

Briefing: Research Shows UK Government Is Wrong about ‘Vexatious Claims’ from Northern Ireland Conflict

The issue

- The UK government alleges that British military veterans have been subjected to ‘vexatious claims’ and ‘vexatious prosecutions’ stemming from the conflict in Northern Ireland prior to the 1998 Belfast/Good Friday Agreement (B/GFA). In this context, we interpret ‘vexatious’ as meaning false, repetitive, lacking evidence or brought for malicious purposes.¹
- RSI’s research indicates that since 2016, there have been over 250 references to the concept of ‘vexatious claims’ in parliamentary debates – not only in relation to Northern Ireland, but also describing claims made against the Ministry of Defence and individual soldiers arising out of the UK’s overseas operations – as well as at least seven parliamentary discussions dedicated to the topic.²
- However, the government has not yet produced statistical evidence in support of its contention that vexatious claims are a serious problem in the context of the conflict in Northern Ireland.

Proposed measures

1. The government is proposing a permanent end to all criminal prosecutions and civil cases arising from alleged crimes in Northern Ireland stemming from the ‘Troubles’ prior to the 1998 B/GFA, in the form of what the government describes as a ‘statute of limitations’.³
2. This proposal would end more than 900 ongoing criminal investigations and at least 1,000 pending civil claims relating to alleged conflict-related abuses in Northern Ireland.⁴

RSI’s research and conclusions

3. The UK’s legal system gives the courts many powers to strike out vexatious claims at an early stage. For example, in civil cases, judges have many powers to strike out unmeritorious or malicious cases, and they can also grant a civil restraint order preventing litigation from a particular individual or group without prior permission.⁵
4. For criminal prosecutions, it is prosecutors who decide whether to bring a case. They must assess whether the evidence provides a ‘reasonable prospect of conviction’, and must also carry out a public interest test which asks whether, considering all the circumstances, a prosecution is in the public interest – in light of

¹ In *Attorney-General v. Barker* [2000] EWHC 453 (Admin), the England and Wales High Court explained [at para. 19] that ‘[t]he hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.’

² Statistical data relating to the period of January 2016–November 2021 are available upon request.

³ Northern Ireland Office, [‘Addressing the Legacy of Northern Ireland’s Past’](#), CP 498 (July 2021), pp. 20–21.

⁴ Police Service of Northern Ireland, [‘Response to Freedom of Information Request: FOI-2020-02235’](#) (15 January 2021); BBC News, [‘Troubles legal aid claims from government ‘utterly wrong’](#) (*BBC News*, 06 December 2021).

⁵ See [Civil Procedure Rule 3.11](#), [Practice Direction 3C](#) (England and Wales) and [Rules of the Court of Judicature \(NI\) 1980](#), Order 18, Rule 19 (Northern Ireland).



factors such as the age and mental and physical state of the defendant.⁶ The Public Prosecution Service (PPS) remains under an obligation to consider the public interest for or against prosecution for the duration of the case.⁷

5. If these safeguards fail and a vexatious criminal prosecution proceeds, the defendant(s) may be able to launch a civil claim against the PPS, the Police Service of Northern Ireland (if relevant), or a private prosecutor – somebody who brings criminal proceedings outside of the PPS process – on the grounds that they have been subject to a ‘malicious prosecution’.⁸
6. In addition to these constraints, regulatory standards binding upon legal professionals require solicitors to act with integrity and in line with the best interests of the client. Lawyers who violate these standards risk disciplinary action, including restrictions being placed on their practice and, in the most egregious cases, being struck off the relevant professional register.⁹
7. Our research has not identified any explanations by the government regarding why it believes these existing powers are inadequate for dealing with any claims stemming from the conflict in Northern Ireland that are unfounded or trivial.
8. Further, the Joint Committee on Human Rights has stated – regarding similar legislation that sought to prevent ‘vexatious claims’ and ‘vexatious prosecutions’ from arising out of the UK’s military operations overseas¹⁰ – that there is no evidence to suggest that existing powers are insufficient for halting ‘vexatious’ cases.¹¹
9. Our research using sources such as Hansard and the parliamentary questions database suggests that in the past 20 years, the government has not cited any official statistics or academic studies as evidence for court delays, unfairness or any similar problems due to ‘vexatious’ claims (in Northern Ireland or elsewhere in the UK). Our research also indicates that the government has not defined what kinds of claims it believes are ‘vexatious’ in the context of the ‘Troubles’.
10. In some instances, the government has pointed to specific investigations or prosecutions, such as the recent case involving former member of the Life Guards Dennis Hutchings. Prior to his death, Hutchings had been charged with attempted murder and grievous bodily harm in connection with the 1974 death of John Pat Cunningham, a 27-year-old man with severe learning difficulties who was shot in the back as he fled an Army patrol.¹²
11. However, our research suggests that in the majority of the cases that the government cites, either (a) new evidence was later found to justify bringing criminal proceedings that was unavailable or had not yet been revealed at the time of the original investigation; or (b) delays or refusals by the authorities resulted in

⁶ Public Prosecution Service, ‘[Code for Prosecutors](#)’ (01 July 2016), 4.1-4.58. This code is statutory guidance issued pursuant to [Section 37 of the Justice \(Northern Ireland\) Act 2002](#).

⁷ Ibid, 4.65.

⁸ *Martin v. Watson* [1996] 1 AC 74, 80B-D, in reference to *Clerk & Lindsell on Torts (Sweet & Maxwell, 16th edn, 1989)*, 1042. See also *CXZ v. ZXC* [2020] EWHC 1684 (QB), paras. 14-16; House of Commons Justice Committee, ‘[Private prosecutions: safeguards](#)’, Ninth Report of Session 2019-21 (29 September 2020).

⁹ The Law Society of Northern Ireland, ‘[Regulations and Standards](#)’ (*The Law Society of Northern Ireland*); The Bar of Northern Ireland, ‘[Code of Conduct](#)’ (01 October 2020).

¹⁰ In what is now the Overseas Operations (Service Personnel and Veterans) Act 2021.

¹¹ House of Commons and House of Lords Joint Committee on Human Rights, ‘[Legislative Scrutiny: The Overseas Operations \(Service Personnel and Veterans\) Bill](#)’, Ninth Report of Session 2019-21 (21 October 2020), p. 4.

¹² BBC News, ‘[Dennis Hutchings: Ex-soldier denies attempted murder](#)’ (*BBC News*, 04 October 2021).

repeated court actions. In Dennis Hutchings' case, for instance, the emergence of new evidence meant that both the evidentiary and public interest tests were met in the PPS's view.¹³ A pertinent example of delays or refusals is the case involving the killing of defence lawyer Pat Finucane, discussed below.

12. The government has frequently declined to respond to questions about why it believes 'vexatious' claims are an issue in relation to the Northern Ireland conflict. In response to a September 2021 parliamentary question submitted by Liberal Democrat MP Alistair Carmichael, the Parliamentary Under-Secretary of State for Defence People and Veterans, Leo Docherty, instead referred to the argument that conflict-related investigations have not provided effective outcomes, without providing statistical evidence.¹⁴ Further, when asked in an October 2021 Northern Ireland Affairs Committee meeting how it had been determined that 'vexatious claims' are a problem, the current Secretary of State for Northern Ireland, Brandon Lewis, likewise did not provide such evidence.¹⁵

13. We conclude that the 'vexatious claims' argument is not based on evidence.

Investigations are still occurring due to previous inadequacies

14. It is true that investigations and legal cases may continue decades after the events in question, and this has occurred in Northern Ireland. However, our research suggests that many civil proceedings and criminal investigations regarding the Northern Ireland conflict that would have concluded years ago remain ongoing due to inadequacies in the dispute resolution mechanisms. These inadequacies include, for example, a lack of adequate funding or lack of government disclosures – issues that the state could address.

15. Perhaps the best-known example of this phenomenon is the case involving the killing of defence lawyer Pat Finucane. Over 30 years after Finucane's death – and despite multiple court judgments finding that the UK government had failed to meet its obligation to conduct an effective investigation into the killing – the Council of Europe has recently decided to reopen its supervision of this case, to ensure that ongoing investigations are 'adequate, sufficient and proceed in a timely manner'.¹⁶ In our analysis, this case could likely have ended years ago, if the government had been more forthcoming in providing information and had investigated the killing more efficiently.

16. One reason investigations have failed in the past is due to a lack of cooperation by public authorities. An example of this is the 'slow waltz' process – uncovered by the Police Ombudsman during the investigation into the Loughinisland massacre¹⁷ – whereby the police deliberately withheld some evidence from investigators. As a result, the victims and their families in that case were left waiting for the truth for over 25 years.¹⁸

¹³ Public Prosecution Service, [PPS statement on the death of Dennis Hutchings](#) (*Public Prosecution Service*, 19 October 2021).

¹⁴ Leo Docherty, [Veterans: Civil Proceedings – Question for Ministry of Defence](#), UIN 51617 (*UK Parliament*, 20 September 2021).

¹⁵ Northern Ireland Affairs Committee, [Formal meeting \(oral evidence session\): Addressing the Legacy of Northern Ireland's past: The UK Government's New Proposals](#) (*UK Parliament*, 27 October 2021).

¹⁶ Council of Europe Committee of Ministers, [Supervision of the execution of the European Court's judgments: H46-38 McKerr group v. the United Kingdom \(Application No. 28883/95\)](#), CM/Del/Dec(2021)1398/H46-38, 11 March 2021, para. 4.

¹⁷ In which the loyalist paramilitary group the Ulster Volunteer Force killed six civilians in a pub in Loughinisland, County Down.

¹⁸ Police Ombudsman for Northern Ireland, [Statutory Report: Relating to a complaint by the victims and survivors of the murders at the Heights Bar, Loughinisland, 18 June 1994](#) (9 June 2016), pp. 67-80.

17. The investigatory bodies set up in Northern Ireland thus far have raised broader concerns about the expediency, independence or thoroughness of investigations that ultimately depend on government funding or disclosures.¹⁹

18. RSI concludes that there is no evidence to suggest that ‘vexatious claims’ and ‘vexatious prosecutions’ are the primary cause of delayed or repeated cases that can cause continued trauma to victims, survivors and veterans. Instead, the ‘cycle of investigations’ can only be stopped by a method of investigation that complies with the UK’s international human rights obligations, along with adequate support and transparency from the government.²⁰ Such an approach would help ensure truth and justice for victims and survivors, while also providing legal certainty for veterans and other persons accused of wrongdoing.

¹⁹ For more information, see Amnesty International, [‘Northern Ireland: Time to Deal with the Past’](#) (2013).

²⁰ For more information on the UK’s international human rights obligations, see Rights & Security International, [‘Northern Ireland Legacy: How to Uphold International Human Rights Law’](#) (*Rights & Security International*, 18 August 2021).