Investigation Branch](#) web page

Police Ombudsman for Northern Ireland, [Historical Investigations](#) , web page

[Commission for Victims and Survivors](#) website

[Committee on the Administration of Justice](#) website

House of Commons Defence Committee, [Who guards the guardians? MoD support for former and serving personnel](#) , HC109 2016-17, 10 February 2017

[Iraq Historic Allegations Team](#) , Commons Library Briefing CBP-7478, 22 January 2016

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