



House of Commons  
Northern Ireland Affairs  
Committee

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# **Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past**

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**Third Report of Session 2007–08**

*Report, together with formal minutes, oral and  
written evidence*

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## The Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

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### Committee staff

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## Conclusions and recommendations

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1. We were impressed by the personal commitment, sensitivity and professionalism of the Chief Constable, the Director of HET and the other staff involved in the HET. The project is unique and challenging, and it is clear to us that there is a real determination to provide information and answers to those who were bereaved during the Troubles. Whilst the memories are painful, families have appreciated the efforts made by the HET team to listen to their questions and to attempt to explain the circumstances of their relatives' deaths. (Paragraph 25)
2. We were surprised to find that all cases are automatically reviewed by the HET. We accept that there are benefits in building a complete picture of often interconnected events. We also accept that a family which initially chooses not to participate in a case review may later change this view; and that there will be occasions where a family member (such as a grandchild) might only feel able to participate once an older relative has come to terms with the re-examination of painful past events, or has died. In such circumstances, the fact that the HET has carried out a comprehensive review of all cases will enable it to help families at a time that is right for them. Nevertheless, we conclude that in some cases scarce resources are being used to investigate historic cases where there is little likelihood of helping a family and limited opportunity of securing a conviction. (Paragraph 26)
3. It is clear that the HET project will need significant additional funding if it is to continue with its current approach and complete reviews of all of the deaths within its remit. We are not convinced that the funding is being targeted as effectively as it might be. We recommend that alternative ways of prioritising cases are identified so as to focus resources on those cases where the next of kin of the deceased specifically request it or where the existence of forensics or other exhibits provides investigative opportunities which could contribute to a successful prosecution case. We recommend that a mid-term project review is conducted, with a view to establishing the costs and benefits of continuing with the HET in its current form, and identifying ways in which the scope of the exercise and the prioritisation of cases could be adjusted so that the project can be completed within budget and with maximum benefits. (Paragraph 27)
4. The financial investment in the HET has been considerable, but little information about its progress and the benefits it has brought to families has been made available to the public. We recommend that the results of the review we call for above are published. (Paragraph 28)
5. We are concerned that the demands of running the HET project, and the likely overspend, might compromise the ability of the PSNI to fulfil its primary role of policing the present. We also recognise that some families and organisations have questioned whether the PSNI is sufficiently independent and would prefer the historic investigations to be managed by an independent agency. We return to this point in paragraph 40. (Paragraph 29)
6. The Patten Report underlined the importance of an independent, properly resourced Ombudsman's Office which had community confidence and support. Our

predecessor Committee noted in 2005 that Northern Ireland's first Police Ombudsman, Mrs Nuala O'Loan, had constructed from scratch a credible police complaints system in Northern Ireland. However, the extension of the Ombudsman's remit to include historic cases is having a damaging effect on the efficiency of the Office. The number of complaints about the former Royal Ulster Constabulary (RUC) arising from the years of the Troubles and the inadequate provision of additional resources have compromised the Ombudsman's ability to investigate complaints against the PSNI. There is a risk that this reduced capability will damage public perception of the Ombudsman's Office and public confidence in policing. (Paragraph 43)

7. We have considered the case for a transfer of responsibility to carry out historical work from the Ombudsman to a newly-created independent body. We have also considered whether the Historical Enquiries Team, part of which is based in London and is staffed entirely by officers and former officers from forces outside Northern Ireland, could take on this function, or whether the resources of the Ombudsman's office should be increased, to allow him to carry out historical work without impacting on his core responsibilities. We are, however, mindful of the Minister's comment that he prefers to await the conclusions of the Eames/Bradley Group before reaching any decision. We, too, wish to avoid pre-empting any conclusion that the Group may come to on this issue. We therefore make no recommendation in this Report, beyond noting that the question of who has responsibility for conducting investigations into grave or exceptional cases involving alleged police misconduct in the period before the establishment of the PSNI is of the utmost importance, and that it will have to be resolved sooner rather than later. We intend to return to this. (Paragraph 44)
8. The disclosure of intelligence information to inquiries clearly presents challenges for the police, and for other organisations which are required to provide sensitive information. The process of agreeing necessary redactions requires considerable input from key police staff who understand the implications of disclosing specific items of intelligence. This necessarily requires them to divert their attention from more current issues of concern, which include, most critically, monitoring the threat posed by dissident terrorists. The provisions in the Inquiries Act 2005 for agreeing and resolving disputes about redactions have yet to be tested and it is therefore possible that difficulties may emerge with the way that those provisions work in practice. It is crucially important that the workings of the Act are carefully monitored. The Committee may wish to return to this issue in a subsequent inquiry. (Paragraph 63)
9. The need for the PSNI to provide sensitive information to inquiry panels was an inevitable consequence of the Government's decision to conduct the inquiries and, as we have previously discussed, there are legal provisions to prevent the disclosure of sensitive information beyond an inquiry if necessary. The inquiries must be able to operate independently of the Government and the agencies which provide them with information. It would not be appropriate for any of those agencies to appear to attach any conditions to its cooperation, nor to dictate an inquiry's internal procedures. The Minister of State at the Northern Ireland Office has underlined the fact that as public authorities in their own right, inquiries have the same obligations

under ECHR Article 2 as any government department or the PSNI. Inquiry chairmen must take full responsibility for the management of information within their safekeeping and ensure that they meet their obligations under human rights legislation. It is important for them to recognise that the future safety and indeed possibly the lives of certain people who have supplied sensitive information could well depend upon their decisions. (Paragraph 67)

10. The loss or inadvertent disclosure of sensitive intelligence information by an inquiry panel or its staff could have serious consequences, including the risk to life. The PSNI has expressed specific concerns about the inquiries' information management procedures. These concerns must be addressed to ensure that the inquiries meet their Article 2 obligations and to enable the PSNI to work cooperatively with the inquiries, and provide them with the information they require without further delay. If the inquiries are unable to demonstrate to the Government that their procedures are adequate, steps must be taken to implement improvements. We recommend that if the particular issues raised by the PSNI were not included in the Government's review of inquiry information management procedures, they should be included in a further review which should be conducted forthwith, as a matter of urgency. (Paragraph 68)
11. The very high annual cost of inquiries into past events is financially unsustainable. We note with concern that the latest estimated cost of the Saville Inquiry alone is £183 million and that inquiry is still not completed. The cost to organisations such as the PSNI that contribute to the statutory inquiries is also considerable, in terms of money and resources. The PSNI estimates that its costs for working with the inquiries over the next two years alone will come to over £6 million. We fully accept the Chief Constable's concerns that the diversion of experts from their current duties is bound to impact upon effective policing in Northern Ireland. The cost of inquiring into the past is an issue that, at some point, will have to be faced. Such inquiries cannot become a permanent feature of life in Northern Ireland. We recommend that the NIO take further steps to control the costs of Northern Ireland's statutory inquiries and that inquiries other than those already under way or announced should only be established if agreed by the Northern Ireland Assembly. (Paragraph 73)
12. The statutory inquiries place significant demands on the PSNI at a time when police officers are still subject to attacks from dissident terrorists. No other police force in the United Kingdom is required to operate in such an environment, and at the same time to service the demands of the extensive range of historic investigations which are underway in Northern Ireland. The NIO must continue to ensure that the PSNI has a budget sufficient to fulfil its operational remit and to meet its legal obligations with regard to servicing the statutory inquiries. (Paragraph 74)
13. There are outstanding legal obligations which require the coroner to investigate a number of deaths which occurred during the Troubles. The PSNI has a duty to cooperate with the coroner and to provide him with whatever information he requires to conduct those inquests. Since some of that information might include intelligence which could identify an informant, issues similar to those raised by the PSNI regarding the disclosure of sensitive intelligence information to the statutory inquiries might apply to the contentious inquests. The coroner has a duty under

Article 2 of the European Convention on Human Rights to take steps to protect the lives of informants who could be put at risk through disclosure of information which might identify them. We recommend that an information management code of conduct be drawn up by the coroner, after consultation with the appropriate agencies, to protect sensitive information provided to him as part of the inquest process, and that any public disclosure of such information is made in accordance with the coroner's obligations under ECHR Article 2. (Paragraph 80)

14. We note that no specific additional funding has been provided to the PSNI in recognition of the extra workload arising as a result of the inquests and that resources have instead been allocated from the main policing budget. There are already significant and unique demands on the PSNI and we are concerned that the volume of work required to cooperate fully with the inquests may compromise the PSNI's ability to direct adequate resources to other high priority areas of policing. We recommend that the impact of the inquests on the PSNI's resources and any consequential effect on current policing capacity is reviewed during 2009 and the budget revised accordingly. (Paragraph 81)

# 1 Introduction

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1. As we prepare this Report, Ministerial responsibility for policing and criminal justice in Northern Ireland remains with the UK Government. These will be the last major policy areas to be devolved to the Northern Ireland Executive, on a date as yet to be determined. For as long as the Northern Ireland Office continues to hold these responsibilities, it will remain the duty of this Committee to exercise scrutiny on behalf of the electorate of Northern Ireland and the rest of the United Kingdom.

2. The inquiry that has led to this Report grew out of the Committee's discussions during one of its frequent visits to Northern Ireland. It became clear that there is great concern in the Police Service, in the Police Ombudsman's office and elsewhere that the cost of 'policing the past' is compromising—and will increasingly compromise—these agencies' ability to carry out their core functions. The more police resources that are committed to servicing the needs of the various historic inquiries, the fewer resources are available for crime prevention measures or for apprehending present-day criminals. Similarly, if the Ombudsman's staff are investigating an historic case, they cannot at the same time be working on a more recent one. A related concern is that the need to supply full evidence, including sensitive material, to historic inquiries may compromise the personal safety of covert sources of intelligence and undermine the position of those who still operate covertly.

3. We therefore announced in November 2007 our intention to produce a focused Report as part of a continuing, broad inquiry into policing and criminal justice in Northern Ireland.<sup>1</sup> The terms of reference we adopted for this initial phase of our inquiry were to inquire into:

- The financial and operational consequences for the Police Service of Northern Ireland (PSNI) of servicing the various 'historic inquiries' into past events in Northern Ireland; and
- The effect on the ability of the Police Service of Northern Ireland to bring accused persons to trial of provisions in the Inquiries Act 2005 and in other legislation requiring the police to divulge information which might identify a covert source

The bulk of our evidence, and therefore the bulk of this Report, centres on the first of these concerns.

4. In the course of this inquiry, we visited Northern Ireland three times and the Republic of Ireland once, hearing formal evidence from several witnesses and holding a large number of informal meetings with interested parties. We also heard oral evidence at Westminster from witnesses and we received written evidence from a wide range of groups and individuals. To all of these we are most grateful. Our advisers for this inquiry have been Ken Armstrong, a former PSNI officer, and Jane Gordon, human rights lawyer and senior lecturer at Kingston University; we thank them for applying their considerable experience and expertise to the complex legal and procedural issues that arose during the inquiry.

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1 Northern Ireland Affairs Committee Press Notice, No. 2 of 2007–08, 22 November 2007

5. The wider context for this quite narrowly focused exercise has been the whole question of how the people of Northern Ireland should deal with the legacy of their past. Various proposals were made to us in the meetings we held. These included the creation of a memorial to the victims of violence; a day of remembrance; story-telling; and the establishment of a truth commission.<sup>2</sup> For us as a Committee to give full consideration to and to reach firm conclusions on such important matters in this Report would take us beyond our current terms of reference and into the issues that are being considered in great depth by the Consultative Group on the Past, which is co-chaired by Lord Eames of Armagh and Mr Denis Bradley.

6. The Chairman met Lord Eames and Mr Bradley at Westminster in January 2008, and the Committee met them, together with other members of the Consultative Group, in Belfast in May 2008. We had a wide-ranging discussion, in an informal setting, which we found very helpful. We welcome the moving and inspirational speeches of Lord Eames and Mr Bradley of 29 May and we await the report of the Group with great interest. While the Committee hopes that the conclusions it reaches and the recommendations it makes in this Report will be of interest to members of the Group, it does not wish, in this Report or elsewhere, to anticipate any conclusions the Group may reach. Our inquiries may have taken place at the same time, but our work has been entirely separate.

7. Some of those whom we met, or from whom we heard evidence, expressed a clear desire to see an end to the constant delving into Northern Ireland's past. We heard suggestions that a time limit on such work of five, seven or ten years should be set. It is not for us at this stage to endorse the setting of any arbitrary deadline. However, we do strongly believe that it is important that Northern Ireland moves towards a time when investigations into the events of the past are no longer needed. This does not mean that the past can or should be forgotten; and in particular, it does not mean a cessation of help to those who bear the scars of the Troubles. We endorse the suggestion made to us by Sir Kenneth Bloomfield, the first Victims Commissioner for Northern Ireland, that the whole question of compensation for the victims of violence and their families should be reconsidered. Too many people in Northern Ireland continue to suffer today as a result of events that took place in some cases decades ago; if the money spent on the public inquiries into the past had instead been spent on relieving the plight of such people, a real difference might have been made to their lives.

8. Whilst any crime committed by a person in authority is particularly reprehensible and must be investigated as thoroughly as possible, it is important that the establishment and conduct of inquiries into such crimes is not allowed to distort the overall picture. This clearly shows that responsibility for more than 90% of deaths attributable to the security situation during the Troubles rests with paramilitary groups. According to the respected publication *Lost Lives*, there were 3703 deaths attributable to the security situation between 1966 and 2003. The publication attributes alleged responsibility as follows:

Republican paramilitaries: 2158 deaths

Loyalist paramilitaries: 1099 deaths

The security forces: 365 deaths. (Most of which have not been attributed to criminal activity.)

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<sup>2</sup> These initiatives, together with others, were identified by Healing Through Remembering as essential components of an integrated approach to dealing with the past in its report "Healing Through Remembering Report 2002"

9. In this Report, we look first at the work of the Historical Enquiries Team of the Police Service of Northern Ireland. We then consider the historical investigations of the Police Ombudsman for Northern Ireland, before turning to the various statutory inquiries into the past. Finally, we look ahead to the burdens likely to be imposed by the forthcoming contentious inquests. The Minister of State in the Northern Ireland Office, Paul Goggins MP, told us that he would take our conclusions and recommendations very seriously; we welcome that statement of intent, and we await the Government's response with interest.

## 2 The Historical Enquiries Team

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10. The Historical Enquiries Team (HET) project was established within the PSNI in 2005 following discussions between the PSNI and the NIO about dealing with the legacy of the Troubles.<sup>3</sup> The objective was “to assist in bringing a measure of resolution to those families of victims affected by deaths attributable to the troubles in the years 1968–1998 and to re-examine all 3,268 deaths attributable to the troubles”.<sup>4</sup> The NIO is committed to provide a total budget of £34m over six years to the project,<sup>5</sup> primarily for the PSNI, but with smaller allocations for the Police Ombudsman for Northern Ireland, the Forensic Service Agency of Northern Ireland and the Public Prosecution Service Northern Ireland.<sup>6</sup> The aims of the project were defined by PSNI as follows:

We envisage a re-examination process for all deaths attributable to the security situation with case reviews leading to re-investigation in appropriate circumstances where there are evidential opportunities.

Families will sit at the very heart of our investigations. The primary objective will be to work with them to achieve a measure of resolution in these difficult cases. ... The second objective will be to enable a sense of confidence among those directly affected and the wider public that all these cases will be comprehensively examined to current professional standards, to the extent that as an organisation we can be satisfied that all evidential opportunities have been explored.<sup>7</sup>

11. We visited the HET office near Lisburn in March 2008 and met members of the management team, other members of staff and a number of families whose cases had been investigated. During this visit, we were given an overview of the HET project administration and staffing arrangements, which can be summarised as follows. During 2005, the HET office was established, premises refurbished and staff recruited, and in January 2006 the project became operational and started investigating cases. Mr Dave Cox, a former Commander in the Metropolitan Police, was recruited as the Director of HET, reporting directly to the Chief Constable. The project initially had a staff of about 80, but the Team has since grown to around 180.<sup>8</sup> Staff retention has been a problem. Mr Cox told us that in the first year there had been a 40% turnover in staff, in part because of the need for staff from outside Northern Ireland to live away from home during the week.<sup>9</sup> Of the 180 staff, around four are serving police officers and the remainder are retired police officers and civilian support staff, recruited within both Northern Ireland and Great

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3 The Secretary of State announced in April 2005 that the NIO had allocated funding to the HET project. During 2005 the HET office was established and staff were recruited. The team became operational and began investigating cases in January 2006.

4 Ev 100. The civil rights march in October 1968 is often used as the event to define the beginning of the troubles. In practice, very few cases within HET’s remit date from 1968, and the vast majority of its cases relate to 1969 onwards. The HET website refers to the start date as 1968, but other HET documents refer to 1969.

5 The NIO quoted the total HET budget as £34m in its written evidence Ev 102 Table 1 and £38m in oral evidence Q555

6 Ev 102 Table 1

7 Police Service of Northern Ireland, *Policing the Past. Introducing the work of the Historical Enquiries Team*

8 Q 8

9 Qq 10 and 11

Britain.<sup>10</sup> The Patten recommendation that the composition of police service staff should be broadly reflective of the population of Northern Ireland, particularly in terms of political or religious tradition and gender, has not been applied to HET staff. There are two distinct review and investigation teams within HET, one of which is staffed exclusively by officers seconded from police forces in Great Britain. This team was created to “deal with those specific cases where independence is essential and where sections of the community or individuals are not yet comfortable working with the Police Service of Northern Ireland.”<sup>11</sup> The other team is staffed by serving and retired police officers from the PSNI and the former RUC. Most staff are located in Northern Ireland except for a small team which investigates exceptional cases relating to serious collusion allegations. This is located in Putney, London, partly in order to demonstrate independence, and also to facilitate recruitment of staff from outside Northern Ireland.

12. The project’s remit includes “all deaths attributable to the security situation” between 1968 and 1998, but does not include cases relating to attempted murders, punishment shootings and other injuries.<sup>12</sup> HET investigators carry out an initial review of each case, including those where there have previously been convictions, and whether or not the review is requested by the family of the victim. The team aims to build up as complete a picture as possible, linking interconnected cases so as to understand the activities of organised and serial killers, identifying all of those involved in the killings (rather than just those who had previously been convicted) and providing as much information as possible for families, some of whom were now ready to engage, but others who would not perhaps be ready until an older relative who did not wish to be reminded of past events had died.<sup>13</sup> In many cases, no information had previously been provided to families, partly because of the lack of resources at the time of the death, and also because of the need to avoid providing information which could have assisted paramilitaries. To date, families have participated in 62% of the completed reviews. Many families who did not respond to the initial contact chose to participate at a later stage, after the review had been completed.<sup>14</sup> New cases are opened primarily on a chronological basis, starting with the earliest from 1968 onwards, but some are taken out of sequence for various humanitarian reasons, or where they are part of a linked series or for some other good reason. Each case goes through the same process of assessment, review, focussed re-investigation and resolution to identify if there are any realistic prospects of taking an investigation further. There has been good cooperation from retired police officers,<sup>15</sup> and assistance and access to historical records have been provided by the Public Prosecution Service.<sup>16</sup>

13. At any stage, where evidence of serious criminal conduct by police officers is identified, the Office of the Police Ombudsman is notified, in accordance with the legislation.<sup>17</sup> We

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10 Q 11

11 Police Service of Northern Ireland, *Policing the Past. Introducing the Work of the Historical Enquiries Team*.

12 Ev 122

13 Q 500

14 Ev 132

15 Q 513

16 Q 463

17 Police (Northern Ireland) Act 1998 s.55

were told during our visit to the HET that to date, 44 cases of alleged misconduct by a police officer have been referred to the Police Ombudsman. Since the Ombudsman has no remit to investigate paramilitary murders or deaths involving military actions, in some cases separate but parallel investigations are carried out by the HET.<sup>18</sup>

14. According to data provided in May 2008, 1,107 cases have been opened; of these, the review process has been completed for 363 cases.<sup>19</sup> The completion of a case does not mean that it is closed, because there may still be further questions from families.<sup>20</sup> Mr Cox explained:

... that does not mean that we regard those cases as closed because ... we work to a standard of answering the questions that families put to us and in many cases these are not legal questions, the worries that families have are basically around could this have been prevented, was there a proper investigation, down to the saddest of personal questions ... We are working with over 600 families and we have logged 4,000 issues that have been raised with us.<sup>21</sup>

The original target had been to open and close 40 cases a month, but this has not been achieved, primarily because the final phase of providing resolutions acceptable to families has taken longer than expected but also because of the complexity of some of the cases.<sup>22</sup> In addition, the HET has had to absorb the investigations required by the publication of the Police Ombudsman's 'Operation Ballast' report into alleged collusion, which required it to establish an entirely new external team, at a cost of approximately £1.6 million *per annum*.<sup>23</sup> The latest estimate is that the final set of cases, relating to 1998, will be opened in December 2011, and that after that "a considerable number may remain open whilst complex investigations are completed."<sup>24</sup>

15. In May 2008, the HET had reached 1973 in its chronological process of opening new cases.<sup>25</sup> Of the completed reviews, one case has been referred to the Director of Public Prosecutions Service (DPP) for prosecution and a further eight have been forwarded for advice.<sup>26</sup> Both the Chief Constable and the Director of Public Prosecutions suggested that the number of prosecution cases might increase once the HET started to investigate more recent cases from the 1980s and 1990s, given that more computer evidence, records and witnesses might be available, but the Chief Constable made it clear that overall the opportunities for prosecutions would be limited. Sir Hugh said:

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18 We consider the important question of overlapping investigations in Chapter 3, below.

19 Ev 133

20 Q 15

21 Q 15

22 Ev 133

23 Ev 133

24 Ev 133

25 Ev 132

26 Q 42

Do I see the HET as prosecuting lots of people? No, I do not. Does that mean there will be no prosecutions? No, I think there may be some but the opportunities are limited.<sup>27</sup>

16. The HET does not have an objective system of measuring outcomes for families, although it has considered commissioning an external evaluation.<sup>28</sup> Mr Cox explained the difficulties involved in representing the range of responses from families:

HET experience of meeting and working with families indicate that there is an enormous spectrum of family responses, which must be factored into evaluation of this complex area. We work with families who feel very badly let down by 'the system', and who start with very little confidence in the HET. We meet people who have, in the absence of factual information, created their own narratives of events, and take some time to accept or even explore factual information that differs from their own perceptions. We meet with families who are openly hostile to HET, perhaps not because of the HET process, but because they are angry and dealing with their own grief or emotions. People's views change over time and we have many letters from people who start off hostile, but who six months later write to say they are very glad they engaged.<sup>29</sup>

The evidence suggests that there has been a range of responses from families to the HET project. During our visit, we met some families who had been through the process. Whilst they had different reactions to the outcomes of the HET investigations, they were, without exception, grateful for the sensitivity and consideration shown to them by HET staff and complimentary about the leadership and professionalism of the Director, Mr Cox. A similar picture was presented by Ms Jane Winter, Director of British Irish Rights Watch (BIRW). She had encountered mixed reactions and said that:

Some people have been very, very pleased with the work of the HET and feel that they have really achieved some closure to the loss of their loved one and other have been critical about mistakes in the report and so on. The one thing we have always found is that the HET are very, very family friendly.<sup>30</sup>

WAVE, an organisation which provides support and training services to people who have been bereaved, traumatised or injured as a result of the Troubles, noted the benefits to families of the HET's work. The Director, Mrs Peake explained that:

From speaking to a number of people who have come through that process from the early 1970s, the fact that someone is sitting down, listening, coming back with answers, adhering to promises and undertakings they have given, has validity. Even to record at the time that an investigation was not adequate or things were

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27 Q 512

28 Ev 133

29 Ev 132

30 Q 367

overlooked, there is something very positive for families in relation to having that process.<sup>31</sup>

17. BIRW however also noted that progress was slower than expected. It stated that:

Given the number of cases the HET has yet to investigate, and given the simple arithmetic outlined above and the complexity of many of the cases the HET is called upon to investigate, it seems likely that the £34 million budget—not all of which is attached to the HET—and the six year deadline for dealing with outstanding murders is unrealistic.<sup>32</sup>

According to information provided to us by the NIO, the total expenditure by the HET up to 31 October 2007 was £13.7 million (of which £11.4 million was spent by PSNI).<sup>33</sup> The HET's projected expenditure for 2008–09 to 2012–13 is £31.37 million.<sup>34</sup> Since PSNI's original share of the NIO's HET budget was £26 million,<sup>35</sup> the projections indicate that, based on current estimates, the project will overspend its original budget allocation by 60% (£16.77 million).<sup>36</sup> Mr Cox acknowledged that additional funding would be required and told us that:

The Chief Constable of the PSNI and the NIO are aware that the HET's work will extend beyond the current project funding. However, the establishment of the Bradley/Eames Committee on dealing with the past means that all parties will await their findings and recommendations before embarking on further financial planning.<sup>37</sup>

18. BIRW argued that the HET must be allowed to continue, and given the additional resources necessary to enable it to complete its work:

It is obvious when one looks at the sums and the number of cases they have managed to close so far that they are going to overshoot that target; they are not going to make it in six years. ... I am arguing that they should be given the resources that they need to finish the job, even if it takes longer than originally anticipated.<sup>38</sup>

The Historical Enquiries Team, because of its openness and its willingness to engage in dialogue with families is, I think, helping to restore confidence in modern policing and some of that thinking is also taking root within the PSNI who are themselves becoming more family centred ... I feel that to just disband the HET in the middle of its work would do more harm than good.<sup>39</sup>

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31 Q 334

32 Ev 104

33 Ev 102 Table 1

34 Ev 125

35 Ev 133

36 See Ev 133 and Ev 124–125

37 Ev 133

38 Q 373

39 Qq 374 and 376

19. Some witnesses suggested that rather than providing additional funding, the scope of the HET should instead be reduced. The Police Federation stated that whilst it had supported the creation of the HET, what it had envisaged as a straightforward information sharing exercise with the families of victims had turned into a much bigger exercise. It suggested that one way of limiting the scope of the HET would be to confine its investigations to those referred to it through the Victims' Commissioners acting at the request of a family.<sup>40</sup> Mr White, Chairman of the Northern Ireland Retired Police Officers Association (NIRPOA) said that his members supported the HET's objective to provide information to families who wished to know more about the circumstances of the death of their loved one, but he expressed concern that "a Rolls Royce industry had been created" and that since £34 million had been ring-fenced for the project, "structures will be put in place to spend that money", despite the fact that "the reality of achieving a prosecution is extremely limited."<sup>41</sup> The former Victims' Commissioner, Sir Kenneth Bloomfield's view was that funding of the various historical enquiries should be a lower priority than the provision of practical support to victims. He said that:

For me, there seems something rather perverse about a situation where over a great many years a large number of people were very properly convicted for committing atrocious crimes and then in the context of the political settlement the jails were emptied and they are all out again. For what purpose do we devote quite so much of a resource, human resource and financial resource, to pursuing all of these old cases because clearly what we are not going to do is end up locking more people up.<sup>42</sup>

He stated that "there was something to be said for" scaling down the remit of the HET,<sup>43</sup> and suggested that the Chief Constable should be asked to propose how this could best be done so that historical work no longer led to the diversion of police officers away from current policing priorities.<sup>44</sup>

20. Another issue raised by witnesses was the independence of the HET, given that its Director reports to the Chief Constable of the PSNI. BIRW stated that "One of HET's difficulties is that it is not seen as being sufficiently independent by some people."<sup>45</sup> Sinn Féin suggested that "PSNI cannot deal with the past" and that "there needs to be the establishment of a credible, independent mechanism which treats all victims equally without political bias."<sup>46</sup> It also stated that "the legacy issues need an island-wide approach".<sup>47</sup> The Committee on the Administration of Justice (CAJ) reported that:

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40 Ev 134

41 Q 431

42 Q 228

43 Q 235

44 Q 237

45 Q 375

46 Ev 135

47 Ev 135

some families will not engage with the Historic Enquiries Team because it is part of the Police Service in Northern Ireland, they see it as intimately tied in institutionally to the police and therefore they do not want to engage.<sup>48</sup>

As we have already noted in paragraph 11, there is within the HET a separate investigation team staffed entirely by officers with a non-PSNI, non-RUC background. We did not hear any allegations of bias on the part of the HET from the five families we met.

21. The Chief Constable told us that he was committed to keeping the HET project going for as long as it was needed, because it was adding more value than it was costing in financial terms. He stated that “if it was the will of Parliament or Stormont” that the HET should be run by an alternative, independent body, he would not be against such an arrangement. However, he added that, as gatekeepers of the information, there would still be pressures on the PSNI to service the HET.<sup>49</sup> He explained that he did not wish “to be rid of” the HET, because it demonstrated a positive commitment by the PSNI to fulfil to duties:

...what [the establishment of HET] said was a very clear statement about modern policing, which was that we were not running away from anything, we were absolutely up for facing the issues ... it shows our determination to deal with what is a police duty, which is to investigate and not to give up on unsolved cases.<sup>50</sup>

22. However, he accepted that if no additional funding were to be made available for the HET, then it would have an impact on the resources which he had available for current policing activities, and stated that “the reality of course, is if there is no more additional money, that, like everything else will be drawn out of my current budget”.<sup>51</sup>

23. We note that in some cases, the Government has a legal obligation to reinvestigate historic cases, and that these investigations must meet the standards set down in Article 2 of the European Convention on Human Rights (ECHR). While the obligation to carry out an effective investigation into unlawful or suspicious deaths comes into play primarily in the aftermath of a violent and suspicious death, the procedural obligation to investigate under ECHR Article 2 may be revived in certain circumstances. The European Court of Human Rights has interpreted Article 2 as meaning that

where there is a plausible or credible allegation, piece of evidence or item of information relevant to the identification, and eventual prosecution or punishment of the perpetrator of an unlawful killing, the authorities are under an obligation to take further investigative measures. The steps that it will be reasonable to take will vary considerably with the facts of the situation.<sup>52</sup>

The HET’s remit currently includes some cases where there is a legal obligation to investigate, and also cases where there is no legal obligation to investigate.

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48 Q 175

49 Q 59

50 Q 61

51 Q 503

52 *Brecknell v UK* App No. 32457/04 (2007)

24. During our visit we noticed that whereas the material relating to some cases was extensive, that relating to others was sparse. This is hardly surprising given that computers were little used in investigative police work during most of the period covered by the HET. There were also more than 80 violent attacks on police stations and the forensic laboratories were twice destroyed during the Troubles. This is a significant factor that must be borne in mind. It underlines the fact that not all cases can be dealt with equally thoroughly.

25. **We were impressed by the personal commitment, sensitivity and professionalism of the Chief Constable, the Director of HET and the other staff involved in the HET. The project is unique and challenging, and it is clear to us that there is a real determination to provide information and answers to those who were bereaved during the Troubles. Whilst the memories are painful, families have appreciated the efforts made by the HET team to listen to their questions and to attempt to explain the circumstances of their relatives' deaths.**

26. **We were surprised to find that all cases are automatically reviewed by the HET. We accept that there are benefits in building a complete picture of often interconnected events. We also accept that a family which initially chooses not to participate in a case review may later change this view; and that there will be occasions where a family member (such as a grandchild) might only feel able to participate once an older relative has come to terms with the re-examination of painful past events, or has died. In such circumstances, the fact that the HET has carried out a comprehensive review of all cases will enable it to help families at a time that is right for them. Nevertheless, we conclude that in some cases scarce resources are being used to investigate historic cases where there is little likelihood of helping a family and limited opportunity of securing a conviction.**

27. **It is clear that the HET project will need significant additional funding if it is to continue with its current approach and complete reviews of all of the deaths within its remit. We are not convinced that the funding is being targeted as effectively as it might be. We recommend that alternative ways of prioritising cases are identified so as to focus resources on those cases where the next of kin of the deceased specifically request it or where the existence of forensics or other exhibits provides investigative opportunities which could contribute to a successful prosecution case. We recommend that a mid-term project review is conducted, with a view to establishing the costs and benefits of continuing with the HET in its current form, and identifying ways in which the scope of the exercise and the prioritisation of cases could be adjusted so that the project can be completed within budget and with maximum benefits.**

28. **The financial investment in the HET has been considerable, but little information about its progress and the benefits it has brought to families has been made available to the public. We recommend that the results of the review we call for above are published.**

29. **We are concerned that the demands of running the HET project, and the likely overspend, might compromise the ability of the PSNI to fulfil its primary role of policing the present. We also recognise that some families and organisations have questioned whether the PSNI is sufficiently independent and would prefer the historic**

**investigations to be managed by an independent agency. We return to this point in paragraph 40.**

## 3 The Police Ombudsman for Northern Ireland

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### Background

30. The Police Ombudsman for Northern Ireland provides an independent, impartial police complaints system. The powers and duties of the Ombudsman are set out in the Police (Northern Ireland) Acts 1998, 2000 and 2003 and other primary and secondary legislation.<sup>53</sup> For the year 2006–07, the office had a net operating cost of £8.4 million and 140 full time equivalent staff.<sup>54</sup>

31. Mrs Nuala O’Loan, the first Police Ombudsman, took office on 6 November 2000 for a term of seven years; the current Ombudsman, Mr Al Hutchinson, replaced Mrs O’Loan on 6 November 2007. Our predecessor Committee conducted a brief inquiry into the functions of the Office of the Police Ombudsman for Northern Ireland, and published a Report in February 2005. That Committee commended the work of Mrs O’Loan and her staff in “constructing from scratch a credible police complaints service in Northern Ireland”.<sup>55</sup>

32. A 2006 report from Healing Through Remembering acknowledged the important contribution made by the Police Ombudsman’s investigations:

The considerable legal powers of the office of the Police Ombudsman in terms of compelling witnesses as well as capacity to access relevant files including intelligence information, and the apparent dogged persistence with which that office has gone about its work, have made it quite a powerful tool of truth recovery in the field of policing.<sup>56</sup>

Other commentators have been more cautious. The views of BIRW on the Ombudsman’s work were that “the outcomes there have been patchy” and “we have found the Police Ombudsman’s Office much less family friendly than the Historical Enquiries Team”.<sup>57</sup>

### Historic remit

33. In 2001, the Ombudsman’s remit was extended to include historic cases. The RUC (Complaints) Regulations 2001 created a statutory obligation for the Ombudsman to investigate ‘grave or exceptional’ cases where the incident occurred more than a year ago and involved allegations of police misconduct. The Ombudsman told us that he was under a statutory obligation to investigate these issues, saying “I have no discretion and whatever comes to me I will eventually have to deal with.”<sup>58</sup> Historic complaints to the Ombudsman

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53 The Police (Northern Ireland) Act 1998 received Royal Assent in July 1998, after the Belfast Agreement was signed (on Good Friday, 10 April 1998). However, most of its Commons stages were completed before that Agreement was concluded.

54 Police Ombudsman for Northern Ireland, *Annual Report and Accounts 2006–07*, HC (2006–07) 659, p 62–70

55 Northern Ireland Affairs Committee, Fifth Report of Session 2004–05, *The Functions of the Office of the Police Ombudsman for Northern Ireland*, HC 344, para 27

56 Healing Through Remembering, “Making Peace with the Past”, 2006, p 55

57 Q 371

58 Q 80

can arise as a result of referrals from a variety of sources, including members of the public, the Director of Public Prosecutions and the Chief Constable, PSNI. Other cases have been referred to the Ombudsman by the Secretary of State as a result of judgments against the UK by the European Court of Human Rights. These include the cases of McKerr, Burns and Toman.<sup>59</sup> However, the number of historic complaints to the Ombudsman increased significantly after the HET project began operations in 2006, and the Office started to receive referrals from it. The Sapphire Team was established within the Ombudsman's Office to respond to these referrals from HET and there is also a Significant Investigations Team which deals with significant and historical investigations—around 35% of the staffing resource within this team is currently dedicated to historic cases.<sup>60</sup> According to figures provided in February 2008, there were 983 investigations then underway in the Office of which 116 were historical (54 of them HET referrals<sup>61</sup>) and it is estimated that there will be a further 300 referrals in total from the HET.<sup>62</sup>

34. The Ombudsman told us that difficulties had been encountered in securing sufficient additional funding to resource the additional work created by the extended remit. He explained that “when the Police Ombudsman was required by Parliament in 2001 to undertake investigations of matters more than a year old, funding was sought on a number of occasions to facilitate this work”.<sup>63</sup> The previous Ombudsman, Mrs O’Loan had submitted a business case to the NIO in January 2006, requesting an additional £750,000 per annum for the period of the HET project. Some funding was made available, but not the full amount requested:

During the three months to the end of March 2006 a commitment of £93,000 was made and utilised in setting up the dedicated team (Sapphire Team) for responding to HET referrals. During the year 2006/2007 a further £497,000 was utilised, the costs relating primarily to the contracting of retired Police Detectives from England or Wales to undertake this specific work.

There has been a general assurance provided by the NIO after this period that in the context of the six-year resource plan established by the Chief Constable [for the HET] £895,000 per year would be allocated to the Office. This resource represents only part of the overall resource utilised by the Office on HET work and other major investigations which have been ongoing within the Office under the statutory requirement to investigate any grave or exceptional matter from the past.<sup>64</sup>

35. Some staff have been reassigned from current investigations in order to assist with historical work. The Ombudsman observed that:

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59 Q 79

60 Ev 116

61 Q 86

62 Q 86

63 Ev 115

64 Ev 116

this impacts on the capacity of the Office to respond to current referrals from the Chief Constable, for example matters such as deaths in custody or fatalities as a result of police operations, or to current significant and serious complaints.<sup>65</sup>

We were told that there have also been difficulties recruiting suitably skilled staff:

The pressure on the Office is compounded by the limited availability of skilled, experienced and appropriate staff, to manage, lead and undertake such investigations. There has to be a balance of Investigation Officer experience and decision-maker experience to enable the 360° investigation that such cases merit and require and to comply with the requirements of Article 2 ECHR. The complexity of the cases and the gravity of the issues immediately necessitate significant managerial involvement. There are huge risks (including risks to the life of persons who may be identified in the course of an investigation) and there are public-police confidence issues present in each case. These risks have to be managed and dealt with at the highest level, and the attention given to such cases has the potential to divert focus from the work of today's police complaints system.<sup>66</sup>

36. The volume of work arising from historic cases, in particular those arising out of the work of the HET, is causing the Ombudsman to have concerns about the ability of his Office to cope with its remit. He told us that:

I have become very concerned. I have now been three months on the job and I am concerned about quality, the impact, our capacity for the future, and strategically looking at it we could come to that point where we will be sinking.<sup>67</sup>

The Ombudsman explained that some historic investigations had been suspended indefinitely due to lack of resources,<sup>68</sup> and that this too was affecting public confidence in his Office. He stated that:

it is impossible, given the number of complex investigations, to provide realistic timescales as to when an investigation will become a priority. The risk to the Office, deriving from this situation, in terms of public confidence is significant.<sup>69</sup>

He said that:

our satisfaction levels, according to surveys, are starting to slip [and that] there is no doubt it is impacting on our current delivery of cases because what we are doing is taking the experienced police officers, investigators, and putting them onto historic investigations because that is where we need the quality.<sup>70</sup>

In conclusion, he stated that “The work of dealing with the past and the headlines that these cases generate have the potential to undermine and reduce the perceived importance

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65 Ev 116

66 Ev 117

67 Q 87

68 Ev 117

69 Ev 118

70 Q 94

and relevance of today's police complaints system."<sup>71</sup> He also suggested that confidence in policing was being eroded, stating that "the past is bleeding into the confidence of this present police organisation" and that "confidence is diminishing in present policing."<sup>72</sup>

37. The Ombudsman estimated that should there be no change in the respective remits of the Ombudsman and of the HET, then his office would have to seek additional funding of around £2 million to £3 million per year to enable him to fulfil his statutory duties with regard to the historic work.<sup>73</sup> We note that the Patten report contained the following observation about the funding of the Ombudsman's Office:

The Police Ombudsman should be, and be seen to be, an important institution in the governance of Northern Ireland and should be staffed and resourced accordingly. Budgets should be negotiated with and finance provided by the Northern Ireland Office (or its successor department) both for the core staff of the office and to provide for exceptional demands created by large scale investigations.<sup>74</sup>

38. Paul Goggins MP, Minister of State for Northern Ireland, did not accept that the Ombudsman's Office had been under funded and stated that its financial bids had been met in full. However, he also said that he had asked the Ombudsman to prepare a business case for what he regarded as necessary to meet the growing workload, and that he would then assess what investment was necessary for the future.<sup>75</sup>

## Alternatives for the future

39. The current Police Ombudsman, Mr Al Hutchinson, published his views on 'policing the past' in his final public report before standing down from his position as the Policing Oversight Commissioner.<sup>76</sup> In that report he identified the difficulties of dealing with the past as one of four future challenges facing policing in Northern Ireland. He suggested that "policing practices of the past are clearly influencing perceptions of present-day policing in Northern Ireland" and that such perceptions were "an issue hindering the forward progress of policing". In his view:

organisations such as the Historical Enquiries Team and the Ombudsman's office are blunt instruments too narrowly focused to use in a search for truth and justice for societal challenges [and] all the pieces are in place to deliver the new beginning to policing in Northern Ireland, but ... the issues of the past have established a barrier in the road toward re-establishing the trust necessary for fully achieving that goal.<sup>77</sup>

40. Mr Hutchinson made it clear to us that in his view the work of the Ombudsman's historic investigations must continue, saying "this piece of work has to be done ...

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71 Ev 118

72 Q 105

73 Qq 87–88

74 A New Beginning: Policing in Northern Ireland, "The Patten Report", September 1999, para 6.41, p 37

75 Q 566

76 Office of the Oversight Commissioner, Report 19, May 2007, pp 215–216

77 *Ibid.*

somebody has to continue to do that”.<sup>78</sup> He stressed that the Police Ombudsman would always need a role to look retrospectively beyond twelve months, but explained that it was the period from 1968 to 1998 that was causing a serious problem for his Office.<sup>79</sup> He suggested that, instead of the current arrangements, there could be “an independent impartial organisation separate from both the PSNI and the Police Ombudsman capable of investigating all matters in a manner that would provide a sustainable process compliant with the United Kingdom’s obligations under Article 2 ECHR.”<sup>80</sup> He stated that “this agency group would have to be removed from the police to have independence and to have the confidence of the broad public.”<sup>81</sup> He explained that a single organisation would reduce unnecessary duplication of investigations and enable significant cost savings to be made:

Such a single organisation would also benefit from the ability to deal with an incident or incidents as one investigation, with one set of disclosure imperatives, as opposed to the current situation, which requires two separate investigations where police officers and non police officers may have been involved in the same incident. In those circumstances the disclosure requirements are significantly complicated, and may have the effect of undermining any subsequent trial.<sup>82</sup>

41. BIRW supported the Ombudsman’s proposal, stating that

It is attractive because it would do away with any duplication between the two organisations of which there is inevitably some ... It would also overcome the problem that the Police Ombudsman has which is that his remit is limited to police misconduct and he cannot look at the bigger picture.<sup>83</sup>

The Police Federation described the historic remit of the Ombudsman as a “legal straitjacket” and proposed that the legislation be amended to enable the Ombudsman to focus on complaints relating to events which had occurred after 1998.<sup>84</sup> As we discussed in the previous chapter, the Chief Constable told us that if the HET were to be transferred from the PSNI to a separate, independent body, he would not be against this different arrangement, but he was doubtful whether it would relieve the pressure on the PSNI.<sup>85</sup>

42. The Minister of State acknowledged that there was a build-up of work in the Ombudsman’s Office, and was aware of the proposal that the historic work should be reassigned to an alternative body. However, his view was that it was “principally a positive thing” that the Ombudsman retained the historic remit,<sup>86</sup> and questioned whether any other body would command an equivalent level of expertise, independence and

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78 Q 118

79 Q 124

80 Ev 118

81 Q 117

82 Ev 118

83 Q 370

84 Ev 134

85 Q 59

86 Q 563

confidence.<sup>87</sup> He stated that he intended to “wait and hear what Lord Eames and Denis Bradley have to say about this issue” before reaching any decision.<sup>88</sup>

43. The Patten Report underlined the importance of an independent, properly resourced Ombudsman’s Office which had community confidence and support. Our predecessor Committee noted in 2005 that Northern Ireland’s first Police Ombudsman, Mrs Nuala O’Loan, had constructed from scratch a credible police complaints system in Northern Ireland. However, the extension of the Ombudsman’s remit to include historic cases is having a damaging effect on the efficiency of the Office. The number of complaints about the former Royal Ulster Constabulary (RUC) arising from the years of the Troubles and the inadequate provision of additional resources have compromised the Ombudsman’s ability to investigate complaints against the PSNI. There is a risk that this reduced capability will damage public perception of the Ombudsman’s Office and public confidence in policing.

44. We have considered the case for a transfer of responsibility to carry out historical work from the Ombudsman to a newly-created independent body. We have also considered whether the Historical Enquiries Team, part of which is based in London and is staffed entirely by officers and former officers from forces outside Northern Ireland, could take on this function, or whether the resources of the Ombudsman’s office should be increased, to allow him to carry out historical work without impacting on his core responsibilities. We are, however, mindful of the Minister’s comment that he prefers to await the conclusions of the Eames/Bradley Group before reaching any decision. We, too, wish to avoid pre-empting any conclusion that the Group may come to on this issue. We therefore make no recommendation in this Report, beyond noting that the question of who has responsibility for conducting investigations into grave or exceptional cases involving alleged police misconduct in the period before the establishment of the PSNI is of the utmost importance, and that it will have to be resolved sooner rather than later. We intend to return to this.

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87 Q 562

88 Q 564

## 4 Statutory Inquiries

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### Background

45. On 1 April 2004, the Secretary of State for Northern Ireland published the reports by Justice Cory into the cases of Robert Hamill, Billy Wright, Rosemary Nelson and Patrick Finucane.<sup>89</sup> At the same time, he announced the establishment of public inquiries into the cases of Robert Hamill, Billy Wright and Rosemary Nelson and undertook to set out the way ahead regarding the case of Patrick Finucane at the conclusion of prosecutions in that case.<sup>90</sup> On 8 July 2004, the Secretary of State published a Statement on Governing Principles in respect of the inquiries into the deaths of Robert Hamill, Billy Wright and Rosemary Nelson.<sup>91</sup> The general principles applying to the establishment and conduct of inquiries include independence, transparency consistent with the interests of justice and national security, fairness and respect for individuals and avoidance of unnecessary expenditure.

46. The Billy Wright inquiry was established under the Prison Act (Northern Ireland) 1953. The Robert Hamill and Rosemary Nelson inquiries were established under section 44 of the Police (Northern Ireland) Act 1998. Both statutes provide inquiries with powers to subpoena witnesses and compel the production of documents. These mirror the powers of the High Court and inquiries established under the Tribunals of Inquiry (Evidence) Act 1921 to compel evidence and witnesses. The Inquiries Act 2005 came into force on 7 April 2005. It repealed the Tribunals of Inquiry (Evidence) Act 1921. The Billy Wright and Robert Hamill inquiries have subsequently been converted into inquiries under the Inquiries Act 2005.

47. The demands of the statutory inquiries, and other historic investigations, have been such that the PSNI has established a dedicated team of staff to deal with this work. The PSNI's Crime Support department, headed by Assistant Chief Constable Alistair Finlay, now has lead responsibility for legacy investigations, including overseeing the work of the HET. One branch of the department acts as the Police Service's main interface with the three statutory inquiries in Northern Ireland and the two statutory inquiries in the Republic of Ireland (the Smithwick and McEntree inquiries).<sup>92</sup> Within this branch are three units: one is responsible for meeting the PSNI's legal obligations to search the PSNI's archives and provide information and other material to the inquiries; another provides legal support to serving and former officers involved in the inquiries; and the third is responsible for reviewing and redacting intelligence information.<sup>93</sup> A second branch of the Crime Support department is the Retrospective Murder Review Unit which is responsible

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89 "Government publishes Cory reports", [www.nio.gov.uk](http://www.nio.gov.uk), 1 April 2004

90 *Ibid.*

91 Public inquiries into the deaths of Robert Hamill, Billy Wright, Rosemary Nelson and Patrick Finucane. Statement on Governing Principles, 8 July 2004 (Statement on Governing Principles).

92 Police Service of Northern Ireland, *Chief Constable's Annual Report 2006–07*, p 5

93 Police Service of Northern Ireland, *Chief Constable's Annual Report 2006–07*, p 5

for the re-examination of unsolved murders that were committed between 1998 and 2004.<sup>94</sup>

48. Sir Hugh Orde told us that liaising with statutory inquiries had created a “huge amount of work” for the PSNI.<sup>95</sup> He said that it had been a burden in terms of recovering archive information and providing storage for it in secure accommodation. However, he said that the PSNI had now “physically searched every single building, and every murder file which we think we can find we now have in very secure accommodation ...”<sup>96</sup> The PSNI is required to provide to an inquiry panel on request any relevant information which it holds, including intelligence. It has expressed concern about the arrangements for protecting confidential intelligence and other sensitive information contained within the records which it has provided to an inquiry. In particular, the protection of information which might identify a covert source is a critical issue. ACC Finlay explained that:

What is not always understood ... is that there is still an appetite in Northern Ireland for people to try and research from the past those within the communities who might have been giving information to the police. Over the period of time we have seen in excess of 30 people killed, believed to be police informants ... and that is the real threat and issue that surrounds public inquiries and inquests if we are not absolutely careful ... in the redaction and the careful framing of material that should end up in the public domain, because we have an absolute duty of care to these people.<sup>97</sup>

49. The PSNI expressed concern about the history of compromised sources being murdered; the potential difficulties of recruiting covert sources in the future if it were to become widely believed that information about them could not be kept confidential; and the financial costs to the police of relocating compromised sources. It also commented that wider knowledge of intelligence capacity and surveillance techniques could reduce the ability of the PSNI to prevent and detect crime, and highlighted the risk that international intelligence communities might become more reluctant to share intelligence information if they considered that it might ultimately be published by a public inquiry.<sup>98</sup> We consider the issue of source protection in the following paragraphs.

## Covert Human Intelligence Sources

50. A covert human intelligence source (CHIS) is an individual who provides information to the police, or security services, on criminal activity. The intelligence provided by covert sources was of particular importance during the Troubles as there were often no eyewitnesses willing to come forward, and the paramilitaries became practised in removing evidence from the crime scene.<sup>99</sup> NIRPOA praised the contribution made by covert sources

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94 Police Service of Northern Ireland, *Chief Constable's Annual Report 2006–07*, p 5

95 Q 13

96 Q 13

97 Q 31

98 Ev 124

99 Ev 111

in saving many lives during the Troubles and explained the importance of keeping secret the identity of covert sources and the consequences for those who were identified:

One common feature shared by every CHIS is a desire for their activities and identity to remain secret. ... Without such reassurance very few people, if any, would actually agree to provide secret intelligence to the police. Everyone in Northern Ireland knows well and understands the penalties that the terrorist and organised crime groups inflict on those whom they believe to be CHIS. The ultimate sanction of death awaits those who fall under the terrorists' suspicion ... Death is often marked with ritual humiliation and the families of informers are obliged to listen to 'confessions' and to distance themselves from their loved ones. Faced with the prospect of such a death if their relationship with the police becomes known no CHIS will operate without the belief that they will be protected by a cloak of anonymity, which they see as vital to their safety.<sup>100</sup>

51. One way of providing protection to a covert source whose identity has been revealed is for the police to offer a resettlement package. However, NIRPOA pointed out that whilst this might give the individual some protection, the provision of a new identity and relocation to another country had a devastating impact on family and personal life and often left covert sources in a position where they were unable to return home even for a parent's funeral, or for a final visit to an elderly relative before they died.<sup>101</sup> NIRPOA suggested that covert sources were now at greater risk of being identified because of the range of historic investigations underway which required the PSNI to share its information about the identity of sources.<sup>102</sup>

52. The Police Ombudsman questioned whether continued reliance on covert sources was necessary or desirable. He pointed out that there were "other effective and lawful technologies and methodologies available to the police, which may be used in the fight against terrorism and serious crime and which support the rule of law." He added:

There is, regrettably, a legacy in Northern Ireland of inappropriate and on occasions unlawful practice and policy in the use of sources, and the information received from them, which has on occasion prevented good policing and has undermined the rule of law and confidence in policing.<sup>103</sup>

The Ombudsman pointed out that the PSNI had decommissioned many covert sources, many of them because they were engaging in serious crime, and that inappropriate use of sources had the potential to impact negatively on good policing. He nevertheless recognised the need to consider the effect of disclosure of any source identity.<sup>104</sup>

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100 Ev 111

101 Ev 112

102 Ev 112

103 Ev 119

104 Ev 118

## Legal framework

53. The PSNI told us that it considered there to be a tension between different aspects of the PSNI's legislative duties in respect of covert sources. The PSNI has responsibilities to protect the identity of sources under European Convention on Human Rights (ECHR) Article 2 and under the Regulation of Investigatory Powers Act 2000 (RIPA). However, it also has a duty to provide information to inquiries, including information which might identify a source. We consider the nature of these duties in the following paragraphs.

### *ECHR Article 2 and Regulation of Investigatory Powers Act 2000*

54. ECHR Article 2 states that "Everyone's right to life shall be protected by law." In practice, this is interpreted as placing the following obligations on states:

- i. a substantive prohibition on the taking of life;
- ii. a procedural obligation officially to investigate the taking of life in certain situations; and
- iii. a substantive obligation to protect the right to life, i.e. to take appropriate steps to safeguard the lives of those within their jurisdiction.

The Human Rights Act 1998 provided for Convention rights to be enforced through the United Kingdom's courts.<sup>105</sup>

55. The PSNI and the inquiry panels are public authorities for the purposes of the Human Rights Act 1998. As such, each must act in a manner that is compatible with European Convention rights. The ECHR Article 2 substantive obligation to protect the right to life applies to both the PSNI and the inquiry panels. That obligation arises where state authorities know (or ought to know) of the existence of a real and immediate risk to the life of an individual (the *Osman* threshold)<sup>106</sup> and requires them to take preventative, operational measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. Whether the obligation arises in any particular case and whether the state authorities are in breach of that obligation will depend not only upon the nature of the threat and the degree of risk to the individual, of which the authorities knew or ought to have known, but also upon the extent to which there were appropriate measures reasonably available to the authorities to alleviate or obviate that risk. However, where it is the conduct of the state authorities which has itself exposed an individual to the risk to his or her life (including for example where the individual is in a special category of vulnerable persons, or of persons required by the state to perform certain duties on its behalf which may expose them to risk) and who is therefore entitled to expect a reasonable level of protection as a result, the *Osman* threshold of a real and immediate risk is too high. If there is a risk to the individual on the facts, then there is a real risk and 'immediate' can

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<sup>105</sup> A House of Lords judgment in 2004 established that the Act is not retrospective. It does not, therefore, apply to unlawful killings which took place before the coming into effect of the Act on 2 October 2000. This does not, however, displace the obligations under ECHR Article 2, which continue to bind the UK under international law.

<sup>106</sup> *Osman v United Kingdom* (2000) 29 EHRR 245

mean just that the risk is present and continuing at the material time, depending on the circumstances.<sup>107</sup>

56. Part II of RIPA sets out the legislative framework for the authorisation, conduct and use of covert human intelligence sources. The RIPA Codes of Practice require authorizing authorities such as the police to take account of the safety and welfare of informers while they are actively working for them and to consider their ongoing security and welfare when the informer has completed his or her involvement. Case law has established that the police have a duty to take reasonable care to avoid unnecessary disclosure to the general public of confidential information provided by an informant.<sup>108</sup> However, public policy considerations will be relevant in determining both the scope of the duty on the police and the question of any breach of that duty, and the phrase ‘reasonable care’ limits the extent of the duty by recognizing that the police have many functions to perform, only one of which is the protection of their sources. If there is a real and immediate risk to life, then the PSNI and the inquiry panels may have a positive obligation to take preventive, operational measures to protect the identified individual whose life is at risk as a result of the criminal acts of a third party. This could include imposing strict procedures and arrangements for the storage, retention and disclosure of sensitive information and intelligence provided (by the PSNI and others) to the inquiry panels and the imposition of restrictions by the inquiry panels on disclosure or publication of any sensitive evidence or documents provided to an inquiry.

### ***Inquiries Act 2005***

57. A Minister may establish an inquiry under the Inquiries Act 2005 where it appears to him or her that (a) particular events have caused, or are capable of causing, public concern or (b) there is public concern that particular events may have occurred. The Minister defines the terms of reference of the inquiry and its setting-up date. The Minister also appoints the members of the inquiry panel. The NIO described the three mechanisms by which sensitive information might be protected:

- A restriction order may be made by the Panel Chairman to prevent the information being disclosed;
- An application may be made to the Minister for a restriction notice to prevent the information being disclosed by the Inquiry Panel; or
- An application may be made for Public Interest Immunity (PII) (either to prevent the information being disclosed *by* the Inquiry Panel, or in exceptional circumstances, an application to prevent the information being disclosed *to* the Inquiry Panel).<sup>109</sup>

58. There is a presumption in favour of public access to both inquiry proceedings and information. However, restrictions may be imposed by the inquiry chairman on

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107 *R (A) v Lord Saville of Newdigate* [2002] 1 WLR 1249

108 *Swinney v The Chief Constable of Northumbria Police* [1997] Q.B. 464 and *Swinney v The Chief Constable of Northumbria Police (No 2)*, the Times, May 25th 1999

109 Ev 101

attendance at an inquiry and/or disclosure or publication of any evidence or documents provided to an inquiry. When considering whether to impose any restrictions, specific regard must be given to any risk or harm that could be avoided or reduced by such a restriction.<sup>110</sup> This means that concerns voiced by the PSNI regarding potential threats to life or risk of harm to informants, witnesses or other individuals<sup>111</sup> must be considered by the inquiry chairman and thought given as to whether to impose restrictions to alleviate or obviate any such threats or risk. BIRW pointed out that it is consistent with the rule of law generally that it is the independent person presiding over proceedings (in this case the inquiry chairman) who determines what is or is not too ‘harmful’ to disclose.<sup>112</sup> It is also consistent with ECHR Article 2 which requires the state to hold effective, independent investigations into deaths involving force.

## Issues raised by the PSNI

### *Process for agreeing redactions with inquiry panels*

59. The PSNI told us that, to date, it had been able to reach agreement with inquiry panels with regard to any redactions to information which it wished to be made prior to disclosure by the inquiry.<sup>113</sup> However it expressed doubts about the procedures for resolving disputes between the PSNI and an inquiry about what redactions were necessary. It was not confident that the provisions in the Inquiries Act for resolving disputes would be satisfactory if there were to be a disagreement between an inquiry chairman and the PSNI about publication of a specific piece of information. The PSNI view was that the Inquiries Act does not clearly specify in what order of precedence a decision of the Minister or the chairman can be sought and which is appropriate at different stages of the proceedings.<sup>114</sup> It also suggested that there had been some debate as to the capacity of inquiry chairmen to award PII, and that the view of Lord McLean, Chairman of the Billy Wright inquiry, was that he could not.<sup>115</sup>

60. BIRW accepted that the PSNI “obviously has a duty of care towards its covert sources” and that “any action on the part of the PSNI that adds to [the risk to life] could potentially infringe the sources’ right to life under Article 2 of the ECHR.”<sup>116</sup> However, it added that “there are no provisions in the Inquiries Act 2005 which place the police under any special or new difficulties in relation to the protection of covert sources.”<sup>117</sup> CAJ commented that:

It is not necessarily the case that in order for the inquiry to do its job the name has to be given of every informer and the level of detailed methodology, but that actually there is a lot of information which could be put into the public domain, more

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110 Inquiries Act 2005, ss.19(5)

111 Ev 128

112 Ev 108

113 Q 72

114 Qq 529–503

115 Q 72

116 Ev 107

117 Ev 107

information certainly than is there currently, that would allow us to assess why certain decisions were made and what actually happened.<sup>118</sup>

The Police Ombudsman pointed out that,

Even where it is not readily apparent to an Inquiry, other individuals, better placed to realise the risk, may invoke protection of the information, or, more accurately refuse to provide the information, in accordance with Sections 22(1) and (2) [of the Inquiries Act]. Section 22(1) specifically negates compellability where to require it would be incompatible with a European Convention obligation. ... Additionally Section 22(2) preserves a public interest ‘exemption’, protecting that which would attract a claim of Public Interest Immunity (PII) in any other venue and therefore ‘copper fastens’ the ability of the PSNI, in such situations, to raise a defence to a production order.<sup>119</sup>

61. The Joint Committee on Human Rights and others have raised concerns about the independence of inquiries under the Inquiries Act, particularly with the Minister’s powers regarding evidence and restriction notices under Section 19 of the Act.<sup>120</sup> For example, BIRW told us that:

The Minister’s role is particularly troubling where the actions of that Minister or those of his or her department, or those of the government, are in question. In effect, the state will be investigating itself. ... Indeed we doubt that the Inquiries Act can deliver an effective investigation in compliance with Article 2. The Minister’s powers to interfere in every important aspect of an inquiry robs it of any independence.<sup>121</sup>

In this context, ACC Finlay suggested that if the Secretary of State were to be required to make PII decisions, it would place him in “the invidious position of seeming to intervene in the inquiry” and that the issue might therefore have to go to judicial review.<sup>122</sup> The Police Ombudsman also referred to the potentially damaging effect on public confidence of issuing PII certificates, pointing out that:

Where the Police Ombudsman or the Chief Constable, under their statutory obligations, seek to protect methodologies or sources from being made public at an inquiry, this may have the effect of undermining confidence in these organisations.<sup>123</sup>

62. The Minister of State accepted that there would be “real pressures” in the complex process of negotiating which redactions were necessary and confirmed that he would take a very close interest in the process to ensure that progress was maintained.<sup>124</sup> However, his

118 Q 204

119 Ev 118–119

120 Joint Committee on Human Rights, Fourth Report of Session 2004–05, *Scrutiny: First Progress Report*, HC 224, HL Paper 26, paras 2.12–2.16

121 Ev 107

122 Q 72

123 Ev 120

124 Q 579

view was that the legislation was adequate and that the provisions for agreeing redactions were clear. He confirmed that the Ministerial powers would be used when necessary:

If the Chief Constable was saying to an inquiry, ‘I do not think that information should be shared with other parties or should be in the public domain because there is an Article 2 obligation here that prevents that’ and the inquiry did not agree and they could not reach a voluntary agreement, if I or the Secretary of State was persuaded by the Chief Constable indeed that that matter should not be shared because of Article 2 obligations, then the Secretary of State would have the power to make a restriction notice. Of course, it would then be for the inquiry to challenge that in court. If we were persuaded as ministers, we would not hesitate to use those powers because Article 2 obligations are absolute.<sup>125</sup>

**63. The disclosure of intelligence information to inquiries clearly presents challenges for the police, and for other organisations which are required to provide sensitive information. The process of agreeing necessary redactions requires considerable input from key police staff who understand the implications of disclosing specific items of intelligence. This necessarily requires them to divert their attention from more current issues of concern, which include, most critically, monitoring the threat posed by dissident terrorists. The provisions in the Inquiries Act 2005 for agreeing and resolving disputes about redactions have yet to be tested and it is therefore possible that difficulties may emerge with the way that those provisions work in practice. It is crucially important that the workings of the Act are carefully monitored. The Committee may wish to return to this issue in a subsequent inquiry.**

### **Inquiry panel information management procedures**

64. Sir Hugh Orde said that one of his key concerns regarding the statutory inquiries, was that the PSNI was “losing control of more and more secret and extremely sensitive material” which previously would have been retained by the PSNI and kept within its control.<sup>126</sup> ACC Finlay explained that a particular issue was the arrangements made by inquiry chairmen for the safe storage and management of information by the inquiry panels and their staff to prevent the loss or inadvertent disclosure of sensitive intelligence information within their care.<sup>127</sup> The importance and relevance of this issue was highlighted during our own inquiry, by the news that a disk, believed to contain sensitive information, had been lost by the Rosemary Nelson Inquiry. We also discovered that each inquiry might have a staff of around 30, and that turnover of these individuals has been high. The specific concerns expressed by the PSNI are listed below:

- i. It is not clear to the PSNI whether inquiry staff with access to intelligence have been required to sign strict confidentiality agreements or been subject to a high level security vetting process.<sup>128</sup>

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125 Q 580

126 Q 526

127 Q 531

128 Ev 127

- ii. According to the PSNI, the government intelligence handling regime (STRAP) used by the Security Service, MOD and others managing intelligence information does not apply to inquiries, even though they are in possession of a “very significant volume of intelligence”.<sup>129</sup>
- iii. The PSNI told us that it was subject to regular audits by the Office of the Surveillance Commissioner to monitor that its information was stored, managed, collected and disseminated in accordance with the required guidelines, but that the management of intelligence information which it had handed over to inquiries was not subject to an equivalent level of scrutiny.<sup>130</sup>
- iv. With regard to the return or safekeeping of documents after the end of an inquiry, the PSNI would also like to see all the un-redacted documents to which PII and Article 2 obligations attach returned once the inquiry is closed and the report is issued, and would be satisfied for documents to which no PII attaches, in other words redacted documents, to be archived as required.<sup>131</sup>

65. In January 2008, the Billy Wright Inquiry published a paper which suggested that the PSNI had contributed to delays and difficulties in the recovery of documentation required by the Inquiry.<sup>132</sup> The PSNI published its response in May 2008, in which the Chief Constable explicitly stated his commitment to supporting the work of the Inquiry. It also included an acceptance that the PSNI had “at times fallen short of the expectations of the Inquiry” and listed a number of specific areas where it accepted that the criticism had been justified.<sup>133</sup> However, the response also listed examples where the PSNI judged that the Inquiry’s management of intelligence information had fallen below the required government standards.<sup>134</sup>

66. The Minister of State explained that the NIO, as sponsoring department for the inquiries, had reached “robust agreements” with them about the handling of sensitive information, and that the inquiries had provided assurances that all of the agreed systems were in place and were working well.<sup>135</sup> He added that it was “deeply concerning” that information had been lost by the Nelson Inquiry and advised that the Secretary of State had asked a security expert to work with all of the inquiries, to ensure that their systems were as robust as they needed to be.<sup>136</sup>

**67. The need for the PSNI to provide sensitive information to inquiry panels was an inevitable consequence of the Government’s decision to conduct the inquiries and, as we have previously discussed, there are legal provisions to prevent the disclosure of sensitive information beyond an inquiry if necessary. The inquiries must be able to**

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129 Ev 127

130 Ev 128

131 Ev 131

132 Position Paper on the PSNI’s Response to Requests for Information, January 2008, [www.billywrightinquiry.org](http://www.billywrightinquiry.org)

133 Police Service of Northern Ireland Response to Billy Wright Inquiry Position Paper, May 2008, p 82

134 Police Service of Northern Ireland Response to Billy Wright Inquiry Position Paper, May 2008, p 26

135 Q 582

136 Q 582

operate independently of the Government and the agencies which provide them with information. It would not be appropriate for any of those agencies to appear to attach any conditions to its cooperation, nor to dictate an inquiry's internal procedures. The Minister of State at the Northern Ireland Office has underlined the fact that as public authorities in their own right, inquiries have the same obligations under ECHR Article 2 as any government department or the PSNI. Inquiry chairmen must take full responsibility for the management of information within their safekeeping and ensure that they meet their obligations under human rights legislation. It is important for them to recognise that the future safety and indeed possibly the lives of certain people who have supplied sensitive information could well depend upon their decisions.

68. The loss or inadvertent disclosure of sensitive intelligence information by an inquiry panel or its staff could have serious consequences, including the risk to life. The PSNI has expressed specific concerns about the inquiries' information management procedures. These concerns must be addressed to ensure that the inquiries meet their Article 2 obligations and to enable the PSNI to work cooperatively with the inquiries, and provide them with the information they require without further delay. If the inquiries are unable to demonstrate to the Government that their procedures are adequate, steps must be taken to implement improvements. We recommend that if the particular issues raised by the PSNI were not included in the Government's review of inquiry information management procedures, they should be included in a further review which should be conducted forthwith, as a matter of urgency.

### Resources

69. The Chief Constable has made a clear public commitment to supporting the work of inquiries.<sup>137</sup> The purpose of our work has been not to question that commitment, but to examine whether the PSNI is adequately enabled to fulfil its obligations without compromising its ability to police the present. The PSNI estimated that its costs relating to the inquiries for 2007–08 would be £2.05 million, with a further £2.75 million projected for 2008–09 and £0.5 million for 2009–10.<sup>138</sup> No specific additional funding for this work has been provided by the NIO. Whilst these are significant sums, they represent a relatively small proportion of the entire PSNI budget but the Chief Constable told us that the biggest impact was in the loss of expertise in key areas of policing where intelligence was currently critical. He explained that the PSNI had only a small pool of appropriately skilled officers able to search intelligence information and identify which parts could be used to identify covert sources. He had had to divert key staff from current policing priorities to historical work and as a result there was a risk that the quality of current policing could be compromised. He said that, "... we cannot just recruit anyone to do this; (a) it is deeply sensitive and (b) the corporate memory goes over time and trying to get that back is difficult."<sup>139</sup> He went on to explain the consequences for the PSNI:

... what I am having to do, if I cannot find it externally, is use some of my key players who will be delivering some of my most sensitive operations today to look to service

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137 Q 534

138 Ev 124–125

139 Q 53

historic inquiries. ... all the inquiries and all the inquests, all [are] coming into a fairly small hub of experts.<sup>140</sup>

70. The Police Federation stated that “We consider that this pressure on police resources should be a matter of concern to be shared at the highest level of Government. Ineffective policing will not help to stabilise the still bedding down political institutions of Northern Ireland.”<sup>141</sup> The view of the Policing Board was that:

the efficiency and effectiveness of the police service in preventing and detecting crime should not be compromised by dealing with various commitments to historical inquiries ... It is the responsibility of Government to ensure that the police service be provided with adequate funding to deal with ‘policing the past’.<sup>142</sup>

71. The Minister of State acknowledged the pressures on the Chief Constable:

I have a lot of sympathy with the Chief Constable in this. Where he is faced with public inquiries, inquests and so on, it is officer time tied up with going back through files, often very experienced officers going back through files, coming up with the information, sharing it and so on. I acknowledge that is a pressure but it is a pressure that, in his own redoubtable way, the Chief Constable gets on and deals with.

However, he stated out that the PSNI’s resource allocation was “substantially more than comparable forces across the rest of the United Kingdom”<sup>143</sup> and that the Chief Constable and the Policing Board had confirmed that they had balanced the budget for the current year.<sup>144</sup> He also accepted that the pressures on the PSNI were “significantly and substantially different from the pressures in other police force areas in the United Kingdom” and explained that was reflected in the PSNI’s budget settlement.<sup>145</sup>

72. The Minister of State told us that he believed it was necessary to fund the statutory inquiries in order to help people achieve resolution and to build public confidence, and also to fund practical projects which helped people to rebuild their lives.<sup>146</sup> He explained:

I genuinely believe that they [inquiries] can help to build up public confidence as well as to deal with individual circumstances. I am not pretending ... that they are a perfect and complete answer in themselves. There are many issues and difficulties associated with them and, in and of themselves, they do not produce the final answer which Northern Ireland as a whole will need if it is to move forward.<sup>147</sup>

**73. The very high annual cost of inquiries into past events is financially unsustainable. We note with concern that the latest estimated cost of the Saville Inquiry alone is £183**

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140 Q 53

141 Ev 133

142 Ev 110

143 Q 576

144 Q 578

145 Q 577

146 Q 601

147 Q 597

million and that inquiry is still not completed.<sup>148</sup> The cost to organisations such as the PSNI that contribute to the statutory inquiries is also considerable, in terms of money and resources. The PSNI estimates that its costs for working with the inquiries over the next two years alone will come to over £6 million. We fully accept the Chief Constable's concerns that the diversion of experts from their current duties is bound to impact upon effective policing in Northern Ireland. The cost of inquiring into the past is an issue that, at some point, will have to be faced. Such inquiries cannot become a permanent feature of life in Northern Ireland. We recommend that the NIO take further steps to control the costs of Northern Ireland's statutory inquiries and that inquiries other than those already under way or announced should only be established if agreed by the Northern Ireland Assembly.

74. The statutory inquiries place significant demands on the PSNI at a time when police officers are still subject to attacks from dissident terrorists. No other police force in the United Kingdom is required to operate in such an environment, and at the same time to service the demands of the extensive range of historic investigations which are underway in Northern Ireland. The NIO must continue to ensure that the PSNI has a budget sufficient to fulfil its operational remit and to meet its legal obligations with regard to servicing the statutory inquiries.

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<sup>148</sup> HC Deb, 19 June 2008, col 148W. The Government has stated that approximately half of these costs have been incurred in legal fees, HC Deb, 20 February 2008, col 337.

## 5 Inquests

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75. The inquest system in Northern Ireland has long been the subject of controversy. A number of inquests into contentious deaths occurring during the Troubles have been the subject of significant cases before both the domestic courts and the European Court of Human Rights. This has resulted in multiple adjournments and suspensions of these inquests, the majority of which remain to be heard. The inquest system in Northern Ireland continues to face a severe backlog of cases and the senior coroner in Northern Ireland recently criticised the PSNI at a preliminary hearing in the *Jordan*.<sup>149</sup> inquest for causing further delays.<sup>150</sup> A detailed note on the legal background to these inquests is at Annex A.

76. The PSNI told us that approximately 100 historic inquests remain outstanding and that 48 of these deaths are classed as contentions because they involved allegations of collusion or involvement of the security forces in the death.<sup>151</sup> The PSNI also stated that “these inquests have the potential to be almost akin to public inquiries. They demand complete disclosure which brings with it issues of intelligence and source handling that will require PII consideration.”<sup>152</sup> Sir Hugh Orde commented that “a different approach has been adopted by the coroner which is a very constructive approach which may minimise the impact, but still it is an awful lot of work.”<sup>153</sup>

77. The PSNI has estimated that its costs relating to inquests for 2007–08 were £0.19 million, with projected costs of around £4.5 million per annum for each of the subsequent five years. Sir Hugh Orde explained that:

there will be a huge amount of backward looking reporting in the context of day to day policing. There is a huge issue for me around competence in policing just around that. In terms of can it be delivered, it can be delivered but it will take time and I will have to continue taking resources out of my current budget because I have no extra money for any of this, except for ... HET which is ring-fenced.<sup>154</sup>

78. Witnesses pointed out the importance of conducting the inquests and questioned whether the PSNI could itself help make the process of information provision more efficient. CAJ commented that,

As a society, what we have to do is to recognise that people do need answers and that that is an important part of us moving forward. If the coroner is now able to start the

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149 On 25 November 1992, Pearse Jordan, aged 22 while unarmed, was shot three times in the back and killed in Belfast by RUC officers. On 16 November 1993, the Director of Public Prosecutions issued a direction of no prosecution on the basis of insufficient evidence to warrant a prosecution. On 4 January 1995, the Coroner's inquest into the death commenced. The inquest has been adjourned on numerous occasions pending the outcome of various applications for judicial review and a successful application to the European Court of Human Rights. The inquest proceedings have recently re-commenced.

150 The Irish News, 21 May 2008, “Coroner criticises police over delays in IRA man's inquest”

151 Ev 123

152 Ev 123

153 Q 534

154 Q 38

inquests it will deal with some of the issues that families have but inquests in Northern Ireland still have more limited powers than ones in England and Wales.<sup>155</sup>

Jane Winter of BIRW suggested that,

... if the PSNI were to have a dedicated disclosure unit which actually cooperates with the HET who have already done a lot of this evidence collecting to find what they really have got that they can disclose to the coroner and do it as promptly as possible that would be a cost effective way of doing it. ... I think there may be ways of making it a more streamlined and effective process that is not as expensive and difficult as it might appear if you look at each case on its own.<sup>156</sup>

79. The Minister of State acknowledged that the inquests would be controversial and would place significant further demands on the PSNI, but stated that the Chief Constable would be able to build on his prior experience in handling similar issues and use that experience to work constructively with the coroner.<sup>157</sup>

**80. There are outstanding legal obligations which require the coroner to investigate a number of deaths which occurred during the Troubles. The PSNI has a duty to cooperate with the coroner and to provide him with whatever information he requires to conduct those inquests. Since some of that information might include intelligence which could identify an informant, issues similar to those raised by the PSNI regarding the disclosure of sensitive intelligence information to the statutory inquiries might apply to the contentious inquests. The coroner has a duty under Article 2 of the European Convention on Human Rights to take steps to protect the lives of informants who could be put at risk through disclosure of information which might identify them. We recommend that an information management code of conduct be drawn up by the coroner, after consultation with the appropriate agencies, to protect sensitive information provided to him as part of the inquest process, and that any public disclosure of such information is made in accordance with the coroner's obligations under ECHR Article 2.**

**81. We note that no specific additional funding has been provided to the PSNI in recognition of the extra workload arising as a result of the inquests and that resources have instead been allocated from the main policing budget. There are already significant and unique demands on the PSNI and we are concerned that the volume of work required to cooperate fully with the inquests may compromise the PSNI's ability to direct adequate resources to other high priority areas of policing. We recommend that the impact of the inquests on the PSNI's resources and any consequential effect on current policing capacity is reviewed during 2009 and the budget revised accordingly.**

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155 Q 167

156 Q 420

157 Q 572

## Annex A Legal Background to the Inquests

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1. The obligation to protect the right to life under ECHR Article 2<sup>158</sup> includes a procedural obligation to conduct some form of effective official investigation when individuals have been killed as a result of the use of force.<sup>159</sup> The essential purpose of the investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in the cases involving state agents or bodies, to ensure their accountability for death occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances, but it has been the general approach of the authorities in the UK to meet this procedural obligation by conducting inquests.

2. The conduct of inquests in Northern Ireland is governed by the Coroners Act (Northern Ireland) 1959 (the 1959 Act) and the Coroners Practice and Procedures Rules (Northern Ireland) 1963 (the 1963 Rules). These provide the framework for a procedure within which deaths by violence or in suspicious circumstances are notified to the coroner, who then has the power to hold an inquest, with or without a jury. The purpose of the inquest is to establish, with the assistance of the evidence of witnesses, post mortem and medical reports and forensic examinations, who the deceased was and how, when and where he died. The Coroners Service in Northern Ireland is headed by a High Court Judge. The coroner decides how widely the inquiry should range to establish the facts relevant to the circumstances of the death and responsibility for it and the inquiry may range more widely than the verdict or findings. Where the circumstances of a death investigated or being investigated by a coroner appear to disclose that a criminal offence may have been committed, the coroner is required to submit a report to the Director of Public Prosecutions.<sup>160</sup>

3. A number of inquests into contentious deaths occurring during the Troubles have been the subject of significant judgments by the European Court of Human Rights. The seminal decision of the European Court of Human Rights is *Jordan et al v UK* (2001),<sup>161</sup> where the Court found that the inquest regime fell short of the requirements of ECHR Article 2.<sup>162</sup> As a result, the court concluded that there had been a violation of the procedural obligation imposed by ECHR Article 2. In response to the judgment, the UK presented a package of proposals to the Committee of Ministers of the Council of Europe<sup>163</sup> setting out the

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158 Read in conjunction with the State's general duty under article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention"

159 *McCann v UK* (1995) EHRR 97.

160 Justice (Northern Ireland) Act 2002 s.35(3)

161 The proceedings before the European Court of Human Rights in this case were conducted simultaneously with proceedings in the cases of *Kelly and Others v UK* (No. 30054/96); *McKerr v UK* (No. 28883/95) and *Shanaghan v UK* (No. 37715/97).

162 On a number of grounds including (i) the non-disclosure of witness statements prejudiced the ability of the deceased's family to participate in the inquest; (ii) the PII certificates had the effect of preventing the inquest examining matters relevant to the outstanding issues in the case; (iii) the police officers who shot the deceased could not be compelled to attend the inquest; and (iv) the inquest procedure did not allow for any verdict or findings which might play an effective role in securing a prosecution in respect of any criminal offence.

163 Under article 46(2) of the Convention, the Committee of Ministers has responsibility for supervising execution of the judgment of the court.

practicable steps that it would take to implement the judgment to ensure that future investigations complied with ECHR Article 2.

4. As a result of domestic and European litigation and the instigation of a major review by Government,<sup>164</sup> the inquest system in Northern Ireland has been substantially remodelled in the last five years. In its Interim Resolution of February 2005,<sup>165</sup> the Committee of Ministers closed its examination of several aspects of the UK's package of measures relating to inquests.<sup>166</sup> Nevertheless, The Committee of Ministers in its second Interim Resolution of June 2007 urged the Government to implement all outstanding general and individual measures and take all necessary investigative steps without further delay in order to achieve concrete and visible progress in complying with the Court's judgment.<sup>167</sup> The Committee also decided to pursue the examination of the execution of the 2001 judgments until it has satisfied itself that all necessary individual measures have been taken to erase the consequences of the violations found for the individual applicants in those cases.

5. The Government was subsequently challenged in the domestic courts following the introduction of the Human Rights Act 1998 in an attempt to compel it to conduct an effective investigation into a number of historic deaths caused by police and/or security forces.<sup>168</sup> Declarations were sought that the Government's *continuing* failure to provide an Article 2 compliant investigation was unlawful and in breach of s.6 of the Human Rights Act 1998 and ECHR Article 2. The decision of the House of Lords however made clear that the Human Rights Act 1998 is not retrospective. Thus, domestic rights created by the Human Rights Act which are available to individuals against specific public authorities cannot be applied retrospectively.<sup>169</sup> The Human Rights Act 1998 does not therefore apply to unlawful killings which took place before the coming into effect of the Act on 2 October 2000. The obligation to hold an investigation is an obligation triggered by the occurrence of a violent death. If the death itself is not within the reach of the Act because it occurred before the Act came into force, nor is the procedural obligation to investigate which, the Lords held, is necessarily consequential on the death. This does not, however, displace the obligations under ECHR Article 2, which continue to bind the UK under international law.

6. In two recent cases (heard together in 2007) concerning inquests into deaths in Northern Ireland which occurred in the 1990s,<sup>170</sup> the House of Lords was asked to consider two further questions: (a) what findings or verdict the inquest jury was allowed to return under the 1959 Act and the 1963 Rules; and (b) the extent of the Chief Constable's duty of disclosure under the 1959 Act. The Court found that an inquest jury in Northern Ireland may not return a verdict of unlawful or lawful killing (unlike inquest juries in England or

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164 *Death Certification and Investigation in England, Wales and Northern Ireland – The Report of a Fundamental Review 2003* (Cm 5831) and *Death Certification and the Investigation of Deaths by Coroners – Third Report of the Shipman Inquiry, 2003* (Cm 5854).

165 Interim Resolution ResDH(2005)20.

166 Including the role of the inquest procedure in securing a prosecution in respect of any criminal offence; the scope of examination of inquests; the compellability of witnesses at inquests; the disclosure of witness statements prior to the appearance of a witness at the inquest and legal aid for the representation of the victim's family.

167 Interim Resolution ResDH(2007)73.

168 *In re McKerr* [2004] UKHL 12

169 These should be distinguished from the obligations under international law which the UK (as a State) accepted by accession to the ECHR in 1950.

170 *Jordan v Lord Chancellor; McCaughey v Chief Constable of the PSNI* [2007] UKHL 14,

Wales). However, nothing in the 1959 Act or the 1963 Rules prevents a jury finding facts directly relevant to the cause of death which may point very strongly towards a conclusion that criminal liability exists or does not exist. The Court also held that s.8 of the 1959 Act requires the PSNI to furnish to a coroner (to whom notice under s.8 is given) such information as it then has or is thereafter able to obtain (subject to any relevant privilege or public interest immunity claim) concerning the finding of the body or concerning the death, noting that “[i]t would so plainly frustrate the public interest in a full and effective investigation if the police were legally entitled, after giving the initial s.8 notice, to withhold relevant and perhaps crucial information coming to their notice thereafter.” A number of inquests<sup>171</sup> which were abandoned in the early 1990s have now been re-opened or recommenced by the Senior Coroner in Northern Ireland in light of the House of Lords decision in *Jordan*.

Jane Gordon  
Specialist Adviser

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171 Inquests into the deaths of Eugene Toman, James Gervaise McKerr, John Frederick Burns, Michael Justin Tighe, Peter James Martin Grew and Roderick Martin Carroll.

## Formal minutes

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**Wednesday 25 June 2008**

Members present:

Sir Patrick Cormack, in the Chair

Mr David Anderson	Kate Hoey
Mr Gregory Campbell	Dr Alasdair McDonnell
Mr Christopher Fraser	Mr Denis Murphy
Mr Stephen Hepburn	Stephen Pound
Lady Hermon	Sammy Wilson

Draft Report (*Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past*), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 81 read and agreed to.

Annex read and agreed to.

*Resolved*, That the Report be the Third Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Several Papers were order to be reported to the House for printing with the Report.

[Adjourned till 3.00pm on Wednesday 2 July.]

# Witnesses

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<b>Mr Al Hutchinson</b> , Police Ombudsman, <b>Mr Sam Pollock</b> , Chief Executive, and <b>Mr Jim Coupland</b> , Senior Director Investigations, Office of the Police Ombudsman for Northern Ireland	Ev 15
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<b>Wednesday 21 May 2008</b>	
<b>Mr Paul Goggins MP</b> , Minister of State, <b>Carol Moore</b> , Associate Director, Policing and Security, <b>Kate Pettifer</b> , Head of Rights, Elections and Legacy, and <b>Nichola Creagh</b> , Policing and Security, Northern Ireland Office	Ev 88

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# List of Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2007–08

First Report	The Northern Ireland Prison Service	HC 118
Second Report	The Work of the Committee in 2007	HC 286
Third Report	Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past	HC 333
First Special Report	The Northern Ireland Prison Service: Government Response to the Committee's First Report of Session 2007-08	HC 386

## Session 2006–07

First Report	Draft Protocol for Community-based Restorative Justice Schemes	HC 87
Second Report	The Work of the Committee in 2006	HC 294
Third Report	Tourism in Northern Ireland and its Economic Impact and Benefits	HC 119
First Special Report	Draft Protocol for Community-based Restorative Justice Schemes: Government Response to the Committee's First Report of Session 2006-07	HC 475
Second Special Report	Tourism in Northern Ireland and its Economic Impact and Benefits: Government Response to the Committee's Third Report of Session 2006-07	HC 545

## Session 2005–06

First Report	Education in Northern Ireland	HC 726
Second Report	The Work of the Committee in 2005	HC 928
Third Report	Organised Crime in Northern Ireland	HC 886
First Special Report	The Work of the Committee in 2004: Government Response to the Committee's Fourth Report of Session 2004-05	HC 393
Second Special Report	The Functions of the Office of the Police Ombudsman for Northern Ireland: Responses by the Government and the Office of the Police Ombudsman for Northern Ireland to the Committee's Fifth Report of Session 2004-05	HC 394
Third Special Report	The Parades Commission and Public Processions (Northern Ireland) Act 1998: Government Response to the Committee's Second Report of Session 2004-05	HC 395

Fourth Special Report	The Challenge of Diversity: Hate Crime in Northern Ireland: Government Response to the Committee's Ninth Report of Session 2004-05	HC 396
Fifth Special Report	Air Transport Services in Northern Ireland: Government Response to the Committee's Eighth Report of Session 2004-05	HC 529
Sixth Special Report	Ways of Dealing with Northern Ireland's Past: Interim Report – Victims and Survivors Government Response to the Committee's Tenth Report of Sessions 2004-05	HC 530
Seventh Special Report	The Functions of the Northern Ireland Policing Board Responses by the Government and the Northern Ireland Policing Board to the Committee's Seven Report of Session 2004-05	HC 531
Eight Special Report	Decision to Cease Stormont Prosecutions	HC 814
Ninth Special Report	Organised Crime in Northern Ireland: Government Response to the Committee's Third Report of Session 2005-06	HC 1642

# Oral evidence

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## Taken before the Northern Ireland Affairs Committee

on Wednesday 6 February 2008

Members present

Sir Patrick Cormack, in the Chair

Mr David Anderson  
Mr Gregory Campbell  
Mr Christopher Fraser  
Lady Hermon

Mr Denis Murphy  
Stephen Pound  
Sammy Wilson

*Witnesses:* **Sir Hugh Orde**, Chief Constable, **Mr Alistair Finlay**, Assistant Chief Constable and **Mr David Cox**, Director of Historic Enquiries Team, Police Service Northern Ireland, gave evidence.

**Q1 Chairman:** Sir Hugh, could I once again welcome you to the Committee. We are delighted to see you and thank you for coming over. I understand that you have to catch a plane and therefore need us to finish by six o'clock and some of the Northern Ireland Members are in precisely the same position and I imagine will be on the same plane, so that we will do. We have two divisions, one apparently at 4.28, at which point I will adjourn the Committee for 20 minutes and no more so that we can then get straight on. If we are not able to have our private session today then we will do it when we come to Northern Ireland in a week or two's time. We are very grateful and if you would like to introduce your two colleagues we can begin.

**Sir Hugh Orde:** Certainly. Assistant Chief Constable Alistair Finlay. Alistair runs really all the historical enquiries matters for me and public inquiries and indeed we are now moving towards inquests as well. David Cox, a colleague of mine from Steven's team, now retired, leads the Historic Enquiries Team on my behalf.

**Q2 Chairman:** Thank you very much. Was there anything that you wanted to say by way of introduction?

**Sir Hugh Orde:** Very briefly. First of all, thank you for the opportunity. Northern Ireland at the moment is at an interesting place and policing it is quite an interesting task, but we face a number of unique challenges. Only yesterday we had to raise public awareness of the very real threat from distant Republican terrorism—domestic terrorism, for want of a better description, a unique feature of Northern Ireland—and we are responding to that of course now without military support. At the other end of the equation we are dealing with many, many historic matters, which is beginning to put an increasing burden on my organisation and, I would argue, my ability to deliver a more effective policing service with less resource. It has got to the stage, I think, where it is entirely appropriate that the Committee looks into this because it is an issue that I do not think will go away in the short term and will

continue to cause issues for policing for the present until perhaps there is a wider solution that is looked into.

**Q3 Chairman:** Before we begin on those subjects could I pick up the point that you made about Northern Ireland being an interesting place at the moment and the warning that you had to issue—the very serious warning—yesterday. It came to my notice yesterday that it was being said that the situation in South Armagh is so difficult at the moment that your officers are requesting the use of helicopters; is that true?

**Sir Hugh Orde:** At the moment, as you are aware, we no longer use military support at all—Operation Banner is over. What we have done is put in an additional police resource, a territorial support group who are dedicated to supporting their colleagues at the front line. If we needed helicopters I have one helicopter, which is a standard police helicopter which we do use across Northern Ireland—there are no areas we do not use it—for operational policing and support purposes. I am not at the stage where I would look to borrow helicopters from the military—that is the only place from which I could resource them and that would have to be under military aid to the civil power—and I am not in that position as we speak.

**Q4 Chairman:** Do you think you may be in that position in the near future?

**Sir Hugh Orde:** I do not see it personally but we have to monitor this on a day by day basis. The threat level, I am on record for the last three months for saying my concerns are that we are reaching a higher level of threat—that is from a very small group of people disenfranchised across the piece but does not mean less dangerous. These are not people fighting for some cause, these are people who do not understand the end game and are hanging on to power using the tactics they have always used, which is terror and fear, and we, together with our colleagues and An Garda Síochána and the security services, are more than capable of dealing with them, but we do think it was right to raise public awareness

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because again it is an opportunity for the public to add support to that effort to finish these people off once and for all.

**Q5 Chairman:** Are you now getting that degree of support from the wider public that you did not enjoy relatively recently? When we came over on our first inquiry you were lamenting the lack of it; are you now getting more or less what you want?

**Sir Hugh Orde:** It is mixed, frankly; I did not expect it to be anything less at this stage. We are seeing increasing levels of support from people who historically would not have supported us. Has that led to a flood of information around the most dangerous end of the business? No, it has not, and I do not expect that to take place yet—the conditions are not there. Sadly, I fear it may be some other serious event which pushes people more down the line of talking to us and I would hope to be able to pre-empt that a bit by people talking to us earlier, but there are places where people still find it very difficult to engage with police officers.

**Q6 Chairman:** We have of course had one very terrible event shortly before Christmas, the Quinn murder. Are you content with the amount of information that you are getting on that?

**Sir Hugh Orde:** That is of course an investigation outwith jurisdiction. It is one of those difficult cases where the crime was in one country and much of the investigation is in another country. I met with Fachtna Murphy, the Garda Commissioner, last week with my head of crime. I am absolutely confident that the cooperation between the two services is 100%; anything we need to do we will do. I do think that there are some interesting legal issues that have been thrown up that we are now looking into, should An Garda Síochána want to arrest people within our jurisdiction. That is partly because of Schengen and of course the Republic are not signatories to the relevant parts of Schengen, so we may to look at those issues, but in the broad sense our cooperation is absolute and we have guaranteed that if they need help in the investigation we will give it, and we have done to date.

**Q7 Chairman:** The Committee did meet, of course, with the Commissioner and with you a couple of weeks ago in Northern Ireland—and we were in Dublin too—and we were very impressed by that degree of cooperation and I am sure on behalf of the Committee I can congratulate you for what you have been able to do with the Commissioner there. If we could move on to our investigation, beginning first of all with historic enquiries. Would you like to tell us the scope of your investigations conducted by your Enquiries Team and the extent to which any of the investigations are required to comply with human rights or other legislation? If you could give us a broad picture.

**Sir Hugh Orde:** I will ask David to give the detail in a broad sense, Chairman. All I would say at the beginning is that the Historic Enquiry Team was a police idea, and it was an absolutely genuine attempt to try and bring some form of closure to all the

unsolved murders which, as you know, number some 2000 plus. It is different for policing—again it is a unique feature of the police family, if you like, in Northern Ireland. We realised at the beginning that this would not bring many people, if any, people to judicial closure, but what we have found is that certainly it has given far more information to families and victims' families than ever before, so I think it is a very positive thing and of course now we are at the stage of delivering outcomes unlike any other process that is trying to deal with the past. David, if you would like to go into a bit more detail?

**Mr Cox:** The Historic Enquiries Team was set up, as the Chief Constable says, to try and address a number of cases from the past, but we quickly entered the world of terminology because when you start meeting with families you realise quite quickly that they do not understand the concept of the past; this is a very real issue for people who lost loved ones during The Troubles and they have had no resolution, and in many cases—in very many cases—no information at all about what happened. When we set up the team there was no template for such a team and in fact we did not really know the scale of what it was we were going to undertake and initially our research showed us that there were 3,268 deaths attributable to The Troubles between 1969 and the signing of the Good Friday Agreement in 1998. So that was the scale of the task and it also quickly became necessary to decide that we would look at all those deaths because we set ourselves up as a family-centred operation to try to answer the questions that families raised, and simply because statistics show that certain cases that the police dealt with are shown as “detected” does not mean that the families in those cases have the answers that they want. So we undertook to see all families if they wanted to engage with us. That would mean 3,268 cases, and that occurred in 2,516 incidents. So that scale of enterprise is quite unique.

**Q8 Chairman:** How many was the team?

**Mr Cox:** When we initially set up we had a staff of about 80 but as we have evolved and become further into the task we have had to grow, for a number of reasons, and we currently stand at around 180.

**Q9 Lady Hermon:** Where are you actually based? Can families come and visit you at separate premises?

**Mr Cox:** Yes, we are based at a site that is not a current police station but it was police premises—it was an old clothing store which has been refurbished; it is just outside Lisburn off the M1 and it is readily accessible and it has been host to a number of meetings with families.

**Q10 Chairman:** Mr Cox, how many of the 180 are serving police officers?

**Mr Cox:** A very small number; we have about four serving police officers, although we are due to grow with a couple of seconded staff coming in from the Metropolitan Police.

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**Q11 Chairman:** How many are retired police officers?

**Mr Cox:** More or less the remainder, apart from some civilian support staff. We recruit largely from agencies and they are usually detective officers with more than 30 years' experience, who have retired, who come back to work for us, which—and perhaps we will come back to this later on—is another issue because we have a huge turnover of staff. With people living away from home in the week, coming to Northern Ireland, living in lodgings, going home on a Friday, we tend to find that after about a year or so many of them leave, so in the first year we had a 40% turnover in staff, although last year it was a little better at about 29%.

**Q12 Chairman:** And you have a ring fenced budget?

**Mr Cox:** We have, sir. With the support of the Northern Ireland Office there was a £34 million project fund set up. It is not purely for us, the Police Ombudsman can also access that, as can the Public Prosecution Service and the Forensic Science Service.

**Q13 Chairman:** If that is the case and if there are only four currently serving officers with two more to be seconded why is this such a burden, Sir Hugh?

**Sir Hugh Orde:** A number of reasons. It is a burden that is worth having, frankly. It is not the biggest issue around dealing with the past—it is the public inquiries, frankly, that is a huge amount of work—but it is a burden in the sense of records, recovery, storage, all those sorts of things, a large amount of that falls to ordinary PSNI staff. For example, our archive management, we have now physically searched every single building and every murder file which we think we can find we now have in very secure accommodation, which of course David's people have to draw from. So there are some crossovers—our vehicle fleet, we supply vehicles, accommodation, as mentioned, and we are looking to increase the accommodation, which again will probably have to be borne by my budget because I cannot take any out of David's budget because he needs it to run the number of people we are running, which reflects our commitment to deliver to families. So it is part of a growing dealing with the past which collectively is having the impact rather than individual bits.

**Q14 Chairman:** One final question from me. Are you tolerably satisfied that your archive is up to it, that you have sufficient documentation to enable you to conduct, in most if not all of these cases, a reasonably thorough enquiry and one where you would feel yourself, Sir Hugh, as a highly professional policemen, that you can say, "Yes, I am content with the quality of that information"?

**Sir Hugh Orde:** I will ask David to deal with detail but the reality is that we have found what exists. Is it complete? Answer, no. What I was slightly surprised about, the amount we recovered is substantial. There are almost no cases, I think it would be right

to say, David, where we have no information recovered, plus a lot of open source information and material. Would you like to go into detail, David?

**Mr Cox:** We have recovered documentation in over 98% of all those cases, those 2,516 cases, and when we do not get the full police file we go to other sources; we go to places such as the Public Prosecution Service and get papers from there, the Public Records Office. We have a team that goes through open source material, as we call it; we have agreements with UTV and with the BBC and with the newspaper libraries to get documentation of the day back, so that we can meet families and explain what information was about at the time.

**Q15 Mr Murphy:** That is actually part of the point I intended to raise. However, could you perhaps develop a little further the quantity and quality of the evidence of the cases you are currently investigating, just to give us an idea of whether you think that it is good enough to ever secure any prosecutions?

**Mr Cox:** There are 1,026 cases now open within the HET system. Our review process has finished in 500 of those cases but that does not mean we regard those cases as closed because, as I said, we work to a standard of answering the questions that families put to us and in many cases these are not legal questions, the worries that families have are basically around could this have been prevented, was there a proper investigation, down to the saddest of personal questions, did he have his dinner before he was killed? We have had all sorts of questions. We are working with over 600 families and we have logged 4000 issues that have been raised with us, and minimally around police work actually so we do a much wider scope. In terms of the evidence that has been recovered we look for documentary evidence and we look for physical evidence. We have upgraded the PSNI's fingerprint computer system and we have searched an additional 12,000 marks which we recovered, which were not available under pre-existing technology. So what that will bring us we are not sure; we have to do this on a case by case basis and it is not really until we have finished each case that we can say what is the value of the evidence that we have recovered. We have a large number of exhibits. I suspect you are probably thinking around the recent Omagh trial issues, are they useable in court? Again, that is going to have to be a judgment in each individual case.

**Q16 Chairman:** Do I infer from that that you do have a DNA database?

**Mr Cox:** We have access to the DNA database. What we do in each case is an assessment of what evidence we have. Again, funding is limited and DNA examinations are very expensive. One of the tasks that I give my managers is to assess whether there is value in doing these expensive tests if, for example, the integrity of the exhibits—by which I mean we cannot prove them to the court's satisfaction—is not there then obviously we would not spend the public money doing those tests because they would not take us anywhere. But a lot

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of the publicity around Omagh is focused on the DNA but that was a particular technique—low copy number DNA. There are other DNA techniques which may be available; it just depends really in each case what is available to us when we do that thorough examination.

**Q17 Mr Murphy:** Is all this information now securely kept on one site?

**Mr Cox:** Yes. What has happened is that it has been stored at the PSNI central store and then as cases come forward for examination by the Historic Enquiries Team—and we bring forward 40 cases each month, which is what we are required to do to hit our project timescale—the exhibits, the papers and anything else related to the case is brought over to our secure site and stored in our secure store.

**Q18 Chairman:** Do you digitise these records or is this all paper that we are talking about?

**Mr Cox:** It is all on a computer database.

**Sir Hugh Orde:** But it is all paper. The other point that is worth mentioning is that there are some murder files which are this thick because the harsh reality was that at the peak of The Troubles the officers were dealing with such an immense number they physically could not do what we would expect them to do today. I think one of the other spinoffs to looking at these issues is that we judge the performance in the context of the time. It is very easy to look at this and to say that this was awful, when actually the reality was looking at 470 murders in a year the Metropolitan Police could not have coped with that, frankly, to the standards we now run. So we are very conscious of that. What is interesting, as David said, the families, providing they understand and we give them the information about what the investigating officer was trying to do and how many cases he or she had, they appreciate the magnitude of the task in front of the investigating officers at the time.

**Q19 Chairman:** Is there any disparity in the relevant amount of information you have as between the two communities, as one used to call them?

**Sir Hugh Orde:** Not that I have seen.

**Q20 Chairman:** Do you have a dearth of information on atrocities committed by the so-called loyalists as compared with those committed by the IRA and their kindred bodies or is it more or less equal?

**Sir Hugh Orde:** I will ask David to come in. One would expect murders of colleagues to be thoroughly investigated and again I have seen murder files of colleagues which are very thin, simply because of the workload. David can give you more detail.

**Mr Cox:** Generally, sir, it is pretty even across the board. Where you find more paperwork is whenever you are dealing with cases involving soldiers as the dear old Army put everything in triplicate; so there is always tons and tons of military paperwork. So if you are dealing with an issue where there is a soldier involved, the Army involved then there are generally extra papers.

**Q21 Chairman:** Would you welcome a visit from the Committee to Lisburn to see what you have and how you deal with it?

**Mr Cox:** I think that would be very helpful, sir. I have brought with me today some of our leaflets and copies of a BBC documentary that was a radio documentary about the work of the HET, which may be useful before you get there.

**Q22 Chairman:** I think if we come and spend some time with you, I will ask our clerks to liaise with your officers so that we can do this in our March visit.

**Sir Hugh Orde:** Most welcome. And just to speak to what the officers are actually doing because it is a huge amount of work—in a way it is a processing factory with real victims at the end of it.

**Q23 Chairman:** And if it would be possible to arrange for us to see some of those people you are seeking to help that would also be extremely helpful to us.

**Sir Hugh Orde:** Certainly.

**Q24 Mr Campbell:** On the past review, you have mentioned the potential of some of the contentious inquests that we are about to experience, that they may be akin to some of these inquiries. Can you outline what you mean by that and what impact it might have on policing, on the service and on morale?

**Sir Hugh Orde:** Again, I will ask Alistair to deal with the detail but in broad terms in a way this is new business. Following the Jordan Ruling we are looking at, we think, about 100 inquests, of which I think 48 will be deemed contentious, and simply looking at where the Coroner is where one case where he feels that this may take him a year in one case. We are back to, in essence, the definition of an inquest is far wider now; it is around circumstances. Looking certainly at the opening remarks of one of the barristers for a victim's family it suggests that we are looking at a mini public inquiry, simply in terms of disclosure, requirements for exhibits, witnesses. It is a huge piece of work.

**Q25 Chairman:** And a very costly piece of work too.

**Mr Finlay:** Potentially it is, and I think we are at the beginning of the journey with this and it is an emerging discipline, if you like, following the decisions in Jordan, and that the law is still to be developed round about that. We are in dialogue with the Coroner about developing our position in relation to that. But it is around about the maximising of the disclosure of the information that we provided. In a similar way that we have been required within the public inquiries to open the cupboards and deliver large quantities of material, some of which the relevance might be seen to be slightly tenuous, we will be pushed into a similar position, we anticipate. We understand the anxiety and pressure that will come from families who are involved in that who will want to understand all the circumstances round about these deaths which happened, in many cases, so long ago. The particular case to which Sir Hugh referred to is a Stalker/

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Sampson case, where we had the shoot to kill cases from 1982, which the Coroner has indicated that he will take this year to undertake preparations for those. There were three incidents, arguably four incidents, but those will be held next year—back to back inquests. It is anticipated that that will take a year to actually conclude. That will involve a lot of consideration of disclosure, a lot of consideration of the PII issues, and that will involve itself some degree of contention, one would imagine. Then issues about representation, and as we go through it is anticipated—

**Chairman:** Mr Finlay, I do not wish to cut you off but we have a division in the House so we will adjourn until 16.48, please, and Mr Campbell has the floor.

*The Committee suspended from  
4.28 pm to 4.59 pm for a division in the House.*

**Q26 Chairman:** I cut you off in full flood, Mr Finlay; not through discourtesy but through necessity.

**Mr Finlay:** Thank you very much. I think we were just discussing the outline of the Stalker/Sampson cases and the commitment that would have to be put into that, which is the major one that the Coroner has started with. We are taking this very much on an incremental basis in that the Coroner is inching his way forward with these and making a consideration about whether they are in fact viable or not. So we do not actually want to put lots of resources and processing into this that might not come to fruition, so we are stepping through it with legal advice, listening to what the Coroner's view is and balancing all of that, but at the same time having to plan around some contingencies that if this does take off what sort of processes do we have to put in place and what sort of considerations do we have to give, particularly round about PII issues, round about sensitive information and how that is processed.

**Q27 Lady Hermon:** It would be helpful to the Committee if you could give us some idea of stepping through what is the volume of documentation and the number of people who are actually stepping through this and where it is all kept.

**Mr Finlay:** It is kept in the same storage facility, the Force storage facility that Mr Cox referred to earlier, in which everything is preserved, maintained, indexed and kept correctly. For the Stalker/Sampson cases there are 70 file boxes of material, which relate to that whole series of events and all the reports that were done by John Stalker.

**Q28 Chairman:** What do you mean by file box? How big is it?

**Mr Finlay:** A file box is approximately this sort of length.

**Q29 Chairman:** A proper archive box?

**Mr Finlay:** Yes, a proper archive box and we have 70 of those for that particular issue. After legal debate and advice the Coroner is looking at those at the moment, so that he can give us a view on what he

thinks is the relevant material, and then we have the discussion about PII and what material we can release and take forward. That is a project he is now undertaking to scope that, and then we have the subsequent discussions.

**Q30 Lady Hermon:** Is the Coroner free to look at all the documentation?

**Mr Finlay:** Yes.

**Q31 Mr Campbell:** I just want to get some idea of the potential workload implications that the entirety of the 100 plus inquests will have for the police service.

**Mr Finlay:** Of the 100 plus we have about 48 which we would regard as contentious. The other ones being less contentious have less resource implications in them. The contentious ones have an allegation of collusion or an Article 2 issue in terms of the person was killed as a result of state intervention, either by the police or the Army. The resource implications round about that, the inquiry would require advice, we would require advice from senior and junior counsel; we would be required to consider each document on a case by case basis and we would consider the redaction issues. Redaction issues we have in public inquiries as well. Redaction is very time intensive; you cannot in terms of the task divide it up and give it to 20 people, you have to give it to a small number of people because what they are actually looking at is the integrity of that information—not just that single piece of information but how it fits within the breadth of everything you are providing. What is not always understood, I do not think, is that there is still an appetite in Northern Ireland for people to try and research from the past those within the communities who might have been giving information to the police. Over the period of time we have seen in excess of 30 people killed, believed to be police informants; and we do not need to go back very many years before we saw circumstances against Donaldson, and that is the real threat and issue that surrounds public inquiries and inquests if we are not absolutely careful to the 'nth degree in the redaction and the careful framing of material that should end up in the public domain, because we have an absolute duty of care to these people.

**Q32 Mr Campbell:** You are really saying then that the care that has to be taken is such as to ensure that the lives of certain individuals could be at risk if that due care is not taken.

**Mr Finlay:** That is correct.

**Q33 Mr Campbell:** So is it as crystal clear as that?

**Mr Finlay:** Absolutely, yes.

**Q34 Sammy Wilson:** You are saying that there are 70 boxes of this stuff around the three or four inquests in the Sampson Inquiry itself. Given the fact that there is I think about 130 odd coming down the line, I imagine that every document would have to be looked at to see if there is any stuff in it that needs to be withdrawn. How many officers do you anticipate are going to be involved in the selecting and sifting

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through all of that material to make sure that the problems you have given have identified are not there?

**Mr Finlay:** That very much depends on the pace and capacity of the Coroner. What we have asked the Coroner to do is to provide us with the prioritised lists in the order that he would intend to bring these cases forward, because the coronial service has a finite capacity.

**Q35 Chairman:** Has a special Coroner been assigned to this?

**Mr Finlay:** No. Mr Leckey, the Principal Coroner for Northern Ireland leads on it. He currently has two other Coroners as assistants, and work is in progress to appoint one additional Coroner. That is the capacity of his office.

**Q36 Chairman:** Will that one additional Coroner be exclusively concerned with these cases?

**Mr Finlay:** My understanding is that Mr Leckey will lead principally and Mr Justice Weir, who has judicial oversight of the coronial service will also take responsibility for accepting all of the cases. An example would be the death of Roseanne Mallon.

**Q37 Mr Murphy:** Would the Coroner have to deal with the normal day to day business on top of that?

**Mr Finlay:** Yes.

**Q38 Chairman:** Is this satisfactory, Sir Hugh?

**Sir Hugh Orde:** It is a massive challenge and I think it will be dealt with as a function of time. The problem from a policing perspective means that it will be running not only our work, the Historic Enquiries Teams, not only work from the Police Ombudsman's Office in terms of the past, we will have an ongoing drip feed of inquests against the backdrop of three public inquiries currently sitting, or four if you include Lord Saville's inquiry, plus obviously Breen and Buchanan in the south. In other words, there will be a huge amount of backward looking reporting in the context of day to day policing. There is a huge issue for me around competence in policing just around that. In terms of can it be delivered, it can be delivered but it will take time and I will have to continue taking resources out of my current budget because I have no extra money for any of this, except for David's work in HET, which is ring fenced. This is current expenditure, if I am spending it, be it on police officers, on retired police officers or legal advice, which is extremely expensive, it will be an ever-increasing budget, in my judgment, and I cannot deploy that on current resources.

**Q39 Chairman:** What sort of percentage are we talking about, Sir, Hugh, over the next two or three years?

**Sir Hugh Orde:** In terms of my budget? We have done our best to supply broad brush figures to the Committee.

**Q40 Chairman:** I want it on the record, Sir Hugh.

**Sir Hugh Orde:** It starts off at about £96 million. One could argue that that is an opportunity cost, to some extent. I would argue I am not sure it is because that has to be taken out of a police budget where the vast majority of the budget, about 82%, is fixed costs, it is people. So I am finding money out of actually quite a small slice. It is the same pot that I spend on overtime, for example, the deployment that I had to put in last night and today and ongoing—all that comes out of what is left of your budget after you have paid for your people, and policing is a people intensive occupation, as you know.

**Q41 Chairman:** If we are going to judge this we have to judge it against certain yardsticks, do we not? One of them would be what you have done up to now. First of all, have you had many prosecutions and convictions as a result of your HET enquiries? And how are the families reacting? Where you have completed cases do they seem to be more or less content with what you have done? Because if we are piling on great expenditure and what has been done still leaves a lot to be answered and desired then there is an extra worry, is there not?

**Sir Hugh Orde:** Indeed there is. I will ask David to give a bit of detail. In broad terms, in terms of value for money the Historic Enquiry Team, in my judgment, is the only part of the history debate that is delivering anything. We are now at the stage of delivering outcomes to families, imperfect though they are—and we fully accept that, and we have been entirely honest. It has been victim centred and that is what it makes it unique in policing terms. David may want to touch on what the views are of the families. Certainly if you come we will not provide you with a family that thinks we are great but we will try to provide you with some people who have issues about what we are doing as I think it is important that you realise, as we do, that this will not solve it for everybody, and we fully understand that.

**Mr Cox:** Our most important factor when we deal with families right at the beginning is that we promise to be absolutely honest with them, and we highlight that. That sometimes means that we will tell them from what we find is going to be unpalatable. So in terms of are people going to be happy with the result, not necessarily but they will be better informed.

**Q42 Chairman:** I used the word “content” not happy.

**Mr Cox:** Indeed. The criteria that we use is trying to answer the concerns raised by families. We work on a chronological basis so we started in 1969, and in those terribly early years there were hundreds of people killed, and over 470 odd in 1972 alone. So we are back at the very earliest phases, still in 1973 in terms of our chronological process. So, not surprisingly standards of evidence collection—DNA was not a technique known about in those days—evidence recovered was not preserved for DNA and it will be very difficult to try and adduce that from those. Not surprisingly there are not many prosecutorial opportunities from the cases we have

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looked at so far. One case has gone to the Director for consideration as to prosecution and a further eight have gone for advice out of the 500 or so reviews that we have completed. Whether that will improve as we move into the 1980s and 1990s, whether that is an issue that might come out as more evidence was kept on computers when they were introduced and records are more available and witnesses from a recent era, it may be that there will be more cases. But we will have to judge that on a case by case basis.

**Q43 Chairman:** You say, Mr Cox, as you move into the 1980s and 1990s, so that there is no ambiguity at all you are doing this chronologically?

**Mr Cox:** We do it chronologically, but as with every rule, sir, there are exceptions. In some sad cases relatives themselves are ill and could not wait for our chronological process and we exempt cases like that. If the PSNI were already dealing with cases, as in cases like Enniskillen, we would not say to families, “We will shut it and you will have to wait for our chronology,” but we have adopted those cases. Also if there is a linked series and it makes sense to look at all the series at the same time in case there are crossovers of evidence. Also, there are a small number of cases where the public confidence issue is such that the Chief directs us to take them out of chronological order, such as the Ombudsman cases from last year in their Operation Ballast report. But by and large by far the majority of our cases are chronological and we are up to 1973. Are families content? We have a good volume of correspondence from families thanking us for the work we have done.

**Q44 Chairman:** From both communities?

**Mr Cox:** From both communities across the board. We also have families that are not content with what we have found and would wish that we could have gone further.

**Q45 Chairman:** Again, from both communities?

**Mr Cox:** Again from both communities. By and large we have to be honest and that is our undertaking to families right at the beginning, “We will be honest with you,” even if that means, “I am sorry, we have looked in the available evidence boxes and there are no opportunities; we can take this no further.” But usually we can tell them what happened. In 95% of cases I would think that we have engaged with the families will say to us, “You are the first police officers to come back and tell us anything since this happened.”

**Q46 Chairman:** Without adding to the burden of your work, of which I am extremely conscious, but trying to ensure that our inquiry is as balanced and objective as it can be—and you have kindly said we can come and visit you on site—do you have a table of completed cases with an evaluation of the family content, the family not content, etcetera?

**Mr Cox:** I am sure we could get that for you and circulate it to you before you come. We can give you statistics. We measure, as does every public department, our performance and see how we do, so we will be able to provide that before you come.

**Chairman:** I think that would be very helpful; thank you very much indeed.

**Q47 Lady Hermon:** We are going to turn to look at the cost. Sir Hugh, may I ask you—because I have listened very intently to what you are saying about the costs and the PSNI budget—have you already asked the Northern Ireland Office—and I am sure you have—to increase your budget to take account of the past cases, just aside from the HET, which is ring fenced.

**Sir Hugh Orde:** Yes. First of all, the HET is a ring fenced budget, so in terms of the overall costs of policing I mention that does include HET money, so I would not want you to think that we are not grateful to the NIO for that—they were very engaged and that was a real success story, I think, very early on. Since then it would be right to say that we have not got any more money; I do not think there is any more money in the NIO to give me, even if they did have it, so it is coming out of current policing costs. That is the harsh reality; we have to top slice a reasonable amount of money for Alistair’s people and for my legal department to commission the legal work, the outside counsel to represent all the people and to give us the advice that we need to service what our legal process has been. A public inquiry is a quasi-legal process, I suppose, but full of lawyers and we need to be represented and we need to make sure that our people are properly represented as well, which is another big cost to my budget and that comes out of current expenditure which means that other budgets do not get what they would get if I did not have to service this. It is as simple as that.

**Q48 Chairman:** Do you get all your legal advice from within Northern Ireland or do you have to come to the rest of the UK?

**Sir Hugh Orde:** I think shortly we will probably run out of lawyers in Northern Ireland but at the moment I have my own legal department; Crown solicitors support us and indeed we then commission barristers from Northern Ireland, I think it would be fair to say in the main.

**Mr Finlay:** Yes.

**Q49 Lady Hermon:** Mr Cox, within the budget that has been ring fenced for you, has it been sufficient to date and do you expect, given that you are taking 40 cases per month in order to keep up to the time table, do you think the budget that has been allocated to you will be sufficient in the long run?

**Mr Cox:** What I do not want to do is to seem churlish or ungrateful; I do think it was a huge step on the part of the Northern Ireland Office to come up with what is a substantial amount of money. However, what we have come to understand is that this is a completely new project—nobody has done a task like this before—and we are seeing it evolve into

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different challenges. We have come to a sort of people versus process situation. We can move the cases through the review phase and do our reviews and police work, but dealing with people is an unknown quantity. With the 3200 lost souls you may have 6000 family members, and if I were to resource that to ACPO guidelines I would want 6000 family liaison officers. I have to do it in a different way; I have to set up a unit to do it. It takes a long time. When people meet us they have further questions as a result of what we tell them, and because we are people focused, family focused we do not draw a line under things, we go back and do the supplementary questions. We are running at 30% of families that do not want to engage with us in the initial phase. They accept their wishes but when we have done the review anyway—we always do it anyway—we write to them and say we have done it and 30% of people who said “no” at the beginning are now engaging afterwards. So, later in the process, it is putting the whole process back. I think there will be sufficient funds to do the reviews and reinvestigations, but I fear that there will be a large proportion of families who will be waiting for us to give the results, purely because of the process.

**Q50 Lady Hermon:** I know Mr Wilson wants to ask a supplementary question here, but could I ask, Mr Finlay, why it is that there appears to be such a huge disparity between, for example, the costs in the Nelson case, the Hamill case and the Billy Wright case? Can I take it that the vast majority of these huge amounts actually goes on lawyers’ fees?

**Mr Finlay:** This would be the costs incurred by the inquiries themselves, effectively?

**Q51 Lady Hermon:** Yes.

**Mr Finlay:** I will have to speculate, not being in the inquiries themselves. A couple of observations would be that the costs for the Hamill inquiry seem very high, up at roughly £10 million, at the moment, but Hamill has had a large number of legal issues, particularly issues in relation to anonymity, and that process went to the House of Lords. So the representation of that process would cost a significant amount of money, and a lot of that, I would suggest, would be in lawyers’ fees. In relation to the contrast between the Billy Wright inquiry and the Rosemary Nelson inquiry, the two inquiries operate very different ways of working. The Billy Wright inquiry operates on a basis of sending out a notice, which is like a shopping list, to us, very broadly framed and saying: “Give us everything about such-and-such a thing”, which we then research and they give us a timescale in which to do it, and then we try to endeavour to get everything we possibly can within that timescale and deliver it to them, within the meaning of this broad shopping list. The Rosemary Nelson Inquiry has worked differently. We have employed investigators, if you like, former police officers, vetted and cleared that we can work with, who have been working in the organisation beside our own people and, to a certain extent, have been directing the inquiry’s investigation within and have taken that particular

route. So they have different ways of going about their business. Equally, they have their own separate legal challenges as well, and they have different structures and different staffing levels. There are different levels of counsel/barrister support in the two inquiries. That probably accounts for some of the difference, but I cannot speak with certainty.

**Q52 Chairman:** Would you be saving more money (this may be a naïve question) if you were enabled to employ more staff lawyers?

**Mr Finlay:** Ourselves? I do not think we would be saving more money. We have the size of legal team that fits our needs.

**Q53 Chairman:** You have.

**Mr Finlay:** The objective has been to have the legal team built but built “just in time”, because one of the challenges round about the inquiries has been that they have projected start dates and, in most cases, those have been ambitious, and there is little point in resourcing it up by briefing counsel if you are not going to move forward. So we have tried to operate a “just in time” procurement of legal advice, and to-date I think that is working.

**Sir Hugh Orde:** Just briefly, there is another issue of knowledge: we cannot just recruit anyone to do this; (a) it is deeply sensitive and (b) the corporate memory goes over time and trying to get that back is difficult, of course, with many different systems and many different interpretations of those systems by officers who would have worked at different levels within the organisation. There is a huge complexity around getting the right people who can hit the ground running, because to bring people up to speed, not only in the betting sense but in understanding the old world, is hugely complicated in its own right. So it is not simply a function of numbers, it is a function of expertise. In terms of impact on the current organisation, what I am having to do, if I cannot find it externally, is use some of my key players who will be delivering some of my most sensitive operations today to look to service historic inquiries. Of course, the legislation is clear: if I do not service a public inquiry I, personally, am criminally liable, and I do not particularly want to go down that route. I can understand the frustration where we are servicing not just one inquiry but all the inquiries and all the inquests, all of which is coming into a fairly small hub of experts. The frustration of an inquiry increases exponentially as I cannot service everything as quickly as I would like.

**Lady Hermon:** What number of your top officers are tied up?

**Chairman:** Mr Wilson?

**Q54 Sammy Wilson:** That is one of the questions I wanted to ask. You have talked about the money resources so far, Sir Hugh, but given the fact that the police have already indicated that they are short of certain skills anyhow, what are the implications for the manpower resources—human resources within the police—of these requests for information being focused on a small number of people who, perhaps, have expertise needed for current police work? What

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sections of police work are particularly affected by the manpower resources which you are required to devote to this?

**Sir Hugh Orde:** Two things: one is I am happy to brief in detail in private session some of the specific issues we have had on that, Chairman, and I would bring ACC Sheridan to that meeting, as my Head of Crime. In broad terms, it is the most sensitive parts of the organisation; it is the people at the scene, the detectives, who are looking at intelligence and looking at using that intelligence to run operations, some of which, obviously, are highly important and dealing with the current terrorist threat. I will find myself, I fear, in a position, at some stage, where I have to make some very hard decisions on what gives. I am, personally, very clear: the overriding obligations of a Chief are under Article 2 and section 32 of the Police Act, which is to keep people alive currently, and therefore the cost will be further delay and frustration of the inquiries, simply because I cannot do all of it. It is key skills and a small number of people.

**Q55 Sammy Wilson:** There have been allegations that the costs to the police and the costs of the inquiries have escalated purely because of police action in sending, for example, files which were not properly collated and sending only bits of statements and then requests having to go back for further pieces of information, and then that having been matched, etc. etc—you probably know all of the allegations that have been made. What is your answer to that? Has it been as a result of information not being readily supplied to the police which has led both to multiple requests coming back to yourselves and, therefore, manpower having to be used, and also increasing the costs to the inquiries themselves?

**Sir Hugh Orde:** I assume you are talking about the 72-page statement from the Billy Wright Inquiry? I will ask Alistair to deal with that. In broad terms, I do not know the mind of the inquiry, so what we are trying to do is—and I stand on my record on this—an absolutely genuine attempt to provide everything they are asking for in the widest interpretation of what they are asking for. The reality is that, historically, records were not kept so that we press a button and it suddenly comes out in an organised form. It was difficult and it required the operating of many systems: paper records, computer records—it was a hugely complex process, all of which was not necessarily in any set order. Alistair may want to go into a bit more detail.

**Mr Finlay:** In relation to the position statement that came from the Billy Wright Inquiry (which I think is from where this has alluded), what I do not want to get into, at this stage, is some sort of slanging match between us and the inquiry. Our endeavours are to support the inquiry and provide as much as we possibly can to the inquiry, within our legal constraints and taking due consideration of the processes and circumstances. We believe we have honestly tried to do that. The inquiry has a different view, I think I would sense. We are currently working—and there is quite a bit of work involved—on a response to that position statement because the

inquiry produced it. They said a few things about it, that there was to be no explicit criticism in it. I would say there is criticism in it, and it is implicit in it rather than explicit. However, they have produced it and they are not anticipating there would be any debate or there would be any chance to respond in public to it, but it behoves us not to just leave that lying. So we are currently working on the response to that. The size of the document is large, the inquiry took some months to write that and to bring it to a conclusion, and then present it at the beginning of the current session. We are working hard to provide a response to that, and without getting into all the detail of that and the work that is still ongoing, that is something we would want to make public and show our position, because we do not accept all that is said in that document. We do accept that there have been some mistakes made, we do accept that in undertaking these endeavours with very broad descriptions on these lists, yes, there have been some mistakes made (we would have learning out of it and we would do things differently again) but there is an awful lot in it that we do not accept.

**Q56 Mr Fraser:** You have already articulated the budgetary constraints you are under, and I think we all have great sympathy for that, not only in terms of what you are doing but what we understand the police are doing in our own constituencies and our own counties. You mentioned, Sir Hugh, the point about top-slicing the current expenditure. Can you tell us something about the wider operational consequences of that for the PSNI, and how it delivers its wider remit for the community?

**Sir Hugh Orde:** In a way, with the overall size of our budget, one could argue this is not a lot of money, but as I have already said some of our budget is pre-committed to people delivering our front-end policing, so there is not an awful lot of slack to play with. Its biggest impact, frankly, is the loss of expertise in key areas of policing, where intelligence, at the moment, is critical and, certainly, operations are running on the back of intelligence to keeping Northern Ireland going in the right direction, which is to an ever-increasingly normal society. In terms of this becoming more critical, Members will be aware that three of my officers were shot last year, two by dissident republicans and one by the UDA during the feud—a clear attempt to escalate, on the dissident republican side (the UDA one was more around incompetence), the attacks on police to try and disrupt that which was being achieved. Our primary focus is to prevent that getting worse. It is a hugely powerful statement of the ability of my intelligence capacity—mine and the security services—that only two officers have been shot, quite frankly, and that there have not been far more terrorist incidents; they have been dealt with and disrupted (in ways which, obviously, I will not go into) but we have done a lot to create the space for Northern Ireland to move on. That is what worries me most. The money is, obviously, important because it is money that would be spent on policing and running those operations and providing more capacity and flexibility to district commands to

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deliver community policing, because it comes out of my overtime budget, my legal budget—all the other budgets I can draw from to create a budget. Indeed, we had to create Alistair—a unique position in policing, supported by the Policing Board—

**Q57 Chairman:** You could not clone him!

**Sir Hugh Orde:**—who fully saw the need for me to have an additional chief officer to do nothing but look backwards. Otherwise, as was reported in the House, 40% of my time was being spent dealing with the past, and I have a modern police service to deliver. It is those issues, as much as the money, which worries me.

**Q58 Mr Fraser:** Are you saying that other areas of policing, as you have just described—the expertise, intelligence gathering and other areas—are being compromised?

**Sir Hugh Orde:** There is no doubt about it; it is a matter of fact. As I said, I would be more than happy to go into more detail in a private session with Peter Sheridan.

**Chairman:** That would be extremely helpful. I think we will do that in private session. Thank you. That will have to be when we come to Northern Ireland. Mr Anderson wanted to come in on this, and then Mr Pound.

**Q59 Mr Anderson:** Sir Hugh, good to see you again. We have had a message from Sinn Féin that says that PSNI cannot deal in the past and what there needs to be is the establishment of a credible, independent mechanism which treats all citizens equally. I would not expect you to agree with the fact that you could not do this, but is there a case to say that some form of independent body (I do not know what that would be) could have done this job, could possibly have done it either better than yourselves or, at least, as well as yourselves, and that would then have meant that you would not be facing the financial burdens that you are now?

**Sir Hugh Orde:** It is a very interesting question. I am not against, if it was the will of Parliament or Stormont, or something, putting all this together in a different way. I am not precious about the Historic Enquiries Team at all; I am very proud of what they have achieved, and I think it would be recognised where the idea came from, but I have no difficulty with that, if that fitted a broader remit, as in Eames Bradley and all the other ideas around how you deal with the past—no difficulty with that. However, the reality is that none of that would be seen as Article 2 compliant, if a family did not want to go down that route. So there would, perhaps, be some challenges to it. The other problem is, of course, we have the material; we are the gatekeepers of the material. So wherever you put it, there will be huge pressure on my organisation to service it. Peter Sheridan mentioned to me (my ACC, Crime) the other week that in one month something like 600 requests for information from outside bodies came into this hub—be it inquiries, ombudsman investigations,

HET. That would not go away, but you could certainly run it in a different way. There are all sorts of ideas, but, yes, you could run it in a different way.

**Q60 Mr Anderson:** The other thing I want to raise with you is something from the British Irish Rights Watch. They said one of the reasons why it has taken so long for the HET to work is that, effectively, a lot of the work you are doing is equivalent to the work that was done around something like Soham, but you are not resourced to the extent that Soham was. Would that be a fair comment to make?

**Sir Hugh Orde:** I think Soham was a fundamentally different issue; it was around the capacity of the Force to deal with a critical incident that was way outside its ability. Many chiefs sent—indeed I sent—people to help with that particular inquiry. So I think that is slightly different. The reality is we were given a pot of money to do something very different. As David has said, I do not think we could have done it any more quickly, frankly. There is a limit to the number of people prepared to do this sort of work (the turnover speaks for itself), and what we have got is something that has got a fairly clear timescale and, interestingly, is now delivering outcomes. If one was to look at other attempts at dealing with the past I am not sure I have seen one that has delivered an outcome. We await, for example, the Saville Inquiry report, which I am told should be, perhaps, this year. Other public inquiries are now up and running. On the Finucane Inquiry, the jury is out on whether it is going to take place at all. As long as that is in the margins I still have to make sure we have available to that inquiry, should it ever exist, a fully resourced capacity to deliver all the material for that, which is huge.

**Q61 Chairman:** When you were answering Mr Anderson's first question you said that you had no proprietorial exclusivity here, and indicated that you were fairly relaxed on that score. Would I be right to infer from that that you would really like to be rid of it and like somebody else to be doing it, or do you feel that you would like to see it through?

**Sir Hugh Orde:** No, I would not like to (do not worry, David, you can stay for a bit), because what it said was a very clear statement about modern policing, which was that we were not running away from anything, we were absolutely up for facing the issues, and, indeed, if anything David uncovers merits an ombudsman's investigation it goes straight to the ombudsman. From that point of view, it shows our determination to deal with what is a police duty, which is to investigate and not to give up on unsolved cases. Where it is different is that it recognises with a degree of pragmatism the reality, and the reality is we are convinced we can help families. We are less convinced we can do what police officers traditionally do, which is take these things to a legal conclusion. That has not stopped us doing it and we are not closed to that idea. Certainly, if we can build a case, that is what David's people do because they are detectives and that is what they do for a living.

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**Mr Finlay:** The scale of this is just so different, I think, from anywhere else. We have recently been visited by people from Strathclyde police, who are interested in following the processes in going about their unsolved murders. That force, which came into creation in about 1975, currently has 33 unsolved murders—and that will not be untypical for any of the county constabularies across the rest of Great Britain—against the thousands that are actually in place in Northern Police. The scale of this is so large it has to be approached differently.

**Q62 Mr Fraser:** This is a wider point but it is about operational ability. Will devolution of police powers have an impact on that, in your opinion?

**Sir Hugh Orde:** I cannot see how devolution of policing and justice would actually impact necessarily on us. What might impact on the past issue is if it is adopted by Stormont as something they would want to take responsibility for. If they have taken responsibility for everything else and policing and justice goes across they may want to take responsibility for coming to terms with difficult history, in which case your suggestion may be that they will want to form some form of overseeing body, some ministry, or whatever, to deal with it in a different way.

**Q63 Sammy Wilson:** Regardless of how it was dealt with, you would still, Sir Hugh, want to ensure that the intelligence sources, the agents and the techniques used in the past were still protected and, therefore, there would be a role for you in ensuring that certain information was not made available to whatever method was—

**Sir Hugh Orde:** Absolutely. That responsibility rests with me as the owner of the material. What it does, of course, is it creates that tension. I understand the frustration of people who are looking to get material and where we have to look at our legal requirements, and people sometimes forget that it is not us being obstructive it is us carrying out our legal duty. Yes, we have to stand by that because it is an Article 2 issue.

**Chairman:** I would like to move on to the final section because it is a very important part of our inquiry.

**Q64 Stephen Pound:** Good afternoon, Sir Hugh. When we met in the autumn of last year you were talking about the conflict between the Inquiries Act 2005 and the need to protect—I seem to remember the felicitous phrase was—“covert human intelligence sources”. You were particularly worried about how this would impact on the Enquiries Team. What is the current situation?

**Sir Hugh Orde:** The current situation is as we discussed, and I am mindful that the British Irish Rights Watch made some observations with which, I have to say, I take some issue. The reality is very simple, for me: section 29 of the Regulation of Investigatory Powers Act is very clear and it is around: “you do not divulge details of informants unless there is very good reason”. The law of the Inquiries Act is equally clear that I am not going to

obstruct a public inquiry set up under current legislation, which means people must have access to this material. The conflict is, as a strategic issue, people are clearly going to be very circumspect about giving intelligence to any police service—and this transcends Northern Ireland—if they feel that, five, ten, 15, 20 or 30 years down the line, that is made available to other people. That is not to say other people would want to give it up or would lose it accidentally, but the risks increase exponentially as you widen the net. We are already experiencing some concerns in that particular area. It is not just around domestic terrorism; there is the notion that someone who is 15 or 20, currently, who can give information on the current international terrorist threat, is going to look forward and think: “I will only be 40 when this could actually be out in the public domain. I am still going to be about.” So that is the key strategic issue which needs to be resolved. In terms of individual cases, I think my fear is I come to a point where I feel Article 2 issues are so overwhelming I am going to have to seek some form of legal clarification of what my responsibilities are. Sitting as the current Chief Constable, the last place I want to be is judicially reviewing any public inquiry. I think that is a very bad place to be for a Chief Constable—or, likewise, on an inquest.

**Q65 Stephen Pound:** This is a question which comes from the outer limits of ignorance in your profession. If a person is a “covert human intelligence source”, our views are shaped by films like *The Informer* and various stereotypes: in some cases they do it ideologically, in which case it would not matter, in some cases they do it financially, in which case it would matter, and in some cases they do it for internal feud advantage, in which case it would certainly matter. I appreciate those are very broad categories, but are those the sort of categories that represent the people who bring this intelligence to you?

**Sir Hugh Orde:** Yes, you have covered them pretty well in terms of the academic literature on this subject, but you have missed out revenge, which sometimes is one of the most effective—certainly, dealing with some crime in London, certain people who felt they were being let down or unfairly dealt with gave very good information on criminal gangs. I do not know if David would want to add anything to that.

**Mr Cox:** I think that covers it. In terms of our dealing, on the informant issue, it is a big question for some families—“Will you tell us if there was an informant?” We are quite adamant about this and honest, again, from the start. The only issue that we would have with an informant or covert human intelligence source is if that person has committed serious crime. There is no judicial cover for people to commit serious crime just because they are giving information. So if (and we did this when we were on the Stevens investigation and we hold true to the same principles) we find that somebody is acting as an intelligence source but is also committing serious

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crime, then they are investigated the same as anybody else. Otherwise, it is not for us to put people at risk.

**Q66 Stephen Pound:** You said they are investigated the same as everybody else. The source for many of us in London is the whole Bertie Smalls Inquiry, and you remember Maurice Mahoney and the information that was given at that particular time. That was done as a straightforward trade-off: “I’m an armed robber, he’s an armed robber; if I give you him you don’t go after me”. Surely, that is not analogous for the current situation that you are describing.

**Sir Hugh Orde:** No, it is not at all. Again, if we are talking about judging the past by current standards, we did not have the Regulation of Investigatory Powers Act to make the United Kingdom compliant with human rights’ legislation, and it is quite a complicated piece of work. What it does do is it, at least, sets a benchmark for how covert sources are handled, and is overseeing the Surveillance Commissioner, and our reports from the Commissioner—which are always very tough—are very complimentary about how we now handle informants. David is right, if someone steps out-with their authority then all bets are off. Sunday school teachers do not make particularly good informants; you are dealing with people who, by definition, are operating in the margins of criminality or, certainly on terrorism, probably within that community. That is why you get the information. There are protections you have to put in place. However, we, again, find ourselves up against not only legislation but Court of Appeal cases, and the very helpful advice is we should never confirm or deny who an informant is—immensely frustrating to people who are trying to understand this, but we are bound by law. So we find, again, this frustration tends to be vented on the police, who are seen as being furtive and underhand, but, actually, all we are trying to do is comply.

**Q67 Stephen Pound:** How do you, as a thief-taker differentiate between the daily intelligence that every decent police officer has to get, walking the patch, picking up what people are saying, and specific targeted intelligence? Is there a managing divide there or do the two flow into each other?

**Sir Hugh Orde:** The whole thing fits what we have in the national intelligence model, so all intelligence goes into one place. Again, one of our major reforms was to centralise intelligence within the Police Service Northern Ireland. Access to that intelligence depends on need. Frankly, in dealing with what we call ordinary crime—burglary or car crime—informants are just as important, as a level one informant, as your most senior informants who are giving you information about armed criminality or, indeed, terrorism. So it is a process of handling, access and, indeed, action on. In many cases—and, again, I understand the frustration—just because someone tells you something does not necessarily mean you can act on it because to do so would put that person at huge risk. So you have to do certain

things to prevent the event happening, for example. It is a very complicated piece of business. It is as much an art as a science, but it is underpinned by very clear legislation and the starting point, in my organisation, is strict compliance with the law.

**Chairman:** That is very reassuring.

**Q68 Mr Murphy:** I wonder, Sir Hugh, if you would be able to comment on my next question. It deals with the darkest period of the troubles, and whether indeed the RUC, as was then, would have actually handled informants or whether that would have been handled by the intelligence services.

**Sir Hugh Orde:** There is no doubt that substantial numbers of informants were handled by the RUC, who had primacy on national security. In fact, they were the lead agency up until September of last year when we handed that over, quite properly, to the security services. So informants were handled. Of course, they were handled out-with guidelines like RIPA because RIPA did not exist in that period of time. So they were handled, basically, against guidelines rather than legislation, but they certainly were handled and they certainly were responsible for preventing an awful lot of terrorist atrocities—there is no doubt about that.

**Q69 Mr Murphy:** Are there records covering all of the individuals concerned?

**Sir Hugh Orde:** There are records. David can probably tell you a bit more than I can. My work is on Stevens, and there were records, but whether they were complete or not, of course, is a discussion point on each case which has to be looked at to triangulate it against everything else. Indeed, that is, I suspect, much of what the inquiry is going to do.

**Mr Cox:** Yes. There are some records. There were registered informants and there were casual contacts. Where the Chief was going, I think, is if you are dealing with crime of this nature and professional paramilitaries who cleaned scenes forensically so that there is no other evidence, it chops down the availability of investigative tools that you have; you really are left with people who are going to give you information as one of your main weapons in the armour. So it is no surprise that we see this big focus on information from sources during the worst times of the troubles. In terms of record-keeping, it is pretty much as Mr Finlay said earlier: there are some records. Sometimes they are patchy and sometimes they are better kept; it is a case-by-case issue.

**Q70 Chairman:** Sir Hugh, when you were answering Mr Pound earlier you gave me the impression that you had a solution in, perhaps, improving legislation under which you are currently suffering, which is clearly inhibiting the possibility of your historic inquiries being brought to a successful conclusion. I would not be wrong in inferring that, would I?

**Sir Hugh Orde:** I am not sure that I have a solution—I wish I did have. I have a lot of frustration because we are trying to deliver across this very broad and unique set—

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**Q71 Chairman:** However, you do not feel you can necessarily deliver if you are inhibited in the way that you now feel you are inhibited.

**Sir Hugh Orde:** My concern for the future, which I am very interested in, is my ability to gather intelligence, I think, because this series of events will become increasingly hampered. I do not see, frankly, people being prepared to stand up and engage with us on a “covert human intelligence source” basis. They do not feel that the protections that were available to them are any longer available to them.

**Q72 Chairman:** Bearing in mind that it is the duty of this Committee to recommend to Parliament what should be done, because we are a Committee of Parliament and not a Committee of Government, would you give a little thought as to whether you feel there are things that we ought, in this context, to be recommending? I cannot say we would necessarily adopt them but we would like to know what you have in mind.

**Mr Finlay:** Maybe I could pick up on that, just briefly. It goes back to the Inquiries Act, which is a fairly new piece of legislation, 2005, but it has now been in operation, utilised by two of the public inquiries, and there are difficulties around some of its provisions. We would experience some difficulties, and maybe some other people have difficulties. One of the issues around it is that there is a requirement for us to deliver to the public inquiries, for example, everything we actually “have”. We “have” information but we do not necessarily “own” it, so if we get other information, intelligence, from another (say, the security service), we do not actually own it but we are then legally obliged to give somebody else’s property across to the inquiry. Some of these nuances were not envisaged and they actually cause some difficulty between the various respondents to the inquiry, and there is also an emerging issue around about restriction, where there is an opportunity, in section 19, to restrict certain information from the public—it could be to not include it or it could be to screen it first. So far we have been able to agree with the inquiries our agreed redactions and such like. However, if we get to a stage where there is something we disagree about, then there are two routes: there is a route that goes to the Secretary of State and there is a route that goes to the Chairman of the Inquiry. Our understanding—and I think Lord MacLean in the Billy Wright inquiry is on record as saying that he does not anticipate that this is his role and that it would be right for him to seek to limit his inquiry, whereas, equally, the Secretary of State is placed in the invidious position of seeming to intervene in the inquiry. It is anticipated that that lacuna in law would end up having to go to judicial review and eventually, maybe, to the Lords to get resolved. There is, perhaps, an opportunity before that for Parliament to reconsider or to consult upon how the law works and, perhaps, take some representations with a view to amendments that would actually be more efficient to do rather than to put it to the law.

**Chairman:** Hence my question, and we would wish to consider what you believe would be a sensible way forward, so that if we decide to make recommendations we would take your thoughts carefully into account before framing those recommendations. That must not be taken as a promise that we would agree, but we want to know to help us formulate our proposals. I know Mr Wilson wants to end on a rather different matter but, Mr Pound, did you want to come back?

**Q73 Stephen Pound:** A very quick point but it is an extremely important point. I interpreted what you said as, in legislative terms, there is a fundamental incompatibility between two pieces of legislation. Is that a correct interpretation?

**Sir Hugh Orde:** I think that is pretty fair—is my interpretation. Alistair is, clearly, going to disagree with me, which is fine.

**Q74 Stephen Pound:** He used words like “lacuna”—

**Sir Hugh Orde:** My argument would be that Article 2 must override all of this, it seems to me. Section 29 of the Regulation of Investigative Powers Act is clear. What the Inquiries Act, basically, says is you must furnish everything to the inquiry. I am not a lawyer, thank heavens—if I was I would be on one of the inquiries, I guess.

**Q75 Chairman:** A much better paid job!

**Sir Hugh Orde:** From an informant’s point of view, which is what I am looking at, the reassurance of a police officer saying: “We can protect your identity” is not true any more, and my officers are professionally bound to warn the person who they are trying to recruit, who may be a vital link in a missing intelligence chain which may in the future keep people alive or stop atrocities, that “I cannot protect your identity in certain circumstances”, because he or she cannot, because that is what the Inquiries Act says. I do not know if Alistair would like to shorten his career by—

**Mr Finlay:** Sir Hugh is, of course, right in that approach.

**Q76 Stephen Pound:** He will go far!

**Mr Finlay:** In terms of the legislation there was, within the Inquiries Act, an amendment put in relative to RIPA. These cases, particularly Rosemary Nelson and Billy Wright, go to the heart of having a public inquiry into secret intelligence, and how it was handled. The legislation really was not written with that in mind and without the objectivity of RIPA. Putting all that together, it seems to me, yes, there is a legislative incompatibility in terms of purposeful outcomes.

**Chairman:** You are walking the tightrope between obedience and dependence with great skill, in agreeing with Sir Hugh, in effect. Anyhow, that is very, very helpful. Before I close the session, I think you have been advised that Mr Wilson would just like to ask a question about a very current event, following the Prime Minister’s statement today.

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**Q77 Sammy Wilson:** Sir Hugh, you have mentioned today about the ongoing threat from dissident republicans, and on previous occasions you have talked to us about the increasingly sophisticated methods that criminal gangs, and paramilitaries, mostly in Northern Ireland, are using. I know that you have made some comments about the use of intercept evidence. Today the Prime Minister made a statement to the House of Commons indicating that, albeit with caveats and limited circumstances, intercept evidence could and may be used in criminal cases. However, this is only going to apply to England and Wales, despite the fact that police and justice has not devolved in Northern Ireland and, therefore, surely, it should be a responsibility of government here. Northern Ireland has not been included. Have you any comment to make on that as to, first of all, how it is likely to impact on the police ability to deal with some of the current problems in Northern Ireland, and, also, what representations the police would like to make to the Government on this to ensure that we will not have our hands tied in Northern Ireland?

**Sir Hugh Orde:** Intercept evidence in the UK is a hugely sensitive issue, and there are very mixed views, I think it would be right to say, among security and law enforcement agencies. That having been said, if that is what the Prime Minister has said, my question would be: “Why am I being treated differently?” I would like to think it may be an oversight rather than some deliberate omission. So I cannot think of a logical reason why you would exclude Northern Ireland from that debate. Indeed, the reality is, when you are dealing with these sorts

of cases, it is not just a national issue it is an international issue, and there are a number of jurisdictions where intercept evidence is admitted, and indeed it has been admitted in the UK courts because it was drawn from another jurisdiction. I would be concerned if I was excluded, in the same way as I am concerned that I am routinely excluded, in the first instance, from legislation which is seen as fit for policing in the rest of the UK. It is a matter of record we do not have a Crime and Disorder Act; we do not have, currently, the ability to issue fixed penalty tickets to minor crimes, and when I took over we did not have a power of arrest for disqualified drivers, although it was available in 1972 for the rest of the country. I do think we should be seen as part of the policing effort in the United Kingdom, so I would be concerned, but as I only heard about it, literally, as I came here, I have no logical explanation that I can think of.

**Chairman:** It would be wrong to press you, but I am very grateful for that honest answer. I want to discuss this with my colleagues, but it seems to me that this disparity between you and other police forces on a range of issues is something this Committee might well look at when we have completed our current inquiry. Thank you very much indeed for today. Everybody has been very good with their questioning; you and your two colleagues have been marvellous with your answers—we are very grateful for those—and that means that you should have no difficulty in catching your flight. We wish you a safe flight back and look forward to seeing you on our next visit to Northern Ireland. Thank you very much. The session is closed.

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## Wednesday 20 February 2008

Members present

Sir Patrick Cormack, in the Chair

Mr Gregory Campbell  
Rosie Cooper  
Mr Christopher Fraser  
Kate Hoey

Mr Denis Murphy  
Stephen Pound  
Sammy Wilson

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*Witnesses:* **Mr Al Hutchinson**, Police Ombudsman, **Mr Sam Pollock**, Chief Executive, and **Mr Jim Coupland**, Senior Director Investigations, Office of the Police Ombudsman for Northern Ireland, gave evidence.

**Q78 Chairman:** Mr Hutchinson, could I welcome you and Mr Pollock and Mr Coupland most warmly. Thank you very much indeed for coming. We have in fact already had informal conversations on the terms of our current inquiry and we are very grateful to you for coming to give formal evidence. The Committee may well wish to have a brief private session with you afterwards and if there are things you would rather raise with the Committee in private session because of issues of confidentiality and sensitivity, then of course we are very happy to comply with that, but we would like as much on the record as is possible. I perhaps ought to advise you that we are expecting a vote in the House of Commons sometime between half past four and a quarter to five, and so we will aim to finish this session, including any private session, by half past four. Is there anything you would like to say by way of opening submission before I begin the questioning?

**Mr Hutchinson:** Just very briefly, it is a pleasure to be here in front of the Committee. I hope that the experience which Sam Pollock, Jim Coupland and myself bring from the Police Ombudsman's perspective can assist the Committee in its deliberations and I welcome the questions.

**Q79 Chairman:** Thank you very much indeed. Just so that we have certain things on the record, perhaps you could begin by saying something about the different types of referrals which lead to your starting a historic investigation?

**Mr Hutchinson:** Yes. We would receive complaints, and do receive complaints, firstly through the Historical Enquiries Team references, public references, individual complaints and agencies such as the Pat Finucane Centre, for example, and certainly the European Courts recently. So there is a variety of sources that come to us. Primarily the Historical Enquiries Team is the area of challenge.

**Q80 Chairman:** What sort of discretion do you have before deciding that you must begin a proper investigation?

**Mr Hutchinson:** Really, Chairman, I have none. Nuala O'Loan, my predecessor of course, I think wisely considered it and Lord Chief Justice Carswell's cited comments in the McConville case, where she addressed the subject, and Lord Chief Justice Carswell said there is no discretion by a public official when guided by the statute to obviate

that. There is a practical consequence of that and we will, I am sure, talk about the workload, the prioritisation, the matrix we have to go through, but certainly I take the view I have no discretion and whatever comes to me I will eventually have to deal with.

**Q81 Chairman:** May I just ask, before we move on, what about your relationship with the Historical Enquiries team? Is it a good one? There must be a certain amount of tension?

**Mr Hutchinson:** I would categorise it as a good one, certainly at a leadership level. Jim, as our new Senior Director of Operations, can perhaps speak more directly to it, but in terms of our respective Gold Commands on any of the particular issues we have a protocol established, which Nuala established, and I am told that after some initial working out of that agreement that is working very fine now. To our benefit, I think the Historical Enquiries Team acts as a very cogent filter for us, in other words they have collected evidence, they have sifted through it and really when they come to us because of police involvement then it is statutorily given over to us and we actually have part of that front end work done for us. So it is a generally positive relationship.

**Q82 Stephen Pound:** Before we move on from that point, obviously this is an extremely significant area. You have talked about protocols, about precedent, and you have talked about jurisprudential rulings. What is the status of those? When you say you have no discretion, do you have no discretion by terms of the legislation that set up the structure? Is it by precedent, is it by Nuala O'Loan's actions, is it by the judge's ruling? What precisely defines and limits your discretion or absence of discretion?

**Mr Hutchinson:** The statutory obligation, first of all.

**Q83 Stephen Pound:** On the face of the original bill?

**Mr Hutchinson:** That is right. There is no discretion.

**Stephen Pound:** Fine. I think it is very important we establish that. Thank you.

**Q84 Mr Murphy:** Could I ask, before we move on, how many members of the public have actually approached you directly?

**Mr Hutchinson:** I will defer to Sam. We have about 116 cases out of historic, how many –

**Mr Pollock:** We have 16 public complaints.

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**Q85 Mr Murphy:** Is there a particular reason why the public would contact you directly?

**Mr Hutchinson:** Well, again there is an obligation. I will give you one example that is very well in the public domain, which is in fact that the Finucane Centre on a particular case in Londonderry would have raised that with us on behalf of them and we have met with the complainants, certainly Loughinisland was a public complaint, I believe. So there are probably no precedent reasons why a particular family would come forward, but often it is driven by families.

**Q86 Chairman:** How far as the creation of the HET project impinged upon your Office and increased your workload?

**Mr Hutchinson:** I suppose, Chairman, what we have before us and what we have coming in terms of prospective cases, on the prospective cases I am led to believe by Dave Cox that we may have up to 300 cases coming at us that may involve allegations of police wrongdoing. Currently we have—Sam, correct me if I am wrong, how many do we have from HET that we have received?

**Mr Pollock:** Fifty-four from HET.

**Mr Hutchinson:** In terms of impinging on our workload, of course, we go through a prioritisation of those. We have the day to day work, which may involve serious and minor allegations and findings of police wrongdoing, as serious as shootings by police, and then of course we have the historic cases, roughly from 1968 to 1998, which come to us, the numbers which Sam talked about. So there are those two broad areas which are impacting on our organisation.

**Q87 Chairman:** Are you sinking under the weight?

**Mr Hutchinson:** I have used in informal session, Chairman, the phrase “tipping point” and I have become very concerned. I have now been three months on the job and I am concerned about quality, the impact, our capacity for the future, and strategically looking at it we could come to that point where we will be sinking. I have asked Jim on an urgent basis to start putting together a business case. Fundamentally, it is put on a premium model, which I think is the HET model. Of course we are independent from that, but very shortly we will probably be going to Government with a provisional idea of what that might cost us, and it probably will be significant to deal with that prospective work which is coming at us.

**Q88 Chairman:** Are we talking seven figures or eight?

**Mr Hutchinson:** We are looking at possibly 20 or 30 new staff, new quarters, because we are on the maximum quarters, maybe 2 to £3 million cumulative per year just for the additional historic works.

**Chairman:** Just for that, yes.

**Q89 Kate Hoey:** In other words, the costs are going to go up and up and up, and you are putting a plan to say, “We need more money to deal with this.” Do you think we will ever come to a stage where you

might actually be really radical and say, “Look, hang on, enough’s enough. This whole thing’s costing far too much and it’s achieving very little”?

**Mr Hutchinson:** As I pointed out to Mr Pound, I do not think I have any legal out on this, if you will. What I am doing—and perhaps we will discuss that in other questions, but I view it as a severable unit, in other words, when Northern Ireland comes to a resolution of how it can deal with the past (1968—1998). I think part of it is evidence-gathering. HET is doing part of it, we are doing part of it, inquests, enquiries are doing another part of it. There is a piece of work there to resolve the issues in Northern Ireland. I am looking at it as to our piece of that could be severable. In other words, when I ask for funds it is to grow my unit, because in fact I am very worried about the impact on the present policing and the present police organisation, that bleeds over from the past to the present. So I think it has to be done, that we have to advise Government, “This is what we think as a professional Police Ombudsman organisation, what it will cost to deal with the historic enquiries that are coming at us,” and I will put that in. It will be on the paper and we will start to draw down in that process just to deal with the workload that we have, but I am absolutely convinced I have no discretion except to do that the way the law is written.

**Q90 Mr Fraser:** You say about the costs and funding the problems you have got with that and you say you need more staff. One of the comments you pass is that there is a lack of availability of suitable staff. Is that because you have not got the funds to tool them up to do the job and train them appropriately, or that the wrong people are coming forward, or that there just is not the pool of the right people?

**Mr Hutchinson:** We really have three categories of staff. We have the developed internal staff. They are not necessarily police officers but they have developed professionally through experience and university training. We have seconded police officers from other police services outside of Northern Ireland, and then we have contracted police officers, primarily to do the historic crimes. There is a cost to each one of those levels and on our last trawl to get seconded police officers in broadly the United Kingdom we had one reply from one service. What is impinging on that, of course, is that all police services are suffering in terms of recruiting and the demographic needs and police chiefs are very reluctant to second their police officers. So we are left with a pool of contracted police officers availability and ironically that pool is probably growing as the police demographics change and more and more people retire, but again there is a very expensive premium to that. On the other hand, direct recruit—logically as a public official I cannot hire permanently staff not knowing which way this issue will go and whether or not it is severable. It is just that you cannot hire experienced criminal investigators, senior investigators.

**Q91 Chairman:** Are you able to recruit from your own former force?

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**Mr Hutchinson:** Well, no. That is an issue of confidence in Northern Ireland. The HET, for example, has recruited from the former force, but they are doing very routine issues. We have the former police service in Northern Ireland doing some of our enquiries, but –

**Q92 Chairman:** You had your police training and career in the Royal Canadian Mounted Police, as I understand it?

**Mr Hutchinson:** I did.

**Q93 Chairman:** Are you able, or is there a bar on your going to other Commonwealth forces like that to recruit?

**Mr Hutchinson:** No, there is not, other than practicality, familiarity with the law. Certainly my experience as a police officer is that the police officers in Northern Ireland, certainly Great Britain, are as confident and capable as they would be in Canada because it is something you gain over a period of time dealing with people.

**Q94 Mr Fraser:** Can I just come back on that point? Given the difficulties you clearly face and which you have explained to us here and in your submission, that is affecting public confidence in your Office, surely?

**Mr Hutchinson:** I believe it is. Our satisfaction levels, according to surveys, are starting to slip. Now, I would not say that that will be maintained. Certainly it is my objective to keep the confidence level up, but there is no doubt it is impacting on our current delivery of cases because what we are doing is taking the experienced police officers, investigators, and putting them onto historic crimes investigations because that is where we need the quality, and these are multiple year-long investigations in some cases.

**Q95 Sammy Wilson:** Can I just ask a follow up question? According to the brief you have given us, Mr Hutchinson, you indicate about 21% of your costs now, your staff costs, are directed towards historic enquiries?

**Mr Hutchinson:** They are.

**Q96 Sammy Wilson:** The Chief Constable told us in relation to the police that it was not so much even the percentage of total costs, but it was the specific areas where he had to take expertise from, where in some cases he was saying 60% of his serious crime resources were being absorbed into this. Are you finding the same in your organisation? It is not just the kind of global or bottom line figure, but it is specific parts of your organisation that are feeling the strain?

**Mr Hutchinson:** I suppose that provides an apt analogy because that is really what I am saying, that we are taking our experienced police officers, former police officers, seconded police officers who have that senior investigating officer experience and putting them into the major cases, which are very complex. They range from—well, we talked about Loughinisland in Ireland, but some are multiple linked allegations of murders, the Stalker affair, you

know, the very complex cases that have a big public impact in terms of outcome. We have to deal with them honestly, fairly and independently and that requires a great deal of skill. That is our cadre of experienced people.

**Q97 Chairman:** How much extra work from the public inquiry is piled upon you?

**Mr Hutchinson:** Not a great deal. For example, the Wright inquiry, I enquired over the impact on us and of course we have primarily derivative intelligence, not exclusively but pretty well derivative intelligence from the security agencies, primarily the police, and we would have to trawl through that, checking with the host/owner of the information and make sure that everything is synchronised as well. We might have our own intelligence that is acquired through interviews and a number of situations. So we have to pay very close attention. The Wright inquiry took three senior people three days to trawl through the information we have on that just to make sure that it met the requirements of law, met the needs of the inquiry and certainly had the sanction of the owner agencies of the information.

**Chairman:** Can I move on with Mr Wilson, please?

**Q98 Sammy Wilson:** I want to really explore the impact your work has on the PSNI, obviously when cases are referred to you. I suspect that if the Historic Enquiries Team refers cases to you they have not done a lot of preliminary work other than to identify there might be some wrongdoing or an allegation of wrongdoing by the police. So you are probably making requests then from the police for files and evidence. How do you find the promptness of the police in responding to those requests?

**Mr Hutchinson:** I will go back to Sam, but generally from my short-term experience here I have had no difficulty, have heard of no difficulty at the present time. I think there might have been some start-up issues. Nevertheless, for example, it is publicly known the Stalker referral came in and the police had about 70 boxes of evidence available for our review, apart from the documentation that we got on the original case. They have to maintain that, catalogue it, hold it securely for us until we get a chance to examine it. That would be at the top end of the spectrum. Other cases where HET would have collected the information, they called around the police stations and certainly identified officers. A lot of that material is available. But of course, we would—as is your point—have to go back and query officers. We would have to look for records on all the retired officers who were available and really that would be a piece of work for the police.

**Q99 Sammy Wilson:** Apart from collecting the information, is there any other sifting work you would require the police to do before they hand over material to you?

**Mr Hutchinson:** No. We would take the view, because of our independence and impartiality, that we would really take the whole basket of goods, but again, recognising the police have collected it, we would have to go back and query them on particular

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cases and particular files. But we would not demand of the police that they do any work. I am not sure if that is what you are implying.

**Q100 Sammy Wilson:** Yes. For example, would they be required, if there was sensitive intelligence information, to perhaps do some sifting there to make sure names were not included?

**Mr Hutchinson:** First of all, I would not expect them to do that because that is our job. The police need to make available all intelligence. We have a very secure intelligence unit, practice and process, so we would collect that intelligence and make our own analysis and decision on the relevance. We would expect all of it to be made available to us and not certainly culled or—

**Q101 Chairman:** We are going to see, at Sir Hugh's invitation, the Historical Enquiries Team and the way they operate and how, and it obviously would make sense for us to pay a visit to you and do the same. Would you be content with that?

**Mr Hutchinson:** Absolutely, Chairman, yes.

**Chairman:** Because I think this would be helpful.

**Q102 Sammy Wilson:** Yes. Just two other questions. The first one is the co-operation between yourselves and retired police officers, who very often have left the service and may be the subject of the inquiry which you are conducting. It has been a fairly rocky relationship in the past. Do you believe that that is improving, and do you see any evidence that because of the emphasis on historic enquiries that actually still continues to poison relationships between your organisation and the police?

**Mr Hutchinson:** I think we are in a better place now than we were before. We have re-established relationships with the Federation and I will be meeting the Retired Officers' Association in a couple of weeks. I made it clear to both groups that I will be saying things that they may not like, but I think we can professionally talk about them. Will what we do in the future challenge those relationships? I think it will, but I do not think it is my role to shy from the truth and the evidence. I know what the Office says and I believe it will follow the evidence—I think the public needs to know that—within the context of the time. So I think it is better, Mr Wilson, but I think it will always be challenged and fractious, probably because we are fundamentally opposed, perhaps, in this debate over historic enquiries and the role the police carried out during the time. If I contrast that with present relationships, I think they are much stronger on the day to day cases that happen on the street because usually they are not contentious issues, they are professional issues that we deal with.

**Q103 Sammy Wilson:** Do you feel it is right in your Office when you are making reports to emphasise that you are very often judging cases in a context which is totally different from the context in which those original investigations and original police actions took place?

**Mr Hutchinson:** Actually, I shared that view too as a reader of headlines before I came to this job and when I started reading the reports I realised that every report had a contextual element to it. I think what has happened is that in the rush to headlines none of that is reported as well, so I think there is a bit of onus on the press to put all of that in context. Probably the most visual element that I can think of is the Omagh investigation and the issue over the tainted evidence in terms of low copy DNA. Nowadays it is not uncommon to turn on the television and see the space-suited forensic officers collecting evidence. Certainly in 1998 that was not happening and it was not happening in 1972. There was an entire context to that, so I think we are all being influenced by the one hour CSI television shows in many ways. So I will continue to put context in every report, and in fairness I think the Office did in the past, it just probably was not picked up.

**Q104 Sammy Wilson:** Just one final question. A lot of money is going into this. The whole idea was to gain greater confidence in the police today from looking at the actions of the past, but as a result of the enquiries you have concluded to date how many police officers have either had complaints against them upheld or there has been disciplinary action, et cetera? For all of this money are we getting any greater confidence, or do you believe your enquiries are instilling any confidence, or indeed turning over stones which need to be turned over and resulting in outputs which will satisfy those people who demanded the enquiries in the first place?

**Mr Hutchinson:** There are several points. I suspect you will have to ask the victims of the Troubles, whether they are police officer families or victims of either community, how they feel. What I am struck by when I have met several victims, individually or as groups, is that that past event, whether it was 30 years ago or 15 years ago is as vivid today as it was at that time. Jim and I met some people in Londonderry just a while ago and although it was 35 years ago as young men, they are still visibly emotionally crying about the events which happened to them, allegedly by the police. The Loughinisland Ireland families—I had a very difficult meeting with them and what struck me, apart from the emotion of the meeting, was that it has become intergenerational. There is a young girl whose father was killed and as a young woman now she feels that pain as much as she did, yet it happened 15 plus years ago. So it is a very present thing which I think has to be resolved. I think as police officers our work is understood—and of course once police officers are retired there is no internal discipline, so we are looking at only evidentiary criminal prospects, to collect what evidence we can. Truth is viewed differently by different people, but we have tried to stick to evidence. So we have not put any police officers in jail and we have substantiated failures in investigation in the past, but we have also substantiated that the police did their work solidly.

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We have tried to be fair and impartial. Again, the headlines maybe do not reflect all that work, but in fact it is probably 50:50 in terms of that.

**Q105 Chairman:** If your prime responsibility is to engender public confidence in the police and to maintain that confidence, is it possible to do that if you have this great backlog of historic investigations which you are obliged to look at, one accepts that, given the present structure? Is it really possible to do the two things, even with the extra resources which you have made quite plain you need?

**Mr Hutchinson:** No, it is not. Just finishing off Mr Wilson's question and following on with yours—is there confidence?—that is the very issue which concerns me, that the past is bleeding into the confidence of this present police organisation. What I want to make clear is that those people victimised by the past really need a resolution. Now, whether or not it is our Office or some office, or a combination, it is important, but the confidence is diminishing in present policing.

**Q106 Chairman:** That is what worries me. Therefore, do you think it would be better if someone else, some other office, did deal with this historic legacy and backlog?

**Mr Hutchinson:** Chairman, I would have no objection to that, bracketed by the period of time we are talking about, bearing in mind the Police Ombudsman now and in the future will always have grave and exceptional historic cases because time will move ahead, but for this period of time it was entirely different. It is problematic. You have HET, ourselves, inquest inquiries, all having different pieces of it and yet there is no resolution of it all. So I would certainly endorse any mechanism—and I would not be prescriptive of that—that would work, and certainly our piece of gathering evidence to feed into that process to assist.

**Q107 Chairman:** To get this absolutely clear, because this is very, very important what you are saying, you would yourself have no objection to there being, as it were, a historic ombudsman dealing with the past in addition to yourself?

**Mr Hutchinson:** No, I would not.

**Chairman:** That is very interesting. Thank you very much.

**Q108 Stephen Pound:** Just a couple of quick points before we move on from this section, bearing in mind this extraordinary and ever-increasing workload—and I understand the normal physical constraints and the constraints of the standard operational limitations that you suffer under—how do you prioritise within that? Would it be in date order, would it be on the size? Could you tell us for the record how you manage?

**Mr Hutchinson:** I can give you some examples. Technically what we do is we use a prioritisation matrix lifted out of ACPO in terms of all the cases, present and past, which come in. We really have to

juggle experience that we acquired in Operation Ballast, for example, and Sam can speak more if you need more detail.

**Q109 Stephen Pound:** I am sorry to interrupt, but the ACPO matrix has two key salients within it. One is the likelihood of resolution. The second one would not apply in your case, I would have thought, it is where there is the probability that the perpetrator is still active and may repeat the crime. Those are not the only salients but they are two within them. What would be the prime salients of the ACPO matrix as applicable to your task?

**Mr Hutchinson:** I will just make the point that both those cases could apply as well. I just want to finish the point on Ballast. Just in terms of prioritisation, to show you the challenges, that diverted the Office for—18 months, Sam?

**Mr Pollock:** Three years.

**Mr Hutchinson:** Three years altogether, and so we had to put some cases to the side. That cost about £1.8 million in terms of diverted resources.

**Q110 Stephen Pound:** Collectively?

**Mr Hutchinson:** Yes. So it illustrates, when you are talking about prioritisation, we just have a fixed number of people, a fixed budget, and we really have to deal with what comes in. The importance of that on the present is that in fact the police, as a result, culled their informant list. They did a whole number of things. The Surveillance Commissioner paid closer attention. So it is a very live thing bleeding over into the present, and of course we identified a number of murders which had to go back to the police to actually reinvestigate as a result of that. So when you look at a priority case it is beyond a matrix, it is very much a judgmental quality of thing where we have to make our best guess.

**Q111 Kate Hoey:** Sorry, I do not quite understand. Just tell us in simple language how you decide your priorities. You are beginning to tip, you say, the balance. How do you decide the priorities of what you are going to deal with? Is it “muggins's turn”, whoever gets in first gets dealt with first?

**Mr Hutchinson:** I am sorry, I did not know the term.

**Q112 Kate Hoey:** That is what I mean about priority. How do you decide?

**Mr Hutchinson:** I am sorry, I do not mean to equivocate, but there is really no particular answer. For example, the European Court decisions which come down to the Secretary of State, Stalker, my judgment is that that is a priority.

**Q113 Kate Hoey:** So you judge?

**Mr Hutchinson:** Yes. We are almost granted discretions.

**Q114 Kate Hoey:** I am not criticising you, I am just trying to find out.

**Mr Hutchinson:** No, no, but we are almost back to discretions.

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**Q115 Chairman:** You have to be pragmatic is what you are saying?

**Mr Hutchinson:** Well, we try to be pragmatic. As a consequence, of course, we almost create this hierarchy of victims again because we have to put some things to the side, but there is a quality aspect to it in every case. But we still run it through a prioritisation matrix which gets us at least to the table, where we can consider relative cases.

**Q116 Chairman:** But you could the more easily do this if you had this clear division, which you have just said a few moments ago you would welcome, between past and present and then you would be able to concentrate on your prime duty of maintaining the confidence in the force as it is and somebody else would be looking at these issues which need resolution but which go back in some cases almost 40 years?

**Mr Hutchinson:** Well, I agree with that, Chairman. I do not want to lose the point that something has to be done about it. We are kind of one of the only games in town, and therefore we have to treat it seriously.

**Chairman:** Indeed, and we will have to make some recommendations at the end of the day, informed by your evidence and other evidence, as to how we think this should best be done, but it is very helpful to have that on the record.

**Q117 Mr Murphy:** Following on from the Chairman's suggestion, Mr Hutchinson, if that was to go ahead, almost the removal of the historic cases from your current workload, do you think that would also require a similar set-up for the police as well to ensure that there is confidence, even if it is part of the PSNI who are actually seconded onto this team to work exclusively on nothing else?

**Mr Hutchinson:** Two points. Absolutely, I believe this agency group would have to be removed from the police to have independence and to have the confidence of the broad public, so there is no doubt the quality of the investigators in there would have to be, in my view, primarily police officers, senior investigators who are used to investigating murders, serious crimes, link murders, a very complex business which goes back—Miss Hoey talked about how we do it—certainly murder and less primarily what we are dealing with, but not exclusively, any murder case, that is really all we are dealing with. It leaves aside the number of victims who have been injured through bombings and attacks over the years, but that is somewhat tragic as well. Yes, professional, separate from the police and severable from us. That is why I mention that I really have two businesses to deal with now. One is the past. The past could be severed from us, the legal process, the legislators and certainly legal draftsmen, but I believe it could be done

**Q118 Mr Campbell:** To pursue this a bit further, is the elephant in the room? Today we were told in the House of Commons we were told by the Secretary of State that the Saville Inquiry is now over £181 million and still not concluded and still not likely to

lead to closure or resolution, and that is not to take account of the other series of inquiries, the whole issues that you have outlined in terms of how you are getting weighed down. Some people are saying there is no end to this. There is simply no end to it. Either we pour hundreds of millions into trying to resolve something which is irresolvable or we pull the shutters down. You seem to be saying, as far as the Ombudsman's Office is concerned, that you imagine a third party should be created to deal with that. Is it as stark as that?

**Mr Hutchinson:** Let me say this, Mr Campbell: I think it is a matter for Parliament, for the legislators, to decide on the resolution of those issues. I am trying to focus myself as a former professional policeman, and now in this job, to say that as part of that resolution (whatever it is) this piece of work has to be done. We are doing it on an evidentiary basis now. Somebody has to continue to do that. I will continue to do it until the legislature, Parliament, says I cannot.

**Q119 Chairman:** You are also saying you cannot adequately do it with what you have got at your disposal?

**Mr Hutchinson:** That is clear, yes. I am not trying to avoid your question, Mr Campbell, but I think that is probably—

**Q120 Mr Campbell:** That is why I called it an "elephant in the room".

**Mr Hutchinson:** Yes. It is probably better for Parliament to debate and discuss that, but I am just saying there is an important piece of work and I do not want the victims of the past to be forgotten. We are talking about a premium for a price. What is that? I certainly cannot answer that.

**Q121 Chairman:** You are saying to the Committee—I want to get it absolutely clear—that it is not your role or remit to say whether a line should be drawn or not. What you are saying to the Committee is, "If a line is not drawn, we cannot carry on as we are." There have to be extra resources, and preferably a living off, or you will not be able to do adequately the contemporary job which we expect you to do?

**Mr Hutchinson:** I adopt your comments, Chairman. You have said it better than I probably could.

**Q122 Mr Campbell:** I just want to finish and ask another question. There will be many people—and I would be one of them—who would look at your work across the range of areas that you have to work in and would see that the essence of your work is that you are concentrating on a number of cases, and if you looked at the number of police officers who have served you could probably be talking about less than 1% of police officers about whom there is some suggestion of impropriety. I do not know if 1% is right, but certainly a miniscule figure, because most objective observers see the Police Force as, by and large, doing a very good job most of the time very professionally and very well. But they see your Office, looking at a small number of officers against whom an allegation of some form of inappropriate

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activity has taken place, and the issue of trying to deal with the past, even if it appears to be lopsided, in that on the one occasion when one person, who now happens to be the Deputy First Minister, openly admitted his involvement in terrorism when he was put in a box under oath at the Saville Inquiry and declined to give any rationale or open up any Pandora's Box about people whom he knew who might help closure be brought to some victims. Many people would say this is all about concentrating on a very small number of people, which will not bring closure, and it is not going to look at the thousands of people who were involved in an organisation, 100% of whom were law-breakers; rather, it seems to be focusing on a tiny, insignificant number of police officers about whom there is an allegation, and how can we ever get closure if there is an imbalance like that and hundreds of millions of pounds is spent on trying to do it?

**Mr Hutchinson:** I am not sure that is a question, Mr Campbell, but I will try to answer just a small portion of it! In that part you are right, and it really reflects my comments as a previous Policing Oversight Commissioner, where I said that HET and the Police Ombudsman—and I have not changed this view—are too narrowly focussed—they are their blunt instruments to deal with societal resolution, and part of that came from—although I am not an apologist for the police—the fact that my Office looks at exactly one small portion of what is a larger issue. I can only look at the police. I cannot look at other state agencies. I cannot look at the paramilitaries that were involved. So it is unfair in that sense, that I only have one piece of a puzzle. So I would adopt part of what you are saying in this sense, that the consequences of our process had the effect you talk about. I do not know about the 1%, but it is fair to say there is a very small number. Most retired police officers cooperate with us. Some do not. We have only had a handful of arrests for alleged criminal offences of former police officers. It casts again an unfair bias towards the Police Service in Northern Ireland and what they are trying to do, so it is unfair in that aspect.

**Q123 Mr Campbell:** Would it help if, in carrying out your activities, more attention was given to that type of statement you have just made?

**Mr Hutchinson:** Absolutely, and that is why I put it in the submission I made in terms of HET and our own Office being blunt instruments and only dealing with part of the issue.

**Chairman:** Thank you very much.

**Q124 Kate Hoey:** I agree with what you say there, that that was certainly the perception, that this could be very one-sided in terms of, in the end, people living in Northern Ireland who have lost loved ones over many, many years where there has not been police involvement and who feel that they are getting absolutely no ending to their misery and cannot find closure. How would you feel then if we, as a Select Committee, came up with the suggestion that actually this was politically the wrong way to go

forward any more and that whilst there is a need for a Police Ombudsman in terms of today's policing, actually it is time to put an end to all these huge amounts of money which end up with, as you have just said, very few people actually being ever found guilty and for the few who are found guilty nothing happening?

**Mr Hutchinson:** Well, I would not tread on the grounds of the Committee. I am sure you will arrive at your own wise decision. I will just make the point I made earlier, that the Police Ombudsman will always need a grave and exceptional new evidence role to look retrospectively beyond twelve months. It is the period from 1968 to 1998 that really is both the elephant in the room and the problem for my Office currently and into the future.

**Chairman:** I think you have made it very plain that 1968 to 1998 is a burden too much for you and that somehow this is—you are quite right—a political issue and we have got to make our recommendations on this. Somehow, that burden has got to be lifted if you are adequately to perform the contemporary role (as I called it earlier) which Parliament and statute has placed upon you. We must deliberate and we must take other evidence and decide whether it is right that there should be another body, side by side with you, looking at other sorts of crimes. That, I fully accept, is not for you, but you have been very clear in what you have said and I would like to move on now to Rosie Cooper, if I may.

**Q125 Rosie Cooper:** Mr Hutchinson, just to go back on some detail you have referred to so far, are you satisfied with the level of access your approved staff are getting to the various bits of information by the PSNI?

**Mr Hutchinson:** Yes, absolutely. There are no barriers at this stage in access. We have total access. I am confident of that.

**Q126 Rosie Cooper:** That is really good. Do you believe there is adequate legislation to protect informants, and if not what legislative changes would you consider to be justified? If you ever get into a really difficult situation where people believe the information they have given to the police will come out and the informants will be identified, then this whole thing will dry up of its own accord anyway.

**Mr Hutchinson:** A couple of points. One, as a former police officer I know how important informants are to policing. Traditionally there is an acceptance of that and usually a neither confirm nor deny policy. Again, Lord Chief Justice Carswell spoke a bit about that and when Nuala looked at this and publicly reported Jean McConville's case she decided to break that, which can be done in exceptional circumstances, just to confirm that Mrs McConville was not an informant. The protection given by the state for informants generally is part of the accepted rule. I cannot really speak authoritatively as to the legislative changes of provisions, but I think the protection of an informant, except in the most exceptional cases, is really what the state should be doing. There is a consequence of that in Northern

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Ireland—and it bleeds over again into normal policing—which is a residue of the past, that every police stop tends to lead to the belief that there are informants out there and that there is an ulterior motive behind it. I am satisfied that the police not only culled their informant list from 2003 onwards, in other words those engaged in criminal activities, but that it is a fairly robust system now, subject to a number of protections. Again, the protection principle, I think, is important for law enforcement, and of course it is not only the police. So I think that is well-established. I could not really go beyond that in terms of legislative changes, beyond that principle.

**Q127 Rosie Cooper:** What about publishing any information about informants? Does your approach differ in any way from that of the PSNI?

**Mr Hutchinson:** No. We have tried to be very rigorous about that and I said earlier that unless there are exceptional circumstances we would not disclose it. It has only been done in one case, after we received information, but our security handling—and if the Committee comes to our Office in Northern Ireland you will be able to see our intelligence unit and how we handle that with only access to direct vetted people and it is very electronically secure handling, because we receive information from not only the police but a number of agencies.

**Q128 Rosie Cooper:** Can I take it from your comments that you are saying the real hindrances you have are staffing and money, and that on the actual ability to do these inquiries, should they be met, you have got no hindrances whatsoever?

**Mr Hutchinson:** That is accurate.

**Q129 Chairman:** Would you like to amplify a point you made in your written submission in the context of these questions when you talked about “unlawful practice and policy in the use of sources” in Northern Ireland? Are you satisfied with the progress which has been made by the PSNI in changing those practices? Would you like to amplify a little on that?

**Mr Hutchinson:** Actually, I will ask Sam to do that because he has been more involved in the last seven years, but fundamentally that relates to participating informants following ACPO guidelines and participation allegations perhaps more where agents have been involved in murders. Sam, could you perhaps amplify that in relation to Operation Ballast, which might be the best example?

**Mr Pollock:** The reason it took such priority was because it was a concern that the practice at that point was still ongoing and we notified the Chief Constable of our concerns and there was an immediate response to that. We were also satisfied even with the response to the recommendations, not just in the public report but in the private confidential report to the Chief Constable on particular matters and there was a full and adequate response to that. Is the world perfect? I cannot say that, but we feel the whole conduct and performance

and compliance with procedures and authorisations is absolutely correct, satisfactory, and there would be no current concerns on that.

**Q130 Chairman:** There are no current concerns?

**Mr Pollock:** No.

**Q131 Chairman:** So you are content with the way things are for the moment? You are content, as I understand from earlier answers, with your relations with PSNI?

**Mr Pollock:** Yes.

**Q132 Chairman:** You see for yourself an important and continuing role as a public watchdog and guarantor of the impartiality and the operational effectiveness of PSNI? You see all of these things as being very positive, presumably?

**Mr Pollock:** I do.

**Q133 Chairman:** So we keep coming back to this terrible problem of the burden of the past. Would you say there is a danger, unless we do get this balance right—and I am not asking you to say how we should do that—there is a danger of the present being overwhelmed by the past and therefore the future operation of your office being jeopardised?

**Mr Hutchinson:** Absolutely, and again I adopt your comments and I referred to the Oversight Commissioner’s comments as the choice, policing the past or policing the future, and I am afraid we are being dragged into policing the past. But I want to emphasise the point that there are very legitimate victims across certainly the police, the military, the communities, who are crying out for some resolution, so I would never abandon them, but certainly –

**Chairman:** Of course. Nothing you have said to this Committee makes us consider you to be insensitive in your response to the past, but you are merely being realistic, and that is very, very helpful.

**Q134 Sammy Wilson:** Could I just ask about the submission you made to us, Mr Hutchinson, in paragraphs 2.6 and 2.7? I know you have said that you do not have discretion as to whether or not you investigate a case if it is referred to you, and it may well take some time before politically some alternative can be found, but would you have discretion along the lines in 2.6, where a case is referred to you but if there is no new evidence you could exercise discretion at that point and say, “Look, there’s no point in us devoting resources to that case because there’s nothing new that has come up anyhow”? Would that be one way of filtering out some cases, and what work would be required to be done? There would be a lot of work required to be done to ascertain whether or not there was new evidence, so would that be a kind of safety valve in the short-term, or do you not even have that discretion?

**Mr Hutchinson:** No, in fact we do that de facto. When we prioritise these cases the first step is that it is not only grave and exceptional, it is whether or not we have any new evidence, whether it has been

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investigated before. So that is one of the considerations. Correct me if I am wrong, Sam, but we probably have turned cases away where there is no new evidence. It is part of our requirement.

**Mr Pollock:** Yes.

**Mr Hutchinson:** But we do that. As I said earlier, I have no discretion in taking the cases in, but then we go through a process of really prioritisation and frankly putting some to the side and judging, hopefully correctly, that some are more important than the others, and that is simply a matter of resource allocation and time and priority that is available. But everything which comes through the door has to go through that filter. Is it new evidence? Has it been investigated previously? Certainly, is it grave and exceptional?

**Q135 Chairman:** But that filter itself can become clogged?

**Mr Hutchinson:** Well, it can, and in terms of our scoping exercise, to answer all of those questions, it simply takes time and we have to do it.

**Chairman:** Of course.

**Q136 Kate Hoey:** Chairman, one brief point—it might even be Mr Coupland because he is in charge of actually investigating—you talk under 2.18 about “the identification of good practice and policies that have evolved but did not exist 20 or 30 years ago”. If you are investigating something which took place nearly 40 years ago in the middle of—you know, some of us who lived through that know just how difficult it was for anyone to do anything in Northern Ireland, never mind the police. What priority do you give to that in terms of looking at whether you could really investigate something that happened that length of time ago and get the evidence based on the fact that the police acted differently there by nature of the fact that they were fighting people who really saw themselves at war?

**Mr Coupland:** The point was raised earlier about contextualisation. You have got to contextualise it. If it is something that occurred, a homicide, 20 years ago, the ACPO manual guidance for homicide investigation was not even out then. There was no RIPA, no authorisations, so there has been a whole load of changes and legislation and police policies and practice, and when you look back you have to look back to what was available to the Police Service at that time.

**Q137 Chairman:** Not to mention the scientific advances and DNA, and all that?

**Mr Coupland:** Absolutely.

**Q138 Chairman:** What I would like to do now, if you are agreeable, is that it would be helpful if we had our private session now.

**Mr Hutchinson:** That is acceptable to us, Chairman.

**Chairman:** A final public question, yes.

**Q139 Stephen Pound:** Could I just say that it is unfortunate there is no representative of any of the Nationalist or Republican political parties here, but I am sure if they were here they would say that any suggestion of a diminution of your historic role would be greeted with considerable opposition in those communities. I am well aware of your sensitivity on that and I think it is extremely important, but I wanted to ask you a question specifically about the point you made about forensic evidence, particularly post-Omagh, when you said that in effect the evidence chain could be challenged on the basis of modern information and that modern techniques were not applicable then. That struck me as being in some ways one of the most terrifying things you have said, and I have to say my admiration for you and your team has grown throughout the course of this inquiry. I am just wondering how you can objectify an investigation from such a long period of time without that irrefutable, non-specific forensic evidence. Are you saying that forensic evidence can exist from 40 years ago and it will not be challenged, or are you saying that whatever forensic evidence exists it was either of such low quality that it is of no value or it would be challenged?

**Mr Hutchinson:** A couple of points in response to that. First of all, I think we are obliged to walk through the whole process examining possibilities of forensic evidence, carrying through an investigation to the point where we have something either to take to the Director of Public Prosecutions or not. I would mention that the final benchmark is that the Director of Public Prosecutions will make the decision based on what we have surfaced. Part of the whole problem is really what you have illustrated. There are very few evidential solutions 30 years on, because of the whole variety of reasons you have talked about. That does not stop us from having to go through that diligent process of finding it out, because that is the complaint. As I have mentioned, in some cases it not only raises expectations but in a lot of cases the police are exonerated, the points are not substantiated.

**Q140 Chairman:** It both raises the expectations and dashes the hopes at the same time?

**Mr Hutchinson:** It does, and I think any process on the past will risk that, unfortunately. That is not to say that public authorities should not go through the steps. A murder is never closed, in my view, in any country, and we just have to go through the process.

**Chairman:** I think at that point, that is very, very helpful and I would like to thank you publicly, you and your colleagues. The evidence you have given and the clarity has been very helpful to us and we will now briefly deliberate with you in private, so could I ask that the gallery be cleared, please.

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## Wednesday 12 March 2008

Members present:

Sir Patrick Cormack, in the Chair

Mr David Anderson  
Mr Gregory Campbell  
Christopher Fraser  
Mr Stephen Hepburn

Kate Hoey  
Dr Alasdair McDonnell  
Stephen Pound  
Sammy Wilson

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*Witness: Miss Maggie Beirne, Former Director, Committee on the Administration of Justice, gave evidence.*

**Q141 Chairman:** Miss Beirne, you are very welcome. Thank you very much indeed for coming to give us evidence. Although it is a total breach of protocol, we do have a number of visitors from the parliament of Iran who have come to listen to this session and we are all delighted to see them. I gather that you have just retired.

*Miss Beirne:* And very happy as a result.

**Q142 Chairman:** I thought you had a bounce in your step when you came in. We are grateful to you for coming and we would obviously like to meet your successor on some occasion. Your organisation has been in existence since the early 1980s. Could you just, for the benefit of the Committee and for the record, say a little bit about the background and in particular about the funding of the organisation?

*Miss Beirne:* We were founded in 1981 at a conference at Queen's University, essentially with people coming together and saying we may not agree about the constitutional status of Northern Ireland—some of us believe it should be part of the United Kingdom, some of us believe it should be part of a united Ireland—but we do all agree that whoever is responsible for this jurisdiction must comply with international human rights standards. From 1981 to 1985 there was no staff; it was just a voluntary group of people, mainly legal academics but gradually a variety of social workers, campaigners and other people got involved. Then it took on staff in 1985 and now we have six full-time staff. We have a broad membership. We consider ourselves a cross-community organisation. We have always worked with anyone and everyone who has a concern about how to ensure that human rights are maintained and protected in Northern Ireland.

**Q143 Chairman:** Do the people who run it come from both communities?

*Miss Beirne:* Yes; our executive committee and staff are all drawn from right across the community and I suppose it would be fair to say that up until the agreement we would have been a responsive organisation in that we just had to deal with what we saw as serious human rights violations that were occurring there and then. In the lead-up to the agreement and thereafter we tried to build on the lessons from that experience and tried to make contributions about how you build human rights and equality standards into fair society rules.

**Q144 Chairman:** How long have you been with them?

*Miss Beirne:* I have been with them as a volunteer since the late 1980s, on staff since 1995 and as director since 2004.

**Q145 Chairman:** And what was your background before all of this?

*Miss Beirne:* I worked for 17 years with Amnesty International in their international secretariat, worked on Latin America and, in the last few years, was head of campaigning and membership internationally. Basically I am a human rights activist.

**Q146 Chairman:** What about the funding?

*Miss Beirne:* Obviously we did not have an awful lot of funding in the early days but we have always taken the position that we should not take government money because we wanted both to be independent and to be seen to be independent. We take money from charitable foundations, from members, from selling publications, just general fund raising but mainly from charitable foundations. As many such groups we would have been very dependent on the Joseph Rowntree Charitable Foundation in the early years and then diversified, the Barrow Cadbury Trust—very keen on chocolates—and now Atlantic have been giving us funds, Oak Foundation, and we have also tried to raise money in the States, but not with great success I have to say. Everyone thinks there is an awful lot of money in the States.

**Q147 Chairman:** There is, but it is a question of getting it. What is your budget?

*Miss Beirne:* I have gone completely blank.

**Q148 Chairman:** Doubtless you will let us know in due course.

*Miss Beirne:* Yes; I have my annual report with all the audited accounts and so on.

**Q149 Chairman:** Your mind is clearly on higher things like retirement. You have a very great deal of experience of the areas into which we are inquiring, so perhaps you could share that with us this afternoon. Colleagues have a number of questions they would like to ask you about inquests and other things but perhaps I could kick off. One of the disturbing matters is the high cost of public inquiries. One of the things we are looking at is the

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possibly disproportionate cost of historic inquiries when it comes to the police budget and indeed when it comes to the budget of the Ombudsman. The Ombudsman himself was very forthright in what he said and actually said he felt two organisations should be spawned out of his: one to deal with the past; and one to deal with the present and the future. Your views on that and on the justification of the high costs of public inquiries?

**Miss Beirne:** It would be very difficult to sit and to say that the money that is currently being spent on inquiries is all money well spent and absolutely every penny of it should be spent in this way. We have a lot of concerns and have expressed these at different times about the expenditure and about whether this is the appropriate way to respond. However, in a sense we want to start at a different place which is that this is where we are at now. Families have been asking for answers to questions for a very long time and we seem to have come up with this piecemeal response in a number of different areas: we have the Historic Enquiries Team within the Police Service in Northern Ireland; we have the Cory inquiries, three of which are up and running in the north; we have the Police Ombudsman's responsibility in this area. Obviously we have a much broader swathe of cases which have not even really been effectively addressed and presumably some of which can be addressed through the work of the Victims' Commissioners now and the Eames/Bradley Panel to deal with the past. One of the key concerns that we have been trying to question is, why we are spending so much money. We would argue anyway that there seems to be insufficient interest in actually tackling these problems effectively. We gave the example in our written submission to the Committee that in the Billy Wright Inquiry there is one legal team representing David Wright, the father of Billy Wright who was killed in prison, with three staff—a senior and a junior barrister and a solicitor—and then several legal teams representing various government agencies. One of the things that you regularly see in the media is how much these inquiries are costing and querying why we are spending so much on Family X, but when you break it down, you realise that there is a big question mark about all of those agencies that feel that they have to be separately represented at the inquiry. It was only very latterly that the security services decided that they needed to be represented separately at the inquiry and that they would require their own legal team. So the first problem is the route that has been taken and the fact that government agencies in their many forms, feel that they have to have official representation. Also, when we went to the Eames/Bradley Panel to deal with the Past, we were saying that there were several things that we thought could be dealt with in terms of capping, legal fees and trying to encourage a less adversarial approach. The problem, we would argue, is that this is all being done after the fact, a rather piecemeal approach and that if you choose to go the Cory inquiry route, Cory made various recommendations about how to cap legal fees, how to maintain it within a reasonable expenditure but some of the questions need to be

addressed out to government agencies. Then I suppose a key thing that I probably will reiterate several times during this testimony is that we feel that there is a lot of learning to come from these inquiries. We certainly do not see it as just looking back and asking what happened, who was responsible, bring them to court, whatever it might be, but actually asking what the learning is from that past experience and how we can put it to good effect in our current response to policing and future arrangements around policing.

**Q150 Chairman:** This Committee will have to make recommendations and although, of course, we cannot guarantee that they will be accepted and adopted, we will have to make them and have to make them in the field of costs as well as to what should be done. If there were two or three things that you believe would help address this issue, what would those two or three paramount things be that you would hope that we might endorse and recommend?

**Miss Beirne:** One of the issues would be engaging with the Law Society and the Bar Council about issues around legal fees.

**Q151 Chairman:** Is this the capping issue?

**Miss Beirne:** Yes, the capping issue. Another issue would be asking Government why so many different agencies need their own separate representation in these inquiries. I am talking now particularly about the Cory inquiries because there were obviously so many different issues and I can come back to the other matters, if you like. Also, and I know that that is not directly the remit or at least, if I understand the Committee's terms of reference, which is very much about the expenditure I suppose I would be saying that one of the things is actually to think about how this expenditure could be made as effective as possible. I know that you have already received testimony from the Chief Constable, but I do not think this question arose. One of the issues would be how that learning is being institutionalised now. The Billy Wright Inquiry has already made some serious criticisms of the police response. How is that information being taken back within the PSNI and built upon for improvements and so on? I really want also to think about how you get the most benefit out of money that is spent as well as trying to keep the level down.

**Q152 Chairman:** If you have to assess the inquiries in general, would you say that they excite too many unrealistic expectations or would you say that, on balance, they have done more for public confidence and therefore the expenditure is justified?

**Miss Beirne:** I do not like either of those two options. They have not excited too much expectation, certainly we have had contact with all of the four families that are involved in the Cory inquiries and we have a lot of contact with families that are working with the Historic Enquiries Team and obviously with the Police Ombudsman's Office and in fact it is always quite surprising, or at least I find it quite surprising, how victims very often do have a

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very limited expectation in that they do not expect to get answers to all of their questions. Sometimes, as I am sure you would have heard from the Historic Enquiries Team, families just want very basic information such as whether a doctor got to a person in time, a priest or a religious minister or whatever it might be. In terms of families at least, they have, in my experience, extremely high expectations. On the other hand, society as a whole looks at these inquiries—and in fact they are only just starting after a very, very long comparative period, after big expenditure in terms of gathering the documentation and so on—and I do not think that society would say this is the best of monies use and this is reassuring them about confidence in policing. That would bring me again to this question about the whole tone and tenor of the debate. I have raised this personally with the Chief Constable himself in response to a speech he gave at Queen's and I felt it came through again in the testimony before you. Obviously, he has a budget and he has to keep within that budget and he is very concerned about the expenditure, but if most of the public pronouncements from the Chief Constable are about the burden that these things place on the police, then it is not surprising that many people within society will think that inquiries create an obstacle to good policing. I feel the inquiries should be part of this process of encouraging greater confidence of society in the police and ensuring that they do feel confident that we have learned from the past and that hopefully we will not make the same mistakes. Maybe ideally some of our learning can be shared with other police forces.

**Q153 Sammy Wilson:** Given that we have already seen the reaction of some of the families, for example involved in the Bloody Sunday inquiry, given that many of those, especially those who push for inquiries, do not just want to hear what happened, they want actually to see somebody in the dock at the end of the process—many of the families have already made that quite clear—and that is not likely to be the outcome of course of these inquiries given their nature, is that not one of the things that the Chief Constable is referring to, that regardless of the outcome, if someone does not finish up in jail over this, then people will believe justice has not been done? So you have a costly inquiry, you have big demand on police resources and people dissatisfied at the end anyway.

**Miss Beirne:** I should not have given the impression that everyone starts from the same starting point. I totally agree with you, the families cover the whole spectrum and there will be families who expect that there will be individuals who are prosecuted at the end and some people who feel that prosecuting individuals is not the key point, it is getting institutions to take responsibility for what they did, and other people who want something very basic in terms of information. There will be fantastically different expectations within families but also some of the realism that the Chief Constable was talking about. Certainly the Historic Enquiries Team have really very consistently gone out of their way and all

the families engaging with them know what their remit is—that they are looking for evidential opportunities. If you are talking of older cases, it is less likely that there are going to be evidential opportunities.

**Q154 Chairman:** I want to move to historic inquiries separately a little later on and colleagues will want to ask questions, but that is very helpful. What about the Inquiries Act itself? Are there severe limitations that make it difficult or do you think it is more or less all right?

**Miss Beirne:** I need to check but I think that CAJ in an earlier inquiry the Northern Ireland Committee may have addressed this, even indirectly, when we talked in more detail about being very concerned about the Inquiries Act when it was introduced and our belief that it would not ensure an Article 2 of the European Convention compliant inquiry. Obviously, when the Government decided to bring together all of the many statutes that allowed for inquiries this was to cover a vast, vast array—major train accidents, food problems and so on—but, particularly in the Northern Ireland context, there was a sensitivity where there were allegations of state involvement in loss of life, where it was felt particularly problematic where the minister, a political appointment, would determine the composition of the inquiry, the terms of reference of the inquiry, in fact could even call the inquiry short at certain stages and certainly had a lot of authority over what could and could not be disclosed. We were very concerned when the Inquiries Act was introduced and argued very strongly against it.

**Q155 Chairman:** And your fears have not been allayed since.

**Miss Beirne:** No.

**Q156 Kate Hoey:** You mention here in the memorandum to us “Any even cursory glance” at the Billy Wright Inquiry “about the inadequacy of police response to their efforts should disturb NIAC members. The audit trail highlights serious problems about police procedures and record-keeping at the time of Billy Wright’s murder, but also in the year 2007”. Tell us about 2007?

**Miss Beirne:** Essentially, in the statement that the Billy Wright Inquiry issued, they really went through an audit trail of their engagement with the police and obviously requested material from the PSNI that related to the time of the murder of Billy Wright, but the concerns that they expressed were that they had made numerous requests for information which were initially not responded to, that they then received an assurance that they had received all of the information that was available to the PSNI, then they subsequently received further information that had been found and that was then made available. Then the PSNI asked to hold a specific internal review, invited retired ACC Kinkaid to ensure that all the information was now available, and meetings were arranged at different times for inquiry panel members and the police did not arrive and so on. So the reference to 2007 was the difficulty

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that the inquiry was having then in receiving full response and comprehensive responses and effective responses from the current PSNI, albeit about events that related to an earlier period.

**Q157 Kate Hoey:** In saying that, were you actually being absolutely overtly critical about the police in 2007?

**Miss Beirne:** The Billy Wright Inquiry; yes.

**Q158 Kate Hoey:** Your organisation.

**Miss Beirne:** We were reading into that that there was reason to be concerned about police.

**Q159 Kate Hoey:** So you were being overtly critical.

**Miss Beirne:** Yes, though it does not sound as though we were being very overt. It is ambiguous. Yes, we are concerned about this information which would lead us to think that there are currently concerns about the police.

**Q160 Sammy Wilson:** Does the CAJ actually look at whether or not the fault may have lain with the inquiry rather than the police? Of course the police in their response to us told us that one of the problems was that other inquiries focused into and asked for specific pieces of information and were quite specific what they asked for. The Billy Wright Inquiry just made general requests and it was very, very hard sometimes to identify what information they were after or where that information lay. Hence, months later it was found that other bits of information were to hand and had they been asked for they may have been looked for. Rather than simply take at face value the complaints from the inquiry, the CAJ could have acted to see whether the inquiry were doing their job.

**Miss Beirne:** Well, we were critical of the inquiry too. It was not that we take as given what the inquiry says about everything. It did seem to us that this was a very detailed, almost day-by-day, week-by-week account of, at the very best, failures of communication between police and a very important inquiry. On that score, that is why we made the reference in the testimony that this would be something that the Northern Ireland Affairs Committee would be well placed to look at. I do not know whether we should have just submitted the document, but it is rather long, about 40 or 50 pages. Chapters seven and eight provide a good summary.

**Chairman:** Let us make sure we have that.

**Q161 Mr Campbell:** On the issue of overall costs of inquiries and the best outcome of those inquiries, you have indicated—and I think it is self-evident—quite a range of relatives have a range of expectations and I fully understand that. Given that is the case and that it is bound to be the case, if we look at inquiries per se for a moment, probably over £200 million of costs to the state, there is a range of expectations, not many of them likely to be realised and the cost is only going to increase. Is there, in the view of CAJ, a different way of looking at them?

**Miss Beirne:** We testified recently before the Eames/Bradley Panel to deal with the Past. We made the point that, although there are lots of lawyers amongst our members and our executive committee, we were not in the business of just arguing for more work for lawyers and that we could certainly see that families were not necessarily best served by highly legalistic adversarial systems of getting at the truth and that what was needed was a more comprehensive response to the past which addressed these many, many different and complementary issues and questions. At the same time we said that it was very difficult, and we would argue actually impossible, to roll back on the commitments which had already been made to families and gave the very concrete example of the lack of inquiry in the Pat Finucane case. The Government have committed, in response to the Cory inquiry and the breakdown of the prosecution case, that there would be an inquiry and we made the case that Eames/Bradley would be very ill-advised to suggest anything that would run counter to that, that would say that we do not need a Pat Finucane inquiry, here is a different vehicle. On the other hand if the panel dealing with the past were able to come forward with a number of proposals about how to respond to these conflicting and different and sometimes complementary needs then it might reassure the families who are currently engaged in Cory inquiries or Historic Enquiries Team work that they will actually get more of the truth of what they are after or more response to what they need through this alternative, more comprehensive dealing with the past. Essentially you do need something more than this piecemeal approach, but you cannot deny the families which are currently engaged in those mechanisms their responses because you are hoping that something better will come along.

**Q162 Mr Campbell:** If we look at the 35 years of the violence and, speaking off the top of my head, probably about three quarters of the people who were murdered as a result of that were murdered by illegal paramilitary organisations and even of the quarter who were not, most of them not in disputed circumstances—only a tiny number of that number are in disputed circumstances—given that the vast bulk of those killings are not going to be the subject of any inquiries, there are no requests or demands for them, do you not see there could well be a case out there in the public mind that the excessive expenditure on such a small number of cases with no end in sight cannot continue to be justified?

**Miss Beirne:** What we would be opposed to is to say that these families cannot have the truth because we have not planned a mechanism for dealing with these broader questions. I do totally agree with you that Northern Ireland society and needs to find some way of dealing with the past. There are serious tragedies where you cannot just close the door and say “That’s it. It’s over. The agreement was to some extent drawing a line in the sand and looking forward and what we want is a better society and future”. Now there is a recognition that that is not so easy to do, that one needs to understand some of the issues of

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the past in order to move forward effectively. That is where I do think society as a whole is saying we need to have better vehicles for dealing with the past and we cannot deal with it in this piecemeal fashion. There I would totally agree with you. Where we might possibly disagree, with the flavour of the question, is that CAJ believes that for those families who have no alternative at the moment, and who have been given a commitment by Government that there will be inquiries with a view to finding out what would be the best way forward (the whole Cory setup which proposed independent inquiries and Government have moved ahead), those have to be pursued until there is something better on offer. Those families have a right to that.

**Q163 Mr Campbell:** Do you not see any redress for the relatives of the people who were murdered by the IRA?

**Miss Beirne:** The redress has to be these mechanisms that we come up with together as a society and talk about how we deal with all of the past; totally.

**Q164 Kate Hoey:** But should we spend money on that?

**Miss Beirne:** I would have thought we will have to.

**Chairman:** Can we move to inquests?

**Q165 Dr McDonnell:** I know a little bit about this, but for the benefit of other Committee members I want to ask you to give a little background on the something in the region of 100 inquests outstanding.

**Miss Beirne:** That is right. I am afraid I am not going to be able to be that knowledgeable because it is now with the coroner. In a sense the process has started afresh because of recent judicial rulings. I think it is slightly more than 100 but I do not have those figures to hand. I am sorry.

**Q166 Dr McDonnell:** I am told that 48 of those, roughly half, are classified as fairly contentious.

**Miss Beirne:** That is right.

**Q167 Dr McDonnell:** Do you see those coroners' inquests, if we can have them, making a helpful contribution to healing for the families involved or do you think it is too little too late?

**Miss Beirne:** It is partly what I keep reiterating. If we as a society and the leadership within the society, such as the Chief Constable, constantly give the impression that dealing with the past is a drain and preventing moving forward, then that is a problem and it is going to be too little too late. As a society, what we have to do is to recognise that people do need answers and that that is an important part of us moving forward. If the coroner is now able to start the inquests it will deal with some of the issues that families have but inquests in Northern Ireland still have more limited powers than ones in England and Wales. Whether he will be able to answer all the questions, we still have to wait and see. At the moment he is looking at the Stevens material.<sup>1</sup> There is some question mark as to how much that is going

to be able to be drawn upon. There are bound to be legal challenges to the fact that the coroner has seen this material which is considered very relevant to the inquest but the legal teams for the families will not be able to have access to the same material. It is probably too early to say, but all the signs are there that this is not going to be the easy answer either.

**Q168 Chairman:** It could drag on and on and on.

**Miss Beirne:** Yes.

**Q169 Chairman:** Do you agree with the Ombudsman that there should be a time limit? He did not have a dogmatic view as to what the time limit should be. He talked in terms of three or five or seven years. He felt that there should be a time after which we do not do these things. Do you agree with that?

**Miss Beirne:** It is very interesting looking at other countries and other places and how they have dealt with their past; even when they have looked back, and they thought they had stopped looking back, they revisit and revisit. I am not quite sure that there is a model out there which says this is how you deal with your past and that is where the Panel dealing with the Past, the Eames/Bradley initiative, will be really interesting. They are trying at least to get a lot of input from different organisations, including *Healing Through Remembering*, which brought together a broad variety of people, looking at the experience in other countries and whether time limits could be set. I am afraid I do not have any easy answer to that.

**Q170 Chairman:** You do not have a fixed view.

**Miss Beirne:** No, I do not have a fixed view.

**Q171 Chairman:** You are not against it, but you do not hold a particular view for it.

**Miss Beirne:** I suppose, if anything, my instinct would be that it might be problematic to set a time limit. I do not know why, but I instinctively think that that might close down options and, at least initially, that is what I hope the panel is doing, hearing from a load of different perspectives. If a lot of people say that we could cope with this but it needs to be in a constrained time period, then that would be something people could buy into and that would be effective.

**Q172 Dr McDonnell:** I was just trying to probe some of the harder stuff but what you are saying is that the coroners' cases will not perhaps answer any questions and perhaps they might have answered questions had they been held earlier.

**Miss Beirne:** That is definitely the case.

**Q173 Dr McDonnell:** Where do we go from here on? Are you saying that you suspect perhaps the coroners' cases, once they are over, will lead to more requirements and more requests for public inquiries?

**Miss Beirne:** CAJ was honoured to host a visit by something called the Eminent Jurists Panel two years ago and we brought out a report *War on Terror: lessons for Northern Ireland*. The Chief Constable, the Director of Public Prosecutions and

<sup>1</sup> The witness later clarified she meant to say Stalker/Sampson material

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others came and testified before the panel. One of the things we did was hold a small group session with people who had lost family members right across the various communities Republican, Loyalist and non-politically-involved. It was fascinating. There were 16 families around the table and some had had inquests and some were awaiting inquests, there was no deadline or anything, yet all of them had this sense that nothing so far had worked, nothing had given them, allowed them to get to the truth of it. Even the people who had had inquests were able to say to other people that they had had inquests but all they said was that X was killed in such and such a situation, not who, what or the full circumstances.

**Q174 Dr McDonnell:** A final point, to pick up on something Gregory Campbell raised earlier, again I am asking you to speculate or think out loud, in the light of the fact that the majority of people killed and therefore probably the majority of some of the contentious cases were killed by terrorist organisations, Loyalists, Provos, whatever, do you see any way in which there can be some closure for some of their victims?

**Miss Beirne:** Most of you know CAJ work essentially on state abuses and we have always taken that as our focus of work. However we have also been very clear in any engagement with the past that you have to deal with all of the issues to do with the past. Clearly a vast number of people were killed by different paramilitary groups and it would be a nonsense to have an engagement with the past which ignored that fact. We need to learn from that as well. We tend to comment on the areas in which we have some expertise and obviously there is a particular concern around state responsibility since the state acts for us, is paid by our taxes and so on. However, clearly there has to be a comprehensive approach to all of those deaths and losses.

**Q175 Mr Anderson:** I am going to ask you about the Historic Enquiries Team. Next week the Committee are going to meet the team in Northern Ireland. When we interviewed Sir Hugh Orde, each time he said the HET was “a burden worth having” and “a very positive thing”, but what would the view of your organisation be about the work the HET has been doing and have they carried out the role they set out to do?

**Miss Beirne:** When the Historic Enquiries Team was first launched there was a lot of uncertainty in the early stages because there was uncertainty about what deaths they were going to cover, what their terms of reference would be and so on. Over time it has become clearer and they have been able to communicate that message very clearly to people who come to them. Some families will not engage with the Historic Enquiries Team because it is part of the Police Service in Northern Ireland, they see it as intimately tied in institutionally to the police and therefore they do not want to engage. Other families are very eager and pleased to engage with the Historic Enquiries Team. One thing which has been very positive about HET’s work is that from the outset they have said that they are victim-centred

and they clearly wanted to engage directly with families, keep families informed about what was happening and so on. I think they have had a whole range of problems, not least I was taken aback when I read the testimony you received from the PSNI about the turnover in staff. I realised there was turnover but I had not actually realised the percentages. I had realised that by virtue of the people we were dealing with; different people quite a lot. To some extent they (HET) had to get themselves up to speed, many of them were from outside our jurisdiction and they had to get themselves up to speed and take on a very difficult area of work. We have engaged with some families who have been unhappy about the process; it is taking too long, they are not getting answers and other family members who felt that this is a very useful mechanism. Mixed responses really.

**Q176 Chairman:** You would not criticise the general integrity of the operation.

**Miss Beirne:** No, I think this was a very genuine attempt. It is a very narrow remit, as they rightly say and as they make clear to potential people who come looking to them; it is a police response to the fact that there are so many household murders and they are carrying out a basic investigation of all of the deaths in the conflict and that is just one part of the puzzle. We make regular submissions to the Council of Europe because the Committee of Ministers is overseeing a number of Article 2 cases—cases which we in fact took to Europe. We always make it clear that the Historic Enquiries Team cannot be compliant with that standard because HET is internal to the police. However, at the same time they have certain benefits and there can be a very effective investigation; the more recent the case the more likely it is to be effective. The victim-centred approach has been very positive.

**Q177 Mr Anderson:** The Police Ombudsman told us that the volume of work which has been produced by HET is giving him concerns about the ability of his Office to do the job. He said that the potential shortfall in funding could be £2 million to £3 million a year. Do you have a view on that?

**Miss Beirne:** I have mixed views. It was rather unfortunate that the current Police Ombudsman commented negatively about dealing with the past before he had taken up office and, rightly or wrongly, there is a certain questioning about whether he did not really think the Office should be dealing with cases in the past and now, surprise, surprise, he has agreed his earlier analysis that they should not be engaging with cases from the past. At the same time, clearly when it was set up it was not envisaged that the Police Ombudsman’s Office would take on the level of investigation they are carrying out and it was essentially to look forward to new cases coming to them, though there might be some “grave and exceptional” ones. Now that has understandably been interpreted to mean all deaths in which there may have been police involvement, that is stacking up into a very, very large number of cases. It is a very genuine problem that he is now

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juggling with. I noticed that there may have been some reference to a protocol being agreed between the Police Ombudsman and the Historic Enquiries Team and that is something we would want to follow up on because we have been asked several times whether we can have sight of that. It did seem as though there was a potential gap between the work the Historic Enquiries Team was doing and what the Police Ombudsman was doing and who was actually taking responsibility at what level. That is one thing we shall be pursuing with both entities. It is a big job certainly.

**Q178 Mr Anderson:** Is there a risk from the continuing focus on historic conduct to the reputation of what the police are trying to do today?

**Miss Beirne:** I do not think so. I think that it is much more risky if we do not find out what was happening in the past or something of what was happening in the past and ensure that we can test that against the changes which have been made. That is much more risky. A lot of people will look to the police and will want to have confidence in policing as it is now and as it will be in the future, but some of that surely has to be engaging with the pressures which were put on policing, pressures that policing created and making sure that anything we do now we have learned from the past. I do not know whether this is directly relevant, but in the wake of the McCord Inquiry last year the Chief Constable referred to the fact that these problems could not occur now because there had been a big clearing out of informers and very detailed analysis of all their informers and they had more or less sacked a very high percentage, something like 20%, of informers, half of them on the grounds that they had been involved or might have been involved in serious criminal activity, half because they were no longer particularly effective or relevant. We have said that is excellent, that there was a triggering off of this analysis of informers, but we have asked on several occasions whether, if so many were sacked because they were involved in serious criminal activity, charges have been laid against any of them, whether charges have been laid against any of the police handlers of those informers who were engaged in serious criminal activity. Until those sorts of things start to happen . . . That is what is needed to ensure public confidence in policing, that there are no serious criminals being used as informers or that the police are not turning a blind eye to that kind of activity. That is the kind of learning we want to get from the past, making sure that whatever legislation we have now, whatever guidelines we have, overseeing amongst other informers, that we learn from that background.

**Sammy Wilson:** That is just what worries me about the approach which you have to the past. I noted very carefully what you said about whether charges have been brought against people, whether charges have been brought against the handlers, but many of those people were handled in situations where the protocols which are in place today and against which you clearly now want the police to be judged, were not in place. To have this kind of witch hunt—because that is how this is perceived and I know you

paint a picture of a cross-community organisation but I have to say that is not how CAJ are perceived in Northern Ireland—this desire to have police prosecuted for how they handled informers in the past, even though the protocols in the past would have been different from the protocols at present, is the very concern that people have about this ongoing inquiry, that it is a witch hunt against one side where, as Gregory Campbell has pointed out, there is nothing. There is no paper trail, you do not even know the names of the people and in many cases there is no way of bringing the terrorists, who committed far worse atrocities, through the same process.

**Q179 Chairman:** These are very important questions and I should like you to give as clear an answer as you can.

**Miss Beirne:** Absolutely. First on the witch hunt. I and my organisation would be more reassured, just to take that concrete example I gave, that in the clearing out of the large number of informers a certain proportion of them were considered to have been engaged in serious criminal activity—and to my knowledge there has never been a statement about what internal, never mind external, steps were taken regarding those informants who were engaged in criminal activity or the police handlers who were dealing with them—it is quite conceivable that if the Chief Constable would say “Here are the steps which have been taken vis-à-vis these people or vis-à-vis this system and it is impossible to get the information at this stage. We are not able to bring them to court for X and Y reasons” that would be a very understandable and in a sense a good public debate to have. What I am concerned about is that there has to my knowledge not been any exploration of how to convict people who engaged in serious criminal activity and what should or should not have happened to the police handlers of those informers. Personally I am not asking for a witch hunt. The only reason why any of this money would be justified is that people want answers but the key thing is that we learn from that past and make sure it cannot happen again. It is as simple as that both in Northern Ireland and there may be lessons for here. On the cross-community point, that is obviously a criticism which is regularly made of CAJ. Your own party and Gregory Campbell put down a resolution at the Assembly which accused us of being anti-British and anti-Unionist. Even though I took personal exception to that, I did appreciate the fact that you (Sammy Wilson) engaged with us at least. We are still hopefully awaiting a response from Mr Campbell. I am more than happy to answer for our executive committee, our staff, our membership and, the nature of the work we do, that we are a cross-community organisation. I can draw parallels in other countries where people who work on human rights and civil liberties are seen to have left-wing interests or be anti-state or anti-government, a label which is very easily placed on them. I would argue that in trying to make sure this is a better society, and that we have better policing, that we are a very positive and, I hope, constructive contributor to the

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debate, so I would challenge that. Lastly, to give a very concrete example of something that we did recently that related very much to the concern of a Loyalist group, though I am not necessarily saying you are pleading that case particularly, but it was of concern to me. CAJ met with the Chief Constable and had been pursuing this issue about the informers and yet the current practice about informers. We had received several complaints from individuals detained in Loyalist working class communities about being approached to be informers and when we raised this with the Chief Constable he directed us to the Police Ombudsman's Office. I said of course we directed individuals who had complaints to the Police Ombudsman's Office but it seemed to me that this was something important he should know about. That kind of concern, trying to feed back current concerns to the leadership of the police, is something we are trying to do.

**Dr McDonnell:** The insinuation that I was taking from Sammy Wilson's point and I would not like our witness to go away with the impression that it is the Committee's view was that somehow or other a crime is not a crime depending on who commits it.

**Chairman:** I do not think the witness is taking away any views. She is answering questions from individual members of the Committee. We will deliberate later and decide what weight we put on evidence we have heard from a whole range of people, including you and we are very grateful to her for coming.

**Q180 Stephen Pound:** It is real pleasure to see you again. I am sure the Committee joins me in wishing you every happiness in your early retirement and thank you for the extremely good work you have done for human rights. Some of the witnesses who have spoken to us have actually talked about the idea of an independent replacement both for the Historic Enquiries Team and the Police Ombudsman. Bearing in mind that in the search for independence Her Majesty's Government have depopulated whole provinces of Canada as well as drawing deep on the wells of Finland and South Africa, do you think there ever could be in the context of Northern Ireland an independent agency which could deal with these issues?

**Miss Beirne:** I think the Police Ombudsman's Office has established itself as an independent entity. It is not by virtue of just seeking independence that there will be problems. Clearly there will be problems in getting people, getting more powers and so on, but this idea that maybe instead of an Historic Enquiries Team within the police and the Police Ombudsman dealing with the past that they be brought together is something on which CAJ does not actually have a position as yet. It has been floated on a couple of occasions. There certainly would be advantages; one can see an immediate advantage to it. Whether it actually saves you, us any money or whether it makes any difference to the extent of police time and resources that will need to be put to the service of that independent mechanism is another matter. If in fact, since the thrust of my argument is that we need

to look at the past in order to move forward, if it were a better way of doing it, then it might be a better use of the money.

**Q181 Stephen Pound:** On the subject of a better way, you use a dramatic expression—and I take it is meant to be—in your evidence when you say “adversarial highly legalistic remedies are often far from ideal in getting to the truth”. May I ask you the obvious question? If not that, what?

**Miss Beirne:** That is what the Eames/Bradley panel is engaging with now and I know *Healing Through Remembering* have done a lot of work in that domain.

**Q182 Chairman:** We are seeing that.

**Miss Beirne:** Good; excellent. They looked at international powers and then came up with four or five different models. There are some organisations who are actively canvassing for a Truth Commission and we have not got to that position yet. We had just said “Here are some of the principles by which that mechanism should be assessed”.

**Q183 Stephen Pound:** Could you enunciate the principles you see?

**Miss Beirne:** Unfortunately they are those difficult ones you were just alluding to: independence; transparency; that the mechanism will allow people to comply with Articles 2 and 3 of the European Convention and Human Rights Act; that accountability is built in. In the light of the fact that this debate has become a lot more live and there is a lot more depth to it, we are going back to our drawing board and trying to see how those international human rights principles might be fed into the current process. As an organisation we will be going beyond that but at the moment those are just the principles we have laid out. We may have submitted that in earlier testimony, but I can very easily forward that for the record if that were relevant to your discussions.

**Q184 Stephen Pound:** There is a conflict between mechanisms, outcomes and structures here and we do have different agencies which sometimes watch over different areas of control. Do you think that there could be a single integrated agency, or even a single, integrated approach to address this issue?

**Miss Beirne:** My own instinct, probably speaking more personally than organisationally, is that you are going to need a whole variety of different mechanisms but the comprehensive approach is in recognising these and how they complement each other and there might be different ways of getting at what people need; the whole issue, for example, of story telling. For some people that is more crucial than anything else, that they be heard on what actually happened to them, because it often did not happen at the time. That is totally separate.

**Q185 Stephen Pound:** I can see that the multiplicity of internal mechanisms is entirely appropriate and I very much take your point. Forgive me for thinking as a bureaucrat or an apparatchik but do you think

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one overarching agency could actually address the issue, instead of having the Police Ombudsman, instead of having the Historic Enquiries Team and any others?

**Miss Beirne:** Possibly you could have it for dealing with the Historic Enquiries Team and the Police Ombudsman overlap, because in a sense they both show different sides of the same problem, but it is quite difficult to imagine an overall agency for dealing with the past.

**Q186 Christopher Fraser:** In terms of the whole issue of how one goes about the business of the past, how does one encourage former paramilitaries to come forward and provide information about their actions? Is it going to be possible? Can we extend the scope of investigations to allow that to happen?

**Miss Beirne:** This would not be an area I would be that knowledgeable about. I understand that was one of the options the *Healing Through Remembering* group thought initially, because they have engaged both with former police, former paramilitaries, a whole variety of people, there would not be a lot of support for, actually different paramilitary groups and different institutions almost carrying out an inquiry into their actions and then putting that into the public domain. That has secured more sympathy than they had initially expected, but I do not have any easy answers as to how that would be done. I am not quite sure how one would approach it. It is really interesting. Our focus is very much on the state and agencies and the state and that is proving very difficult, so I would imagine it would be very difficult to do paramilitary groups as well.

**Q187 Christopher Fraser:** Is the whole issue about granting amnesty key to how other countries have dealt with this issue? Do you see that as being a way forward? Can you tell us something about the advantages and disadvantages of doing that?

**Miss Beirne:** This has come up twice in the recent past: initially at the time of the agreement when there was a discussion on what to do about prisoners from various paramilitary groups; then there was a discussion about on-the-runs legislation. We have not revisited that more recently in the light of the current debate. Essentially we looked, as we always do, for the international standards in this area and essentially they are not very clear. There is a clear international standard that you cannot have a blanket immunity, you cannot just say it does not matter what people did in the past, that is it, it is over. There are issues around accountability and holding people to account and how you do that. For example, we did not engage directly in the issue about the prisoners because we said they had gone through a trial process on a case-by-case basis, the legislation proposes a two-year minimum sentence and cases will be reviewed and they will be let out on a limited licence. All of those things seem to be safeguards which are built in so it does not violate the international principle of no blanket amnesty. With on-the-runs legislation, we were more critical because, at least in the early drafts, it was clear that

Government were trying to do something which would just close down the past and we argued for some sort of judicial process and case-by-case analysis. We will have to look at the individual proposals which come back from Eames/Bradley about what they are proposing in this instance and see whether there is more to be added to it.

**Q188 Christopher Fraser:** In your opinion are there merits in broadening the scope of the historic investigations to cover the Republic as well?

**Miss Beirne:** We restrict ourselves very much to commenting on Northern Ireland; we do not comment on either Great Britain or the Republic. I do not know how joint Garda/PSNI investigations would work because of the different jurisdictions.

**Q189 Christopher Fraser:** Possibly.

**Miss Beirne:** The only problem is how that would work judicially afterwards.

**Q190 Christopher Fraser:** Do you have an opinion on it?

**Miss Beirne:** Do I have an opinion on whether inquiries should be extended?

**Q191 Christopher Fraser:** What is your opinion about that view?

**Miss Beirne:** That they investigate deaths in the Republic?

**Q192 Christopher Fraser:** Broadening the scope of investigations to the Republic as well.

**Miss Beirne:** I do not know that I have any; we do not have any.

**Q193 Kate Hoey:** It may seem minor and pedantic to some of my colleagues but you talk about being cross-community yet over and over in all your writings and the bit about Amnesty you talk about either the Northern Irish or the north of Ireland.

**Miss Beirne:** Where does it say North of Ireland?

**Q194 Kate Hoey:** You talk about the Northern Irish context in your February newsletter and you talk about the north of Ireland in the Amnesty one. Why can you not talk about Northern Ireland? That is what most people use.

**Miss Beirne:** We always use the term; that is why I am expressing some surprise.

**Q195 Kate Hoey:** Your CAJ February newsletter.

**Miss Beirne:** Refers to Northern Ireland.

**Q196 Kate Hoey:** It talks about the Northern Irish context.

**Miss Beirne:** Northern Irish is the adjective, is it not? May I be clear? We use the term Northern Ireland. This is the United Kingdom of Great Britain and Northern Ireland; it is the UN language for the jurisdiction.

**Q197 Chairman:** That is something you have never departed from.

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**Miss Beirne:** No. As an organisation that is the language we use.

**Q198 Mr Campbell:** I just want to raise an accuracy point. In the course of responding to a question posed by my colleague Sammy Wilson the witness indicated that I had tabled a motion at the Assembly referring to CAJ. In fact I had not.

**Miss Beirne:** At the Bill of Rights Forum where CAJ was criticised.

**Mr Campbell:** I am quite happy to be associated with the comments which were made regarding CAJ but in the interests of accuracy I did not actually table the motion.

**Q199 Chairman:** Having had a couple of clarifications, you did not table a motion and you have never departed from using the term Northern Ireland.

**Miss Beirne:** Now I am nervous when you say “never” since 1981. Someone will bring out a document in which we do. Our current, and for as long as I can remember, policy has been to use UN terminology.

**Chairman:** We accept it. I should like Mr Wilson to lead on the questions on protecting the anonymity of covert sources, which is a very important issue.

**Q200 Sammy Wilson:** You mentioned the fact that CAJ are concerned about the activities of some of the covert sources that the police used and of course at many of the inquiries references have been made to covert sources which the police recruited. Do you believe that it is possible for the Cory inquiries, which are quoted quite a lot, to do a job without first of all risking the exposure of those covert sources and their handlers and also of the methods of intelligence which the police used in the past and which could be useful to criminals and terrorists in the present and future?

**Miss Beirne:** The Government must think it is possible because they passed an Inquiries Act which allowed for the establishment of these inquiries and there are plenty of safeguards, some of which we think we criticised, which would enable the inquiry not to seek certain disclosure or to protect the anonymity of witnesses and such like. Certainly the Inquiries Act does allow for that reality. What we have to do is see what actually happens now in practice.

**Q201 Sammy Wilson:** The fact that you are critical of them would indicate that you believe therefore that the inquiry cannot do their job without some of those safeguards being removed.

**Miss Beirne:** It would be very difficult for the inquiries to do their job. Obviously the legislation just gives the power to the minister to intervene in a number of different circumstances. If the minister chooses not to intervene then clearly that is not going to be so problematic. If, however, the minister does see that there are many instances in which he or she has to intervene to protect sources then it will be very difficult to see how the inquiry can get to the truth of a situation.

**Q202 Sammy Wilson:** On balance then, is it the view of CAJ that, in order to get to the truth that the people who asked for the inquiry want to get to, the police should be obliged to disclose who their sources might be, disclose who handled those sources maybe and in some cases disclose the methods they used? Is it CAJ’s view that when you balance these things up really police methodology and police anonymity are less important than the demands of the people?

**Miss Beirne:** No. It is CAJ’s view that there should be a balancing out of these different demands and I think testimony has already been given to you that informers have a right to life too. They are certainly not in the business of emblazoning names of informers across Northern Ireland.

**Q203 Chairman:** Do you accept that it is an unfortunate but necessary part of the process that some people’s anonymity has to be protected in perpetuity?

**Miss Beirne:** That clearly would have to be the case. What we are saying is that there needs to be a proper balance. We are not sure the legislation has got it right about that proper balancing.

**Q204 Sammy Wilson:** In an earlier answer you said you did not believe it was possible for the inquiries to do their job on some occasions without the information being disclosed. Yet all along you have been defending these inquiries. That to me is contradictory. If you believe that there should be some protection, because informers have a right to life, and inquiries cannot do their job without that protection being removed, then what is the point of having inquiries?

**Miss Beirne:** In a sense you are going from one extreme to the other. It is not necessarily the case that in order for the inquiry to do its job the name has to be given of every informer and the level of detailed methodology, but that actually there is a lot of information which could be put into the public domain, more information certainly than is there currently, that would allow us to assess why certain decisions were made and what actually happened.

**Q205 Sammy Wilson:** Yes, but the police argument is—and in fact that you have said in some cases you need to know the name of informers, you need to know whether they are dead or whatever—that once you start down that route by naming or maybe not even naming but giving some of the information they gave or some of the incidents in which they had supplied information or whatever, that you immediately identify them to their colleagues; you do not have to give their names and addresses. If you identify the methodology which the police used to get that information that compromises not just what happened in the past, which is bad enough, but that compromises current police operations and future police operations.

**Miss Beirne:** I am not sure I am allowed to ask questions of you. My question is: how do we then get to the truth of these situations? You have very credible allegations of collusion between police

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officers and various individuals and that information cannot be pursued because of a concern around protecting the methodology, protecting individuals, so how do we then make sure that those problems are not going to continue?

**Q206 Chairman:** You are quite right to address that to the Committee. Of course the Committee will not give you an answer this afternoon, but it is one of the issues which we will have to wrestle with and we will have to address in writing our report. We will have to decide what recommendations, if any, we make on this particular issue. Mr Wilson is entirely right to raise it and you are justified in batting it back to us in the way that you have.

**Miss Beirne:** To be fair, the key thing, one of the issues you rightly raised, is how we ensure general confidence in policing. That is what our concern ought to be. We want to have good policing and we want to ensure that society as a whole has confidence in policing. I think dealing with this past has to be part of that. It cannot just be pushed under the carpet.

**Q207 Sammy Wilson:** Part of the confidence in policing rests with the people being prepared to come forward, sometimes having placed themselves in dangerous positions, to give evidence and information to the police. One point which the police have made to us is that if the kind of demands made by some of the relatives of families who have asked for inquiries to be made and demands made by groups like yours, were acceded to, in the future it would be almost impossible to recruit informers. An informer would wonder whether ten years, 20 years down the line their name would be given out in some inquiry because demands were being made to try to find what happened to a particular individual whose case they were involved in.

**Miss Beirne:** That is not an inconsiderable concern but I do not know how else we are going to handle this. Drawing your attention again to the McCord Inquiry, that was really one complaint about one individual who was murdered. That essentially opened a can of worms about operations like that, and not that long ago either. I can certainly see there are big problems with what was happening in the 1970s and a lot of the testimony from the Chief Constable was very right in emphasising that the number of deaths in any one year—1974 was

horrendous—placed particular pressures on policing. The interesting thing is that the Cory inquiries were all late 1990s, McCord is also a more recent case, and yet clearly it took some of the uncovering (bought about by the Ombudsman's Inquiry) to start to create the change we are now beginning to see in terms of that overview of informers.

**Q208 Chairman:** Clearly there are dilemmas and clearly there are tensions and we will have to discuss many of these things. Do you believe, as many of our witnesses, both formal and informal have believed, that there has to be—you have made your position on arbitrary dates plain—a drawing of the line at some point in some way? Do you believe that is right or do you think it is so important that inquiries be conducted, that there is absolutely no time limit; we go on and we go on and we go on.

**Miss Beirne:** That discussion needs to be had. Looking back with hindsight to the agreement, it is really interesting that, with the exception of one of the opening paragraphs where it talks about tragedies of the past and, the need to build a shared future, there was no discussion of the past, no discussion about anything really, it was essentially about what we wanted to do for the future. Now we have realised in the ten years since then that that was not going to cut it. We need to have something much more fundamental looking back. I personally will not answer. I do not think organisationally we can say what that timeframe should be. Hopefully something is coming out of Eames/Bradley about whether people as whole think a time limit can be set. Look at Spain, Japan, Germany.

**Chairman:** Thank you very much indeed. Thank you for coming, thank you for giving your evidence; it is helpful to us and we will take this into account as we see others. We are going to be visiting the Historic Enquiries Team and the Ombudsman's Office next week in Belfast and we shall be reflecting on these things. If there are points you believe ought to be brought to the Committee and they are not contained either within your written submission or what you said this afternoon, please let us know. Please also discuss with your successor in case he wishes to add anything to the testimony you have given. We appreciate your coming and wish you a safe journey home. That concludes our proceedings. Thank you very much.

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Thursday 20 March 2008

Members present:

Sir Patrick Cormack, in the Chair

Christopher Fraser  
Mr Stephen Hepburn  
Kate Hoey

Mr Denis Murphy  
Sammy Wilson

*Witness:* **Sir Kenneth Bloomfield**, former Victims Commissioner, gave evidence.

**Q209 Chairman:** Sir Kenneth, you will be very familiar with the set-up of select committees, I know.

**Sir Kenneth Bloomfield:** I am afraid, yes, rather familiar with the PAC in days gone by, but I will not talk about that today.

**Q210 Chairman:** I think we are much gentler than the PAC! Thank you very much indeed for coming.

**Sir Kenneth Bloomfield:** Not at all.

**Q211 Chairman:** You know the subject of our inquiry. Yesterday we had the opportunity to visit the HET centre and we also went to the Ombudsman's office and had the great privilege of meeting representatives of eight families, of course privately and informally but it was very helpful to us. You were the Victims Commissioner.

**Sir Kenneth Bloomfield:** Yes.

**Q212 Chairman:** And in 1998 you published the seminal report, that we well remember, and gave your views and recommendations. Would you like to say a word about that and how far you believe your recommendations have been implemented and honoured, and whether you are satisfied with the progress and whether, with the all powerful benefit of hindsight, you would have done things any differently?

**Sir Kenneth Bloomfield:** At the heart of my report in 1998 was the idea that the victims needed a more effective voice and a better listening ear. The more effective voice was difficult in the sense that not all victims are natural mates or companions of each other and undoubtedly the victim's voice tends to be diffused through a lot of different organisations that reflect different bits of the community. When I said there should be a listening ear, I meant above all that there should be some officer or office independent of government that would be the champion of the victims' interests. I always saw this as the appointment of a Victims Commissioner. I was described as "the Victims Commissioner" but, of course, it was in a very short-term sense. My remit was discharged once I had produced my report in 1998. I remember thinking to myself that in the modern world we have a custodian of consumers' interests, we have a custodian of children's interests, here is a very vulnerable section of the community and they need their own champion. I suspect the Government thought they were meeting that suggestion when they designated, and they did this very sharply, a Victims Minister in the Northern Ireland Office. In fact, Adam Ingram was the first

Victims Minister. They also set up official machinery, a victims unit in the Northern Ireland Office. I think perhaps they felt at the time that was meeting what I wanted to happen. I did see the need for some centre of activity within the government machine that would give priority to all of this, but I did also see the need alongside that for the kind of champion I had spoken of, who would be capable on occasion of saying, "The Government are not doing enough. They are not doing the right things. They are not doing them quickly enough". Frankly, it has been a major disappointment to me that it has taken ten years to get to the point where we are now. I would like to say one or two other things. I have been involved with one aspect or another of the victims' problems for ten years, beginning with this remit, but then I was asked to pick up the ball in two cases that I had brought to notice in my report. One was the issue of criminal injuries compensation, because I met so many people who said, "We have been living with the after-effects of what we have been through for decades already" and, let us remember, that in the conflict most of those who died were youngish men, so those left to pick up the pieces were women, and a lot of them, dating back to the early 1970s, and that was the time when most of the killings occurred, felt that they had been very poorly compensated. They were properly compensated in terms of the law as it stood, but it was not as generous a law as it became later on. It seemed to me that a lot of people had been left behind. I made a specific recommendation that somebody should look again at the system of criminal injuries compensation. I was then hoist with my own petard because, with two excellent, well-qualified colleagues, I was asked to look at that. We got a curious remit, and it may be very typical of the way Government behaves in some respect, which said, "Look at how the compensation system has been handling all of these victims of the Troubles and on the basis of this recommend improvements in the law for the future". It was all a bit anomalous because you are going to fix the system having found that a lot of people had been left behind by the way it had operated previously without the chance of revisiting that. We all know, of course, Government abhors retrospective action and Government is very inclined to say, "You got your lot under the code of law as it stood at the time and that's that". To be honest, my colleagues and I rather stretched our terms of reference in this because we said, "In a sense it is not our business to say this but, nevertheless, we think some means should be found to reach into that community who

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were rather left behind in the early 1970s and who were not sufficiently compensated.” The other delicate issue that I drew notice to in that report was the problem of the disappeared. That does not affect a very large number of people but it is a problem of peculiar poignancy. I suggested that it might be possible to devise some instrument that would allow people to come forward and give information without inculcating themselves. As you know, Chairman, that led to legislation in the two Parliaments and the establishment of an independent Commission, and I have been serving on that since 1999 and making very slow progress. Could I go on to say that I was specifically tasked in 1997 to look at how the sufferings of the victims of violence could best be recognised; I was not asked to look at the wider issue which is now on the agenda of what do we do about the past, can we put the past behind us. Nevertheless, I think it was absolutely inevitable that in the course of my review people would talk to me about South Africa and there were quite a lot of people knocking around already in Northern Ireland, people like Brandon Hamber, who had had experience of the South African Truth and Reconciliation Commission.

**Q213 Chairman:** We are seeing him later today.

**Sir Kenneth Bloomfield:** Some were beginning to say to us, “What about that rostrum for Northern Ireland?” I did not think I would change this, but what I said in my report was if you look at what happened in South Africa, it came about because the main factions were agreed that it should happen. They agreed that it should happen with different motives in mind. If you like, white South Africa seeing a degree of exculpation or freedom from prosecution and black South Africa saying, “We are more interested in knowing the truth of what happened than necessarily prosecuting everybody and locking them up”. Nevertheless, it was not a divisive issue in community terms. What I said in 1998, and I think I would adhere to this now, was there is nothing wrong with this in principle. If we were in a situation where the communities and the political representatives of the communities agree then it is a good thing to do, but if they do not it is a bad thing to do. We have had all these people killed because of the divisions in our society and we do not want any remedies which are divisive in themselves. That is where I still stand in relation to grand, overarching Truth and Reconciliation Commissions. I am very dubious about them. Frankly, even in the event of agreement I am dubious about them, first of all because I am very doubtful that all the interests involved in our struggle are willing to come forward and tell the truth and, secondly, I am not convinced that if they do come forward and tell the whole truth and nothing but the truth, and a pretty awful truth it is going to be in some cases, it will reconcile. It might have exactly the opposite effect. Indeed, it may serve to destabilise the rather delicate political structure that has been put in place in Northern Ireland for reasons which would be fairly obvious to you.

**Q214 Chairman:** Yes. You think it would just exacerbate, or possibly exacerbate, the situation?

**Sir Kenneth Bloomfield:** I would think so. Maybe I am going on too long?

**Q215 Chairman:** No.

**Sir Kenneth Bloomfield:** One of the things that people have said in the aftermath of the political settlement is we must look forward now and we must put the past behind us. I have been at pains to say on a number of occasions, “Of course we must look forward now and it is time we do”, but we cannot really put the past behind us because so many people are living with it. On the other hand, endless digging into the past for no terribly useful and productive purpose is not a good thing. I have been long enough a civil servant to realise no claim on public expenditure is a zero-sum game, there is a finite sum of money. I have looked at the Bloody Sunday Tribunal, and I spent a day giving evidence to the Tribunal, not very usefully to myself or to them, I am bound to say, and it is £180 million now. On the one hand, you can say allegations that the British Army have unlawfully killed people is a suggestion of great seriousness and ought to be investigated; on the other hand, I do ask myself what could £180 million have done for the community that I have been concerned with for the last ten years.

**Q216 Chairman:** I think we would all share those concerns. There is an element of contradiction in your comments in that, on the one hand, you say you cannot forget the past and, on the other hand, it is necessary to stop delving at such vast expense and in such detail. Whatever you said in 1998, and I accept that was wholly relevant at the time and you stand by much of that, but we are now in 2008, we now have a restored Assembly and a power sharing Executive of a sort we have not had before because it has brought in what we would generally reckon, and I choose my words carefully, to be the extremes working ostensibly side-by-side and so on, what is your solution now? How do we deal with the past? This Committee will want to make some recommendations and clearly at the moment we are a long way off from making recommendations, and that is why we want to see you and others for your ideas. If we asked you to do a short report now and give your recommendations to this Committee, what would they be?

**Sir Kenneth Bloomfield:** I think I would say, like a good civil servant, that a heck of a lot of government is about prioritisation. First, in the order of priorities in dealing with this problem, I would deal with the practical issues confronting those who have been affected in one way or another by the violence. Let us remember what a large community this is. The figures are not absolutely capable of being pinned down, but the best part of 3,700 dead, 40,000 injured, and around every one of those individuals are the people who are affected. I remember being asked improbably to deliver the University Sermon at Oxford and saying to the congregation, “With any luck there’s nobody in this congregation who has known personally anybody who has been

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murdered". I live in a community where there is practically nobody who does not know personally people who have been murdered. There are a huge number of people suffering the after-effects of all the awful things that have happened. I would put right at the top in the order of priorities doing practical justice to those people. That is not to say that there are not other remedies that ought to be considered.

**Q217 Chairman:** I just want to pin you down on that one, bringing practical justice to these people. That is a laudable sentiment, it is a generalisation, but what do you mean by that?

**Sir Kenneth Bloomfield:** I mean that outside the system of criminal injuries compensation because, if you like, the claims on that system have been exhausted, it should be a priority for the several Victims Commissioners now appointed to consider by what means they might identify people who continue to suffer in economic terms from the consequences of violence and have so far not been given adequate state assistance to support them.

**Q218 Sammy Wilson:** Chairman, can I just ask Sir Kenneth a question on that. Very often it has been difficult to identify individuals and what has tended to happen is that groups have grown up to represent those individuals, and we have seen some of them in the past, and they almost become focus groups for those who wish to join a club, if you wish, whereas there are many who suffer quietly at home, et cetera. I think some of those groups perpetuate the kind of thing you have quite rightly said you do not wish to see perpetuated, that is they feel they have got to highlight the grievances and make an issue of what happened in the past. How do you avoid that happening, Sir Kenneth?

**Sir Kenneth Bloomfield:** It is not easy. If I may say so, you do touch on a great problem. When I was doing this work in 1997/98, apart from seeing people I got a huge number of poignant letters and one I will never forget was from a lady who wrote to me from Ballygauley and said, "My son, who was a university student, was killed in Belfast the day after the Enniskillen bomb 'by mistake'. Very understandably, of course, the news was full of the Enniskillen bomb, the names of those families were all over the papers, there was a media campaign to raise campaign to assist them, but what about my son, doesn't he matter as much as any of these victims?" and, of course, he does. Undoubtedly, you have to be very careful about the group notion. My priority would be to see the government money that is available actually reaching the people who need it and if you are not very careful you can construct a kind of victims industry with the best of motives, but one has got to be careful about this.

**Q219 Chairman:** How would you distribute the money? I am very interested to tease this out if we can. You are saying you believe there should be targeted help for those victims who have suffered and for whom financial compensation is both desirable and could help.

**Sir Kenneth Bloomfield:** Yes.

**Q220 Chairman:** How do you target them? Do you ask everyone to apply? Do you means-test them?

**Sir Kenneth Bloomfield:** The trouble is that government records, when they are not being lost, sometimes disappear for all sorts of other reasons and, unhappily, it is not the case that the criminal injuries compensation files from the 1970s are all conveniently available. Undoubtedly people would have to furnish some proof that they had been through this experience and this was the compensation they got. Could I just make another point? In the process of looking at this issue of criminal injuries compensation, each of the three of us went to different jurisdictions to have a look at how they tackled these issues, and I chose to go to Israel because, as it happens, I have a very good contact there in the Hebrew University of Jerusalem. It was extraordinarily interesting because their approach to compensation was entirely different from the British one where you have a once-for-all solution, you appear before the compensation Board, or in Northern Ireland it used to be the courts, and they make a judgment on what you are due, about the effect of your disabilities and so on. Three or four years down the line the factors weighing on that judgment may have changed, they may have thought, "Yes, he ought to be capable of working again but he has proved not to be capable of working again". They have quite a different system in Israel where you can periodically revisit the situation of somebody who has been affected by violence, you can reassess the situation and change their supportive status. I found that very interesting.

**Q221 Chairman:** A bit like a disability benefit that is paid as a regular sum?

**Sir Kenneth Bloomfield:** I think it is better not to have a once-for-all settlement in these cases. The reason why I did not recommend it in this case was, after all, law on compensation in Northern Ireland had to be passed through the Westminster Parliament where the great majority of members are not members from Northern Ireland and could we conceivably get away with a system radically different and more generous than the one that applies to people in Great Britain. Nevertheless, I would say to you when I looked at the situation in Israel, where the disposition of government, of course, is to regard everybody as being in the frontline, in a sense—first of all, they have a citizens' army and, secondly, there are a lot of civilian casualties, attacks and so on—I was struck by the fact that they did not reach once-for-all judgments about the long-term needs of people who had been affected.

**Q222 Chairman:** Let me pursue this, if I may. If you or any of us was badly injured in an accident and because of that injury unable to work, the state has a means whereby we are given a not very generous or handsome benefit but, nevertheless, a benefit on a regular basis until we are able to return to work or if we are never able to return we have that until we receive our retirement benefits when the overlapping benefits regulation comes into force and so on. Are

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you saying that eligibility for such a benefit would be the proper way to compensate those who have suffered in this way in addition to what they might already receive?

**Sir Kenneth Bloomfield:** Yes, that is what I am saying. I am not suggesting for a moment, Chairman, that it is easy to work out such a scheme in detail, it would be a radical departure from what we have had previously.

**Q223 Chairman:** It would.

**Sir Kenneth Bloomfield:** As you know, we had Bertha McDougall in place as an interim Commissioner and I had some meetings with her and thought her approach was admirable.

**Q224 Chairman:** We would endorse that.

**Sir Kenneth Bloomfield:** I thought her views on all of this were extremely sensible. It seemed to me that she too had identified this problem of the people who had been left behind who had been treated properly on a statutory basis under the laws that existed at the time but all these years later on were still living with the consequences and could one and should one be doing more for them.

**Chairman:** That is very helpful and we will certainly pursue that.

**Q225 Mr Murphy:** Just on that particular point, I think it is a very good idea to try and come up with a scheme that would offer compensation. I have some experience of probably one of the largest compensation schemes in the world that is currently going through in the UK and that is the miners' compensation.

**Sir Kenneth Bloomfield:** Yes.

**Q226 Mr Murphy:** It has ended up splitting families. This compensation goes back as far as 1954 and it depends on the time someone spent underground and the level of disability. We have had people coming up who have denied they have got brothers and sisters in order to claim the compensation themselves. In practice it would be extremely difficult to put something like that in place. Nevertheless, of the people we spoke to yesterday, families of victims who have taken their cases through the HET and Ombudsman, not one person mentioned compensation, what they wanted in the main was to try and find out what happened to their loved ones. Generally, in many cases they felt they had not been given any information at all and what they sought for themselves was the circumstances in which their loved ones died and the details surrounding that. Whilst I am sure compensation will assist some people who are struggling economically, the majority we spoke to wanted to find out exactly what had happened and wanted the truth.

**Sir Kenneth Bloomfield:** Without being in any way critical of the people you have seen, I am very sympathetic to the kind of people you have seen, they have all suffered dreadfully, but those who present themselves on these occasions tend to be the activists. As I said to you, I met hundreds of people

and got hundreds of letters. What was striking was that very few of them were saying, "I want anybody to be locked up". Quite often they were saying, "Yes, I would like to know the truth of what happened", that is undoubtedly so. The activists perhaps are a bit unrepresentative in the degree of stress they place on knowing the precise truth. The other thing I am really bound to say to you is, in a sense, if you look at what has been happening in Derry all this time at this enormous expense, do we not all know pretty clearly what happened. Unless that report comes out and says, "The situation is exactly as the people out there believe", they will simply say it is another whitewash.

**Q227 Chairman:** That is absolutely correct and we all have real misgivings about the enormous expenditure and share your view that money could have been put to better and more productive use, but nevertheless that has happened and it is where we are. What do you think about the two organisations we visited yesterday? In your opinion, and we are beginning to form ours, how is HET working? In your opinion, how is the office of the Ombudsman working? Should there be some degree of rationalisation between the two, as has been suggested to us?

**Sir Kenneth Bloomfield:** You have mentioned two of the important interests in all of this and the other interest is the PSNI.

**Q228 Chairman:** HET is part of that.

**Sir Kenneth Bloomfield:** Of course, you are right. He has been making it clear that he is a bit concerned that so much activity is being devoted to looking back into these retrospective, previously regarded as dead cases that there is not adequate resource to deal with the current situation. Although, on the one hand, it is wonderful to have the degree of political stability we have got, and I would not have bet on it and it is marvellous to be there, nevertheless there is still a lot of crime going on in Northern Ireland which needs to be addressed. For me, there seems something rather perverse about a situation where over a great many years a large number of people were very properly convicted for committing atrocious crimes and then in the context of the political settlement the jails were emptied and they are all out again. For what purpose do we devote quite so much of a resource, human resource and financial resource, to pursuing all of these old cases because clearly what we are not going to do is end up locking more people up. I thank God that nobody got hurt, but our house was blown up around us and I often reflect from that day to this that nobody has ever come and said, "You might be interested to know we are pretty sure we know who did it in a generic way. We have not got witnesses who are willing to come into a court and say so". That might have given me some modest degree of satisfaction, but it does not happen. I understand that. Certainly if you deal with the relatives of the disappeared, as I do, they know what happened but what they want is a grave to visit and to go through the traditional ceremonies and all the rest of it.

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**Q229 Chairman:** Of course. One thing that keeps coming up as we talk to people is if and when should there be a line drawn, to use that oft-quoted expression. Do you believe that there is a time when we should stop looking at the past or do you believe that so long as there is one grieving relative wanting to see what they call “closure” we should continue with our present system or something like it?

**Sir Kenneth Bloomfield:** This might seem a very bureaucratic answer but I am afraid I am a child of my upbringing. It is not so much a yes or no question as it is a how question. It seems to me we have created very elaborate looking into the past search engines which have been very, very expensive and if we are going to go on doing this at all we really do need to find some simpler, less costly, to be blunt about it less law borne, mechanism. I would not rate very high amongst my order of priorities the enrichment of lawyers. Some of my best friends are lawyers, indeed my daughter was originally a lawyer but is now doing other things.

**Chairman:** She saw the error of her ways!

**Q230 Sammy Wilson:** Sir Kenneth, can I ask one question. When you were doing your report, and maybe I am wrong in this assumption, at that stage the victim industry had not grown to the extent that it has today.

**Sir Kenneth Bloomfield:** That is correct.

**Q231 Sammy Wilson:** So you probably did hear in a very genuine way the concerns of individuals and a lot of them were economic at that stage. Given the fact that in the interim period we now have, as you have described it, and I think quite rightly described it, a fairly elaborate victims industry in Northern Ireland and that in itself is driving a lot of this desire to delve into the past for various reasons, and there are lots of different agendas as well. Given the climate that there is now around the past, do you think it is possible to easily draw a line without creating quite a lot of political pressure and without making the victims feel that they have been short-changed?

**Sir Kenneth Bloomfield:** The victims’ community does remain fractured. It is no longer the case that even in theory you could imagine one organisation representing the victims to which they would all subscribe. Although personally I find it a clumsy situation to have four Victims Commissioners, in a sense I can understand why we have arrived at that. There are people in our community who are more comfortable talking to one sort of person than another. I wish it were otherwise but that does seem to be the reality. My own wish would be that as many people as possible should be able to remove the word “victim” from their foreheads. There are people who were not injured themselves who are almost making a lifelong career of all of this and it would be a great thing if one could wean some people away from that attitude.

**Q232 Chairman:** On this business of the four Commissioners, and you say you understand why—I suppose we can all say we understand why—is it

really desirable? You have not got four Ombudsmen, have you? Would it not be better to have just one Victims Commissioner?

**Sir Kenneth Bloomfield:** Maybe one schizophrenic would be a compromise.

**Q233 Chairman:** Do you have a candidate in mind!

**Sir Kenneth Bloomfield:** Far be it from me as a mere bureaucrat to go into the politics of the situation. I would simply say I do not regard it as an ideal outcome but I can understand why we have got there.

**Q234 Kate Hoey:** Sir Kenneth, you were talking about the victims industry, but do you think there is also an ex-policemen’s jobs industry growing up because in HET there are numbers of people being flown in from England staying over during the week and then being flown back and that is hugely costly. Do you think that is helpful in the long-term?

**Sir Kenneth Bloomfield:** I do come back, boringly, to the idea of prioritisation. Dealing with the victims, dealing with the past, is a priority and how high do we rate it. I pick up the morning paper and I read, for example, that at a time of housing crisis the co-ownership scheme has been shut down because there is not the money at the moment to keep operating it. I ask myself in that situation how sensible is it to be spending such a lot of money on some of these other things. One cannot say absolutely they are wrong things to do but I do ask whether it is a sensible order of priorities. I am a great believer in doing practical things for people, frankly.

**Q235 Kate Hoey:** We are where we are and it exists at the moment, Sir Hugh Orde decided there was going to be an HET. Are you saying really it should be scaled down and they should only look at cases where the families come forward specifically and ask for them to be looked at? They are obviously taking up every case whether anyone has asked or not.

**Sir Kenneth Bloomfield:** I think there is something to be said for that. I only encounter Hugh Orde as he jogs along the coastal path occasionally. Having said that, the police, like all other public bodies, have a finite resource and I am sure Sir Hugh asks himself from time to time is it really sensible that quite so much of our manpower is devoted to this.

**Q236 Chairman:** Sir Hugh is publicly on record as expressing concern, which is one of the reasons why this Committee is looking into this matter to make recommendations. I do not want to misrepresent you, and it is particularly important we do not misrepresent you when we are considering our report, but in answer to Kate Hoey you said, as I understand it, that you would favour a system whereby an investigation is only triggered if the family requests it.

**Sir Kenneth Bloomfield:** I think that might be too limited a remit. I do think that we could trust the police force to be more selective about this, frankly.

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**Q237 Sammy Wilson:** Sir Kenneth, say you went down the route that has been suggested where it is only when the family requests it, is the danger that the only ones that would be investigated are those where people have an agenda perhaps or are driven or are well connected and have joined a victims club of one sort or another and some people who have stayed clear of that, and whose case would warrant some investigation, would miss out?

**Sir Kenneth Bloomfield:** This may seem rather a cowardly response to what you are saying to me. I think what you have said is entirely fair about Ms Hoey's comments. I think one needs to say to Sir Hugh, "Look, you clearly are concerned that the extent of this work is diverting your officers from what ought to be their current priorities and some kind of selective process has got to apply, what are your proposals to do that?" He has raised this issue. In my experience he is a man of good judgment and I would pay a good deal of attention to what he says about it.

**Chairman:** Of course, at the end of the day this Committee has got to make some recommendations along these lines and that is why we are very interested in what you are saying.

**Q238 Mr Fraser:** Saying what you have just said, do you think that the reputation of the police has been damaged recently as a consequence of diverting attention to these historic cases? Is that the perception of the community in your opinion?

**Sir Kenneth Bloomfield:** No, I do not really think it has, there are other things that have somewhat damaged the reputation of the police. This simply underlines the fact that in a nasty, prolonged conflict not everybody always behaves well or sensibly.

**Q239 Mr Fraser:** Given the fact you talked about the selectivity one has to go through in terms of how one deals with these issues, there have been some criticisms of yourself and the work you have undertaken by some of the interested groups, the victims community groups that you described earlier as fractured. How do you respond to the fact that they believe there is quite a lot of political controversy which is always going to be around this with someone like you involved given your background?

**Sir Kenneth Bloomfield:** It is very interesting you raise this because literally the other day I went to Magee, the University College in Derry, where INCORE, which is a group concerned with this sort of issue, is running a series of seminars on victims and so on. I was asked to take part in a seminar and there was a representative of that kind of sentiment who at the end tackled me and said, "Look, here is your report and there's only one chapter in which you refer to the issue of collusion. Doesn't this underline the fact that at the end of the day you are a kind of Brit bureaucrat and you are going to be jolly sure you don't embarrass anybody in Government" and I said, "Well, there are quite a lot of other important issues in there about which there is only one paragraph. Let me tell you what I said about my contact with organisations like yours. I

said I have been approached by groups who strongly believe that they are victims of collusion and unlawful action by state forces. I am obviously not in a position to validate or dismiss any of these claims, I am not a court of law. I am asked within a few months to make recommendations about this very wide issue but what I will undertake to do is to include in my report the fact I have met you and you have a strong belief this is a grievance". I was tackled about this in Derry just the other day, as I say, and I said, "I still regard that as perfectly fair. If you are looking for legal judgments about what happened, there are people called judges to do that and if you are looking for moral judgments there are authorities rather higher than me, all I can do is say there are people who feel this way".

**Q240 Mr Fraser:** One of the quotes that I have here says: "Despite the inclusive mandate and definition of victims, only two paragraphs of the report discussed those killed by state violence". They have been quite specific about this.

**Sir Kenneth Bloomfield:** It is very interesting. Let me just explain to you the rationale of my report. First of all, when I was contemplating taking it on a lot of friends said, "Don't touch it, it's a poisoned chalice, nothing but trouble, you shouldn't do it", but I did do it at the end of the day. What I knew was I was going to face a lot of people who were going to press me on this business of the definition of victims. It related to monuments, for instance: if there is a monument, whose name is going to be on it, whose name is going to be off it. I avoided being drawn into all of that actually. I used a wider definition of what a victim is than certainly some people in our community would like to see. I will tell you why I did this. Even where, let us say, somebody is out as a member of the INLA and he is in a stake-out trying to shoot a policeman and he is shot, he leaves a widow and family behind. Do you say it is their fault, as it were, that they are in this situation they are caught up in? No, I do not think so. What we want to cut through is the intergenerational transfer of hostility and bitterness. Do you want that family to grow up with the same sense of grievance that caused that young man to take up arms in the first place? I tried desperately hard not to be driven into what I would call ghettoes of definition.

**Q241 Chairman:** Building on that, because it runs on nicely from it, what is your view of Eames-Bradley? Do you think that this is the right way forward? Do you have high hopes and expectations?

**Sir Kenneth Bloomfield:** I confess to being a longstanding friend of Robin Eames, for whom I have enormous respect. If someone said to me in 1997, "You're taking on a poisoned chalice", I think I might have said to Robin, "You're taking on two poisoned chalices with a bit of arsenic added". They have been given a very much wider remit than me. Of course, a lot depends on what they are going to recommend and I suspect that some things are being floated as trial balloons to see how people react. There is the notion, for instance, of was it a war all along? I am not quite sure what all that is about. I

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would simply say this to you: last week I was in The Hague at a conference about terrorism and so on, and they said, “Here’s the court where Milosevic was tried” and if we were in a war all this time there are quite a lot of very interesting people who perhaps should be before a War Crimes Court. I am not madly enthusiastic about the idea of describing it as a war. I am more measured about universal amnesty because I hate the thought of yet more money being spent in meaningless court procedures when it seems to me inconceivable that having let out all these people already you are going to lock up another lot you did not catch in the first place, what is the sense in that.

**Q242 Chairman:** The limit is two years anyhow.

**Sir Kenneth Bloomfield:** Yes.

**Q243 Chairman:** Would you favour an amnesty?

**Sir Kenneth Bloomfield:** I think perhaps I would. It is a logical extension of what happened in the earlier stage. I am on record, and I am stupid enough to write books these days, as having criticised the attitude to prisoner release as rather flaccid at the time, more ought to have been sought for that very major initiative, but that is water under the bridge, that is where we have been. Having adopted that kind of attitude, I think there may be something to be said for extending it into these other undeveloped cases.

**Q244 Mr Fraser:** If there was an amnesty in the way you considered it in your response, do you think it would encourage former paramilitaries to own up to their actions? Do you think it would have that effect?

**Sir Kenneth Bloomfield:** No, I do not think so.

**Q245 Chairman:** But you would see this as a way of moving towards—I hate using these jargon words—a universal closure, would you?

**Sir Kenneth Bloomfield:** In one sense I do not think closure can be achieved absolutely until the last person dies who was affected in some way by it. We do want to mark the fact that we are heading into a new chapter. There are some very, very important people around in Northern Ireland who, to use a great Ulsterism, the dogs in the street know were involved in rather nasty things and no effort is being made to prosecute them. If you are not prosecuting the big fish, should you be thinking of prosecuting the small fry?

**Chairman:** That is a very interesting observation and it is one that we all take very seriously.

**Q246 Kate Hoey:** Could I ask about your attitude to the Police Ombudsman’s office and its priorities and how it is working, particularly its relationship with the HET.

**Sir Kenneth Bloomfield:** The recently retired Ombudswoman was a formidable lady, very upright and honourable. On the other hand, one way or another I think she was drawn into more deep and retrospective inquiry than I thought likely at the outset. I thought that office was constituted to ensure proper behaviour in the reconstituted

Northern Ireland Police Service. I am not sure I thought near the top of her list should be delving back into all these historic cases. You are talking to her successor and I think it is conceivable that he takes a rather different view on the powers.

**Q247 Chairman:** He has gone on record in front of this Committee as saying that he would favour a division of the office and if there is to be a pursuing of past problems that should be hived off.

**Sir Kenneth Bloomfield:** I think there is something to be said for that, Chairman. Although there should be a degree of apprehension in the Police Service about the Ombudsman, they should live in a relationship of mutual respect, and I do not think it is helpful to that relationship if it is regarded as a kind of potential nemesis lurking all the time bringing more and more nasty things out of the woodwork. I am not sure that helps in terms of an organisation which in a sense is one of the partners in a modern Police Service and good policemen ought to embrace it as a regulator that is there. They are going back into things when most of the people currently serving in the police were not serving at all and is that helpful to the standing of the Ombudsman and what I see as the Ombudsman’s current principal responsibility, which is the current conduct of the police.

**Q248 Chairman:** Your views tally very much with his and, again, we shall be reflecting on this before we make our recommendations. We are moving towards the close of this session, for which we are very grateful. I do not want in any sense to misrepresent you, it is very important we do not, but you are saying to us you are concerned that there has been a distortion of priorities, you are concerned about the blanket approach to the past and you would be more selective.

**Sir Kenneth Bloomfield:** Yes.

**Q249 Chairman:** You are saying to us that you would like to see evolve a system of what I would call continuing compensation by means of a pension or benefit that would be targeted at those families who do genuinely continue to suffer because of the loss of the breadwinner or whatever. You are also saying that the logic of everything you have said and your remarks on the amnesty point to the fact that you really believe we should be looking towards bringing this as far as we can to a conclusion, even though you have made the very valid point that until the last person who suffered dies there will be a lingering legacy. Would that be a fair summation of your views?

**Sir Kenneth Bloomfield:** Chairman, you have made my points much better than I could make them myself.

**Chairman:** Thank you very much indeed. It is important that we have this clarity on the record. I am very grateful to you, we all are. I hope it does not sound patronising or presumptuous to say that we are all very conscious of the contribution you have made to Northern Ireland over a very long lifetime of public service and thank you for it. Thank you.

*Witnesses:* **Dr Brandon Hamber**, Director, and **Ms Kate Turner**, Project Coordinator, Healing Through Remembering, gave evidence.

**Q250 Chairman:** Dr Hamber and Ms Turner, could I welcome you both very much indeed. Thank you for coming to give formal evidence to the Committee. You know the background and we have had the pleasure of meeting Kate Turner before informally. I think you had the benefit of hearing all, or certainly most, of Sir Kenneth's evidence. By way of introduction, would you like to tell the Committee on the record a little bit about your organisation and how it came to be created and what you see as your particular aims and priorities.

**Ms Turner:** Healing Through Remembering began as an ad hoc group of people. It arose out of a one-week event where Alex Boraine, who was then the Deputy Chair of the South African Truth and Reconciliation Commission, came for a range of private meetings, a bit about what the Truth Commission had been about but more about asking what were the questions they had asked in South Africa on those issues about dealing with the past. From that very first week there was an immense amount of interest and people kept contacting the few of us who had been involved. From that we brought a group of 19 diverse people together from very different backgrounds to discuss what to do about dealing with the past. In 2001/02 we carried out a public consultation and as a result of that we wrote a report, the *Healing Through Remembering* report, in 2002. From the submissions we received and the diverse group of people working together with very different perspectives in terms of their being affected or involved in the conflict, different political perspectives and from across Northern Ireland, they worked on the information that had been shared with us and came up with five recommendations. They were five areas that they felt needed looking at further as ways of dealing with the past. They were seen as a package, no one stands above the others and they are all interconnected. They were a collective story-telling process, a day of reflection, a network of commemoration projects, acknowledgment and truth recovery and a living memorial museum. At that stage there was a sixth recommendation that there should be a Healing Through Remembering initiative because we realised we had tried working for a week and it became a couple of years. At that stage we formed a limited company and became a limited company with charitable status. In 2004 we set up five what we call sub-groups where, like the original Board, we bring people together who have been involved in or affected by the conflict, community workers, people from churches, academics, journalists, a range of people, to discuss each of those ideas. They range from people who have been in the British Army, who were in the UDR, the RUC, who are in the PSNI and various ex-prisoner groups and a range of victims groups.

**Q251 Chairman:** All churches, both Protestant and Catholic?

**Ms Turner:** Yes. When we formed those sub-groups, within the groups it was not just a group of people with very different perspectives who all agreed, for example, that a collective story-telling process was a good idea, there was a range of people in each group who thought the recommendation was a good idea, those who thought the recommendation was not a good idea and those who were not sure. The aim was to have a full debate about these issues, not just to bring people with different perspectives together on a like-minded issue. That leads to some fairly robust debates within the sub-groups but also a chance for people to hear each other's concerns and share them. The groups then carry out work as they see appropriate. We are a membership-led organisation, so the groups carry out audits or research as they see appropriate.

**Q252 Chairman:** How big is your organisation?

**Ms Turner:** Membership, including members of the organisation and members of the sub-groups, is about 108.

**Q253 Chairman:** 108?

**Ms Turner:** 108 individuals.

**Q254 Kate Hoey:** How are you funded?

**Ms Turner:** Our original funding was from Atlantic Philanthropies and we are now funded by the Joseph Rowntree Charitable Trust. We have a small amount of project funding that comes from other sources, like the Community Relations Council, and some Peace II money for an outreach project.

**Q255 Chairman:** But you have no direct state funding?

**Ms Turner:** No. We have always had a principle that we do not take money directly from any government, nor do we take money that is for victims services or needs because (a) we are not a victims organisation and (b) we are about looking at how society as a whole deals with the past relating to the conflict.

**Q256 Chairman:** What is your budget?

**Ms Turner:** Our budget over a year is just under £200,000.

**Q257 Chairman:** I see. How many paid staff do you have?

**Ms Turner:** Two.

**Q258 Chairman:** You two?

**Ms Turner:** No, myself and an administrator at the moment.

**Q259 Chairman:** What about your position, Dr Hamber?

**Dr Hamber:** I am the Chair of the Board of the organisation. I began working with the organisation as a facilitator. In the early parts of the organisation when they were bringing different people from

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different backgrounds together, I worked on helping to work through the different issues to ensure that people participated.

**Q260 Chairman:** You are a South African?

**Dr Hamber:** Yes.

**Q261 Chairman:** Motivated by your experience in South Africa?

**Dr Hamber:** Yes, very much so. Partly linked with, I suppose, some of the weaknesses I would outline within the South African process which are that although there was a large amount of civil society participation, that dwindled over the life of the process in South Africa particularly once the Truth and Reconciliation Commission began. What I was focused on and why I got involved in the project was very much from the perspective of wanting to engage with as many people across civil society, middle leadership people if you want to think of it in that way, in the debate about dealing with the past. I know Kate has said the organisation has 108 members, but those are 108 very diverse individuals strategically placed in a lot of key organisations across society. I see it as a very key mover in its ability to put issues on to the table, which is what it has done, so each of those sub-groups has delivered different recommendations in different forms. For example, the Truth Recovery Group has outlined in a large document, *Making Peace with the Past*, five very clear options to debate around truth recovery. The Day of Reflection Group has implemented a day of reflection as a way of assessing whether that is possible. The Museum sub-group, for example, has collated a database of over 400,000 items that could possibly go into a museum were it to be put in place. It was a two year project tracking all the different museums and what they have, et cetera. It is very much laying the groundwork for a very wide process of dealing with the past and we are very much attracted to that.

**Q262 Chairman:** You heard what Sir Kenneth said about the Truth Commission and all that, give us your views.

**Dr Hamber:** I can give you my personal views and then as the Chair I would have to talk in terms of what are the views of the actual organisation. In terms of the organisation, the organisation has outlined in the document, *Making Peace with the Past*, at this stage five different options for truth recovery, of which one is a Truth Commission. The other is what one could call drawing a line under the past or not doing anything more, because it is not the case one can actually draw a line under the past because there are processes in motion from the HET and others, but that is one of the options. The third would be a collective story-telling process, a bottom-up type process of collecting testimonies. The fourth would be what is termed an investigation-type mechanism similar to the way the Disappearances Commission has worked with liaison groups within the various structures who might be able to give

information that people might request. The final option focused on the idea of a more hands-off historical account of what happened.

**Q263 Chairman:** These are not mutually exclusive.

**Dr Hamber:** No.

**Q264 Chairman:** What is your personal preference and what is your order of priorities?

**Dr Hamber:** The way I would be approaching the debate at this point in terms of my personal preference would be to approach it first from a matter of principle and the first principle is do we actually think that at a bare minimum victims have a right to truth. There are different international legal debates about this question, but if we come to it from a moral position and say we do think victims have a right to truth then there is an onus on us to think of what is the best mechanism for doing that. My position at the moment very much would be to say I would like hear coherent arguments as to why we should not pursue that. Many of the arguments that are put on to the table, for example people will not play ball, they will not come forward, it is too costly, are equally arguments that you could make as to why there should be an all-encompassing truth recovery-type process that could cross jurisdictions. For me, at this point in time the argument I would be making is let us put a Truth Commission up as an ideal type, and when I say ideal type I mean a body that has cross-jurisdictional powers, powers of search, subpoena and other powers, can compel people to come forward to give evidence, but ultimately is charged with the responsibility of trying to outline the causes, nature and extent of the conflict. I would like to debate an argument as to why we should not do that rather than saying it is simply not possible.

**Q265 Chairman:** You heard Sir Kenneth's views. This is not asked critically but just for information, how long have you been in Northern Ireland?

**Dr Hamber:** I have been living here for about seven years and I started to work here in 1996.

**Q266 Chairman:** So you really do not have any, or very little, direct experience of the 30 years of Troubles, 1968-98.

**Dr Hamber:** That would be correct, yes.

**Q267 Chairman:** You are bringing, therefore, the benefit of your experience in your native country and you are seeking to tell us here that is the best way forward.

**Dr Hamber:** I am not seeking to tell anybody anything.

**Q268 Chairman:** That is the clear inference I draw from your remarks.

**Dr Hamber:** Basically, from my own experience I am willing to put issues on to the table for debate and that is very much why I have engaged with the Healing Through Remembering project, which is what it has been engaged in. I do not think it is helpful to make bland comparisons between

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different contexts. I can simply relate what the experiences are from other contexts and if people find that helpful then that is helpful, and if they do not—

**Q269 Chairman:** You did say a moment or two ago that you did favour the Truth Commission, something that Sir Kenneth took a different line on, and you did say you thought it was incumbent upon those who disagreed with you to prove their case rather than for you to prove yours. That was what you said.

**Dr Hamber:** What I was trying to say was not necessarily that at this stage I am fully committed to say, “I think there should absolutely be a Truth Commission”, I am saying we should engage in a debate about the principles of what it embodies, and one of the key principles within that, which is an international standard, is around the question of what are the rights of victims within these processes. That is very much what I am focusing on.

**Q270 Chairman:** What about the way in which we are seeking to tackle things within the United Kingdom and within Northern Ireland in particular with the Historical Enquiries Team and so on? How do you regard that?

**Dr Hamber:** Again, speaking from my personal opinion, not the organisation’s opinion, the Historical Enquiries Team is a very unique process compared to—

**Q271 Chairman:** It cannot be very unique, it is either unique or it is not.

**Dr Hamber:** It is a unique process related to many other international contexts in terms of its very systematic approach of working through case-by-case. In a lot of other societies they have attempted, for example, Truth Commissions which try and do that but which have never actually done quite that. I would rate the systematic approach incredibly highly in terms of various international standards. From having a lot of contact with various victims groups it has certainly built the credibility of the Police Service within its ability to engage in a process like the HET. At a personal level I would have a very positive view of the Historical Enquiries Team.

**Q272 Kate Hoey:** Having visited it, I share a lot of your views on the HET. What on earth do we need a Truth Recovery Commission for? Northern Ireland is a very small country, practically everybody knows everybody or knows somebody who knows somebody. What on earth would be the point of setting up another hugely expensive, lawyer-driven, whatever you say, inquiry? To do what? To rake over things over and over again, most of which have already been gone through by the HET or the Police Ombudsman, and a lot of people in Northern Ireland who are not members of the victims industry are just getting on with their lives having put up with some terrible things and maybe do not want anything to do with any of this.

**Dr Hamber:** The main issue would be about trying to meet the various needs that are out there. One could make an argument that the Historical Enquiries Team could meet those needs in terms of perhaps getting to issues around the truth. However, I think for a lot of victims what they are also seeking is a wider form of social acknowledgement. Whether that has to be through an all-singing, all-dancing Truth Commission is something one could debate, but the only element the Historical Enquiries Team lacks, in a sense, is that public acknowledgement process which might be important to some victims.

**Kate Hoey:** What do you actually mean by that? What does that mean to Mrs Smith sitting somewhere?

**Chairman:** Who might be a very private person and might want private satisfaction.

**Q273 Kate Hoey:** And comes from a generation, perhaps, who do not want to talk publicly about some of the things that happened to them in their private lives.

**Dr Hamber:** Absolutely. One of the biggest challenges within the process of dealing with the past is that you have a whole range of people with a whole range of different needs, so it is very difficult to do one thing that would meet all of those needs. It is quite clear that not every single person would want to engage in a very public type of process, and that is what the Historical Enquiries Team for some families has done very effectively, they have been able to engage with it, they have been able to get the information and various forms of feedback from the Police Service and other sorts of issues and that has been very effective. When I talk about the issue of acknowledgment, I mean it as a wider, social and political process of people engaging in the past and saying, “Yes, there is something that we need to acknowledge in relation to the way that it happened”, whether that is acts of omission or commission. It is a much wider level I am talking about at a political level.

**Q274 Kate Hoey:** Are you sure it is not just academics and well meaning people thinking this is what people want when maybe it is not?

**Dr Hamber:** I could give you a range of research in relation to victims that would say that is what they want. Not all victims, as I said, but that is something that could be substantiated by evidence.

**Q275 Mr Fraser:** You have passed various comments about the independence of the Commissioner, and I referred to some of those comments earlier not knowing you were sitting at the back. You were quite direct about the two paragraphs in the report Sir Kenneth has put forward about state violence and then you go on to say: “any process that is interested in taking forward truth recovery will have to be seen to be independent; to include the views of victims in all their diversity, not just in its definition but also in its actual working practices” and say, “to ensure that any sense of a hierarchy of victims is to be avoided.” You are suggesting here that there is a hierarchy.

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**Dr Hamber:** Which report are you quoting from there?

**Q276 Mr Fraser:** This is your point 45, your submission, *Making Peace with the Past*, page 61.

**Dr Hamber:** That is the *Healing Through Remembering* report. I just wanted to clarify that. Could you maybe try and rephrase that question?

**Q277 Mr Fraser:** Do you believe there is a hierarchy of victims and is that right in your opinion, because you have said here that you want truth and recovery for everybody equally but I think you have also accepted that is not possible, have you not?

**Dr Hamber:** If I am speaking from the *Healing Through Remembering* side of things, the view amongst many of the members would be that there is certainly a perception that there are different hierarchies and it depends who you ask whether they say they feel there are different hierarchies.

**Q278 Mr Fraser:** But that is inevitable, is it not?

**Dr Hamber:** It is absolutely inevitable. I think what that report will be getting at is saying what are the different ways by which we can try and deal with that, which is largely the perceptions of different groups that they are receiving perhaps preferential treatment or their cases are being dealt with, and that comes out of a context. *Healing Through Remembering* is an organisation where you have to understand there are incredibly diverse people who would be signing off on that, so they would be quite concerned at looking how that could be dealt with in a way that meets the needs of those with very different perspectives and perceptions of that issue.

**Q279 Mr Fraser:** If we had a Truth Commission, or whatever it ends up being in the way you have described, you can always point a finger and poke at the person who is going to be running it, because you have done here. The implication of what you are saying here is that Sir Kenneth in the role he had was not fair and equal, so that means you could go and do that with the next person because you have said here you want to avoid the process being mired in political controversy. By suggesting that the chairman of any commission is biased, which is the inference, does precisely what you are trying to avoid. You are drawing it into political controversy by making those suggestions surely.

**Dr Hamber:** No, I think it is exactly the opposite. I do not think that *Healing Through Remembering* is the type of organisation that makes those sorts of accusations publicly. What it is trying to say is that there are people out there who have a perception of Sir Kenneth in a certain way and, therefore, those are the types of issues that we need to be addressed in any type of process.

**Q280 Chairman:** Do you share that perception?

**Dr Hamber:** I would share the view that there are organisations out there that have that perception of Sir Kenneth Bloomfield.

**Q281 Chairman:** Do you share that perception yourself? Is it your perception?

**Dr Hamber:** My perception is that Sir Kenneth did his job in a certain way, he went forward with it, certainly there is a report in which there are two paragraphs on state violence and I can understand why certain organisations would look at that and interpret it in a certain way. I do not really have a specific opinion about whether he is biased or not in relation to this issue.

**Q282 Chairman:** You have come to Northern Ireland, you have set up this organisation and are acting as our tutor in these matters, surely you have a view.

**Dr Hamber:** I take exception to the fact that you are describing me as having set up this organisation, which I have not, this organisation was set up by a range of people across this society. I also take exception to the fact that you describe me as trying to tutor people. I have never tried to adopt that role in Northern Ireland, I have simply said if people want to hear information about my experience I will put it on the table.

**Q283 Mr Fraser:** Sorry to be pedantic about this, but you say here, unless these quotes are wrong, which I suspect they are not: "Despite the inclusive mandate and definition of victims, only two paragraphs of Sir Kenneth's report discussed those killed by state violence" and that this, together with other factors, "contributed to the strong perception of bias by the nationalist community". That is not them saying that, that is you saying that.

**Dr Hamber:** That report is a report which was written by at least 20 people.

**Q284 Mr Fraser:** Yes, but you are here representing that organisation.

**Dr Hamber:** I am indeed representing that organisation.

**Q285 Mr Fraser:** In most of your answers you have either said, "I give my personal view" or the view of your organisation. You are here as part of *Healing Through Remembering* and I hope your personal view is in line with what the view is in your chairmanship job surely.

**Dr Hamber:** Indeed. The quote as you read it out is that there is a perception within the nationalist community that his report was biased, that is what that was saying, it is not actually passing a specific judgment on it.

**Q286 Chairman:** I accept, of course, that there is a perception out there, but what I am asking is do you share that view? Is it your view as well?

**Dr Hamber:** My view is that there is a perception that that report had a limited focus on victims of state violence.

**Q287 Chairman:** Do you personally think that report was biased, yes or no?

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**Dr Hamber:** I think it probably could have had a wider focus at a personal level. This is not the view of the organisation. At a personal level, it probably could have had a wider focus on the issue of state violence. I think this is a minor point. I am not here to basically come out and say whether I think his report is a biased report or not. It is a job which has been put on the table, issues have been placed on the table and the process is moving forward from that.

**Ms Turner:** What was important and what the group was saying when they wrote those first sections about the situation, and it is a very diverse group coming together, they were saying to each other, "What are the problems around this area? Why was it even difficult for us to sit down and have this conversation together?" These were some of the issues that came up and they said, "Look what has happened, there is a report that has been written about these issues and there are two paragraphs in it about what matters to us", and other people in the room were saying, "Now that you explain that to us we see that, we understand how that has made you feel not part of this debate and suspicious about any initiatives that come from the state". It was not about the people in that room saying, "Yes, we all agree that this report is biased", or "That chairman acted inappropriately", because that is not what we are trying to do in Healing Through Remembering, coming to these big judgments about people. We are trying to work out how do we deal with these issues in a way that we can hear each other, engage with other and trust each other. The people in that subgroup, and they are listed in the back of the report, they have written their own biographies, you can see the diversity, started sitting down together in 2004 when it was very hard for them to even be in the room together. They were identifying to each other why they were not able to talk about these issues. In putting this down in the report they were saying to each other, "We understand where people are having difficulties". We have taken ten minutes now having a debate as to whether or not that report was biased, but that is not the issue, the issue is people perceive that and it limited the dialogue and engagement. We need to have more engagement, more dialogue. We need to answer the fundamental questions about dealing with the past, one of which is there are people in our society who have already suffered the most and we have a duty to meet their needs and what should we be doing as a society to meet their variety of needs whether or not they are perceived within hierarchies. The other point is we are a society that went into conflict and has come out of conflict, hopefully. We have an enormous range of versions as to why that happened and how it happened and the trouble is we are in danger of those versions being embedded within communities. The reason that people are involved in Healing Through Remembering is they come to meetings once a month, they sit with people it is hard to be in a room with, they listen to opinions that they find hard to hear and address things which they find upsetting to remember, but they do it on a month-by-month basis because they think unless we deal with these issues there is a danger we are just papering it over

and the conflict could re-emerge. They do not agree on how we can do it but they agree we need to talk about how we do it. Maybe we do not do a big truth recovery initiative, but let us not do it because we know that not doing it is the best way of it not happening again and serving the needs of individuals, not because we feel that people will not take part or it will cost too much. Let us examine it along with the other initiatives. Healing Through Remembering is about those five areas and a Truth Commission is just one part of truth recovery.

**Q288 Mr Hepburn:** There are a lot of Sir Kenneths about and, with all respect, Dr Hambers, academics who are telling working class people in the Falls Road and Shankhill Road what they need. Can you tell me why you think that your way out is what these people actually need?

**Ms Turner:** Because in Healing Through Remembering Groups Brandon does not make the decisions about the organisation. I am called a Project Coordinator, not a manager or a director, and I do not make the decisions about what the organisation does, they are made by the members within the group and they decide what research they want to do, whether they want to hold a conference, right through our submission to Eames-Bradley. We brought the members together and they had a debate and discussion about what they thought were the principles around dealing with the past, which was what went into the report. The decisions are not made by the academics in the room, they are not made by the staff, they are made by the people together having those conversations over a period of time. It does mean we have not come up with the magic solution for dealing with the past, and when we meet people they keep asking that, but we have found a space where people can talk to each other from a whole variety of backgrounds as to what might actually work and that is a slow process and about building trust and hearing these difficulties.

**Q289 Mr Hepburn:** You would say that you are reflecting the views of what I would say are the working class people, and I keep saying in the Falls Road and Shankhill Road but that is the crux of the matter. You reflect the views of what those people want.

**Ms Turner:** We are reflecting the views of a diverse society. I would not say I could sit here and say we are representing the views of working class or middle class, it is a range of people coming together that includes—

**Q290 Mr Hepburn:** It is the people in those areas who have been affected most by the Troubles, is not?

**Ms Turner:** Yes.

**Q291 Mr Hepburn:** You might go to Bogside or whatever, but it is those people. I am not being critical, I am just asking, you could put up a fair argument to say that your way is the best way to help those people and you basically came to that conclusion because of your discussions and research and whatever to get that.

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*Ms Turner:* I am not sure I would put it quite like that, but yes.

**Q292 Mr Hepburn:** Do you understand what I am saying?

*Ms Turner:* Yes. We are not academics or experts coming and saying, “This is the answer”, it is the people. Healing Through Remembering is largely people from Northern Ireland but each sub-group has people from the South, from England, Scotland and Wales because we see the conflict has had an effect on people across these islands. It is a bottom-up approach from the ground, people saying, “We’re discussing this, we’re debating what we want”, with the luxury of having international experts and local academics sitting in the room as well as people who are saying, “It’s all very well saying that, but that organisation is not going to do that and this is the reality”, or “Victims that I know are not going to accept that”, people speaking with authority from organisations, groups or collections of people. Not speaking for them, everyone is there as an individual but there is an authority in their voice.

**Q293 Mr Hepburn:** You say you are a bottom-up approach from the grass roots up. How would you compare that with Sir Kenneth’s report?

*Ms Turner:* Sir Kenneth was looking at one individual issue ten years ago in terms of the victims, and we are not a victims’ organisation, so I cannot compare us like-for-like. If you are asking me to compare it with something that is set up by Government or—

**Q294 Chairman:** Would you say he was a grass roots, bottom-up person?

*Ms Turner:* No, it was clearly set up from formal structures to carry out his Commission at that time.

**Q295 Mr Murphy:** Have you a view on whether there should be an amnesty?

*Ms Turner:* No. There is discussion in this document on it and discussion within the sub-group. It is one of those circular debates because you cannot discuss whether or not there should be an amnesty separate from your discussion about what it is you are trying to achieve in terms of truth recovery.

**Q296 Chairman:** Do you have a view?

*Ms Turner:* No, the organisation is still discussing that.

**Q297 Chairman:** Do you have a view?

*Ms Turner:* No.

**Q298 Chairman:** You do not.

*Ms Turner:* No, I am here as a member of staff of the organisation.

*Dr Hamber:* As Kate said, in terms of the organisation it has a debate that has gone round and round. In terms of some of the earlier discussion it is important that we go back to what the organisation actually does, which is this type of debate with a range of different people, and we have shown that

works, that it is possible to get people together to talk about these issues despite their very diverse opinions. In terms of my own view, I do not think I have a specific view at this point about whether there should or should not be an amnesty. If we did go down any route of looking at questions of incentivising different people to engage in a process it might be some sort of debate we would need to have, but I do not have a hard and fast view on this.

**Q299 Mr Murphy:** Without an amnesty would you see former paramilitaries coming forward to tell the truth?

*Dr Hamber:* That would be one of the biggest challenges of any type of process, how to get individuals to come forward. I think there are two ways of approaching that. Either one approaches it in an individual way, which is what is the way that one might incentivise individuals to engage in the process, or the other way of doing it might be to say how would you engage various political groups who might have sway over individuals engaging in the process. My personal view would be that one probably has to engage in more of a political debate about is this something which various political groupings feel is necessary and important. If there was some sort of a green light at a political level that would probably facilitate the process better than making some sort of individual type of trading process, but that is an incredibly complex and difficult endeavour.

*Ms Turner:* It is not a black and white issue, like everything in this there are grey areas. In the patchwork of initiatives that are happening at the moment one of them is stories in the media and books and autobiographies and journalists say to us they have individuals coming to them saying, “I think my story needs to be told. I don’t want to stand up in a public arena and say what I did but I am going to talk to you as a journalist so you have information” and journalists are saying, “I don’t want this information, what am I going to do?” I am not certain that is a lot of people and it is certainly people from a range of different backgrounds, so it is not just there are a lot of people who need some incentive, for some people the incentive is, “If my story is going to be used as a way of there being peace for future generations”. For some it needs to be not public. There are some people who want to get the information out and some people who never will and there are people in-between.

**Chairman:** I must bring Mr Wilson in, he has been pregnant with speech for at least 20 minutes!

**Q300 Sammy Wilson:** I just wonder how widespread this desire for a public Truth Commission happens to be. Let me give you some of the information which we have received and you would imagine these would be people who would be particularly interested in truth. The Historical Enquiries Team yesterday told us that about 55% of people they have contacted so far and told them they were going to look at a case and wanted to interface with them were prompted. A very small minority of people actually go to the Historical Enquiries Team and

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ask, “Would you initiate an investigation into my case”. Even when prompted only 55% have asked the Historical Enquiries Team, “Keep me informed, I want to know what is happening”, et cetera. That is amongst people who have lost relatives, which would indicate to me that there is not a massive desire for this. Take Stephen’s point, I do not see any mad push within the communities which were perhaps most affected by the Troubles to have all of the past spelt out again in some kind of truth and reconciliation group. I take it that people from your group are self-selecting, people who for one reason or another want to be there, either because they like talking about things or sometimes have an agenda, they want to find a mechanism to get the state under the spotlight again through truth and reconciliation. What evidence do you have that wider society actually wants this opening of the box to spell out what happened in the past and the reasons why it happened, who did it, why they did it and where they did it, et cetera?

**Ms Turner:** From our very beginning, as I said at the start, we were set up to exist for a week, we did not think there was that much interest in this debate, but the organisation has grown and continued to grow because more and more people are interested. We get newspaper clippings and in the early days we got a few a day, but now we are getting dozens of clippings each day because there is more and more stuff in the media about the past and dealing with the past. We are living in this uneasy peace and are very wary of doing anything that unsettles it. A lot of people will say, as you heard earlier, that they are scared that looking at the past is going to destabilise that, and I agree that is a very common feeling. A lot of the people who are involved in Healing Through Remembering have that view. There are people in the organisation now who say, “I sat outside the organisation four or five years ago and thought what are these people doing, but I started to look around and realised we need to decide what we are doing about dealing with the past or else it is going to come back and affect the future”. There are people in each of the groups who do not think that the recommendation we are looking at is a good idea and that is part of the dialogue we have within the organisation. Healing Through Remembering is definitely not a group of people who are saying, “We want a Truth Commission”, it is a group of people saying, “We want a dialogue about how we deal with the past”, and part of that dialogue is around truth recovery, not even necessarily around a Truth Commission. The difficulty is that when you talk to people who have not been debating on this issue they immediately think any kind of truth recovery means a South African-style Truth Commission and they perceive that as being a big, public, televised, media-driven event. They also see it as an event where victims and perpetrators encounter each other. Brandon can explain better that these perceptions are not what happened in South Africa, but it is also not what happened in the 30-odd other countries where there have been Truth Commissions, so the trouble is the debate is at a fairly naïve level, which is understandable, and that is why the group who are

undecided on this issue produced this report, *Making Peace with the Past*, because they wanted to inform the debate.

**Q301 Chairman:** You keep using the word, “the group” and you have used the word “members”, and you have told us there are 108 members. Is the group and the 108 members one and the same body or do you go out and embrace a lot more people because that is very relevant?

**Ms Turner:** When I refer to “the group”, I am referring to one of the sub-groups. That is a group of between 16 and 26 people looking at this issue on a month-to-month issue.

**Q302 Chairman:** But drawn from the 108?

**Ms Turner:** Yes.

**Q303 Sammy Wilson:** I am at a loss to understand. If you say, first of all, one of the reasons we need to talk about the past and truth and reconciliation to remember and whatnot, that strikes me as something which if it is going to have wider public benefits needs to be public, yet you are saying it does not necessarily have to be public, this can be something which can be done presumably between individuals or behind closed doors or whatever. How do you get this wider reconciliation if it is not at the public Truth Commission level where it is all going to be held in public?

**Ms Turner:** You should come and join one of the sub-groups, this is the kind of thing we debate on a month-by-month basis. The second option in this report is about internal investigations and, as Brandon said, it was mirrored on the disappeared and is about going to an intermediary who goes to organisations to get individual answers. That does not feed the wider debate in society about dealing with the past but the group recognise maybe that cannot be done through truth recovery and that is why they presented that as one of the options for discussion, but when we took that out to our 12 public roadshows we have had with this report, that was the one that the audience in a whole range of venues said, “That is not going to give us answers”.

**Q304 Chairman:** What sort of audiences? What size of audiences?

**Ms Turner:** Some of them were small. The largest one was about 50 and the smallest one was about four.

**Sammy Wilson:** Presumably the Historical Enquiries Team does that on a one-to-one basis, the Police Ombudsman does that on a one-to-one basis with people who have had members of their families killed or whatever. Dr Hamber talked about something much wider than that. He talked about a kind of truth body which, I think I wrote the words down, “subpoena, search, et cetera”. I know it was a personal opinion that he was expressing, but if that is the route we are going down I would see that as fairly one-sided for two reasons. First of all, if you are going to have people to search and subpoena, et cetera, you are more likely to be searching through police and Army records, et cetera, you are not going

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to be searching through the records of the paramilitaries or the UDA or the UVF, there is nothing to search there. It is going to be very much one-sided. I can understand why some republicans would love that because not only do they get what the Historical Enquiries Team is doing in a very controlled way at present but they get this done in the full light of publicity and, of course, they can learn lots of things from that. The second thing is I know lots of people who previously never were convicted but were involved in paramilitary activity in Northern Ireland and some of them are now teachers, some are businessmen, some look back on their past and wonder how they ever got involved in that, "Thank God, I was never charged. Thank God, I was never in a police station", but they know they were involved in it. Do you honestly think that those people who now have a stake in society, now have a job where they are looked up to, are ever, ever going to volunteer? You say we need a debate on this but this is one of the reasons why I think what you are suggesting can only go in one direction, and that is to expose the police, the Army, the state, to the full scrutiny and never get anywhere near the people who performed terrorism.

**Q305 Chairman:** Could I ask you to make a fairly brief, succinct reply to that because we are nearing the end of our 45 minutes and there are some more witnesses to appear before us before we fly back to London. The essential point of Mr Wilson's question was that this would become rather one-sided and biased. How do you answer that?

**Dr Hamber:** I will be succinct. Firstly, I feel I set the tone off in the wrong way at the beginning of the hearing. My task, or the way I saw what I was trying to say, was not to try and divert attention from the Healing Through Remembering project, which is what this is essentially about, it is about debate and a wider process and they are putting options on the table. I expressed an opinion, so I do not want that to be confused. When I raised that issue, what I was trying to say was I feel if we discount that issue we need to put out a very coherent argument saying why we are not going down that route. That is both a practical argument on some of the points you have just outlined as well as a principled argument because we need to bear in mind that in a lot of other societies around the world the opinion is they need to account for the past, there needs to be an uncovering of the truth, so if we are not choosing that route in this society we need to be very clear as to why we are not choosing that route. That is simply what I was trying to say and I feel I set the tone

incorrectly and perhaps created the impression that Healing Through Remembering is advocating a Truth Commission, which it is not, and it has those diversity of opinions. In terms of the specific question, equally if we were to debate this as a simple point of debate rather than trying to put this forward as, "This is what has to be done", you could probably make an argument that if there was a wide-ranging process that looked at all the types of violations there would be very few armed groups in this society that would come out looking very good. For example, it is absolutely clear that paramilitaries killed more people than anybody else, so if there was a wide-ranging process trying to paint a broad picture of the past, there is the potential that could be balanced against other types of issues and, in fact, they could come out looking a lot worse from that process with very poor structures of how that was authorised, how they understood what was legitimate and what was not, et cetera. I am just saying at the level of argument there is the chance those issues could be looked at differently.

**Sammy Wilson:** We do not need a Truth Commission to tell us how many people were killed by the UVF, the UDA and the IRA, there are books written on it, statistics given. If you ask for it in Parliament you will get that. If that is the only benefit you see, that everybody will come out looking bad, I have to say that is a fairly weak argument for having that kind of thing. Why have you given us a personal opinion? The answer Ms Turner gave links the two in. If this is going to be about some wider good for society and if you want to go down the route we are talking about then you cannot have it anything other than public and all the dangers that there are will come to the fore.

**Q306 Chairman:** Do you want to respond briefly to that?

**Dr Hamber:** No, it is okay.

**Chairman:** Thank you very much. Thank you for seeking to clarify in your last remarks. I think we all accept and appreciate that you are seeking to do good and find a way forward. What you have said will certainly be taken into account. When you leave today, if you feel there are points you wish further to clarify, things that you have not been able to get across to us for whatever reason, perhaps you could send a further written submission to our clerk. We shall be continuing to take evidence for at least another couple of months, so there will be ample opportunity for any supplementary material to be read by all the Members of the Committee and taken into account. Thank you very much.

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*Witnesses: Mrs Sandra Peake* Director, and *Mr Alan McBride*, WAVE, gave evidence.

**Q307 Chairman:** Mr McBride, Mrs Peake, can I welcome you both. Thank you very much for coming. I think you heard some of the last session but you probably did not hear any of Sir Kenneth's evidence, is that right?

**Mrs Peake:** That is right.

**Q308 Chairman:** Would you like to say a little bit about your organisation? I know you have been in existence for the best part of 20 years. Could you fill us in briefly on the background and how you see things and then we will ask you some specific questions. Two of my colleagues have to leave to get

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early flights, so I hope you will acquit them of any discourtesy. The rest of us, of course, will certainly be staying to ask you questions until 12.30 or thereabouts. Who would like to take the lead?

**Mrs Peake:** Alan and I both work for an organisation called WAVE. Primarily we provide support and training services to people who have been bereaved, traumatised or injured as a result of the Troubles. To date we have provided support to over 3,000 individuals. We have five centres working right across the North providing a range of support services to individuals and families. Referrals to WAVE continue on a daily basis from people who were affected in the early 1970s to more recent times.

**Q309 Chairman:** You are giving practical help to these people right across the Province?

**Mrs Peake:** Yes.

**Q310 Chairman:** How are you funded? How many are you?

**Mrs Peake:** We are funded by really quite a diverse range. We are very heavily EU funded and have been over the last number of years. We also have core funding through the Victims Unit, other diverse sources of small grant funding and we have to raise money ourselves in relation to sustaining support services.

**Q311 Chairman:** So you are a registered charity?

**Mrs Peake:** We are, and a limited company.

**Q312 Chairman:** You have some money from the Government?

**Mrs Peake:** Yes.

**Q313 Chairman:** And you have some money from foundations and other charities?

**Mrs Peake:** Yes.

**Q314 Chairman:** And some from individuals?

**Mrs Peake:** Yes.

**Q315 Chairman:** What is your budget?

**Mrs Peake:** Just over £1 million running on an 18 month to two year basis.

**Q316 Chairman:** This is to cater for five officers in Belfast, Londonderry?

**Mrs Peake:** Ballymoney, Omagh and Armagh. Each of those centres will also provide locally based services to areas like Enniskillen, Cookstown, Strabane.

**Q317 Chairman:** Is each office manned on a daily basis?

**Mrs Peake:** It is, yes.

**Q318 Chairman:** Office hours?

**Mrs Peake:** Through office hours and we also provide evening and weekend programmes.

**Q319 Chairman:** Do you? How many people are giving this service?

**Mrs Peake:** Belfast would have the largest staff team because our finance would be centralised through Belfast where we also have a training component. We provide trauma training opportunities to communities and other agencies. Each centre would have four to five members of staff on average and a volunteer network of around 15.

**Q320 Chairman:** So you are heavily dependent upon volunteers?

**Mrs Peake:** Yes, we are.

**Q321 Chairman:** Drawn from both communities?

**Mrs Peake:** Yes.

**Q322 Chairman:** It sounds to me that you are doing some very valuable work. How do you set about your work? Do you look for people or do they look for you? Is it referral by personal knowledge or recommendation? How does this happen?

**Mrs Peake:** Over time it has changed. I came into WAVE in 1995 and at that stage there were still many people coming forward in terms of the death of their loved one and, therefore, our role was more proactive in that we would have made contact with families to let them know that support services existed. Thankfully, that has changed and now we have a greater number of people making contact with us directly. Word of mouth is a major factor. Also, we have a very clear support role and trust is a very big issue within communities. Our referral base is very diverse, from political parties to local clergy to doctors, the whole spectrum of health professionals.

**Q323 Chairman:** When you say local clergy, you mean both Roman Catholic and Protestant, do you not?

**Mrs Peake:** Yes.

**Q324 Chairman:** If the Roman Catholic father or Presbyterian minister refers a widow to you—I am not asking you to break any confidences—what sort of support and help do you give?

**Mrs Peake:** Our first point of contact will be to determine where that person wants to be seen. We have a very extensive outreach network, we have people who go out to people's homes. To be truthful, if you relied on people to come in to any of the centres without that first step it would be very difficult. Sometimes people need that service brought to them. We would then see what we can do to provide support to them. We have a continuum of support services on offer from befriending or a listening ear service to different groups for different issues, I suppose, to an advice and welfare function.

**Q325 Chairman:** Can you give us some specific examples of the sort of help you give? It is helpful for us to know. Do you give financial help or do you merely give counselling help? What sorts of things do you do?

**Mrs Peake:** The help that we give will depend on what needs individuals have. We can provide counselling help and some people will go into

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counselling with registered Masters level therapists to a set standard that we have. Other people may want just to be visited and have support for some time and it would be through that ongoing support that their needs would be identified. Others will be facing financial or other difficulties, housing issues, benefit issues, and that support is available. In some cases they may be facing difficulties for their children and we have a youth service, so that youth service might work with them. For some it will be to meet other people who have shared some of their experiences and we have access into groups of people who have a variety of experiences, some might be bereavement, some injury.

**Q326 Chairman:** How do you give financial help and of what sort of order? I will tell you why I ask. Sir Kenneth, when he gave his evidence this morning which, sadly, you did not hear, said that one of the things he would like to see is some form of structured benefit system to help victims over a longer period. Once he recognised the difficulties he felt that this would be a very sensible, practical way of doing it. First of all, what, presumably limited, financial help can you give? Secondly, would you welcome something along the lines Sir Kenneth advocates?

**Mrs Peake:** Firstly, our financial help is not monetary, it would be advice. We will signpost people to available help and work with them as necessary to access that help. Secondly, we would welcome a revision of the system. One of our concerns is the fact that some people have suffered very detrimentally financially and emotionally and it has had a long-term impact and at present there is not a centralised funding measure that will adequately meet their needs.

**Chairman:** That was his point.

**Q327 Mr Fraser:** You are obviously spending a great deal of time with these people. What were you doing before you were doing this? What are your backgrounds as individuals?

**Mrs Peake:** My background is nursing.

**Mr McBride:** I was a pig butcher.

**Q328 Mr Fraser:** So you have come to this because you felt passionately about trying to help these people. Obviously you have come in that regard, have you not?

**Mrs Peake:** Yes. I came in 1995 and at that stage it was to develop support services.

**Q329 Chairman:** When did the pig butcher come in?

**Mr McBride:** I got involved in it because my wife was murdered in 1993. It was her father's fish shop and she worked in the next block to where I had the butcher's shop, so for very personal reasons I did not feel I wanted to go back and spend my time doing that, so I went and retrained as a youth worker and have been working in youth work ever since basically. That is my background. Since I left school at 16 I worked as a butcher up until I was 29.

**Q330 Mr Fraser:** In terms of what you have just described, Mr McBride, and I am sorry to ask you these questions but it is important we know your background, you have just described a situation where you had to deal with your life and you have moved on clearly from being here and what you are trying to achieve. How can we see closure for other people? You heard some of the evidence just now and there is a great, complicated array of opportunities ahead of us, and obviously some threats to the same in the way that have been described in conversations we have had, but how do we find a way forward jointly so that as a society here in Northern Ireland we can eventually move forward together?

**Mr McBride:** If I can tell my own particular story and I will probably have to contextualise it by saying in all cases you probably will not find closure for folk, and that is a reality we need to come to terms with. Regardless of what you put in place there are going to be people out there who will largely remain outside of whatever it is you put in place. I was at some of the Bradley-Eames consultative group meetings very recently and heard a number of people speak to the floor and what they want to see happen is to would have the people who murdered their loved ones back in prison and people who were linked to paramilitary organisations out of the government of Northern Ireland, and with the best will in the world we all know those things are not going to happen. We need to say to people, "If that is what you want in terms of dealing with the past, we are sorry but we really can't deliver that", so what we have to find is other ways of dealing with this kind of stuff. It is very important we say to those people they are not going to get the sense of justice they feel they want. Let us be honest, there is probably nobody in this room who would want to deny them that, yet we are all realists and know that the political process has moved on and for the first time, certainly in my lifetime, we have a stable government here and we do not want to see that go, so we have to say to those people, "We are sorry, but we can't give you what you are asking for". What we then have to do is concentrate on other things that are going to try to be helpful to the process but also remember for some folk it may not be enough. One of the things that helped me a lot was I was quite fortunate when my wife died that she happened to be working in the Health Service and I am sure you all know that when you get compensation you get compensated for loss of earnings and because she had a good job the compensation I got was reasonable. Obviously you cannot compensate for loss of life, and no-one is suggesting you can, but the compensation I got meant that I was able to leave work to go back to university to study and that gave me sufficient mobility in terms of being able to move around to do different jobs, something which I find invaluable and means I am able to put something back. Beyond that, the other thing that was most helpful to me was being given the ability to tell my story, and I have done that at lots of different meetings and groups, some small groups of maybe three to four people, some large groups. I gave the

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Bloody Sunday Lecture in Derry two years ago and for me that has been very helpful in being able to come forward and talk about what I have been through and how I have dealt with it. That is something that we probably need to look at as well. The other thing that has been very helpful to me, and I do not think you can legislate for this, is the kind of people I have been able to surround myself with and get involved with through my work and other things. I have met with republican and loyalist ex-prisoners. Initially I was very reluctant to do so, I was very suspicious about what it was that they wanted from me and how we could relate together, but after a while, meeting and discussing a whole range of things, you start to not demonise people so much you have got to know because they took part in the conflict. I have been able to have discussions around things that had you said to me ten years ago I would have been having discussions on I probably would have said, "Absolutely no way". When I think of where people are at the moment and see some people involved in victims' work, they have surrounded themselves with people of a like mind so there is no challenge. The people who come to the groups in some instances are held back because they cannot move on because the people who are representing them are not moving on either. I was fortunate that I was able to have those experiences. I do not know how you could legislate for some of that stuff, which is why I think it is particularly difficult.

**Q331 Mr Fraser:** Are you working closely with Healing Through Remembering?

**Mr McBride:** I sit on their Board.

**Q332 Mr Fraser:** I thought there was an integration there!

**Mr McBride:** And I chair one of their groups looking at the memorial museum. It is through organisations like Healing Through Remembering that I have got to know people who were former combatants and other victims. There is no one-size-fits-all, which is why certainly Healing Through Remembering, and we would support this view as well, are in favour of a menu of options for dealing with the past.

**Q333 Mr Fraser:** In terms of how one moves that forward, the idea of a single integrated approach rather than different historic inquiries, would you feel that may be a way forward to focus on rather than it being, with all respect, a disparate set-up as it could currently be seen, or not?

**Mrs Peake:** There are a number of options for families and some of them are driven by their circumstances. If you look at our work with families some of it involves their work with the Historical Enquiries Team and for other families it is around the Police Ombudsman Sapphire Team, and for some it is around the Commission for the Disappeared because of the very nature of their circumstances. If you are saying that one body could do all that, I am not sure about that because each of those cases in terms of the mechanism and the way

they are set up has benefits for some families, maybe not for all, and it is driven by the individual nature of their circumstances.

**Q334 Chairman:** We were thoroughly impressed by the sensitivity displayed both by HET and the Ombudsman's office and we were fairly impressed, I think, by the thoroughness of their inquiries. Would that be your impression too?

**Mrs Peake:** Yes. I think they have taken time to look at their protocols. They have taken time in relation to accessing training and other support mechanisms. Also, they have taken time to listen to both positive and what they may consider as negative feedback and have learnt from that in relation to how they inform their practice. The role of family liaison has been very important for families because in the past they might not necessarily have had that, so the fact they have somebody who starts with them and, hopefully, will finish with them is something which is very important. From speaking to a number of people who have come through that process from the early 1970s, the fact that someone is sitting down, listening, coming back with answers, adhering to the promises and undertakings they have given, has validity. Even to record at the time that an investigation was not adequate or things were overlooked, there is something very positive for families in relation to having that process.

**Q335 Chairman:** Would you go along with that, Mr McBride?

**Mr McBride:** Yes.

**Q336 Mr Murphy:** It says here you are dealing with 3,600 people, and you have probably had more contact than any other organisation, I would suggest, in Northern Ireland, so you are probably best-placed to understand the requirements of those individuals and families that you deal with. Compensation was mentioned earlier by the first witness today. Would you see that as an essential part of moving forward, either to revisit the actual compensation people received, and in some cases it was not very much, or to improve the benefit system to recognise the economic problems people have suffered as a result of this?

**Mrs Peake:** Absolutely. We have undertaken two recent consultations across the organisation and one of the central issues that came out of both those consultations in relation to dealing with the past was the issue of compensation. Many people, I suppose, have viewed it in terms of lack of recognition, the fact that they have been taken to places they would not have been in but for what happened. At a level, whether it is re-looking at compensation or looking at what can be set up to meet the needs of those people and to be needs reflective, that would be very welcome.

**Mr McBride:** Some of the stuff that came out of our research, particularly with folk who suffered injury in the Troubles, was the compensation they got in many instances did not take on board the long-term

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nature of their problems, so as their problems got worse over the years the compensation was no longer adequate.

**Q337 Chairman:** This was the point Sir Kenneth was seeking to make and why he was rather in favour of a benefit. Clearly you would both concur with that?  
*Mrs Peake:* Yes.

**Q338 Chairman:** Another point Sir Kenneth made was that on balance he was inclined to be favourably disposed towards an amnesty. What is your view there?

*Mr McBride:* For me, it begs the question in terms of the whole Truth Commission idea and whether or not in all instances you have to buy the truth. I think you probably do, you have to have some carrot in order to encourage people. I think it was Mr Wilson who spoke earlier about folk who maybe had moved on and become teachers or businessmen, et cetera, and how do you encourage those folk to come forward and tell the truth. An amnesty would not be a carrot at all because they were never brought before a court, they never had a criminal record anyway. It is something we have not really discussed, to be honest with you. Any time that I have mentioned it within the victim survivor community that we work in, I know many people who were affected by the conflict have not been in favour of it, they see all sorts of problems. It is something that we need to have more discussion around. My personal opinion is I think we gave away all the carrots when we signed the Good Friday Agreement and perhaps if we had it linked with truth for prisoners, truth for guns or something like that, there would have been some more bargaining power.

**Q339 Chairman:** You cannot go back.

*Mr McBride:* We cannot go back and the bargaining power we have at the moment is very weak. There is an issue around people not having criminal records any longer which might mean they can travel to other countries and get jobs, et cetera, and maybe you could look at that, but it is a very weak bargaining chip. That is a personal opinion.

**Q340 Chairman:** What about the issue of the Truth Commission? Sir Kenneth was very sceptical about it. Our previous witnesses rather put forward the view that you had to put up a good case against it and there was a degree of support for it. You are part of healing and so on, what are your views personally?

*Mr McBride:* I can see benefits of it. If I can answer anecdotally and very quickly. I was speaking at a conference about two years ago with young people aged between 13 and 16. I was telling my own story, and at the end of it one of the young fellas who was about 15, so he would have been about two when the Shankhill bomb happened in which I lost my wife, stood up and basically challenged me about what happened that day and my version of it. He basically alleged that there was a meeting taking place in the upper room where my wife was murdered of top UDA personnel and this was the reason the bomb

was placed there and that was how my wife came to die. I have heard that rumour as well, I do not think it has ever been verified or openly acknowledged that was the case. That is just one anecdote. If for no other reason than just setting the record straight, I think a Truth Commission probably very quickly could bring some answers to some of those questions around the actual facts of the case. For me there are definitely some benefits in having a Truth Commission. For me, the issue is not necessarily whether we get to the truth or not, it is how we do it, whether we have a full-blown commission or whether we look at some of the other options that I know Healing Through Remembering have been putting forward and also the Eolas Report which was put out as well which identified two further models. What we need to do here is not to come down and say, "This is what we need" but to have a very sophisticated discussion. At the moment the debate has not really happened and it has not engaged the victim and survivor community, they have largely been absent from the debate and the first port of call must be to have that debate, not just look at the South African model but look at other models. I think Kate Turner said there are around 30 models around the world and we probably need to look at all of those and try to pick out bits and pieces to find out whether there is a model that would work well in a Northern Irish context. Rather than saying we need a Truth Commission, I think I would be saying we need a debate around whether we should have one or not.

**Q341 Chairman:** What is your view?

*Mrs Peake:* Similarly, in our discussions within WAVE there is a great variety. For some people there is a pressing need for a process where they will discover the truth. Others have spoken about the fact that it is easier having a faceless person than having the face of someone they know who was responsible in the 1970s, 1980s or 1990s for their loved one's death. You cannot say there is general widespread agreement that this would be the best way forward. I would share Alan's view that one process would not fit all by any means. In terms of some of our work, there have been small processes where we can see for some families it has brought a degree of helping them in the longer term process. Small examples of that would be the Commission of the Disappeared and their model for helping those families get information on where their loved ones are buried, which has been a positive process and there has been positive engagement in relation to recovering their loved one's remains. In other cases it is about setting up a variety of meetings or mechanisms for people to get information and for some that assists them in relation to moving forward. One process that the Historical Enquiries Team have engaged in is in relation to providing, when they have their process completed, a revision to the 'Lost Lives' record that is held in relation to whether there is information that was inaccurate at the time. They are putting a process in place for clarifying those details and, to be quite truthful, that has been major because for some people that record

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is there, it is bound, it is held, used as reference, and for some people there are difficulties when those details are incorrect.

**Q342 Chairman:** I know this is the most difficult question of all, but what is your view about the medium to long-term future? Sir Kenneth made the point, and others have made it to us, and we ourselves are very concerned about the vast cost of public inquiries and he said he was not in the business of advocating extra wages or fees for lawyers and other things. Also there is this feeling that one does detect wherever one talks that although there is a desire for truth, desire for as much knowledge as possible, nevertheless the past must not overwhelm the present and jeopardise the future. Is there a time when we should stop dealing with the past?

**Mr McBride:** I think there will come a time when as a society we should probably stop dealing with the past in that I think victims and survivors and people who were impacted by the past will go on and remember in their own way. What we are trying to do with the whole debate around dealing with the past is to have something that we can hang the past on in order to free us up to move into the future. That seems to me to be the rationale. My fear is if we do not do that you are going to leave the past to be determined by the tabloid press, which fill their pages Sunday after Sunday with different atrocities and different truths that are coming out about these atrocities. Those things are sold around Northern Ireland and the families have to deal with this every Sunday and come to terms with things that are being revealed.

**Q343 Chairman:** It is very, very difficult, but how and when do you think the line should be drawn?

**Mr McBride:** It is difficult to put a time on it, to be honest with you. With the passing of time, things which perhaps are not possible today become more possible. For example, if you look at a very contested issue around a memorial for victims, particularly a memorial which would have the names of those who died on the memorial, I think now is probably too soon to have something where all the people who died would be written on it side-by-side, but with the passing of time something like that may well become possible. There are things in the future that we will probably put in place.

**Q344 Chairman:** Do you think, and I apologise if the question is particularly difficult in your case, that you could accept a memorial that had both your late wife's name on it and the name of the person, if known, who killed her?

**Mr McBride:** I probably would find that to be very difficult. That said, I recognise in the Shankhill bomb, and to me this goes straight to the heart of the matter, I lost my wife and Mrs Begley lost a son, Mrs Begley's son murdered my wife. I would rather be in my position than in her position, but I still respect the fact that she may well want her son to be remembered as a person who was affected by the conflict, because at the end of the day, whether we

like it or not, an unpalatable truth for me is the fact that if Thomas Begley had grown up in another part of the UK he probably would not have killed my wife and he would not have died either. I do respect the fact that we need to find some way, and I do not know how to do this, this is the difficulty, and surely somebody out there has some imagination whereby we could come up with something that would recognise both of our hurts. I would be against having some meaningless statue without names somewhere which commemorates all the people who died because I would want to see my wife's name on it.

**Q345 Chairman:** So you would want to see something a little bit like perhaps the arboretum the Queen opened earlier this year for those who have died in the Forces since the last war. You would like to see some memorial in Northern Ireland eventually.

**Mr McBride:** In a personal capacity, absolutely. With my Healing Through Remembering hat on, we have been looking at the whole idea of a permanent living memorial museum whereby you have a building which would tell the story of the Northern Ireland Troubles from all different perspectives and people could come and see and learn. Perhaps there would be housed a memorial in that building. For me, the main reason for memorialising the conflict would be not only to remember all the people who died but to make sure we learn lessons from it and ensure these things never happen again and our young people and their young people can come and learn from this very difficult and horrible period of our history. That is what I would like to see happen.

**Q346 Mr Fraser:** You just touched on a very important point, young people and how they see this. Accepting the point you make about wanting this living memorial, which is an interesting concept, until that happens how do you deal with young people? How do you stop what I would suggest is the possible prejudice? As a father myself I can tell my children certain things, what is the expression, "Do what I say, not what I do". How does one stop the next generation from feeling anger about this?

**Mr McBride:** Obviously parents have a role here. I suppose there is a big issue around parents taking that on, some parents do and some parents do. Beyond that, we have to get it into our schools and youth clubs. We have to look at ways where we can learn from our history. One of the projects that I have been very fortunate to be involved with is a project called Facing History and Ourselves, which is run primarily in the States although they have come to Northern Ireland and we ran a programme ourselves based in the WAVE Trauma Centre where they look at history and start to learn, not so much dates, facts and figures and who did what to who, but what does it mean for us today and how can we learn from it.

**Q347 Chairman:** Where was this based here?

**Mr McBride:** No, it is based in the US.

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**Q348 Chairman:** But you said there was something here.

**Mr McBride:** I ran a programme in WAVE simply because I had been to one of their summer schools. I do not believe they have a presence in Northern Ireland. There is a group of around 90 coming over in May. People who are involved in Facing History throughout the US are coming to Northern Ireland and doing a fact finding mission here. I know there are some movements being made to see if this thing can be rolled out in schools in the curriculum. Facing history and dealing with our history is one of the big challenges for our new society. We need to find a way of building a shared future and looking and learning from the past, I am 100% sold on that. I do know it is a debate for us and we are having a conference tomorrow looking at the whole notion of truth telling and there are about 40 or 50 members of WAVE coming to that, so we are playing our part in that.

**Q349 Chairman:** Tell us a little about that tomorrow. What is the conference that is being held?

**Mr McBride:** We have actually stolen the title from one of the Healing Through Remembering publications, so apologies for that, guys. It is entitled "Making Peace with the Past" and there is a guy called Wilhelm Verwoerd, who is from South Africa, and his grandfather was Hendrik Verwoerd who was the old South African Prime Minister when apartheid came on.

**Q350 Chairman:** I remember him well, yes.

**Mr McBride:** Wilhelm is going to be coming and exploring some thoughts around the whole issue of dealing with the past.

**Q351 Chairman:** How do you structure a conference like that? Where are you holding it?

**Mr McBride:** We are holding it at WAVE. There are going to be about 40 or 50 people, all of whom have been directly affected by the violence who have lost members of their family.

**Q352 Chairman:** It is an invited group of people?

**Mr McBride:** Yes. There are about 50 people coming to it. We will probably have Wilhelm speaking in the morning and myself and another guy from another victims group across town are going to be doing a panel on the whole idea of truth telling and then we will break into some workshops. The workshops for us is where it is at because we will have folk who come, who lost people in the conflict, who cannot come and speak in groups like this but are much more likely to speak in very small intimate groups, so they will come forward and share their views as well.

**Q353 Chairman:** This is going to be in Belfast?

**Mr McBride:** It is going to be in Belfast, yes.

**Mrs Peake:** We also have focused on people who would not normally come to such public conferences that are held in other areas, they are not 'serial conference-goers'. They are people who are very interested in the issues and might not necessarily

have that opportunity normally, but because they have had contact with the organisation they are happy and are willing to come through that mechanism. It is a regional initiative with people coming from all over.

**Q354 Chairman:** That is very interesting. What are both of your views on the Victims Commissioner, this business of having four Commissioners? Is this a cop-out or is it a good idea?

**Mr McBride:** When Bertha McDougall, the interim Commissioner for Victims, was doing her consultation, we suggested that perhaps they think about the idea of a Commission because it was always going to be very difficult to see how one person could do that job. That is not to show any disrespect to the people who applied for the job, many who applied were very capable, very able people, but given we come from a very divided, very diverse society it was always going to be a very tough question to get one person to address. We were in favour of the Commission. That said, I do think we have a number of concerns around the way the Commission was set up. I do not believe that it was particularly well thought through. This is a personal opinion. I think it was probably built on the fact that the DUP and Sinn Fein could not really agree a candidate so it just emerged. I also think the fact that the legislation even today is not in place would further spell out for me that they had not thought this through well enough. I have other concerns around the fact that there are four Commissioners on a very well-publicised pay scale, £65,000 each, with no-one taking overall responsibility. In terms of public relations, the four were announced at the same time and many victims organisations in the sector that we work for are finding it very difficult just to make ends meet with funding coming to an end, et cetera. We have loads of issues with it but, that said, I am more than prepared to give it time, let it bed in and see what sort of work they do. All the candidates on it are well able people and I am sure they will make a significant contribution, but we need to iron out some of the protocols initially.

**Q355 Chairman:** You would ratify and monitor?

**Mr McBride:** Absolutely. There is no other way to go on this. It is important that we do that.

**Mrs Peake:** We have waited some time for this to happen in terms of the length of time it took for an appointment to happen. What was happening in the sector over that time was many decisions were not being made because it was on-hold and we had to wait and see in relation to the Commissioner being appointed. The sector as a whole is facing major difficulties in relation to the end of European funding at the end of June. I agree with Alan's point that that does cause a major difficulty in relation to providing any level of continuity because you have people coming to you and in all likelihood we will finish with them, they will get the level of support they need, but that will be very difficult when the summer sees the end of considerable money.

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19 March 2008 Mrs Sandra Peake and Mr Alan McBride

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**Q356 Chairman:** Mr McBride is himself a victim and he speaks very movingly about these things. How many of your people have similar experiences to those of Mr McBride?

**Mrs Peake:** We have just over 30 staff and a third of our staff team have direct bereavement. We have a Management Board and three-quarters of that Management Board have direct experience of the Troubles through bereavement or injury, and quite a number of our volunteers.

**Q357 Chairman:** One of the things that has struck me over the last couple of days has been that everything is geared to those who were bereaved. There were many who suffered in the Troubles personally or through their houses being burned down or whatever, but many who suffered grievous injuries, maiming, blinding, all that sort of thing, and I wonder if the system is geared sufficiently to them. What do you think?

**Mrs Peake:** That is a major issue for people who have been affected in that way at a number of levels. In our report on the back of the consultation to the Bradley-Eames consortium we did make the point that many of those who have been injured in whatever way have often felt attention has focused on the bereaved and in some ways their needs and

the complexity of their needs have not been recognised, and the fact there is no official record of who has been affected. We know the names of those who have died but the estimates in relation to those injured are only estimates. It is estimated that anything between 40,000 to 100,000 have been injured. That causes issues for people in relation to how they have fared and in terms of how they have been treated long-term.

**Q358 Mr Fraser:** Your overall aim is to offer support to anyone bereaved or traumatised?

**Mrs Peake:** Yes.

**Q359 Chairman:** I am grateful for your observations. Thank you both very much indeed for the evidence you have given, we are very grateful to you. Thank you for what you are doing and continue to do. We shall be making our recommendations over the summer. If there are points you wish to send in a written submission after today's hearing, things that you feel you have not been able to explore in-depth with us, please let our clerk know.

**Mrs Peake:** We have left a number of our reports with you.

**Chairman:** That is helpful, but anything specific. Thank you very much.

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## Wednesday 2 April 2008

Members present:

Sir Patrick Cormack, in the Chair

Mr David Anderson  
Mr Gregory Campbell  
Mr Stephen Hepburn  
Lady Hermon  
Kate Hoey

Dr Alasdair McDonnell  
Mr Denis Murphy  
Stephen Pound  
Sammy Wilson

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*Witness: Ms Jane Winter*, Director, British Irish Rights Watch, gave evidence.

**Q360 Chairman:** Good afternoon and welcome. Could I also, on behalf of the Committee, thank you very much indeed for agreeing to come and give evidence. You are of course aware that this evidence is, although not being broadcast on the television, is available on the internet and of course everything is taken down and there will be a full published transcript. Are you quite happy about that?

*Ms Winter:* Yes, I am.

**Q361 Chairman:** Fine. You have been the Director of British Irish Rights Watch for how long?

*Ms Winter:* Since 1995.

**Q362 Chairman:** So you have done a good stint. Before we move onto the questions, is there anything that you wish to say by way of opening statement?

*Ms Winter:* Only to thank you very much for inviting me here today.

**Q363 Chairman:** You know that we are looking into the past, the historic enquiries, the work of the Ombudsman, the cost and whether it is proportionate, how long this should go on and all the rest of it. We will be making a report to Parliament which will of course be published and we will publish it with a press conference in Northern Ireland towards the end of June/early July time. We are about half way through now. We took evidence in Northern Ireland a couple of weeks ago and we shall be taking further evidence in Northern Ireland early in May. Did you hear the evidence we took in Northern Ireland?

*Ms Winter:* I have not, no.

**Q364 Chairman:** Have you read it?

*Ms Winter:* I have not yet, no. I have read some of the testimony you have taken here in London but I have not caught up with that from Northern Ireland.

**Q365 Chairman:** Can you give me by way of opening your views on the work of the Historical Enquiries Team? We have visited it; we have seen it at first hand. In your opinion is it achieving what it set out to do?

*Ms Winter:* That is actually a very difficult question for me to answer because my organisation is involved in quite a few of the cases that the Historical Enquiries Team is looking into.

**Q366 Chairman:** How many?

*Ms Winter:* It would be hard to give you an exact number, but somewhere between 30 and 50 I would think, spread across the whole time period that they cover, so some of them are more recent and some of them are quite old.

**Q367 Chairman:** Is your time span the same, 1968 to 1998?

*Ms Winter:* No, our time span is 1968 to today, but we have cases that coincide with their time span. So far we have not seen a final report from the HET on any of our cases so it is difficult for us to judge whether they are in fact delivering what they promised. However, we are obviously aware of other cases that other NGOs have been involved in where there seems to have been a somewhat patchy response. Some people have been very, very pleased with the work of the HET and feel that they have really achieved some closure to the loss of their loved one and others have been critical about mistakes in the report and so on. The one thing we have always found is that the HET are very, very family friendly and if they do make a mistake and it is pointed out to them, they will do something about it; they do not insist on their version of events and they will look at it again. They do make real efforts to involve families in the work and to try to keep them informed.

**Q368 Chairman:** That very much bears out what we saw because we met a few families, obviously confidentially and we would never name them, but we did get the impression that the matter was being dealt with meticulously, that it was being dealt with sensitively and that even those families who could not be entirely happy with the outcome at least respected the integrity of the operation. That would seem to accord with your general comments.

*Ms Winter:* It certainly would, yes. As you say, for many families the truth is never going to be discovered. People are quite realistic about that, they do not usually have huge expectations that somebody is going to be prosecuted after 30 years or whatever. The families that we work with feel that the Historical Enquiries Team is doing its best to get to the truth and is also prepared to share with them as much information as they are legally allowed to share which, for many families, is a new experience.

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**Q369 Chairman:** When we were in Northern Ireland we also went off to the Ombudsman's office where again we met with senior officials and we also met with representatives of some families. We had evidence which you will have read because it was here in London from the Ombudsman himself in which he expressed very great anxiety about being submerged in the past as far as his operations are concerned and about his ability to deliver what he believes the Ombudsman should be delivering now and also coping with the past. What views do you have on that?

**Ms Winter:** It is all a question of resources at the end of the day. I was having a look at the budgets available to the police, the HET and the Police Ombudsman and just on last year's annual figures it would appear that whilst the police have £2 million a day to run their operation the Police Ombudsman has only £24,500 and the HET has only £15,000 which are minuscule by comparison, and yet some of these historical cases are very, very difficult and they would, in my view, be a major crime operation if they were to occur today and yet neither the HET nor the Police Ombudsman has the resources to deal with that sort of work.

**Q370 Chairman:** What is your answer to that? Would you do as the Ombudsman has said he would like and have the operation divided into two so that there is not a drain on the resources for current work? Would you keep them together under his general oversight? How would you deal with that?

**Ms Winter:** I am well aware that Dame Nuala O'Loan, his predecessor, has proposed that there should be one unit which is made up of what is now the HET and the historical aspects of the Police Ombudsman's Office and that is actually quite an attractive proposition with some provisos. It is attractive because it would do away with any duplication between the two organisations of which there is inevitably some. It is attractive from the Historical Enquiries Team's point of view because it would get round the fact that it is the police investigating the police and therefore they are not compliant with article 2 of the European Convention in terms of independence. It would also overcome the problem that the Police Ombudsman has which is that his remit is limited to police misconduct and he cannot look at the bigger picture. From all of those points of view I think her idea has merit. The provisos would be that it must have the resources that it needs, the powers that it needs and hopefully it would not lose the learning that both the Police Ombudsman's Office and the Historic Enquiries Team have already amassed, which is quite considerable. One would hope that they would inherit the staff who had been doing the work anyway.

**Q371 Chairman:** You said very honestly that you could not deliver a verdict on HET apart from expressing a general satisfaction with the modus operandi. What about your experience of the work

that the Ombudsman's Office has done? Are you well content with that or do you feel it has not been well done?

**Ms Winter:** We are in a better position to comment on that because his office has been around for longer and we have seen more cases that we have been involved in come to fruition. The outcomes there have been patchy. I think it very much depends on the quality of the individual investigating officers. Some of them are excellent and do a very, very thorough job and they explore every nook and cranny of the complaint; others seem to be much more superficial. As an institution certainly up until now we have found the Police Ombudsman's Office much less family friendly than the Historical Enquiries Team. They are much more concerned with confidentiality and not wanting to disclose more than the bare minimum of information to families which can be very, very frustrating because families are much more often interested in finding out the truth about what happened than in making a complaint against an individual police officer.

**Q372 Mr Campbell:** In your submission you talked about HET being given the tools it requires to finish the job. Can you put some flesh on that? What does that actually mean?

**Ms Winter:** As you know they have been given six years to try to cover all the murders that took place between 1968 and 1998. It is obvious when one looks at the sums and the number of cases they have managed to close so far that they are going to overshoot that target; they are not going to make it in six years. What I was trying to argue in my submission was that now that this enterprise has been started so many expectations have been raised amongst those families who come within the remit of the HET that it would be devastating for them if their case does not get looked at. I am arguing that they should be given the resources that they need to finish the job, even if it takes longer than originally anticipated.

**Q373 Mr Campbell:** You also said, "It is crucial in our view that whatever the cost, the HET should be allowed to continue its work", the relevant quote being "whatever the cost".

**Ms Winter:** I can see why those who hold the purse strings might not enjoy that phrase. I obviously do not mean that they should not be cost effective and that they should not be accountable for their money, but what I was trying to imply was that costs should not be the final arbiter in this exercise. This is a unique exercise, it has never been done before and, as I say, it has raised many expectations and to shut it down on financial grounds I think would have more detrimental effects than any benefit from saving money.

**Q374 Mr Campbell:** You go on a bit further than that and you have said, "If HET was not allowed to complete its work the expectations of a large number of victims would be dashed and public confidence in

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the police and the criminal justice system would be dealt a body blow from which it may never recover". Is that not a rather extreme statement to make?

**Ms Winter:** I do not think it is. I think it can be underestimated, particularly by people from outside Northern Ireland unlike yourself, how difficult a job the RUC had during the conflict. The reason why it was not able to deal with what we would think of as ordinary crimes a lot of the time was because all of its resources and energy were focused on an almost unmanageable situation. We have found in our work right across the community that people on all sides have felt they have not had a decent service in the past. The Historical Enquiries Team, because of its openness and its willingness to engage in dialogue with families is, I think, helping to restore confidence in modern policing and some of that thinking is also taking root within the PSNI who are themselves becoming more family centred, better at family liaison than they used to be and so on. So there is a kind of symbiotic relationship there and I just think from the families we work with who have been engaging with the HET, if the HET rug was pulled from under their feet then they would lose faith in the police altogether.

**Q375 Mr Campbell:** I do not doubt what you say about the work of the HET. Everyone that I have spoken to and the Committee have spoken to speak very highly of the work of HET. However, are you saying that the work of policing in 2008 in Northern Ireland would be dealt a body blow from which it may not recover because of the attitudes of a number of people to investigations into events of some 30 years ago that were not satisfactorily concluded?

**Ms Winter:** Yes, I am saying that because there is a historical continuum. It is not true that this is now and that was then. For people who lost a loved one where there has been no resolution to the case it is as if it happened yesterday. Now that there is some glimmer of a possibility of some resolution and some closure to that, if you took that away that would affect, I think, people's attitudes towards the police now. That is partly because the HET is seen as part of the PSNI, which of course it is. Dave Cox is answerable to an assistant chief constable. It is part and parcel of the police and people are well aware of that; they do not see it as a separate organisation. One of the HET's difficulties is that it is not seen as being sufficiently independent by some people.

**Q376 Mr Campbell:** In terms of day to day policing where people are now phoning the police more and more in relation to antisocial activities, criminal activities, car theft, all of that where some people say they are achieving excellent results, some people say it could be improved, but the fact is that they are reporting to the police which historically they would not have done. Are you saying that all of that would be jeopardised for all the hundreds of thousands of people over a period of years from now on who have to report criminal activity, because of an uncompleted HET investigation the bulk of which relates to the 1970s and the 1980s?

**Ms Winter:** I am not sure that it would all be jeopardised but I think it would create a huge hurdle for the PSNI to have to get over. It has been building public confidence, as you rightly say, and people are much more willing to engage with the police now than they used to be. When somebody is murdered there is a ripple effect. It does not just affect the immediate family of that victim, it often affects an extended family and sometimes a whole community. People who were not directly involved in that murder nonetheless are intensely interested in the investigation and the outcome of that investigation. I do not think that should be underestimated. It is for that reason that I feel that to just disband the HET in the middle of its work would do more harm than good.

**Q377 Mr Campbell:** The Ombudsman and some other witnesses have suggested that it might be possible to hive off all of this work to separate agencies. Do you have a view on that?

**Ms Winter:** As I was saying earlier, I think that is what Dame Nuala O'Loan has been recommending. I certainly think it does have some attractions to it from the Police Ombudsman's point of view that he could get on with the current complaints system.

**Q378 Chairman:** That is very much his view.

**Ms Winter:** Yes.

**Q379 Mr Campbell:** Cost would a secondary factor as far you are concerned.

**Ms Winter:** As said earlier, it would need to be sufficiently resourced. It would need to be at least as good as what people have now.

**Q380 Mr Murphy:** When we visited the Historical Enquiries Team we had the opportunity to look at some of the evidence that had been collected. In some cases there was quite a bit, several boxes for an individual case, and yet in others there was very little, perhaps three or four sheets of A4 containing very little information. It is fairly obvious to us and a lot more people in Northern Ireland that information does exist out there. Individuals or organisations will have information on many of these murders. How would you see the HET changing to try to encourage these people to come forward? Would you consider amnesty to be part of it?

**Ms Winter:** I think one has to be very careful about amnesties because from a human rights perspective—which is obviously the perspective I am coming from—we would be very concerned about impunity and about the slate being wiped clean where people have done wrong. On the other hand there clearly is a trade-off—we have seen this in some of the public enquiries—between giving people at least a limited element of amnesty in return for information. I think it would really be a matter for the professional judgment of the HET whether they think that such an offer would help them or would possibly hinder them; for everybody who might

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come forward there might be somebody else who, disliking the idea of an amnesty, refused to come forward.

**Q381 Sammy Wilson:** At the beginning of your submission you gave your impression that British Irish Rights Watch is a body which deals with complaints right across the board and takes a fairly objective view of all of this. However, reading your submission and looking at some of the comments which have been made here, it does not seem very objective. Phrases such as “the police had a gentleman’s agreement which meant that the RUC did not investigate them in any depth, accepting self-serving statements supplied by the Royal Military Police”; “It is a safe bet that many of the cases will turn out to be of major proportions” (this is in relation to the UDA); your contention that the Bloody Sunday Inquiry was full of flaws. It is not really a very objective assessment of the police, is it? None of these statements are backed up by any facts.

**Ms Winter:** In relation to the gentleman’s agreement I can and indeed would be more than happy to send you or the Committee all the documentary evidence that exists. The term “gentleman’s agreement” is not my term, it is the term that was adopted at the time. It came out of papers that came from the public records office. I would be very happy to supply you with that information. I do not believe that we were being in any way biased in referring to that agreement which is a historical fact, it did exist.

**Q382 Sammy Wilson:** The comments about the gentleman’s agreement, who made them?

**Ms Winter:** The agreement was made between the RUC and the Royal Military Police.

**Q383 Sammy Wilson:** The comment about the gentleman’s agreement, who used that phrase?

**Ms Winter:** I am afraid I cannot remember off the top of my head who said it.

**Q384 Chairman:** Is it a phrase you quoted rather than one of your own.

**Ms Winter:** Yes, it is one that I have quoted, not one that I have made up. As I say, if you would like me to send you the evidence I certainly will.

**Q385 Sammy Wilson:** Yes, we would like to see the source of that particular comment. You had also mentioned the activities of C Company of the UDA, “It is a safe bet that many of these cases will turn out to be of major proportions”. “Safe bet” based on what? There is no evidence given in your submission as to how you came to that conclusion.

**Ms Winter:** I came to that conclusion based on the number of serious cases that have already emerged from that particular part of the UDA. Again I can send you details.

**Q386 Sammy Wilson:** You are actually referring to the future, not referring to past cases.

**Ms Winter:** If I recall correctly I had referred to the Police Ombudsman’s Operation Ballast report and what I had in mind was that if anybody had the time

or resources to go into some of the other things that have gone on in Northern Ireland—and I accept fully that they went on on both sides of the divide—I am thinking for example of the Stakeknife investigation, it is a safe bet that they would be just as bad. That was not an isolated, one-off case; I think that was the point I was trying to make.

**Q387 Sammy Wilson:** You are speculating.

**Ms Winter:** Yes, but I think by using the word “bet” I made that clear. In relation to Bloody Sunday it is not just me who thinks it was flawed; the Government went to the trouble of setting up a second inquiry and I do not believe they would have done that unless somebody somewhere thought that there really was something wrong with the first inquiry.

**Q388 Sammy Wilson:** Some people argue that it was a political decision to set up the inquiry. In relation to the cases you have taken on, you have mentioned there are about 30 to 50 cases that are currently being dealt with by the Ombudsman and the Historical Enquiries Team which are also being dealt with by British Irish Rights Watch. How many of those cases would relate to instances where terrorists have murdered, for example, a policeman or a member of the security forces? How many of those cases would relate to murders by terrorists?

**Ms Winter:** The majority of them relate to murders by terrorists. Some of them relate to members of the security forces, for example there is a police officer who was shot off duty. Obviously I cannot give names here for confidentiality reasons, but I am sure you will remember the dreadful atrocities of the human bombings where both civilians and a large number of soldiers were killed. That is another case that we have been involved in. It is the truth that we do act for anybody whose human rights have been violated because of the conflict, absolutely regardless of their status. We do not go to people; we do not chase. We do our level best for anybody who comes to us and asks for our help.

**Q389 Sammy Wilson:** In how many of the 30 to 50 cases would there be allegations of collusion by the security forces?

**Ms Winter:** I think probably about half of them. I am afraid we do not actually count all the cases that we have; we just get on with them and do the work. I am estimating here—guesstimating even—but I would say it is about half.

**Q390 Sammy Wilson:** The vast majority of cases that are being dealt with by the Historical Enquiries Team, there are no allegations of security force collusion. The vast bulk of your work would be cases where it is allegations of security force collusion.

**Ms Winter:** I would not call half the vast bulk, but I would also say to you that people who believe that there has been collusion in their case are more likely to complain to groups like mine than people who think that the case was already solved by police. Unfortunately we do not see the happy people in society, we see the unhappy ones.

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**Q391 Lady Hermon:** In relation to the cases that you are taking forward with families, to what extent does your organisation actually supply or assist the families in presenting lists of questions to HET?

*Ms Winter:* It depends on what the family wants. Sometimes the family comes with their own list of questions that they have already developed. The attitude we have taken to the HET is that there is no point with an experiment like that—and it is a unique experiment—setting it up to fail. We have tried to assist them as much as we can. For example, they will tell us what cases they are working on at the moment and ask us if we have any information. If we do, if it is publicly available information, we will just point them to it; if it is confidential information we will ask the family whether they are happy for us to pass that information on. In some of the cases we worked on, partly because of the problem that Mr Murphy was mentioning of their being such a paucity of evidence available in some cases to the Historical Enquiries Team, we have done our own research and produced a report on the case and handed over to the HET everything we have discovered. We do not have their powers or their resources, but I do think that we are often able to suggest lines of enquiry to them that they have found useful to follow.

**Q392 Lady Hermon:** How is your organisation able to come forward with those lines of enquiry?

*Ms Winter:* It is very standard research work. We go to the cuttings library in Belfast. We get the inquest papers if there was an inquest—there usually was—and then there are witness statements there and so. We interview the family themselves and sometimes we will interview witnesses if they are still around.

**Q393 Lady Hermon:** Does your organisation actually supply questions on behalf of the family to HET?

*Ms Winter:* If the family asks us to, yes, but it is always in consultation with the family. They are not our questions, they are their questions.

**Q394 Lady Hermon:** Moving to the Police Ombudsman, I was quite disconcerted by some of the comments about the Police Ombudsman's work. You have made an assessment that in fact the investigation of the Police Ombudsman's Office is "patchy and superficial in some cases".

*Ms Winter:* Yes, in some cases.

**Q395 Lady Hermon:** Since those cases are presumably in the public domain already and the reports are published and therefore confidentiality does not attach to them, could you give us some examples of where it is patchy and superficial and some that you would say were good investigations by Nuala O'Loan and her team? She was there a very long time, seven years.

*Ms Winter:* Yes, indeed, and some of her investigations have been very good and Operation Ballast, which is very much in the public domain, she

obviously spent a great deal of time on and went into matters meticulously. When I say "she" I obviously mean her office.

**Q396 Lady Hermon:** What about the patchy and superficial ones? That is quite a damning indictment and I would just like to know some examples.

*Ms Winter:* It is, yes. My difficulty in giving you examples is that although you say reports are published, reports are not published on all of the Ombudsman's cases and often the full report is not published.

**Q397 Chairman:** I do understand your reticence because these are highly sensitive matters, but would you reflect on Lady Hermon's question and would you please communicate with our clerk after this session. If you could just indicate for the Committee's information alone, with the assurance from me that we will not break any confidentiality, which cases were well dealt with and which were patchy. If you could do that sort of thing it would be very helpful. Could we ask you to do that?

*Ms Winter:* Yes, of course.

**Q398 Lady Hermon:** My final question relates to a wish, it seems, for the Police Ombudsman to be more "family friendly". What changes would you like the Police Ombudsman to make to be more family friendly?

*Ms Winter:* It would be helpful if they would keep families informed of progress on a more regular basis. That is one of the most common complaints we have about his office. A family will come to us and say, "I complained to the Ombudsman a year and a half ago, the last time I heard anything was six months ago and I have no idea what is going on".

**Q399 Chairman:** This is in contrast to the HET where you feel they keep the families better informed.

*Ms Winter:* Yes.

**Q400 Lady Hermon:** How many cases would you have had of families coming to you and saying that the Police Ombudsman has failed to keep them informed? What sort of numbers are we looking at?

*Ms Winter:* I am sorry I am not very good at giving you numbers; it is simply that we do not count them.

**Q401 Lady Hermon:** It would be helpful if you would send us a note.

*Ms Winter:* What I can say is that the majority of people who come to us—as I say only people who are unhappy about something come to us—have complained about these long patches of time where no information is forthcoming. I have met with Dame Nuala O'Loan when she was Police Ombudsman and discussed this issue with her. What she said to me was that their difficulty was that they were often waiting for information from other people and did not really have anything to tell the family. That is a view that I absolutely understand, but from the family's point of view silence means that nothing is happening at all.

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**Q402 Chairman:** If the train comes to a halt the passengers like to know why, even if they are told repeatedly that they cannot establish the cause.

**Ms Winter:** Yes. Or just to know that the Police Ombudsman has been doing something but they are being held up by somebody else.

**Chairman:** You make the point very well. Anything you can do to flesh out that answer would be helpful.

**Q403 Kate Hoey:** I probably should know this, Ms Winter, but who actually funds you?

**Ms Winter:** We are a registered charity and about 90% of our funding comes from other charities who make charitable donations and those would include the Joseph Rowntree Charitable Trust, the Oak Foundation, the Hilda Mullen Foundation, the Atlantic Philanthropies. About 10% of our funding comes from individual charitable donations.

**Q404 Kate Hoey:** You have said quite a lot about the Lord Saville inquiry and you say here that Lord Saville wanted to conduct a “thorough and impartial inquiry, and by and large it would appear that he has succeeded in doing so, although his final report will be the ultimate measure of that”. You are an organisation that actually represents everyone’s human rights; how are you going to assess this very interesting term that it will be the “ultimate measure” of whether it has been thorough and impartial inquiry. Is that because you have already decided what you would like it to say?

**Ms Winter:** I have no idea what it is going to say. I am very perturbed by the fact that it is taking so long to say it, as indeed are the victims. No, I am not prejudging the issue at all. What I meant by that was that our contact has primarily been with the victims and their families. Most of them were initially very cautious and suspicious about the new public inquiry and I believe that Lord Saville and his team won them over in the way he conducted the inquiry. Many of the relatives have said to me that whatever the outcome they feel as though they had a fair hearing. However, from our point of view, given that the Widgery report was so highly criticised, Lord Saville has expressed some consciousness of this and he knows that he will be judged at the end of the day on the product he produces. That is all that I meant about this.

**Q405 Chairman:** So we must not read anything too sinister into your submission.

**Ms Winter:** Not at all; I did not mean it in a sinister way.

**Q406 Mr Hepburn:** In your opinion, from your experience and the work you have done in the world of human rights in Northern Ireland over the years, how widespread do you think collusion actually was in Northern Ireland? Was it just the high profile cases that we have seen or do you think it went on to a greater extent?

**Ms Winter:** I wish I knew the answer to that question.

**Q407 Mr Hepburn:** Do you have an opinion on it?

**Ms Winter:** I suspect that it was quite widespread—I think the Operation Ballast report which came out with a catalogue of things in that instance that Special Branch were doing wrong—because it strikes me not just from reading that report but from having worked on other cases where I have seen some of the same things happen, those were ways of working, those were policies; they were not rotten apples in the barrel, as it were, they were shortcuts in lots of cases that should not have been taken. I tend therefore to think that that was systemic.

**Q408 Mr Hepburn:** At all levels, from your bobby on the beat to senior levels; it was just part of their every day work.

**Ms Winter:** I think it was possibly more certain parts of organisations, whether it was within Special Branch or within the army rather than the whole organisation. I think there were plenty of ordinary coppers on the beat doing their best to do a very good job, but when intelligence was not being handed to them by those who had that intelligence then they could not use it to prevent crime or detect crime. I have spoken to many police officers who felt as if they were operating with one hand tied behind their back. I am not saying that this was a complete culture but I think there were methods of working which made it more difficult for those who really just wanted to get on and do a good job to do their job properly.

**Q409 Chairman:** Bearing in mind the population in Northern Ireland is not a lot different from the population of greater Birmingham or Staffordshire, would you not think that any police force confronted with the repeated atrocities that happened during that period by whomsoever committed—IRA or Loyalists or whoever—would have been overwhelmed, particularly bearing in mind that police stations were continuously being targeted. We discovered when we were there that one of the reasons why evidence was in short supply was that there were 87 bombings of police stations, there were two very significant attacks on the forensic laboratory. It was a very real battle against the odds, was it not?

**Ms Winter:** It was, and I think we acknowledge that in our submission. For example, we mention 1972 when I think nearly 500 people were murdered in one year. No police force could cope with that adequately and for that reason I think that some of the criticisms that have been made of the RUC are not fair because any police force would have had difficulty. I would also, if I may, add to that that any police force anywhere in the world—I think human rights groups all over the world would back me up on this—will say that the less scrutiny you put your police under, the less well they behave. It is true that for a long time there was very little scrutiny in Northern Ireland. That has changed a great deal.

**Q410 Chairman:** They are probably the most scrutinised police in the world.

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**Ms Winter:** Possibly. Certainly Sir Hugh Orde would say so.

**Q411 Dr McDonnell:** Before I start my questions on the Cory inquiry, I would like to commend you for your discretion and your diplomacy around Widgery because words like “whitewash”, “dishonest” and “scandal” come to my mind. Have you any opinion on the Cory public inquiries and what benefits might we expect from the outcomes?

**Ms Winter:** Again it is always hard to anticipate. Things have already happened in the Billy Wright inquiry which is the most advanced which we would never have expected, so it is hard to anticipate exactly. I do not believe there are going to be any more public inquiries in Northern Ireland so these are significant for a lot of people. My hope would be that they will fairly and properly conducted, that they will not be obstructed which really does appear to have been a problem with the Billy Wright inquiry both by the prison service who destroyed 800 prisoners’ files knowing that there was going to be a public inquiry. My hope would be that state agencies will not be in a position to stop an inquiry set up by the state; that should not be allowed to happen in a democratic society. If that does not happen and those inquiries are able to come to the truth about what happened in those cases, then I think that will do a lot to restore people’s confidence in the public administration of justice.

**Q412 Dr McDonnell:** What do you see as the ultimate end point in terms of benefits from these? How do you feel that benefit relates to the cost? We heard many times that a lot of money had been poured into the Saville inquiry and the suggestion is that there will be no satisfactory outcome or no satisfactory conclusions and no closure.

**Ms Winter:** That would be a tragedy. I must say that is not my expectation of the Bloody Sunday inquiry from having seen how it was conducted. As we were all acknowledging at the outset of this session, inevitably not everybody is going to be satisfied, not everybody is going to find out exactly what happened to their loved one and that could be the case in any of these inquiries. This is a process of an honest endeavour to come to the truth, done in the public gaze, for anyone to scrutinise for themselves, particularly in Northern Ireland where there has not been enough of that in the past. Remarkably the Saville inquiry was only the second public inquiry ever to have been held after Widgery and now we have another three (in my view there should be a fourth into the case of Patrick Finucane but that has not yet happened).

**Q413 Dr McDonnell:** Do you feel that with the high costs of these there is a cost benefit there? Would we not be better, as some people suggest, to hand the families and surviving victims of these situations a large sum of compensation rather than spend it on an inquiry.

**Ms Winter:** I certainly do not think that the families would accept financial compensation in lieu of proper investigation. I do not think that would bring

them any closure. From their point of view this is not an exercise that is about money and very often the publicity that is generated by the inquiry makes it sound as if the families are somehow raking in huge sums of money whereas of course they do not get any money out of a public inquiry. What they are looking for is the truth and some resolution and, crucially, they do not want what happened to them to happen to anybody else. That is a thing that we find over and over again, whether people have an inquiry or not. What people say to us more often than not is that there is nothing they can do about what happened to their loved one but they do not want it to happen to anybody else.

**Q414 Chairman:** What do you say about people like Sir Kenneth Bloomfield who said to the Committee a couple of weeks ago in Belfast that the only people who get rich out of inquiries are the lawyers? We really do need, whilst recognising all the sensitivities, to have some alternative to just enriching the lawyers. How do you respond to that?

**Ms Winter:** I would certainly agree with you. I think that there are cost benefits to holding public inquiries, but whether the costs that are incurred are justified or reasonable is a different question. Judge Cory himself came up in his reports with several suggestions for ways of capping the costs and also making sure that things happen in a timely fashion instead of dragging on and on, which I am not sure have been taken fully to heart by the inquiries, although it may be early days yet especially since two of them have not actually started work yet.

**Q415 Dr McDonnell:** Is the public inquiry the only way to pursue the issues involved, or is there an alternative that might bring closure to the families and might bring closure to the victims who are left behind?

**Ms Winter:** I think it depends on whether you are looking to the past or to the future. If we look to the future there is a very cost effective way of ensuring that there is no need for a public inquiry, which is often really an admission of failure; everything else has not worked and you end up with a public inquiry. The way to avoid that is to have effective investigations in the first place. We are moving in that direction; we are getting better at it I think. That is by far and away the cheapest way of bringing closure and of dealing with serious crime. Of course you cannot make right the past where that has not happened. As I say, I do not think we are going to see any more public inquiries in Northern Ireland although there are many families who are calling for public inquiries. Many people feel they deserve a public inquiry and should get one but I do not think it is going to happen, so it is important that the ones that are happening do it right.

**Q416 Dr McDonnell:** Is it a good thing that there will be no further public inquiries?

**Ms Winter:** Not for the individual families; for them it is a tragedy. I have been using the word public inquiry rather loosely but of course inquiries under the Inquiries Act are not really the same as public

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inquiries like the Saville inquiry was. I think it is generally felt that public inquiries are not the best way of dealing with things. When everything has gone wrong to have a hugely expensive, very time consuming public inquiry does not seem to be the best way of dealing with it. It cannot be beyond the wit of human kind to come up with something better.

**Q417 Dr McDonnell:** What do you say to those who suggest that the reputation being built for the PSNI is being undermined and damaged by some of these inquiries even though they are inquiries into the activities of the RUC as it was then?

**Ms Winter:** I think that that is currently a matter which is in the hands of the PSNI itself in that if they are seen to act properly now and if they also make it very clear to the public that they operate very differently nowadays than the RUC used to, then it is a hearts and minds exercise that they have an opportunity to win. I also think that if people come to a public inquiry and give an honest account of what happened, however wrong what took place may have been, that does actually reinforce public confidence because they say, "Well, at least this person is being honest; we are now getting to the truth, we are getting to the bottom of it and we can put it in the past where it belongs".

**Q418 Stephen Pound:** Good afternoon, Ms Winter. Thank you very much for finding time to come and see us. We seem to be spending so much time talking about costs that I think I would say that many of us respect the fact that you set up British Irish Rights Watch on an entirely voluntary basis and for the first five years you did not even get paid for it. You said something extraordinarily interesting a moment ago. You said, "It is not beyond the wit of human kind to come up with a better way of doing it". Could I refer you specifically to the issue of historic inquests? There are about 100 historic inquests outstanding and about half of them could reasonably be classified as contentious. Sir Hugh Orde has said that his concern is that every one of those could end up as a mini public inquiry, particularly because of the requirements of disclosure. Bearing in mind that you have talked about article 2 earlier on and bearing in mind there have been rulings on about six of those cases, could you apply the wit of human kind to come up with a better way of addressing that issue? Do you think that those inquests, if addressed through the Winter mechanism, would provide what you referred to earlier on as closure?

**Ms Winter:** I am afraid that I probably need the collective help of some other bits of human kind to come up with a proper blue print.

**Q419 Stephen Pound:** Give us a clue. Give us the shape of it. Who would it consist of? Would it be people from Northern Ireland or would it be people from outside?

**Ms Winter:** Your question was about inquests specifically but you seem to me to be asking more about something like a truth commission perhaps.

**Q420 Stephen Pound:** I was piggy-backing on your statement.

**Ms Winter:** In terms of the inquests themselves, they have been held up for years and years and years by legal arguments about the scope of the inquest and about disclosure of documents. Those, at long last, have been resolved by the courts and it is true that this backlog has arisen. I can see that that is a real headache for the PSNI but, on the other hand, it is a headache that will eventually go away because it is a historical backlog which will disappear over time. I do think—certainly talking from Dave Cox and the Historic Enquiries Team about this whole issue of how much evidence can be found about cases within the police estate—that if the PSNI were to have a dedicated disclosure unit which actually cooperates with the HET who have already done a lot of this evidence collecting to find what they really have got that they can disclose to the coroner and do it as promptly as possible, that would be a cost effective way of doing it. I get the sense that different teams of police officers, who perhaps have no experience of doing this, are detailed to go away and find the documents and the evidence to give to the coroner and that is not a very good way of proceeding. I think there may be ways of making it a more streamlined and effective process that is not as expensive and difficult as it might appear if you look at each case on its own.

**Q421 Stephen Pound:** Would it bring closure?

**Ms Winter:** I certainly hope so because now that inquests can look not just at the means by somebody died—for example, they were shot—but the circumstances surrounding the death, there is the scope to bring closure through an inquest. I would hope that if those inquests are conducted properly and there have been, as I am sure you are aware, many reforms within the inquest system—there is now a senior judge presiding over the whole process and there are full time coroners rather than part time coroners—I am hoping that they will bring some closure to those families who have been waiting far too long.

**Q422 Sammy Wilson:** I want to deal with the question of covert sources and I notice in your submission that you say British Irish Rights Watch find yourselves wondering about the issue of covert sources was being raised as a matter of concern. You accept, first of all, that for the police to have covert sourcing is important and, secondly, that they do have a duty first of all to protect those covert sources and to protect the handlers of those covert sources.

**Ms Winter:** I certainly accept that they have a duty of care towards their covert sources and their handlers. I have given this a lot of thought because the issue has been much discussed in recent times. I have thought about it in terms of the so-called war on terror, international terrorism. I do think it is time to re-think the way informers are used because at the moment we base informers on money; we pay for information in many, many cases. I think that that is inherently likely to produce unreliable information and we need to look at the whole way

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informers are used in society. We need to find ways whereby we can encourage people who do have information, in whose own interests it is not to be blown to bits—nobody wants to be the victim of terrorism at the end of the day, or very few people—to come forward with no question of payment but because it is their public duty to do so and to be, if necessary, in confidence recognised as having been a useful person in society who has done a good thing instead of being this kind of rather shady person who is marginal and on the sidelines and comes up with information in return for money.

**Q423 Sammy Wilson:** Some people might regard that as a very naïve view of how you get informers. Sunday school teachers do not actually make good informers.

**Ms Winter:** Sometimes they do.

**Q424 Sammy Wilson:** The chief constable, in his evidence to us, told us that the reassurance of police officers saying, “We can protect your identity” is not true any more because of the Inquiries Act. That is the chief constable whom I would imagine has some knowledge of the impact this has had on intelligence sources, *et cetera*. You beg to differ; why?

**Ms Winter:** I think that the chief constable, if he had ever made that promise to any of his agents or informers, was mistaken to do so because the law of the land is that if a matter comes to court the police can apply for a public interest immunity certificate in order to protect information about sources and about methods of working, but it is for the courts to decide whether, balancing the public interest, national security and these days, thankfully, human rights, it is necessary to disclose that information. That has always been the case. There is nothing new in the Inquiries Act, for example, that makes it more difficult to protect sources or methods. There are all sorts of other methods of protection like screening, like giving evidence by video link, anonymity, all of which are used by the courts whenever they are needed.

**Q425 Sammy Wilson:** We have already seen, as we have seen with the Police Ombudsman and with the Historic Enquiries Team, that more and more people have access to information. The Historic Enquiries Team have told us that they could go and look for any intelligence that there was gathered, ask for that intelligence, that then increases the circle of people who know about it. It is the same with the Police Ombudsman’s Office, sometimes the reports themselves I suspect have been very useful to terrorist groups because, by a process of elimination, they can identify who might be referred to there. Is it a fact of life that if you allow inquiries to have access to intelligence information and more people have that, there is a greater chance of it being leaked and therefore a greater chance of risk for those intelligence sources?

**Ms Winter:** I think one has to look at the other side of that coin which is what happens if nobody has access to that information. I have a case like this in the Republic of Ireland where a soldier was

dismissed from the army on account of a handwritten note in pencil that was not signed. He had no court martial, no due process and he has been trying to clear his name for 25 years. That is what happens when you do not have some checks and balances on the informers. I just think that—maybe I do sound like a Sunday school teacher—people who work for the Historic Enquiries Team and the Police Ombudsman should be under a duty of confidentiality and there should be very strong sanctions if they break that. In my own organisation nobody works in my organisation without understanding very clearly that confidentiality is rule number one and anybody who does not obey that rule would be sacked. I would expect the same to happen in any organisation.

**Q426 Sammy Wilson:** The point I want to get to is that on one hand the chief constable says there is a problem, on the other hand British Irish Rights Watch are dismissing that there is a problem. I really wanted to establish that you accept that the wider you make intelligence information available—which unfortunately is what happens when you have these types of inquiries—the greater the chance is that those intelligence sources will be compromised.

**Ms Winter:** I think that would be a risk if the reports really did contain that kind of information. If one looks at the Operation Ballast report, for example, which we have done in detail, I can see very little comfort for criminals in that report that they would be able to outwit the police from anything that they read in that report. I think the Police Ombudsman is very, very careful about that. She talked about things that had not happened that should have happened and talked about things that did happen that should not have happened, but they were in very general terms. I think unless one already knew about the case in some detail one would not have known who she was talking about, except in relation to witness A about whom there had been endless publicity long before her report. Three years before her report there were newspaper reports naming that individual.

**Q427 Chairman:** This is obviously a point with which we will have to wrestle. I am bringing the session to a close now because the division bells will go in a couple of minutes. Could I just ask you one final question? In taking evidence in Northern Ireland a couple of weeks ago and evidence here, the question comes up time and time again: should a line be drawn? The expression is sometimes disputed but we all know what that means. If we are to have a future for Northern Ireland, if we are going to capitalise upon the remarkable events of the last year, should a line be drawn? The Ombudsman tended to think there should be and it might be three, five, seven years, he did not have a fixed view on that. Should a line be drawn? If your view is that, when?

**Ms Winter:** I do not think anybody can draw a line on anybody else’s behalf. Unless victims are ready to draw a line in their own case then the line is a non-concept. In terms of mechanisms if, for example, Dame Nuala proposal for merging the HET and the

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historical parts of the Police Ombudsman were to be followed, then I think that could be given a realistic time scale and it could be said perhaps that if you do not raise your case with this organisation within this time span you have had it.

**Q428 Chairman:** What would be a realistic time scale? You have had a lot of experience and you have been involved in this for a long time.

**Ms Winter:** I would say it would be at least ten years, and from now not from when the HET started.

**Chairman:** Could I thank you very much indeed for your evidence. If there are things you wish to supplement it with please write to our clerk. I declare this session suspended.

*The Committee suspended from 4pm to 4.25pm for a division in the House*

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*Witnesses: Mr White, Chairman, and Mr Lamont, Northern Ireland Retired Police Officers' Association, gave evidence.*

**Q429 Chairman:** Mr White and Mr Lamont, could I welcome you both. You are here to speak on behalf of the Retired Police Officers' Association. We are grateful to you for agreeing to a public evidence session. If there are matters that you would like to raise in private with the Committee after the public session perhaps you could indicate to me and we will make arrangements for that. We are allowing up to an hour for this session but if we can get through it before then I know it will assist you in your journey back. Is there anything that either of you would like to say by way of opening statement before I start the questioning?

**Mr White:** On behalf of the Retired Police Officers' Association thank you for the opportunity of having us here. It is a refreshing experience in that more often we are an organisation or a group of people talked about rather than talked to. We see ourselves as being major stakeholders in all the events that are now being examined and yet there is a paucity of contact with us. We find ourselves having to elbow our way into the space that others occupy. Why that is we have not yet resolved, but sometimes a good conspiracy theory can be destroyed by our presence because we introduce such things as fact and that may not please some people. As I say, it is a delight to be here and if we can assist your Committee in any way we will do so.

**Q430 Chairman:** Thank you; we are very grateful to you. Could I just say that we have regular and frequent contact with the PSNI and with Sir Hugh and his senior colleagues in particular. This is our first contact with your Association but I know that I speak for all members of the Committee in saying that we have an enormous regard for the courage and the stamina of those who served first in the RUC and more recently in the PSNI. We know that you and your members suffered greatly during the troubles and although no record is ever totally unblemished the award of the GC was more than justified and we pay tribute to you. Thank you for what you have done.

**Mr White:** Thank you.

**Mr Lamont:** Thank you.

**Q431 Chairman:** As you know we are looking into the whole business of the past, how it is dealt with, for how long, by whom, the cost, whether it is proportionate or disproportionate, whether there

should be no limit. All those things are within our remit. How do you, as retired officers, see the work of the Historic Enquiries Team? There have been, from time to time, criticisms that there has not been the greatest cooperation that there might have been, but would you like to tell me how you see things and how you deal with that criticism which does, from time to time, come up?

**Mr White:** We see the core of the work that the HET does as a very essential requirement, and that is the capacity to feed back to those people who seek information, that particular information or whatever can actually be released. In that sense we have met with Mr Cox on two occasions to ensure that he understood that insofar as retired police officers are concerned we would give every cooperation in that respect, balanced against the requirement as we saw it, that whatever information he did release he released it with a contextual dimension attached to it because the earlier releases that were being made by HET were simply based on the record in respect of what was written but gave no feedback to those who were seeking information as to what the actual policing context was or what environment we lived in. A simple example of that was that quite often bodies had to be left at roadsides for maybe a number of days before they could be lifted and taken to a mortuary. To any young person reading about that, about what happened to his uncle or his father two decades ago, it would be offensive for any body to be left in those circumstances. It needs to be explained to that individual that there was immense danger quite often in recovering bodies, especially in border areas, when the body itself would be booby trapped and you were totally dependent on the army technical officer saying to you that the pathway is now clear to collect that body. We were asking of Mr Cox to make absolutely sure, when he was bringing it home to these people, that he explained the policing environment which perhaps foreclosed on us being able to do things with the speed or in the manner which perhaps one would expect of policing today. I accept that from the HET perspective and the giving feedback of information, it is difficult, but we do have concerns. We have concerns from the point of view that £34 million has been ring fenced and, speaking as an ex-police officer, if you tell any police officers anywhere in a policing environment that there is a specific sum of money to be spent I can

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almost assure you that the structures will be put in place to spend that money. What I fear now to some degree is that a Rolls Royce industry has been somewhat created. We are told that the HET exists to review all murder cases as such, and our members look to see what the purpose of the review is. In part we are told it is intended to run with prosecutions where such prosecutions are available. We know from experience that the reality of achieving a prosecution is extremely limited in relation to such cases, especially so where the older cases involved as matters were investigated under different legislation; suspects were interviewed under different conditions, investigating officers who were in charge of those inquiries are now deceased and forensic evidence was collected and stored under different rules and requirements. The opportunity of bringing all that together in 2008 to launch a prosecution for an offence that occurred, say, in 1977 we would say is unrealistic. What we do worry about is that there is still an element of people within the province who look to HET in a sense to deliver up to them justice in the form of making people amenable to the courts for past offences. The other side of the work of HET's work is overlaid to some degree in our mind by the political situation. The Maze Prison was emptied under the Northern Ireland Sentences Act and in reality we do not see politicians of whatever persuasion seeking to refill the Maze by putting people back before the courts. From our perspective the retrospective investigation dimension of HET we see the clock is already ticking in a run down fashion from the point of view of further investigations in that respect. In our submission to Eames-Bradley and in anticipation that the vast majority of people would be asking that group to look forward to the future as such, we said that as an Association we felt that the time has arrived for a good hard-nosed stock taking of exactly how the work of the HET can be taken forward and in what areas it is likely to be effective in rendering the information people are looking for. I see from the evidence that has been given to you, and from your visits, you met with eight different family groups who no doubt expressed an element of satisfaction for what they have got from the process. We have not canvassed or looked for anything in relation to how HET has done its work, but in at least two cases we know there has been an element of re-traumatisation by the fact that HET has come back into the lives of people when they had to some degree comes to terms with those issues. I would simply caution that there are always two sides to what HET does. It is a little bit "in a sense" cold calling on families and inviting themselves in to make comments.

**Q432 Chairman:** Is it logical to draw the inference from what you have just been saying that there should be some time limit put on this, and that in the fairly near future? Is it also fair to draw the inference that the logic of your argument is that perhaps a general amnesty should be issued?

**Mr White:** There are two issues there, one is how you bring some element of closure to the investigative dimension; that is the investigative dimension I

would say by HET and by the Ombudsman's Office. Both are basically left with the requirement to look backwards. It certainly goes against the grain—for myself, my colleague and the rest of our Association as ex police officers—to close the door on any crime. A recommendation we made for consideration by Eames-Bradley was one that we felt might offer some way forward and that was not an absolute closing of the door, but in fact a drawing of the line in the sand that people have asked for, and then allowing there after a very controlled mechanism that would enable retrospective investigation to take place as and where it was deemed to be required. The line in the sand we saw being drawn was to keep the Sentence Review Act as it currently stands, which designates that offences that occurred before April 1998 as being offences for which the maximum period of imprisonment, should you ever be found guilty, will be two years. The Ombudsman's Office, when it was originally set up, had a retrospective period attached to it of two years which took it back to 1999. Our suggestion was to use the earlier date of 1998 as a mechanism for drawing that particular line in the sand. Thereafter we suggested that there should be looked at what you could call a two-tier requirement. One was that there should be credible evidence brought forward in relation to any case that people would seek to have retrospectively investigated. At this moment in time all you really have to do is turn up at the office of HET or the Ombudsman or anywhere else and simply allege collusion, conspiracy or something else. You do not have to go into any detail as regards the evidence you wish to put forward. What we suggested was that there should be a basis of credible evidence, in other words that you have to establish a *prima facie* case. You have a perpetrator who has made an admission; you have eye-witnesses who have now come forward having been silent for whatever period of time; you have turned up fresh circumstantial evidence; something that gives a credible base for that investigation to be launched. The second tier of that was that it had to be in the public interest, in other words if Eames-Bradley are told that the majority of people wish to be forward looking, then in acknowledgement of that forward looking dimension, it has to be asked whether it is in the public interest that this investigation actually takes place? The public interest may be: has this person appeared before the court on other offences? In other words, was he convicted maybe 15 years in the past for, shall we say, possession of a firearm that was used in a murder when in actual fact he is now coming forward and admitting that murder? Anything put before the Director of Public Prosecutions or a judge would have to be considered on the basis that if the two offences had been before him then he would have dealt with it by way of consecutive sentences as opposed to now sentencing the individual for a new offence. The age of the individual may be of concern for if you are dealing with somebody who is perhaps in their late 70s or 80s now, is it in the public interest to go forward if you apply the two-tier test to it? The other recommendation was that this should all be

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controlled through a Victims' Commissioner with a Victims' Commission in support of him, in other words they would take the issue on board as part of the determination as to what a particular victim or a victim's family wanted.

**Q433 Chairman:** Have you submitted this to Eames-Bradley?

**Mr White:** Yes, we have given it to Eames-Bradley.

**Q434 Chairman:** Have you given it to us?

**Mr White:** I cannot answer that.

**Chairman:** I am told we have a copy. Obviously we want to take that into account.

**Q435 Sammy Wilson:** On the first point where there has to be some credible evidence, is there a danger there that it is only those families who may well have the resources or some other backing to dig into a case and find out about it and go and talk to witnesses or get someone to do some private work on the case? Only those people would have the chance of getting the case re-opened and others who did not have the resources or some group backing them would not get access to have the case re-opened.

**Mr White:** We saw the opportunity being fairly flexible, in other words it was all based on the fact that we were envisaging a one-stop shop for everybody that considered themselves to be a victim. If you came along to the particular body that we envisage within the Victims' Commission and they, having the capacity through their legal representatives to note the detail of what was required, the Victims' Commissioner would then commission from HET from the PSNI or from the Ombudsman an initial look to see whether there was a credible body of evidence there, taking on board whatever the family was able to submit. The problem at the moment is that the system is totally open. You do not have to establish any credibility in order to make the allegation of collusion for the issues to be examined. It was trying to bring in some element of order to the process but in such a way that you were not allowing every case to invite itself to be opened up. We have acknowledged that we have not gone through the minutia, it was simply put forward as a possible tender for consideration as a way forward, not to close the door entirely on criminal offences, be they committed by police, the military or paramilitaries.

**Q436 Lady Hermon:** I wonder if I could draw your attention to some of the work of the HET in particular. At every stage you have, as we have just heard, indicated to the Director, Dave Cox, that the Retired Police Officers' Association are perfectly willing to work with them, provided that there is a confidentiality that is attached to information you might give that might lead to disclosure of the identity of the source. Is that right?

**Mr White:** In relation to the identity of sources we did not have any discussion with HET. Our concern with HET was simply to say to people you have to be more fulsome. In other words, rather than simply giving people the benefit of a written record what we

were saying was that we, as retired police officers, are a resource and on occasions, if you wish, we are prepared to meet with the relatives and explain to them what the policing environment was in 1979 or 1982 or whenever if that helps them fulfil their job. We made the offer but, to date, it has not been picked up on in any shape or form.

**Q437 Lady Hermon:** You have not been asked to speak to any of the families?

**Mr White:** We have not, although I think Mr Cox has amended the practice and they are trying to put a contextual dimension to it.

**Q438 Lady Hermon:** Can I ask the view of your Association on the other aspect of HET which did, I must say, come as some surprise to me. I thought HET was actually looking at unsolved deaths in Northern Ireland but actually it is looking at all deaths in Northern Ireland since 1968. Does the Association have a view about the re-opening of all RUC investigations, even those where people actually served a term of imprisonment?

**Mr White:** It is entirely a matter for the chief constable and the HET as to how they structure themselves in what they review. We live off it—as most of the public live off it—simply on the documentation that HET has released as regards its role. If I can go back to what I said before, this is where some of the confusion seems to exist. HET is all things to all people. Some people look on it for the primary task of: will these people make somebody amenable for the atrocities that were visited upon our family? Others are quite content to simply see inquest papers or to ask very simple questions in relation to why it took so long for the release of a father's body or the collection of it. The HET in those circumstances, if nobody has been charged, obviously cannot give the identity of the people who were responsible but they may be able to indicate an organisation or something of that nature. We have not had any further views or engagements in relation to HET. The one question that our membership by and large ask of us is: what is the output of HET? We constantly look to see what cases are under investigation at the moment. I think the evidence given to yourselves indicated that eight cases have been referred for advice to the DPP and one case has been referred for possible charging out of some 900 that have been examined. We balance that against the 48-odd cases that have already been handed over by HET to the Ombudsman for investigation and there are 300-odd possibly in the pipeline that might have some connection with police activity. Our people ask: where is the balance in terms of what actually has been done here? The focus does not seem to be on the 2,000-odd murders that were carried out by the paramilitaries in relation to the Republicans or the 1,200-odd that were the responsibility of the Loyalists. When they add to that the public inquires that are taking place, the perception is that they are not focussed on anything else other than the alleged misdoings of the police service. We have already mentioned the inquests which again are totally

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focussed on it. People ask within our Association: when does closure come in relation to the police officers who served on a daily basis and who dealt with the outcome of atrocities? We are not automatons; we have lived through these things. We have somewhere in the region of 5,000-odd officers identified as having suffered from post-traumatic stress. If we are going to go on continuously without a deadline, trawling the most dark recesses of the past, then people in their late 60s and 70s are to be invited back to revisit the minutiae of how they dealt with those incidents. We now have a retrospection industry growing up in Northern Ireland in terms of people looking backwards and we feel that most of that retrospection, including a large proportion of HET, is looking proactively at what you would call alleged police misdemeanours. We have an element of HET, as I am sure you are well aware, which does not serve in Northern Ireland but seems to serve here in London looking at intelligence papers as opposed to reviewing old offences.

**Q439 Lady Hermon:** We heard when earlier evidence was given to us about a proposal to amalgamate because there is obviously duplication between the work of the Police Ombudsman's office and the HET. What is the Association's view about the proposal that the historic investigations of the Police Ombudsman and HET should be merged?

**Mr White:** The merger, is that under the umbrella of what you are calling a historical Ombudsman or simply HET?

**Q440 Chairman:** We have heard various proposals. We have heard the proposal referred to this afternoon of Dame Nuala O'Loan which would be the hiving off and the creation of an independent agency that would embrace the two. There is the proposal that this Committee has received from the current Ombudsman which is slightly different because he wishes to concentrate on the present and he believes that he is going to be overwhelmed by the past if there is not a division. There are a variety of suggestions, but what is your general view? Would you hive off? Would you create something separate? Would you let both organisations continue in spite of what Lady Hermon refers to quite correctly as the inevitable duplication?

**Mr White:** Certainly we would aim for the line in the sand aspect of it. We think that an historical Ombudsman would simply be perpetuating a process where we see the time clock running down with no great prospect of making anybody amenable before the courts for old offences. I think hard decisions have to be made by our political representatives of whether the time has come, whether, in essence, they will have the majority of the public behind them, to make that decision and say that we have to bring our past to a close and leave history to the historians to write. You will recall that the Irish Rebellion of 1641 is still being argued over in terms of how many people actually died as a result of the pogroms there in Ulster. It was interesting to read that in 1644 as part of a settlement with King Charles, the Irish aristocracy were trying

to bring in an Act of Oblivion to officially wipe out the history of the past. You mentioned before an amnesty as a mechanism for bringing things to a close. We certainly would not subscribe to that if it is linked to the declaration that in actual fact we were engaged in a war. I think any examination of the statistics will clearly show that a war was being waged only against civilians on both sides. In actual fact, when you look at the "success" records for the paramilitaries, the Provisional IRA managed to kill 30-odd known members over three decades of those who were in the Loyalists organisations and the Loyalists in turn managed to kill 42-odd people who were in the Republican paramilitaries. The remainder of their targets were innocent members of both the Roman Catholic and the Protestant communities. Anything that would attach it or give it the dignity of viewing those people as combatants abiding by what you would call the normal conventions of any war would certainly be abhorrent to ourselves and our Association.

**Q441 Mr Murphy:** Following on from that, in your submission you quite rightly point out to the Committee the trauma faced by the vast majority of your members. Do you meet on a regular basis with them? Do you offer any help and support apart from the counselling that you mentioned some are now receiving?

**Mr White:** Yes, indeed, there is a benevolent association and there is an organisation known as the PRRT which has been given very kindly a government grant which provides psychological support services for these people and helps them resettle themselves back into their families and retrain for other employment. So there is a fairly proactive management process there that these people in retirement can still have access to.

**Mr Lamont:** I think it is important to point out that within our ranks we do have many victims and survivors as well. Indeed, it is not just the members but it also has a knock-on impact for their families and their loved ones that have to live with their continuing and recurring nightmares. Certainly a number of our members have highlighted to us the fact that the retrospective industry keeps dragging them back to very dark places and reminds them of standing on roads in places like South Armagh surrounded by bits of bodies and things. I think sometimes, when we are looking at victims and survivors, the police family can be overlooked.

**Q442 Mr Murphy:** You have actually touched on my next question, Mr Lamont. Do you not see any value at all from the Historic Enquiries Team for members of your Association who themselves have been directly affected being able at least to try to find out? From the evidence we saw, even with some police murders, there are perhaps only two or three pages of A4 available; there is very little evidence for them. Do you not see that it could also be beneficial to their families to be able now at least to try to find out what happened?

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**Mr White:** I go back to what I said at the very beginning. We fully support that particular aspect of access to what you would call the historical archive of police investigations and files for materials that both assist police families, especially younger members who were in their childhood when their father or their mother or their brother or uncle died, and where talking about it within the family circle was taboo because it only upset their mother. They are now in the late 20s, 30s and 40s; they have had questions burning in their minds for a long time and are now seeking the capacity to understand how their relative was targeted and how did it take place in detail. Under the old process, because there was no legal aid in respect of inquests, quite often families were never notified of the inquest taking place or else nobody wished to attend in that respect. Those people have a right now to get the information they are seeking. HET and the work it does in the business of providing that information we 110% support.

**Q443 Mr Murphy:** You would not say that it is necessarily unfair that their remit is to re-examine every single case from 1968 with a view to seeing how it was investigated, what information currently is available, what other information that perhaps could be found and make that information available to as many people as possible.

**Mr Lamont:** I think it is important that it is victim centred and you need to know what the families actually want to know and where possible that information has been given to them. I can certainly tell you personal anecdotes of standing on a road in South Armagh, colleagues having been murdered, and us not being able to recover the body overnight because the army technical officers was telling me that the light was failing and there was a danger of a secondary device and possibly a tertiary device. His advice was that the body should lie on the cold road all night until daylight came and he could guarantee the safety of the officers and soldiers that would be going in to do the body recovery. The family might want to know why their loved one lay that length of time and I think it is important that information like that should be made available to them. However, it has to be victim centred; it should focus on what they want to know. Very often, from what I am led to believe, there may be very simple requests that could be quickly and speedily dealt with and may bring some comfort to those families.

**Q444 Chairman:** Spontaneous and automatic examination of every case is something that should give way, in your view, to the response for information from people who are seeking it.

**Mr White:** We are saying victim driven as opposed to victim centred. Victim centred allows you certainly to have that overview but victim driven means that I knock on the door and I request information. It is terribly hard to define exactly who family is. Is it simply the siblings? Does it spread out to cousins or relatives? It should be open to all who feel themselves requiring information and have a relationship with a particular victim, but they should

be the ones that commission the provision of the information, not the reverse as it appears to be at the moment with an element of cold calling.

**Q445 Mr Murphy:** In your view, in the event of the HET writing off to what they consider to members of the family of a case they are currently reviewing and they receive no response for whatever reason, then in your view they should not go ahead with that inquiry?

**Mr White:** I am uncomfortable because a lot of families have through this past ten, 15, 20 years come to terms with it. It does not mean that they have written it off and forgotten in any shape or form, but by and large they have come to terms with it. I lost my brother-in-law to an under car booby trap bomb; who is the family in our circumstances? Am I part of that family? Does it extend to cousins and relatives? Who exactly does HET write to? Do they write to the widow? Is she supposed to raise the issue with her two daughters and canvass whether or not they and their husbands want that information? To turn it round the other way, use mechanisms of publicity that are there—leaflets, websites, television adverts and everything else—and simply leave it or else wait, as we have suggested. If there is a Victims' Commission with a Victim's Commissioner, then I could present myself in front of him as a victim and simply say, "These are the things I would wish you to attend to on my behalf".

**Q446 Chairman:** We have come across cases of this. The widow, for whatever reasons, wishes it to be over. The widow dies. The son and/or the daughter take a very different view. How do you react to that?

**Mr White:** If the son requires the information then I think he is entitled to have it, but it is terribly hard simply to do that by the issue of a letter. The other side of the coin is this, what exactly more, in a large number of circumstances, can HET add to the situation? If nobody has been charged in relation to it immediately HET has to say to the family, "I am sorry, whilst intelligence may indicate who was responsible I can say no more than that it was the responsibility of the UDA and that your father was targeted as a result of the work he was doing". They cannot go into the detail that says that it was somebody within the same employment as himself that provided the name that helped target the deceased. That would be stepping over the mark altogether and they certainly cannot put names to it. Quite often, especially in rural communities, people want to know, "Was it my neighbour? Or was it somebody in the community that provided a service to me? Or was it somebody in the community that my father provided a service to that actually, as it were, colluded with the paramilitaries to set him up?" To my mind that information would be simply intelligence and I do not see the need to discuss that information because you cannot prove it and you are simply fostering suspicions that can linger on and on within communities. You are not healing in any sense of the word; you are poisoning.

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**Q447 Mr Hepburn:** It has been suggested to us that one of the possible, very serious consequences of digging into the past and putting pressure on police officers is that one of your retired members may snap and blow the gaff and start to mention these things such as he informed this or he informed that, or he did this. Have you had any representations from retired police officers who have suggested anything in this way?

**Mr White:** I am not entirely following you.

**Q448 Mr Hepburn:** We have taken evidence where it was suggested that one of the possible dire consequences of keep probing into police officers and how they did this and how they did that could be to put an extreme amount of pressure on them. If you have somebody who is 70 he may turn round and say, "I'll tell you everything. Joe Bloggs down the street was an informer and this one did this." Have there been any suggestions from the members of your organisation that this could happen?

**Mr Lamont:** No, not that we are aware of. Recently for all police officers in Northern Ireland, especially those who served in the Royal Ulster Constabulary, there has been a campaign almost of demonisation in certain sections of the press and through some of the highly contentious reports that have been publicised. So there has been a whole process of demonisation and there is no doubt that many of members are suffering from stress and some of them may crack and indeed you could end up with suicides and all sorts of things, but not for the reasons you are suggesting because what you are suggesting almost predicates the fact that there is something there for them to blow the whistle on. It would be our Association's strong contention that that is indeed not the case. There are many, many conspiracy theories out there. We would contend that they do not have the reality that many people are attributing to them. There is a lot of stress on retired officers and a lot of stress on their families at the present time, but I do not think it is likely to bring that outcome.

**Q449 Chairman:** Can we move on to this whole business of covert sources? You appear to suggest that the Police Ombudsman's publications would lead to the identification through a process of elimination and what you described as interrogation by terrorist godfathers. Can you just develop that a little?

**Mr Lamont:** One of the big dangers here is that there are an awful lot of people talking about intelligence who have very little experience in the intelligence arena. People who have worked with intelligence for a long time within terrorist organisations with highly sophisticated security teams and highly sophisticated mechanisms have their own ways of sitting down and reading everything that is published and trying to join the dots as to who the informant is. Your previous speaker alluded to a system for public interest immunity and said that the chief constable has the ability to ask for public interest immunity. In many court cases as soon as you ask for public interest immunity the terrorist organisations know straight away that there was an

informant involved and you are actually protecting the informant. Straightaway a security investigation inside that terrorist organisation is initiated. I would also suggest that there have been examples in some published reports where it would be possible to follow—if you have the inside knowledge in the terrorist organisation—a chain of events back to who you believed the informant was. For me there is a significant danger as we move forward with the public inquiries and some of the inquests that are coming because I think we would be naïve to assume that everybody is looking to know who the informants were for honest reasons. There will be those who will be looking to exact revenge; there will be those who are looking to know who betrayed them so that in some way they can make their lives or their families' lives much more difficult.

**Mr White:** You asked for examples and I think we would simply quote here Operation Ballast that has already been referred to. As part of Ballast one agent provided, shall we say, live explosive material which was neutralised and returned and was subsequently planted in a bomb. Obviously the bomb was not going to explode. As part of the police reaction to that no arrests were made; it was an effective bomb as far as the paramilitary members were concerned. The Police Ombudsman's report published in detail the fact that substitution had taken place and then castigated the police for not making a suitable response and arresting people. If we had arrested in those circumstances I would have been duty bound to serve on the persons arrested a statement from the forensic science service saying that this was a neutral device with no explosive content. Immediately the charges that I would have preferred would have had to be set aside and any paramilitary organisation reading that report would know immediately what it referred to. They knew to whom they had delivered the explosive device and they knew then subsequently who had basically assisted in the planting of that. It does not take Einstein to make the deductions, especially when you work in a cell structure. The second example is in relation to the killing of Mr Restorick, the last soldier to be killed in Northern Ireland. Extensive details were released as part of that investigation into the methodologies that had been used, and currently are being used, not only within the jurisdiction of the UK but elsewhere. It was a case where the MoD and others had to lobby the Ombudsman to have the report taken off the website simply to try to preserve the viability of that methodology. It is quite often a case, with the retrospection industry that we are now under, that the overseer of the practitioners downgrades the position of the specialist, to one that is subordinate to their own judgment and where they supplanted it with two instruments, one of total transparency and the other of total accountability as being the mechanisms by which they demonstrate that they have fulfilled their function. The victim of that process is that secrecy and applied intelligence becomes subordinate or else they are overlooked altogether. That is the fear we have. We have not yet had any examples of the effects of the Inquiries Act

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2005 as to how it will work. All we can do at this moment in time is look back to see how others with an oversight requirement have applied it.

**Q450 Sammy Wilson:** You heard the evidence of British Irish Rights Watch who claim that the Inquiries Act has got all of the safeguards in it which are required to ensure that intelligence methods and sources are not identified. Can you elaborate how you think the Inquiries Act is defective insofar as it could well lead to either police methods or police informers being identified?

**Mr Lamont:** The very simple one is the impact that it will have on the current CHIS within the police service. One of the big concerns we have as an Association is that we have many members who have worked in the intelligence field who now fear they are not going to have this technique in the PSNI, in the future, because you cannot offer some sort of reasonable guarantee to those who have information. I was interested in your interchange with the previous speaker when you mentioned about Sunday school teachers. The reality of working with informants is that you need someone who can actually tell you what is happening within the terrorist group so they have to be on some peripheral capacity at the very minimum to be able to pass on the intelligence you need. No-one in my long years of experience working in that field is going to come forward and give you information unless you can offer them some reasonable guarantee about how they will be protected. The first thing every potential CHIS—as they are called nowadays—wants to know is: “If I speak to you what are the implications for me? Am I going to die as a result of trusting you and passing information on?” The sad reality in Northern Ireland is that there have been around 60 deaths that have occurred during the troubles could be attributed to people who, it is alleged, were informers. So there is a well established fact in Northern Ireland that if you inform there is an ultimate sanction that you pay. That is the biggest problem, that we do not know yet what will come out of the inquiries that could have an impact on the capacity to get agents to pass intelligence on. I also think there is a second dimension to that because I also think that the demonisation that has occurred is not encouraging many young members of PSNI to move into the field of intelligence as a chosen career path because there is a stigma attached now to working in that area. So not only will you have no CHIS, you may end up in the future with no police officers to actually work any CHIS that you may have because they are shying away from it as it is a difficult, contentious and, at the present time, political part of policing that many young officers do not want to know about.

**Q451 Kate Hoey:** We are all immensely grateful to you for coming in and we are all aware of the heavy price that your members have paid over the years for the protecting of people in Northern Ireland. On this whole question of informers and covert intelligence, do you see any double standards in terms of the way we are treating Northern Ireland and the historic

inquiries and our attitude perhaps on mainland UK to terrorism and information and covert intelligence? Do you think there is something that is slightly hypocritical about the way we are acting?

**Mr White:** Absolutely.

**Mr Lamont:** Perhaps I could give you a personal experience. I was still serving at the time and I was coming across to a meeting in London. It was after one of the bombings here on the mainland, one of the al-Qaeda attributed bombings. I remember picking up the newspaper and reading the recommendations that the Home Secretary was putting forward for things that should be applied here on the mainland. Every one of them was familiar to me because they had been tried and rejected at some stage in Northern Ireland, but the knee jerk reaction here seemed to be that this was the way forward. If someone had been asking my advice, I would have said that none of those methods that you are proposing are going to work because as soon as you go to Strasbourg to the Court of Human Rights they will all be protected. I very much think that there has been a double standard. I think one of the dangers of that is that many people working in Special Branch and in the security service nowadays will think about whether they will be sitting here in 20 years time before your successors, explaining why they carried out certain activities against Muslim extremists here in GB.

**Mr White:** There is a moral ambiguity which those who do not work within the field of intelligence gathering find quite incomprehensible at times and very difficult to deal with. You do not destroy a terrorist organisation by retrospective investigation of offences or making public calls for witnesses to come forward and give evidence. Terrorist organisations are destroyed almost like a cancer; you destroy it from within it. The people who provide that information are two-legged individuals like ourselves. I would like at this moment in time to put on record my admiration for those who did act as informers or agents or CHIS or whatever you wish to call them throughout the Northern Ireland campaign. There are an immense number of people alive today as a result of the work that those people did. Anybody who seeks to draw a comparison between somebody who acts as an agent in the intelligence world and an agent in the drugs scene is in error, they are as different as chalk and cheese. I certainly would not take on the role of being an informant, not from the point of view that I would have any loyalty to a spurious paramilitary cause, simply because I am a moral coward in that respect. I could not live the double life that these people live. I think it is an aspect for which retrospectively some government minister needs to put on record an acknowledgement that these people were human beings who made a moral choice. They may have had blood on their hands at some stage, but they took the courageous step of acting as informers on behalf of everybody who lives in Northern Ireland. There would be no peace process today without such people.

**Q452 Chairman:** What would you say to our previous witness? I do not know whether you heard what she said about informers; she recognised the

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need for them and suggested it was all done for money.

**Mr White:** Any examination of the public record in respect of what informers were paid will show that the money would hardly have kept you in beer and cigarettes in respect of what you were getting. Money would never drive me to live a life as a model terrorist with all the risks that were associated with it in terms of discovery by the security team, with the constant 24-hour awareness that I would have to have, where even the most innocent of requests to attend at a given venue would result perhaps in me never being seen or heard of again because I could be destroyed by the organisation itself simply on mere suspicion. As I say, on behalf of those who did put their trust in police handlers and then allowed the information they provided to be used in such a way that people were made amenable before the courts, I have full admiration. There is probably a massive misunderstanding in relation to actually what happened and how many people are involved. Every operation that resulted in somebody being arrested in relation to information used, resulted in the intelligence service having to make available to the Director of Public Prosecutions a full picture of the involvement of the informant, so that he could satisfy himself that the police did not act in a way of agent provocateur, or else in a way where we had incited or procured the informant to act in a principal role in that respect. Before he would even consider charges he needed to be satisfied. As I say, it was a rigorous test that was applied before it went forward. You then had the issue of disclosure in terms of the police case to the defence and you run a risk there in terms of what actually was said. Within the system there was a standard process of accountability that went on each time the information from an informant was used and one could argue from an intelligence perspective that quite often you actually lost a little bit each time you used an informant's information. If it happened to be the second or third time you were using that information you had to be extremely selective in what you actually did act upon, because you were leaving a trail behind that quite easily, by deduction, would identify who the informant was. That has been a contentious area with those who have stepped in to look at certain activities, and they have seen evidence of intelligence left on the books and not acted upon, and that has brought serious criticism of evidence not being disclosed to CID which allegedly amounted to collusion or concealment, a failure or almost a willingness not to accept that it had to be left there for source protection.

**Q453 Chairman:** You have made your point very effectively about the importance of informers and protecting them. In what way is the existing system deficient in protecting them? What should we, as a Committee, be recommending to ensure that the protection that these people have is watertight and enhanced in the future?

**Mr White:** The duty of care is there and the chief constable has acknowledged that. The Regulation of Investigatory Powers Act (RIPA) certainly puts it on

the chief constable to provide that. The dilemma occurs for him obviously with the Inquiries Act 2005 and the knock-on impact that that might have. I am content in my own mind that there is, shall we say, a system in place. The problem is that we have recently seen an outing of alleged informants. I am sure the headlines are familiar to yourselves. This is one of the most recent ones: "Agent was Scap's ally in IRA 'nutting squad'". That gets itself repeated in the *News Letter*: "Focus back on IRA as spy flees Ulster". Every one of those headlines is a result of some disclosure having taken place. You do not have to look far beyond the death of Denis Donaldson to see that, but where is that information coming from? Who has released it? Our problem with this large body of inquiries is that they are not focussed on considering the issues relative to article 2 in relation to any informant. The message needs to be brought home to those people that there is a requirement to take on board very seriously what the chief constable has asked him to do and to cull their press releases and their release of documentation to make absolutely sure identities are protected. Once these people are outed, it is a life sentence, it is banishment and you do not come home for anything. You live abroad; you live outside the family support. We think there should be a stronger duty of care emphasised in that respect.

**Q454 Dr McDonnell:** I listened with interest to your comments there, but I would have to add a question in that I think the serious public concern is not about the use of informants and about the lives they saved, but it is about the fact that some of the informants—I could go through a whole litany of examples—committed murder while under protection in circumstances when they were under supervision and they used their informant status to some extent to escape the penalty. How do you balance that? What are the rights and wrongs there?

**Mr White:** I can only answer in respect of my own stewardship. No informant that we had on the books was there in the full knowledge that he had or she had been involved in murder. The rules and procedures were such that if we had that intelligence that was given to CID and CID had the capacity to arrest and interview those people. In the aftermath of that capacity being exercised by CID to see if they could put those people before the courts, it was not necessarily the case that we abandoned them entirely and did not use those informants. Terrorist organisations do not exist for any charitable purposes; they exist with one thing in mind and that is murder. Every individual who is in a terrorist organisation is a potential murderer. So do we draw down the shutters and say that absolutely nobody who is in a terrorist organisation should be capable of being recruited and handled? There certainly is a taint of blood on the hands of any intelligence officer who is handling people within a paramilitary organisation but what I can categorically say to you is that to my knowledge no member of the RUC handled any informant under my stewardship who had live intelligence in front of him that said that this individual had committed murder and had not been

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questioned or dealt with in that respect. The moral ambiguity is there: do you deny yourselves the intelligence from that individual if he decides to turn over and provide information? Do you close your eyes to that? In relation to 9/11 people ask themselves, if they had had the opportunity to recruit somebody who was a member of that organisation, would they say no? Would you take that person on board? This is a dilemma that we all faced in that respect. The rules were quite clear internally within the organisation: nobody who had the capacity to have intelligence against them was allowed to remain on the books if they had not been dealt with by CID.

**Q455 Chairman:** You make your points very clearly. You had had an hour of giving evidence in public, before I close the public session do you wish to have a private session with the Committee or are you content with what is on the record?

**Mr White:** We are here to facilitate the Committee.

**Chairman:** Are there any other questions that colleagues wish to put to our witnesses?

**Q456 Lady Hermon:** The mood within the Retired Police Officers' Association is obviously one of feeling rather humiliated and demoralised.

**Mr Lamont:** I think you are being very polite; I certainly subscribe to those sentiments. I think a number of our members are feeling very much under siege at the minute and have felt like that for a growing period of time. When the Good Friday Agreement was signed people were promised the opportunity to move on but it would certainly be the contention of a good many of our members that they are not being allowed to move on because they are constantly being taken back. A lot of them are in employment but have to take days off to go and be interviewed by solicitors and public inquiries. It has a knock-on effect in terms of welfare issues in that time when they should be with their families they are having to give up to be interviewed by the Ombudsman's Office and by various inquiries. There are a core number of people who, because they worked in a difficult and contentious area of policing—and were brave enough to work in a difficult and contentious area of policing—are now disproportionately being brought to these inquiries and being asked questions. As I say, it does have an impact on them and their families.

**Q457 Sammy Wilson:** Is that not the difficulty in persisting with the Historic Enquiries Team, the Ombudsman or whatever we call it, this is bound to be a one-sided process? All of the documentation, all of the knowledge that can be delved into will be in relation to state organisations such as the army or the police who have records of terrorist organisations. Is this not a consequence of having any kind of inquiry type system at all, that it will be a one-sided process?

**Mr White:** Exactly, and that sort of tiredness is there amongst the officers, many of whom have given 35 years of service. They feel that this re-writing or revision that is going on is a desire almost to come up

with some form of equivalence between deaths that occurred at the hand of the state and those that were carried out by terrorists. The simple answer to that is no police officer ever rose from their bed in the mornings saying, "I am going to kill someone". We did our duty and it was a duty that, by and large, was focused on providing a regular police service and on top of that an anti-terrorist service each day. When we had to use firearms we used them in defence of ourselves. The records would show that the RUC was responsible for 55 deaths. They are not police statistics; they are statistics provided by the University of Ulster. In that sense all this retrospective looking seems to be occurring around state issues and we feel it is to try to provide some sort of equivalence of responsibilities. In other words, if we could only get the RUC and military to admit to wrongdoings on their part, then perhaps that might be a mechanism through which we can invite the coroner of these to make a partial apology or admission that they were wrong, perhaps in what they did, and then when those two agencies have done that, everybody can move on. That is a let-out clause for the paramilitaries. You know as well as I do that paramilitaries did not act in a vacuum; they acted within communities. Communities colluded with them to provide safe houses, to provide protection for firearms, to provide vehicles, to target people they thought were members of the opposition in terms of being police officers or whatever. People who lived in communities commissioned the paramilitaries to punish other people in their communities by kneecapping and whatever else and those that were kneecapped, through their silence and their refusal to identify who dealt with them, bought their way back in. If people want to look at what was involved, do not just keep it an issue between the police, military and the paramilitaries. If Northern Ireland wants to come to terms with itself, then look at the collusion that communities on both sides of the fence were engaged in.

**Q458 Chairman:** You open this up in a very graphic way. I now want to draw this session to a close by asking you a question similar to the one I put to our previous witness. You talked about a line in the sand.

**Mr White:** Yes.

**Q459 Chairman:** She talked about a ten year period being necessary as the limit if we were going to have a limit. A number of our witnesses have said that if Northern Ireland is to enjoy the promise of a bright new future something has to be done to bring to an end the delving into the past. You have made the point that it should be possible to go back on specific things at the particular request of a victim, but what would your limit be? Do you think we should be coming to a close very shortly? Do you think we have to acknowledge that we have another decade of this? What do you think?

**Mr White:** I think, on a realistic acknowledgement of the situation, there is neither the political will nor, shall we say, the professional capacity or reality to effectively investigate the vast majority of those

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issues that are outstanding simply because of the technical difficulties from the police perspective. It is misleading to perpetuate the myth almost that the retrospective investigative process is a mechanism for dealing with the past. I think that the corner has to be turned. It will not bring closure to a lot of people who still hanker after justice, but is there justice for anybody that would be brought before the courts today? You could spend a quarter of a million pounds on a court trial that would last for three weeks or more at which a judge would pronounce that the most heinous of crimes had occurred, and the defendant would simply say, "I've done six months on remand; I'm entitled to remission. Can you order a taxi to take me to wherever I can appear before the Sentence Review Commission and get my

release document now?" Is that justice? There is an ambiguity there in terms of what already exists. We are simply saying: face up to those issues; draw that line in the sand; take on board what the majority of the people we hope will tell Eames-Bradley and that is to be forward looking and only allow retrospective investigation where you can come up with credible information that will show on the face of it that there is a case to be answered here and you apply a public interest test to it to ask is really worth the while. If you must retain a re-investigative capacity, then control it, limit it and make it applicable to all in an equal fashion, in other words, paramilitaries and the police, not the police alone.

**Chairman:** Thank you very much indeed. That is very clear and we are grateful for your evidence.

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**Tuesday 13 May 2008**

Members present:

Sir Patrick Cormack, in the Chair

Mr David Anderson  
Mr Stephen Hepburn  
Lady Hermon

Dr Alasdair McDonnell  
Mr Denis Murphy

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*Witnesses:* **Sir Alasdair Fraser**, Director, and **Mr James Scholes**, Senior Assistant Director, Public Prosecution Service for Northern Ireland, gave evidence.

**Q460 Chairman:** Good afternoon, it is nice to see you. Sir Alasdair, could I welcome you and Mr Scholes. Thank you both very much indeed for coming. We are particularly delighted to see you, Sir Alasdair. You have met the Committee before.

**Sir Alasdair Fraser:** Yes.

**Q461 Chairman:** We appreciate your coming to give evidence in this inquiry. We will have roughly half an hour of evidence which is public, on the record, and then we will have a brief session in private, which I understand you have willingly agreed to, with you and your colleague. Thank you very much indeed. First of all, is there anything you want to put on the record before we ask any questions?

**Sir Alasdair Fraser:** I am very happy to be here with my colleague and I hope that we can be of some assistance to you.

**Q462 Chairman:** I am sure you can, and we are very grateful. What do you see at the moment, Sir Alasdair, as being the key challenges facing the Public Prosecution Service?

**Sir Alasdair Fraser:** We are at quite an unusual stage. As a service we have finally rolled out and have taken responsibility for all of the work which PSNI was doing, therefore we are providing our services across Northern Ireland. I think the challenge is to raise our profile in the community. We are a regionally based organisation which historically was somewhat shy with a very low public profile, but I think that is a challenge that we will have to meet and we will have to be seen to be more responsive in the community.

**Q463 Chairman:** Thank you very much indeed. Moving towards our own specific concerns at the moment, what has been the extent of your involvement with HET?

**Sir Alasdair Fraser:** We have been involved with them since 2005 when we had to make a business case for additional staff. We were successful in that application and we have access to about £1.8 million of the ring-fenced budget and have employed a number of senior lawyers to take this work forward. However, it has been slow. We have had one case referred for a decision, which has been taken. We have been asked on eight occasions for advice, which we have given, but, apart from that, we have had little contact with them. Of course, for historical reasons our own records are of a very high standard and we have been able to assist them in rebuilding

cases that are 30–35 years old and to explain to them upon what basis the decisions that were taken then were reached. In a somewhat unusual manner, we still have people in the office who took those decisions despite the passage of time, including James and myself, so we can give them a pretty informed view as to what has taken place.

**Q464 Chairman:** Do you find that they are co-operative and receptive? Is the relationship a thoroughly constructive and amicable one?

**Sir Alasdair Fraser:** I think they are very well led by Mr Cox and Mr James. I had the advantage of working very closely with them when they were dealing on behalf of Lord Stevens, so I have known them both for ten years.

**Chairman:** We would certainly concur with your remarks, having recently visited and met Mr Cox and his colleagues and associates. Can I bring in my colleague, Mr Murphy.

**Q465 Mr Murphy:** Thank you, Sir Patrick. Sir Alasdair, we had the opportunity the last time we visited here some months ago to meet with and discuss the work of the Historical Enquiries Team. We understand from speaking to them that to date there has been only one case referred to you from them. First of all, would you by now have expected more cases to have been referred? Do you feel as they move on to more recent cases that you will get more referrals?

**Sir Alasdair Fraser:** I think you have put your finger on it. I am not surprised that, given the period they are examining, they have found it difficult to secure evidence. In most of the cases we have considered what evidence was put before us and have come to a view and it has proved difficult for them to gather fresh evidence. I understand there are about 1,000 cases open, of which 500 have been completed. I think when we move from the 1970s into the 1980s then perhaps there will be an increase in the rate at which cases are referred to us. Although only one has been sent to us, it is not a criticism of their professionalism.

**Q466 Mr Murphy:** I must say that we were very impressed with the people we met there and with the work they were doing. I understand that your organisation has been allocated £488,000 as a contribution to the work you will need to do on that. Do you consider that to be adequate?

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**Sir Alasdair Fraser:** At the moment we have a ring-fenced budget of £1.8 million covering 2005–10. We have spent £322,000 of that. I am informed that they anticipate that they will be sending cases to us, not in the immediate future but in the middle term. At the moment I cannot but say that we are sufficiently funded.

**Chairman:** That is reassuring. That is very good. Lady Hermon.

**Q467 Lady Hermon:** Thank you, Sir Patrick. It is delightful to see you here this afternoon, Sir Alasdair. I wonder if we could look at an issue that I know has certainly concerned the present Chief Constable and it does concern the Committee as well, and that is how one protects intelligence and how one protects human sources. The Chief Constable has actually indicated to the Committee that he and the police now find there are difficulties in bringing cases to the court with the human rights implications, obviously the right to life, and there is a risk of compromising sources. Presumably you are aware of this. How does the Prosecution Service deal with this?

**Sir Alasdair Fraser:** There is a very clear pathway that we have to follow. The Chief Constable is, of course, right in saying that meeting one's duties can affect whether or not a person is to be prosecuted. As you know, there is a duty on the prosecution to disclose evidence, material, information which will assist the defendant in the conduct of his defence or will undermine the prosecution's case. We, as prosecutors, have to have an arrangement with police to ensure that we are briefed with that information and we have to have arrangements with the Security and Intelligence Services. Then we are under a duty to examine that material. In the case of a trial without a jury then we move to a disclosure judge for a ruling. If we think the material ought to be disclosed, we either disclose it or stop the case. If we think there is an argument which a judge could properly determine that we do not disclose the material and a fair trial can be obtained for the defendant then we move to a disclosure judge. In the circumstances that you described, it inevitably will be an *ex parte* application with or without notice to the defence. If the judge says, "Well, I do not think you need disclose" then we, as prosecutors, are under a continuing duty during a trial to act as a minister for justice and if an issue arises during the trial which we consider may affect a defendant then we must go back to the disclosure judge and inform him of what has taken place and seek a further ruling. You have quite a sophisticated, complex mechanism. The disclosure judge is not the trier of fact and has the disadvantage, of course, that he is not in the arena of the trial.

**Q468 Lady Hermon:** Could I just ask you to give some indication of how influential the human rights legislation has been and, as I say, the right to life. Have cases actually been dropped? Perhaps you could give us some examples. The one that does

come to mind is where the reference to right of life and protection of that person's life might well have indicated that, in fact, he was an intelligence source.

**Sir Alasdair Fraser:** The police, the Prosecution Service and the courts are subject to the European Convention on Human Rights, now the Human Rights Act. Clearly circumstances have arisen where one would be mindful of one's duties under Article 2, and that has occurred. As a prosecutor you either can find a way, perhaps with the disclosure judge, to continue a prosecution fairly or, if that cannot be achieved, then you stop.

**Q469 Lady Hermon:** Are you duty bound as the Director to refer to the Attorney General for a decision like that, Sir Alasdair, or is that a decision that, in fact, remains here in Northern Ireland with you?

**Sir Alasdair Fraser:** The Attorney, of course, would be receptive to any approach which I would make and if I asked her for advice she would give it, but as Director I am responsible for the conduct of prosecutions and the Attorney would look to me to meet my duties.

**Q470 Lady Hermon:** Yes. That has been very helpful so far. Do you think that, in fact, the legislation in Northern Ireland is adequate for the protection of witnesses who may find themselves under intimidation or in fear for their lives or, indeed, their families in fear for their lives? Is the protection adequate at the present or could more be done for witnesses?

**Sir Alasdair Fraser:** I think you will find that there are a number of cases decided in the Appellate Court, particularly in the House of Lords, which permit witnesses to be protected, for example by screening, by anonymity and the like. In addition to that, there is legislation which permits a witness to give evidence by video link rather than be present in court. There is a range of measures which will protect an individual, but we live in a small community.

**Q471 Lady Hermon:** Precisely.

**Sir Alasdair Fraser:** When we live in a community of this size it is very difficult for police to protect an individual, if that be necessary.

**Q472 Lady Hermon:** Could I sum that up by saying they are good as far as they go but not entirely adequate. Would that be fair?

**Sir Alasdair Fraser:** What I would say is I think they are reasonable and proportionate and I cannot identify additional means that I would favour.

**Lady Hermon:** Gosh, that is very interesting.

**Q473 Chairman:** So you have no recommendations that you would like this Committee to make in that regard?

**Sir Alasdair Fraser:** Not in regard to anonymity, screening or special measures. I think both Parliament and the courts have addressed those issues in a very thorough way.

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**Chairman:** That is very clear, thank you very much indeed. Obviously we will be much influenced by those comments when we come to draft our report. Thank you very much.

**Lady Hermon:** Thank you so much.

**Chairman:** Could I move on, please, to Mr Hepburn.

**Q474 Mr Hepburn:** Thank you. Just some questions on the relationship between yourselves and the police. How is the protocol working that you had jointly drawn up?

**Sir Alasdair Fraser:** It has worked well. We have a very good, professional relationship with the police. The problems that we faced, perhaps, in the 1990s are no longer there. We have very effective arrangements in relation to the disclosure of sensitive information. We have sophisticated reporting arrangements which, because of Causeway, are by and large electronic and very advanced. We are involved from time to time in police training, as they are with us. It is a very productive and professional relationship where each of us recognises and respects our different roles and our independence.

**Q475 Mr Hepburn:** At what stage would you expect to be called in to give advice to the police in a criminal investigation?

**Sir Alasdair Fraser:** Since the 2002 Justice Act we are under a statutory duty to provide advice. Increasingly, the police are coming to us earlier and earlier in the course of an investigation and, on occasions, before anyone is arrested. We encourage that. We encourage them preparing papers for that consultation. We ask that colleagues formalise the advice in a written manner and I hope that is of assistance to police and is moving in the right direction in the particular sense that if there is a problem, a problem, for example, about perhaps the presence of intelligence, that problem should be identified as soon as possible by the two agencies.

**Q476 Mr Hepburn:** You say with the protocol there is a very professional relationship between yourselves and the police, but just generally in those relationships with the police are there any tensions, Sir Alasdair, any frictions?

**Sir Alasdair Fraser:** It would be foolish to say there were not. There are no tensions or frictions at my level and Mr Scholes' level. What I see is an invigorated Police Service, young, at times inexperienced, committed, and impressive, and it will improve with time, as my own service will do so.

**Q477 Chairman:** Sir Alasdair, one of the things that Sir Hugh has expressed concern about, and indeed one of the reasons why we are conducting our present inquiry, is that he feels there is increasingly perhaps an imbalance between his responsibilities for the day-to-day policing of Northern Ireland, which is his supreme duty, and dealing with the historic past. Coming from where you are coming from, do you have any comments on that?

**Sir Alasdair Fraser:** The starting point is one of sympathy and perhaps a recognition of similar pressures and concerns within my own service. I think the Chief Constable is principally concerned about the haemorrhaging from the past into the present and one can fully understand that, but the past must be addressed by the responsible agencies in a thorough and professional way.

**Q478 Chairman:** Do you think that in respect of its recent past Northern Ireland should have its own statute of limitations?

**Sir Alasdair Fraser:** It is certainly a possibility and is not a unique instrument, it is relatively common in common law jurisdictions.

**Q479 Chairman:** Yes, that is why I ask the question. Would you favour it?

**Sir Alasdair Fraser:** I am happy to say, Chairman, if Parliament considered it appropriate I would be quite content, but I do not think as Director I should be contending for it as such.

**Q480 Chairman:** No, but you would see it as being something unexceptionable with which you could find yourself, as you say, content?

**Sir Alasdair Fraser:** I think if society considers that this is appropriate I would be very content. There would need to be a reasonably broad consensus for that consent to be meaningful.

**Q481 Chairman:** Thank you very much, that is very helpful. Taking things as they are at the moment, what do you find to be the greatest obstacles in bringing prosecutions dealing with crimes committed long ago?

**Sir Alasdair Fraser:** There would be a range of problems. The memory of witnesses is fickle.

**Q482 Chairman:** Indeed.

**Sir Alasdair Fraser:** And documentation would not have been kept or prepared in the manner that it would be today. With scientific techniques, whilst they give a great opportunity for finding fresh evidence, one is caught by the manner in which exhibits have been handled and their integrity. I think it is very difficult to go back 30 years and be able to put together sufficient evidence that will withstand the proper, rigorous scrutiny that it will receive.

**Q483 Chairman:** As one who could not, in his time, vote for the War Crimes Bill for those reasons, I fully understand why you make those points. When we went to visit the HET team we did have pointed out to us the number of very damaging attacks on police stations over the period of the Troubles which resulted in destruction of much valuable evidence. We also had pointed out to us that there were two fairly devastating attacks on the Forensic Laboratories. All of these things make it more and more difficult. What is absolutely crucial, and it has been underlined, of course, by a recent case is that if prosecutions are to be brought everybody has got to

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be persuaded that this truly is a fair trial and that it will stand up to the scrutiny to which you just referred.

**Sir Alasdair Fraser:** Things go in cycles in the legal system. At one point it might have been the treatment of individuals in police custody that was the point of focus, then whether or not someone had made some adjustment to interview notes. I think we are now in the phase where fresh, vigorous scrutiny has been brought to the manner in which exhibits are being handled, and quite properly so.

**Q484 Chairman:** Yes. Last year, Parliament, in its wisdom, decided that the era of Diplock was over but that there should be a remaining provision for trial without jury here. Have there been any trials without jury since Diplock?

**Sir Alasdair Fraser:** Yes. I am called upon to issue a certificate and if I suspect that a condition which Parliament has set is met, for example the defendant is involved in a proscribed organisation, and consider there is a risk that by reason of that the administration of justice might be affected then there will be a trial before a judge sitting alone. I take the decision on the basis of a very thorough analysis of the evidence and intelligence. In some cases I have granted a certificate and in others refused. Interestingly, I refused a certificate in a transitional case which was heading for a Diplock trial because the conditions are different.

**Q485 Chairman:** Yes. Can you tell the Committee how many certificates you have granted and how many you have refused.

**Mr Scholes:** Somewhere in the region of 22. I cannot be absolutely accurate but it is somewhere around that figure.

**Q486 Chairman:** 22 granted?

**Mr Scholes:** 22 certificates issued, yes. Obviously those cases have not come to trial yet.

**Q487 Chairman:** No, I appreciate that. This is very, very helpful because, after all, we were all involved in this legislation. How many refused?

**Sir Alasdair Fraser:** I would say one.

**Q488 Chairman:** One.

**Sir Alasdair Fraser:** I think so. It is a very small number.

**Q489 Chairman:** You were very proper in the remarks you made about possible legislation, but can you say on this piece of legislation that you are content with the way it is indeed allowing you to operate, or has Parliament not got it right?

**Sir Alasdair Fraser:** Parliament always gets it right!

**Q490 Chairman:** Would that that were the case, Sir Alasdair, would that that were the case.

**Sir Alasdair Fraser:** I would admit that in approaching the Bill I was not at ease with the prosecutor being cast as the decision-maker. I preferred the previous arrangement whereby the Attorney took that decision.

**Q491 Chairman:** So did I, yes. That is very interesting because we did have the Attorney before us on this very issue and I and colleagues pressed him on that point. Having said that, you are reasonably content with the way it is now enabling you to work even though you would prefer not to have that specific responsibility?

**Sir Alasdair Fraser:** Yes. I do not think it has been tested yet.

**Q492 Chairman:** No.

**Sir Alasdair Fraser:** One would anticipate some judicial review of a decision or perhaps an abuse application.

**Q493 Lady Hermon:** Against a certificate having been granted?

**Sir Alasdair Fraser:** Yes.

**Q494 Lady Hermon:** That has not yet arisen?

**Sir Alasdair Fraser:** It has not.

**Q495 Lady Hermon:** The grounds for review, if my memory serves me well, and it does not always, are judicially kept very narrow indeed, are they not?

**Mr Scholes:** Yes, dishonesty, bad faith or other exceptional circumstances.

**Sir Alasdair Fraser:** I think in this particular case my colleague is right. It is very hard to have a Director's decision overturned in the absence of malfeasance, but on this issue probably one would be applying the Wednesbury approach whether or not it was reasonable. That is probably a lower standard that the applicant would have to establish.

**Chairman:** Before we move into private session, are there any other questions?

**Q496 Lady Hermon:** Yes, Sir Patrick, I have got one. I am always very interested in finding out how morale is within an organisation. How would you describe morale, because we are looking at how we are dealing with the past in Northern Ireland? The contingent of prosecutors who are looking at the past, would you say they regard that work as something of a privilege or is it something of an albatross that they just have to get on with and do?

**Sir Alasdair Fraser:** It is the former. It would be viewed as difficult work within my service and it would be a feather in one's cap if one was designated to take that work forward.

**Q497 Lady Hermon:** Really.

**Mr Scholes:** **Sir Alasdair Fraser:** There would be no reluctance at all.

**Lady Hermon:** That is a very interesting response. Thank you for that.

**Chairman:** Thank you very much indeed. Are there any other questions? In which case, could I ask the members of the public to withdraw, please, and Sir Alasdair and Mr Scholes will stay. Thank you very much indeed.

*Witnesses:* **Sir Hugh Orde**, Chief Constable, **Mr Alistair Finlay**, Assistant Chief Constable, and **Mr Peter Sheridan**, Assistant Chief Constable, Head of Crime Operations, PSNI; **Mr John Brannigan**, Head of Intelligence, Historical Enquiries Team, gave evidence.

**Q498 Chairman:** Sir Hugh, you are extremely welcome. You have, as you say, your A Team and not enough nameplates, so perhaps you would like to introduce the anonymous gentleman.

**Sir Hugh Orde:** Who are you? I have never seen you before in my life! John Brannigan. John is a retired senior detective who now works on the Historical Enquiries Team. David Cox, sadly, is on annual leave. He will be well-known to some Members of this Committee, I suspect, from his previous life. He will answer all the hard questions!

**Q499 Chairman:** You are very welcome. Before we begin, could I just express our sense of outrage, sadness and sympathy at the appalling event which has dominated the news this morning. Please convey the Committee's sympathy to the officer concerned and his family. Is there anything you would like to say about this?

**Sir Hugh Orde:** Yes, thank you for the opportunity. I was not going to make an opening statement in general but I think this is important. It really underlines where Northern Ireland still is and yet again distinguishes us from other Police Services. No other officers in the UK have to be continually mindful 24 hours a day on or off duty that there is this latent threat, albeit sporadic and disorganised, which does not make it any less dangerous, as I said on the TV. The bottom line is, as it has been accurately described by the media, this was an officer on his way to work using his own car where clearly a device had been placed before it exploded within about 400 yards of his home address. The injuries are serious but not life-threatening. He had an operation at one o'clock this morning to remove shrapnel from the backs of his legs, which is where the worst of the injury was incurred. The device was clearly designed to kill. This is the third time we have not had a funeral, but it is only good luck rather than determination. In terms of indicators, what is different, in keeping with the last two in November when two officers were shot, is universal condemnation from every political party probably even more assertive in that sense across the divide. The phrase I used this morning was he was an officer on the way to protect the community and ended up being protected by the community. He was pulled out of the vehicle by local people. A nurse was nearby who rendered first aid until the experts arrived, the Fire Brigade and colleagues. Whilst it is a bad event, the fact that there has been such comprehensive condemnation shows where Northern Ireland is and the clear message is it is not going backwards. Until these people are locked up the potential continues and we will have to do our best to police it out. The other minor observation is I dealt with a couple of media crews about intelligence and the point I have been making in public, and I am happy to have a conversation in private at the end of this meeting, is our intelligence system is as good as it has ever been. In the last six years, and that is all I can speak for, the number of things that have not

happened because of police action, or An Garda Siochana action with the Security Service, has been huge. Sadly, we can never mention them in any detail because the cost of achieving nothing is something that the Treasury bean counters are yet to come to terms with, but it obviously costs millions of pounds a year to maintain that level of normality and we will continue to do it.

**Q500 Chairman:** Thank you for that, and thank you and, through you, to all your officers for what they do to ensure that this place is as normal as possible. As you rightly said, the universal condemnation of this appalling act and the community assistance rendered to the stricken officer does itself indicate how far we have come forward even since this Committee has been coming over in the last three years. Sir Hugh, as you know, we are looking at HET. I would like to thank you for making it possible for us to have that visit. Mr Cox and his colleagues could not have been more helpful or welcoming. They gave us the opportunity to meet a random selection of victims' families who, of course, had different views on the outcome but were unanimous, I might say, in praising the sensitivity of those who had handled their cases. That is something that has come up again and again in our conversations, both public and private. Thank you for that. One thing we were very surprised to learn, Sir Hugh, when we went to the HET headquarters was that all cases are being investigated, even those where there have been prosecutions and where families have never requested further information. I even came across one where the victim had been a very old man when he was killed in the 1970s and a bachelor with no known relatives. I think the Committee does just wonder whether this is a justifiable use of resources, both financial and human. I wonder if you would like to say a word about that.

**Sir Hugh Orde:** I will make some very brief comments and hand over to Alistair or John. I think we made a decision early on in terms of reinvestigating every one that it was around recognising whilst many were solved, they were not solved in the holistic sense, someone may have been convicted but there may be other people outstanding. There is also the harsh reality that these people were not killed by individuals or maverick activity, these were organised killer gangs, serial killers, going around, so to miss one out means you could miss a series of crimes where this was a critical element, so it was around joining them together. As far as the families are concerned, I think the odd case may seem a bit strange and if someone does not want investigation we do not want to make it worse for them but, again, doing the basic reinvestigation which was described to you does enable us to make sure we do not miss perhaps critical elements of a series of crimes. Interestingly, and I am sure Dave will have mentioned this, a number of people, whilst they do not engage at the beginning, one of the

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reasons we may overrun is when they hear we have done it they want to engage at the end. In other words, the questions we would like to get before we start the review we get at the end. I do not know if Alistair or John would like to add anything to that.

**Mr Finlay:** I think that covers most of it, the interconnections between the different cases. The other thing to be remembered is where you either have no family or no family engagement it generally means that the scope and size of the amount of work that is done is smaller. A lot of the work is the unanswered questions that come from victims' families and those are the answers they are looking for. Those who do not have family engagement are probably smaller in scope but it means we have then got the complete picture and we have joined up that tapestry of interconnected incidents some of which, until you revisit them, you do not know are interconnected. John deals with the intelligence so maybe sees a bigger picture.

**Mr Brannigan:** What we would like to do is get it right once and not to have to go over cases again. We find that where you get fragmented families, and we do get grandchildren coming along enquiring as to the death of their loved one much later after the process has started, and that is all through the media where they hear of HET and we get letters from as far away as Australia and America enquiring about their distant relative and the fact they have no near relatives, we feel that it is necessary to open each case and go through all the different areas within that investigation and have it complete and it is there forever. We will place that file within the central store and it is there for anyone to pick up in future years.

**Q501 Chairman:** Obviously what you say is on the record and people will be able to reflect on that, and the Committee will. We were told by the Retired Police Officers' Association, Sir Hugh, that some families have been, as they put it, "re-traumatised" by the investigation. Are you aware of this? How common a reaction is that?

**Sir Hugh Orde:** You will have met my Family Liaison Officer or someone at the HET, so I will leave it to the experts to talk about it. Generally speaking, my gut reaction is that would be highly unusual. I do remember a case when I was on Stevens where we had to reinvestigate a case which to say we re-traumatised the family would not be right but it was a family that went through some pain because of what we were doing, which in a way lends itself to the wider debate about how you deal with the past, I think. We recognised we were only ever going to be one bit of it and now, according to Denis Bradley's inquiries moving on, that is a hugely positive step to offer closure for families. We never claimed this was a universal solution, but what we are saying is at least we are doing something which we think is quite legitimate and on balance is bringing more success. I do not know if there is any hard evidence.

**Mr Brannigan:** From my knowledge of HET, we have not experienced too many complaints of people being traumatised by us approaching them, but we

have had a number of cases where people have clearly said that they do not want anything done. Equally, we have had fragmented families where some members of the family have said, "We don't want anything", but other members have come along saying, "Yes, I do want an investigation". We have no clear evidence that people are being traumatised by our investigations.

**Q502 Chairman:** We, of course, will have to address all of these issues of how the past should be dealt with and we are meeting with virtually everybody who has an involvement in this. I would just like to ask you one more question before I bring in Lady Hermon, and that is this: we were told when we visited the HET headquarters that it was unlikely that the project would be completed within the initial planned six-year period. What are your views on the overrun? How long is it likely to be? Is it going to be adequately resourced?

**Sir Hugh Orde:** When we started it, it was a sort of unique step into the dark, frankly, no-one had ever tried this, to my knowledge, anywhere in the world. It is quite interesting, having given evidence in Strasbourg to the Secretariat raising some specific cases, I fear we are now going to be in demand in other places looking at their history as a model of best practice. That is a huge statement around what the Secretariat thought of what we were doing, and they would have had a presentation very similar to the one you had. It may overrun, but much of that is around the families wanting to know more. Our determination was to be victim-focused, so we feel obliged to do that. Alistair or John may have some scope on time. It is a finger in the air, frankly, because we are at 1972-73 at the minute and as you get closer to the end of the game, does that make it more complicated or less complicated. There may be more questions, there may be more completeness in the files, as one would expect, as we get to the more modern ones. All of that having been said, what we are delivering is petty cash compared to other methods, a more legalistic approach to dealing with the past. Government has given us £32 million or £34 million, I lose the odd million here or there.

**Q503 Chairman:** What is that between friends!

**Sir Hugh Orde:** At the minute, essential. I have said on record that I am committed to keeping this going as long as it needs to keep going because I think it is adding far more value than it is costing in terms of hard fiscal cash. The reality, of course, is if there is no more additional money that, like everything else, will be drawn out of my current budget. This is different from public inquiries because I am funded for this separately by Government. I do not know if Alistair has got a point on that.

**Mr Finlay:** The other point is public inquiries is a single victim essentially and we are looking at 3,265 deaths. The range of victims, if you like, are the families left behind and if you multiply that by a factor of whatever, we are dealing with a huge number more. In terms of scoping how long this is going to take, I do not have a firm figure that I can give. I think part of this is we have done this process

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of gathering papers and such like together, but until you start the family engagement and know what the questions are and look for the interconnections you maybe do not know the size of it and it is not one-size-fits-all. It is very difficult to project at this stage other than to say I think there are somewhere in the region of 1,100 cases that are already opened. So of the 3,265—

**Q504 Chairman:** Roughly a third.

**Mr Finlay:** Are opened.

**Q505 Lady Hermon:** May I just follow on from that point, Alistair. Of the 1,100 cases that have been opened, one of the reasons you gave for identifying and reinvestigating every single death, not just unresolved deaths and murders was that you “could identify interconnected cases”. Has HET identified any interconnected cases?

**Mr Finlay:** Yes. There are numbers of series.

**Q506 Lady Hermon:** Are you able to say publicly which cases those are?

**Mr Brannigan:** I am not able to say with any great detail what they are, but what I can say is a number of cases are connected. We were able to link those through intelligence, through weapon history and general circumstances.

**Q507 Chairman:** These are cases that you did not previously think were connected?

**Mr Brannigan:** We did not know if they were previously connected.

**Q508 Lady Hermon:** These are early cases?

**Mr Brannigan:** These are early cases that are connected.

**Q509 Chairman:** These are not cases that have been taken out of sequence?

**Mr Brannigan:** No, but in cases that have been taken out of sequence we see a clear pattern there and we see them as linked.

**Q510 Lady Hermon:** Are you hopeful of prosecutions in those cases?

**Mr Brannigan:** Every case we have to treat on its merits and what evidence we have. It is really a case of digging down into the circumstances and evidence.

**Mr Finlay:** One of the great advantages that we have now that we did not have before is the range of techniques. The role of the crime analyst and the computer tools that are available to the crime analyst to map out a picture showing the interconnections is a facility that we have available to us today that detectives in yesteryear did not have, and maybe did not have the opportunity through more electronic means and assessing of information to join the pattern together in a way that we are able to do now so you can see where, as John says, the linkages are and make connections between them. It is an evolving map of interconnected events that tend to emerge from HET.

**Q511 Chairman:** I was interested in what you said about the out of sequence cases. Does that mean that some of those also connect with the very early ones?

**Mr Brannigan:** Not particularly. If we look at some of the cases that happened in the 1990s, there was no relevance to something that happened in the 1970s in terms of personalities who may have been involved. To give you an example: in 1972 there were 470 deaths due to the Troubles and of those, as Alistair said, there was no real analysis done in those early days to the depth that we do now and we are seeing patterns that we can connect.

**Q512 Lady Hermon:** I am sorry to repeat myself, but is HET hopeful of prosecutions in those linked cases?

**Sir Hugh Orde:** No is the short answer. Do I see the HET as prosecuting lots of people? No, I do not. Does that mean there will be no prosecutions? No, I think there may be some but the opportunities by definition are limited, certainly in the 1970s' cases. I think the more modern we become probably the greater the chances as we come up to the more modern where exhibits and things are more likely still to exist, but in the older cases, no. I have been roundly criticised for setting it up on the grounds that this is nothing to do with the police. I happen to think that victim care is something to do with the police and the feedback we are getting to date is that this is of value. I am not being defensive about it but success for me is not the number of prosecutions; success for me is we have allowed some people to move on in their lives to a degree that they would not have been able to move on if HET had not existed and given them that interaction and opportunity to ask questions they have never had before because simply people were too busy at the time.

**Q513 Lady Hermon:** Can I put just one other matter. We have looked at the families and we have looked at the victims, but can I just ask about the impact on police officers who will be asked by HET to cast their minds back to the 1970s and 1980s and the trauma that is caused to retired police officers and their families. What concern does the Police Service have about them?

**Sir Hugh Orde:** An awful lot. In fairness, I think it would be fair to say they are keen to engage.

**Mr Brannigan:** Yes. We have found that a lot of ex-police officers are keen to engage and have left their phone numbers. Some others have said they do not want to be contacted. We do write out to them as opposed to door stepping them and we give them the opportunity either to co-operate or not. Some people do not respond, but by and large we have found good co-operation from retired officers.

**Q514 Lady Hermon:** Thank you.

**Mr Brannigan:** We do respect their wishes in that if they say “no” we will not harass them to get that information but we will do it in a courteous way.

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**Q515 Chairman:** Sir Hugh, before you came we had Sir Alasdair this afternoon and he gave in public evidence the comment that to date only one case had actually been referred to him. He did not make any complaint about this, but he—

**Sir Hugh Orde:** I bet he did not!

**Q516 Chairman:** He merely gave it as a statistic. How many do you reckon he is going to get?

**Sir Hugh Orde:** I think that is an impossible question, Chairman. I understand why you are asking it. In the older cases, not a lot. I am not going to put on Sir Alasdair's plate stuff which we could not make decisions on. It is easy to say, "We have got something here, give it to the DPP", but that is not fair. We have got to be comfortable that we have got a case that we think in our professional judgment has some chance of life before we hand it over to the Director to direct on. I think it would be unfair just to offload everything on him to say we did not make a decision. John may have a better view, but I do not think we are looking at huge numbers.

**Mr Brannigan:** I do not think there will be overall. Perhaps in the cases towards the end of the process we will have more that will go towards—

**Q517 Mr Murphy:** Why then was the decision made not to start with the latest cases and work the other way, given that time is moving on and people are retiring? Surely it would have been much better from an evidence point of view to investigate the later cases first.

**Mr Brannigan:** If we look at the family issues and the cases from 1969–70, the people, relatives and the victims' families by the time we get to look at their cases would be much older. It is a big, big issue that we have and I do not think there was any easy answer as to where to start. I think within our process the integrity of a lot of documents, including exhibits, will be more intact than they were for the 1969–70 cases, so they will still be there in the systems that we have.

**Q518 Chairman:** But basically your reason was compassion for the ageing?

**Mr Brannigan:** It was a judgment call, yes.

**Sir Hugh Orde:** It could have gone either way, frankly. There was a long debate about it.

**Q519 Dr McDonnell:** We have explored that quite a bit. Some people have suggested that there is significant overlap between the Historical Enquiries Team's inquiries and the Police Ombudsman's inquiries. Do you agree with that? Do you see them as different animals?

**Sir Hugh Orde:** They are certainly very different. The Ombudsman has a very limited remit. The Ombudsman cannot investigate ordinary, for want of a better description, murders outwith any suggestion of police malpractice; it is as simple as that. It may help if Alistair talks on how we operate jointly.

**Mr Finlay:** There is a lot of co-operation and joint working that goes on between the Ombudsman and HET over those cases where there is joint interest, if

you like. I do not see it as a duplication of effort over the same cases, they are coming at it from different aspects. There is routine co-ordination and exchange of views on a regular basis, is that not right, John?

**Mr Brannigan:** Yes, indeed. We have monthly meetings with the Ombudsman to discuss cases that are of mutual interest and we exchange material. The Ombudsman is legally obliged to investigate some of the cases where the police have been involved in the shooting, so those cases have to be passed to them. Other cases where there is some doubt or where there are allegations of collusion or ineffective investigations we do discuss in some depth with the Ombudsman. I cannot speak for the Ombudsman, but certainly they would be strapped for resources and finance to deal with the volume of cases that we have for even the minor complaints of maybe an ineffective investigation in the 1970s.

**Q520 Dr McDonnell:** So really you do not see a lot of overlap and the bit of overlap that there is you work it out?

**Mr Brannigan:** Yes.

**Sir Hugh Orde:** Yes.

**Mr Finlay:** The Ombudsman is discharging that oversight over inquiries that are going on within HET that the Ombudsman does not have the resources to pick up at that time but maintains that ongoing, regular interest and update.

**Q521 Chairman:** The Ombudsman has said in public evidence to this Committee that he would like to see the historic hived off from his current responsibilities. He actually said in as many words that there is a danger of the past overwhelming the present. Any views on that?

**Mr Sheridan:** I think about 70% of their work is currently in the past. Judging from the letters I get, a lot of current stuff is not going to be dealt with.

**Q522 Chairman:** That was his point.

**Mr Sheridan:** That is my sense of where it is at the minute.

**Q523 Dr McDonnell:** Could you see any circumstances where this aspect of the work would come under one umbrella?

**Sir Hugh Orde:** Yes. It would be interesting to see what Lord Eames and Denis Bradley come up with in terms of is there a wider solution. Am I determined to keep HET under our command? No, I am not persuaded it is necessarily the right place, it depends where it would fit in something else if some other model is developed. I would be very concerned if the work we had clearly stated we were going to do was not done and I would want to have a serious conversation around that. As we always saw it right from the beginning, this was part of a spectrum of outcomes or ways of dealing with history, it was never going to be the whole one. On the Ombudsman's observation, Chairman, if one looks at the model in the Republic, of course their legislation is different, they postdate our Ombudsman and their retrospective powers, when

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they were severely limited, were to a very short period of time pre-appointment. If the current Ombudsman thinks that is the right way forward, I have no difficulty with that at all. I need the Ombudsman today to do what the key role is, which is to deal with misbehaviour by current serving officers to maintain confidence in police.

**Q524 Chairman:** That was the reason for the office being established.

**Sir Hugh Orde:** I am at one with that.

**Q525 Mr Hepburn:** The PSNI was set up as a new organisation and the Police Ombudsman was set up to look into things like current misbehaviour by police officers. The very fact that they are getting involved in historic inquiries into the 1970s when there may have been wrongdoing by police officers, do you not think that taints the current PSNI when the Ombudsman is doing both?

**Sir Hugh Orde:** My big concern about all of the historic events that are going on is that it is reaching such a level of activity, and I say this with some experience of living through the Lawrence Inquiry, the murder of Stephen Lawrence in London and the inquiry into that, by the time that one inquiry reported some many years later the changes had been achieved. The Metropolitan Police took several years to recover from that impact because it was seen as if it was only yesterday, which was your point, and it narrows the gap. I have lost count of the number of public inquiries we have had both North and South. We have all of the historic events from the Ombudsman's office and we have our own Historical Enquiries Team which may find something out which then has to go to Al Hutchinson to investigate. You reach a point where distilling one from the other is hugely difficult and confidence in policing, as I have said, will suffer as a consequence of that, and unjustly so.

**Mr Sheridan:** I have personal evidence of it because the Ombudsman did an investigation into the death of Sammy Devenny in 1972 when the police ran through his house after a riot. He was beaten with batons, taken to hospital and died some weeks later of a heart attack, not the injuries. The Ombudsman did a reinvestigation in 2002 and she found, quite rightly, what had happened in the event. I was the Commander in Derry at the time and was interviewed and there was a lot of stress around it and eventually I had to say, "Look, I was 12 years of age when this happened", but in their mind time had collapsed and they were of the view this was currently what was happening.

**Chairman:** Could we move on to inquiries with Mr Anderson.

**Q526 Mr Anderson:** Sir Hugh, it is good to see you again. In the written submission you sent us you mentioned your concerns about the information management procedures of the various inquiries and the fact they do not provide sufficient protection. Can you expand on that?

**Sir Hugh Orde:** Yes, I can. It is one of the key issues that causes me concern. This is no specific criticism of inquiries and the role they have been asked to do, it is the fact that I am losing control of more and more secret and extremely sensitive material which includes the names of covert human intelligence sources which historically, of course, would have been recruited on the clear understanding their names would be retained by the Police Service and would never go outside that control. None of my officers can ever say that ethically again because it is not right in inquiries like this and the Ombudsman gives powers to require that information to be divulged. We expressed those concerns in writing to all the inquiries at the start and sought to make sure processes and procedures were in place to minimise the impact, but the fact is you lose control when it goes outside the organisation. Likewise, the Ombudsman who, in fairness, has a very sophisticated and secure system for document retention that mirrors ours to the highest level, so it can be done but it is very expensive, of course. The long-term implications of this, in my judgment, and it is a judgment, are, if you look at the current threat to the United Kingdom, will we be able to successfully recruit sources, young men and women, from the communities where these current terrorists are being drawn from and radicalised who may be 20 now, so in 20 years' time, come a public inquiry, will only be in their 40s and their identities will not be secure. I think that has huge implications, which is why we feel it is very important. The risk is compromise and the wider the audience then the wider the risk, it is as simple as that. I do not know if Peter wants to expand.

**Mr Sheridan:** It is very difficult for people to sign up to be covert human intelligence sources at the best of times and one of the guarantees we used to give them in the past was that their identities would remain confidential, but we cannot do that any more. In the contract with that covert human intelligence source it becomes more and more difficult to persuade them that their identities will always remain secret. It stretches further into the courts, PII and protecting identities of informants in investigations.

**Q527 Lady Hermon:** Picking up on what Sir Hugh just said about the serious implications that are not just confined to Northern Ireland but our dealing with al-Qaeda and right across the United Kingdom, that is the point you are making?

**Sir Hugh Orde:** I think it has national and international implications. The other side is what agencies will be prepared to deal with us from outside if they feel they cannot be protected. There ways of minimising the risk and I think that we need to be confident when that material is outwith our control those risks are minimised, and I think there are certain standards that need to be maintained. It is a big issue.

**Q528 Mr Murphy:** Sir Hugh, have there actually been any incidents of covert human intelligence sources being identified as a result of public inquiries to date?

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**Sir Hugh Orde:** Not to date, and likewise in prosecutions. We will step back, much to our frustration on many occasions, when the disclosure rules force us either to withdraw or divulge a source under Article 2. It is really a very simple, albeit frustrating, decision: you step back.

**Q529 Mr Murphy:** Just to follow on from that. One of the powers the Secretary of State has is to prevent the publication of evidence being published that would normally be placed in front of the inquiry. You are on record as saying to us that you thought it would place the minister in “an invidious position of seeming to intervene in the inquiry”.

**Sir Hugh Orde:** It is a matter for the minister really, but I think it must be difficult if you set up an inquiry, a public inquiry, albeit in the Inquiries Act the word “public” does not feature in it, to be as public and as open as possible and then you are the same person who says, “I am sorry you can’t hear this bit”. In terms of public confidence in the process that does not seem to make sense to me.

**Q530 Mr Murphy:** But if that particular piece of information is to protect the very people you have just described, if he does not make the decision then who should?

**Sir Hugh Orde:** One could argue the judge of the inquiry might. There is a debate around this currently.

**Mr Finlay:** It is a legal debating issue. What we see at the moment is the traditional PII route and the legislative route that is in the Inquiries Act and we have got Lord MacLean particularly in the Billy Wright Inquiry who believes that he cannot and should not be the arbiter around that. He believes the Secretary of State is the right person to do it. Equally, the Secretary of State would have a view, we think, that he is not the arbiter because it has been provided for in the legislation that the chairman would do it. It has never come to fruition as yet because everything that we have had to deal with has been negotiated because we know about this issue. It is a grey area and an area which is uncertain and our position would be that it does not need to be uncertain, it could have that certainty if they clarified it.

**Q531 Mr Anderson:** Are you saying the certainty would come if you had the same sort of relationship you have got with the Ombudsman where the systems in the inquiries were the same as your systems?

**Mr Finlay:** There are two different things there. One is the clarification between a system whereby there is the granting of immunity over the release of that information to another body and the other is the framework of controls round the storage and management of information once it goes outwith our control. Our concern about inquiries is we have very strict regimes of control of the information and we are subject to oversight and inspection on that; the inquiries are not. The inquiries have been reluctant to engage in a process where they would give us assurances as to what that framework looks

like. Although we tried at the beginning to get Memorandums of Understanding to see how this would work, fairly understandably the inquiries at that stage were reluctant to sign up to something which would appear to perhaps fetter their scope.

**Q532 Chairman:** Each inquiry is effectively *sui generis*, is it not, and they all are taking very different approaches?

**Mr Brannigan:** Absolutely, yes.

**Q533 Chairman:** That cannot be easy for you, can it?

**Sir Hugh Orde:** No, it is not. I must try to remember what I say more often!

**Q534 Lady Hermon:** We will remind you!

**Sir Hugh Orde:** I am also very much on record as saying I will provide whatever the inquiry demands because that is what the law requires me to do. I think I have an absolute right equally to raise concerns at committees such as these and in places that are important because we need to understand what that means. Alistair leads on this for me, but we have a whole department providing information. There are very different ways of dealing with not only inquiries but now we have to deal with inquests, and again a different approach has been adopted by the coroner which is a very constructive approach which may minimise the impact, but still it is an awful lot of work.

**Q535 Chairman:** We will come to inquests in a second. On the Billy Wright Inquiry, for instance, when are you going to give your response to this so-called Position Paper?

**Sir Hugh Orde:** Alistair?

**Mr Finlay:** This week.

**Sir Hugh Orde:** Are we giving it this week, Alistair?

**Mr Finlay:** Yes.

**Chairman:** There we are, very positive news. Lady Hermon, you want to ask about inquests.

**Q536 Lady Hermon:** Coroners’ inquests have been described by some of our witnesses as being similar to a “mini public inquiry” in terms of the workload for the police. Is that how you have found it? Tell us the impact? For example, how many people within the police now are involved, for example, in the Rosemary Nelson Inquiry and the Billy Wright Inquiry? You have said that the coroners’ inquests are quite separate. Are these different police officers or is it just one room full of very hardworking police officers, men and women police officers, involved in this?

**Sir Hugh Orde:** I will leave Alistair to deal with the details. It is just another piece of business of dealing with history, so the strategic impact of public inquiries adds to the mix of all these things coming into the public domain which increases the pressure on confidence in policing. In terms of the structure, it is Alistair’s daily life.

**Mr Finlay:** There is not a team that deals with each individual issue. The teams, if you like, are researching different parts of each inquiry or

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inquest, as the case may be. We move the capacity around depending on where the demand is coming from at a particular time.

**Q537 Lady Hermon:** So how big is your team, Alistair?

**Mr Finlay:** At the moment we are running with about 60 people and we have got a legal team which is of about 20.

**Q538 Lady Hermon:** Is that exclusively what they do?

**Mr Finlay:** Yes.

**Q539 Lady Hermon:** They do not do any other what I would call “normal” policing?

**Mr Finlay:** No. Those are the ones who are exclusively devoted to that side. They will then pass out work to other specialists, in particular Peter’s area.

**Q540 Chairman:** Are these very experienced officers?

**Mr Sheridan:** Most of the people at Alistair’s end are former police officers who are doing that but they require intelligence staff and the only people who can do that are current serving officers, so then it comes across to my department who will research whatever they need for whatever inquiry it is. That takes a considerable number of people depending on what it is. They also have to service requests from the Ombudsman into past investigations and, as I said, 70% of the work is into past investigations. You get all that information, including inquests, that requires intelligence and background and consistently researching that information.

**Q541 Lady Hermon:** So much of your time is personally taken up?

**Mr Sheridan:** Department time?

**Q542 Lady Hermon:** Yes, department time, just looking at the past at inquiries and the coroners’ inquests.

**Mr Sheridan:** I would say probably a good 25% of individual officers’ time because it is a group of people who continually research old systems and it just depends on the level. One month ago there were 600 separate requests from different parties that came in. The inquiries are up and running now, so by its very nature they have got all the information and all the intelligence they need so there is less of that happening, but it is very hard.

**Sir Hugh Orde:** It is huge, which is why I have expressed publicly concern about its impact on current policing. It is not just any individual but the key experts, many of whom have retired and we have had to bring them back, who understand the legacy systems. We do not just press a name on a computer and get everything. Everything has to be right because I cannot afford to give wrong information or misinformation to an inquiry, we would be rightly criticised for it. It is a huge piece of work.

**Q543 Chairman:** On this impact on current operations, how serious is that at the moment or is that merely a fear for the future?

**Sir Hugh Orde:** No, it is consistently serious. These are people, particularly in Peter’s department, who should be dealing with the top end of criminality and terrorism because those are the expertise and skills we need. When you are looking for old covert source material and intelligence material these are the people who understand it, so when you get a request, I do not know, for all INLA intelligence you cannot just go and press a button, you have got to look at all PIRA intelligence and may have to look at lots of intelligence which may mention it in there. It is not easy. That is what we have been trying to articulate, maybe inadequately, to try and underline why the impact is substantial.

**Q544 Chairman:** You are articulating it very adequately now and I would give you as much opportunity as you would like because this is on the record.

**Mr Sheridan:** It means those officers who are doing that are not looking at preventing last night’s event.

**Q545 Chairman:** Indeed.

**Mr Sheridan:** So in terms of researching and assessing current intelligence, a proportion of their time is spent researching intelligence from the past rather than trying to prevent next week’s robbery or next week’s murder.

**Q546 Chairman:** Indeed, Sir Hugh, it was your comments on this at an earlier stage that really provoked us into conducting this inquiry.

**Sir Hugh Orde:** We are grateful for it. It is important. It is not something we take lightly. We will continue to provide that information and, in addition to all of Alistair’s people, there are a number of very important players, for example Colin Port, the Chief Constable of Avon and Somerset. He has to have substantial legal support because the inquiry has chosen to employ retired detectives to review his independent investigation, which I am told is a substantial report which I think Colin has some issues with. He now has a QC and counsel at our expense and a whole team to do that piece of work, so the work gets farmed out as well.

**Mr Finlay:** That was a creation of the inquiry that separated them off.

**Q547 Chairman:** Yes, absolutely. All of this is in the context of a Northern Ireland which, although very much better and more normal, still has, as we have been reminded all too horribly today, a real and continuing threat, especially from dissident republicans.

**Sir Hugh Orde:** It is certainly not the environment it was even five years ago, never mind ten or 15 years ago, but, as I said in my opening, Chairman, we are still different and the effort has to be in maintaining normality to enable, for example, a business conference last week to go ahead unheeded. That was a massive police operation.

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**Q548 Chairman:** I was there, you did very well.

**Sir Hugh Orde:** That is exactly the point where nothing happened where nothing is success and nothing does not come easily or cheaply, it requires huge effort to achieve that objective.

**Q549 Chairman:** What was the cost of that?

**Sir Hugh Orde:** I could not put a figure on it yet because I have not had it costed in that sense, but a substantial effort, not just with us but our colleagues in An Garda Síochána. The interesting thing was the best the dissidents could come up with was 38 hoax calls. A huge effort to deal with, but most people at the conference would not even have noticed.

**Q550 Chairman:** No, absolutely. Before we move into private session, could I just ask you one thing for the public record similar to a question that I asked Sir Alasdair before you came in. How do you consider your relationship with the Prosecution Service? Is it one that is fraught with tension?

**Sir Hugh Orde:** We have our moments. I do not know if Peter wants to comment on that.

**Mr Sheridan:** It has improved over the last few years and there is a recognition, particularly in the PPS, of much more need for working together and the issue about creating silos and we are independent, I have seen a change in that. In the most serious of cases,

even at the intelligence stage, I would despatch the senior investigating officer down to the PPS and they would be pleased with that and that is not something that happened in the past. I have seen huge improvement around that.

**Sir Hugh Orde:** In individual cases Peter is absolutely right. Where the debate now needs to shift is towards looking at models in the rest of the UK around speedy justice and proportionality and what is necessary to prosecute a case. That is the debate which I am very much engaged with the Minister on progressing because I think it is hugely important in terms of freeing up frontline resources and frontline policing rather than creating much paperwork which is never going to be used because eventually the majority of people arrested by the police spookily are guilty and want to plead guilty at the earliest opportunity, not two years down the line.

**Q551 Lady Hermon:** And then hopefully getting a sentence instead of bail or a suspended sentence?

**Sir Hugh Orde:** I have made several on-the-record comments on those particular issues.

**Chairman:** Yes. At that point we will rescue you from any more. Thank you to you and your colleagues for the public session, we are very grateful. You have kindly said you will stay to brief the Committee in private.

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**Wednesday 21 May 2008**

Members present:

Sir Patrick Cormack, in the Chair

Mr Gregory Campbell  
Mr John Grogan  
Kate Hoey

Dr Alasdair McDonnell  
Stephen Pound  
Sammy Wilson

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*Witnesses:* **Paul Goggins** MP, Minister of State for Northern Ireland, **Ms Carol Moore**, Associate Director, Policing and Security, **Ms Katie Pettifer**, Head of Rights, Elections and Legacy Division, and **Ms Nichola Creagh**, Policing and Security, Northern Ireland Office, gave evidence.

**Q552 Chairman:** Minister, could I welcome you and your team of officials. Thank you very much indeed for coming to give this formal oral evidence and thank you too for not succumbing to an invitation to go to Cheshire this afternoon. You are very welcome and, as you know, this is the final formal evidence session of this particular inquiry into policing and criminal justice in Northern Ireland and we are very grateful to you for coming. Is there anything that you would like to say by way of introduction and could you, in any event, introduce your colleagues with their responsibilities?

**Paul Goggins:** I will with pleasure, Sir Patrick. Carol Moore, on my immediate left, you will know I am sure from previous visits, is the Director of Policing and Security. Katie Pettifer, on Carol's left, is the Deputy Director for Rights, Elections and Legacy.

**Q553 Chairman:** That is quite a responsibility!

**Paul Goggins:** That is taking care of the past and the future, I think. Nichola Creagh is the Head of Legacy Branch.

**Q554 Chairman:** That sounds like an insurance company! Anyway, you are all very welcome.

**Paul Goggins:** In the course of this evidence session, I am sure they will all demonstrate why they are very highly thought-of officials. Sir Patrick, normally you invite me, as you just have, to say something at the start and I usually say something fairly quickly and move on because I know the Committee want to get into questions, but I wonder if you could forgive me this afternoon if I did say one or two things formally at the start of this session because this is a very complex area and it might be helpful if I did that.

**Q555 Chairman:** We are entirely happy that you should do that. Following our conversation last night and conversations with members of the Committee, we are aiming for a 4.10 finish of this because I know that that fits in with your personal requirements, but, by all means, feel free to make an opening statement. When we come to the questions, and I will obviously lead off with those, they will be directed to you, but please feel at liberty to call in any of your officials to assist with the answers, as you wish.

**Paul Goggins:** As I say, dealing with the past in Northern Ireland is complex and challenging and includes two separate elements, both of which are very important. The first is to ensure that proper

investigation is carried out in relation to individual cases, and of course, as you know from your enquiries, there were 3,268 deaths during the years of the troubles, but then, secondly, to enable society as a whole to be able to move forward. Both of these strands are important and the Government is supporting both of those strands in very practical ways, and I will give you four particular examples. The first is through the funding of the Historic Enquiries Team, and I know you have had evidence about the work of the HET, and £38 million is being invested in this work over six years, mainly to the Police Service, but also to other agencies as well, the Ombudsman, also the Forensic Science Service and also to the Public Prosecution Service, and this is to ensure that an effective investigation is carried out into each of those 3,268 deaths, but also to provide maximum information and explanation to families, helping, if you like, to tell the story of what happened to their loved ones, which is a very important element of helping them to move forward. The second strand is of course establishing a number of public inquiries, the Bloody Sunday Inquiry, but also inquiries into the more recent deaths of Billy Wright, Rosemary Nelson and Robert Hamill. A third strand is to help a number of organisations in a very practical way to help those who have been victims of the Troubles. We fund the Northern Ireland Policing Fund and the RUC Widows' Association who provide very practical support in helping people to rebuild their lives. Then, fourthly, we have established the Consultative Group on the Past, which is co-chaired by Lord Eames and Denis Bradley, to see whether there might be a way of dealing with the legacy of the past in ways which command widespread support across the community and help everybody to move forward. In saying the Government is supporting these four activities, the Government of course is not alone, and you will have met a number of voluntary organisations, including organisations like Healing Through Remembering, who are doing a lot of very valuable work, and of course government alone cannot deal with these kinds of issues in isolation. In relation to the past, the situation in Northern Ireland is unique. All police forces of course have an obligation to investigate historic cases of murder and serious crime where there may be further evidence which could lead to a conviction, but what makes Northern Ireland different is the sheer scale of the number of deaths which have to be investigated.

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Also, of course we have to deal with the very serious allegation that people working for the State may have colluded in the taking of life, a most serious allegation, so that clearly also has to be dealt with. Finally, Sir Patrick, the Committee has expressed particular interest in whether the requirements of the 2005 Inquiries Act is preventing people from being brought to justice, and a very straight answer from me on that is no, it is not preventing people from being brought to justice, but there are a number of considerations which I would want to draw attention to. First of all, the public airing and reporting of crucial information in a public inquiry might of course be prejudicial to a later prosecution, although that matter will have been considered by those who set up the inquiry in the first place. The Attorney General may undertake not to prosecute a particular individual on the basis of his or her own evidence. Thirdly, the Public Prosecution Service may decide that the provision of evidence from covert sources is not in the public interest and a particular prosecution, therefore, may not be able to proceed, but these are all features of the criminal justice system in any event and they do not occur because of the 2005 Act. What is clear to me, Sir Patrick, is that dealing with the past does place a burden on a range of organisations, on the police, on the security services, indeed on my own department, the Northern Ireland Office, and your decision, as a committee, to examine this matter is both timely and welcome.

**Q556 Chairman:** Well, thank you very much indeed for that and obviously we shall take careful note of everything that you say this afternoon, including the remarks you have just made, as we deliberate and produce our report to Parliament. We are aiming to publish the report on Monday 7 July with a press conference in Belfast at Queen's University, and obviously the normal embargoed copy which goes out to the press and so on will also go to you 24 hours beforehand, so that procedure will be followed. Now, we have of course received formal evidence, including last week in Belfast, from Sir Hugh and from Sir Alasdair Fraser and others. We have also had a considerable number of informal briefing meetings, we have met Lord Eames and Mr Bradley and their group informally, we have met with a whole range of family support groups, from some of whom we have taken formal evidence, some we have met just informally, and we had a meeting with the Victims Commissioners-Designate on the same basis, trying to inform ourselves, and I would like to ask you some straight and, I hope, pertinent questions about this. One of the things that surprised some of our Committee when we went and had a session at the HET headquarters, where incidentally we also met a group of victims' families informally over lunch, was the fact that they are indeed examining every case in a chronological order, although there are certain exceptions where certain cases have been given advanced priority, but starting with the earliest cases and, at this rate, they have only reached 1974/5. Now, are you yourself, Minister, satisfied that this is the best way of

prioritising this work? Would it not have been better to have dealt with the most recent cases where there is a greater chance of getting a lot of evidence, because again we heard of all the police stations that were blown up during the Troubles, we heard of the two major attacks on the forensic laboratory, all of which resulted in the destruction of quite a lot of extremely relevant evidence, so would it not have been better to have prioritised by going to the most recent cases and also looking at those cases where the families had particularly requested an investigation? I merely give you one example of what we came across, I personally came across, which was the example of a bachelor in his eighties who was murdered in, I think it was, 1973 with no request for any investigation and no knowledge of any living relatives. Is that really the best way to use time, resources and money?

**Paul Goggins:** I realise that this is a difficult issue, but I think the chronological system that they have adopted is the best system because it means that those who have waited longest for information and explanation are given a priority that clearly down the years they may not feel that they have always—

**Q557 Chairman:** But should it be done, regardless of whether any request is made by the family? This is one of the things that has exercised members of the Committee.

**Paul Goggins:** Well, my judgment is that, provided there are the other reasons that you have alluded to, whereby an investigation can be opened up, if there are particularly compelling humanitarian reasons, for example, or if the case is linked to another case, then exceptions should be made there. I think when you are dealing with so many cases, so many complex cases, each of which of course could be argued on its own merits should be a priority, they have to have something which is a fair system.

**Q558 Chairman:** Yes, Minister, but I come back to the point that I asked and that you did not actually answer and it is this: that, if there has been no request from any member of the family regarding a case, such as the one to which I alluded, dating back to the early 1970s, should time, resources and money be devoted to that at the expense of other more recent cases?

**Paul Goggins:** But what, for example, if a family had not requested an investigation to take place because that family was under pressure from some external source not to request an investigation and how could one know that? The example you gave was a rather compelling example, but it could be that families are under pressure not to request an investigation and that is why, in all fairness, the police have this systematic approach and, whilst no approach would be absolutely perfect, I think it is the best approach.

**Q559 Chairman:** When HET was established in 2005, it was said that it would be a six-year project. Now, clearly that six-year deadline is not going to be met. When do you think it should be completed?

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**Paul Goggins:** I would not be able to give you a precise date when I would expect all the work to be completed, and I pay tribute to those, I was not amongst them, who set this Historic Enquiries Team up to do this very ambitious work; nobody had done anything like it before and nobody could predict, with any certainty, how long the inquiries would take. I think, for understandable reasons, things have been slow to move in the early stages. Some very complex cases have been examined and also in those early years of course there were many of the murders taking place, and in 1972, for example, more than 400 deaths occurred, so I think in the early years, in the early stages, there are the complex cases, there is the large volume of cases, and I would expect that the pace will quicken as we move along and as those longer-standing, more complex cases are dealt with, but I could not tell the Committee with any certainty when I expect the work to continue. We have of course funding in place for the current spending period, and I know there will be pressure, indeed, some would argue, an obligation, to continue this work until it is completed, but certainly there is sufficient funding to continue the work at present levels for the next three-year period.

**Q560 Chairman:** Let me just say, as it were, in parenthesis that we were very impressed by the thoroughness, we were very impressed by Mr Cox, and all of the families we met, regardless of their cases and regardless of whether they were satisfied with the outcome, all paid tribute to the thoroughness and sensitivity of the operation, so that is something that ought to be formally on record. You talk about funding, but, if additional funding is needed, can you give the Committee a guarantee that it will be secured?

**Paul Goggins:** The first thing to say is that nobody has ever complained to me in Northern Ireland that things are not being done within this work of the Historic Enquiries Team because there is no money or there is insufficient money. Every request for money that has been made has been met, including the request from the Ombudsman's Office for the £2.7 million that we are giving in the three-year period that we are now in. The question for the longer term is: will that money be there until all the investigations are carried out? We have it in place for the next three years. We are undertaking at the moment a stock-take to look at the numbers of cases dealt with, what the costs have been so far and to begin to make some projections for just how long we expect this work to continue. I think there would be enormous pressure around and, as I say, some people would feel, an obligation to make sure this work was continued until it was absolutely completed. The piece of work obviously that Lord Eames and Denis Bradley are doing at the moment plays into all of these issues and we will need to listen very carefully to what they recommend and to see whether there is any common ground right across the community in relation to this or other matters, and we will need to listen to that carefully, but I know that the Chief Constable is deeply committed to this work, he has made that clear to the

Committee, and he is rightly proud of the work that the officers have done in the thorough way in which they investigate, but also to explain in a very honest way to the families as much information as they have.

**Q561 Chairman:** I think we would endorse that. Minister, if you had to sum up for this Committee this afternoon the benefits that have been achieved from HET so far, how would you do that?

**Paul Goggins:** I think the most impressive and the most successful elements of the work of HET are the things that the public would never see, the private explanations to families about what happened to their loved ones in the moments before their lives were taken, and I think that public money being spent to support that work is public money very well spent indeed. If in the end of course there are any prosecutions that arise out of those investigations, well, that would be an additional bonus, but I think the most impressive element is the explanations and information for families, which helps them to move forward from the distress and the misery of that moment of loss.

**Chairman:** Now, we also of course met the Ombudsman, we have received formal evidence from him and we have also been to the Ombudsman's Office and informally met with a number of families helped there. Could I bring in Dr McDonnell at this point.

**Q562 Dr McDonnell:** Thank you, Minister, for your comments so far; they are very informative. Just to come to the detail of the Police Ombudsman, that office was established in 2000 as part of Chris Patten's 'New Beginning to Policing'. It was then, in 2001, extended, the remit was extended to include historical cases. Could you outline for us the rationale behind that because there is, some people would say, a bit of a contradiction between the Ombudsman role, which is a role going forward, and the reflection backwards.

**Paul Goggins:** That of course is a tension that is there throughout the whole system; it is there for the police as well. There is an ambition to police today as well as an obligation to police yesterday and balancing that up in terms of time, resources and expertise is felt by the police as well as by the Ombudsman, and I have had discussions with the current and the previous Ombudsmen about this very issue. Having the Ombudsman there to investigate cases involving the police of course has been critical to building confidence in policing in Northern Ireland and we have levels of confidence of policing in Northern Ireland which are unparalleled anywhere in the rest of the United Kingdom, and the Ombudsman's Office has been critical to that. Now, allowing and enabling the Ombudsman to investigate deaths which are referred from the HE Team and indeed referred from members of the public builds up that confidence, but also uses the expertise which the Ombudsman has gained through the investigations that that office has carried out, so I think it is both expertise, independence and confidence, all of these things, which make it

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important. However, I acknowledge of course that there is a build-up of work now in the Ombudsman's Office that he feels very keenly and he feels that this is, to some extent, providing an imbalance in the work because he is desperately keen to get on with the job of today, and somehow or other we have to enable that balance to be worked through.

**Q563 Dr McDonnell:** So you have outlined a number of the benefits there. Are there any other drawbacks that you would want to outline for us?

**Paul Goggins:** I think this is principally a positive thing that the Ombudsman is engaged with this. Clearly, in investigating deaths and events in the past, the Ombudsman's Office necessarily becomes engaged in controversy sometimes and that can be problematic, but I think in the end of course that again is a bonus and a benefit because that adds to the independence and the authority of the Ombudsman's Office, and I think that that is a wholly good thing.

**Q564 Chairman:** But, Minister, you did see his evidence here when he indicated that he was profoundly unhappy about the burden and even advocated a splitting of the Office and the responsibilities and, as you are answering Dr McDonnell's questions, I would be grateful if you could reflect on what he has publicly gone on record before this Committee as saying.

**Paul Goggins:** I am happy to respond to that because it is a discussion I have had with him personally and that is why I freely acknowledge that he feels that imbalance between the growing work of investigating the past compared with his current responsibilities to investigate the here and now. For example, if there is a discharge of a firearm somewhere today in Northern Ireland, the Ombudsman will be asked to investigate that, and that is a very positive role that the Ombudsman plays, but at the same time he is having to deal with these historic cases. The first thing the Ombudsman has promised to do, and, even as we sit here, I understand it is winging its way to my office, is that he is going to provide a business case to indicate the level of resources that he feels is necessary in order to do that work that will be required. There are 62 cases which have been referred by the HET so far and he calculates maybe another 300 coming on the way, so he will indicate what he believes is necessary in terms of the resources required to deal with that number of cases, but he has made it clear that he would like that work to be positioned somewhere else outside of his office. Again I say that we will need to wait and hear what Lord Eames and Denis Bradley have to say about this issue, if they have anything to say at all—

**Q565 Chairman:** And what the Committee says about it.

**Paul Goggins:**—and of course what the Committee has to say about it. I am not saying it is impossible for it to be put somewhere else, but you have to balance the assertion that it should be with the integrity, the independence, the authority and the

experience which the Ombudsman's Office has. Who else has that degree of independence, authority and experience? We would have to be satisfied, would we not, that any alternative had that because there are serious obligations here that have to be followed through?

**Q566 Dr McDonnell:** Following where it is located and those issues, one thing on which I think we would all agree is the adequate funding and there is a serious concern that has been articulated here, and you were almost alluding to it there yourself, as to the need for adequate funding. It is currently only partially funded, so do you feel that we can increase the funding? For the historical aspects of the cases, and you have alluded to the number of cases there, do you feel that the possibility of taking it short of that, short of separating it, if you do not leave it with the Ombudsman's Office, that it can be better funded?

**Paul Goggins:** I say again that I do not think anybody could claim that money has been bid for that we have not paid up in relation to this. The Ombudsman received, I think, £1.4 million for work done up to March of this year and we have allocated £2.7 million for work over the next three years. Now, that £2.7 million is precisely the amount of money that was requested, so we have met that bid in full. Now, as the work grows, and we have a new Ombudsman who is assessing these things, he is going to send me a business case for what he regards as necessary to meet the growing workload, and we will have to assess that and look at it, so that is one question. The second question is: is it correctly located in the Ombudsman's Office? As you point out, Chairman, we will consider what you recommend and look at what Eames and Bradley say and think about these things in the longer term.

**Q567 Dr McDonnell:** Taking us on to that very point, some have suggested here to us that perhaps the work of the Historic Enquiries Team and the historic aspect of the Ombudsman's Office should be located together under a single independent agency. What are your feelings on that?

**Paul Goggins:** We do not have any plan to do that, so that is the first thing to say.

**Q568 Dr McDonnell:** No, but you have a feeling?

**Paul Goggins:** Obviously in the context of the work that is being done to deal with the past and, in particular, the work of Lord Eames and Denis Bradley, we are open to reflect about these things and to consider all, and any, of these things, if there is a better way of doing it which will command widespread support and enable people to move on, so I would not rule it out, and I do not think the Chief Constable—

**Q569 Chairman:** I was going to make that point because again the Chief Constable is on record to this Committee as saying that it is something that he certainly recognises as being entirely feasible. Whether it is desirable, we have to determine.

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**Paul Goggins:** Yes, I think his position would be that he is not advocating it, but he has not ruled it out. I think what he would be looking for and what I would be looking for is whether we get the same thorough investigation, the same degree of independence and the same authority in any new framework as we are getting from the present one. I think it is important, Chairman, and this is perhaps a general comment that applies to a number of issues, that, whilst we yearn for a big-picture solution in Northern Ireland, and we do and that is what Eames and Bradley are working on, we should acknowledge the progress that is being made through these initiatives and, in particular, the Historic Enquiries Team and the work of the Ombudsman. They are helping individual families to reach a resolution to their own particular loss and that is helping enormously, so, if we are going to change any of this, we need to be absolutely certain that it is going to be at least as good as what we have got, if not better.

**Q570 Sammy Wilson:** Just to pick up something that the Minister said about the Police Ombudsman's Office and the request that is probably coming to him for additional resources, given that currently, with the 60-odd cases that they have, they reckon it is costing £1¼ million per year and you have mentioned a figure of another 300 cases, so, on a pro rata basis, we are looking at another £7-odd million per year for just that work of the Police Ombudsman's Office, across all of the other costs of inquiries. Are you not beginning to get concerned that the more we keep on going down the route of these types of inquiries, first of all, the bill can only go in one direction and, secondly, as we have heard from the Police Federation, especially with the enquiries which come through the Police Ombudsman's Office into the records of police officers, that not only is the bill going up, but there is resentment amongst those who serve in the security forces who now feel that there is almost an attempt to rewrite the truth and blacken them? Really we ought to be looking, in the direction we are going, to address those two problems, the vast resentment which is being built up and also the vast costs which are being built up as well.

**Paul Goggins:** Well, the reason why I started my evidence in a rather more formal way than I normally would was to emphasise precisely the point that individual investigation on its own will never provide a resolution to the problem that the whole of Northern Ireland's society is facing and that you have to have that balance between the individual inquiry and investigation and the ability of the whole of society to move forward. If you try to do one without the other, it will not succeed, if you try to have a big-picture solution that disregards the anxieties and questions of individual families, it will not work, and, equally, if you only have the individual investigation, you never move forward as a whole society, and that is why the work of Eames and Bradley, complementing the work of the Historic Enquiries Team and other initiatives, is so very important. We could continue to spend hundreds of millions of pounds doing the individual

investigation, but, if it were not complemented by some bigger movement to move the whole of society forward, then it would not produce the solution that everybody might want to see, and I acknowledge that. I do acknowledge that the danger with individual investigations is that certain sections of society get painted into a corner as if they were always to blame for the problem. There needs to be a wider debate in which everybody can participate.

**Q571 Sammy Wilson:** Minister, is there not a contradiction in what you are saying, that we need a wider picture so that all of society can move forward and we need these investigations? Many people would argue that these investigations, rather than helping us to move forward, are simply reinforcing many of the prejudices that people have about the past, are picking at the scab of the past and indeed making it more difficult to move forward?  
**Paul Goggins:** Well, as I say again and I know I am repeating myself, I think you need both. You need rigorous examination of particular deaths and particular circumstances to provide answers and, if possible, to provide the opportunity for prosecution, if that is possible, but you also need that wider debate in society to be able to enable people to move forward. None of this is straightforward and easy and I would not pretend that it is for a minute, but my contention is that, if you try to do one without the other, it does not succeed. If there is a criticism, if you like, of how things have gone so far, there has been an over-emphasis on the individual investigation, on the public inquiry, and not enough work done on the big picture and the society-wide resolution of these issues, and it is in trying to get that balance right, as we have over the last year with the Eames and Bradley work, that I think lies the solution.

**Chairman:** Perhaps that is a good point at which to move on to Mr Campbell's section on inquiries.

**Q572 Mr Campbell:** Staying on costings, you outlined the additional funding for the HET and, setting the funding aside, there does appear to be a general air of gratitude or at least expectation that at least somebody somewhere is looking into the crimes that relatives or loved ones were victims of. That goes without saying. It seems that HET is getting a broad look, but the Chief Constable indicated to the Committee that the forthcoming contentious inquests that we are all aware of, quite a number of them, have the potential themselves, each of them, to be a mini-inquiry. There does not appear to be any additional funding for that. Is that the case?

**Paul Goggins:** The funding in relation to any additional pressures in terms of the Coroner's work would be a pressure that would not come to the Northern Ireland office but would go to the Ministry of Justice that is responsible for the court service. I acknowledge that if for example the Coroner, as he has indicated, is going to have to spend a lot of his own time dealing with controversial inquests that is a valuable resource which is tied up with that work. Presumably there are other day to day pressures also building up. I do not deny that there is resource

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pressure there. I also do not deny what the Chief Constable has said here which is that if you have 48 controversial inquests—that is the estimate of the number that we have—when we have had legal challenges which have taken place coming to the House of Lords about how much information should be disclosed and so on—we know about all the legal challenges that happen—there is the likelihood that the issue of the request for sensitive information by the Coroner which has already been made in relation to certain cases will be met with a response from the police about, first of all, the level of work that is required to find that information and then to share it. Of course, there may be a request to restrict some of that information on the grounds of national security or other grounds, so we get into that complexity that we have become familiar with at public inquiries in relation to a number of inquests. I think we have to acknowledge these inquests are controversial. They are complex. They would not be the normal, every day inquest that you would see, but it will throw up resource issues. It will throw up time pressures and it will throw up other pressures about what information can and cannot be disclosed. I think we have the experience of public inquiries. The Chief Constable is very experienced in handling these issues and I think he will use that experience in the way that he responds to the Coroner.

**Q573 Mr Campbell:** Is it not the case that the 48 controversial inquests are going to have resource implications, as you have put it? All of the other inquiries—HET, Saville and the ongoing public inquiries—with the exception of Saville are at the very early stages of ongoing development and costs. According to a parliamentary question I received a reply to 260 million so far has been expended on HET, Saville and these public inquiries, most of which are at a very early stage, not counting the 48 controversial inquests. Are we not talking about much more than just resource implications?

**Paul Goggins:** We are certainly talking about more than simply money because the Chief Constable for example has estimated I think that some £22 million is his estimate of the costs of dealing with the inquests. It is not pound notes; it is people's time. It is the time of experienced officers who have to go back through the files, identify what may be relevant information and then share it and enter into negotiation if necessary with the Coroner about what can be disclosed and what needs to be restricted.

**Q574 Mr Campbell:** That is his estimate before any of the inquests have started.

**Paul Goggins:** My understanding is that is his estimate for what it is going to cost—

**Chairman:** He has said to the Committee that he is seriously worried about the impact this will have on every day policing in Northern Ireland.

**Q575 Mr Campbell:** I remember the Saville Inquiry

being told that it would not cost any more than 15 to 20 million and we are at 182 million now and we are not finished yet.

**Paul Goggins:** All I can give you is my understanding of the Chief Constable's own estimate. I know how these costs rarely decrease and often increase, but the point I am making is I have a lot of sympathy with the Chief Constable in this. Where he is faced with public inquiries, inquests and so on, it is officer time tied up with going back through files, often very experienced officers going back through files, coming up with the information, sharing it and so on. I acknowledge that is a pressure but it is a pressure that, in his own redoubtable way, the Chief Constable gets on and deals with.

**Q576 Chairman:** I am not impugning your good faith for a minute but that is a very disturbing comment in a way because we have had Sir Hugh before us indicating his worry, indicating in effect to the Committee that this could be such a drain on resources that he would not be able to provide the adequate policing which is so necessary if the vast and welcome improvements in Northern Ireland are going to be built upon. An efficient police service that detects crimes, that protects the peace is crucial for the future of Northern Ireland. What can you do to give comfort to the Chief Constable and indeed encouragement to this Committee that this is sufficiently recognised?

**Paul Goggins:** I hope the Chief Constable, the Committee and others will take comfort from the way that my right honourable friend, the Secretary of State, battled very hard in the negotiations around the Comprehensive Spending Review to make sure that the Police Service of Northern Ireland is adequately funded. I can confirm that in this and the next two years the PSNI will spend £1.1 billion in each of those years. That is substantially more than comparable forces across the rest of the United Kingdom. That is how we try to deal with it, to win the resources to enable the police to do their job in all its complexity and dimensions. That is how we can best help. Of course we pay close attention to the pressures that build up in the police budget and we have always tried, wherever we can, to help them to deal with those.

**Q577 Kate Hoey:** How do you think the PSNI is going to deal with the £100 million shortfall that they have said there will be in policing on the ground, the ordinary, every day policing that the vast majority of the community in Northern Ireland wants to see happening, irrespective of what their views are on historic inquiries? They are very different, as you know. How is that going to be met? Why do you keep going on about making a very simplistic, as the Chief Constable himself said, differential between what we are getting in Northern Ireland in terms of policing and other UK forces as if somehow you can compare like for like? Do you accept that it is not a like for like situation?

**Paul Goggins:** Let me deal with the second point first. It is not like for like. I would not for a minute suggest that. It would be simplistic to compare

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numbers and disregard the pressures. The pressures on the PSNI are significantly and substantially different from the pressures in other police force areas in the United Kingdom and that is reflected in the budget settlement. There are proportionately more police officers. That is necessary. We have a remaining threat from dissident Republicans which we all need to guard against. We need the police to be able to deal with that. In all of these things and in terms of dealing with these issues to do with history, we need a police services that is properly resourced. I am not making crass or simplistic comparisons, but it is a fact that there is substantially more funding going in and it is necessary. That is why we battled so hard to win that. I do not suggest for a minute that the budgetary position the Chief Constable is in is an easy one. It is not.

**Q578 Kate Hoey:** You accept there is a shortfall of £100 million?

**Paul Goggins:** I am going to come to the first point right now. I accept straight on that there are pressures in there which need to be dealt with. Priorities will need to be made by the Police Board and by the Chief Constable. In relation to the budget pressures, let us be absolutely clear. There is a funding difference of £88 million. That difference is between what the Police Board bid for and what the government has allocated. It is not a cutback from what was spent last year. It is the difference across the whole of the three year CSR period between what they bid for and what was allocated. Let me confirm to the Committee that in the process of that bid being arrived at that bid increased by £300 million in the course of the negotiation, so we have a bid that grew by £300 million and yet still the difference between the bid and what was allocated was 88 million. I accept that that is the difference, but I think that is a tremendous outcome in the current climate and with the pressure that is on public expenditure. I note that the Chief Constable and the Board have confirmed that they balanced the budget for the year that we are now in and that they will be able to retain 7,500 police officers. I am pleased about that and I know that further work is being done to close the remaining gaps for the second and third year. That is why I acknowledge that there are pressures, but we need to be very clear. The funding gap, the difference between what was bid for even with the additional pressure of £300 million and the allocation over three years, was £88 million. If any Secretary of State of any department that spends money under this administration could claim that kind of success, I think they would be very pleased with it.

**Q579 Mr Campbell:** I strongly suspect that when the Police Board come back next time they will be looking for even more again. Part of the reason they will be looking for even more again is because of what we are examining today. Hundreds of millions of pounds over five, six or seven years are going to be diverted into what the Chief Constable talks about, trying to police the past. It seems to be a never ending black hole into which hundreds of millions of

pounds are going to be poured. That is before the inquests start and before the main public inquiries get up and running and the biggest one has not finished yet. Who knows where we are going to be in 12 months? You mentioned the Inquiries Act 2005. The police have told us that, in the area where there are disputes between the police and the inquiry chairman about disclosure or reduction of intelligence information, the demarcation lines are unclear. Can you explain the circumstances we might arrive at whereby you or whatever minister it would be would have to intervene to prevent publication of sensitive data?

**Paul Goggins:** It might be helpful if I just say something about the whole process of the request for information. When an inquiry is established, the inquiry asks all the relevant agencies for any information that may be relevant to that inquiry. That is a big responsibility for the police, the security service, the Northern Ireland Office and any other agencies to go away, look through all their files and see what might be relevant. They then present all of that information to the inquiry and the inquiry team has a look at all that information and sees what they believe would be relevant to their investigation and what would then be shared with other parties to the inquiry. Once they have made that clear to the particular agency—let us say the police—of course the police will look carefully at that information to see whether they believe that information could be shared with other parties and ultimately of course with the public, bearing in mind issues of national security and Article 2 responsibilities, which are very important too. They would then point out to the inquiry that they thought certain information perhaps should be restricted and should not be passed on. There would then be a negotiation if there was a disagreement between the inquiry and the police about whether or not that could be restricted. In the end one hopes—and in the vast majority of cases this is what is happening—that negotiation reaches a voluntary agreement so there is no question of any powers being used. If it was not possible to reach a voluntary agreement, then the Secretary of State for example under the Inquiries Act could issue a restriction notice which would compel the inquiry then not to release that information. The inquiry could then take the Secretary of State to court and have that decision judicially reviewed. That has not yet happened in any of the inquiries because so far it has been possible to reach a voluntary agreement. Certainly I hope that is the case but, in presenting it like that, I do not deny for a minute that there are real pressures and real stretch and strain within that negotiation to arrive at the agreements that they have arrived at. Obviously, as the Minister of State, I will take a very, very close interest to see that that progress can be maintained.

**Q580 Mr Campbell:** The police view is that ministerial intervention might be necessary in order to protect the lives of covert sources who might be exposed by some of the inquiries. That might put you and others in an invidious position.

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**Paul Goggins:** Perhaps I should clarify a little bit further. If the Chief Constable was saying to an inquiry, “I do not think that information should be shared with other parties or should be in the public domain because there is an Article 2 obligation here that prevents that” and the inquiry did not agree and they could not reach a voluntary agreement, if I or the Secretary of State was persuaded by the Chief Constable indeed that that matter should not be shared because of Article 2 obligations, then the Secretary of State would have the power to make a restriction notice. Of course, it would then be for the inquiry to challenge that in court. If we were persuaded as ministers, we would not hesitate to use those powers because Article 2 obligations are absolute.

**Q581 Sammy Wilson:** Coming back to your earlier point about trying to move forward, is that not the real danger in the line that Gregory Campbell has taken you down? Those who wish to try and use the inquiries—and many of them will—for legal purposes will come back and say, “There you are. Nothing has changed. There is still secrecy attached to it around the police. There is no justice.” You could write the lines for them as well as I could. Is that not the real danger of these public inquiries? You spend money. You use political capital on them and you still give ammunition rather than answers to those who want to use them for a mischievous purpose.

**Paul Goggins:** I make the point again that, unless we do this other work of trying to deal with the whole issue of moving society forward as a whole, then I agree that we would continue to go down this endless route of individual investigation and inquiry that would be very expensive and it would not produce the resolution that we all seek in the longer term. That is why we have to get the balance right. I want to see a reduction in the first four public inquiries and investigations because I want to see those that need to be done resolved and then I want to see people moving on. Unless we get that wider resolution, we will have the endless pursuit of inquiries and investigations. I accept that that is a very expensive road and it does not in the end produce the kind of settlement that can sustain the peace that we have achieved in Northern Ireland.

**Q582 Mr Campbell:** I have a question on the press release that the NIO released last week about the disc.

**Paul Goggins:** Obviously when we establish an inquiry, because the Northern Ireland Office is the sponsoring department for the inquiries, we reach an agreement with them about a whole range of issues, including the handling of sensitive information. We have robust agreements with all the inquiries about that. I can confirm that after the HMRC disc was lost last year, the Permanent Secretary wrote to all the inquiries to ensure that all the systems that were agreed were in place and working well. All the inquiries assured us that they were. Clearly, there is grave concern about the loss of the information from the Nelson Inquiry and that is why the Secretary of

State has put in place an expert in the security area to work with all of the inquiries, to make sure all of their systems are as robust as they need to be, because this is highly sensitive information. It is deeply concerning that any of it would ever be lost. We take this absolutely seriously.

**Q583 Chairman:** Have you any idea where it is?

**Paul Goggins:** I would not want to comment, frankly, on the record as to where I thought that information might be. I think the police have offered some reassurance but nonetheless it is concerning that the information should ever be lost in the first place. We need to make sure, through the work of this security expert, that we have the systems in place, that people stick to the procedures which have been agreed and that sensitive information does not get out.

**Q584 Kate Hoey:** Do they have to sign the Official Secrets Act, anybody who is working in any capacity with those inquiries?

**Ms Pettifer:** They do not sign the Act as such but the provisions of the Official Secrets Act apply to them.

**Q585 Chairman:** We sat in on some of the Nelson Inquiry last week when we were over there and listened to the evidence that was being given by one of the witnesses. We were impressed by the thoroughness of the questions and so on, but you yourself have referred to highly sensitive information. To think that it should go missing and you have no clue where it is is very worrying, is it not?

**Paul Goggins:** It is very worrying. I spent a considerable amount of time with the Secretary of State on the day when this information came to light. He and I were both deeply exercised by it. We followed this through in a very rigorous way, as you would expect. We frankly need to know what happened in this case. We also need to know that it is not going to happen again. That is why we have put somebody in place with real expertise, who can go into these systems and make sure that they are properly adhered to. I take the point that has just been raised. Whether or not people have to sign the Official Secrets Act, any member of staff who is engaged in a public inquiry has an obligation to make sure that any information that they handle or deal with is treated in an appropriate way.

**Q586 Chairman:** Minister, you said a minute or two ago that after the fiasco of the Revenue and Customs loss last year when millions of records went astray and have still not come to light, so far as I am aware, you put certain systems in place; yet, after putting them in place, this still gets lost.

**Paul Goggins:** It is the case that an agreement is reached at the outset about how sensitive information is stored, handled and disseminated. What the Permanent Secretary did after the HMRC disc went missing was to reassert the importance of those agreements and systems.

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**Q587 Chairman:** Yes, but in spite of all that reassertion and importance, it has gone.

**Paul Goggins:** Then we received this news, so we are deeply concerned about it.

**Q588 Chairman:** And embarrassed?

**Paul Goggins:** I think those involved in the inquiry are embarrassed about it. It is their responsibility and it was their loss. It is our concern that such a thing should happen.

**Q589 Sammy Wilson:** I am not sure that they are deeply embarrassed. It would appear that they are not even concerned because the PSNI have informed us that, in the case of the Billy Wright Inquiry, whether it is because they want to keep their independence or whatever, the inquiry has declined to document who will handle sensitive information or provide assurances as to how that sensitive information will be used, managed or stored. If the inquiry asks the police for this information, if it does leak eventually you can say, "They are the people who had it" or "That is how they were meant to deal with it." How can you possibly give that assurance when the inquiries are adopting this kind of attitude?

**Paul Goggins:** It is timely that you are raising these concerns because having this expert consultant now in place he will be looking in depth and in detail to make sure that all the systems that should be in place and should be being adhered to are being adhered to. When we receive his report, that will offer I hope reassurance to this Committee and others that the systems are being properly handled and properly dealt with.

**Ms Pettifer:** For both the Billy Wright and the Rosemary Nelson Inquiries which do hold very sensitive material, a very detailed set of requirements were put in place with the inquiry with the agreement of the government departments whose sensitive information was being dealt with. Procedures were put in place for auditing the inquiry at regular intervals to make sure those requirements were being complied with. This review will hopefully identify whether there are further requirements that need to be put in place.

**Q590 Sammy Wilson:** Would one of the requirements at least not be that if they ask the police for sensitive information at least they would give the police the information as to who is going to have it and what they are going to be allowed to do with it?

**Ms Pettifer:** The review will be helpful in telling us that. One of the important issues we will need to bear in mind is the independence of the inquiry and the fact that it will have to operate independently of the government and of the agencies providing this information. That is certainly a question that we can put to the review.

**Q591 Stephen Pound:** I am acutely aware that you can have the best system in the world and there is absolutely nothing you can do to guarantee 100% security. In the case of Billy Wright which was exactly four months ago, a laptop was stolen as I recall from a barrister's chambers in London. What

do you do in terms of a protocol, in terms of a structure, in terms of a system of procedures to actually avoid that, because it seems to me that discs will go missing. If data is being extracted, stored and then transferred to another jurisdiction, how on earth can you police that? The dam has been breached there. Is there no protocol or practice which prevents evidence of that sensitivity being taken away from the primary investigation site? If there is a protocol in place—I am sure the Chairman has already mentioned this—could the Committee have sight of it because we are aware of the problems.

**Paul Goggins:** Certainly any information in relation to the protocols that we have we will be very happy to share with the Committee. The key word here is "encryption". Any information that is downloaded, put on a disc, taken and transferred anywhere should be encrypted because if it is encrypted then it cannot be broken into even if it is lost and found by somebody. That is a key element in the protocols and agreements that we have. Making sure that that aspect is adhered to is extremely important. We would be more than happy to share information about the protocols and agreements that we have.

**Q592 Chairman:** We would welcome as much information as you can give us and as soon as possible because one of the things that we of course are looking at is the whole protection of sources. There are real implications here. Although you have given us reassurances, for which we are grateful, about the 2005 Act, all the reassurances in the world have a coach and horses driven through them if this can happen. Please do keep us closely informed.

**Paul Goggins:** It is important to underline as well that these public inquiries are all formally public authorities. They all have Article 2 obligations, the same as a government department would have or the police would have. It is important that this message is absolutely loud and clear. This obligation is on all of us.

**Q593 Sammy Wilson:** You have outlined some of the benefits of the Historic Enquiries Team and the Ombudsman but just generally on inquiries what assessment have you made of the benefits of for example the Finucane, Saville and Nelson Inquiries as well as HET?

**Paul Goggins:** The Finucane Inquiry is not yet up and going but the others are. The benefit is in relation to public confidence. There is a very serious allegation that runs through these inquiries that there was collusion, that people who worked for the state were involved in the taking of life. There can hardly be a more serious allegation and that needs to be investigated. Things have either to be dealt with or reassurances offered. Given where Northern Ireland has been, given the history that we have, we have to resolve those issues if we are going to enable people to move on with confidence. For all the difficulties associated with inquiries—and I am the first to acknowledge them—that is the prize, greater public confidence.

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**Q594 Chairman:** Why are inquiries which hold intelligence information not subject to scrutiny of their information management procedures by the Surveillance Commissioner?

**Paul Goggins:** Because the role of the Surveillance Commissioner is to actually oversee the activity of covert surveillance and of covert human intelligence sources. It is the surveillance of the activity, not the surveillance of the documents, as it were. It is a different role that the Surveillance Commissioner has.

**Q595 Chairman:** You, as the Minister, have powers under the Act of 2005 to make rules dealing with the return or safe keeping of documents to an inquiry. How are you going to exercise those powers to give reassurance and would it not be sensible for you to bring in the Surveillance Commissioner to assist you?

**Paul Goggins:** We will consider very carefully of course what you have to say about this. We will also consider any recommendations that come from the security expert who is doing this work for us at the moment in relation to the systems for handling sensitive information. If more needs to be done to offer that assurance both to ourselves, to the wider public and to Parliament, then we would obviously need to consider that. I am not persuaded of any particular line of action at the moment. I have tried to answer why I am not convinced that the Surveillance Commissioner is the right person in any event, but clearly this is something that we would want to consider.

**Q596 Chairman:** In those immortal words, you are ruling nothing in and ruling nothing out.

**Paul Goggins:** That is a fair summary. Given the work that you have done, I think it would be fair to say that we will wait and see what you recommend in this area because clearly we will need to respond to that and, in doing so, will consider any recommendations that you make.

**Q597 Sammy Wilson:** Another word which has now crept into the benefits which you have mentioned is “confidence”. If we look at all those inquiries, the Finucane Inquiry revealed and led to someone going to jail; yet the Finucane family was still not happy. An inquiry has been set up with which they are not even going to cooperate. In the case of the Saville Inquiry, some of the families have not bothered with it anyway and already some of them have been fairly critical. In the case of the Billy Wright Inquiry, the family has been critical of the procedure and the nature of the inquiry and everything else as well. On all of those we have expended 27 million already on the Finucane case, Stevens one, two and three. We have expended 190 million on Saville. If you are resting your case on these inquiries helping to engender confidence, the people to whom they are directed have not said that, right to the point where they are not even prepared to cooperate with them. Is this not an expensive way of trying to buy confidence from people who either are determined

never to have confidence in the state of Northern Ireland anyway or else will always find ways of nit-picking over what an inquiry does?

**Paul Goggins:** I do not think I am ever going to convince Mr Wilson about the merits of public inquiries. I genuinely believe that they can help to build up public confidence as well as to deal with individual circumstances. I am not pretending—and I have not pretended for a minute this afternoon—that they are a perfect and complete answer in themselves. There are many issues and difficulties associated with them and they themselves do not produce the final answer which Northern Ireland as a whole will need if it is to move forward. We need to do that other work which Eames and Bradley have been doing, consulting widely across the community. We need to do that work as well.

**Q598 Sammy Wilson:** Would you not build confidence much easier though? A lot of the people we have spoken to and people who are victims have talked about part of the problem being that compensation was very little. The vast millions of pounds that are being spent on inquiries: would it not be far better to look at how that money might be directed at victims who are now becoming older, who are being affected by the injuries which they sustained? It is becoming clear, the impact which those injuries are having. Would that not be a far better use of resources than trying to chase some illusory confidence which might be built up by these inquiries or providing answers which sometimes people, even when they do get them, are never satisfied with anyway?

**Paul Goggins:** I do accept the argument that we need to do practical things to help people rebuild their lives and move forward. We have spent somewhere in the region of £47 million over the last ten year period in supporting people in that way. I have mentioned before some of the organisations that we have tried to help. I think they do fantastic work and we need to support them.

**Q599 Chairman:** Minister, you will know that in giving evidence to this Committee Sir Kenneth Bloomfield, the first Victims’ Commissioner, made the point that he felt there should be a more adequate and continuing compensation scheme. When we put his suggestion to two of the victims’ groups that were giving formal evidence to us, they both warmly endorsed Sir Kenneth’s submission. What is your response to that?

**Paul Goggins:** We are out to consultation on the criminal injuries compensation scheme at the moment. We launched a consultation document in March and we are having a full, 12 week consultation on it. Frankly, the level of compensation paid for criminal injuries in Northern Ireland is on the whole greater than it is for injuries sustained elsewhere in the United Kingdom.

**Q600 Chairman:** With very good reason.

**Paul Goggins:** With good reason both in terms of the origins of the compensation scheme through the common law process in Northern Ireland that

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frankly, again for understandable reasons, was always more generous than the system elsewhere in the United Kingdom but, as we move to more normal times, I think there is a very strong argument why the compensation scheme should be more closely aligned. That has been our starting point, although I would hasten to add we are not simply just transposing the GB system to Northern Ireland.

**Chairman:** The thrust of Sir Kenneth's submission and of those who supported him was this: that the saddest and in some ways the bitterest legacies of the past are those who may have been maimed, injured and mutilated 20 or 30 years ago whose needs, rather than diminishing, can actually increase with age and therefore the need for help increases. I would hope that in any review you would at the very least take on board that powerful and very logical point put by Sir Kenneth.

**Q601 Sammy Wilson:** £47 million to people who find themselves in those circumstances, as opposed to if you add up all of the money which has gone to inquiries, most of which has gone to lawyers, it is nearly five or six times that. The question I am asking you is: are we not far better to zone the resources in on those who are still living with the real legacy of the past, their injuries, their disabilities and all of the disadvantage they have, rather than putting five times more into the pockets of lawyers who seem to be making a good living out of these inquiries? That would seem to be the main outcome. We are certainly not getting confidence, answers or moving on.

**Paul Goggins:** I think we have to do both. We have to fund the inquiries to get the resolution, to get the public confidence. We also need to fund practical projects that help people to rebuild their lives. Of course, as you will know, within the Assembly and the Executive there is now a renewed emphasis on the needs of victims. The Deputy First Minister has taken on these responsibilities. It has not been without controversy but it is important that the priority that is being given there is understood. Those who have suffered in the past need help to rebuild their lives and we would certainly support that assertion.

**Q602 Mr Grogan:** Judge Cory in the report there, in the government's response, gave us an indication that they would take all reasonable steps to put into effect his recommendations, including even possibly capping legal costs. What progress has been made in implementing those recommendations?

**Paul Goggins:** In the 2005 Inquiries Act, we placed a new responsibility on the chairman of any inquiry, a duty to have regard to the need to avoid unnecessary cost. This is not an obligation that was ever there before. Chairmen of inquiries spent as much as they spent, whereas now we have placed that duty firmly upon them within the Act. Secondly, we have also taken steps to cap both the payments and the hours worked by legal advisers. For example, senior counsel within an inquiry, have their fees now capped at £200 an hour. Solicitors are capped at £150 an hour. Their hours are capped at 40 hours a

week or 60 hours during any oral hearing. We have taken steps to try to limit in terms of the overall spending of an inquiry and also in terms of the specific limits at any one time on any solicitor or leading counsel.

**Q603 Mr Grogan:** I understand your reluctance to say when this process might come to an end. HET is funded until 2011. There might be a further extension but looking at other processes round the world of trying to come to terms with the past—South Africa is one example; there are others—once we get to 2011, it will be more than a decade after the Good Friday Agreement. Without being very specific, would you hope that, for a minister in your position coming to this Committee at a similar stage in the next Parliament, it would be pretty well wrapped up by that stage?

**Paul Goggins:** Whilst in central government we still carry some responsibilities for public inquiries, I hope that many of the responsibilities I have will have been handed over by this time next year. Obviously I can only speak about the three year spending period which we have just entered where we negotiated hard to get the kind of resources that we need, both for policing and for other things. Clearly, this task of resolution and moving forward is going to take longer than that spending period, so people will need to anticipate. That is why the work of Eames and Bradley is so important because, in terms of shaping future direction, if they are able to find this consensus about how to move forward, that might involve a lessening thirst for public inquiries and investigations because people are more confident and want to move on. That would be very welcome and that would shape in a different way than the priorities and the spending of the Northern Ireland Office or whoever is funding public inquiries and activities of this kind. I think that is the big prize that we are trying to achieve here, to build confidence, deal with the individual allegations and cases, but to try and diminish the thirst for that route by drawing away and moving forward in a way that uncovers common ground and an aspiration to sustain the peace that has been developed there in recent years. That will require public funding but you can see that it will be funding different activities if we are moving in that more positive direction.

**Q604 Kate Hoey:** Going back to the first question Sir Patrick asked you, you gave a response after Ms Creagh sent you a note about why we could not just look at the ones where people wanted to be looked at in the Historic Enquiries Team. You made some remark about pressure and people might be put under pressure not to come forward. I would suggest, Minister, that that is something you should look at again because I do not think that is a very sensible reason for not being much more streamlined about why we should go back and, in many cases, raise the families in that they may not, for all sorts of reasons, want to even go back through huge, huge expense, huge amounts of waste of time and energy and not allowing you to do, as you said, the

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ambition for policing today. That is what the people of Northern Ireland, I believe, really care about. I think you should look at that again.

**Paul Goggins:** I am happy to look at it again. I would invite Nichola to make her own comment now in words rather than in a written note. It was a very helpful note. I will go back and enquire very specifically how many cases have been opened for investigation where there was no request for that investigation, prompted by yourself and the Chairman. I will happily go away and ask that question and think harder about the points you have raised.

**Q605 Chairman:** Do you want to add to the Minister's words?

**Ms Creagh:** I do not think there is anything much to add to what the Minister has said. It is a concern that has been articulated by the Chief Constable and Dave Cox that there is a potential of families being put under pressure not to cooperate. Perhaps it is illustrated that maybe it does happen by the fact that a number of families choose to engage after HET have completed their work and come back into the

process, which might indicate that, although at first they were reluctant, having maybe had contact with HET by letter, therefore they do then realise that they would like to do it or they maybe are freed from some sort of thought of pressure that might be put on them.

**Q606 Chairman:** By listening rather than reading we at least know that the Minister has an authentic Northern Ireland voice in his ear. Minister, could I thank you and your colleagues and officials for coming this afternoon? The evidence you have given will be very helpful to us as we formulate our report. We will aim to publish on 7 July. It may well be that there will be one or two points we shall wish to follow up in correspondence following this session, but thank you very much indeed for your attendance and thank you to all the officials. We wish you a safe journey back to Belfast or wherever you may be going, Minister.

**Paul Goggins:** I think it might be Cheshire.

**Chairman:** I cannot wish you success in Cheshire but I can wish your officials a successful flight back to Belfast. Thank you very much.

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# Written evidence

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## Written evidence from the Northern Ireland Office

### INTRODUCTION

1. The legacy of the past remains one of the greatest challenges facing society in Northern Ireland and continues to have significant implications for almost every area of NIO work and in particular for agencies such as the PSNI.

2. In looking to address the legacy of the past many different initiatives have been put in place, not only formal public inquiries into specific incidents but also more general methods of investigation into past crimes and most importantly the provision of services for victims and their families.

3. It is inevitable that investigations and inquiries into past incidents that have involved alleged criminal acts will require the participation and co operation of the PSNI. The primary objective of any law enforcement agency is to investigate crime and that requirement is not nullified by the passage of time. Both the PSNI and the Government also have specific obligations in this regard under the European Convention on Human Rights and the Human Rights Act 1998.

4. The Government recognises the additional burden placed on the PSNI by the need to respond to the demands of the public inquiries and investigations, and the potential impact this has on the availability of resources for the investigation of recently committed crimes. It also recognises the need of families of victims to have the circumstances surrounding the loss of loved ones appropriately investigated.

5. The memorandum sets out briefly the facts on costs associated with public inquiries and other historic investigations and the broad impact on the PSNI, in the context of both the funding levels the PSNI receives in comparison with other UK police services, and of the broader actions taken by Government to help address the legacy of the past. It also sets out the position regarding the protection of sensitive information under the Inquiries Act 2005.

### FINANCIAL COSTS ASSOCIATED WITH INQUIRIES

6. The PSNI do not receive specific extra funding to help them meet their obligations to public inquiries and other historic investigations, the exception being the Historic Enquiry Team project where separate funding has been made available. The HET began operations in 2006. Separate ring fenced funding is made available by the NIO to all participating organisations ie the PSNI, Police Ombudsman for Northern Ireland, FSANI and the PPS. Expenditure details for the HET project are set out in Table 1.

7. The HET project was established to “assist in bringing a measure of resolution to those families of victims affected by deaths attributable to the troubles in the years 1968–1998” and to re-examine all 3,268 deaths attributable to the troubles and ensure that all investigative and evidential opportunities are examined and exploited in a manner that satisfies the PSNI’s obligation of an effective investigation article 2 code of ethics for PSNI and “to do so in a way that commands the confidence of the wider community”.

8. The work is being carried out by the specific HET unit within both PSNI and the Office of the Police Ombudsman (see section on Police Ombudsman below). The PSNI HET is staffed by police officers and civilian staff recruited within both Northern Ireland and GB.

9. The Office of the Police Ombudsman has also played an important role in carrying out investigations into past events. It is responsible for investigation of cases where a police officer has been directly responsible for a death or where the conduct of a police officer may have resulted in a death or where a complaint has been made. Since the establishment of the office in November 2000 approximately nine reports have been produced into events occurring before 1998. In the vast majority of cases the families of victims whose cases (both pre and post 1998) that have been investigated by the Office of the Police Ombudsman have expressed their satisfaction with the outcome.

10. The PSNI have estimated that the financial cost to their organisation of servicing inquiries and investigations into past cases is likely to be in the region of £96 million covering the period 2006–07 to 2012–13. It must be emphasised that these costs are estimates based on assumptions about future workloads associated with the existing public inquiries and the need to respond to the requirements of the Coroner in respect of reopened and potentially controversial inquests. They also include the costs associated with the Historic Enquiry Team project for which separate funding has been provided.

11. Although these costs are large and undoubtedly present financial challenges for the PSNI and for the delivery of an effective policing service it needs to be balanced by the fact that the PSNI still receives more funding than any comparable police service in the UK. Indeed in looking at the costs it must be remembered that many costs are personnel related and as such funding is already provided as an integral part of the budget for the police service.

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CONSULTATIVE GROUP ON THE PAST

12. The Government believes that the time is right to reflect on how to address the legacy of the past more generally. In June 2007, the then Secretary of State established an Independent Consultative Group on the Past. The Group's terms of reference are:

“To consult across the community on how Northern Ireland society can best approach the legacy of the events of the past 40 years; and to make recommendations, as appropriate, on any steps that might be taken to support Northern Ireland society in building a shared future that is not overshadowed by the events of the past. To present a report setting out conclusions to the Secretary of State for Northern Ireland by summer 2008. The group are currently conducting a public consultation exercise and I look forward to receiving their findings in due course. I have no doubt it will add greatly to achieving a consensus on an acceptable way forward.

13. The Group is currently conducting a public consultation exercise.

## THE INQUIRIES ACT 2005

14. The Inquiries Act 2005 provides a comprehensive statutory framework for inquiries into events that have caused, or have the potential to cause, public concern. The Act replaced a wide collection of legislation on inquiries that had grown up in various areas over the past century or so. Like most of the legislation it replaced, the Act provides powers for an Inquiry Chairman to compel the production of evidence and the attendance of witnesses at his inquiry. These powers are set out in section 21 of the Act. Section 22 of the Act makes clear that the Inquiry Chairman's powers of compulsion are subject to the same exceptions for privileged information as apply in the civil courts (including, for example, the rules on legal professional privilege). Section 22 also makes clear that the Public Interest Immunity rules apply in the same way as they do in the civil courts.

15. The Inquiries Act also contains a framework to ensure the protection of sensitive information once it has been provided to an inquiry. Although section 18 sets out a general rule that evidence must be made available to the public, section 19 allows either the Inquiry Chairman or the Minister who established the Inquiry to place restrictions on the publication of evidence and on public access to hearings, if such restrictions are required by law or are in the public interest. In determining whether any such restriction is in the public interest, the Minister or Chairman is required to take into account a range of factors set out in the Act, including any risk of “harm or damage” which could be avoided or reduced by imposing the restriction. “Harm or damage” includes death or inquiry, or damage to national security.

16. The Act therefore provides three mechanisms by which sensitive information, such as information which might identify a covert source, might be protected:

- A restriction order may be made by the Panel Chairman to prevent the information being disclosed;
- An application to the Minister for a restriction notice to prevent the information being disclosed by the Inquiry Panel; or
- An application for Public Interest Immunity (either to prevent the information being disclosed by the Inquiry Panel or, in exceptional circumstances, an application to prevent the information being disclosed to the Inquiry Panel);

Any decision on which mechanism should be used would need to take into account the particular circumstances.

17. Two of the current Northern Ireland public inquiries are taking place under the Inquiries Act: The Robert Hamill Inquiry and the Billy Wright Inquiry. Both Inquiries were established under other legislation but were converted to the Act at the request of the chairmen. The Rosemary Nelson Inquiry is taking place under section 44 of the Police (Northern Ireland) Act 1998. The Bloody Sunday Inquiry is taking place under the (now repealed) Tribunals of Inquiry (Evidence) Act 1921.

## IMPACT OF THE INQUIRIES ACT 2005 ON THE PUBLIC PROSECUTION SERVICE

18. The Inquiries Act 2005 does not impact upon the Public Prosecution Service in exercising its discretion to prosecute. It may, however, impact on criminal proceedings.

19. If an inquiry is initiated, there would be a serious risk that any contemporaneous or subsequent prosecution would be compromised. This could happen in a number of ways. Primarily, the public reporting and discussion of evidence that would inevitably arise during the course of an inquiry is liable to create a substantial risk of serious prejudice to the trial process. In addition difficult issues of disclosure, admissibility and conflicting evidence are likely to occur as the inquiry begins its own investigations. The difficulties are liable to be greater if the prosecution is to take place before a Judge sitting with a jury.

20. The giving of undertakings by the Attorney General or the Director as to the use made of evidence given to an inquiry is not without difficulty. The purpose of any inquiry would be to get at the truth of the matter enquired into and it is inevitable that the Attorney General or the Director would be invited to

provide an undertaking as to the use of evidence given. They would then balance the public interest in giving an undertaking which would allow witnesses to give full and complete accounts of what happened without fear of incriminating themselves against the public interest in not allowing possible prosecutions to be compromised.

21. Even if there were other evidence on which to base a prosecution, it is likely that a defendant would put forward an abuse of process argument that it would be unfair to prosecute in all the circumstances. If successful such an occurrence would damage public perceptions of the prosecution process. Again, the difficulties are liable to be greater if the prosecution is to take place before a Judge sitting with a jury.

#### Covert Sources

22. Prosecutions in Northern Ireland are initiated or continued by the Prosecution Service only where it is satisfied that the test for prosecution is met. The test for prosecution is met if the evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction—the evidential test; and prosecution is required in the public interest—the public interest test.

23. The existence of a “covert source” is liable to be a complicating factor. A number of issues may arise. Is the covert source capable of giving credible evidence which would advance the prosecution case. If the “covert source” is not a witness (and this would be a very unlikely occurrence), can the prosecution meet its duty of disclosure to the defence.

24. The prosecution is under a duty to disclose evidence or information which may assist the defence or which undermines the prosecution case. If the prosecution can only meet this duty by revealing to the defence the existence of the “covert source” and the evidence and information which he holds, then a decision would have to be taken to determine whether, in these circumstances, prosecution was required in the public interest. The value of the “covert source” may be such that having regard to the advice of police, the Prosecution Service would not be willing to disclose these matters and a decision for no prosecution would be reached.

25. In reaching this decision the Prosecution Service would bear in mind Article 2 of the European Convention on Human Rights.

26. There may be cases where it would be possible to make disclosure under the supervision of the court which protected the existence of the “covert source” or sensitive evidence or information.

27. Each case must be addressed on its own facts.

**Table 1**

#### EXPENDITURE DETAILS FOR THE HET PROJECT—TOTAL HET BUDGET OVER SIX YEARS IS £34 MILLION

<i>Organisation</i>	<i>Rounded Expenditure to 31 October 2007</i>
PSNI HET	£11.4 million
PPS	£488k
FSNI	£654k
OPONI	£1.16 million
Total HET spend	£13.7 million

Northern Ireland Office

24 January 2008

#### Written evidence from British Irish Rights Watch

##### 1. INTRODUCTION

1.1 British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation and registered charity that monitors the human rights dimension of the conflict and the peace process in Northern Ireland. Our services are available to anyone whose human rights have been affected by the conflict, regardless of religious, political or community affiliations, and we take no position on the eventual outcome of the peace process.

1.2 We welcome this opportunity to respond to the Northern Ireland Affairs Committee’s inquiry into the effect on policing of “historic inquiries” and the provisions of the Inquiries Act 2005 and other legislation which might require the police to divulge covert sources.

1.3 We will deal with each of these issues separately.

## 2. THE FINANCIAL AND OPERATIONAL CONSEQUENCES FOR THE POLICE SERVICE OF NORTHERN IRELAND OF SERVING THE VARIOUS “HISTORIC INQUIRIES” INTO PAST EVENTS IN NORTHERN IRELAND

2.1 It seems to us that there are three aspects of the Police Service of Northern Ireland’s (PSNI) work that fall to be considered under this aspect of the Committee’s inquiry:

- (a) the work of the Historical Enquiries Team (HET),
- (b) the work generated for the PSNI by the Bloody Sunday Inquiry and the inquiries into the murders of Robert Hamill, Billy Wright and Rosemary Nelson, and
- (c) contentious inquests.

### *The Historical Enquiries Team*

2.2 A budget of £34 million has been allocated over a six-year period, starting in 2005, for dealing with all the unsolved murders arising out of the conflict. The HET is one of four agencies funded under this budget, known as the Legacy Project, the other three being the Police Ombudsman (PONI), the Public Prosecution Service (PPS), and Forensic Science Northern Ireland (FSNI). None of these agencies has a specific allocation within the budget, but each must bid for its own costs, although FSNI’s costs may be included with those of the HET in future, since the HET commissions work from FSNI as a provider of services.

2.3 According to the latest figures available from the HET they are examining 3,268 conflict-related deaths, arising from 2,516 incidents. 997 investigations into incidents have been opened so far, of which 242 have been completed or are nearing completion.<sup>1</sup> Although the HET has needed to take some cases out of chronological sequence, in chronological terms they have reached June 1973.

2.4 Thus, halfway through the project, the HET has started work on 40% of all the incidents it needs to investigate, and 76% of those cases are yet to be completed.

2.5 There are many reasons why the HET is taking a long time to deal with cases. Here we would like to highlight just three of those reasons:

- the inability of the RUC to cope in the past with the large number of murder investigations generated by the conflict, alongside their role in combating terrorism;
- the fact that so many of the HET’s investigations are equivalent to major crime investigations such as the Soham murders, but are not resourced as such; and
- the fact that collusion has complicated the work of the HET on many levels.

2.6 The policy of successive governments throughout the conflict has been to criminalise terrorism, so that every murder triggered by the conflict has required a criminal investigation. Government policy has also dictated that the RUC’s primary role has been combating terrorism, as is demonstrated by the policy of police primacy over the army since the mid 1970s. There were 2,107 conflict-related deaths between 1969 and 1979, which accounted for 60% of all deaths between 1969 and 2001. Of these deaths, 11% were caused by the security forces and 89% by paramilitaries or unknown perpetrators, leaving the RUC with at least 1,800 murders to investigate. In 1972, the worst year of the conflict in terms of deaths, no fewer than 479 people died. It is little wonder that the RUC was overwhelmed. This meant that, very often, murder investigations at the time were perfunctory at best.<sup>2</sup> So far as deaths caused by the security forces were concerned, of which there were 239 in the first decade of the conflict, in the early 1970s a “gentleman’s agreement” meant that the RUC did not investigate them in any depth, accepting self-serving statements supplied by the Royal Military Police, rather than interviewing members of the armed forces themselves. When the HET returns to look at unsolved cases, which is the majority of all deaths, it is often necessary for them to start their own investigations virtually from scratch.

2.7 The very poor clear-up rate of conflict-related killings has meant that the HET is finding a disproportionate number of cases which, were they to happen today, would immediately acquire the status of a major murder investigation. When Jessica Chapman and Holly Wells from Soham were murdered in 2002, the Home Office allocated an additional £3.55 million to the budget of the Cambridgeshire Constabulary in order to help them deal with that one investigation.<sup>3</sup> The total cost of the investigation, which involved officers from several different police forces, was probably considerably in excess of that sum. If one assumes hypothetically that £30 million of the £34 million allocated to the Legacy Project goes to the HET and FSNI, that would mean that there would be under £12,000 per incident available to the HET. Yet the HET has on its books landmark murder after landmark murder, including McGurk’s Bar, Bloody Friday, Robert Nairac, La Mon, the Droppin’ Well, the Shankill Road bombing, the six deaths investigated by the Stalker/Sampson Enquiry, Teebane, the two soldiers murdered in Casement Park, Claudy, the Miami Showband murders, and the Disappeared, to name but a few cases, chosen virtually at random.<sup>4</sup> Many of these cases, of course, concerned multiple deaths.

<sup>1</sup> E-mail from HET to BIRW, 17 January 2008.

<sup>2</sup> All figures derived from *An Index of Deaths from the Conflict of Northern Ireland*, by Malcom Sutton, to be found at <http://cain.ulst.ac.uk/sutton/tables/Year.htm>

<sup>3</sup> *Closing the gap—A review of “fitness for purpose” of the current structure of policing in England & Wales*, by HM Inspector of Constabulary Denis O’Connor CBE QPM, September 2005, Appendix H.

<sup>4</sup> There have been a few prosecutions in some of these cases, but not of the major perpetrators.

2.8 The widespread nature of collusion during the conflict, the extent of which is only just beginning to emerge, greatly complicates the work of the HET. They are already investigating the allegations concerning the army Force Research Unit's agent known as Stakeknife and the Police Ombudsman's report on Operation Ballast, which unmasked alleged serial murders by just one UVF man who worked for Special Branch,<sup>5</sup> both of which are major investigations. Many other cases which the HET is due to investigate, whether they are high profile cases like the Miami Showband killings or less well-known cases, also involve allegations of collusion. The ramifications of these cases are an unknown quantity but, if just one example—the extended murder campaign by C Company of the UDA in Belfast in the 1970s and 80s—is considered, it is a safe bet that many of these cases will turn out to be of major proportions.

2.9 The HET is a unique experiment. To the best of our knowledge, nowhere else in the world has such a team. Inevitably, its very existence has raised high expectations among many of the families who still do not know the truth about what happened to their loved ones. In our work with victims we have found that they are seldom if ever interested in revenge or retribution. What they want above all is to find out the truth about what happened, whether to themselves or a loved one. They also want to be reassured that what happened to them will not happen to anyone else—an expectation that has all too often been unfulfilled. Thirdly, wherever possible, they want justice. They want those responsible, including not only perpetrators but instigators and those responsible for bad policies, to be held to account. However, victims are not unrealistic about what the justice system can deliver, and this aspiration for justice is often linked to the wish to ensure that the past does not merely repeat itself. These are very powerful, legitimate feelings, held right across communities, and the HET is playing a very important role in meeting at least some of those expectations. It is therefore crucial, in our view, that, whatever the cost, the HET should be allowed to complete its work. If it is unable to do so, the expectations of a large number of victims will be dashed and public confidence in the police and the criminal justice system will be dealt a body blow from which it may never recover.

2.10 Given the number of cases the HET has yet to investigate, and given the simple arithmetic outlined above and the complexity of many of the cases the HET is called upon to investigate, it seems likely that the £34 million budget—not all of which is attached to the HET—and the six year deadline for dealing with outstanding murders is unrealistic. We call on the Committee to recommend that the HET be given the tools it requires to finish its job in an effective manner. Although such a course of action may seem costly in the short-term, the potential benefits of drawing a line under so many unsolved cases can only be beneficial to the long-term stability of Northern Ireland, and to restoring public confidence in a system of criminal justice which has been badly battered by counter-terrorism measures such as the Diplock courts, the supergrass trials, and inroads into the right to remain silent.

#### *(Public) Inquiries*

2.11 In all the history of the conflict, for many years there was only ever one public inquiry in Northern Ireland, and that was the Widgery Tribunal<sup>6</sup> into the events known as Bloody Sunday in 1972. The findings of that inquiry became discredited over time, and, after a lengthy campaign by some of the victims of Bloody Sunday, in January 1998 the government announced an unprecedented second inquiry into the same events. Chaired by Lord Saville, the Bloody Sunday Inquiry opened in April 1998 and sat for 435 days between March 2000 and January 2005. It heard from 922 witnesses and studied 160 volumes of evidence, estimated to contain between 20 and 30 million words, 121 audiotapes and 110 videotapes.<sup>7</sup> So far, it has cost the taxpayer £178.264 million.<sup>8</sup> It was the longest and most expensive public inquiry in English legal history. Its report is yet to be published.

2.12 The cost of the Bloody Sunday Inquiry has generated a great deal of heat but very little light. There were three reasons why the Inquiry cost so much. The first was that the Inquiry decided to rehear all the oral evidence, despite the fact that the events under scrutiny took place so long ago. In view of the fact that the Widgery Tribunal was openly described in some quarters as a whitewash, we think it understandable that Lord Saville wanted to conduct a thorough and impartial inquiry, and by and large it would appear that he succeeded in doing so, although his final report will be the ultimate measure of that. The second reason for the high cost was that the Inquiry granted separate legal representation to so many parties. People often forget that the money spent on such inquiries does not go to the victims, but to lawyers and on the cost of hiring a venue for such a long time, as well as on photocopying and scanning a huge volume of documents, taking witness statements, preparing transcripts and so on. Thirdly, the soldiers' insistence that they could not give evidence safely in Derry—an assertion acquiesced to by London courts with no experience of the situation on the ground—meant that the whole Inquiry had to move to London for many months, a move which in itself cost £15 million.<sup>9</sup>

<sup>5</sup> Statement by the Police Ombudsman for Northern Ireland on her investigation into the circumstances surrounding the death of Raymond McCord Junior and related matters, January 2007.

<sup>6</sup> Although in fact Lord Widgery sat alone.

<sup>7</sup> All information from the Bloody Sunday Inquiry website: <http://www.bloody-sunday-inquiry.org>

<sup>8</sup> Northern Ireland Questions, Hansard, 26 July 2007, col 1445W—this figure represents the cost as at the end of April 2007 and does not include the costs of the Inquiry's report.

<sup>9</sup> <http://www.bloody-sunday-inquiry.org>

2.13 The only other public inquiry to be held in Northern Ireland—and the last to be held anywhere in the United Kingdom—is the Rosemary Nelson Inquiry. The Robert Hamill Inquiry and the Billy Wright Inquiries started life as public inquiries, but both were converted to inquiries under the Inquiries Act 2005 (wrongly called the Public Inquiries Act in the Committee's press notice), which in our opinion cannot deliver an effective public inquiry, for the reasons given in part 3 of this submission.

2.14 The PSNI has been unable to tell us how much they spent on the Bloody Sunday Inquiry, and they do not keep a breakdown of what they are spending on the individual Nelson, Hamill and Wright Inquiries. However, they say that expenditure on all three inquiries in this financial year is projected to be £2.05 million, increasing to £2.75 million next year.<sup>10</sup> Given that all three inquiries are reaching the end of their information-gathering phase, it is not clear to us why the anticipated costs to the PSNI are expected to be so high next year; the Committee may wish to explore this with the PSNI.

2.15 While we can appreciate that police officers of a new generation who played no part in the events which are the subject of these inquiries may feel frustrated by the sight of such sums spent on dealing with matters that, from their point of view, are past history, such frustration is fundamentally misplaced. In the first place, the police are an organ of the state. Individual post holders may come and go, but the police as an organisation must accept responsibility for the actions of its officers whether they are still in office or not. Secondly, today's officers may misunderstand the fact that, when trauma remains unresolved, it remains as fresh in the victims' minds as if it had occurred yesterday—it is not past history to them. Thirdly, in all four of the inquiries to which the police have been required to disclose evidence, they are under the same duty of disclosure as anyone else who holds relevant evidence. Inquiries are entitled to expect the unquestioning co-operation of any public body that can assist them in their work. Fourthly, by being seen to engage in the past in an open and honest manner, the PSNI could do much to increase public confidence especially, but by no means exclusively, within the nationalist community. Lastly, and crucially, the PSNI must accept some responsibility for the need for these inquiries in the first place. In all four cases, the conduct of the police is rightly under scrutiny.

2.16 In the case of Bloody Sunday, there was to all intents and purposes no police investigation. The incident was regarded as a gun battle between the army and the IRA, and portrayed as such by the British authorities, who swiftly labelled all the victims as nail- and petrol-bombers or gunmen. There was no scene-of-crime investigation; the bodies of the dead were conveyed from the scene in army vehicles, resulting in their contamination with firearms residue. No-one in authority seems to have considered that there may have been any crime committed, at least in relation to the shootings, with the result that there was no police investigation.

2.17 In relation to Robert Hamill's death, the RUC are culpable in many ways. Robert Hamill and his friends would never have risked walking past the mob that attacked them had it not been for the fact that an RUC landrover was parked in the vicinity. The four armed officers inside the landrover, who could have dispersed the crowd with a single shot fired into the air if necessary, failed to come to their assistance. Another officer apprehended one of the alleged perpetrators but inexplicably let him go. Their actions constituted gross dereliction of duty, but none of them has been prosecuted or disciplined. After the attack, the RUC put out a series of misleading press releases suggesting that there had been a mass fight between opposing factions and that the police themselves had come under attack. The RUC have never apologised to the family for their failure to protect Robert Hamill. Six people were ultimately arrested for the murder, but only one stood trial. The evidence given against him by the RUC officers present at the time of the attack was so poor that he was acquitted of murder and only convicted of the much more minor offence of affray. When a witness came forward alleging that an RUC officer had telephoned one of the murder suspects advising him on how to get rid of the clothes he was wearing on the night of the attack, the officer in question denied making the telephone call and suggested that two friends who had been staying in his house had done so. These two individuals later said that they had indeed telephoned the house of the suspect at the relevant time. Later, one of them reversed her position and stated that she and her husband had lied to protect the RUC officer. These two were subsequently convicted of perverting the course of justice. However, a prosecution of the RUC officer concerned collapsed. Thanks to police inaction, incompetence, corruption and collusion, Robert Hamill lost his life and his murderers have evaded justice.

2.18 So far as Billy Wright's case is involved, the police investigation following his death was perfunctory, to say the least. Billy Wright, a leader of the loyalist paramilitary group the Loyalist Volunteer Force (LVF), was murdered in the yard of H-block 6 in the Maze Prison on 27 December 1997 by three members of the Irish National Liberation Army (INLA). Although the identities of the three main perpetrators are known, and they gave themselves up and were convicted, it is obvious that other INLA prisoners in H-block six would have known about the plan and may have acted as accessories before or after the crime. Indeed, the RUC officers investigating the murder thought that there were others involved in the murder. Yet the 13 other INLA prisoners were not arrested or interviewed by the RUC until 28 January 1998. While it might reasonably be anticipated that INLA would not have co-operated with the RUC, such a long gap certainly would have facilitated getting stories straight and the destruction of any evidence. Furthermore, Special Branch had intelligence of threats against Billy Wright's life, but so far no evidence has emerged to suggest that they used this information in order to protect him.

<sup>10</sup> E-mail from Assistant Chief Constable (Crime Support) to BIRW, 16 January 2007.

2.19 Not only are the police open to criticism over their conduct in relation to the Wright case, but they have been sharply criticised by the Billy Wright Inquiry for failing to comply with requests for disclosure of evidence. As a result, the Inquiry suspended its proceedings in order to produce a position paper on the whole question of disclosure by the PSNI. This paper is due to be made available on 21st January 2008, and we have no doubt that the Committee will find it of interest.

2.20 Solicitor Rosemary Nelson's life had been threatened and she had been abused by RUC officers before she was murdered by the LVF in a car bombing on 15 March 1999. Although the then RUC Chief Constable Sir Ronnie Flanagan called in Her Majesties Inspector of Constabularies<sup>11</sup> to appoint an external police officer to head the murder investigation, the officer who eventually took the job, Colin Port, remained answerable to the RUC, which therefore retained responsibility for the investigation. By June 2002, the police investigation had cost £7.8 million. The whole of this sum came from the RUC/PSNI's budget. Other police services contributed at least a further £2 million in the form of salaries for seconded officers.<sup>12</sup> Despite this expenditure, there is evidence that the investigation failed to command public confidence, particularly within the nationalist community. Some important eyewitnesses refused to be interviewed by Colin Port's team and there was little or no response to his television appeal for witnesses to come forward.

2.21 BIRW's concerns about the police investigation in the case can be summarised as follows:

- for the first two crucial weeks it was conducted entirely by the RUC, despite that fact that RUC officers had threatened Rosemary Nelson's life;
- Colin Port's investigation was not sufficiently independent of the RUC: he continued to employ RUC officers; he had no independent power of arrest; he was based in Lurgan RUC station; and he reported to the Chief Constable of the RUC;
- such independent scrutiny as there was of the investigation (for example by the FBI) was purely cosmetic;
- there were a number of leaks to the media about the investigation which were harmful to the investigation, some of which appear to have come from senior RUC officers;
- there was no effective investigation of those RUC officers who threatened Rosemary Nelson's life;
- there was no effective investigation of the failure to protect Rosemary Nelson despite many warnings about her safety;
- we believe that intelligence information held on Rosemary Nelson may have been withheld from Colin Port;
- the investigation has failed to command public confidence; and
- Colin Port did not produce a report of his investigation, but even if he had it would not have been published.

2.22 The Rosemary Nelson Inquiry has appointed a seven-person team of non-Northern Ireland police officers, led by Robert Ayling, to examine Colin Port's investigation in detail. That report has not yet been made public but it is our expectation that it will voice a number of criticisms.

2.23 In all four inquiries, the police were given the status of a full participant on the grounds that their conduct needed to be scrutinised. It ill behoves the PSNI to complain about the cost of co-operating with the inquiries when their own conduct has been called into question.

### *Contentious Inquests*

2.24 BIRW does not have any information about the costs of PSNI co-operation with contentious inquests, but, as in the case of the four inquiries above, in many of the cases where contentious inquests are still outstanding, the police played some role in the killing, or failed to provide an adequate investigation, or both.

2.25 In six such cases, the European Court of Human Rights has ruled that the police were insufficiently independent to provide an effective investigation, either because the police were responsible for the killing or because they were too close to the army, when they were responsible. These are the cases of Pearse Jordan,<sup>13</sup> who was shot by the RUC; Loughall,<sup>14</sup> where the army was responsible; Gervaise McKerr, also killed by the RUC;<sup>15</sup> Patrick Shanaghan, where collusion on the part of the RUC is alleged;<sup>16</sup> Patrick Finucane, where again police collusion<sup>17</sup> is alleged;<sup>18</sup> and Dermot McShane,<sup>19</sup> where the army was responsible for the death. The Court ruled that in all of these cases, which involved twelve deaths, the

<sup>11</sup> A post he now holds himself.

<sup>12</sup> Financial information supplied to BIRW by Colin Port.

<sup>13</sup> *Hugh Jordan v the United Kingdom*, no 24746/94 (Sect 3).

<sup>14</sup> *Kelly and Others v the United Kingdom*, no 30054/96 (Sect 3).

<sup>15</sup> *McKerr v the United Kingdom*, no 28883/95 (Sect 3), 4 May 2001.

<sup>16</sup> *Shanaghan v the United Kingdom*, no 37715/97 (Sect 3), 4 May 2001.

<sup>17</sup> As well as army and MI5 collusion.

<sup>18</sup> *Geraldine Finucane v UK*, no 29178/95.

<sup>19</sup> *McShane v UK*, no 43290/98.

victims' right to an effective investigation under Article 2 of the European Convention on Human Rights, which protects the right to life, had been breached. Unusually, and in order to emphasise their disapproval, the court awarded compensation of £10,000 to each family affected. To this day, none of the cases has been the subject of an effective investigation. Had the police provided an effective investigation in the first place, it would have been considerably cheaper than the costs involved in the European cases and subsequent litigation arising out of the Court's judgments, some of which went to the House of Lords. By comparison, the PSNI's costs in relation to the inquest of Gervaise McKerr, which has yet to take place although he was killed in 1982, are a drop in the ocean.

### 3. THE EFFECT ON THE ABILITY OF THE POLICE SERVICE OF NORTHERN IRELAND TO BRING ACCUSED PERSONS TO TRIAL OF PROVISIONS IN THE PUBLIC [SIC] INQUIRIES ACT 2005 AND IN OTHER LEGISLATION REQUIRING THE POLICE TO DIVULGE INFORMATION WHICH MIGHT IDENTIFY A COVERT SOURCE

3.1 As has already been pointed out, the word "public" does not appear in the title of the Inquiries Act 2005, with good reason, since the Act effectively abolished the independent public inquiry as we know it. The Act removed ultimate control of inquiries from independent judges and other chairs and placed it in the hands of government Ministers. Under the Act, the Minister:

- decides whether there should be an inquiry;
- sets its terms of reference;
- can amend its terms of reference;
- appoints its members;
- can restrict public access to inquiries;
- can prevent the publication of evidence placed before an inquiry;
- can prevent the publication of the inquiry's report;
- can suspend or terminate an inquiry, and
- can withhold the costs of any part of an inquiry which strays beyond the terms of reference set by the Minister.

Parliament's role has been reduced to that of the passive recipient of information about inquiries, whereas previously<sup>20</sup> reports of public inquiries were made to Parliament. Now, not only is there no guarantee that any inquiry will be public, but inquiry reports will go to the Minister. The Minister's role is particularly troubling where the actions of that Minister or those of his or her department, or those of the government, are in question. In effect, the state will be investigating itself. In our view, the Inquiries Act is at odds with the United Nations' Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.<sup>21</sup>

3.2 Where Article 2 of the European Convention on Human Rights (ECHR) is engaged, the Inquiries Act is at variance with the United Nations' Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.<sup>22</sup> Indeed, we doubt that the Inquiries Act can deliver an effective investigation in compliance with Article 2. The Minister's powers to interfere in every important aspect of an inquiry robs it of any independence. Even if a Minister were to refrain from exercising those powers that are discretionary, s/he still has absolute power over whether there should be an inquiry at all and over its terms of reference. There is no scope for victims to be involved in or even consulted about the process.

3.3 However, there are no provisions in the Inquiries Act 2005 which place the police under any special or new difficulties in relation to the protection of covert sources. In any legal proceedings, whether they be statutory or non-statutory inquiries, criminal trials, inquests, judicial review or other types of hearing, the police always face a dilemma when their evidence is intelligence-based. They always have to balance their public duty to tell the truth, and/or their desire to secure a conviction in a criminal case, against their concern not to disclose information about their methods which may assist those who commit crime or threaten national security. That dilemma is particularly acute where the disclosure of intelligence-based information may identify a covert source, because there is often the risk that to do so would put the source's life at risk.

3.4 The PSNI obviously has a duty of care towards its covert sources. In many instances those sources have already put their lives at risk by providing information; any action on the part of the PSNI that adds to that risk could potentially infringe the sources' right to life under Article 2 of the ECHR. However, the PSNI has at its disposal a panoply of measures that can be used to protect covert sources. Sources can apply for anonymity, for screening from public view, and for the ability to give their evidence at long-distance by way of a video link. The PSNI can also apply for a Public Interest Immunity Certificate in order to protect a source.

3.5 Rightly, though, in our view, the PSNI do not have the final say in such matters, which are for the court to decide. The court must always balance the need to protect the source against the public interest in establishing the truth and in a transparent, open system of justice. Failure to value those principles has

<sup>20</sup> Under the Tribunals of Inquiry (Evidence) Act 1921, now repealed.

<sup>21</sup> E/CN.4/2005/102/Add.1) <http://documents.un.org>

<sup>22</sup> <http://www2.ohchr.org/english/law/pdf/executions.pdf>

resulted, in other countries under the rule of totalitarian regimes, in show trials that have been travesties of justice. Within our own, democratic, system of justice, misuse of protective measures has the power to pervert the course of justice. A prime example, although it did not involve the police, was the Matrix Churchill case,<sup>23</sup> where if the judge had not intervened and refused to uphold a Public Interest Immunity Certificate signed by a Secretary of State, innocent men would have been jailed for sanctions-busting which had been secretly approved by the government. In a case which did involve the police in Northern Ireland, Colin Duffy was acquitted on appeal when the prosecution's star witness, given the cloak of anonymity, was revealed to be a loyalist terrorist who was already under investigation by the police for gun-running.<sup>24</sup> In that case, the judge at first instance had placed great weight on the evidence of this palpably unreliable witness. It is perhaps worth remembering that the lawyer who helped to avert that potential miscarriage of justice was Rosemary Nelson.

3.6 It should also be remembered that covert sources are not the only people whose lives can be put at risk by giving evidence in legal proceedings. Every day in criminal trials, ordinary members of the public, without the benefit of any special protections, give evidence which could result in retribution. Although they too can apply for protections such as anonymity, screening and video-links, in practice they rarely do so. One of the precious threads in our justice system is the maxim that justice must not only be done but be seen to be done, and ordinary citizens put that principle into practice on a daily basis.

3.7 One person's "covert source" is another person's "informer". Many of the people from whom the PSNI obtain information are themselves involved in criminality and proffer information in return for payment. While they have the same right to life as anyone else, at the same time there is nothing inherently meritorious in their actions which confers more rights on them than on any other witness.

3.8 In our view, the protections already in place for covert sources are already adequate. There is nothing in the Inquiries Act 2005 or any other legislation that places covert sources at any greater risk than they have always faced. Whether their identities have to be revealed will always be a matter for the courts decide, in their proper consideration of the balance that must be struck between the right to life of individuals, the public interest and the interests of national security.

3.9 We find ourselves wondering why this issue is being raised as a matter of "current concern", in the Committee's own words, just at this moment in time. Given the information that has come to light about the very dubious practices in relation to the use of covert sources in the cases of, for example, Stakeknife, Denis Donaldson, and Mark Haddock, it seems very likely that convictions have been obtained in the past which may, on further scrutiny, be found to be unsafe and unsatisfactory if they were based on evidence obtained from such sources. The Committee should be on its guard against any move to prevent the re-opening of potential miscarriages of justice.

3.10 We are also concerned that the PSNI is gearing up to obstruct the Nelson, Wright and Hamill Inquiries in the name of protecting covert sources. These inquiries were established by the government in the wake of reports by the distinguished and independent former Canadian Supreme Court judge Peter Cory, who found a prima facie case of collusion to answer in all three cases. It would be wholly wrong if the police, themselves an emanation of the state, were to fail to co-operate fully with inquiries set up by the state in the public interest.

*Jane Winter*

Director, on behalf of British Irish Rights Watch

*January 2008*

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### **Written evidence from the Committee on the Administration of Justice**

#### **INTRODUCTION**

1. The Committee on the Administration of Justice (CAJ) is known to the Northern Ireland Affairs Committee from previous inquiries, as an independent cross-community organisation working to uphold human rights in Northern Ireland. The organisation has worked on policing and criminal justice since 1981, and was awarded the 1998 Council of Europe Human Rights Prize for its work to mainstream equality and human rights in the peace negotiations.

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<sup>23</sup> Known as *R v Henderson and others* (1992), although the case collapsed; see also Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions, (the Scott Report), 1996.

<sup>24</sup> *R v Colin Francis Duffy*, CA (Northern Ireland) HUTE2200, unreported.

## CURRENT INQUIRY

2. It is difficult not to comment in passing on the negative connotations which are already conveyed by the formulation of the Inquiry's terms of reference. Whether it was intentional, or quite inadvertent, the impression is given that the Inquiry is starting from the premise that historical inquiries are creating obstacles to good policing, and that operational policing may be undermined. CAJ will be taking a different approach.

3. Unfortunately, time pressures particularly relating to current discussions on the Forum for a Bill of Rights for Northern Ireland (which CAJ also believes would contribute to good policing), prevent us from making a major submission at this time. We do think, however, that the Northern Ireland Affairs Committee would be wise to give consideration to some of the issues raised below.

4. Firstly, it is difficult in any situation to separate "past" policing from "current" or "future" policing. This may particularly true of Northern Ireland, given the centrality of policing in many of the events of past decades, but it is equally true of other places. Could a new Met Commander disregard the Stephen Lawrence Inquiry on the grounds that that related to "past" events? Our learning from the past, informs our attitudes to current and future events.

5. Secondly, such learning can both be for both good and ill, but CAJ believes that it will be the former in the case of the so-called "historic" inquiries. CAJ does not contest that there are cases beyond those selected for examination by Justice Peter Cory which might merit a public inquiry, and we recognise that this is one of the challenges that is currently facing the Panel to deal with the Past (the Eames/Bradley initiative). However, the reality is that the government has publicly committed to undertake four inquiries in furtherance to the Cory recommendations (in addition to Bloody Sunday), and these inquiries are likely to highlight very different issues and provide very different learning to the police, and to the authorities generally.

6. The advantage to the police of the so-called "historic" inquiries is that:

- (a) there will be an exploration of police action and inaction in the course of several very different phases of the conflict, and in response to very different situations.
- (b) the three inquiries already initiated relate to a murder in prison and the police investigation of that death (Billy Wright); the sectarian killing of a young man and accusations of individual police wrongdoing at the scene of the crime and in the subsequent investigative phases (Robert Hamill); and the role the police may have played in creating an atmosphere in which a defence lawyer was considered a "legitimate target" by loyalist killers and subsequent events (Rosemary Nelson). In all cases, the police procedures in and around the death, and the subsequent investigation, and allegations of collusion between state agents and loyalist or republican paramilitaries, need careful scrutiny. (The fourth case—that of Pat Finucane—is even more centrally located in the debate on what is an appropriate role of policing).
- (c) The inquiries (if they work well, but see further) will provide important insights into how policing was done in the 80s and 90s and what worked well and what did not. Society needs to retain the learning about good policing, and ensure that that learning is translated into current policies and practices, and it needs to determine what was bad policing, and how that can be avoided in future. Post 7/7 in London, who can say that it would not be widely beneficial to learn about the pressures put on good policing at the height of the conflict in Northern Ireland, and how can this be better countered in similar situations in the future?

7. Thirdly, as noted above, CAJ believes that there will be some very negative learning that arises from these inquiries. Nevertheless, the advantage of that learning is that it can be put to good effect and will ensure that it cannot be repeated. Each time that the Chief Constable and the Policing Board are able to assure themselves that "x" or "y" could not happen now because of changed procedures, the more society can be assured that we have indeed learnt the terrible lessons of the past. We refer the Committee to pages 95–96 of our report entitled *War on Terror: lessons from Northern Ireland*, in which the Chief Constable of the PSNI makes this very point.

8. CAJ's fear is not that too much will be learnt, and somehow overly burden current operational policing, but rather that the Inquiries Act, and the recalcitrance of many within the various criminal agencies, will hamper the search for truth. Our concerns about the limitations placed on public inquiries by the passage of the Inquiries Act are well known, and figure in earlier NIAC reports. In this regard, we need do little more than refer the Committee to the current Billy Wright Inquiry. Any even cursory glance at the public statement issued by the chair to that Inquiry about the inadequacy of police response to their efforts should disturb NIAC members. The audit trail highlights serious problems about police procedures and record-keeping at the time of Billy Wright's murder, but also in the year 2007. The Committee may indeed want to express concern about the public expenditure involved in commissioning an external review by former ACC Sam Kinkaid, but the real shame is in the fact that so little was achieved by this review. What does this say about current police commitment to the process of learning from the past?

9. We also note that of the four inquiries underway (Bloody Sunday and three "Cory" inquiries), media frequently comment on the enormous legal costs involved. Interestingly, there is rarely a breakdown of costs as between the legal costs for the family/families (ie the victims) as opposed to the (multiple) teams

representing the several different arms of government. At the Wright Inquiry, for example, there is a three member legal team (senior and junior counsel and solicitor) representing the family, and then seven legal teams representing the Northern Ireland Prison Service, the Prison Officer Association, the Police Service of Northern Ireland, the Northern Ireland Office, the Security Services, the Treasury Solicitor's Office and the Crown Solicitor's Office.

10. CAJ has recently testified to the Eames/Bradley panel and we confirmed that adversarial highly-legalistic remedies are often far from ideal in getting to the truth that the family, and society, needs. We have no brief for arguing that vast sums of public monies should be spent in ways that result in obscuring rather than revealing what happened. The European Convention/Human Rights Act (and common decency) requires, however, that the families have a remedy. The 'Cory' families have campaigned tirelessly to get answers to their questions, and they should be being supported in their endeavours—instead constant obstacles are placed in their way. The Northern Ireland Affairs Committee should exercise caution in their eventual recommendations if they are not to imply that these families do not deserve the full truth of what happened.

11. Given the concern about putting public resources to best effect, the Committee might want to make the following recommendations:

- (i) The PSNI should establish mechanisms to capture the learning that arises from the Inquiries regarding past and current policing and how to ensure that regular reviews of policing policies and practices are built in.
- (ii) The PSNI should have legal advice and lines of accountability that make a clear distinction between its obligations towards employees (past and current) and its duties as a public body required to uphold human rights of all the members of the public with which the Service interacts.
- (iii) The PSNI should review the legal advice that led to them arguing recently in court that RIPA authorised them to covertly bug legally privileged conversations between lawyers and their clients (an issue that has read-across to recent debates in Britain about MPs private meetings).

Committee on the Administration of Justice

February 2008

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#### **Written evidence from the Northern Ireland Policing Board**

The Board has discussed the Northern Ireland Affairs Committee Inquiry into Policing and Criminal Justice in Northern Ireland and Members have the following responses on the two specific areas of concern:

1. *"The financial and operating consequences for the Police Service of Northern Ireland of servicing the various 'historic inquiries' into past events in Northern Ireland."*

It is the view of the Northern Ireland Policing Board that the efficiency and effectiveness of the police service in preventing and detecting crime should not be compromised by dealing with the various commitments to historical inquiries (ie the PSNI Public Enquiry Unit, the PSNI Retrospective Murder Review Unit, Police Ombudsman for Northern Ireland, Historical Enquiries Team, the Rosemary Nelson Inquiry, the Robert Hamill Inquiry, the Billy Wright Inquiry, the Stevens Inquiry and the Criminal Cases Review Commission). It is the responsibility of Government to ensure that the police service be provided with adequate funding to deal with "policing the past".

2. *"The effect on the ability of the Police Service Northern Ireland to bring accused persons to trial of provisions in the Inquiries Act 2005 and in other legislation requiring the police to divulge information which might identify a covert source."*

The Board did not agree a response on this issue.

Professor Sir Desmond Rea  
Chairman  
Northern Ireland Policing Board

22 January 2008

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### Written evidence from the Northern Ireland Retired Police Officers' Association

1. This submission is made to the House of Commons Northern Ireland Affairs Select Committee by the Executive Committee of the Northern Ireland Retired Police Officers' Association, a social and welfare organisation representing the interests of over 3,000 former members of the Royal Ulster Constabulary GC and the Police Service of Northern Ireland.

2. The Association feels that it is uniquely positioned to contribute to the deliberations of the Committee as it seek to address the effect on the ability of the Police Service of Northern Ireland (PSNI) to bring accused persons to trial, of provisions in the Public Inquiries Act 2005 and in other legislation requiring the police to divulge information which might identify a Covert Human Intelligence Source (CHIS).

3. Amongst our members are former officers, of all rank levels, who were directly engaged in the collection of intelligence using CHIS and many former officers who benefited from the intelligence that was collected. We believe that they have a valuable knowledge, considerable experience and important views on the matter under consideration by your committee.

#### POLICE USE OF CHIS

4. The primary functions of any police service are the protection of life and property, as well as the prevention and detection of serious crime. An efficient intelligence gathering system is essential in this regard. Intelligence properly gathered, analysed and disseminated provides invaluable assistance in both protecting life and investigating crime and, in many cases, will enable action to be taken to prevent crimes occurring. When police are lacking witnesses (which is often the case in Northern Ireland), especially eyewitnesses, dealing with sophisticated terrorists and criminals, or not getting much out of the crime scene evidence, the use of CHIS becomes increasingly important as it can help inform and direct the investigators.

5. The PSNI has a duty to gather information and generate intelligence about crime, terrorists and criminals. The ability to infiltrate criminal and terrorist organisations is vital to understanding the way in which individual and organised criminal enterprises work and to formulate strategies to thwart and frustrate criminal and terrorist activity and bring those responsible to justice. The practice of using CHIS is a well tried, tested and productive method of gathering intelligence and it is a technique that is employed by police throughout the world, not just in Northern Ireland. Towards the end of the "Troubles" in Northern Ireland, a former RUCGC Chief Constable is on record as stating that four out of five planned terrorist attacks were being disrupted. It is widely accepted in jurisdictions permitting the use of CHIS that processes and procedures must be in place to protect the identities of the CHIS.

#### THE CLOAK OF ANONYMITY

6. One common feature shared by every CHIS is a desire for their activities and identity to remain secret. It has been our members' experience that during the recruitment process potential CHIS need constant reassurance that their dealings with the police will indeed remain secret and that only under exceptional circumstances, such as a legal requirement, will their identity be revealed to anyone outside the small team that is working with them and their managers. This is an issue that recurs constantly throughout the life of the relationship with the CHIS and they need continual reassurance on this issue. Without such reassurance very few people, if any, would actually agree to provide secret intelligence to the police.

7. Everyone in Northern Ireland knows well and understands the penalties that the terrorist and organised crime groups inflict on those whom they believe to be CHIS. The ultimate sanction of death awaits those who fall under the terrorists' suspicion and the murders of individuals such as Dennis Donaldson and Eamon Collins, both allegedly CHIS, have been well publicised and helped to reinforce this perception. It is by offering such a fate that the terrorists seek to maintain a grip on the security of their organisation and to reassure their own membership that they won't be betrayed. Indeed the IRA's "Green Book", its training and induction manual, which acts as a manual of conduct, states clearly that the penalty for informing is death. In Ireland (as in some other jurisdictions) this sanction is reinforced with a deliberately cultivated community attitude towards informers.

8. Death is often marked with ritual humiliation and the families of informers are obliged to listen to "confessions" and to distance themselves from their loved ones. Faced with the prospect of such a death if their relationship with the police becomes known no CHIS will operate without the belief that they will be protected by a cloak of anonymity, which they see as vital to their safety.

#### MOTIVATIONS

9. In recent years, due a small number of highly controversial cases involving the publication of some misleading material, the common perception of CHIS is that they are manipulative, self serving criminals, only out for their own benefit. Whilst this does apply to some individuals, it does not do justice to the reality that Human Intelligence Sources can be made up of very different people, motivated by very different reasons. Some CHIS will indeed be motivated by self-interest, some by financial reward; others however will be motivated by more noble reasons, such as a desire to save lives and to protect their community from the

evils of paramilitarism. This type of CHIS willingly puts their life on the line and takes extraordinary risks as they seek to gather and pass on intelligence which saves lives. They often show a moral courage and indeed a physical bravery that is not widely seen or recognised. All they seek in return is the satisfaction of knowing the valuable contribution to saving lives which they have made and the reassurance that their activities and identity will remain secret. It is the Association's opinion that there is a major moral duty on the State, on public inquiries and on the courts to protect the identities of such CHIS.

#### THE IMPACT OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

10. The Human Rights Act was enacted in November 1998. It incorporates the European Convention on Human Rights (ECHR) into domestic law and places consideration of an individual's rights to privacy and fair trial at the very heart of law enforcement operations. Many people only view Human Rights in relation to the use of CHIS and their intelligence gathering activities as it impacts on Article 8 the right to privacy and Article 6 the right to a fair trial. It is our opinion that CHIS also have the right to protection under Article 2 the right to life and under Article 8 the right to privacy and family life. If the identities of CHIS are not adequately protected it is only a matter of time before some of these issue will be subject to legal test in court.

#### DUTY OF CARE

11. It is recognised that the police service has a duty of care in relation to the management of intelligence, the protection of sources and towards people who provide them with information in confidence. Where, through neglect or a deliberate act, harm results from a failure to honour confidentiality a sustainable claim for damages may arise. In the circumstances in which informants are handled the agreement to respect confidentiality is explicit. The case of *Swinney v Chief Constable of Northumberland* (1999) is the most relevant judgement in this area. Equally, a failure to act to protect an informant who is known to be in danger, presents the possibility of a similar breach of a duty of care. The ECHR related case of *Osman v UK* (1998) indicates that where police know or ought to know of a real and immediate threat of harm to someone and fail to respond, an actionable breach of a duty of care may arise.

12. One way the police can best exercise its duty of care towards CHIS is by protecting their identities. If a CHIS identity is revealed and they are then subject to a threat of violence the usual response has been to offer that CHIS a resettlement package. This package will include the offer of a new identity and relocation to another part of the world. Accepting such a package may save the life of the CHIS, but it can have a devastating affect on their family and personal life. Imagine having to leave your friends and family behind as you move to start a new life in some part of the world you know little about. Our members can relate many stories of discussions with resettled CHIS who want to return home for the funeral of a parent or who want to return to see an elderly parent for one last time before they die.

13. The threat against resettled CHIS continues to exist, if not from a terrorist organisation then from individuals, some of whom may have served prison sentences because of intelligence supplied by the CHIS. It is our Association's opinion that the resettlement of CHIS should only occur in the most extreme circumstances when a real threat to the life of a CHIS exists. It is not something that should have to occur because of the system's failure to protect the identity of the CHIS or to fully realise the impact that revealing their identities can have on the CHIS, their family and life.

#### TRADECRAFT AND OPERATIONAL SECURITY

14. "Tradecraft", the art of safely using informants, is a key feature of nationally accredited CHIS training courses for handlers, controllers and managers. Police services worldwide spend considerable time and money ensuring that officers are trained in tradecraft and best operational security practices for CHIS operations. At the heart of this training lies methodology to protect the identity of CHIS. The benefits of such training and financial expenditure are significantly diminished if other parts of the criminal justice system are not offering the same levels of protection to the identity of CHIS. The Association is strongly of the view that a holistic approach to protecting the identity of CHIS needs to be adopted and that decisions to disclose identities should not be made in isolation by other parts of the criminal justice system not directly involved with the fallout from such decisions.

#### FURTHER CONCERNS

15. The Association is extremely concerned that knowledge about the identities of a number of CHIS is now more widespread than traditionally would have been the case. Due to the number of public inquiries taking place and continuing investigations by the Police Ombudsman and Historical Enquires Team, the PSNI has had to share a lot of information on the identities of its CHIS and has in effect lost control of the protection of such information.

16. This is also the case with other investigations such as the prolonged investigations by Lord Stevens, the status of which remains a mystery to us. Files with recommendations have been submitted to the Director of Public Prosecutions who has directed no prosecutions against any police officer. Yet some form of investigation seems to continue and a large number of files containing the identities of CHIS remain in his possession, a matter now attracting media attention and associated dangers.

17. There is the associated complication of the previous Police Ombudsman publishing "commentaries" on cases, allegedly involving CHIS, where "No Prosecution" had been directed by the Public Prosecution Service. This in itself can lead to (and probably has) the identification of CHIS through a process of elimination and interrogation by terrorist godfathers.

18. Each of these inquiries and investigations has its own staff and administrative support: they are subject to the normal employment practices and people will come and go, on promotion and through movement to other jobs, each taking with them some knowledge gained during their time with the inquiry or investigation. A serious concern must be that there is an ever widening pool of knowledge about the identities of CHIS, some of whom are still in place and continue to provide valuable intelligence. Each of the inquiries and investigations has their own premises, with a resultant geographical spread, and each has their own security measures. No longer are the identities of CHIS held in one central location which is under the control of PSNI and which is subject to very high security.

19. The Association feels that this is a disaster waiting to happen and that it may only be after some serious lapse of security or indiscretion by a former employee, when a CHIS is compromised, that someone will look at this issue and wonder how it was ever allowed to happen. There is significant potential for immediate and very serious consequences of any "loss of data" in this particular area of public life. High on this scale would be the resultant threat to existing and particularly retired handlers.

20. It is our recommendation that this situation should be investigated now and the Committee should not wait for some adverse event to be the catalyst for such an investigation. Can anyone currently say who exactly knows the identity of a particular CHIS? An area once so keenly and professionally protected by RUCGC/PSNI is now an area over which they have little control. The golden rule always was "need to know" not "want to know". It is now an almost weekly occurrence to read Press articles about individuals being alleged CHIS. It goes without saying that the injudicious use of any intelligence material can have fatal consequences, particularly relating to terrorism in Northern Ireland.

21. Our Association sees real dangers in the current situation and believe it has an impact on both the current intelligence gathering operations and on the potential for the recruitment of CHIS in the future. A real concern is that there is emerging a situation where the police will not be able to retain the CHIS they currently have and that they will not be able to recruit any CHIS in the future. We would ask, who in their right mind would risk their life to supply intelligence with no guarantee that their activities and identity will be protected? The use of CHIS as an effective intelligence gathering technique will end if steps are not take to ensure that adequate guarantees can be given to present and potential CHIS.

#### CONCLUSION

22. The Association would remind the Committee that the police service paid a heavy price in the discharge of its duties in Northern Ireland with some 302 officers killed and a further 10,000 injured, of whom 300 are maimed for life: and 1,183 police officers and their families were forced to leave their homes and live elsewhere. Many former officers are still in receipt of psychological counselling as they struggle to re-establish themselves within their family circles and in the wider community. It is our earnest belief that the use of Covert Human Intelligence Source prevented many more from being murdered and injured and indeed many of our members can testify to the personal benefits to be had from timely and actioned intelligence received from Covert Human Intelligence Sources. Consequently we are keen to ensure that the use of Human Intelligence Sources as a technique remains a potent and powerful tool for PSNI.

23. It is further our belief that the compromise of individual CHIS and, by implication, of the system itself, will damage the chances of the broader intelligence community, including the Security Service and mainland police services, of being able to defend the United Kingdom from the terrorist and organised crime threats which now confront us. It would be for others to say definitively, but we would also have concerns that other UK agencies would find their cooperative relationships with friendly overseas agencies jeopardised if it were thought that the UK was indifferent to the protection of its intelligence assets.

24. Whilst our submission is succinct it is nevertheless important. Our members feel strongly that if action is not taken to ensure that the identities of CHIS are protected, the ability of the PSNI to benefit from the use of Covert Human Intelligence Sources in combating crime and terrorism will be seriously and adversely affected. We, more than many groups in society, know what will be lost to law enforcement and the possible price that could be paid if such a situation arises. As an Association we would urge the Select Committee strongly to do what it can to ensure that this does not happen.

Northern Ireland Retired Police Officers' Association

21 January 2008

## Written evidence from the Police Ombudsman for Northern Ireland

### SECTION 1

#### 1. *Introduction*

1.1 The Police Ombudsman welcomes the invitation to attend the Northern Ireland Affairs Committee on this important inquiry.

1.2 This submission offers comment in relation to the two specific areas of current concern as outlined in your Terms of Reference and will not attempt to comment on the wider aspects of your broad inquiry.

1.3 The Police Ombudsman (Mr Al Hutchinson) took up his tenure of Office on 6 November 2007 and will hold this Office for a fixed period of seven years from that date. Mr Hutchinson, prior to November 2007, was the Oversight Commissioner and prior to those duties had a career in the Royal Mounted Canadian Police, retiring as an Assistant Commissioner.

1.4 The Chief Executive (Mr Sam Pollock) has worked as the Senior Official and Accounting Officer since April 2001 and prior to these duties has worked in Criminal Justice, primarily in Northern Ireland, since 1972.

1.5 The Senior Director of Investigations for the Office (Mr Jim Coupland) has only recently joined the Office (January 2008), coming from 30-years service in Lothian and Borders Police but more recently as Deputy Chief Constable in the Civil Nuclear Constabulary

#### 1.6 *Context of Submission*

1.7 The Office of the Police Ombudsman has operated by Law since the 6 November 2000 and has become a central feature in the new arrangements for the Governance, Oversight and Support of Good Policing in Northern Ireland.

1.8 The strategic duty of the Police Ombudsman is to secure an independent Police Complaints system that has the confidence of the public and the police and is enabled to do this under the duties and powers set out in the Police (Northern Ireland) Act 1998 as amended by the Police (Northern Ireland) Act 2000 and the Police (Northern Ireland) Act 2003 and by other primary and secondary legislation

1.9 Complaints are investigated not only against the Police Service of Northern Ireland (PSNI), but also Larne and Belfast Harbour Police, the Belfast International Airport Police, the Ministry of Defence Police, the Serious and Organised Crime Agency (SOCA), and soon the Board and Immigration Agency and Her Majesty's Revenue and Customs, when exercising law enforcement powers in Northern Ireland.

1.10 The Vision of the organisation is to provide "excellence in the provision of an independent, impartial police complaints service in which the public and the police have confidence".

1.11 The Office opened its doors in 2000, and between November 2000 and 31 March 2007 we have received 20,597 complaints containing 30,283 allegations of police wrongdoing. From 2001–02 to 2004–05 the number of complaints against the police showed a steady decrease, however this pattern reversed in 2005–06 when the number began to rise. It appears that complaints this current year (2007–08) have trended downward.

1.12 Mrs Nuala O'Loan (now Dame Nuala O'Loan DBE) established and developed the working of the Office over the first seven years and the Office is now recognised locally, nationally and in many parts of the world as representing an excellent mechanism for the independent, open, impartial and effective investigation of complaints.

1.13 In July 2004, the Northern Ireland Affairs Committee conducted an inquiry into the working of the Office and published their Report in February 2005. The Report provides a comprehensive review of the breadth and depth of the contribution that the Office is making to the working of the complaints system and impact in the context of Northern Ireland Policing and Criminal Justice development. That Report provides primary background material for assistance to this Committee.

1.14 In October 2007 a publication was released by the Office of the Police Ombudsman outlining some key trends and patterns in complaints and matters handled by the Office over the seven year period and this Report is attached. It provides general information about the working of the Office, changes and development in complaints from the public and referrals from the Chief Constable and others and also Police Ombudsman initiated investigations over the past seven years.

1.15 The Police Ombudsman and the Accounting Officer are required to lay before Parliament an Annual Report and Statement of Accounts each year and do so in line with the guidance and requirements of Parliament. The most recent Annual Report, for the period ending 31 March 2007, was presented to the Secretary of State as required by the 30 June 2007 and laid in Parliament. This Report best represents the current performance and activity within the Office and is attached in support of the submission.

1.16 With regard to Part 2 of the Terms of Reference, a number of Public Statements have been released by the Office of the Police Ombudsman, which are specifically relevant to the issues being examined. Attached for the information of the Chairman.

## SECTION 2

### 2. *Terms of Reference—Part 1*

2.1 The financial and operational consequences for the Police Service of Northern Ireland, of servicing the various ‘historic inquiries’ into past events in Northern Ireland.

2.2 In 2001 the Ombudsman was given a statutory obligation, via the RUC (Complaints) Regulations 2001, to investigate grave or exceptional cases where the incident occurred more than a year prior to a complaint being recorded and there is an allegation of police misconduct. Matters to be investigated under this provision arise from a number of areas—Chief Constable or other statutory referrals, Police Ombudsman initiated investigations, public complaints. The law requires investigation and that will continue to be the case unless the law is changed.

2.3 In April 2004 the Prime Minister gave a commitment to finding ways which Northern Ireland could deal with its past and one such way approved by Government was the need to examine unresolved deaths in Northern Ireland that were related to the security situation during the period 1969 until the signing of the Belfast Agreement. In March 2005 the Government gave a commitment in providing additional funding to enable the Chief Constable to expand the work of the Serious Crime Review Team and funded the setting up of the Historical Enquiry Team. This commitment extended to £24 million. Related support work by the Forensic Science Agency and the Public Prosecution Service is also being resourced by a further £8 million. No provision was made at this stage for the costs of the additional work which would inevitably fall to the Police Ombudsman.

2.4 The PSNI cannot investigate any matter where the conduct of a member of the police force may have resulted in a death. Section 55(2) Police (Northern Ireland) Act 1998 and Section 55(3) state that the Police Ombudsman has to investigate such a matter and cannot refer it back to the police. Attached at Appendix A is an extract from a legal opinion provided to the Director of Public Prosecutions (DPP) by Bernard McCloskey, QC which concludes that the Police Ombudsman has exclusive jurisdiction in such investigations (the part of the advice excluded contains sensitive information alluding to a particular case giving rise to the request for advice). In another part of that advice Mr McCloskey concludes that the police would have no “investigative competence” in such cases. The advice from Senior Treasury Counsel to the DPP also confirms the legal position.

2.5 A meeting was held with the Chief Constable on 26 September 2005 and the jurisdiction of the Police Ombudsman was articulated. A protocol has been drawn up between the two organisations and signed. The objectives the Police Ombudsman agreed to were:

- to undertake a review and, where necessary, an investigation into all matters stemming from the work and remit of the HET which require to be dealt with by virtue of Section 55(2) or Section 52;
- to provide independent and impartial recommendations or closure on all relevant matters;
- to work and co-ordinate effectively with the HET in those cases where parallel investigations are required (where the incident involves both police and non-police personnel); and
- to help build confidence in the public domain that policy of Government as outlined in April 2004 is being taken forward with rigour and impartiality.

2.6 When the Police Ombudsman was required by Parliament in 2001 to undertake investigations of matters more than a year old, funding was sought on a number of occasions to facilitate this work. The work deriving from the operations of the HET however, was, in many cases additional to the work which had already been identified through public complaints etc. The previous Police Ombudsman, in presenting the business case for resources following the creation of the HET, placed on record as early as January 2006 the serious concerns with regard to the impact on resources, of enquiring into the past by this Office as follows and said:

The Government initiative in relation to unresolved murders is a strategic proposal with far reaching implications for public confidence in policing;

The review and investigation of those matters where death may have resulted from police conduct or action, or where there has been or is suspected to be police failure of investigation as a consequence of the work of HET, the review requires equally effective but independent examination. It is of particular significance to the resolution of allegations and accusations in relation to past events;

The potential number of matters to be referred, whether mandatory or discretionary, is of such proportion that it requires a separate stand alone investigation team which will have the substance and resilience to take on the scope and nature of the work identified.

2.7 The Business Case in January 2006 presented an outline of the structure of the proposed Team which was required, and of the necessary expertise and resource that would underpin it. The case represented an additional requirement of £750,000 per annum. If the work extended for the period of time parallel with the HET, it would amount to £5 million over six years. This Business Case was submitted to the Northern Ireland Office, on 10 January 2006, through the Police Reform Division asking for urgent consideration of the proposal in relation to requirements.

2.8 Government responded through the NIO to the Business Case for resources. During the three months to the end of March 2006 a commitment of £93,000 was made and utilised in setting up the dedicated team (Sapphire Team) for responding to HET referrals. During the year 2006–07 a further £497,000 was utilised, the costs relating primarily to the contracting of retired Police Detectives from England or Wales to undertake this specific work.

2.9 There has been a general assurance provided by the NIO after this period that in the context of the six-year resource plan established by the Chief Constable £895,000 per year would be allocated to the Office. This resource represents only part of the overall resource utilised by the Office on HET work and other major investigations which have been ongoing within the Office under the statutory requirement to investigate any grave or exceptional matter from the past.

2.10 Currently all investigations into historic matters are dealt with either within the Sapphire Team which responds directly to all HET referrals or within the Significant Investigations Team which has focused on the significant and historical investigations over the past six years.

2.11 The Police Ombudsman's Office has published 14 major reports which relate to "grave or exceptional" issues from Northern Ireland's past. Examples as follows:

- *October 2001*: Finding that the police never acknowledged to the family of a man who died after he and his family were attacked by police in their home in 1969, details of what happened that night. The information revealed that a thorough investigation had taken place but the truth had never been revealed;
- *December 2001*: Major failings in the police investigation of bombing of Omagh;
- *January 2004*: The RUC investigation of the murder of 61-year old man in 1997 was incomplete and inadequate;
- *October 2004*: A report indicating that the Police had conducted a thorough investigation into the murder of a taxi driver murdered by Loyalists near Dungannon in 1990;
- *February 2005*: No evidence to support an allegation that a Newry man was murdered in 1990 at the instigation of police, but the police investigation of the murder had significant failings and Special Branch withheld information from the police officers investigating the murder;
- *August 2006*: Report issued indicating that the abduction and murder of a mother by the IRA in 1972 had not been investigated at the time, and that subsequently an attempt to investigate had been ineffective;
- *January 2007*: Report issued following a three year investigation of the murder of a man in North Belfast raising serious concerns about collusion and the criminal activity of sources along with significant failings of the police to take effective action;
- Other high profile cases included allegations relating to police conduct in relation to the murders of a soldier, and a solicitor;
- There have also been a number of other retrospective cases that have been dealt with in a quick and low profile manner. Often these cases, on investigation proved to have been properly dealt with apart from the fact that police simply had not provided information to families.

2.12 There are currently 983 investigations taking place in the Office and 116 of these could be described as relating to matters of a historical nature. In the Significant Investigations Team, 54 are matters of a historical nature representing 41% of all cases in that Team and at least 35% of all staffing resource in this team is dedicated to historic cases. This impacts on the capacity of the Office to respond to current referrals from the Chief Constable, for example matters such as deaths in custody or fatalities as a result of police operations, or to current significant and serious complaints.

2.13 In the Sapphire Team, all cases relate to historical matters, and so all staff resources and other costs are dedicated to this function. With regard to the staffing resources of the Office (£5.9 million), disregarding central support costs, infrastructure, accommodation, and senior management costs), at least 21% of all staffing costs are dedicated to work of a historical nature. There is a specialised unit for the analysis of information and 70% of the resources in this Unit are focused on historical work. Therefore with regard to staff costs in relation to this work against our total investigation staff cost, it is in the region of 25%.

2.14 The level of experience of investigators required for complex historical investigations has been significant. For example, the Senior Investigating Officers (SIO), Deputy Senior Investigating Officers (DSIO) and many of the investigators are seconded Police Officers from England and Wales. More recently, in the setting up of the Sapphire Team, the use of contracted investigators (all retired Police Detectives) cost significantly more than an investigator directly employed by the Office. A seconded Police Officer costs the

Office almost three times the cost of a directly recruited investigator. A contracted investigator similarly represents a cost of almost double that of a directly recruited investigator. There is not available however a sufficient pool of experienced non-police investigators to carry out this work.

2.15 The level of resources, the pressure on the caseloads of normal day-to-day complaint investigation as against historical investigation, and the necessary use of current experienced police seconded officers, all represent pressures, which currently cannot be avoided.

2.16 Historic case investigation involves a number of stages. The initial scoping and research is to:

- ascertain whether the basis of the complaint or matter is within the legislative remit of the Office;
- ascertain whether there are evidential lines of enquiry available; and
- prioritise the case against the others that have been researched and prioritised.

2.17 All cases referred to the teams whether by way of public complaint or by HET referral, are subject to this review process. It is a 10 week review/scoping process, completed cases are then brought forward to the Prioritisation and Tasking Meeting where it is decided if cases will be pended, (put on a waiting list) investigated or closed depending on the existing priorities as identified.

2.18 The Investigation phase—if it is considered appropriate to move to it involves:

- identifying lines of enquiry, witnesses, forensic opportunities, police officers (suspects and/or witnesses), family, relatives, and on occasion issues deriving from linked enquiries;
- obtaining evidence from witnesses where the incident may have occurred decades ago (in which cases memory may have become deficient), from a police estate that has not dealt well with retention of information material, and from unwilling former police officers (inevitably these are key witnesses or suspects);
- the issues arising in grave or exceptional circumstances such as multiple deaths arising from bombing atrocities;
- the identification, interpretation and application of complex issues of policies and law, current at the time of any particular incident;
- the identification of good practice and policies that have evolved but did not exist 20 or 30 years ago;
- analysis of pre-incident, incident and post incident intelligence is required in nearly every case—this is a skilled area of work, which must for security reasons be restricted to a limited number of staff. These matters tend to grow in demand and complexity as the investigation develops; and
- the consideration of life and death decisions in the context of policing the most serious crimes, with management and public policy issues forming the backcloth to the work.

2.19 The pressure on the Office is compounded by the limited availability of skilled, experienced and appropriate staff, to manage, lead and undertake such investigations. There has to be a balance of Investigation Officer experience and decision-maker experience to enable the 360° investigation that such cases merit and require and to comply with the requirements of Article 2 ECHR. The complexity of the cases and the gravity of the issues immediately necessitate significant managerial involvement. There are huge risks (including risks to the life of persons who may be identified in the course of an investigation) and there are public-police confidence issues present in each case. These risks have to be managed and dealt with at the highest level, and the attention given to such cases has the potential to divert focus from the work of today's police complaints system.

2.20 In the Significant Investigations Team, there are 54 public complaints of a historic nature under investigation at this time. 28 are currently in the reviewing/scoping process, 15 are active investigations, eight investigations are complete and three are pended due to insufficient resources. Of the 28 under review/scoping, two have already been identified as potential priority cases which will require a full investigation team under an SIO, and of the 3 that are pended, two will require a full investigation with separate teams of investigators.

2.21 In the Sapphire Team (historic enquiries) there is a total of 16 public complaints currently under investigations together with 46 HET referrals being dealt with by this Team. One relates to the murder of a female in a loyalist club in 1987. This case has been through the prioritisation process, and has been approved for full investigation. However, due to its complexity and possible links to at least five other murders, it has had to be pended. Four other public complaints have also been totally pended because of lack of resources.

2.22 Among the HET Referrals which have already been received, there remains a large number of high profile and complex matters, which will require significant resources and investigation. These include referrals relating to matters arising from previous enquiries such as Omagh. Another referral relates to a hugely complex matter again involving linked murders. Given our current numbers of investigations, our ability, to conduct effective and efficient and timely investigations into these matters, as required by Article 2 ECHR, has been significantly reduced.

2.23 Whilst every effort is made to explain the process to the families, solicitors and other public representatives at the outset, it is becoming more and more difficult to manage expectations. It is impossible, given the number of complex investigations, to provide realistic timescales as to when an investigation will become a priority. The risk to the Office, deriving from this situation, in terms of public confidence is significant.

2.24 The work of dealing with the past and the headlines that these cases generate have the potential to undermine and reduce the perceived importance and relevance of today's police complaints system. There are not enough investigative staff to deal with the workload of today and the past. There is a real danger that we will review and scope, but not be able to progress past that point in all cases, unless resources are diverted from the work arising from current complaints. This in turn has the potential to undermine both the police complaints system and public confidence in the system and in policing today.

2.25 As the former Policing Oversight Commissioner, the present Police Ombudsman, Al Hutchinson, reported in his June 2007 report, under *Future Challenges—A Choice: Policing the Past or Policing the Future?* stated that:

“I am raising the issue of ‘policing the past’ from the singular perspective of policing the future of Northern Ireland. I do believe that the Northern Ireland society somehow has to find the proper architecture to deal with the past, and learn from it. The past is a place no longer inhabited, except with our imperfect memories. The future, for our children and grandchildren, should be the destination of choice. I do not have a magical solution or elixir, I wish I did. I do know that organisations such as the Historical Enquiries Team and the Ombudsman's Office are blunt instruments too narrowly focused to use in a search for truth and justice for societal challenges. While they are simply doing what is required by mandate and law, they raise expectations that cannot be met, and distract from the task of finding a societal resolution to the past”.

2.26 There has to be a proper and comprehensive architecture to deal with the past, and learn from it. One part of this could, for example, be an independent impartial organisation separate from both the PSNI and the Police Ombudsman capable of investigating all matters in a manner that would provide a sustainable process compliant with the United Kingdom's obligations under Article 2 ECHR. A high threshold would have to be set; for example, only where there is significant new evidence available, would a matter be investigated. There are hundreds of cases currently under review where there is no prospect or indication that a new investigation would lead to a positive outcome. This would rationalise the process and while disappointing the families, it would avoid raising unrealistic expectations.

2.27 The establishment of such a single independent investigative organisation would enable significant savings to be made in the costs currently arising through the running of the two separate organisations, which must of necessity duplicate many tasks in the course of complying with the requirements of the law as currently established. In the situation of the Police Ombudsman, it would have the consequential result of focusing back on our core function.

2.28 Such a single organisation would also benefit from the ability to deal with an incident or incidents as one investigation, with one set of disclosure imperatives, as opposed to the current situation, which requires two separate investigations where police officers and non police officers may have been involved in the same incident. In those circumstances the disclosure requirements are significantly complicated, and may have the effect of undermining any subsequent trial.

## SECTION 3

### 3. Terms of Reference

3.1 The effect on the ability of the Police Service of Northern Ireland to bring accused persons to trial of provision in The Inquiries Act 2005 and in other legislation requiring the police to divulge information which might identify a covert source.

3.2 It is recognised that this part of the Terms of Reference focuses on the responsibility of the PSNI under the Inquiries Act. However the current public enquiries overlap with some of the complaints and current major investigations in this Office. The powers of an Inquiry constituted under the Inquiries Act are wide ranging and under Section 21, the Chairman may require the production of any document or thing and compel the attendance of any witness, to give evidence relating to any matter in question at the Inquiry. Where “harm or damage” could occur, the Chairman of the Inquiry or the relevant Minister may by order or notice, restrict the disclosure or publication of any evidence provided to the Inquiry. Thus, where the Chairman or the Minister is sighted of potential difficulties which could arise, they may of their own volition, restrict the disclosure or publication of relevant evidence.

3.3 Even where it is not readily apparent to an Inquiry, other individuals, better placed to realise the risk, may invoke protection of the information or, more accurately refuse to provide the information, in accordance with the provisions of Sections 22 (1) & (2). Section 22 (1) specifically negates compellability where to require it would be incompatible with a European Convention obligation. Obviously the placing

at risk of a source by disclosure of their identity would infringe upon Article 2 ECHR and would therefore be incompatible with the Convention and this Office will hold to the principle of not confirming or denying the identity of any source.

3.4 Additionally, Section 22 (2) preserves a public interest “exemption”, protecting that which would attract a claim of Public Interest Immunity (PII) in any other venue and therefore “copper fastens” the ability of the PSNI, in such situations, to raise a defence to a production order. Other organisations also have powers to compel the Chief Constable to release to them documentation which could, if published, disclose the identity of a source and compromise any subsequent trial. This power vests in the Criminal Cases Review Commission, amongst others, and in particular the Police Ombudsman under Section 66 of the Police (Northern Ireland) Act 2000. The Police Ombudsman and others may therefore be in possession of information relevant to the public inquiries, which would identify sources. That information too must be protected, if there is to be compliance with the State’s obligations under Article 2 ECHR.

3.5 In order to fulfil the statutory duty to investigate allegations of police criminality and/or misconduct, it is vital that the Police Ombudsman continues to be in a position to access all relevant evidence held by police. To fetter this power would severely compromise the integrity of investigations, hamper the ability to secure public and police confidence in the police complaints system and negate the overarching requirement, in appropriate cases, to conduct effective and efficient investigations under Article 2 ECHR.

3.6 Where such information is disclosed to the Office, it is managed within a secure unit with appropriate safeguards in place. A careful assessment is made of how, and in what circumstances, such information may be used, mindful always of all Convention Rights that may be engaged. Where this Office obtains details of source identity, there is no reason to suspect that this may compromise any criminal trial, any more than a trial resulting from a police investigation. Like the Chief Constable the Police Ombudsman will investigate allegations of criminality in order to provide the Director of Public Prosecutions with a report and recommendation. The decision on whether or not to prosecute remains with the Director and issues of what is required to be disclosed to the defence under the Criminal Proceedings and Investigations Act, rests ultimately with the Director.

3.7 The Police Ombudsman recognises that the NIAC considers the impact of disclosure of any source identity, on the future ability of the police to secure information from sources. There are, of course, other effective and lawful technologies and methodologies available to the police, which may be used in the fight against terrorism and serious crime and which support the rule of law. These include:

- The use of honest and paid agents of the State to provide information and intelligence for the PSNI to mount lawful surveillance in compliance with the Regulation of Investigatory Powers Act, and to secure information and intelligence to be used in investigation and operational processes to bring criminals and terrorists to justice.
- The use of honest members of the public, if necessary rewarding them for reliable information, to help uncover and destabilise active terrorist and criminal organisations.
- The provision of protected status on grounds of public interest immunity for relevant evidence and witnesses, to secure successful convictions.
- The impact on terrorist organisations, of knowing that covert and intrusive surveillance is actually used to undermine and frustrate their strategies.
- The impact of using such evidence, properly protected and disclosed under authorised arrangements, to achieve convictions and positive outcomes.

3.8 There is, regrettably, a legacy in Northern Ireland of inappropriate and on occasions unlawful practice and policy in the use of sources, and the information received from them, which has, on occasion, prevented good policing, and has undermined the rule of law and confidence in policing. Examples of this are as follows:

- The use of multiple sources in one illegal organisation, operated by different handlers, who have not complied with the law or policy, or who have had no policy guidance to follow and who have taken advantage of the opportunities which this presented, to protect their sources and undermine policing.
- This Office notes with concern an observation of the appropriate inspectorate that due to the number of sources being handled in one place and in certain positions within a terrorist organisation, the PSNI could have been accused of controlling that organisation.
- The authorisation of criminals and terrorists to engage in criminal activity which goes well beyond that which is permitted in law and guidance. Some sources have been engaged in the most serious of crimes and yet still being paid by the police.
- The lack of records of authorisations for sources to be involved in minor criminal activity.
- The corruption of processes designed for detention for extended investigation purposes.
- The failure to inform Prosecutors of information held by the police, or providing false information to Prosecutors as highlighted in the Ballast inquiry.

- The significant impact on confidence in the criminal justice process, deriving from the non-prosecution, discontinuing or acquittal of persons during trials, due to the inability to disclose either source identification or investigative methodologies.

3.9 It is acknowledged that the PSNI following their review of sources decommissioned many of them, half of them because they were engaging in serious crime but the inherent dangers of these practices and its impact on good policing cannot be underestimated.

3.10 The NIAC will be aware that compliance with the current requirements under the Inquiries Act 2005 in terms of disclosure may have the effect of negating the possibility of future criminal proceedings, given the need to comply with the requirements under Article 2 ECHR, not only to protect life, but also to conduct independent, efficient and timely investigations of all killings, however perpetuated, as well as other serious allegations such as collusion.

3.11 Where the Police Ombudsman or the Chief Constable, under their statutory obligations, seek to protect methodologies or sources from being made public at an Inquiry, this may have the effect of undermining confidence in these organisations.

#### SECTION 4

##### 4. Summary

4.1 Policing practices of the past are influencing perceptions of present day policing, and consequentially hindering the forward progress of policing in Northern Ireland.

4.2 The Police Ombudsman believes that all the pieces are in place to deliver the new beginning to policing in Northern Ireland, but that the issues of the past have established a barrier in the road to re-establishing the trust necessary for fully achieving that goal.

4.3 The Police Ombudsman believes also that the Historic Enquiries Team and his Office are blunt instruments too narrowly focused to use in a search for truth and justice for societal challenges. While these bodies are simply doing what is required by mandate and law, they raise expectations that cannot be met and distract from the task of finding societal resolution to the past.

4.4 This submission highlights only briefly the disproportionate weight of work and pressure on resources which the Historic investigations create for the Office, we are already struggling to cope with current commitments and with possibly over 300 or more relevant matters still to be referred by HET, we will move rapidly to a “tipping point” and the Office would lose ground and confidence in a significant manner.

4.5 The early years of this Office has made a huge contribution to demonstrating a strong and effective accountability mechanism within the new policing arrangements, but the fundamental priority for this Office should be to deal effectively and impartially with current complaints against the PSNI and help continue improve the practice and the confidence in PSNI as it seeks to serve communities in a new phase of life in Northern Ireland.

4.6 No crime, most certainly no killing, whatever the context, should ever be regarded as outside the law or considered spent as long as there is a prospect or evidence which might lead to the detection of that crime and no criminal or terrorist or anyone giving support to criminals or terrorists should ever be regarded as outside or above the law.

4.7 The Police Ombudsman did not say, nor believe, that a line should be drawn under the past and it be forgotten. Some matters should and could still be the subject of investigation and the NIAC may consider the merits of a separate body or investigative mechanism, outside the PSNI and the Police Ombudsman which would be capable of investigating matters through a sustainable process compliant with the UK obligations under Article 2 ECHR.

4.8 For those current matters where there are no realistic prospects or no new lines of inquiry or new evidence then there does need to be other appropriate mechanisms for “truth recovery” or the uplifting of information which will assist victims families and communities to deal with the hurts and pain of the past.

4.9 With regard to issues centring on covert sources, there should be radical review and recommendations to bring procedures and controls, in all agencies or policing units into proper democratic accountability consistent with the rule of law and a criminal justice process which covers all those committing crime or terrorism.

*Al Hutchinson*  
Police Ombudsman

*Sam Pollock*  
Chief Executive

*Jim Coupland*  
Senior Director of Investigation

14 February 2008

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## APPENDIX A

3. *Does the Ombudsman, by virtue of Section 55(2) of the Police (Northern Ireland) Act 1998 (“the 1998 Act”), have exclusive jurisdiction for cases where death has resulted from the conduct of a police officer so as to preclude the involvement of PSNI?*

3.1 One recalls that the office of the Ombudsman is statutory, having been created by Part VII of the 1998 Act. I would highlight Section 51 (1), which provides that the Ombudsman is established “for the purposes of this Part”. Further, Section 51 (4) makes clear that the two overarching statutory purposes of establishing the office of Ombudsman in Northern Ireland are (a) to secure “the efficiency, effectiveness and independence of the police complaints system”; and (b) to secure “the confidence of the public and of members of the police force in that system”. The word “independence” is obviously noteworthy.

3.2 Per Section 52(1), all complaints about members of the police force “shall” either be made directly to the Ombudsman or shall be “referred immediately” to the Ombudsman. Also to be noted in this context are the duties imposed on the Chief Constable (and, hence, PSNI) to take steps to preserve evidence. See Section 52(2) and (10). By Section 54(2), the Ombudsman shall formally investigate every serious complaint in accordance with Section 56. Where the complaint is other than serious, the Ombudsman has the choice of formally investigating the complaint under Section 56 or referring it to the Chief Constable for formal investigation by a police officer in accordance with Section 57. The very fact that Parliament has invested the Ombudsman with this choice is striking, tending as it does to reinforce the dominant and independent role of the Ombudsman in the sphere of investigating possible serious offences committed by police officers.

3.3 Section 55(2):

“The Chief Constable shall refer to the Ombudsman any matter which appears to the Chief Constable to indicate that conduct of a member of the police force may have resulted in the death of some other person”.

Section 55(3) provides that, in such a case, the Ombudsman “. . . shall formally investigate the matter in accordance with Section 56”.

I have reflected on the question of whether the statutory language “a member of the police force” applies to a person who is not a current member, whether by retirement or resignation or otherwise. On balance, I consider that the legislation extends to such persons. This construction would be consistent with the overarching statutory objects.

3.4 The question on which I am asked to advise focuses attention on Section 55(2). I suggest that this provision should not be considered in isolation, but in conjunction with a series of other, related provisions, as outlined above. In other words, it must be examined in its full statutory context. The true meaning, ambit and implications of Section 55(2) are clarified and informed by, *inter alia*, Section 55(3) and Section 56 in its entirety. In this series of statutory provisions I can identify no real ambiguity or anomaly. Their combined effect, in my view, prompts an affirmative answer to the questions posed.

It follows that in the murder investigation presently being conducted, the office of the Ombudsman has exclusive jurisdiction.

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### Written evidence from the Police Service of Northern Ireland

#### INTRODUCTION

1. This paper is intended to give a broad introduction to the scale and associated costs incurred by the Police Service of Northern Ireland in respect of the activity which is related to Historic Inquiries. It also includes “best guess” predicted costs for the future based on certain assumptions which are detailed in that part of the paper.

2. We can supply detailed briefing papers on all the topics, however, in the first instance we have refrained from overloading the Committee with such, but will of course supply all additional information which either the Committee or their officials consider would help understanding of the issues. It is anticipated that in the first instance the Committee may wish to explore by means of oral evidence, our organisational position.

3. It will, however, be noted that a considerable sum is devoted to the work Historic Inquiries Team. This is a unique project undertaking the immense task of reviewing the 3,268 deaths which are attributed to the period referred to as ‘The Troubles’ and it does so from a victim’s family perspective. For the present, it remains in our view, the only major commitment by an agency of the State which is actively seeking to address victim’s family and community concerns regarding historical incidents. Such is the significance of this initiative, that it is suggested that the Committee may wish to hear a presentation on the initiative to get full understanding of its scope and effect. To that end, a copy of a brochure describing the HET is attached at Appendix A.<sup>25</sup>

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<sup>25</sup> Not printed here.

## UNITS WITHIN PSNI DEALING WITH THE PAST

### *Historic Enquiries Team*

- Security related deaths—1968–1998 (3,268 deaths from 2,516 incidents);
- Positive approach by police to try to address outstanding issues in relation to these deaths;
- Victim/Family Centred;
- Relationships with NGO & Victim's Groups;
- Article 2 Compliant;
- Independent, Effective;
- five Phased approach—Collection, Assessment, Review Investigation, Resolution;
- Complex Enquiry Team—Op Ballast—Raymond McCord Jnr—19 Murders & 10 Attempts all linked; and
- 160 staff involved.

### *Retrospective Murder Review Unit (742 deaths from 690 incidents)*

- Security related deaths 1998–2004; and
- All non-security related deaths 1969–2004;
- Created to fill the gap between the HET remit and the formation of Crime Operations in 2004.
- Crime Operations incorporates the Serious Crime Review Team who have provided ongoing review of serious crime since 2004.
- 30 staff involved.

### *Public Inquiries*

4. There are 5 Public Inquiries, which were created following the review by Judge Peter Cory subsequent to the Weston Park Agreement in 2001 -

#### Billy Wright

- Lord MacLean, Professor Andrew Coyle and The Reverend John Oliver.
- Murdered 27 December 1997 in Maze Prison.
- INLA—Christopher McWilliams John Kenneway, John Glennon.

#### Robert Hamill

- Sir Edwin Jowitt, Sir John Evans and Reverend Baroness (Kathleen) Richardson of Calow.
- Died following an incident in Portadown on 27 April 1997.

#### Rosemary Nelson

- Inquiry held under Sect 44 Police (NI) Act 1998.
- Sir Michael Morland, Dame Valerie Strachan and Sir Anthony Burden.
- Murdered 15 March 1999 by car bomb outside her home.
- Claimed by Red Hand Defenders.

#### ROI—Smithwick Tribunal

- Ch Supt Breen and Supt Buchanan Murdered in an ambush by the Provisional IRA on 20 March, 1989.

#### Patrick Finucane

- Murdered 12 February 1989 at his home by members of the UDA.
- This Inquiry has not commenced and does not have a Panel appointed.

5. The Billy Wright and Rosemary Nelson Inquiries are challenging in that they seek to conduct a Public Inquiry into circumstances that involve a significant amount of secret intelligence. We are working constructively with these Inquiries to agree the form in which the intelligence they require to comment on in public can be released. It will involve an unprecedented volume of material and source protection is a critical issue.

6. Rosemary Nelson staff has viewed in excess of 40,000 intelligence documents and have been supplied with 6500. The Billy Wright Inquiry has been supplied with 23,500 intelligence documents. It is envisaged that approximately 3000 of the documents will after redaction or similar treatment will be published by the Inquiries.

7. The provision of intelligence, particularly in relation to informants and its treatment to allow publication is highly specialised and restricted to a very small number of staff. The demand put on these staff by all the historical enquiries is significant.

#### GOVERNMENT'S COSTS OF PUBLIC INQUIRIES (APRIL 2007)

Robert Hamill Inquiry	£10,411,000
Billy Wright Inquiry	£7,217,000
Rosemary Nelson Inquiry	£15,169,000

#### INQUESTS

8. Approximately 100 “historic” inquests remain outstanding. 48 of these deaths are classed as contentious (allegation of collusion or killed by security forces). These include The Stalker/Sampson “Shoot to Kill” cases which the Coroner estimates will take the whole of 2009 to hear.

9. The contentious inquests having been either adjourned or not yet commenced can now go proceed following the House of Lords decision in the Jordan case regarding the extent of disclosure and possible verdicts in such inquests. In effect, these Inquests have the potential to be almost akin to public inquiries. They demand complete disclosure which brings with it issues of intelligence and source handling that will require PII consideration.

#### ROSEMARY NELSON MURDER INQUIRY TEAM

10. At the time of the commencement of the Public Inquiry this investigation was still proceeding albeit its core task in recent time has been to service the Public Inquiry. The inquiry created legal confidentiality boundaries between the MIT and PSNI that meant it has separate interested party status at the Inquiry and requires separate legal representation, the expense of which falls to PSNI. Since the murder of Mrs Nelson police investigating her death has spent approximately £15M.

#### STEVEN'S ENQUIRY TEAM

11. This Metropolitan Police unit maintains the material that will be required for any inquiry into the murder of Patrick Finucane following its investigation of it. It is relatively small in scale.

#### STAFFING

12. The majority of the staff associated with this part of the business are former police officers. As a consequence of the Patton severance regime, there is lack of corporate memory and skills in older IT systems and former officers are the only ones with such knowledge and necessary skills.

#### THE EFFECT ON COVERT SOURCES CONSEQUENT TO THE WORK OF PUBLIC INQUIRIES

13. It is perceived that when the Public Inquires begin in earnest their hearings and publication of documents this may have a serious impact on policing today. Particularly in relation to human sources (known as CHIS), this will not be restricted to Northern Ireland.

#### CHIS

- *Article 2*—history of compromised sources being murdered. There is such a volume of material being disclosed which will be analysed by journalists, researchers and former paramilitaries and related to information or misinformation already available in an effort to identify CHIS. This potentially may put lives at risk,

- *Future recruitment*—Once it becomes more widely known that information may not be kept confidential between the CHIS and security agencies, it is suggested that recruitment of CHIS may become more problematic. This effect could manifest itself across the country and may damage the current efforts being made to gather intelligence on terrorism in particular.
- *Financial costs if under threat*—If it is believed that a CHIS may have become compromised as a consequence of information put into the public domain then our duty to preserve life may require us to put in place measures such as relocation which are expensive

#### TECHNICAL SOURCES

- There is an appetite to know more about capacity and techniques and this leads to those who suspect they may be subject of surveillance becoming more aware and resistant to monitoring with consequent reduction in potential to prevent crime and detect offenders of the most serious crimes.

#### INTERNATIONAL

- There is a view that international intelligence communities may be more reluctant to provide detailed intelligence if they assess there is a legal process that could allow their information to be considered and potentially published by a Public Inquiry.

#### COMMUNITY IMPACT

- The exposure of policing methods or criticism of a past policing regime has the potential to dent trust and confidence in the policing of today.

#### COST OF POLICING THE PAST

14. This part of the paper details the costs and broad brush projections for the years 2006–07 to 2012–13 relating to servicing the various historic enquiries into past events in Northern Ireland. The paper is structured as follows:

- Policing the Past 2006–07 costs and 2007–08 projected costs.
- Broad brush projected costs of Policing the Past.
- Cost of Policing the Past—Notes and Assumptions.

The total projected cost for each of the seven years is shown below. Additional funding will be required to make up the shortfall between budgetary provision and projected expenditure.

<i>Year</i>	<i>£ million</i>
2006–07	7.72
2007–08	13.42
2008–09	19.13
2009–10	15.33
2010–11	13.29
2011–12	13.49
2012–13	13.82
Total	96.20

#### POLICING THE PAST—2006–07 COSTS AND 2007–08 PROJECTED COSTS

	<i>2006–07</i>	<i>2007–08</i>	<i>Total</i>	<i>Note</i>
	<i>£m</i>	<i>£m</i>	<i>£m</i>	
<b>A. A Historical Enquiry Team</b>				
Pay Costs	3.90	7.07	10.97	1
Non-Pay Costs	0.27	0.21	0.48	1
<b>B. Crime Support</b>				
Pay Costs	0.30	1.69	1.99	2
Non-Pay Costs	0.40	0.28	0.68	2
<b>C. Corporate Costs</b>				
Public Enquiries	0.78	2.05	2.83	3
Legacy Inquests	0.00	0.19	0.19	3
PORT Enquiry	0.61	0.92	1.53	3
Stevens Enquiry	1.10	0.71	1.81	3
Crime Support inc HET Total	7.36	13.12	20.48	

	2006–07	2007–08	Total	Note
	£m	£m	£m	
<b>B. Other PSNI Support Costs</b>				
Transport	0.03	0.05	0.08	4
Estates	0.07	0.00	0.07	5
IT	0.01	0.00	0.01	5
Other PSNI Support Costs Total	0.11	0.05	0.16	
<b>C. Non Cash Costs</b>				
Depreciation	0.22	0.22	0.44	6
Cost of Capital	0.03	0.03	0.06	7
Non Cash Total	0.25	0.25	0.50	
Overall Total	7.72	13.42	21.14	

## POLICING THE PAST—BROAD BRUSH PROJECTED COSTS 2008–09 TO 2012–13

	2008–09	2009–10	2010–11	2011–12	2012–13	Total	Note
	£m	£m	£m	£m	£m		
<b>A. Historical Enquiry Team</b>							
HET Costs	7.39	5.98	5.85	6.00	6.15	31.37	8
Historical Enquiry Team Total	7.39	5.98	5.85	6.00	6.15	31.37	
<b>B. Corporate Enquiries</b>							
PORT	0.95	0.97	0.00	0.00	0.00	1.92	9, 10
Stevens	0.70	0.35	0.00	0.00	0.00	1.05	9, 11
Public Enquiries (Wright, Nelson, Hamill)	2.75	0.50	0.00	0.00	0.00	3.25	9, 12
Corporate Enquiries Total	4.40	1.82	0.00	0.00	0.00	6.22	
<b>C. Inquests</b>							
Contentious (42)							13
File Preparation	0.50	0.51	0.53	0.54	0.55	2.63	14
Additional HET Costs	0.10	0.10	0.11	0.11	0.11	0.53	15
Police Attendance Costs	0.10	0.10	0.09	0.10	0.10	0.49	16
Legal Fees—Senior Counsel	0.95	0.97	0.88	0.90	0.93	4.63	17
Legal Fees—Junior Counsel	0.66	0.68	0.62	0.63	0.65	3.24	17
Legal Fees—CSO fees	0.51	0.52	0.47	0.49	0.50	2.49	17
Contentious Inquests Total	2.82	2.89	2.70	2.77	2.84	14.00	
Less Contentious (58)							18
File Preparation	0.25	0.26	0.26	0.27	0.28	1.31	19
Police Attendance Costs	0.05	0.05	0.05	0.05	0.05	0.25	20
Legal Fees—Senior Counsel	0.63	0.65	0.66	0.62	0.64	3.20	21
Legal Fees—Junior Counsel	0.44	0.45	0.46	0.44	0.45	2.24	21
Legal Fees—CSO fees	0.34	0.35	0.36	0.33	0.34	1.72	21
Less Contentious Inquests Total	1.71	1.75	1.79	1.71	1.75	8.71	
Inquests Total	4.53	4.64	4.49	4.48	4.59	22.72	
<b>D. Crime Support Costs</b>							
Pay Costs	2.20	2.26	2.31	2.37	2.43	11.56	22
Non-Pay Costs	0.37	0.38	0.39	0.40	0.41	1.94	23
Crime Support Total Costs	2.57	2.63	2.70	2.77	2.84	13.51	
<b>E. Non Cash Costs</b>							
Depreciation	0.22	0.22	0.22	0.22	0.22	1.10	5
Cost of Capital	0.03	0.03	0.03	0.03	0.03	0.15	6
Non Cash Total	0.25	0.25	0.25	0.25	0.25	1.25	
Overall Total	19.13	15.33	13.29	13.49	13.82	75.07	

## COST OF POLICING THE PAST—NOTES AND ASSUMPTIONS

1. HET projected costs of £7.3 million for 2007–08 split between pay and non pay based on spend to date;
2. Crime Support projected spend for 2007–08 taken from December 2007 figures;
3. Projected Corporate costs for 2007–08 as at end December 2007;
4. Full Year projected Transport costs based on spend to date;
5. Estates and IT running costs for 2007–08 are included within non pay costs;
6. Currently there are 64 vehicles for use in both HET and Crime Support with approximate annual depreciation of £3.5K;
7. Cost of capital at 3.5% on 64 vehicles with approximate value of £14K each;
8. HET projected costs for 2008–09 to 2010–11 based on CSR07 allocation. Future years increased by inflation;
9. PORT, Stevens and Public Enquiries projected costs for 2008–09 based on Integrated Planning submission 2007;
10. PORT Enquiry projected costs for 2008–09 increased by inflation for 2009–10. Enquiry assumed to end in 2009–10, therefore zero costs projected for 2010–11 to 2012–13;

11. Stevens Enquiry costs for 2009–10 projected to be 50% of 2008–09 costs, as the enquiry comes to a close. Zero projected costs 2010–11 to 2012–13;
12. Public Enquiries costs for 2009–10 projected to be £0.5 million as the enquiries come to a close. Zero projected costs 2010–11 to 2012–13;
13. 42 out of approximately 100 Inquests are assumed to be contentious;
14. Agency staff costs required for file preparation for contentious Inquests estimated at £0.5 million pa, increased by inflation year on year;
15. Additional PSNI pay costs for HET staff estimated at £0.1 million pa for contentious inquests, increased by inflation year on year;
16. An average of two police officers to attend court for 20 days for each contentious inquest has been estimated. The 42 contentious inquests have been evenly spread over the five years (9, 9, 8, 8, 8) Daily charge-out rate of £279 per day for Constable rank obtained from Ready Reckoner. Increased by inflation year on year;
17. An average of 40 days preparation time and 20 days court time has been estimated for legal fees for contentious inquests. Estimated fees are as follows:
  - Senior Counsel—£250 per hour.
  - Junior Counsel—£175 per hour.
  - Crown Solicitor’s Office—£134.50 per hour.
  - An average of seven hours per day has been estimated.
18. 58 out of approximately 100 Inquests are assumed to be less contentious; and the inquests have been evenly spread over the five years (12,12,12, 11,11)
19. Agency staff costs required for file preparation for less contentious Inquests estimated at £0.25 million pa, increased by inflation year on year;
20. Police officer court attendance costs for less contentious inquests estimated at 50% of those for contentious inquests;
21. An average of 20 days preparation time and 10 days court time has been estimated for legal fees for contentious inquests. Estimated daily fees are as Note 17 above;
22. Estimated Crime Support pay costs based on December 2007 figures with inflationary pay increase each September;
23. Crime Support non pay costs based on Integrated Planning submission 2007;
24. Inflation has been assumed at 2.5%.

Police Service Northern Ireland

23 January 2008

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### **Supplementary evidence from the Police Service of Northern Ireland**

Further to evidence previously given regarding policing the past and in particular the impact of public inquiries, I detail below some legislative issues of concern and some suggestions, which may go some to address these. The issues are based on our experience as an organisation seeking to openly assist the various public inquiries while at the same time maintain our other statutory obligations in respect of certain information.

I have set this out in the attached paper under six broad headings namely:

- Intelligence & Risk Management
- Covert Human intelligence Sources (CMS)
- Intercept
- Immunity Retention of Documents
- Costs

I trust this is of some assistance to the Committee and as always if I can be of further assistance please do not hesitate to contact me.

### **OBSERVATIONS ON LEGISLATIVE FRAMEWORK OF PUBLIC INQUIRIES**

#### **INTELLIGENCE—RISK MANAGEMENT**

Risk management in the matter of intelligence is directed toward the protection of knowledge, sources (both human and technical) and information. The purpose of this protection is twofold: firstly, the protection of the Article 2 (right to life) rights of the sources, individuals providing assistance and personnel; and secondly, the duty to protect ongoing operational capacity and effectiveness. Operational effectiveness must be maintained in order to discharge the police function of providing protection to the community and ensuring the wellbeing of members of those communities which includes members of the police service and CHIS. Operational effectiveness, and to some extent Article 2, may be protected through Public Interest Immunity (PII) procedures. Risk is also managed by maintaining coherent operational procedures,

protections and processes designed in legislation and policy to protect intelligence from disclosure. The material will be classified and treated in accordance with a scheme of classification that is based upon the anticipated threat and risk to life, and to state interests, that may be caused by disclosure.

## *PII*

It has been determined, after much debate between organisations holding intelligence, and, after consultation with experienced counsel both in Northern Ireland and England, and with the example of coronial case law that very little, if any, PII exists between the Inquiry Chairman and the holding agency. The Inquiry Chairman has a broad entitlement to have sight of all information. The question remains open as to whether and how far PH may extend to protect information from those staffing the inquiry. Practically speaking, in matters of the size and complexity of the present inquiries, the panel and the Chair do not, and could not be realistically expected to do their own research. The inquiry staff are large in number. There is therefore some difficulty in defining the extent to which PII exists in this respect, ie material which may be disclosable to the panel may not be susceptible to broader disclosure. A balance between the pragmatics of inquiry work and PII concerns about the extent of disclosure and handling must be struck. This is a factor the PSNI has tried to negotiate with the inquiries, principally by way of a Memorandum of Understanding. Perhaps understandably the inquiries have not found this attractive as they require to visibly maintain their independence and entering into a such an agreement, which may be perceived as potentially fettering their independence.

There has also been some debate as to the capacity of Chairmen to award PII. The prevailing opinion is that Chairmen can do this—but it would be helpful to have this fact spelled out directly. Most of these issues have been resolved by negotiation at this stage, but the process upon failure to agree in the matter of PII would benefit from clarification and thereby reduce uncertainty for all concerned. This standing of a need for a PII certificate should be clarified.

## *Information Management Policy and Procedure*

The prime way to keep intelligence safe is to keep the circle of knowledge as narrow as possible. This is the underlying rationale of the STRAP (government intelligence handling regime) approach to management of intelligence. This process is based upon the concept of need to know and is the prime way the Security Service and MOD among others manages their information. The exigencies of police work have meant that the STRAP process is not practicable in policing, as the basis of STRAP is a rigid codification of those who may handle the information which would impede policing through its rigidity, however, the concept of “need to know” governs information management. Procedures are to a large extent designed to respect this principle. Police officers who fail to respect this need-to-know principle expose themselves to enquiry and possibly criminal or disciplinary processes. These disciplinary processes are part of the framework of safeguards in which agencies utilising intelligence such as the police, the Security Service and MOD operate. Such a framework does not we believe extend to the Inquiries but who are now in possession of a very significant volume of intelligence. Indeed, we are unaware of whether inquiry staff have been required to sign an undertaking in keeping with the Official Secrets Act, but would suggest that they should be so required.

Risk goes up exponentially as control of the intelligence diminishes- this includes Article 2 risks. Worryingly the Service cannot delegate its Article 2 responsibilities as a public authority (s. 6 Human Rights Act 1998). Thus the Service retains these onerous obligations in respect of the significant volume of relevant intelligence that is now out with its influence or control, having been handed over to enable the Inquiries to undertake their work. The Wright and Nelson Inquiries (the principal inquires utilising large amounts of intelligence) have declined to document who will handle this sensitive information or provide assurances as to how it will be used, managed, handled and stored. We have approached them for these assurances however the best we have achieved is to have their facilities and processes inspected by relevant staff of the Security Service and some personal commitments from certain staff. Nor have the inquiries been amenable to any agreement whereby this information will be provided to the PSNI so that risk registers may be adjusted to adequately reflect the wider circle of knowledge. What is clear, is the inquiries have neither the facilities nor the resources to undertake risk management- nor do they have the full ambit of knowledge to be able to do a complete assessment. We are aware of two occasions where laptops have been lost and the result is the risk is presently unascertainable and unmanaged. This is somewhat ironic given the lengths that we as an organisation go to protect information and manage risk.

As alluded to above, the Inquiries have now availed themselves of the Government Manual of Protective Security guidance and advice, to which they came latterly after much correspondence detailing the risks and the concerns. Throughout the upgrades undertaken by inquiries in response to the requirements of the Manual the Nelson and Wright inquiries continued to protest at restrictions we applied to intelligence and secure storage of same. This was stressful for the PSNI in the sense that the Service has been sensitive to the damage that allegations of lack of co-operation with the inquiries could have on its reputation and the confidence of the public and the communities it serves but at the same time had to articulate these concerns.

There is a definite tension created by the holding of a public inquiry into what are essentially matters that are secret. In the case of a criminal trial the state always has the uncomfortable option of withdrawing the proceedings where it is determined that the detrimental effects of revelation or disclosure would outweigh the laudatory effects of a prosecution. So whilst this is not a comfortable decision it leaves the holder of the intelligence with the discretion to consider whether in fact even having the argument is a worthy risk. Sometimes even the existence of an argument reveals the fact there is something to argue about which in turn provides a clue as to the scope and nature of information that may be held. These arguments also run the risk of shaking public confidence at a time when Northern Irish society is still somewhat fragile. These are not purely legal concerns but are also public policy concerns. This option to withdraw is not available in a public inquiry.

### *Oversight*

The Inquiries are not subject to the oversight bodies the agencies such as the PSNI are subject to. These oversight bodies monitor, among other things, how information is stored, managed, collected and disseminated. In the case of the Police Service of Northern Ireland, the scrutiny given to the management of information, combined with the experience of other organisations, has resulted in experienced personnel being put into place to manage systems and information. The material itself is held in secure facilities on grounds to which the access is closely monitored. The Service is subject to regular audits, in particular in this context, by the Office of the Surveillance Commissioner. The PSNI is also always in dialogue with ACPO and other partners, including international partners, about how to improve its practises and procedures. The training, checks, balances, knowledge of the full picture in the matter of risks and ongoing awareness and dialogue is not available to the inquiry- and there has been no legislative effort to include them or address these fundamental concerns. When security has been breached, for example the break in to Castlereagh police station, there has been a huge cost to the public purse- never mind to the wellbeing and peace of mind to the persons affected and their families.

Our position is that the inquiries do not have the policies and procedures available to them and nor are they themselves subject to independent scrutiny with regard to their safekeeping of sensitive and critical information information for which this Service has liability for. I will be frank in stating that the political pressure on the PSNI not to be seen to cause a rift with any inquiry in face of questions about collusion has made querying the state of inquiry security all the more stressful. This stress is caused by the lack of clarity as to responsibilities and liabilities the once the documents are handed over. Legal opinion in the matter of Article 2 is clear that currently the PSNI has a duty to satisfy itself that material is not being handed over to insecure holdings. Accountability must rest somewhere and if not with the originating body- then somewhere. Assurances in this regard would ease disclosure of relevant material.

#### Suggestion

That legislation convening inquiries be amended to assign authority, responsibility and accountability to the Inquiries, no matter which Act the inquiry is convened under, in the matter of secure handling, management and storage policies and procedures. This could be achieved by a mandatory Memorandum of Understanding.

That where Inquiries hold information which is subject to scrutiny by an oversight body in the setting of the providing agency, then that oversight body's scrutiny will extend into the inquiry. It may well be that the Cabinet Office or another body accepts responsibility for this- but right now this is operating on good faith and a promise.

That in convening these inquiries consideration be given to requiring the personnel involved to undertake responsibility and to be bound in the matter of the Official Secrets Act.

### COVERT HUMAN INTELLIGENCE SOURCES (CHIS)

Any inquiry into what the intelligence holder knew or knows at a relevant time leads to the CHIS. The PSNI is dependant upon CHIS to fulfil its obligations in criminal investigations and, in the past, on security issues. Many of these CHIS operate at great risk to themselves and to their families and associates. There is a long history of punishment of informers—and this is not unique to Northern Ireland. CHIS may be criminals or associates or they may simply be ordinary people who have “access”. They are motivated by everything from money, revenge and adventure to altruism, community spirit and fear for the future. But each one supplies information with the promise of confidentiality. Information about CHIS may be important to the investigation by the inquiries but the fact of being an informant poses special risks for both law enforcement and the CHIS personally (Article 2 and Article 8). CHIS and their families, CHIS handlers and associates are all at risk of harm- this is a well-documented fact. Notably the same concerns outlined above with regard to handling apply. Further, again, to the extent that information is relevant to the inquiries detail identifying the CHIS may well be the subject of disclosure.

Restriction orders, under the Inquiries Act 2005, are one way of managing the security of the information. PII is another, or some combination of the two. It has not been clearly spelled out whether a Chairman may deal with the question of a PII certificate, but the prevailing view, albeit not shared by Lord McLean, is that

he can. Further it has not been made clear in what order of precedence, a decision of the Minister or the Chair in this regard may be sought and which is appropriate at what stage of the proceedings or in what circumstance.

When personal details of the informant have been provided to the Inquiry-there is no mechanism by which the agency holding responsibility for the informant under the Regulation of Investigatory Powers Act 2000 (RIPA) is required to be advised of the use, dissemination, storage, or publication internally at the Inquiry or otherwise of these details. RIPA at section 29 (5) codifies and details certain responsibilities in respect to CHIS. These responsibilities are essentially operational responsibilities conceived in the context of the use of CHIS for law enforcement and/or security service reasons (the purposes meant by “for the purposes of this part” below). Therefore these sections do not extend to other uses- for example to inquiries. RIPA addresses these issues for the Security Service and police services but it has never been amended to extend to inquiries.

### *RIPA*

s. 29(5) For the purposes of this Part there are arrangements for the source’s case that satisfy the requirements of this subsection if such arrangements are in force as are necessary for ensuring:

- (a) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have day-to-day responsibility for dealing with the source on behalf of that authority, and for the source’s security and welfare;
- (b) that there will at all times be another person holding an office, rank or position with the relevant investigating authority who will have general oversight of the use made of the source;
- (c) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have responsibility for maintaining a record of the use made of the source; d) that the records relating to the source that are maintained by the relevant investigating authority will always contain particulars of all such matters (if any) as may be specified for the purposes of this paragraph in regulations made by the Secretary of State; and (e) that records maintained by the relevant investigating authority that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.

### *Suggestion*

That the serious risks raised by the unclear state of affairs be addressed through amendments to RIPA- and such amendments extend to all inquiries potentially dealing with sensitive information-including but not limited to the Inquiries Act 2005. It is suggested the government has responsibilities under the Human Rights Act 1998 and the Convention to address these risks. There are serious concerns regarding the lack of clarity in this area. The Inquiries do not have the be of policy, process and rules in the matter of accountability. Lack of clarity has in the past led to unacceptable risks to CHIS and their handlers and to problems for the police service and other organizations and has led to sweeping changes in the way these resources are managed and held.

Again that an inquiry’s use, storage and dissemination of this information be subject to the oversight of an independent body. The originating agency, often an interested party, has no way of knowing what use this information may be put to once it is released to the inquiry. Further, it does not have the power to impose caveats on the use, storage or dissemination of this material. The originating agency is also reactive and so if not alerted to the use of this information is not in a position to take preventative action. Preventative legal action is also time consuming and stressful to relations, therefore a clear practice or procedure in this regard would greatly assist.

### *INTERCEPT (IOCA-RIPA PART I)*

The problem is straightforward. As regards intercept material, RIPA has been amended for the Inquiries Act 2005 but not for other inquiries. The interpretation accepted by interested parties is that the Nelson Inquiry is not governed by RIPA. The result is that under the Inquiries Act 2005 disclosure must be made to the panel alone, but in respect of other Acts is silent. Opinion has been sought in face of the silence but this opinion suggests the restrictions that apply in Wright and Hamill (requirement to make a finding and disclosure to panel alone) do not apply in the matter of Nelson. This creates a public policy concern suggesting amenability to prosecution in the one setting but not the other.

Section 17 of RIPA (as amended by Schedule 2 of the Inquiries Act 2005) states that:

- 17(1) Subject to section 18, no evidence shall be adduced, question asked, assertion or disclosure made or other thing done in, for the purposes of or in connection with any legal proceedings or Inquiries Act Proceedings which (in any manner):
- (a) discloses, in circumstances from which its origin in anything falling within subsection (2) may be inferred, any of the contents of an intercepted communication or any related communications data; or
  - (b) tends (apart from any such disclosure) to suggest that anything falling within subsection (2) has or may have or be going to occur.
- (2) The following fall within this subsection:
- ...
- (c) the issue of an interception warrant or of a warrant under the Interception of Communications Act 1985;
  - (d) the making of an application by any person for an interception warrant or a warrant under that Act;
  - (e) the imposition of any requirement on any person to provide assistance in giving effect to an interception warrant.
- ...
- (4) In this Section an “intercepted communication” means any communications intercepted in the course of its transmission by means of a postal service or telecommunication system.  
In this section “Inquiries Act Proceedings” means proceedings of an Inquiry under the Inquiries Act 2005.

Section 81 of RIPA defines “legal proceeding” as “means civil or criminal proceedings in or before any court or tribunal”. There is an opinion from experienced counsel to Treasury Solicitors that an inquiry is not a legal proceeding within the meaning of the Act therefore as the Act is specific with regard to inquiries convened under the Inquiries Act 2005 and silent under the Police Northern Ireland Act, disclosure may be made to the Nelson Inquiry without the strictures contemplated under the Inquiries Act 2005. The amendments to RIPA for the Inquiries Act 2005 have been carefully balanced to account for Article 8 (Privacy) and other considerations (including PII) that this sort of product gives rise to, and the public interest in the inquiries accessing same, but there is a silence in the matter of other inquiries under other Acts.

The Inquiries Act 2005 is the Act by which the Hamill and Wright Inquiries are constituted. They may have access to Part I information under RIPA by virtue of Schedule 2 of the Inquiries Act 2005 that amends RIPA and in accordance with those provisions. Section 17 of RIPA is amended such that when the panel makes certain findings concerning the product, intercepted communications, from Part I of the Act may be disclosed to them. In this context as stated in the last note RIPA applies to any warrants issued under the Interception of Communications Act 1985 (s. 17(2)(c), (d), and (e)). Section 18 serves as the exception to section 17 where it states:

- (1) Section 17(1) shall not apply in relation to:
  - ...
  - (7) Nothing in section 17(1) shall prohibit any such disclosure of any information that continues to be available for disclosure as is confined to:
    - ...
    - (c) disclosure to the panel of an inquiry held under the Inquiries Act 2005 in the course of which the panel has ordered the disclosure to be made to the panel alone.
    - ...
- 8(A) the panel of inquiry shall not order a disclosure under subsection (c) except where it is satisfied that the exceptional circumstances of the case make the disclosure essential to enable the inquiry to fulfil its terms of reference.

Suggestion

That the provisions relative to inquiries and Part I of RIPA be reviewed as the current situation is contradictory.

#### IMMUNITY

All three inquiries have provided some reference to the provision of immunity in respect to evidence provided to an inquiry that might tend to implicate a person in an offence or disclose an offence. Each of these inquiries involves the investigation of the facts of serious criminality and the interview of those who may be or are directly involved and who may either hold information or provide information implicating themselves and others. Interviewers must be prepared to address these public policy considerations and will be witness to these disclosures where the disclosures take place in interviews leading up to hearings. The voluntary basis of the evidence is also adversely affected by the power of compulsion under the legislation,

and so the admissibility of this evidence, even where there is no immunity, is also adversely affected. There are very serious public policy considerations around the granting of immunity in return for valuable evidence. By way of example this issue has been addressed in the Serious Organized Crime and Police Act at Chapter 2, sections 71–74.

#### Suggestion

That the provisions of inquiries legislation be amended to address and reflect the public policy and human rights considerations involved in issues of criminality and testimony or evidence provided to an inquiry. One possibility is to incorporate the above-named SOCAP legislation by way of amendment.

### RETENTION OF DOCUMENTS

The Inquiries Act and the rules of procedure are silent as to two matters of interest to the PSNI in light of the number of restricted documents provided to the Inquiries in response to their demands. The PSNI would like to see documents the Inquiry determines are not going used for the production of core bundles returned to the interested party who owns them. This is a determination that could be made at any stage by the Inquiry before the close of proceedings. The PSNI would also like to see all the un-redacted documents, to which PH and Article 2 obligations of care still exist, returned once the Inquiry is closed and the Report is issued. The PSNI would be satisfied to see documents to which no PH attaches, in other words redacted documents, be archived as required.

The Act provides, at s. 41, that the Lord Chancellor may make rules, and in the case of Scottish and NI inquiries there are other “appropriate authorities”:

#### 41 Rules

- (1) The appropriate authority may make rules dealing with:
  - (a) matters of evidence and procedure in relation to inquiries;
  - (b) the return or keeping, after the end of an inquiry, of documents given to or created by the inquiry;
- (3) The appropriate authority is:
  - (a) the Lord Chancellor, as regards inquiries for which a United Kingdom Minister is responsible.

#### Suggestion

The PSNI would like to see the rules, and where the inquiry is not under the Inquiries Act 2005, the related regulations or legislation, amended to provide for the return of unused and sensitive material at the close of the inquiry, or for a procedural hearing whereby these matters can be discussed. The concern is longterm security and control of the documents- this concern encompasses Article 2 concerns for sources and other persons who may be implicated in their contents. It is submitted that particularly in the case of unused material- there is very little public interest in the retention of same and that the security and Article 2 concerns far outweigh any interest in its retention. With regard to unredacted material the concerns are the same. Either provision needs be made for the return of the same, or that provision be made explicitly for their longterm storage and safekeeping so responsibilities and liabilities are made clear.

### COSTS

Common to the inquiries is the broad reach of their terms of reference. The inquiries concern historical events of at least a decade ago. It has been said that it takes about a decade to replace a generation of officers in the military. In the Police Service of Northern Ireland this process has been accelerated by the implementation of Patten, resulting in the retirement of more than a generation of the leadership possessing the corporate memory. Inquiries, as they investigate and develop their theories go through a period where the net cast by their search becomes wider and wider until they are possessed of sufficient information to be able to begin to narrow down the focus of their search. In no instance was the likely size of the response scoped or planned for, necessitating a constant expansion of specialised and contracted personnel to respond to the demand and a moving target in terms of cost and planning. The specialist services required and the corporate memory have had to be purchased at some considerable expense utilising finding that would otherwise be devoted to core policing.

Notably there are extensive sections in both the rules and the Inquiries Act 2005 dealing with the cost of the inquiry itself. These provisions do not address the public purse costs to core participants- most of whom are government agencies and departments. Certain of the Inquiry’s costs are offset by the assistance these agencies provide in the form of office space, storage, copying, production of materials in summary form,

analysis of material and so on. The rules and the statute then have not addressed the full real costs of an inquiry. A timely response is also expensive because it requires immediate increases in resources, often specialised, to meet demands.

Suggestion

That a provision be made in the Act for a scoping exercise as part of the Inquiry process which could then inform a re-focussing of the terms of reference and so limit the possibility of “mission creep” and allow interested parties to plan how to respond to inquiry demands more fully. Every day the Service makes choices in the allocation of physical resources and manpower between responding to the past and dealing with present day policing and in line with the reduced needs of a peaceful society those resources are being reduced- but due regard for the past would suggest more consideration of the costs involved with these examination of the past should be had. I would also suggest that a provision such as this would complement the provisions in the Inquiries Act 2005 designed to encourage efficiencies.

*Alistair Finlay*  
Assistant Chief Constable  
Police Service of Northern Ireland

6 April 2008

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**Supplementary evidence from the Historical Enquiries Team, Police Service of Northern Ireland**

Thank you for your letter dated 24 April 2008. In response to your questions please find a breakdown of the information requested.

1. Families sit at the heart of our review process and our primary objective is to work with them to answer any questions that they have regarding the death of their family member.

The HET have opened 1,107 cases and to date 98% of families have been successfully traced.

Families are invited to engage with the HET at the very beginning of the Review process and whilst 58% of those who wish to engage choose to do so at this stage, it is the experience of the HET that many families who have not responded to initial contact or who have declined to be involved change their minds. For that reason the team have adopted a process of contacting the families again at the end of the HET process to let them know that the review is complete & available to them if they change their mind. At this stage a further 26% make contact. Overall, 63% of families have engaged with the HET process.

Family engagement levels across communities are a crucial issue for HET and we are seeing an upward trend in engagement rates as cases get more recent, (HET is currently up to 1973 in its chronological process). Family engagement statistics across monthly case loads are constantly monitored via management information in order to maintain oversight of engagement ratios.

Several additional factors also need to be borne in mind. In the main, the HET is dealing with cases from the early 1970s at this stage. Over 30 years a number of those closest to those who died in these incidents have since died themselves, moved away or feel unable to re-open old wounds. HET expect, and have taken advice from expert groups, that levels of engagement will increase as we move chronologically through the cases.

2. There are three main types of outcome based on HET set objectives

A Complete with family engagement	62%
B Complete without family engagement	38%
C Judicial Proceedings. HET have received advice from the PPS in relation to a small number of cases and one file has been sent to the PPS.	

The outcome of a case with family engagement is a qualitative issue, and is assessed by the HET via a Post Resolution De-brief in relation to every family. The de-brief examines the extent to which families questions have been answered and their satisfaction with their engagement with the HET. If there are any negative issues raised by the family in relation to the questions the HET give a commitment to go back and look again.

It is very difficult to measure families “satisfaction levels”. Whilst families may feel comfortable with the HET process, they may not necessarily like or agree with the findings. We do get a lot of letters from families thanking us for our work. The Committee met with some family representatives during their visit to HET.

To date families have raised 4,842 issues. The HET is currently reviewing its performance in this area to seek to measure levels of satisfaction on an accurate basis.

HET experience of meeting and working with families indicate that there is an enormous spectrum of family responses, which must be factored into evaluation of this complex area.

We work with families who feel very badly let down by “the system”, and who start with very little confidence in the HET. We meet people who have, in the absence of factual information, created their own narratives of events, and take some time to accept or even explore factual information that differs from their own perceptions.

We meet with families who are openly hostile to HET, perhaps not because of the HET process, but because they are angry and dealing with their own grief or emotions. People's views change over time and we have many letters from people who start off hostile, but who six months later write to say they are very glad they engaged.

The range of situations is as varied as the number of families involved, this makes quantitative evaluation on these terms challenging. However HET is now looking at an external evaluation and has developed a tender for this work, it is also looking at the possibility of a university study. These options however, can incur significant costs. HET is conscious that the NIO has provided public funding that is intended for reviewing cases—abstractions for secondary purposes must be closely evaluated and justified.

3. The HET have opened 1,107 cases. Reviews in 363 of these cases have been completed. The original target in order to move through 3,268 cases within six years was to open and close 40 cases a month. However, this was quickly revised. Before the first HET Strategic Evaluation in November 2006 was completed, it was recognised that this original projection was not achievable. As a result of this, the team revised their process; we recognise that whilst Reviews and Focussed Investigation can be completed, the vital "People" part of the process does take longer.

The final family resolution part depends on various factors, including the number of questions raised, the number of families HET is working with on a case (families involved in these kinds of trauma are often fragmented) and the time it takes to get a date and time suitable to all parties for the resolution meetings.

HET has had to absorb the investigations required by the publication of the OPONI "Operation Ballast" report into alleged collusion. These enquiries have had to be taken out of chronological sequence because of the public confidence issues involved. It has required the HET to establish and deploy an entirely new, external team, at a cost of approximately £1.6 million per annum. No additional funding was provided.

This will inevitably impact on the overall HET process, slowing down the rate at which other cases can be progressed.

Our present estimate is that our last cases will be opened in December 2011. After that, a considerable number may remain open whilst complex investigations are completed.

4. The NIO established a "Legacy Project Fund", which amounted to £34 million. The HET's original allocation from this was £26 million, with other agencies (OPONI, PPS and FSNI) also taking monies from the fund. The NIO has been very flexible in allowing HET to vire additional funds from unused allocations from other agencies (eg the FSNI spend was £1 million less than anticipated).

HET has a budget of £7.6 million for the current financial year. The NIO project fund has two years left of the original allocation.

The Chief Constable of the PSNI and the NIO are aware that the HET's work will extend beyond the current project funding. However, the establishment of the Bradley/Eames Committee on dealing with the past means that all parties will await their findings and recommendations before embarking on further financial planning.

I trust that this answers your questions. However, should you require any further information please do not hesitate to contact me.

*Dave Cox*  
Director  
Historical Enquiries Team

6 May 2008

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#### **Written evidence from the Police Federation for Northern Ireland**

1. The Police Federation for Northern Ireland is pleased to address the two issues raised by the Committee. The Federation represents over 9,000 officers from the ranks of constable to chief inspector. The breakdown in round figures is: 7,000 regular officers; 600 full-time reserve officers and just under 1,000 part-time police officers. The remit of the Federation is welfare and efficiency.

#### **HET AND RELATED ISSUES**

2. This submission can afford to be brief because the Federation defers to the PSNI on the factual issues regarding the financial and operational consequences for the PSNI of servicing the various historical inquiries. The evidence to the Committee already given by the Chief Constable indicates that the cost of servicing the Historical Enquiries Team and the four inquiries of Finucane, Nelson, Hamill and Wright is having a significant adverse affect on the ability of the PSNI to meet its current policing obligations. We consider that this pressure on police resources should be a matter of concern to be shared at the highest level in Government. Ineffective policing will not help to stabilise the still bedding down political institutions of Northern Ireland.

3. Unless there is some revision to the terms of HET the effect on the operational capability of the PSNI is likely to get worse with obvious consequences for policing objectives and public satisfaction. This situation will be further aggravated as the full implication for assisting the 100 or so inquests scheduled over the next couple of years starts to bear on the PSNI.

4. The Federation led the campaign to have all unsolved murders of the “Troubles” 1969–1998 re-examined. The initial prompt was our disquiet that the murder inquiries of Pat Finucane, Rosemary Nelson, and in the same category but occurring later, Robert Hamill and Billy Wright, were absorbing significant financial and expert resources while the unsolved murders of 211 police officers killed in the execution of their duty were simply being ignored as dormant files. This was not a judgement on our part that these high profile murders should not be investigated; it was simply our unpreparedness to accept that the deaths of our colleagues seemed to count for less.

5. However, what we envisaged as an information sharing exercise with the families of victims (we had only ever limited expectations that there would be criminal convictions flowing from the re-investigations) has turned into a huge exercise requiring the commitment of £34 million albeit ring-fenced, the recruitment of 180 investigators and support staff and a massive input of specialist knowledge and expertise from the senior management levels of the PSNI, the latter costs of the which are not ring-fenced.

6. We would bracket with this burden the legal straitjacket in which the Police Ombudsman’s Office has found itself. It is duplicating the work of HET cases which have been referred to it and under current legislation has no room to manoeuvre other than to accept any complaint arising from an HET investigation or to ignore any request to investigate a complaint from any quarter no matter how far back.

7. PONI has not sufficient financial or professional investigatory resources required to fulfil this aspect of its remit. In our view the answer is not to provide additional funds or skilled personnel (both of which are in any case in short supply) but for Government to revisit the legislation to enable PONI to restrict its focus to current complaints against the police and certainly nothing pre-1998.

8. The HET should be examining only those cases referred to it through the Victims Commissioners acting at the request of a family. If a family is not willing to initiate an investigation it is dangerously presumptuous for the HET to invite itself in and, in effect, to force families to confront or become acquainted with issues in a way that the family may have chosen or preferred not to.

9. The Federation supports the work of HET and believes it is providing valuable outcomes for victims’ families. But not all families wish to come to their investigative attention and their wishes should be respected. A reprioritisation of the work of HET would ease the financial and resourcing problems of HET and the PSNI.

10. Additionally, when one looks at the inability of HET and PONI to bring a legal conclusion, in the sense of a prosecution through the courts, of the perpetrators of past terrorist crimes or the alleged crimes of officers of the state, then the whole cost, purpose, scope and size of the investigatory apparatus, that is PONI, HET, the public inquiries and the impending coroners’ inquests becomes questionable.

11. We suspect that there is not the political will to identify the perpetrators of many terrorists’ incidents and it may not be in the long term public interest to risk a destabilisation of the current peace through revelations or allegations incapable of judicial pursuit (as the Director of DPP has determined in the case of Stevens III). The role of all the investigatory/inquiry bodies should therefore be reviewed for relevance in the light of experience to date and within the context of the new Victims Commissioners and the impending report of Eames-Bradley.

#### INQUIRIES ACT 2005

12. With regard to the effect of the Inquiries Act 2005 and the Regulation of Investigatory Powers Act 2005 we remain concerned that the law of unintended consequences might have been triggered by a seeming conflict between the provisions of the two Acts.

13. It is inconceivable that the drafters of the Inquiries Act foresaw the situation in which the details of informants would require to be disclosed or would become compromised at court because of the removal of previous protection protocols. RIPA put the handling of informants onto a proper statutory framework and gave much overdue guidance to police officers as to their legal responsibilities. By contrast it seems unclear whether the protection of informants as to their identity has been undone through the Inquiries Act 2005.

14. The recruitment of informants with their mix of motivations is extremely difficult, given that in terrorist culture the penalty of discovery is usually death. To have a situation whereby informants or agents cannot be guaranteed permanent anonymity is counter-intuitive and patently ludicrous.

15. The experience of Northern Ireland in informant handling is now a lesson to be learnt throughout the rest of the United Kingdom. The prevention of acts of terrorism as well as the conviction of the perpetrators is a priority if lives are to be saved. If there is any legal doubt that the identities of informants are liable to eventual disclosure then this loophole must be immediately closed.

16. Given national newspaper reports that there were up to 2,000 sleeper terrorists in the UK, the recruitment and protection of informants specifically tasked with infiltration has to be a priority for the Government. It does not seem to be sufficiently understood that when combating terrorism the immediate priority for the police, security services and for the public is to save lives. In Northern Ireland four out of five terrorist attacks were being thwarted. That level of success was due to the intelligence being gained through informants. Success against the new terrorism in Britain will also be intelligence dependent and should not be inhibited by inappropriately framed legislation.

Police Federation for Northern Ireland

13 March 2008

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### Written evidence from Sinn Féin

*“The NI affairs committee is to conduct a broad inquiry (announced 22 November 2007) into the administration of policing and the criminal justice system in NI. The first phase of this inquiry will focus on two specific areas of current concern:*

1. The financial and operating consequences for the PSNI of servicing the various ‘historic inquiries’ into past events in NI.

2. The effect on the ability of the PSNI to bring accused persons to trial of provisions in the Public Inquiries Act 2005 and in other legislation requiring the police to divulge information which might identify a covert source.”

3. The families and legal representatives of people killed by agencies of the State, and in collusion with Unionist paramilitaries, are entitled to the truth surrounding their loved ones deaths. It is the attempted concealment and cover up of these facts which leads to inquiries, their huge costs etc. The cost of disclosure is “political will” not millions of pounds.

- Approx 400 victims killed by British State agencies during conflict.  
Approx 1,200 victims killed by Unionist paramilitaries during conflict.  
British State has responsibility to address their role in these killings.  
Shoot to kill/Plastic bullets/Impunity/Collusion.
- British Government have used various measures to prevent families access to the truth. Perjury, Public Interest Immunity Certificates, Destruction of evidence (weapons, files, statements), Fabrication of evidence, Refusal to prosecute, Double standards to benefit agents of state.
- Scarman, Widgery, Stalker, Sampson, Stevens 1 & 11 & 111, Inquiries act have all been used by the British Government to block the truth emerging.
- Comparison of over 15,000 republicans arrested, interrogated, tortured, charged, convicted in “special” Diplock courts serving over 100,000 years in gaol between them to handful of British security agents serving lenient sentences.

4. The PSNI cannot deal with the past. There needs to be the establishment of a credible, independent mechanism which treats all victims equally without political bias. That is the task of all those in positions of responsibility need to set themselves as a matter of urgency.

- British Government not neutral in this conflict. Cannot arbitrarily deal with issue.
- British Government need to acknowledge their role in conflict. Nearly 10 years after signing of Good Friday Agreement (GFA) and British Government, its agents and agencies, have not acknowledged their role in creating and maintaining conflict in Ireland.
- Legacy issues need an island-wide approach as identified by the G FA which was supported by overwhelming majority of the electorate.
- Any investigation into the past needs to look at context of conflict and role of society as a whole and how it contributed to conflict.
- Any process should be victim centred. Victims have a right both to acknowledgement and to contribute to a changing society.
- An objective of any process should be healing—both for victims and for society in general.

Sinn Féin

February 2008

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**Written evidence submitted by the RUC GC Widows Association**

**INQUIRY INTO ASPECTS OF POLICING IN NORTHERN IRELAND**

On behalf of the RUC GC Widows Association, can I thank you for your kind invitation to give evidence at an Inquiry into Aspects of Policing in Northern Ireland.

I have reflected upon this and do not feel that the Widows Association would be able to contribute usefully to the work of the Inquiry through appearing independently. I have however spoken to the Chairman of the Police Federation for Northern Ireland, Mr Terry Spence, and am content that our views would be encompassed in their submission and subsequent oral evidence.

*Wilma Carson*  
Chairperson—RUC GC Widows Association

*13 March 2008*

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**Supplementary evidence from the Northern Ireland Office**

**INQUIRIES' SECURITY PROCEDURES**

Following the Northern Ireland Affairs Committee recent hearing with Minister of State Paul Goggins MP, we undertook to write with further advice in relation to the procedures on security which Government has agreed with the independent public inquiries into the murders of Robert Hamill, Rosemary Nelson and Billy Wright. It is worth highlighting that the Billy Wright and Rosemary Nelson Inquiries do hold some protectively marked material (PMM), whereas the Robert Hamill Inquiry holds no PMM. For that reason this letter has focussed on the procedures which have been agreed with those two inquiries. As the Minister made clear during the hearing, as a result of the recent loss of data by the Rosemary Nelson Inquiry, the Government has engaged an independent security adviser to review all the arrangements that are in place in each of the Rosemary Nelson, Billy Wright, Robert Hamill and Bloody Sunday Inquiries for the handling and storage of protectively marked material and to ensure that each Inquiry is fully complying with the procedures Government has agreed with them.

We have agreed a management statement with each Inquiry and it is this statement which forms the basis of the NIO's relationship with that Inquiry. For the two Inquiries which hold PMM, a further document entitled "Protecting Sensitive Government Material" outlines in great detail all that is required of the Inquiries for them to handle and hold sensitive information. This detailed document explains the need to protect sensitive government information, and advises them on how to do it.

However, steps have been taken in addition to this management statement to provide adequate assurance to Government departments and agencies that the PMM they have provided to the Inquiry will be securely managed by the Inquiry. A set of risk-based protective security measures and procedures was developed with each Inquiry and its implementation by the Inquiry was checked before it could receive PMM. This also included a package of personnel security measures, on the basis that all security procedures and arrangements will ultimately depend on the staff involved for their success. These covered:

- obtaining any additional vetting clearances recommended by Security Service advisers; (for example, while key Inquiry staff already held DV clearances, other staff may have needed to obtain clearances in order to manage the material, eg administrative staff, computer technicians etc)
- putting in place an interlocking package of physical security measures including physical protection of the site and robust storage and handling arrangements for protectively marked material in whatever form; hard copy and electronic;
- ensuring that individual staff are informed about the overall security policy and their personal responsibility within that policy;
- putting in place a disciplinary regime to ensure that any breaches of the security arrangements would be handled appropriately;
- appointment of a security coordinator within the Inquiry; and
- permitting appropriate ongoing outside auditing of all protective security arrangements applicable to the operation of the Inquiry.

The Security Service carried out an individual risk-based assessment of each of the sites of each Inquiry where they were to hold PMM. It is worth re-emphasising that this exercise was carried out separately with each Inquiry and that the inquiries were not assessed as one entity. The Security Service also provided a single point of contact and support for protective security measures for the Inquiries, in order to facilitate easy access to security advice and a means of assurance that proper measures were put in place.

By implementing these policies, we were able to assure ourselves that both Government and each of the independent inquiries have fulfilled our various common law and statutory responsibilities. We considered that it was important to satisfy ourselves that these security requirements were met in relation to personnel before moving on to physical security requirements because, as mentioned previously, the success of any physical security measures depends on the staff who have to implement and adhere to them.

As the list of measures makes clear, an important part of this security package was Government's insistence that the Inquiries should each establish a "security co-ordinator" post. By this measure we were able to ensure that a responsible person in each Inquiry had undertaken to follow the advice laid out by the Security Service that:

- protectively marked material should be stored and handled according to the recommended protective security procedures;
- protectively marked material should be made accessible only to those who are appropriately cleared and have a genuine need to know it;
- staff should be fully informed about their security responsibilities and be held accountable for any failure to observe security procedures;
- staff should be encouraged to report security problems;
- suitable security procedures should be in place to deal with cleaners, contractors, visitors and others who might have access to the premises; and
- staff should be made aware of the reasons for local security procedures such as locking up their work at night.

I hope this provides you with a useful outline of the Government's risk-based framework for guiding judgements on whether sensitive Government-owned information can safely be placed in the care of the independent Inquiries. If you require further detail, please let me know and I will seek to provide it at the earliest opportunity.

*Katie Pettifer*  
Deputy Director, Rights, Elections & Legacy  
Northern Ireland Office

*10 June 2008*

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### **Supplementary evidence from the Northern Ireland Office**

#### **RULE MAKING POWER UNDER INQUIRIES ACT 2005**

Following the Committee's recent hearing with Minister of State, Paul Goggins MP, the Northern Ireland Office undertook to provide you with further clarification in relation to the power under section 41(1)(b) of the Inquiries Act 2005 to make rules relating to the return or keeping, after an inquiry, of documents given to or created by the inquiry.

In the course of the hearing the Committee Chairman, Sir Patrick Cormack asked how Minister of State, Paul Goggins MP would exercise these rule-making powers to give reassurance and whether he might seek assistance from the Surveillance Commissioner on this matter.

Government recognises the importance of preserving the integrity of inquiry records and ensuring that information is stored securely. However I should clarify that this rule-making power under section 41 of the Act falls to the Lord Chancellor and not to the Minister and consequently we do not see any additional role for the Surveillance Commissioner in this process.

The Lord Chancellor has in fact already exercised this power and has made rules covering all inquiries established by UK Ministers under the Inquiries Act. These rules state that on conclusion these inquiries must pass their records either to a UK Government Department or to the Public Records Office, depending on what the Minister who established them directs. In this, these rules have enshrined in statute what has been customary practice in the past, that inquiries' records are kept by their sponsor departments or by the Cabinet Office. The rules also ensure that it is possible to make appropriate provision for any highly classified material.

I would add that these rules do not apply to inquiries which were not originally established under the Inquiries Act 2005 but which have subsequently been converted to inquiries under that Act. They do not, therefore, apply to the Robert Hamill or Billy Wright Inquiries. However we would expect the same general principle to be followed.

I hope this information is helpful. If you require further detail, please let me know and I will seek to provide it at the earliest opportunity.

*Katie Pettifer*  
Deputy Director, Rights, Elections & Legacy  
Northern Ireland Office

5 June 2008

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#### **Supplementary evidence from British Irish Rights Watch**

Please find enclosed answers to a number of questions raised by Members of the Committee during the session on 2 April 2008.

I am sorry that it has taken me some time to reply. The questions involved me in some very time-consuming research.

Q336 by the Chair, *regarding the number of HET cases BIRW is involved in*

British Irish RIGHTS WATCH has provided information to the Historical Inquiries Team on 231 individuals concerning 105 incidents. In 13 of these cases, involving 36 victims, we have provided substantial quantities of information, including, in those cases where the families of the victims have so requested, helping them to formulate questions they would like the HET to attempt to answer (please see Q391).

Q381 *The "Gentleman's Agreement"*

Please find the papers enclosed, as promised.<sup>26</sup> I first came across the phrase "gentleman's agreement" during a meeting with the Historical Enquiries Team. After extensive research, I understand that the phrase was first used during hearings of the Bloody Sunday Inquiry. I am afraid that I do not have the time or resources to search the voluminous transcript of those hearings for the phrase, but I am told that it is there somewhere for anyone who has the energy to find it. However, as the enclosed papers clearly show, much more important than any term used to describe it is the policy, embodied in a police Force Order, which decreed that any soldier who shot anyone in the very early years of the conflict was to be interviewed not by the RUC but by the Royal Military Police, whose role was not to examine whether any crime had been committed, but to assist the soldier in question. As was found in the case of Mrs Thompson (copy enclosed),<sup>27</sup> the court considered that this arrangement precluded any effective investigation into her mother's death, contrary to Article 2 of the European Convention on Human Rights.

Q388 *In how many of the HET cases in which BIRW is involved were the perpetrators terrorists?*

In 77 of the 105 incidents the alleged perpetrators were paramilitaries.

Q360 *In how many of the 30 to 50 cases would there be allegations of collusion by the security forces?*

In nine of the 13 cases where we have been substantially involved there are allegations of collusion. In the total of 105 cases where we have provided information there have been 32 (including the nine just mentioned) where collusions have been alleged.

Q396 *Examples of patchy and superficial investigations by the Police Ombudsman?*

As I mentioned in my evidence, it is difficult to give specific examples without breaching our client's confidentiality. However, BIRW is on record as saying that we believe the Police Ombudsman's investigations into the firing of plastic bullets were too heavily reliant on police accounts. We find it difficult to square the fact that, although the Police Ombudsman has on occasion made recommendations for better police practice, she has found every single firing that she has examined to have been lawful, proportionate, and justified, with complaints made to us by solicitors of very serious injuries caused by plastic bullets.

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<sup>26</sup> Not printed here.

<sup>27</sup> Not printed here.

In one case that we can mention because it has been said publicly, that of the murders in February 2000 of David McIlwaine and Andrew Robb, there was a point when the Police Ombudsman was preparing to sign off on the police investigation as having been perfectly acceptable. It was only after we presented the Police Ombudsman with a detailed analysis of the case that further questions were asked. We understand that this is now a major investigation which may well result in severe criticism of police conduct.

In another case, involving a nationalist whose name and other details were found in the wallet of a member of the security forces, the Police Ombudsman's investigation seemed to us to be flawed in a number of serious respects. After we made representations about the case, the Police Ombudsman carried out a further review, but by then it was too late to make good the problems that we had identified.

In citing these concerns, I should like to emphasize that BIRW wholeheartedly supports the Police Ombudsman as an institution. As I said in evidence, we tend not to hear from the satisfied customers, only from those who have a complaint. As the Committee is no doubt aware, the Police Ombudsman has relied for staffing on many external police officers on relatively short-term secondments, which has not led to good continuity. Many of those who have come to us have complained about having to start again when a new investigating officer came on board, and, as I said in my evidence, we have had numerous complaints about the length of time that some investigations take.

However, none of these concerns should detract from the fact that the Police Ombudsman has done some very important and courageous work, particularly in relation, for example, to the Omagh and McCord cases.

*Jane Winter*  
Director  
British Irish Rights Watch

7 May 2008

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#### **Supplementary evidence from the Northern Ireland Office**

##### **INQUIRY INTO THE POLICING AND CRIMINAL JUSTICE: EVIDENCE SESSION 21 MAY 2008**

During the evidence session with Minister of State Paul Goggins MP, the Northern Ireland Office undertook to provide details on the number of cases opened by the Historic Enquiry Team where there has been no request for an investigation by the victim's family.

I can confirm that of the 1,107 cases currently open 58% of families have engaged with the HET at the very beginning of the process. However many families who initially choose not engage subsequently change their minds. Overall 63% of families have so far engaged with the HET process.

As the HET process is chronological most of the cases currently open (excluding those which are exempted) date from the early 1970's. The majority of families engaging with the HET process have expressed their satisfaction with the experience and it is hoped that as this generally positive view is spread more widely among victim's groups and other family support organisations and as the process examines more recent deaths family engagement rates will increase.

I hope this is helpful please let me know if the Committee require any further information.

*Nichola Creagh*  
Policing and Security  
Northern Ireland Office

20 June 2008