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Meeting: 1501st meeting (June 2024) (DH)

Communication from an NGO (Committee on the Administration of Justice) (29/04/2024) concerning the group of cases MCKERR v. the United Kingdom (Application No. 28883/95).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1501^e réunion (juin 2024) (DH)

Communication d'une ONG (Committee on the Administration of Justice) (29/04/2024) relative au groupe d'affaires MCKERR c. Royaume-Uni (requête n° 28883/95) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



**Submission to the Committee of Ministers from the Committee on the
Administration of Justice (CAJ) in relation to the supervision of the cases
concerning the actions of the security forces in Northern Ireland**

Jordan v the United Kingdom, judgment final on 4 August 2001
Kelly and Ors v the United Kingdom, judgment final on 4 August 2001
McKerr v the United Kingdom, judgment final on 4 August 2001
Shanaghan v the United Kingdom, judgment final on 4 August 2001
McShane v the United Kingdom, judgment final on 28 August 2002
Finucane v the United Kingdom, judgment final on 1 October 2003

and

Hemsworth v UK, judgment final on 16 October 2013
McCaughey & Others v UK, judgment final on 16 October 2013

April 2024



Introduction

1. The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights (FIDH). Its membership is drawn from across the community in Northern Ireland and beyond.
2. CAJ has regularly made Rule 9 communications to the Committee of Ministers on the 'McKerr group of cases' concerning the actions of the security forces in the 1980s and 1990s in Northern Ireland. This Rule 9 communication is for consideration at the 1501st meeting (11-13 June 2024) (DH).
3. These submissions have charted the evolution of the 'Package of Measures' agreed to by the UK further to the above judgments, and their proposed replacement with measures agreed by the UK and Ireland, and political parties in the Northern Ireland Executive, under the December 2014 Stormont House Agreement (SHA). The submissions also cover the unilaterally departure by the UK on the 18 March 2020 from its commitment to implement the SHA, the UK Command Paper of July 2021 and the consequent *Northern Ireland Troubles (Legacy and Reconciliation) Act 2023* (hereafter 'the Legacy Act') introduced into the UK Parliament in May 2022. The legacy Act will close down the Package of Measures, and establish a new legacy body the Independent Commission for Reconciliation and Information Recovery (ICRIR) to conduct 'reviews' on selected cases alongside a 'conditional immunities scheme.
4. Following the Anniversary of the Good Friday Agreement the Chair of the Committee of Ministers (CM), Þórdís Kolbrún Reykfjörð Gylfadóttir, Minister for Foreign Affairs of Iceland, at the Parliamentary Assembly of the Council of Europe reiterated that the CM "has expressed serious concerns that this legislation is not in compliance with the European Convention and will not enable restitution for victims."¹
5. CAJ welcomed the CM Interim Resolution of June 2023 on these cases. The Interim Resolution expressed serious concern that there had been no progress in amendments addressing the legislations incompatibility with the ECHR, singling out, in particular, the immunities scheme, the closure of inquests and weaknesses in the powers and independence of the ICRIR.²
6. CAJ also welcomed the CM Decision of September 2023. The CM: raised issues such as ICRIR independence and that the support for it remained 'minimal'; deeply regretted the termination of pending inquests; and reiterated serious concern regarding the immunities scheme. The CM escalated their level of concern with these issues by inviting the CM Chair to send a letter to the UK authorities and resume examination at the June 2024 meeting.³
7. In light of the June 2024 examination, the UK authorities, including the ICRIR, issued a communication to the CM in April 2024.⁴

¹ <https://pace.coe.int/en/verbatim/2023-04-25/pm/en#speech-23130>

² [Interim Resolution CM/ResDH\(2023\)148 June 2023](#)

³ [CM/Del/Dec\(2023\)1475/H46-44](#)

⁴ [DH-DD\(2024\)364](#)



Summary of issues raised:

- The **Legacy Act completed passage** in the UK Parliament on 18 September 2024. The Act will close down the Package of Measures established as a result of the current group of cases on 1 May 2024. Ministers celebrated the passage of the Act as the **fulfilment of a pledge to military veterans**. The ICRIR Investigations Commissioner also told a US audience that the Act had been designed to protect soldiers.
- Ireland lodged an **inter-State** case (*Ireland v the UK no 3*) with the Court in January 2024. In response the London *Telegraph* newspaper - describing the Legacy Act as “*a flagship British law that gives immunity to hundreds of soldiers*” cited Government sources as stating: ‘Ireland needs to back off’ and of considering ‘retaliation’.
- The **UN Human Rights Committee in March 2024**, examining UK compliance with ICCPR, called on the UK to repeal or reform the Legacy Act raising concerns about the amnesty scheme, stifling of criminal and civil proceedings and ‘the weakness of the “review” function’ of the ICRIR calling on the UK to instead “*adopt proper mechanisms with guarantees of independence, transparency, and genuine investigation power that discharge the State party’s human rights obligations and deliver truth, justice and effective remedies, including reparations to victims of the Northern Ireland conflict.*”
- March also saw the **publication of the Interim Report of Operation Kenova** – a major independent police investigation into the involvement of state agents in the IRA in torture and murder, conducted under the ‘call in’ provision of the Package of Measures. Kenova found that state agents were involved in human rights violations including murder and torture and were shielded from the criminal justice system. Kenova also found that that the system of facilitating state agents involvement in serious crime and assuring agents they would be shielded from the justice system was unlawful. Kenova also comments on the obstruction, including delayed disclosure, by state agencies of legacy investigations.
- At the end of February, the **High Court in Northern Ireland** issued the first domestic ruling on the Legacy Act, finding the immunities scheme and some provisions debarring civil litigation incompatible with the ECHR. Ministers had previously told the UK Parliament that the absence of the immunities scheme would ‘critically undermine’ the ‘principal aim’ of the Legacy Act and that the ICRIR would have no ‘chance’ of working *without* the immunities scheme. The UK has appealed and the ruling has been cross appealed. The NI Court of Appeal is set to hear the case in June.
- The UK in its communication to the CM **overstates the extent to which the High Court** has given the green light to the contention that the ICRIR can conduct ECHR compatible investigations. The Court concluded that such an assessment would need to be case specific and that “at this remove” it could not say that the “system established under the Act *cannot* provide an Article 2/3 compliant investigation”. The question of independence of the ICRIR Commissioner for Investigations is also dealt with by the Court given his background as a former NI senior police officer. The Court held it was ‘self-evident’ the Commissioner would have to recuse himself from cases where he had had involvement or there was a conflict of interest. Given the Commissioner was a very senior officer the occasions where the ICRIR will be reviewing the conduct and actions of former colleagues, including in relation to the



handling of agents, are likely to be quite broad. The High Court ruling also presents a lengthy narrative, largely drawn from material from the UK authorities, of how the Legacy Act came about. This includes presenting a positive narrative of UK engagement with the CM.

- **Package of Measures:** the Legacy Act is closing down the Package of Measures on the 1 May 2024 frustrating many families who have waited years for investigations. There have been particular concerns that state agencies have engaged in quite brazen tactics of delaying inquests to seek to run down the clock to the 1 May 2024. In particular, there have been concerted efforts to thwart inquests that may reveal the involvement of state agents in human rights violations. Ministers have been publicly at odds with and challenging coronial judges, and more recently the Chief Constable, to seek to prevent disclosure of sensitive material in 'national security cases'. This has led to calls, including from Coroners, for public inquiries as inquests have not been able to complete and the ICRIR has not been deemed an appropriate mechanism for such cases. Notably the ICRIR will grant Ministers broad powers to redact ICRIR reports expressly to remove any information regarding the involvement of state agents and the intelligence services in human rights violations.

Legacy Act becomes law

1. The Legacy Act completed Parliamentary passage and became law, as the *Northern Ireland Troubles (Legacy and Reconciliation) Act 2023*⁵ on 18 September 2023.⁶ A number of provisions were then commenced on the 18 November 2023, including a ban on civil claims (subsequently partly ruled unlawful). A Commencement Order then brought into force a number of other elements on the 1 December 2023.⁷ This included a number of provisions for the new Independent Commission for Reconciliation and Information Recovery (ICRIR), including the Ministerial power to appoint ICRIR Commissioners (albeit the Chief Commissioner had already been recruited before the law was passed). The Legacy Act provides that the Package of Measures will be closed down on the 1 May 2024.
2. The passing of the Legacy Act was celebrated by the (military) Veterans Minister Johnny Mercer MP at the ruling Conservative Party conference in October 2023. Referring to the closing of current legacy mechanisms within the legal system established further to the Package of Measures the Minister stated:

That totemic scourge on the lives of our extraordinary people [military veterans] who served in Northern Ireland has been removed. The hounding of these special people who stood against terror and violence in Northern Ireland, on our behalf, was appalling. The sight of these men being arrested in their 80s, dragged back to Belfast, hounded literally to death. It was a totemic symptom of a nation's moral ambivalence to those who served.⁸

3. The Minister also elaborated to the media of his pride at delivering the Legacy Act as fulfilling a pledge to military veterans. The Minister referred to the current system as 'abuses in the legal system' that 'hound[ed] our veterans.'⁹
4. Speaking at a filmed event at a US University in October 2023, the appointed ICRIR Commissioner for Investigations, Peter Sheridan, made clear that the Legacy Act was designed to protect military veterans. Explaining how the Act came about the ICRIR Commissioner stated:

The reason why there is so much opposition to it is the British government decided on this because they want to protect the veterans.

...there was a big lobby group, pressure group, in the UK and Boris Johnson, when he was the Prime Minister, said they were going to bring in this legacy act and the focus was, everybody knew it even though the government didn't say it that way, but everybody knew it was about the veterans, soldiers.¹⁰

⁵ <https://www.legislation.gov.uk/ukpga/2023/41/enacted>

⁶ <https://bills.parliament.uk/bills/3160/stages>

⁷ <https://www.legislation.gov.uk/uksi/2023/1293/contents/made>

⁸ See <https://twitter.com/AmandaFBelfast/status/1709621953915498831?s=20> and <https://x.com/irishagreement/status/1737520523293134999?s=20>

⁹ <https://www.belfasttelegraph.co.uk/news/northern-ireland/veterans-minister-johnny-mercero-speaks-of-pride-at-delivering-troubles-legacy-bill/a2047547975.html>

¹⁰ https://www.irishnews.com/news/northernirelandnews/2023/11/28/news/peter_sheridan_legacy_law_designed_to_protect_british_soldiers-3795547/

5. The ICIR Commissioner for Investigations also stated that he had previously articulated to the CM that the Legacy Act breached the procedural obligations under the ECHR to conduct effective investigations.¹¹
6. As set out in previous Rule 9 submissions there has long been a pattern and practice of the UK withholding resources from the Package of Measures which have operated independently from the UK Government. By contrast the ICIR has been offered up to £250 million GBP to undertake its work.¹²

Inter-State Case *Ireland v. United Kingdom, (III)* [1859/24]

7. In December 2023 Ireland announced its intention to lodge an inter-State case against the UK over the Legacy Act. On 17 January 2024 the application was formally lodged under Article 33 of the ECHR.¹³
8. CAJ has lodged an application to intervene jointly with the International Federation of Human Rights (FIDH), the Pat Finucane Centre, the Irish Council for Civil Liberties (ICCL), Dublin and Human Rights First, New York.
9. The initial UK response to the inter-State case was for Ministers to raise unspecified 'consequences' for UK-Irish relations¹⁴ The London *Telegraph* newspaper has throughout the process which led to the Legacy Act been a central platform for official advocates of the military amnesty. In response to the announcement of the inter-State case the *Telegraph* – openly describing the Legacy Act as “*a flagship British law that gives immunity to hundreds of soldiers*” - in a piece headlined “*UK to defend veterans from Irish attack on Troubles law.*” Stated that:

Military leaders and Tory MPs united in outrage, accusing Irish PM of meddling in British politics in trying to overturn soldiers' immunity.

One senior government source said: “Ireland needs to back off. The Irish Government, Sinn Féin and Joe Biden are all cut from the same cloth. But we are not going to climb down over this...”¹⁵
10. Once the case was formally lodged in January 2024 the *Telegraph* carried a further piece indicating the UK was considering ‘retaliation’ against Ireland, citing sources close to the legal process, stating that ‘potential options’ including a counter case were under consideration.¹⁶ To date this has unsurprisingly not materialised.

¹¹ “I gave evidence to the Council of Europe, the ministers in the Council of Europe about, we felt that it breached Article Two under the human rights convention, about the need for a thorough investigation and so on.”

https://www.irishnews.com/news/northernirelandnews/2023/11/28/news/peter_sheridan_legacy_law_designed_to_protect_british_soldiers-3795547/

¹² Correspondence from the Secretary of State to the ICIR, 14 December 2023 <https://icir.independent-inquiry.uk/document/icir-funding-letter/>

¹³ <https://www.echr.coe.int/w/new-inter-state-application-brought-by-ireland-against-the-united-kingdom>

¹⁴ See *Troubles legacy act: UK-Irish relations consequences 'not ruled out'* BBC News 21 December 24.

¹⁵ <https://www.telegraph.co.uk/politics/2023/12/20/ireland-take-uk-echr-troubles-era-case/>

¹⁶ <https://www.telegraph.co.uk/politics/2024/01/19/uk-could-sue-ireland-failing-investigate-omagh-bombing/>



UN Human Rights Committee: ICCPR review of UK

11. In March 2024 the periodic UK dialogue with the UN Human Rights Committee took place in Geneva, assessing the UK's compliance with treaty-based obligations under the International Covenant on Civil and Political Rights (ICCPR). The two most prominent key areas of concern raised by the Committee were the Legacy Act and the Illegal Migration Act.¹⁷
12. The Committee in its Concluding Observations, in relation to 'Accountability for Past Human Rights Violations', stated:

The Committee is concerned by the adoption of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, which occurred despite the warnings expressed by domestic and international actors that it would be in breach of the Belfast Good Friday Agreement and would violate the State party's international human rights obligations, including under the Covenant.¹⁸

13. The Committee expressed concern regarding the conditional immunity and also:
...the weakness of the "review" function of the Independent Commission for Reconciliation and Information Recovery, the allegations on its lack of independence, the absence of the power of investigation to guarantee the right to truth for victims, and the procedural barriers and obstacles to criminal investigations, civil suits, and other remedies, effectively stifling any criminal or civil proceedings connected to the troubles. The Committee is also concerned about the increased use of closed material proceedings for legacy cases.¹⁹

14. The Committee urged the UK to take the following action:

The Committee calls on the State party to repeal or reform the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 and to adopt proper mechanisms with guarantees of independence, transparency, and genuine investigation power that discharge the State party's human rights obligations and deliver truth, justice and effective remedies, including reparations to victims of the Northern Ireland conflict. ²⁰

15. The UK has declined to do this and pressed ahead with the Legacy Act.

Operation KENOVA Interim Report March 2024

16. In March 2024 the interim report of Operation Kenova was finally published.²¹
Operation Kenova was a major independent police investigation conducted using the 'call in' mechanism of the Package of Measures whereby the Police Service of

¹⁷ <https://www.ohchr.org/en/news/2024/03/examen-du-royaume-uni-devant-le-comite-des-droits-de-lhomme-les-experts-se-penchant>

¹⁸ [CCPR/C/GBR/CO/8, ICCPR Concluding Observations on the UK, 2024](#) Paragraph 10.

¹⁹ [CCPR/C/GBR/CO/8, ICCPR Concluding Observations on the UK, 2024](#) Paragraph 10.

²⁰ [CCPR/C/GBR/CO/8, ICCPR Concluding Observations on the UK, 2024](#) Paragraph 11. Emphasis in original.

²¹ <https://www.kenova.co.uk/Kenova%20Report%202024%20Digital%20version%20-%20FINAL.pdf>



Northern Ireland (PSNI) can ‘call in’ an external police force or team to conduct an independent investigation.

17. Kenova involved a major investigation team of detectives led by a former UK Chief Constable Jon Boucher (who has subsequently been appointed Chief Constable of the PSNI). Kenova concerned the involvement of an alleged state agent within the provisional IRA ‘Internal Security Unit’ (ISU) in kidnap, torture and murder. Kenova was set up in 2016 and examined 101 murders and abductions. Whilst the Kenova interim report is dated October 2023 there was a delay in its publication.

18. In the Interim Report the then Officer in Command of Kenova, Jon Boucher sets out that the independent investigation had faced some level of state obstruction in accessing disclosure and other attempts to undermine it:

I have encountered a number of challenges while leading Kenova. Some, such as difficulty in accessing information and attempts to undermine me and the investigation, were expected (and were predicted by those who led previous such inquiries), others such as the length of time for prosecution decisions to be made by PPSNI [Public Prosecution Service NI] I did not expect.²²

19. The Kenova Interim Report also commented on the obstruction and delay on the part of state agencies to other legacy mechanisms:

It is abundantly clear that agencies of the state involved in dealing with the Troubles have made decisions not to disclose information that should have been passed to legacy investigations, and have permitted a culture of delay and obstruction. Those leading previous legacy investigations have evidenced these actions. This should not happen, particularly where grounds exist to indicate the state was complicit in or turned a blind eye to serious criminality.²³

20. In relation to delayed disclosure the report states that *“continuing ‘slow waltz’ has become the dominant factor in most legacy cases; the terms ‘slow waltz’ or ‘no downward dissemination’ (NDD) were used routinely by RUC Special Branch [the intelligence branch of the then Northern Ireland police service] to indicate that information should be shared in slow time, if at all.”*²⁴

21. The Kenova Interim Report finds that state agents were involved in human rights violations including murder and torture and were shielded from the criminal justice system:

We have also established that agents were involved in murder. There is no evidence to suggest that the authorities considered holding these agents liable for their criminal acts. In some instances, the RUC was not even informed of the involvement of Army agents in criminality. After his resettlement, one agent assisted the security forces providing lectures to new agent handlers and other security force personnel. These training

²² [Operation Kenova Interim Report](#), page 27

²³ [Operation Kenova Interim Report](#), para 37.2

²⁴ [Operation Kenova Interim Report](#), page 29.



presentations included admissions to serious criminal offences that have not been dealt with by the criminal justice system. [paragraph, 71.8]

The security forces sometimes knew serious offences were taking place, including murder and torture, but to protect their sources they did not always pass on or act on this intelligence to the detriment of the rule of law. In many cases, the perpetrator reoffended and the organisation handling the agent concerned continued to protect them despite the agent's repeated involvement in serious criminal offences. [16.23]

Some Kenova victims who survived PIRA mistreatment have named those responsible for violence against them and I have established that some of them were agents when they committed acts of torture, including shootings. [67.3]

We have identified occasions when agents were under surveillance by the security forces and the surveillance team was withdrawn leaving the victim exposed to torture and murder. Failings extend to PIRA ISU members not being arrested and prosecuted when the evidence was readily available. This permitted murderers, and those involved in torture and abduction, to escape the rule of law and this happened repeatedly. [71.7]

One theme addressed in this report is the way in which both [police] Special Branch and the FRU [Army intelligence] withheld information from and about their agents in order to protect them from compromise and withdrawal, with the result that very serious criminal offences, including murder, were not prevented or investigated when they could and should have been. [page 7]

It is deeply troubling that we have found no cases where a prosecution was brought in connection with a victim who was murdered because they were accused or suspected of being an agent. In the vast majority of these cases, intelligence exists about those responsible and yet PPSNI [Public Prosecutions Service NI] has informed me that it knows of no cases (outside of Kenova) where a full police investigation file was submitted to it in connection with such a murder. This should be concerning to everyone. While raw intelligence cannot always be developed into actionable evidence, this is often possible and the practicability of criminal proceedings requires active and thorough testing by investigators and prosecutors. The reality is that this did not happen in these cases - they were not properly worked or pursued when they undoubtedly could and should have been. [68.4]

22. The current officer in Command of Kenova Sir Iain Livingstone expressed frustration at a number of decisions by the Public Prosecution Service (PPS) in Northern Ireland not to prosecute state and non-state actors as a result of Kenova despite what was described as 'strong and compelling case' submitted by the Kenova team.²⁵ It remains the case that the PPS have controversially taken decisions not to prosecute in Kenova related cases. The PPS have been criticised by legal representatives of victims for this, and the long delays in making decisions.²⁶

²⁵ <https://www.kenova.co.uk/head-of-kenova-responds-to-pps-decisions>

²⁶ <https://www.irishlegal.com/articles/no-prosecutions-to-be-brought-in-stakeknife-cases>



23. Kenova lays bare that the system of facilitating, tolerating or even directing state agent involvement in serious crime and giving assurances agents would be shielded from the justice system, was unlawful:

It is undoubtedly the case that some FRU [Army intelligence] and RUC Special Branch [police] agents disclosed their involvement in criminality to their handlers (both before and after the event) and were assured that their anonymity and status would always be protected and they would never stand trial or spend time in jail. In some cases, the commission of offences by agents was not only condoned by their handlers, it was impliedly and even expressly encouraged. An agent who exposed himself to serious risk by providing information to the security forces could easily have been led to believe that their conduct was authorised and could not lead to prosecution.

However, the simple fact is that the security forces had no power to authorise the commission of crimes or confer prospective or retrospective immunity on offenders and any assurances given to the contrary were themselves unlawful.

Indeed, the abuse of process jurisdiction exists to protect the integrity of the legal system and the rule of law and it would make little sense if it operated to immunise breaches of the law and deny justice to victims and families.²⁷
[68.9]

24. The Kenova report also refuted the official line that the operation of informant ‘Stakeknife’ -whose actions had been at the centre of the Kenova investigation- had saved many lives finding such claims ‘inherently implausible’ and that the agent had probably cost more lives than the small number that were saved.²⁸
25. The unlawful nature of the system of authorising informant criminality and immunity goes a long way to explaining why such relentless efforts are being undertaken by the UK authorities and agencies to obstruct legacy investigations under the Package of Measures. The existing mechanism have been increasingly revealing the involvement of state agents in human rights violations. This also provides an insight as to why the UK wishes to replace the Package of Measures with the ICRIR where, through provisions in the Legacy Act, Ministers will have a ‘national security’ veto to prevent any information regarding intelligence and state agents being included in ICRIR family reports. Ministers do not currently have this power over the judiciary and independent investigative bodies such as Kenova or the Police Ombudsman.
26. It is notable the use of the term ‘dirty war’, synonymous with the involvement of state agents in torture and murder, has now become more mainstream in Northern Ireland discourse regarding the Troubles (for example in the title of the flagship BBC documentary about Kenova).²⁹

²⁷ [Operation Kenova Interim Report](#), paragraph 68.9. Emphasis added.

²⁸ Operation Kenova Interim Report, page 36 and <https://www.independent.co.uk/news/uk/home-news/operation-kenova-stakeknife-report-freddie-scappaticci-b2509430.html>

²⁹ ‘Our Dirty War: The British State and the IRA’: <https://www.bbc.co.uk/iplayer/episode/m001x24x/spotlight-our-dirty-war-the-british-state-and-the-ira?seriesId=more-like-this>

The High Court of Northern Ireland judgment on the Legacy Act

27. Following the passage of the Legacy Act numerous legal challenges were lodged with the domestic courts in Northern Ireland. The court, to expedite the proceedings,³⁰ narrowed the cases it examined down to a small series of test cases represented by one firm. Among 20 other applications were a broader package of cases put forward by four law firms which were stayed insofar as they raised ancillary points not covered by the test cases (in relation to matters such as torture and Article 3 compliance and Article 6 and civil proceedings.)
28. The High Court of Northern Ireland delivered its ruling on the 28 February 2024. The case reference is as follows:

*Dillon, McEvoy, McManus, Hughes, Jordan, Gilvary, and Fitzsimmons Application and In the matter of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 and the Secretary of State for Northern Ireland [2024] NIKB 11*³¹

29. The High Court, in a 203 page ruling unsurprisingly found that the ‘conditional immunity’ amnesty scheme was incompatible with the ECHR. It also found that retrospective curtailing of civil proceedings back to the date of introduction to the Bill was unlawful (but not curtailing future such proceedings) and also found provisions relating to the exclusion of evidence in civil proceedings to be unlawful under the ECHR.
30. The Court also found the same provisions were not compatible with rights protected under the Good Friday Agreement (GFA) that have become justiciable by virtue of the Article 2 of the Windsor Framework (né Protocol on Ireland/Northern Ireland) to the UK-EU Withdrawal Agreement. This relates to a UK commitment to non-diminution in certain GFA rights as a result of Brexit. i.e. including ECHR and victims rights). This is significant as the effect is to disapply the provisions in question, rather than await a remedial order.³²

Ministerial Position that absence of immunity scheme would critically undermine ICIR

31. As set out below Ministers had previously told the UK Parliament that the absence of the immunities scheme would ‘critically undermine’ the ‘principal aim’ of the Legacy Act and that the ICIR would have no ‘chance’ of working without the immunities scheme being in place. On this basis the whole UK rationale for replacing the Package of Measures with the ICIR (and not implementing the Stormont House Agreement) is undermined by the High Court ruling.
32. The conditional immunities scheme had been described in the House of Commons by the Secretary of State for Northern Ireland (SOSNI) as ‘a crucial aspect of the

³⁰ The judgment states “The court’s objective, in narrowing the number of applications, was to ensure that the legal issues that arise in relation to the 2023 Act were heard and determined as expeditiously as was reasonably possible” [para 9]

³¹ Full judgment is here: <https://www.judiciaryni.uk/judicial-decisions/2024-nikb-11>

Summary of judgment is here: <https://www.judiciaryni.uk/judicial-decisions/summary-judgment-re-dillon-and-others-ni-troubles-legacy-and-reconciliation-act> [note there is a discrepancy in the summary of judgment as to the extent to which the bar on civil cases was found to be unlawful.]

³² For further information see: Anurag Deb and Professor Colin Murray, ‘[The Dillon Judgment, Disapplication of Statutes and Article 2 of the Northern Ireland Protocol/Windsor Framework](#)’ 8 March 24



*information recovery process*³³ In resisting an amendment in the House of Commons, Ministers sent the following reasoning back to the Lords (emphasis added):

COMMONS REASON The Commons disagree to Lords Amendments 44D, 44E, 44F, 44G, 44H and 44J for the following Reason—

44K Giving family members a role in whether immunity should be granted or not would critically undermine the effectiveness of delivering on the principal aim of this legislation.³⁴

33. Creating what was claimed to be this ‘*effective information recovery process*’ with the immunities scheme at its heart was also the rationale offered for closing down of the existing mechanisms.³⁵
34. Ministers also resisted a second Lords amendment which would have required all ICIR reviews to be compatible with the investigative duties under the ECHR. Instead, the ICIR model of ‘reviews’ was predicated on information from the immunities process. In the House of Lords, the Minister Lord Caine expressly stated the ICIR would have no chance of working without the amnesty – stating that the immunities scheme was ‘*essential if the new processes which the legislation establishes are to have a chance of working.*’³⁶

Ruling on extent to which the ICIR can conduct ECHR compatible investigations

35. A second element of the High Court ruling relates to the ability of the ICIR to conduct ‘reviews’ that would constitute ECHR compatible investigations. The UK Government and the ICIR have overstated the extent to which this first instance ruling gives the green light to the ICIR being capable of ECHR compatible investigations.
36. The UK states in its communication to the CM that a key finding of the High Court was that “the ICIR is operationally independent of the UK Government, and is capable of carrying out ECHR compliant (Article 2 and Article 3) investigations into deaths and serious injuries.”³⁷ The ICIR has also stated that “Court has confirmed that the Commission is independent” and “capable” of carrying out ECHR compatible investigations and that the ICIR “is therefore properly and lawfully established.”³⁸
37. However, this is an overstatement of what the Court held. The Court alluded to the proceedings not dealing with a ‘specific case’ and ‘at a remove’ could conclude that

³³ [HC Hansard Vol 736 Clm 825 18th July 2023]. Resisting a House of Lords amendment to excise the immunities scheme, the SOSNI said, ‘*the Government believe it is the best mechanism by which we can generate the greatest volume of information in the quickest possible time, to pass on to families and victims who have been waiting for so long. That is why the Government cannot accept Lords amendment 44, which seeks to remove clause 18 and conditional immunity from the Bill.*’

³⁴ [Hansard UK Parliament Official Report Volume 832: Tuesday 12 September 2023](#)

³⁵ For example the SOSNI told the House of Commons the aim of the legislation was to provide more information to more people than is possible under current mechanisms [HC Hansard Vol 736 Clm 825, 18th July 2023]. Whilst there is understandable scepticism this would be the case, it was the official rationale for the ICIR.

³⁶ [Volume 832: debated on Tuesday 5 September 2023](#)

³⁷ DH-DD(2024)364 (02/04/2024).

³⁸ ICIR Engagement Team email 1 March 2024.



ICRIR was ‘structurally’ independent to an article 2/3 standard taking into account the statutory arrangements and policy documents.³⁹ The Court went on to state that at a remove it could not conclude that the ICRIR could *de facto* never provide an Article 2/3 investigation, conceding that whilst undesirable for such matters having to be dealt with on numerous cases this would ultimately occur. Alluding to fully understanding the opposition to the new scheme and the reasons for it the Court stated that:

That said, I cannot at this remove say that the system established under the Act cannot provide an article 2/3 compliant investigation. The Commission is obliged to do so. It has wide powers and a wide range of discretion/flexibility to carry out its reviews. Should it fall short of its obligations under article 2/3 then I have no doubt that they will be subject to the scrutiny of the court, as were the coroners and PSNI in the cases of *Middleton, Jordan, McQuillan* and *Dalton*. As [barrister for an applicant] Ms Quinlivan pointed out this may be a highly undesirable consequence, in circumstances where article 2/3 compliant investigations and inquests are being conducted. [367]

38. The Court was not correct in its assertion that the Commission (ICRIR) is obliged to conduct reviews to a standard compatible with ECHR procedural obligations.
39. Ministers resisted an opposition amendment which would have expressly required the ICRIR to carry out its reviews in a manner compliant with the investigative duties under the ECHR.⁴⁰
40. Instead, Ministers amended the legislation to require the ICRIR to comply with the *Human Rights Act* (HRA)– the domestic incorporation of the ECHR – (which was already the case under the HRA). This decision has to be seen in the context of the UK Government having consistently and successfully argued on a technicality (of temporal restriction) that the duties under the HRA *do not apply* to pre-1990 cases. Hence given that by definition vast majority of ‘reviews’ of conflict-related cases that will be before the ICRIR, will be pre-1990 cases, the ICRIR is not legally bound as a matter of domestic law to comply with ECHR procedural obligations.
41. Another issue explored briefly in the Court ruling is the issue of ECHR independence requirements in light of the ICRIR Commissioner for Investigations being a former senior NI police officer, in both the RUC and PSNI. The Commissioner rose ultimately to preside, as Assistant Chief Constable, over the special branch (renamed c3) of the police, the branch responsible for handling informants and other covert powers.
42. To this end the Court states that this the issue of the independence of the Commissioner for Investigations as a former RUC/PSNI officer would have to be dealt with on a case by case basis stating “*Self-evidently, he must recuse himself from any*

³⁹ Dillon [2024] NIKB 11, para 284. [284] Whilst the court is not dealing with a “specific case” it concludes that the proposed statutory arrangements, taken together with the policy documents published by the Commission inject the necessary and structural independence into the ICRIR. At this remove the court concludes that the ICRIR is sufficiently independent to comply with the requirement for independence to meet the procedural obligations under articles 2/3 ECHR.

⁴⁰ HL Hansard Volume 827: 24 January 2023 Column 155-6 Amendment 72



review involving an incident in which he was involved as a former RUC/PSNI officer, or in respect of which there is a personal conflict of interest.”⁴¹

43. The UK submission to the CM, in the annex produced by the ICRIR states that when the Commissioner for Investigations was appointed (by the Secretary of State) in light of his past in policing role “a thorough assessment of this was made”, “including checking the previous roles that he had undertaken to confirm that he had not worked in roles or departments that could potentially be subject to investigation by the Commission.”⁴²
44. However, when CAJ issued a freedom of information request to the Northern Ireland Office on information held regarding the consideration given to the past police role of the appointed Commissioner for Investigations, they only held one paragraph of information, which reads as follows:

In coming to this recommendation, the panel considered carefully his past role as a police officer of the Royal Ulster Constabulary. This is not an automatic bar to appointment. The panel asked the candidate to consider if he had involvement in cases that might fall within the Commission’s remit. The candidate confirmed that he did not consider this to be the case due to the roles he had been in, and, while he would have no problem robustly scrutinising officers of the RUC, considered that he would want to build teams and mechanisms with sufficient distance from the RUC to be able to make judgements without any risk to perceptions of independence.⁴³

45. This information would indicate that the consideration by the assessment panel was limited to whether the candidate himself declared involvement in particular cases.
46. It is the case that the Legacy Act does not debar former RUC officers from investigative roles in legacy cases, a departure from current practice (this had been the practice in both the Police Ombudsman and Kenova under the Package of Measures.)
47. In the case of the Commissioner for Investigations it is not clear how a case-by-case assessment would work when dealing with a former officer whose career was not restricted to junior roles but rather was also a senior officer. It would be inevitable that the Commissioner for Investigations would therefore be regularly overseeing reviews which engage the actions of former colleagues, including subordinates for whom he was ultimately responsible. The extent of this is heightened by his ultimate role within the PSNI hierarchy over the ‘special branch’ (renamed c3)– the unit responsible for paramilitary informants and covert operations, where there are most concerns regarding past unlawful practices and agent involvement in violations.

The narrative of the Legacy Act in the High Court Judgment.

48. The High Court ruling also included a lengthy narrative of 70 [paras 70-140] of the ruling to the “DEVELOPMENT OF THE ACT – HOW DID WE GET HERE?” setting out the process as to how the Legacy Act came about. However, the judgment openly states

⁴¹ Dillon [2024] NIKB 11, para 273

⁴² [DH-DD\(2024\)364](#)

⁴³ NIO freedom of information request - FOI/23/190, the NIO also provided a copy of a line given for a press Q&A which alluded to this position.

that the material was largely drawn from material provided by UK Government lawyers defending the case.⁴⁴

49. On the one level within these 70 paragraphs⁴⁵ of the judgement is some enlightening material relating to internal UK Government position and option papers that had not been in the public domain. For example, the ruling reveals that an internal options paper presented within the UK Government had discounted the option of continuing the Package of Measures by (falsely) arguing there was no public support for them, and also and that it did not provide ‘certainty’ to veterans “who were being exposed to multiple investigations”.⁴⁶ This appears to confirm the motivation for closing the Package of Measures is not that it ‘was not working’ but rather that it was investigating military veterans. This paper also highlights that the SHA was abandoned as whilst Government conceded it was ‘victim centred’ and supported by NI political parties, it would have continued investigations into veterans.⁴⁷
50. However, the broad thrust and particular aspects of the narrative in the High Court ruling have clearly been heavily influenced by the UK Government’s own heavily contested narrative as to how the Act came about, its purpose and the process.
51. This includes a narrative regarding the UK engagement with the Committee of Ministers, which implies that the UK had extensive good faith engagement with the CM, largely consisting of a list of times the UK wrote to the CM. This was not our recollection of the process and in particular the withholding of amendments from the CM. In addition, the High Court reflects a position that the CM had undergone a ‘shift in tone’ in September 2023 towards a more positive stance towards the Legacy Act. In practice the CM chair was invited to take the rare step of writing to the UK.⁴⁸

Closing down the Package of Measures

52. The Legacy Act is closing down on the 1 May 2024 all current mechanisms for conducting Article 2 compliant investigations into deaths during the Northern Ireland conflict which were established as the ‘Package of Measures’ further to the execution of the current group of cases.
53. There has been particular activity around inquests with a former opposition Secretary of State raising concerns in the UK Parliament that key inquests were being

Dillon [2024] NIKB 11, [74] “Mr McGleenan [for the Secretary of State] charted a chronological course through a substantial amount of documentary evidence since the B-GFA. This material demonstrates how successive governments have attempted to deal with the legacy of the Troubles. It explains and reveals the thinking behind the provisions of the 2023 Act and the competing policy objectives which it seeks to balance. The court has reviewed this information in detail and sets out a summary of the key points below.”

⁴⁵ Dillon [2024] NIKB 11, Paragraphs 49-96

⁴⁶ Dillon [2024] NIKB 11, Para 95.

⁴⁷ Dillon [2024] NIKB 11, [96] Option B was to implement the SHA proposals without revision. This was considered more favourably, in large part because it was “designed to be balanced and fair” and would be accepted by all main NI parties (with the exception of the UUP). Moreover, the focus on criminal justice outcomes was offset by the time limit of five years for operation of the HIU and the introduction of specific truth-seeking bodies. However, it was noted that this option, whilst more victim-centred, would be unlikely to provide the “level of certainty which veterans are seeking.”

⁴⁸ Dillon [2024] NIKB 11, Paragraphs 133-139.



‘deliberately delayed’ to seek to run down the clock until curtailed by the Legacy Act.⁴⁹

54. There have also been a number of instances of very public intervention by the Ministers to try and prevent coroners revealing ‘national security’ information, understood, and on occasions confirmed, to relate to the involvement of state agents in human rights violations.
55. This was the case in the Inquest into the death of Sean Brown where the Coroner publicly identified that there were up to 25 state agents among the suspects to the murder.
56. In the *Thompson* inquest the Secretary of State, has twice sought to prevent the Coroner from publishing a gist of national security information, despite following the first set of proceedings, the PSNI agreeing to do so. The Secretary of State has argued that the courts should implement a Government policy of ‘neither confirm or deny’ (NCND) regarding sensitive material. The Courts have held that there is no legal basis for such a doctrine. It is notable by contrast that the power to redact out such information, which the Secretary does not have over the independent judiciary, will be in place to prevent the publication of such material in ICRIR reports.
57. Lawyers for the family in the *Fergal McCusker inquest*, raised concerns of “an unprecedented political intervention” revealing that the Secretary of State had written to the Chief Constable (who is operationally independent) to complain that it was ‘unwelcome’ decisions had been taken without reference him. The Chief Constable replied reportedly in ‘fairly robust terms’ pointing out that “I am independent of the executive and not subject to the direction or the control of government ministers, department or agencies.” Again, it is notable that there *will* be such Ministerial direction and control over the content of ICRIR reports.⁵⁰
58. The Chief Constable, now Jon Boucher, before a UK Parliamentary Committee this month, challenged the application of the NCND doctrine when stretched the extent of preventing investigations into agents of the State and granting de facto immunity:

I am probably bringing a new challenge now, because this is the way it has always been done. Of course, when you go into a new role and somebody says: “Well, this is the way we do things,” because of my background and experience I question it—“Well, is that right?”—and question what NCND cannot do. **There is no immunity process. ... Saying that you cannot investigate a crime any further because there is an agent involved is poppycock. That is not right.**

I think there has been an application of NCND in Northern Ireland that has restricted previous Chief Constables and investigators. Through the narrative that I described—from these incredibly impressive people who have dealt with legacy in the past—that has created a position that has inhibited us freeing ourselves from some of this legacy. It is like an anchor that holds us back. I think the NCND provisions are part of that. **That is why all I am asking is for**

⁴⁹ <https://www.irishnews.com/news/northern-ireland/troubles-inquests-delayed-to-run-down-clock-until-law-kicks-in-ex-ni-secretary-DNWQA4UHKRD4FBZFIGOJCDFHRQ/>

⁵⁰ <https://www.irishnews.com/news/northern-ireland/exclusive-chris-heaton-harris-accused-of-unprecedented-political-intervention-in-legacy-inquest-G5HBSNUMQ5EUNFRFXVI7577Y4Y/>



them to be reviewed and re-codified in the context of the Northern Ireland troubles. Nobody who commits murders should be protected by the policy of NCND. I do not think anybody could disagree with that.⁵¹

59. The following section provides further information as to the delivery of the Package of Measures in recent months.

Police Ombudsman Legacy Investigations

60. We have received the following information from the Ombudsman's office, on request, regarding current legacy cases:

- The Police Ombudsman is in receipt of 442 complaints and referrals relating to events during the period of the 'Troubles'. A feature of many of these complaints are allegations of collusion between paramilitary organisations and members of the RUC.
- Due to well-rehearsed issues associated with underfunding and other challenges, the Police Ombudsman has been unable to progress investigations of 281 of these matters. On 1 May 2024 the Ombudsman will lose jurisdiction to investigate these complaints due to implementation of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023.
- The Ombudsman will be unable to continue the investigation of a further 54 cases that have been progressed to various degrees as they cannot be completed by 30th April 2024. In accordance with the provisions of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 those investigations will end with no further action.
- Between 1 May 2024 and 30 April 2025 a further 95 investigations that have been completed will be subject of final reporting to bereaved families under the transitional arrangements.
- The Police Ombudsman's History caseload includes 12 matters that are not 'Troubles' related matters as defined by the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. This casework will still be subject of investigation by the Police Ombudsman.

Inquests

McKerr

⁵¹ <https://committees.parliament.uk/event/21199/formal-meeting-oral-evidence-session/Q25>. (emphasis added) In response to Q23 Mr Boucher stated: "since arriving as the Chief Constable and because of the experiences I have had, I have taken quite a forensic view of how we were dealing with the remaining inquests that were to take place before such inquests had to finish for the commencement of the commission on 1 May. That included my looking at the process that has been adopted on public interest immunity applications... With my background as head of covert policing, undercover policing, I have done a considerable amount of public interest immunity applications and dealt with every type of sensitive information that is available to intelligence agencies and law enforcement. I have taken a very clear position that this totemic approach in Northern Ireland, and I describe it in those terms in the report, is not correct and is often driven by lawyers. What it leads to, as the Chief Constable of PSNI, is a perception in communities in Northern Ireland that there is a cover-up—[...]that the authorities are deliberately preventing information from coming out."



61. Jonathan McKerr, son of Gervaise McKerr lodged judicial review proceedings in the High Court in September 2023, challenging various aspects of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. On 9 October 2023 the High Court selected a number of test cases (currently subject to appeal)⁵², all of which concerned deaths post-dating October 1990. Mr McKerr's father was shot and killed by the RUC in 1982, therefore his application for judicial review has been stayed by the High Court.
62. In January 2024, Mr McKerr lodged an application in the ECtHR. No correspondence has yet been received from the ECtHR.
63. There has been no further progress with the inquest into the death of Mr McKerr's father since the last update to the Committee of Ministers. The Coroner, Mr Justice O'Hara, has yet to complete the Public Interest Immunity exercise into the deaths at Kinnego in October 1982, which is the first sequentially of the 4 incidents in the autumn/winter of 1982 into which the Coroner was to examine.

Jordan

64. Inquest findings were delivered in November 2016. The Coroner, Mr Justice Horner, referred two police officers, Officers M and Q to the Public Prosecution Service for the Director of Public Prosecutions (DPP) to consider whether they should be prosecuted for the offences of conspiracy to pervert the course of justice and/or perjury. Seven years later, on 11 October 2023, the DPP indicated that "there is no decision as to prosecution to take" in respect of the officers because the police "did not consider that there was evidence of an offence and there is no individual reported to whom the test for prosecution could be applied." Mrs Jordan commenced judicial review proceedings in the High Court, and the DPP's decision was quashed by Scofield J. on 28 March 2024. On 4 April 2024 the DPP corresponded and said that a decision on whether to prosecute Officers M and Q would issue on week commencing 15 April 2024. As of 17 April, no decision has been communicated.
65. Separately, Mrs Jordan issued proceedings in the High Court in September 2023 challenging the provisions of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. On 28 February 2024, the High Court granted Mrs Jordan a declaration⁵³. The Secretary of State for NI has issued a Notice of Appeal against the judgment and Order of 28 February and Mrs Jordan is cross appealing. The appeal is listed for hearing before the Court of Appeal on week commencing 10 June 2024.
66. In January 2024, Mrs Jordan lodged an application with the ECtHR. No correspondence has yet been received from the ECtHR.

Finucane

67. In December 2022 the High Court quashed a decision of the SOSNI on 30 November 2021, not to establish a public inquiry into the death of Patrick Finucane 'at that time'. The High Court ordered that the SOSNI should pay Mrs Finucane £5k for a

⁵² <https://www.judiciaryni.uk/files/judiciaryni/2024-02/Dillon%2C%20McAvoy%2C%20McManus%2C%20Huges%2C%20Jordan%2C%20Gilvary%2C%20and%20Fitzsimmons%20Application.pdf>

⁵³ Ibid

breach of her Article 2 rights. This was appealed by the SOSNI and the appeal proceedings concluding in September 2023. At the time of writing the Court of Appeal, in a case about Article 2 delay, has failed to deliver a judgment.⁵⁴

Shanaghan

68. In January 2024, the next of kin lodged an application with the ECtHR. No correspondence has yet been received from the ECtHR.

Kelly & Others

69. There have been no developments since 11th March 2024, when the Crown Solicitor's Office advised that in relation to the inquest, the Ministry of Defence (MOD) had made progress on both the sensitive and non-sensitive elements of its disclosure including annotating all schedules to show where documents have been disclosed in the civil claim and creating an electronic version of the sensitive material that has been reviewed and processed to date. In January, it was advised that further work on MOD's sensitive disclosure was required, and it was stated that the MOD's aim was to complete the review of the additional material by end of February but the MOD have been unable to complete this task, or its work on its non-sensitive disclosure, however the MOD continues to progress its disclosure.

Other Inquest proceedings

70. The *Springhill inquest*⁵⁵ opened in February 2023, investigating a military shooting, killing five persons, including three minors and a priest in July 1972. The Attorney General for Northern Ireland had directed a fresh inquest in 2014.⁵⁶ There has been a ruling on applications for anonymity, screening and the provision of evidence remotely⁵⁷ and numerous hearings with the hope that this inquest will complete before 1 May.

71. In the inquest into the death of *Sean Brown* (deceased 19 May 1997) a High Court judge sitting as coroner, released a limited gist of sensitive material which revealed confirmed that more than 25 people had been linked by intelligence to the loyalist murder of Mr Brown, including several state agents. The SOSNI, and PSNI have challenged his decision to release this material.⁵⁸

72. The Coroner has noted that the ICRIR is not the appropriate mechanism to investigate this murder⁵⁹ and in a ruling on the claim for Public Interest Immunity in the inquest into the death of the Coroner noted his inability to carry out an Article 2

⁵⁴ In addition recent archival material presented in the media also claim that former Prime Minister Tony Blair worked behind scenes to thwart Pat Finucane public inquiry after discussion with MI5
<https://www.belfasttelegraph.co.uk/news/politics/tony-blair-worked-behind-scenes-to-thwart-pat-finucane-public-inquiry-after-discussion-with-mi5-boss/a1324106581.html>

⁵⁵ <https://www.judiciaryni.uk/springhill-inquest>

⁵⁶ <https://www.judiciaryni.uk/publications/press-notice-springhill-inquest-17-february-2023>
<https://belfastmedia.com/springhill-massacre-families-to-relaunch-their-campaign-in-fight-for-truth-and-justice/>

⁵⁷ <https://www.judiciaryni.uk/files/judiciaryni/decisions/In%20the%20matter%20of%20an%20inquest%20into%20the%20deaths%20of%20John%20Dougal%20and%20others.pdf>

⁵⁸ <https://krw-law.ie/sean-brown-statement/>

⁵⁹ <https://www.irishnews.com/news/northern-ireland/high-court-judge-believes-legacy-body-not-appropriate-mechanism-to-investigate-sean-brown-murder-E6NQLSUB65DRJC4DIUWCNCZ4AI/>



inquest and wrote to the SOSNI requesting that a public inquiry be held into this murder:

[34] In consequence I am satisfied that my duty to carry out a full, fair and fearless investigation into Mr Brown's death is seriously compromised as issues of central importance to the death cannot be dealt with by the inquest process. I cannot investigate or make a proper analysis of material which is the subject of the PII certificates.

[35] In these circumstances, and with considerable regret, I have concluded that I cannot continue with this inquest. To do so would inevitably result in an inquest that would be incomplete, inadequate and misleading.⁶⁰

73. On 22 April the Irish state broadcaster RTÉ aired a documentary 'Murder of a GAA Chairman' highlighting the obstacles the next of kin have faced in seeking truth and justice in relation to this murder.⁶¹

74. The inquest into the death of *Liam Paul Thompson (deceased 27 April 1994)* in which CAJ acts, was due to resume in February 2024 for a three-week hearing but due to late Public Interest Immunity claims made in relation to disclosure this did not proceed. There have been two judicial reviews challenging the decisions of the Coroner to provide the next of kin and other parties a gist of PII material. In both judgments the High Court dismissed claims that the 'Neither Confirm Nor Deny' (NCND) national security policy was a legal principle. The first challenge taken by the SOSNI and Chief Constable was dismissed on all grounds on 25 March 2024:

[28] As the authorities make clear, there is no such principle: it is a lawful policy, adopted by the executive, the operation of which is subject to the proper application of the law. To seek to elevate it to the status of a 'principle' which is capable of being 'breached' represents a misunderstanding of the legal position and renders much of the pleading redundant. It is difficult to criticise a decision maker for a failure to apply the law correctly when the legal position is itself misstated in the judicial review challenge.⁶²

75. The second challenge taken only by the SOSNI was also dismissed on all grounds on 25 April 2024⁶³. This is subject to appeal.

76. The inquest into the death of *Fergal McCusker* (alluded to above) has halted with the coroner requesting the SOSNI to hold a public inquiry into this death. The coroner's decision to issue a limited gist, of sensitive information linked to the case is subject of an ongoing legal challenge by the British government, including SOSNI.

⁶⁰ <https://www.judiciaryni.uk/files/judiciaryni/2024-03/In%20the%20matter%20of%20an%20inquest%20touching%20the%20death%20of%20Sean%20Brown.pdf>

⁶¹ <https://www.rte.ie/radio/radio1/clips/22386998/>

⁶² <https://www.judiciaryni.uk/files/judiciaryni/2024-04/The%20Chief%20Constable%20of%20The%20Police%20Service%20of%20Northern%20Ireland%27.pdf>

⁶³ <https://www.irishnews.com/news/northern-ireland/paul-thompson-secretary-of-state-loses-high-court-disclosure-challenge-LKTFEBXPMMHZZDLUICVOC2PLM/>



77. *Kingsmill* inquest has concluded⁶⁴ with the survivor of this massacre and next of kin calling for a public inquiry.⁶⁵
78. The inquest into the deaths of *Daniel Doherty & William Fleming*⁶⁶ (deceased 6/12/1984) has concluded and the Coroner has retired to consider his findings.
79. In the inquest into the death of *Francis Bradley*⁶⁷ (deceased 18/2/1986) evidence has concluded and closing submissions were heard in late April with the Coroner retiring to consider his findings.
80. In connection with the *Duffy* inquest concerns were raised that the Ministry of Defence (MOD) is “sabotaging” legacy inquests by failing to provide sufficient resourcing, agreeing with comments from former northern secretary Peter Hain in the House of Lords who stated that “state bodies appear to be openly running down the clock to May 1st, when the due process that we set such store by in the United Kingdom will no longer apply in Northern Ireland, thanks to the shameful Legacy Act”⁶⁸
81. In the inquest into the death of *Sam Marshall* (deceased 7/3/1990) Public Interest Immunity Hearings are ongoing and this inquest will not be completed by 1/5/24. One module of evidence was heard in April 2023 and the evidence of civilians and experts received.
82. The inquests into the deaths of *Gervaise McKerr, Eugene Toman and Sean Burns* (deceased 11/11/82) will not complete by 1/5/24. Preliminary Hearings have been ongoing since 2007.
83. The inquest into the death of *Gerard Casey* (deceased 4/4/1989) was ordered by the Attorney General for Northern Ireland in 2010, however the inquest was never allocated to a Coroner to be case managed. This is one of the cases considered by OPONI’s Operation Greenwich and will not open before 1/5/24. Mr Casey’s widow lodged proceedings in the High Court in September 2023 challenging the abolition of inquests by the Legacy Act and this case has been stayed pending a test challenge. She also lodged proceedings in the ECtHR in January 2024 but has had no update.
84. An inquest into the death of *Joe Campbell* (deceased 25/2/77) was ordered by the Attorney General for Northern Ireland in 2015. A module of evidence was heard in 2023 but this inquest will not complete by 1/5/24. The elderly next of kin has lodged an application with the ECtHR in January 2024 but has heard nothing further in response.
85. *Liam Ryan* (deceased 29/11/89) – an inquest was ordered by AG in March 2024. Allegations of collusion between mid-Ulster UVF (loyalists) and security forces arise in this death. This inquest will not open before 1 May 2024.

⁶⁴ <https://www.judiciaryni.uk/kingsmill-inquest>

⁶⁵ <https://krw-law.ie/statement-statement-of-barry-odonnell-krw-law-on-kingsmill-inquest-verdict-and-findings/> <https://krw-law.ie/belfast-telegraph-sole-survivor-of-massacre-says-families-are-no-nearer-to-truth/>

⁶⁶ <https://www.judiciaryni.uk/judicial-decisions/2024-nicoroner-23>

⁶⁷ https://twitter.com/madden_finucane/status/1783456847434776693/photo/1

⁶⁸ <https://hcclawyers.com/legacy-inquests-being-sabotaged-by-lack-of-resources-lawyer-representing-troubles-bereaved-says-irish-times-15-2-2024/>

86. *James Bell* (deceased 14/8/80) – an inquest ordered by AG in March 2024. This death was as a result of up to 90 rounds being fired by the British Army Parachute Regiment at two men involved in a burglary at a hotel in Cookstown. This inquest will not open before 1 May 2024.
87. In the *Coagh* inquest it was held that the use of lethal force was justified as the soldiers involved in the deaths had an honest belief that it was necessary in order to prevent loss of life and believed it to be reasonable. It also held however that the operation was not planned and controlled in such a way as to minimise to the greatest extent possible the need for recourse to lethal force.⁶⁹
88. In relation to the sectarian loyalist murders of *Kevin and Jack McKearney and Charlie and Tess Fox*, in the Moy in 1992 the Coroner stated: “*that he has been prevented from delivering a “narrative” around the events surrounding of the murder of four people killed in two loyalist attacks in Co Tyrone in 1992 following a legal challenge from the Government to it being delivered in open court...Judge Richard Greene KC also said he had reached a provisional view that an inquest into the four deaths cannot proceed because of the withholding of sensitive files from the proceedings on national security grounds.*”⁷⁰
89. An application for judicial review was dismissed concerning the death of *Raymond McCord* and the decision of the Coroner to decision not to continue with preparatory work up to the 1 May 2024.⁷¹
90. The Attorney General for Northern Ireland has ordered a fresh inquest into the death of *Joe McCann*.⁷²

Outstanding PPS Decisions on Prosecutions

91. *Kathleen Thompson*⁷³ (deceased 6/11/71) Soldier D referred to PPS in October 2022. There have been two judicial reviews and two Court of Appeal hearings culminating in decisions of the CA on 15/4/24. Held that there was nothing exceptional, despite findings of Coroner of unlawful killing by an identifiable suspect, to take investigation out of LIB case sequencing model. PPS also failed to seek inquest materials (transcripts, expert reports, statements, maps, photographs etc) from Coroners Service. Inquest materials provided by NoK’s solicitors directly to PPS who failed to consider them.
92. Mrs Thompson’s son William lodged JR proceedings in the High Court in September 2023 challenging immunity provisions of the Legacy Act – stayed pending test challenges as per McKerr.
93. Mrs Thompson’s son William also lodged proceedings in ECtHR in January 2024 but has heard nothing further in response.

⁶⁹ <https://www.judiciaryni.uk/coagh-inquests>

⁷⁰ <https://m.belfasttelegraph.co.uk/news/northern-ireland/coroner-prevented-from-delivering-ruling-on-uvf-deaths-by-government-challenge/a685404318.html>

⁷¹ <https://www.judiciaryni.uk/judicial-decisions/2024-nikb-29>

⁷² <https://krw-law.ie/itv-northern-ireland-attorney-general-orders-inquest-into-official-ira-man-joe-mccanns-death/>

⁷³ <https://www.judiciaryni.uk/kathleen-thompson-inquest>



94. *Bloody Sunday*. Prosecutorial decisions in relation to soldiers who gave false evidence on oath to the Bloody Sunday Inquiry in 2002/3, on 19/4 PPS decided not to prosecute any soldier (or a member of the official IRA) for the false evidence given on Bloody Sunday.
95. *Leo Norney* Shot dead by British Army in west Belfast on 13/9/75. In November 2023 the Coroner referred a number of soldiers who falsified a cover story justify a shooting later found to be unlawful at inquest in 2022/2023. Decision awaited before 1/5/24.⁷⁴
96. *Cairns family*. Following broadcast of a BBC Spotlight programme on 15/10/19 a former member of the UVF, Laurence Maguire, who admitted on national television to conspiring to murder every male member of the Cairns family in mid Ulster in 1992, was investigated by police after the family lodged JR proceedings in the High Court in 2020 at police inactivity on foot of the broadcast. The proceedings challenged the failure of the SOSNI to establish a public inquiry into the allegations. Two members of the family were in fact murdered by the UVF in October 1993. Family have been notified that a decision will be made before 1/5/24. Further update. On 18 April 2024 the PPS decided to prosecute Laurence Maguire for conspiracy to murder members of the Cairns family on a date unknown.
97. The PPS are scheduled to make prosecution decision in relation to the Army Shooting of the Conway Brothers by Undercover Army Unit on 15th April 1972 on Friday 26th April 2024.⁷⁵
98. The PPS are scheduled to make a prosecution decision as to whether to prosecute army personnel for the shooting of 14-year old *Annette McGavigan* in 1971 on Monday 29 April.⁷⁶

CAJ, April 2024

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⁷⁴ <https://www.judiciaryni.uk/leo-norney-inquest>

⁷⁵ [PPS to make Prosecution Decision in Army Shooting of Conway Brothers by Undercover Army Unit on 15th April 1972 on Friday 26th April 2024 - Harte Coyle Collins, Solicitors & Solicitor Advocates \(hcclawyers.com\)](#)

⁷⁶ [PPS to Make Prosecution Decision on 1971 Fatal Shooting of Annette McGavigan \(14\) on Monday 29th April 2024 before Legacy Act Deadline - Harte Coyle Collins, Solicitors & Solicitor Advocates \(hcclawyers.com\)](#)