

The new Northern Ireland Secretary does not believe that any former British soldier would face prosecution under the controversial Troubles Bill. Read on for

some information which may be welcome as far as it goes, with some BAFF comments and a recommendation below.

Sir Chris Bryant was appointed in succession to Hilary Benn on 20 July. Interviewed by the paper's James Crisp, he told The Telegraph that "To be absolutely clear, I have veterans' backs on this."

The Government's amendments to the Bill had been "further strengthened", and the final version of the legislation would "overwhelmingly" benefit veterans, for whom protections would be "as robust as possible".

Sir Chris pledged that elderly soldiers would be allowed to give evidence remotely, anonymously, and with legal support from the Ministry of Defence.

'No knock on the door, no rinse and repeat'

Legal notices from the Legacy Commission (previously the Independent Commission for Reconciliation and Information Recovery) would go through the MOD, sparing veterans from cold calling:

"The Bill will make it absolutely clear that nobody's going to get a knock on the door. They won't have to go to Northern Ireland.

"But even more importantly, that there can be no repeat of a process that has already been undergone ... I'm adamant. I will do literally everything I can to prevent rinse and repeat."

The Bill would rule out repeated investigations of the same incident "unless the highest possible legal threshold is cleared". The Commission would have to consider all previous investigations, not just its own, in making such decisions.

Bryant admitted that most of the protections would be available to anyone giving evidence to the commission, not just veterans: but legally-binding language ensuring there is "no equivalence" between British service personnel and terrorists during the troubles is a cornerstone of the amendments.

The legislation would compel the commission to make a distinction between the lawful actions of soldiers looking to protect lives – and those of terrorists seeking to end lives.

The commission would also be required to consider the operational conditions and orders under which soldiers were operating.

He also told The Telegraph:

"I am absolutely determined that when veterans look at these amendments, they will say, 'Yes, well done, you've listened, and these make these guarantees really stick.'

"I don't think there will be any prosecutions. The number of people who have ever had to give evidence from the Armed Forces is tiny, and I think it will remain tiny."

"Absolute guarantees were impossible", but the "vast majority" of the 123 cases before the commission involved UK personnel being killed. The Bill was, he insisted, the "only way" to secure the cooperation of the Republic in exposing the truth behind crimes committed by republican terrorists against British service personnel. An answer to events like the Guildford pub bombing "and possibly prosecution" would be an "enormous win": "We don't get anywhere near that without this legislation."

BAFF comments

BAFF has already made a similar point – that so many of the victims were our own people; there sometimes seems to be a risk of them and their families being forgotten in these debates.

More generally, Bryant seems to be offering a practical assessment of what the legislation will actually produce, rather than simply defending its architecture. He is not a lawyer and of course in no position to direct the commission or any eventual prosecutions, other than through the legislation itself if ultimately passed by Parliament.

Bryant's statement that "I don't think there will be any prosecutions" goes significantly further than what the Government has been saying to date. For example, their official reply to Lord Garnier as recently as 5 August merely spoke of avoiding duplication unless a further investigation was "essential", with a "very high threshold in law"; it certainly didn't predict that prosecutions were "unlikely".

Sir Chris's intervention can therefore be welcomed, but with considerable caution. His statement that he "will do literally everything I can to prevent rinse and repeat" is strong, but it is not clear how much even a Secretary of State can do once a commission is up and running and exercising its independent powers.

It is the Bill itself which matters at this stage. Bryant gave the Telegraph some useful practical detail which is welcome: **no unexpected knock on the door, contact through MOD, remote evidence, anonymity, MOD-funded legal support.**

Sir Chris's predecessor had already trailed some of these safeguards in the Commons on 27 April, but Sir Chris has now not only confirmed these safeguards but has made that "prosecutions unlikely" prediction, which will certainly be remembered if events turn out in any way differently.

If there really are going to be no such prosecutions, one might reasonably ask why elderly veterans should face significant investigative processes at all unless there is some genuinely unresolved evidential issue which justifies them. The Government's answer to that question might be that criminal prosecution is not the sole purpose; families and surviving victims are entitled to answers, and the Legacy Commission would still a truth-recovery function.

Recommendation: The "No equivalence" provision requires close attention

According to the interview, the legislation will expressly distinguish between **lawful actions by soldiers intended to protect life** and the actions of terrorists, while requiring the Troubles Commission to consider the operational circumstances and orders under which service personnel acted.

There have already been parliamentary amendments proposing that the Act should not imply moral equivalence between terrorists and the security forces. But Chris Bryant appears to be describing something more useful than a declaratory "no equivalence" clause: **operational context becomes legally relevant to assessment of a serviceman's conduct.**

We would want to see in the actual Government amendment before getting too enthusiastic. A statutory statement that terrorism and lawful military service are not morally equivalent is unobjectionable – **but doesn't by itself protect anybody.**

But a requirement that **investigators assessing an incident take account of contemporaneous operation orders, operational intelligence, relevant SOPS/NI Operational Aide-Mémoire/Rules of Engagement/Yellow card etc and the circumstances confronting the soldier** potentially could make a difference.