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02 June 2023

Dear Peter,

Northern Ireland Troubles (Legacy and Reconciliation) Bill: Operation Kenova

Thank you for your letter of 19 February regarding using Operation Kenova as a proven model for how to deal effectively with the legacy of Northern Ireland's past.

Legacy, as we both know all too well, is a complex and sensitive issue. I am the first to acknowledge the challenging nature of this legislation. Despite the best efforts of successive governments, reaching agreement on how to address the legacy of the past has proved to be elusive. This piece of legislation delivers a package of measures that, in the Government's view, will together help to address legacy issues fairly, moving the current focus away from criminal justice outcomes and towards information recovery and reconciliation.

While there are elements of Operation Kenova, such as the level of personal engagement of the Officer in Overall Charge, that are not scalable, the Government recognises the innovative and effective approach that Operation Kenova has taken in approaching its task. It is precisely because of this ability to pioneer a different approach, which the Government considers it is right to pursue its policy aim of taking a different approach to legacy cases than those that have tried and failed in the past.

There are many features of Operation Kenova's work that the Government considers are capable of being mirrored and built upon, should the Commission choose to do so. Indeed, as I have put on record in our debates numerous times, the Government views it as vital that the Commission is free to determine its own approach to these complicated matters. Operation Kenova has made good use of the opportunity of a

stand-alone investigation into specified sets of circumstances. The Government's view, however, is that enabling legislation is needed so that the Commission can operate on a systematic basis, with wider powers (greater than those afforded to the police), and sufficient statutory discretion with the flexibility to accord greater weight to the needs of victims and the objective of reconciliation. Some important elements of this legislation include:

- Establishing a request process that means that families and victims will have to be at the heart of the process from the beginning, shaping the request and the elements of the work the Commission undertakes on their case;
- Granting wide powers to the Commission, and crucially imposing strong duties on other parts of the state to comply;
- Giving great flexibility to the Commission to determine how cases are examined, including the ability and police powers to conduct a criminal investigation equivalent to that conducted by police. The Commission will take into account relevant factors, including the wishes of family members, when deciding on the particular investigative approach in any given case. The Commission itself will need to set out a scheme of policies about how it utilises this wide flexibility. I would observe that this is similar to how Operation Kenova has constructed some of its approach, where issues raised have been on the margins of its specified terms of reference.
- Providing for direct judge-led involvement and oversight in its work as well as a statutory board of Commissioners. As has recently been set out by the Secretary of State, the selection of Commissioners will be independently led by the Chief Commissioner-designate, who is a former Lord Chief Justice of Northern Ireland.

Operation Kenova's investigation team carry out their investigation by virtue of Section 98(1) of the Police Act 1996 (as amended) and thus have all the necessary powers and privileges of police officers of the Police Service of Northern Ireland. Section 98 (1) allows cross-border aid of one police force by another and in this circumstance was used by the chief constable of the Police Service of Northern Ireland to request provision of "constables or other assistance for the purpose of enabling ... the Police Service of Northern Ireland to meet any special demand on its resources."

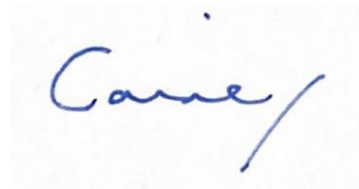
As part of this work, two non-statutory, advisory boards were appointed by the Officer in Overall Charge to assist him. Terms of Reference were agreed in order to set the remit and boundaries for the work including, therefore, allowing the operation to ensure that cases outside of its scope did not add to its workload or form part of its delegated statutory responsibilities by virtue of the above provisions.

While this structure has operated well for the specific cases that have been referred to it by the PSNI, it is by definition one police force providing assistance to another. The Government considers that a specific statutory footing is needed for the wider work and remit envisaged with greater flexibility than a police force and with bespoke powers reflecting the specific nature of the case work. Moreover, this statutory framework will provide for accountability, ultimately to Parliament, including via the National Audit Office and Public Accounts Committee.

It is vital that the Commission be informed by best practice from elsewhere, including Operation Kenova which has achieved very positive outcomes in building strong relationships and helping them to better understand the circumstances around what happened to their loved ones. The best response, however, is not to scale up or seek automatically to replicate all elements of it.

I remain committed to continued engagement with you, along with other Parliamentarians and stakeholders, as the Bill continues to make progress through our House.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Caine', with a long, sweeping flourish extending from the end.

LORD CAINE
PARLIAMENTARY UNDER-SECRETARY OF STATE
FOR NORTHERN IRELAND