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Belfast

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 11 October 2021

**Legacy and Dealing with the Past**

Dear Karen,

I am writing to you as you kindly arranged, and participated, in the Zoom meeting with us which took place on 11 May last.

We in the Malone House Group welcome the initiative that the Presbyterian Church has taken in considering legacy in the Supplementary Report of the Council for Public Affairs (‘the Report’) and in the debate on 6 October at the Assembly itself.

The various statements by the Church and in the Assembly debate were heartening in the breadth of opinion expressed (as per the BBC NI report linked below).

We do appreciate that the Council has been engaging with the Government (and of course with groups such as Malone House) on this important matter and have considered its Report.

However we do have particular concerns about the statement in paragraph 5 that:

“ . . . Some victims of violence who have lost loved ones still seek justice, however unlikely such recourse through the courts might be. To remove that from them is to remove hope, and is antithetical to the gospel which unites both love and justice in the person of Jesus Christ. ***It may be enough for some that that the remedy they crave will show on the balance of probabilities, that such and such a one perpetuated this act, even if the prospect of conviction in a criminal court ‘beyond all reasonable doubt’ is now beyond our system of justice to deliver.”***

(I have highlighted in bold italics the sentence that causes us such concern, though of course it must be considered in its context.)

I suggest that the problem which we all face is how to deliver any form of ‘justice’ short of circumstances where the Director of Public Prosecutions can take a case to court for ultimate decision by a judge (and where appropriate a jury). It is common case, of course, that, as the Report states, it is unlikely many prosecutions can now be taken.

Thus, in all the cases where there cannot now be any prosecution, your suggested remedy for victims will be some form of ‘family report’ (after police investigation) and it is expected that such report will identify perpetrators.

But the problem which, with respect, the Report should have addressed is how in such circumstances to deliver justice in the round. As you know, justice is a much greater concept than discovering and revealing alleged perpetrators’ identities.

There are two problems of principle:

* *Firstly,* it is antithetical to our system of justice for any police investigator to act also in the role of adjudicator by way of a document such as a ‘family report’ in which the investigator purports to identify any perpetrator.
* *Secondly* it is a matter of fundamental justice and the rule of law that every citizen is entitled to a fair hearing and to protection of his or her reputation. (These rights are both part of our common law and are protected under the European Convention on Human Rights particularly in Articles 6 and 8 – to which the United Kingdom is a party.)

Thus, any legacy proposal must address these principles transparently.

While, of course, the principles can be clearly stated, it is a matter of great difficulty to work out a scheme which can, in observance of the principles, deliver justice both to any alleged perpetrator and to victims.

We did touch on these matters in our May meeting and we in the Malone House Group would certainly be happy to meet again with members of the Council, and yourself to discuss things further, especially as the legislation moves closer.

If you would like amplification or further explanation of anything in this letter, do of course let me know and I shall be glad to respond. Feel free to circulate this letter and attachments to your members.

I look forward to hearing from you.

Kind regards

Jeffrey Dudgeon (Malone House Group Convenor)

BBC NI news report link: <https://www.bbc.co.uk/news/uk-northern-ireland-58819460>