

A substantial new report from Policy Exchange examines the role of the Special Air Service in Northern Ireland during Operation Banner and the continuing investigation of events which took place decades ago.

The Special Air Service in Northern Ireland – What they did, why it matters, and what is being done to them now is written by Air Marshal Edward Stringer CB CBE, Lord Faulks KC, Sir Stephen Laws KCB KC (Hon) and barrister Andrew Dinsmore. It draws extensively on original interviews with more than a dozen SAS veterans who served in Northern Ireland.

The report deserves to be taken seriously as an important contribution to the continuing debate about how Northern Ireland's troubled past should be dealt with.

It argues that the SAS operated in support of the police and under the ordinary criminal law, with the Army's Yellow Card providing practical guidance on the use of force. The veterans interviewed describe extensive training in the rules governing the use of weapons and reject the suggestion that they operated under a "shoot to kill" policy.

("Shoot to Kill" was simply the title of successive British Army marksmanship pamphlets dating back at least to 1944, unconnected with Northern Ireland, but misrepresented for propaganda purposes during the Troubles and replaced with a new title in 1981.)

The veterans' accounts are valuable, not least because the voices of those actually involved in these operations have not always featured prominently in subsequent discussion.

The report also examines the development of Article 2 of the European Convention on Human Rights and, in particular, the procedural obligation on the state to investigate deaths involving its agents. The authors argue that investigative standards developed after many of the events concerned have effectively been applied retrospectively, contributing to repeated investigations and inquests many years later.

Policy Exchange makes some far-reaching recommendations. These include reconsideration of conditional immunity, changes to the application of the Human Rights Act to historic cases, a "new and compelling evidence" threshold before reinvestigation, and a requirement for Attorney General consent before prosecution of former or serving personnel for actions on active service. It also takes a robust position on the relationship between Parliament and the European Court of Human Rights.

Not everyone who accepts the report's diagnosis will necessarily agree with all of those proposed remedies.

Al Carns – accountability without perpetual investigation

The foreword to the report is by Al Carns DSO OBE MC MP, the former Armed Forces Minister and former Royal Marines officer.

His contribution is particularly worth reading because he does **not** simply endorse everything which follows. Carns says expressly that he does not agree with every conclusion or recommendation in the report. When they might have had no difficulty in finding a more senior retired officer to endorse everything in the report, Policy Exchange deserves credit for publishing a foreword which makes that clear.

Carns nevertheless strongly supports its central concern. He writes:

“No soldier should be above the law. Equally, no soldier should face endless legal jeopardy.”

He adds that accountability is not the same as perpetual investigation and that justice is not served when the process itself becomes the punishment.

That is an important distinction.

There can be no general principle that the passage of time makes unlawful killing immune from investigation. Where genuinely new and compelling evidence emerges, it must remain possible for it to be investigated and, where appropriate, for wrongdoing to be referred for prosecution.

Indeed, the Policy Exchange report acknowledges that such an approach is consistent with the Strasbourg case of *Brecknell v United Kingdom*, under which the investigative obligation concerning an historic death may revive when genuinely new and plausible material comes to light.

But that is not the same thing as repeatedly examining substantially the same evidence through successive investigative processes, particularly when those concerned reasonably believed that events had already been investigated and concluded.

Carns proposes what he describes as “one body, one process and one authoritative record” – a system which establishes the truth, refers wrongdoing where the evidence warrants it, treats families with dignity, but also protects those who served from endless repetitive investigation.

That seems a useful starting point for discussion even among those who may disagree about the detail.

Remembering all the victims

There is another consideration which should never disappear from the Northern Ireland legacy debate.

Thousands of people were killed by republican and loyalist terrorism during the Troubles. The Policy Exchange report records that paramilitary organisations between them killed more than 2,000 civilians and 1,000 members of the security forces.

Behind those figures are individuals and families.

The victims of terrorist violence and their relatives – including the families of members of the Armed Forces and police who were murdered – also have a legitimate interest in justice where justice remains possible, and in obtaining answers where answers can still reasonably be found.

Those interests should not be forgotten in a debate which can sometimes appear to have only two sides: former members of the security forces on the one hand, and families of those killed by the security forces on the other.

Carns himself recognises the wider problem. He says that parliamentarians have obligations both to families who deserve answers about what happened to those they loved and to veterans who served in extraordinarily difficult circumstances. Those obligations need not be contradictory.

Recognising the injustice which can result from perpetual investigation does not require the abandonment of justice. Nor should concern for veterans require anyone else whose family suffered during the Troubles to forget their loss.

The challenge is to devise a system capable of distinguishing between genuinely new evidence which ought to be investigated and the repeated reopening of matters which have already been thoroughly examined.

BAFF itself has been consistent on these issues, taking the same line that no-one is above the law but endless repeated investigations are themselves an injustice. Views on some of the detail may vary, and we welcome contributions from members, for the blog or offline.

Whatever view is taken of all its recommendations, the Policy Exchange report – and Al Carns's thoughtful foreword – make an important contribution to that debate.

[The Special Air Service in Northern Ireland – What they did, why it matters, and what is being done to them now](#)