



# KENOVA

A Thematic Peer Review

NPCC Homicide Working Group

January 2021

## Executive Summary and Conclusions

*“I strongly believe every family that lost a loved one during The Troubles should have access to an independent and full examination of their case. I am an advocate for a criminal investigation of legacy cases and where evidence is recovered against offenders for a criminal justice process to then proceed. All victims deserve such an investigation, not merely a few”.*

Jon Boutcher, QPM.

# Executive Summary

The evolution of Kenova began in 2016 with the investigation into the criminal activities of the alleged agent 'Stakeknife' under the auspices of Operation Kenova. Since then, the investigative team has commenced further legacy investigations, including Operations Mizzenmast and Turma. One of the first observations of the Review team relates to the issue of branding arising from this widened remit (see Communications and Media). For clarity from the outset this document will refer to 'Kenova' as the name of the overall investigative unit headed by the OIOC and 'Operation Kenova' will refer solely to the initial investigation concerning 'Stakeknife'.

A thematic review of Operation Kenova was undertaken in 2017, followed by a review of the Major Incident Room (MIR) and HOLMES systems in 2019. This document will not repeat findings from these earlier reviews. We are aware of an Article 2 ECHR review currently being undertaken by Alyson Kilpatrick BL and an interim review has already been published.

Despite the challenges of the Covid-19 pandemic, the review team has engaged in a programme of key consultations and informal interviews, and has been granted unfettered access to all staff and documents relevant for this process.

The review team members, all experienced in their professional fields, have never encountered an enquiry of this complexity and scale. The challenges are compounded by the difficult operating environment and the understandable sensitivities relating to conducting legacy investigations in Northern Ireland.

The paramount priority for Kenova is to place victims' families and survivors at the heart of every decision and action. The OIOC has devised and led a comprehensive and unprecedented programme of engagement with victims' families, survivors and stakeholders, and this has undoubtedly been central to the success of Kenova to date. The drive to establish the truth in relation to these crimes has resulted in hitherto unseen levels of engagement from sections of the community that have previously been 'hard to reach'.

A powerful comment made to the review team was that; "*It is, the journey that is important, not necessarily the destination*". This is a humbling statement as it originates from the family of a victim and reflects the wholly understandable determination on their part to establish the truth in relation to their loved one's death.

The incredible progress made with victims' families and survivors by Kenova can be credited to the personal contribution and leadership of the OIOC who has taken the lead in direct contact with those affected. This level of personal responsibility far exceeds the expectations of the role of an OIOC. However, the review team noted comments by all stakeholders that it was exactly this approach and energy that has won the hearts and minds of all of those affected in a manner not seen before.

The review team has considered the volume of investigations under Operation Kenova itself which currently stands at 16 cases submitted or in the process of submission to the Public Prosecution Service (NI) encompassing over 50 crimes including murder, attempted murder, kidnap and violence. There are numerous other investigations as yet to be submitted to the PPS within the wider Kenova remit.

The review has examined the investigations within scope, considering 'value for money', and has concluded that Kenova is being undertaken within an efficient and effective governance framework. It is the considered view of the review team that Kenova is now approaching a potential tipping point both in terms of capacity and resilience of the team itself and in respect of its funding and resourcing arrangements. In addition, the review team has identified further opportunities for Kenova to future-proof its approach to intelligence and data management, and to build on the impressive work seen within this review.

The overall Kenova approach can best be described as an innovative hybrid of homicide and counter-terrorism investigative processes; with operating functions modelled on elements taken from the Murder Investigation Manual (MIM), the Major Incident Room Standard Administration Procedures (MIRSAP) and the Manual of Major Counter Terrorism Investigation. This is especially noteworthy as this bespoke approach reflects the extraordinary challenge facing Kenova in terms of managing multiple legacy homicide investigations within a counter-terrorism setting. The review would highlight this as best practice and it may be seen as a useful template to assist future complex enquiries of this nature.

The Governance framework for Kenova has, likewise, been developed to a highly evolved system of oversight and peer support. From the outset, the OIOC has recognised the need for a comprehensive approach and has devised and led the implementation of multi-layered and independent Governance structure. Of particular note is the inclusion of both individuals and NGOs related to, or otherwise representing, the victims, families and survivors who have striven to have their voices heard over the years. By empowering these parties in this most inclusive manner, the Kenova leadership have established the very highest levels of trust and legitimacy in the community.

The Kenova approach to governance and scrutiny is unique and a highly credible function unlike anything seen by the reviewing team in similar legacy investigations or other UK policing inquiries. The introduction of 3 highly credible independent oversight groups, quarterly updates to PSNI, representation at the Northern Ireland Policing Board, the rhythm and quality of independent external reviews, additional scrutiny of investigation files submitted to the Public Prosecution Service and the ongoing public and media communication, is impressive and an exemplar of good practice throughout.

The achievements of Kenova to date, both operationally and particularly in terms of the confidence of the victims' families and survivors, should be recognised and applauded. The Kenova team has identified new evidential leads in several homicide investigations that have remained unsolved since the time of The Troubles. Kenova has effectively set a new and higher standard of expectation within the community, stakeholders and especially families in relation to legacy investigations and any lesser approach, such as a 'desktop review', would be unlikely to achieve the same levels of confidence and legitimacy. In summary, the review team believes that the Kenova model - in terms of its investigative approach, family engagement and Governance - represents a highly credible template for the formation of any future Historical Investigations Unit.

The review has not identified any significant concerns requiring immediate remedial action. There are a number of issues that should be considered by Kenova across a range of strategic and investigative themes.

Ultimately this review will highlight that the Officer in Overall Command (OIOC), the victims' families, survivors and all stakeholders can have absolute confidence in the professionalism, ethos and legitimacy of Kenova.

## Conclusions

In compiling this report, the review team has exhaustively debriefed the Kenova Senior Leadership Team and the officers and staff performing all the operational roles detailed herein over a four-month period. A diverse array of stakeholders from across the various Governance and supporting groups have also been interviewed during this time. Throughout the review process, the team have been continuously impressed with the dedication and professionalism of the entire Kenova team and with the successes it has already achieved, and continues to build on, both operationally and – equally importantly – in terms of gaining the confidence of the victims' families, survivors and communities affected.

The strategy, vision and personal leadership of the OIOC permeates throughout the Kenova construct and both directly and indirectly exerts positive influence on all aspects of delivery. This is especially evident in both the absolute imperative that is clearly placed on successful family liaison and survivor contact, and in the investigative tenacity of enquiries made on their behalf, in keeping with the OIOC's personal commitment to each of them. In relation to point 1 of the objectives and scope of this review therefore, the team can confirm that each of the Kenova investigations is being undertaken exactly in line with the Strategic Objectives as set out by the OIOC, and which reflect the need for a completely victim-focused approach.

This centrality of the victims' families and survivors to the OIOC's strategy constitutes one of the fundamental pillars of Kenova's compliance with Article 2 ECHR (see point 2 of Objectives and Scope). The review team had the benefit of consulting with Alyson Kilpatrick, BL and noted the interim findings of her review as documented in February 2020. This review concurs entirely with Ms Kilpatrick's emphatic observations in relation to the true independence of Kenova's leadership and direction; noting in particular her commentary on the need to view investigative independence in its widest sense, including its vital inter-relationship with family engagement and the need for openness to public scrutiny. The findings of this review unfailingly corroborate that these legal requirements are being comprehensively met throughout Kenova's operations with enquiries conducted in an exclusively victim-focused way, always without prejudice, and with robust Governance in place to ensure both transparency and constructive challenge. It is the considered view of this review team that it is this fastidious approach by Kenova's leadership to ensuring that all the facets of Article 2 ECHR are not merely complied with but are, in fact, exceeded that has secured the vital sense of legitimacy that has so often eluded previous legacy investigations in Northern Ireland.

The review team have identified several examples of exceptional innovation, organisational learning and national best practice which should be considered in other legacy, and similarly complex, inquiries in the future. These outstanding operating practices have undoubtedly contributed to the excellent 'value for money' that Kenova represents when compared with other large-scale investigations and, certainly, to the potential costs associated with a Public Inquiry if required.

Throughout this report, the review team have consistently identified one common theme across almost all areas that does, however, represent a strategic vulnerability for Kenova in the form of a perceived 'tipping point' in terms of capacity and resilience. Whilst the team have invariably found only the highest levels of performance throughout - from the OIOC's own leadership through to the finest points of operational delivery - the workload of Kenova continues to burgeon as a direct consequence of its own extraordinary success. This review therefore comes at a potentially propitious juncture as it provides a timely opportunity to not only highlight Kenova as a hitherto unrivalled leader in its field of Legacy Investigations in Northern Ireland but also as one which, as a result of its success, now requires strategic, financial and political support in order to continue to deliver for the victims' families, survivors and communities affected.

This leads to the final conclusion of this review; the Terms of Reference of which included the question as to whether Kenova might offer a 'scalable' model upon which to build any future Legacy Investigative capability for Northern Ireland. Having exhaustively reviewed its strategy, governance, partnerships and all facets of its operations, the review team firmly believes that Kenova would form the best possible foundation for this purpose. Any future Historical Investigation Unit or similar would benefit immeasurably from building on the exceptionally strong reputation that Kenova has achieved and by adopting its leadership and investigative model throughout. Discussions with several key stakeholders, including representatives of victims' families and survivors from all sections of the community, in fact revealed that one of the main challenges for any alternative investigative initiative in this area would be that it would inevitably risk being constantly negatively compared with Kenova, with the confidence of victims' families and survivors being undermined as a consequence.

This review concludes therefore with a final excerpt from Alyson Kilpatrick, BL,

*"Where allegations include collusion with State agents over a passage of time during which victims' relatives have been disappointed by inordinate delay and have lost trust in the system, the securing of evidence can be extremely difficult. That is why establishing credibility and trust in the investigation is crucial. It is more than a moral imperative; it is a legal requirement. If there is no trust, there will be no sharing of information, relatives will disengage thereby depriving investigators of a source of evidence and eye witness testimony. Those who have engaged with the Kenova team are unlikely to ever do so again if obstacles are put in the way of the investigation".*