

## **SUBMISSION FROM KRW LAW LLP**

### **NORTHERN IRELAND OFFICE CONSULTATION:**

#### **“ADDRESSING THE LEGACY OF NORTHERN IRELAND’S PAST”**

“With all due respect to my colleagues, you cannot possibly understand the issues of Northern Ireland from Westminster”<sup>1</sup>

KRW LAW LLP (KRW) is a firm of solicitors based in Belfast. We are Ireland’s leading human rights law provider. As part of our human rights portfolio we specialise in all aspects of litigation relating to the Legacy of the Conflict in Northern Ireland (NI).<sup>2</sup>

Our work embraces Legacy inquests and inquiries (including in England and Wales), public law challenges by way of judicial review and actions for civil liability breaches relating to the operation of the Security Forces and Services and their agents during the Conflict.

In addition, we represent families who are the relatives of victims engaged in securing criminal prosecutions arising from Conflict-related human rights violations including against former members of the Security Forces and Services and their agents.<sup>3</sup>

Further, we represent a number of former members of the Security Forces and Services in actions against state agencies arising from the Conflict.

#### **Remit of the Consultation**

KRW considers that:

- a) Both the Birmingham Pub Bombings 1974 and The Guildford Pub Bombings 1974, in addition to other Conflict related incidents in England, should form part of the remit of the Consultation and be acknowledged as part of the Legacy of the Conflict in Northern Ireland. Practically funding should be available in order to provide support in parity with other victims and survivors and in order to pursue truth, justice and accountability.
- b) The Kincora Boys’ Home should be considered as part of the remit of the Consultation and acknowledged as part of the Legacy of the Conflict in Northern Ireland.

Regarding (a) Justice for the 21 (J4the21), a campaign group representing some of the relatives of the victims of The Birmingham Pub Bombings 1974, met with the Commissioner for Victims and Survivors Northern Ireland (CVSNI) and her representations. They discussed how they have been excluded from any prior discussions, initiatives, strategies and opportunities regarding to the Legacy of the Conflict (and specifically from any arrangements for victims arising from the Belfast/Good Friday Agreement (GFA) 1998 and other accords). They argued that should receive similar recognition and support

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<sup>1</sup> The Right Hon Karen Bradley MP Secretary of State for Northern Ireland, *The House*, 10<sup>th</sup> September 2018, No. 1624 Volume 41

<sup>2</sup> The Troubles refers to a violent thirty-year conflict framed by a [civil rights march in Londonderry on 5<sup>th</sup> October 1968](http://www.bbc.co.uk/history/troubles) and the [Belfast/The Good Friday Agreement on 10<sup>th</sup> April 1998](http://www.bbc.co.uk/history/troubles). At the heart of the Conflict lay the constitutional status of Northern Ireland. The Troubles is accepted as a colloquial and euphemistic term whilst Conflict describes the international recognition of the period. <http://www.bbc.co.uk/history/troubles>

<sup>3</sup> We attach as an Appendix to this Submission two submission of two of our clients in relation to the shootings at Kennedy Way, Belfast 26<sup>th</sup> October 1993.

through any processes proposed within the Consultation. This should be over and beyond and what they have already secured through their own volition in the form of a resumed inquest concerning the deaths of their loved ones, although still subject to argument regarding public funding and parity between Interested Persons in a complex multi-death inquest (whether related to the Conflict or not).

Regarding (b) The Kincora Boys' Home, abuse at Kincora and affiliated institutions, has been subject to investigation by three inquiries (Terry, Hughes and Hart) regarding the abuse of children and the role of Security Forces and Services, including the RUC (hence the current OPONI investigation).

Nevertheless, rumour and suspicion continue to surround the allegations of collusion and The Kincora Boys' Home, which must be allayed to satisfy the human rights demands following a breach or violation of Article 3 ECHR and to dispel the appearance of the state impunity of collusion and in order to maintain public confidence in the Rule of Law. Therefore, given the continuing rumour and suspicion that the abuse at The Kincora Boys' Home and associated institutions has a causal connection with the Conflict, it must be within the remit of the Consultation and any mechanisms to deal with the Past out-with any prior inquiry or investigation and we due note of the concerns raised by KRW and others regarding National Security and the Conflict in the present Consultation.

**[Note: KRW restricts its observation to the General Principles of the proposed legislation Draft Bill and the Historical Investigations Unit (HIU). Save for some of our observations being applicable to some of the other proposed institutions regarding onwards disclosure and veto and National Security, we do not comment on The Independent Commission on Information Retrieval (ICIR),<sup>4</sup> The Oral History Archive or the Implementation and Reconciliation Group. KRW refer you to the submissions made by The Model Bill Team:**

<https://s3-eu-west-1.amazonaws.com/caj.org.uk/2018/08/30135633/qub-uu-caj-response-to-nio-consultation-aug-18.pdf>

#### **NIO Press Release 11 05 2018**

KRW notes that the Press Release of NIO dated 11<sup>th</sup> May 2018 states that the statutory bodies created by way of the institutions proposed under the Stormont House Agreement 2014 (SHA) act in ways that are balanced, proportionate, transparent, fair and equitable.

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<sup>4</sup> The Model Bill Team note: "A major concern with the ICIR proposals emerged during the consultation process in relation to an *observation in the Explanatory Notes*. The relevant explanatory note suggests that, even though information provided to the ICIR would be inadmissible in legal proceedings, this would not prevent policing authorities or a coroner pursuing lines of inquiry based on information provided to families by the Commission. Where such inquiries, generated *new* evidence, the new evidence could be admissible. This observation highlights the possibility that where an individual provides information to the Commission, they could run the risk of providing information about their own actions or the actions of others that indirectly aids the work of criminal investigators and prosecutors. We believe that the risk of prosecutions resulting indirectly from information provided to the ICIR is extremely low, particularly since (former) paramilitaries may opt to engage with the Commission through interlocutors. Furthermore, if any such prosecutions applications from defence lawyers that would challenge the admissibility of evidence that was uncovered because of information produced by the ICIR. However, we recognise that it may create a disincentive for information providers to engage with the Commission."

KRW would suggest that that whilst in agreement with those key elements importantly the statutory bodies should act in ways which are in compliance with the European Convention on Human Rights (ECHR) as implemented by way of the Human Rights Act 1998 specifically section 6 but not limited to the domestic legislation and should encompass both the ECHR and international standards of investigation and reconciliation regarding Conflict and human rights standards.

We note that The Belfast/GFA 1998 Declaration of Support states:

“2. The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and *vindication of the human rights of all.*”<sup>5</sup> (*Our emphasis*)

We note that this is the third consultation on dealing with or policing the past in Northern Ireland following the attempts of the Consultative Group on the Past (CPG) and the Haass/O’Sullivan Proposals which lead to the SHA.<sup>6</sup>

We note the intent of the UK government to prevent new Legacy inquests being opened until the Historical Investigations Unit (HIU) completes its work. We note the existing number of Legacy Inquests which are to commence, we note the existing number of applications before the Attorney-General for Northern Ireland (AGNI) for fresh or resumed inquests in relation to Conflict related deaths.

KRW argue that following the request for funding for inquests made by the Lord Chief Justice of Northern Ireland, that funding should be immediately released so all Legacy inquests can now proceed unhindered (see also the judgement of Girvan LJ in *Re: Bridget Hughes* [2018] NIQB 30)<sup>7</sup>

The importance of the inquest investigation being one mechanism of inquiry through which the UK government can discharge its obligations under the ECHR cannot be dismissed and demands careful consideration as a widely accepted investigatory mechanism to discharge outstanding human rights obligations toward families of victims and survivors.

### **NIO Foreword by the Secretary of State May 2018**

In her foreword to the Consultation Paper, the Secretary of State expands upon the key elements by adding that the proposed statutory bodies must follow the Rule of Law. KRW contends that it is axiomatic that upholding the Rule of Law is paramount to a democratic society and that this demand is intensified in a society in a peace process which is in transition from Conflict to peace, underscored by a public commitment to the protection and vindication of human rights as per the GFA 1998.

Core to the principle of up-holding the Rule of Law is both the practice and appearance of not condoning impunity for human rights violations in any form and exposing collusion which lies at the base of the practice and appearance of impunity and undermines the legitimacy of the Rule of Law.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/136652/agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf)

<sup>6</sup> These include the important work of Healing through Remembering (HTR) *Making Peace with the Past: Options for Dealing with the Past in and about Northern Ireland* (Healing Through Remembering 2006).

<sup>7</sup> <https://judiciaryni.uk/sites/judiciary/files/decisions/Hughes%20%28Brigid%29%20Application.pdf>

The Secretary of State continues by stating that amnesties or immunities are not the right approach and believes that justice should be pursued. KRW concurs with this position as it goes to the core principle, as stated by the Secretary of State, of up-holding the Rule of Law. We have made our views on amnesties clear in our evidence to the Defence Select Committee Inquiry “Statute of Limitations – Veterans Protections” and the recent exchange of views between the Secretary of State and the Chair of the Defence Committee.<sup>8</sup>

KRW is concerned, however, that the way in which the deployment of National Security is used within the proposed legislation as a limitation to the authority of the Director of the HIU and in the form of the proposed judicial review which enables a veto over National Security and a referral to a Secretary of State, together with the implied definition of collusion within the Draft Bill, that this is an amnesty for state agents by ‘the back door’ (‘a smothering blanket to conceal the sins of the UK’)<sup>9</sup> (and by association those paramilitaries working with or for the state agencies as agents or informants) in that the National Security factor may veil illegal or unlawful activity and the commission (or omission to prevent or investigate) of illegal acts and tortious wrongs, including misfeasance.

Regarding the comment of the Secretary of State as to the rejection of any attempt to rewrite the history of Conflict in Northern Ireland – what one of her predecessor’s referred to as a ‘pernicious counter-narrative’<sup>10</sup> – KRW would caution against such inflammatory rhetoric: its adds nothing to the necessary political dialogue of reconciliation and merely adds to the toxicity of the failure of resolution.<sup>11</sup>

There are competing narratives of the Conflict because this part of the past was a Conflict and therefore there will be a contest over the context of the truth. It should be for the proposed institutions and mechanisms to produce a public record or account of the Conflict not for those with vested interests in particular narratives of truth to have precedence over others and to exploit those mechanisms to impose a narrative claiming to be the truth regarding the Conflict.

## **Part one – The current system for addressing the past**

### **4.5 Problems with the current system**

4. “Some people are concerned that human rights obligations mean that some unresolved deaths are more likely to be investigated than others”.

There is no evidence presented to justify this statement. KRW would interpret this statement to imply that it means that there are more investigations into Conflict-related deaths where the UK government is implicated or responsible than where paramilitaries are implicated or responsible because state killings which breach or violate Article 2 ECHR engage investigatory obligations on the state. The Consultation needs to present evidence to justify this statement and its context. The

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<sup>8</sup> <https://www.parliament.uk/business/committees/committees-a-z/commons-select/defence-committee/inquiries/parliament-2017/inquiry13/> and [https://www.parliament.uk/documents/SofS\\_for\\_Northern\\_Ireland\\_to\\_Chairman\\_Legacy\\_Consultation.pdf](https://www.parliament.uk/documents/SofS_for_Northern_Ireland_to_Chairman_Legacy_Consultation.pdf)

<sup>9</sup> <http://www.irishnews.com/news/2015/11/27/news/flanagan-critical-of-national-security-smothering-blanket--334991/>

<sup>10</sup> <https://www.newsletter.co.uk/news/full-text-of-speech-from-secretary-of-state-theresa-villiers-1-7209438>

<sup>11</sup> <https://www.newsletter.co.uk/news/full-text-of-speech-from-secretary-of-state-theresa-villiers-1-7209438>

statement is contestable and was recently refuted by the Public Prosecution Service and in evidence to the Defence Select Committee.<sup>12</sup>

We refer NIO to our concerns regarding the propagation of a pernicious counter-narrative in relation to Conflict related investigations and the dangers of such narratives infecting the process of truth and reconciliation in a jurisdiction still undermined by dissent relation to the Belfast/GFA 1998 from both Republican and Loyalist sections of the community.

### **Question 1: Current system for addressing the past**

As noted this Consultation is another attempt by the British government to address the Legacy of the Past in Northern Ireland.

We conclude that the failure to date is due to political intransigence from all sides who have vested interests in versions of the past (contested narratives). This is manifested in part in the current impasse to have an effective administration at Stormont.

There is also a tension between 'hard' and 'soft' law/justice: Northern Ireland has been well served by transitional mechanisms of reconciliation to date and victim support (although not without the substantial assistance of EU funding – we question whether such funding will be replaced post-BREXIT). NI has been well-served by both community based and NGO initiatives to deal with the needs of victims and survivors and further, through a strong relationship between the relevant parts of the academic sector and local and international peace building and reconciliation initiatives.

In addition Northern Ireland has two unique investigatory mechanism:

The PSNI Legacy Investigations Branch – which is not independent in terms of Article 2 ECHR

The PONI – which is under-resourced and limited in remit to complaints against the RUC

In addition, there is the under-resourced Legacy inquest process. The NIO proposals should honour the SHA by explicitly stating that legacy inquests will continue as a separate process to the HIU. And should be funded immediately.

These two mechanisms are not sufficient to fulfil the policing role required if there is to be an Article 2 ECHR compliant mechanism to discharge the investigatory obligation which is engaged following a violation or breach or omission to prevent such a violation or breach (paralleled in the jurisprudence of Article 3 ECHR also).

KRW has responded to the needs of those demanding answers to questions arising from the Legacy of the Conflict and we have responded, as lawyers instructed by our clients (across the community – (including former members of the Security Forces) – RUC and British Army) through litigation in the absence of human rights compliant mechanism of investigation: litigation has been thwarted by attempts (as we and our clients see it) to block access to truth: delay in disclosure, the use of PPI and CMP, political interference with decisions of law officers, inadequate funds to service the judiciary, delay in responding to court orders and so forth.

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<sup>12</sup> See for example: <https://www.belfasttelegraph.co.uk/news/northern-ireland/only-six-of-18-legacy-cases-linked-to-security-force-members-claims-pps-35428397.html> and <https://www.belfasttelegraph.co.uk/opinion/news-analysis/is-the-price-of-an-amnesty-for-the-security-forces-just-too-high-to-contemplate-35839290.html>

Nevertheless, litigation is a mechanism through which a) maintenance of confidence in the Rule of Law is secured by way of an independent judiciary and b) accountability of state agencies and agents is achieved.

The relationship between litigation and the mechanisms proposed under the NIO Consultation must be considered: there can be no limitation, ouster or closure, to legitimate challenges by way of litigation. To do so would be a dangerous interference with the separation of powers which is core to the constitutional arrangements of the UK. In addition, in terms of parity between victims, any arrangement proposed by the British government for Northern Ireland must be in accordance with bilateral arrangements for victims in the Republic of Ireland.<sup>13</sup>

## **Part two – Stormont House Agreement proposals**

### **51. Overview**

KRW endorses the aim of addressing the Legacy of the past in Northern Ireland in a way that aims to place the needs of victims and survivors at the core of that process and be balanced, proportionate, transparent, fair and equitable. These are strong and noble words but they do need to be grounded upon real intent and purpose and in accordance with human rights standards and obligations.

In addition we note:

- That there can be no hierarchy of victims and the Victims and Survivors (Northern Ireland) Order 2006 is unaffected by any implementation of these proposals<sup>14</sup>
- That survivors must have recognition and a role – and that their claims to investigation be fulfilled in compliance with the obligations arising following a breach or violation of Article 3 ECHR in parallel to the law and jurisprudence in relation to investigation following a breach or violation of Article 2 ECHR.<sup>15</sup> This would include all survivors of attempted murder, torture and serious injury.

### **5.2 SHA commitments and to victims and survivors**

It is unclear what the exact role, employment status and qualifications of an advocate-counsellor will be and whether this post will be independent of an organisational structure.

We welcome the commitment to improve the way the Legacy inquest function is conducted to comply with Article 2 ECHR. If funding is to be made available to Legacy Inquests this must include inquests into Conflict related deaths and injuries in the rest of the UK.<sup>16</sup> This funding must be released immediately not least to discharge the promptness obligation under Article 2 ECHR.

The commitment to Article 2 ECHR compliance must be a commitment across the board applying to any proposed investigatory mechanisms, specifically the HIU.

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<sup>13</sup> See: <https://www.dfa.ie/media/dfa/alldfawebsitemedia/newspress/publications/Information-Note-on-Government-cooperation-with-legacy-institutions.pdf>

<sup>14</sup> <https://www.legislation.gov.uk/nisi/2006/2953/contents>

<sup>15</sup> We refer you to the Statement of Gerard Joyce in relation to the Kennedy Way Shootings 1993.

<sup>16</sup> We refer you to the inquest into circumstances of The Birmingham Pub Bombing 1984 and The Guildford Pub Bombing 1974 and the funding concerns of those families engaged in these inquests, which is subject to review by the MOJ in its Consultation of Legal Aid for Inquests.

## **General principles**

### **6.1 Overview**

KRW agree with the six general principles set out in the SHA. We note the commitment to compliance with human rights obligations (HRA +) and that Legacy institutions will be required to act consistently with these general principles: we would expect this consistency to be applied and adhered to all government departments and agencies interacting with those Legacy institutions.

Regarding the Rule of Law, we stress the importance of maintaining public confidence in the Rule of Law and that the state undertakes to condone impunity from human rights violations and breaches, including where there is the rumour and suspicion of collusion: one of the aims of a human rights compliant investigation is to allay rumour and suspicion which undermines the Rule of Law and the right to truth of an individual, victim, community or society.

We reiterate our concern regarding the lack of clarity around the proposed advocate-counsellor and their status in relation to the independent Legacy institutions.

### **The Historical Investigations Unit (HIU)**

Despite commitments in the SHA and the ECHR duties incumbent on the UK government, the draft Bill provides that the HIU would be funded from the Department of Justice's budget without any provision for additional monies. This risks a replication of the existing problems of Legacy inquests where further funding has been unlawfully blocked and political decisions subject to judicial sanction.

Payment must be made from the Consolidated Fund through the UK Treasury. The NIO should recall that it is the UK that is the contracting party to the ECHR and not the devolved administration of Northern Ireland.<sup>17</sup>

### **7.1 Overview**

Whilst we welcome the proposed HIU Legacy institution we stress the importance of independence and lack of constraint in its relations with the UK government and its agencies. This is particularly important in relation to the contested matter of disclosure of any material or information in the possession of any state agency or agent (or private body vested with storage of such information or material).<sup>18</sup>

### **7.2 Cases within the remit of the HIU**

The remit of the HIU appears to be restricted to deaths occurring during the Conflict: there must recognition of the need for inclusion of the demands of survivors of Conflict-related violence specifically in relation to investigations. This would reflect the intent of the General Principles.

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<sup>17</sup> Clause 4 of the 2018 draft Bill provides that the NI Department of Justice (DoJ) would pay the expenses of the HIU, via the Policing Board. The DoJ would decide the amount required. Essentially the HIU would be paid from the DoJ budget and the draft Bill creates no obligation for the UK centrally to provide the DoJ with even the initial resource package that the NIO has committed to providing in the SHA.

<sup>18</sup> Truth recovery via litigation and inquest has been blocked by the intransigency of state agencies regarding the issue of disclosure, particularly the PSNI and the MOD and the Garda, in matter of cross-border investigations such as in The Kingsmills Inquest.

The NIO might want to consider addressing the allegation that there is a pernicious ‘counter-narrative’ weighted in favour of investigating and prosecuting incidents in which state agents (including informers) and state agencies are implicated: the statistics presented at 7.2 regarding the work rate of completed reviews conducted by the PSNI HET clearly points contra-wise.

Clarification is also required that a re-investigation will occur into all PSNI HET Reviews (completed or otherwise) where doubt was raised by the HMIC and subject to overview by the Northern Ireland Policing Board (2014).

It is proposed that the HIU Director ensures that the HIU does not ‘duplicate’ any aspect of a previous investigation, unless the HIU Director considered such duplication necessary. There is a risk that this provision could preclude re-investigations by the HIU of matters which have been subject to previous investigations that were not Article 2 ECHR compliant. The HIU faces hurdles in conducting investigations into RUC and other state actors in that they must not duplicate previous ‘investigations’ unless having regard to new evidence or being able to identify alleged perpetrators, which is rare.

This is a significant threshold and not applicable non-state parties.

Regarding agent handling, as discussed further below, we note that there must be evidence of unlawful acts being deliberately carried out whilst performing law lawful duties as law-enforcement officers – this definition goes to the core of collusion and in its present implied form is narrowly proscribed and out-with the definitions of collusion proposed by others including Stevens, Cory. De Silva, O’Loan, Smithwick and the current Police Ombudsman. In addition it ignores the ‘corporate memory’ and culture of some state agencies in which policies regarding counter-insurgency would become practices engaging in unlawful or illegal activity with or without criminal intent.

It is proposed that cases that fall within the HIU remit are the only cases that the HIU would be permitted to investigate. The HIU remit as specified does not include completed PSNI HET cases, unless a number of criteria are met relating to new evidence and state involvement. Since the PSNI HET work was suspended, it has transpired that significant amounts of evidence were withheld from the PSNI HET and other Legacy processes (including by former state agents employed to assist the intelligence filtering process – who can still apply for roles with the HIU as ‘experience in Northern Ireland is an advantage’).<sup>19</sup>

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<sup>19</sup> As The Model Bill note:

“In 2013, it was revealed that the Ministry of Defence was unlawfully holding thousands of files that should have been processed for the National Archive in what had been a secret warehouse in southern Derbyshire. Among the 66,000 files were significant materials relating to the Northern Ireland conflict. These included ‘hundreds and hundreds of boxes’ each containing around 10 files relating to the 1970s and early 1980s, that had been transferred from the British Army’s Northern Ireland Headquarters when it closed in 2009. The existence of the archive had not been declared to the HET.

Ian Cobain, ‘Ministry of Defence holds 66,000 files in breach of 30-year rule’, *The Guardian* (6<sup>th</sup> October 2018)

In 2017, it was revealed the PSNI had not disclosed material to the Coroner from a Ministry of Defence intelligence database they had held since 2007. The PSNI Disclosure Unit stated it had not known the database was held by the PSNI. It is not clear from this whether any of the materials withheld from the Coroner were also withheld from the HET and Ombudsman.

Alison Morris, ‘PSNI did not disclose military database files to Troubles inquests’, *Irish News* (31<sup>st</sup> January 2018)

Under the current proposals, families of victims and survivors might continue to confront difficulties in establishing that such cases fall within the HIU's remit.

Regarding the transfer of 265 cases to the HIU from OPONI:

- Clarification is required as to whether this transfer will affect thematic OPONI investigations (e.g. Operation Medfield, Operations Achilles, for example)
- There must a commitment that the Conflict-related investigations remaining with OPONI are effectively resourced

KRW has no objection to the remit of the HIU including deaths up to 31<sup>st</sup> March 2014. However, we note the public concerns expressed by the families of the victims of The Omagh Bombings 1998 and would expect their views be sought on this aspect of the proposals.

KRW expresses concern regarding the role of the Chief Constable of the PSNI in the operation of the HIU. Our objection to the role of the Chief Constable in any decision-making process relating to the investigatory criteria of the HIU (and it is unclear how the role of the Chief Constable would co-exist with the role of the Director of the HIU at this point).

The political credibility of the HIU and its credibility as a human rights compliant mechanism of investigation demands independence. The expensive debacle of the PSNI HET is testimony to that demand.

Importantly, as the Model Bill Team make clear,<sup>20</sup>

“The draft Bill contains a provision allowing the PSNI to determine which cases previously reviewed by the HET should be reopened on grounds of potential collusion. Depending on interpretation, the definition of collusion proposed in the draft Bill risks excluding all cases where informants acted under the authorisation of a handler, even if the actions of the informant constituted human rights violations. There is also a potential conflict in vesting the decision-making power in the PSNI who retain legal liability for actions taken by the RUC.” (x)

The Model Bill Team proposed that,

“Recommendations: The PSNI should not make decisions on *cases involving potential collusion*; instead, there should be *an independent decision maker*. The definition of collusion should remove or strictly codify any circumstances where facilitating an offence or the avoidance of justice would not be ‘collusion’. As a first step, government should clarify the circumstances whereby it considers facilitating a criminal offence or the avoidance of justice relating to a murder should be considered ‘lawful’ and ‘proper’. In particular, it should be clarified whether there is an official government position that all acts by informants that were authorised by handlers are deemed ‘lawful’.” (xi)

Regarding collusion, Daniel Holder has usefully commented on its interpretation in terms of the proposals for the HIU:<sup>21</sup>

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<sup>20</sup> <https://s3-eu-west-1.amazonaws.com/caj.org.uk/2018/08/30135633/qub-uu-caj-response-to-nio-consultation-aug-18.pdf>

<sup>21</sup> <http://eamonnmallie.com/2018/07/how-the-stormont-house-legacy-legislation-tries-to-define-collusion-by-daniel-holder/>

“In essence it sets out two criteria that must be both met namely that a person: i) Facilitated an offence or avoidance of justice in relation to the death, and ii) Did so with the intention of achieving an unlawful or improper purpose; Cases can then be recommended for reinvestigation if the Chief Constable believes that the person in doing so either may have committed a criminal offence or also if they were an RUC officer (but not other branches of the security forces) committed misconduct, and that either require further investigation. (The Chief Constable would not be making a finding of collusion, rather suspecting potential collusion and hence referring to the HIU who may investigate, otherwise these former HET cases would be outside the HIU’s remit). The term ‘facilitating an offence or ‘avoidance of justice’ is elaborated upon as meaning if the person ‘assisted or caused, or intended to assist or cause’, a person to commit a criminal offence or avoid arrest / prosecution in relation to the death. Whilst this first part of the definition can encompass a range of actions or omissions often associated with ‘collusion’ the second part – requiring an ‘intention of achieving an unlawful or improper purpose’ is far more restrictive. Straight out it prompts the question as to when it is ‘lawful’ and ‘proper’ to facilitate a criminal offence or assist someone evade justice?”

Holder then considers the words ‘lawful’ and ‘proper’ and ‘intent’ in this context, and whether, in human rights terms, ‘lawful’ and ‘proper’ and ‘intent’. For example,

“The term ‘facilitating an offence or ‘avoidance of justice’ is elaborated upon as meaning if the person ‘assisted or caused, or intended to assist or cause’, a person to commit a criminal offence or avoid arrest / prosecution in relation to the death. Whilst this first part of the definition can encompass a range of actions or omissions often associated with ‘collusion’ the second part – requiring an ‘intention of achieving an unlawful or improper purpose’ is far more restrictive.

Straight out it prompts the question as to when it is ‘lawful’ and ‘proper’ to facilitate a criminal offence or assist someone evade justice? We are not talking about shoplifting here but criminal offences relating to a death– like murder, supplying firearms and concealing evidence.

This takes us into the world of how informants were handled and what they were allowed to do. Nowadays the legal framework for informant handling states that anything done under a signed-off authorisation from a senior officer is ‘lawful for all purposes’ and hence – regardless of what it was– would not constitute ‘collusion’ under this definition. This legislation – the Regulation of Investigatory Powers Act 2000, (‘RIPA’) was a first and did not exist at the time of any of the HET cases.

Is it really going to be argued that this system just placed existing practices on a formal basis and therefore anything previously authorised by a handler should be considered ‘lawful’?

It is known that the RUC had a system whereby informant participation in a criminal offence was subject to an authorisation by an ACC. Also in the public domain are the RUC Force Orders flowing from the 1980 Walker Report that established a system whereby Special Branch could veto arrests by detectives, precisely to protect informants from investigation.

This system was not even debated in Westminster let alone legislated for. It seems difficult to sustain the idea that *authorisation* means *lawful*.

In the alternative was informant participation in any criminal offence pre-RIPA all *unlawful*? The system was run in a legal lacuna outside of the law, and government declined to set it up on a legal basis. In this case the ‘lawful’ purpose threshold in pre-RIPA cases, should never be met.

This is before we get to ‘improper’ – which raises further questions as to whether it was ‘proper’ to give primacy to the protection of an information source over saving a life known to be at risk. Human rights law says no. But who will make these judgements?

It will not escape notice that the decision makers in this instance will be the PSNI – the agency that retains legal liabilities for the RUC who handled many of the informants in question. The PSNI among other matters is therefore consequently unlikely to declare all informant handling by their predecessor force as ‘unlawful’, given the legal claims that would be expected to arise.”

The interpretation of intent in terms of Conflict- related collusion is contested, as both Daniel Holder and The Model Bill Team concur. Collusion within the context of the Draft Bill must ensure that intent is interpreted broadly in accordance with both the finding of the Smithwick Tribunal as applied to the OPONI Statement on Loughinisland:

“Smithwick stated that whilst collusion generally meant an action “it should also be considered in terms of an omission or failure to act” and included examination as to “whether anybody deliberately ignored a matter or turned a blind eye to it or have pretended ignorance or unawareness of something one ought morally, legally or officially to oppose”. In finding collusion the Loughinisland report itself goes on to conclude, in relation to protecting informants, both the wilful acts and the ‘passive turning of a blind eye’ it had identified met the Smithwick definition.”<sup>22</sup>

Further, the process of certification of cases by the Chief Constable is not acceptable. ‘Substantially complete’ is an indeterminate criteria to enable the Chief Constable to exercise judgment. This could mean an HET RSR completed but not signed off for quality audit purposes, an HET RSR which was in draft form, an HET RSR where it is linked to another Review which has been completed. Whilst the HIU Director would have a final decision in the matter this would of course be dependent on material being sent to him by the Chief Constable.

There must be clarification as to whether the list of certified HET cases the PSNI would provide to the HIU would include information on whether the investigations were commenced. Clarification should be given on whether families can still challenge PSNI HET RSRs with which they are dissatisfied.

In any event, the Director of the HIU is constrained by being limited to directing an investigating where s/he reasonably believes there are investigative steps that could be taken leading to identification or prosecution. This presumes that there are investigative steps that could be taken, not that an investigation could take place in any event where there has been a death whether there has been a prior investigation or not.

Finally, regarding the proposed transitional provisions, if PSNI or OPONI continue the investigation (and we strongly recommend that PSNI involvement in investigations ceases – unless by way of direction of another constabulary, as in the case of the current Operation Kenova), there must be a guarantee of sufficient resources being made available proportionate to the budget of contemporary investigations.<sup>23</sup>

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<sup>22</sup> ibid

<sup>23</sup> We note also that Operation Kenova, led by Chief Constable Jon Boutcher of Bedfordshire Police, has also stipulated that its investigations team ‘will not include personnel who are serving in or have previously served in the Royal Ulster Constabulary, Police Service of Northern Ireland, Ministry of Defence, or Security Services.’

Clarification should be provided as to whether the 49 cases of RUC shootings that have not been re-examined by the HET or Ombudsman remain on their list and whether they fall within the HIU Remit. If not, amendment should be made to the draft Bill to include them.

### **7.3 Operation control of investigations by the Director**

Given the constraints on the Director to determine the extent to which an investigation would be required (and whether this will include all incidents which must have resulted in death as opposed to injury)<sup>24</sup> there is an immediate limitation in the HIU being able to discharge the procedural obligation under Article 2 ECHR (and Article 3 of the injuries suffered by survivors were to be included) and the spirit and letter of the General Principles.

The 'safety-net' is an investigation for the purpose of obtaining information: but the criteria to be applied by the Director to such an investigation is not satisfied save in terms of prior investigations (whether completed or not?). Question 4 encapsulates our concern: it asks whether a Conflict-related death has taken place or whether investigation is needed. If a Conflict-related death has taken place then it should be investigated. This also infers that the Director will determine what is a Conflict-related death (or injury).

### **7.5 Duties of the HIU**

As we have noted human rights compliance demands that an investigation is conducted by a mechanism that is independent of the state and that this is linked to the maintenance of the confidence of the public – the people of Northern Ireland (and those affected by the Conflict in the Republic of Ireland and within the rest of the UK) – independence means being able to operate free from any constraint limitation or interference by an Executive authority of the state.

This immediately means that National Security will be an issue of conflict or contest between the HIU and the state. National Security has never been subject to statutory definition and therefore its interpretation is always subjective, and not constrained by temporal imitation.<sup>25</sup>

Nevertheless, KRW note that any application of a National Security consideration within the context of the out-workings of the Legacy of the Conflict and in the context of the General Principles (transparency) and with regard to human rights compliance standards must be viewed through the prism that as the past determines the present and the future in and for Northern Ireland.

National Security in terms of operational matters is historic and its application hard to justify save in terms of protecting the right to life which can be achieved through a variety of mechanisms.

National Security cannot be used as an excuse for the tolerance of impunity or the legitimization of secret justice.

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Operation Kenova, 'Investigation - Terms of Reference (TOR)' <https://www.opkenova.co.uk/investigation-terms-of-reference>

<sup>24</sup> Under section 3 of the 2006 Order

<sup>25</sup> See: <http://rightsni.org/2013/05/national-security/>

## 7.6 Operation of the HIU

Whereas we note the commitment to the independence of the HIU we have pointed to limitations in this regard. The exact form and content of a family report is not clarified and this is a concern given the investigatory constraints described previously.<sup>26</sup>

Of additional concern is the issue of National Security. The proposal is that the Director would seek an *agreement* with the relevant Secretary of State (we assume that given devolution of powers this would mean the SSNI but as National Security is not a devolved matter then this could be the SSMOD or Home Secretary, for example). In any event, a Secretary of State will make the final decision subject to appeal (7.7).

As National Security is not defined within statute, in the context of truth and reconciliation and the Conflict in Northern Ireland a preferable designation would be 'keeping people safe and secure' and compliance with the protection of life and the duty to prevent harm. This is as proposed by The Model Bill Group.<sup>27</sup>

There must be a sanction for non-compliance added to the HIU's powers to compel disclosure of records. Clarification should be given that the existing provisions would set aside all other obligations including those under the Official Secrets Act.

Appeals against decisions of a Secretary of State taken in Northern Ireland must be expedited and effectively resourced. We would expect that if this proposal becomes part of statute then existing requirements of the Secretary of State conducting a PII exercise would take place before an application for a section 6 CMP and that should a CMP be granted then it would be kept under review and justification pursuant to section 6 (5) "The second condition is that it is in the interests of the fair and effective administration of justice in the proceedings to make a declaration."<sup>28</sup>

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<sup>26</sup> 12.7 "For every death that the HIU investigated it would produce a report on the death and provide it to family members. The family report must be as comprehensive as possible, having regard to the need for the report to be accessible to the family members" and "In sharing information, the HIU would be required to comply with its duties in respect of national security, risk to life or safety and prejudicing criminal or police disciplinary" (7.6). That would need to be made clear to the family.

As The Model Bill Team note:

"There is also a duty on the face of the draft Bill for the Family Reports to 'take into account the context' in which a previous PSNI/RUC or Ombudsman investigation took place, including the 'procedures followed in police investigations at the time of the investigation'. This appears to reflect calls by former RUC officers that past investigations are not judged by today's standards. Some former officers have also argued that reports should reflect the difficult circumstances in which policing operated in the past, with the HET, for example, providing a background narrative in its reports. Some families, however, were critical of this approach arguing that this embedded a partisan 'security force narrative' into the report. In the draft Bill proposals, it would be open to the HIU to interpret how it would contextualise past investigations."

<https://s3-eu-west-1.amazonaws.com/caj.org.uk/2018/08/30135633/qub-uu-caj-response-to-nio-consultation-aug-18.pdf> page 35

<sup>27</sup> <https://s3-eu-west-1.amazonaws.com/caj.org.uk/2018/08/30135633/qub-uu-caj-response-to-nio-consultation-aug-18.pdf> at xlv. If National Security is retained as a definition any source of threat to any individual must be explained and that it deployment refers to contemporary threats as opposed to historic threats.

KRW note that the introduction of the CMP undermines both Article 6 ECHR and Common Law principles and that Parliamentary intent (*Pepper v Hart*) was that there use would be *exceptional*.<sup>29</sup> A high proportion of section 6 applications are now made in relation to the Legacy of the Conflict in Northern Ireland undermining the original intent of Parliament of the exceptional and restricted use of this process in preference to PII.

KRW concurs with the position of Relatives for Justice regarding National Security and the Legacy and appeals:

“In the legislation it is not the case that families will have an automatic right to appeal. Families who will find themselves in such circumstances must first go through all the pre-stages of launching an appeal from trying to fund the case, which can be costly, to also then having to demonstrate unreasonable grounds by the Secretary of State for withholding the information and even then, if leave is granted to take a challenge, the process of adjudication will be conducted under the Justice and Security Act (JSA) and under closed material proceedings (CMP) with access only by special advocate lawyers approved by the UK. The reality is that lawyers who did/do represent families, or who tend to represent families, are by virtue of their endeavours excluded from the UK governments list of lawyers suitable for seeing such sensitive material.

*Another point on the appeals procedure is that the court cannot quash the secretary of state’s decision – it is a veto.* If the judge finds in favour of the HIU director/family, the matter goes back to the Secretary of State to make a new decision. Families have 28 days to appeal the Secretary of State for withholding information about the killing of their relative yet the Secretary of State would have 60 days should they be asked to reconsider by a court that found withholding information unreasonable; this noting that any such judicial decision is not enforceable.

*We think the real purpose of the legislation is to get secret courts centralized into legacy.*

Therefore whilst the draft legislation does not overtly contain a statute of limitations (amnesty) for state forces the smothering blanket of ‘national security’ however does act as a de-facto form of extending amnesty/impunity not only to state forces but also their agents within non-state groupings to the conflict.

There is a concern that the ‘national security’ veto, described by Irish minister Charlie Flanagan, who helped negotiate the agreement that includes the HIU, as a ‘smothering blanket to conceal the sins of the UK’, will cover not only the actions of UK soldiers who killed citizens and intelligence agencies involved in killings through collusion, but also those very agents within illegal paramilitaries working for them.”<sup>30</sup>

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<sup>29</sup> The Joint Committee on Human Rights found in 2010 that the use of CMP, notwithstanding the contributions that Special Advocates may make, “is not capable of ensuring the substantial measure of procedural justice that is required”, comments which were judicially endorsed both in *Al Rawi* and in *Tariq*. (See *Al Rawi v Security Service* [2011] UKSC 34, at para 96 (Lord Kerr): “At the moment with PII, the state faces what might be described as a healthy dilemma. It will want to produce as much material as it can in order to defend the claim and therefore will not be too quick to have resort to PII. Under the closed material procedure, all the material goes before the judge and a claim that all of it involves national security or some other vital public interest will be very tempting to make.” )

<sup>30</sup> Relatives for Justice <https://relativesforjustice.com/consultation-on-dealing-with-the-past-launched-initial-thoughts/> (11<sup>th</sup> May 2018).

KRW also agrees with the Model Bill Team that:<sup>31</sup>

“If the HIU is placed a suitably independent footing and given the necessary resources, powers and clarity of mandate; staffed by the right people, who are appointed in line with clear and transparent criteria; protected from political interference; the net result would be a significant advance on the prevailing fragmentary, under-resourced, and piecemeal approach to the past” (vi)

### **12.3 Investigatory function**

The expectation is that the HIU in undertaking the functions of the PSNI and OPONI would investigate both criminal and non-criminal misconduct and that these functions would be operationally independent from one another. It is important that these functions are both operationally independent and structurally independent (horizontally). Structural independence in terms of the discharge of the Article 2 obligations was one of the principal faults in the operation of the HET.

KRW welcome the commitment that the HIU would publish a statement setting out the manner in which it would carry out its investigatory function including how its investigations would comply with Article 2 – which would again stress that this obligation is to both the Human Rights 1998 and the ECHR and other human rights standards.

### **12.6 Governance and oversight of the HIU**

Similarly, there is a commitment that at least one unit of the HIU would not include any officers who have, or could be perceived to have a work-related conflict of interest in respect of any HIU investigation. This would avoid replicating the fault of the PSNI HET in this respect and maintain the integrity of independence. This core commitment must be applied to the all staff including those analysts and ‘gate-keepers’ of intelligence access including sifting/filtering/redaction. Given our concerns regarding both the definition of National Security and the implicit interpretation of collusion, any recruitment of former members of the British Security Services including the RUC despite experience in Northern Ireland, must be resisted.

Clause 3 (5-7) of the draft Bill not only departs from this approach but by contrast would provide a statutory duty with the purpose or effect of compelling the HIU to employ significant numbers of former RUC officers. This is framed as a duty to ensure a balance of HIU officers who have previous Northern Ireland policing investigative experience with those who have such experience elsewhere - the draft Bill links this duty to the SHA principle that the approach to dealing with the past be ‘balanced, proportionate, transparent, fair and equitable’. KRW consider this proposal disingenuous at least.

Schedule 15, Clause 11 of the draft Bill, which deals with the oversight of the work of the HIU, the Northern Ireland Policing Board would have the power to establish an Inquiry on any matter disclosed in a HIU report due to the gravity of matter or exceptional circumstances. However, in the draft Bill, Schedule 15, Clause 11(3), the Secretary of State may overrule the Policing Board if he/she determines that an inquiry should not be held in the interests of National Security. The ability of the Policing Board to establish an inquiry on matters of gravity revealed or exceptional matters revealed in a HIU report should not be capable of being over-ruled by the Secretary of State based on National Security.

This clause must be deleted. **ENDS**

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<sup>31</sup> <https://s3-eu-west-1.amazonaws.com/caj.org.uk/2018/08/30135633/qub-uu-caj-response-to-nio-consultation-aug-18.pdf> KRW strongly recommend that reference should be made to the work of the Model Bill Team.

## **Appendix**

### **SUBMISSION FROM COLM CAMERON**

**3<sup>rd</sup> September 2018**

**(SUBMITTED AS AN APPENDIX TO THE SUBMISSION OF LRW LAW LLP)**

**NORTHERN IRELAND OFFICE CONSULTATION:**

**“ADDRESSING THE LEGACY OF NORTHERN IRELAND’S PAST”**

#### **Introduction**

I, Colm Cameron, wish to be part of the submission by KRW LAW LLP to the Northern Ireland Office Consultation “Addressing the Legacy of Northern Ireland’s Past” concerning my family’s experiences through the flawed PSNI HET Review process concerning the Review of my father’s murder on 26<sup>th</sup> October 1993. I have had to take the unnecessary steps to challenge, by way of Judicial Review, the failure of the PSNI Legacy Investigation Branch (LIB) to complete the PSNI HET Review process concerning the murder of my father James Cameron at the Kennedy Way, Belfast on 26<sup>th</sup> October 1993.

One other, Mark Rogers was also murdered in this incident and several others were seriously injured. There appears to be no consideration within the NIO proposals for a mechanism to investigate an incident which lead to injury as opposed to death and therefore survivors of Conflict related violence are excluded from the remit of the HIU mechanism save as collateral to a primary investigation of death. This is indicative of the attitude to survivors of the Conflict since the Belfast/Good Friday Peace Agreement 1998 and is an indictment of the NIO proposals.

My father James Cameron worked for the Belfast City Council at the Cleansing Depot on Kennedy Way in Belfast. He had been employed as a road sweeper for the Belfast City Council for a number of years.

James Cameron is Entry 3430 in *Lost Lives* page 1334

Mark Rodgers is Entry 3431 of *Lost Lives* page 1334

#### **The morning of 26<sup>th</sup> October 1993**

On the morning of Tuesday 26<sup>th</sup>, October 1993 workmen were arriving for their work at the Belfast City Council depot on Kennedy Way.

One of the first to arrive at approximately 6.45 a.m. that morning was my father, James Cameron. He was 54 year old at the time.

My father arrived at this time every morning as he opened the Depot yard and admitted other work colleagues as they arrived for work on foot or by car. Other employees arrived at different intervals.

At approximately 7.05 a.m. each morning the skip lorry would arrive to empty the rubbish skips which were located to the right of the yard. The man who drove the skip lorry was called ‘Billy’. Other employees remembered that he never spoke to anyone or acknowledged anyone and would just empty the skips and leave. However, on this particular morning he did not turn up.

It was alleged that this individual had made arrangements and was provided with a set of keys and had entered the yard at approximately 3.30 a.m. rather than turn up at his usual time of 7.05 a.m. on the morning of the shooting. A number of residents of Andersonstown Park opposite the depot were awoken by the noise of the skips being emptied and one resident, Claire Shields, witnessed this man arriving at approximately 3.30 a.m. and emptying the skips. Claire Shields is now a resident of Fruithill Nursing Home, 20 Fruithill Park Belfast.

All but one of the employees at the Kennedy Way Depot had arrived for work and were all clocked in for 7.30 a.m. The usual practice was that the men would have been allocated their various tasks and informed about what area they would be working that day. However, on that particular morning there was a delay in delegating their work. The men were told to wait in the yard as senior managers of the Belfast City Council were on their way to the Kennedy Way Depot to speak to them.

The morning of Tuesday 26<sup>th</sup> October 1993 was significant the first funeral of one the Shankill Road Bombing victims was due to take place that morning. On the previous Saturday 23<sup>rd</sup> October 1993 an IRA bomb had exploded prematurely at Frizzell's fish shop on the Shankill Road killing ten people, including one of the bombers, and injuring approximately 57 others. This bomb was targeted at the UDA/UFF who had an office on the first floor of the building. As result of this atrocity there was a great deal of fear in Nationalist areas that Loyalist paramilitaries would strike back and target Nationalists.

The fear in Nationalist communities was therefore palpable and people can remember that there was a 'bad atmosphere' with many people being extra careful and conscious of anything strange or different in their areas. The first reprisal was within hours of the bomb on the Shankill Road.

Many of the employees based at the Kennedy Way Depot noticed the absence of the usual 'ring of steel', which was the daily police and military checkpoints in West Belfast the men encountered as they made their way to work. The usual checkpoints were absent and the usual patrol were also noticeably non-existent.

Raymond Mullan can recall that morning vividly and said that there were obvious signs that something was going to happen. His route to his place of work was up Kennedy Way from the lower end where the security gates were located. There was always an army checkpoint at the upper end of lower Kennedy Way where DC Business Park is located. However, on this morning there was no checkpoint at that location.

One of the last to arrive at the Kennedy Way Depot was Vincent Murdock. He was late for work and his wife had given him a lift from their home in the nearby Coolnasilla Park. As Vincent Murdock approach the gate he noticed my father standing just inside.

His comment to my father was that he should not be standing so close to the gate or he would be an easy target to which my father said he would rather see them coming and be able to getaway. Shortly after Vincent Murdock arrived two other employees arrived by car, Peter Quinn and Fergal Keenan. My father opened the gate for them. He then closed the gate before walking across the yard.

### **The Shooting**

The shooting began shortly after this between 7.30 a.m. and 7.35 a.m. when two masked gunmen entered the Depot on Kennedy Way, and opened fire with two automatic weapons, one of which was a Czech manufactured VZ58 assault rifle (Gunman B) and the other was described as being an RUC issue Sten gun (Gunman A). The gunmen were alleged to have been wearing Belfast City Council (BCC) yellow florescent vests and would therefore not have raised any suspicions as they approached the gate.

Raymond Mullan was standing with colleagues as they always did outside the canteen and office building. Raymond Mullan saw the gunmen enter through the gates and as they were wearing the BCC yellow vests was not concerned until he saw one of them raise his gun and the shooting started. He said that the gunmen knew everything about the yard and the daily routine – where they congregated on arrival etc.

Some of the men were standing outside the canteen building as they usually did, however on that morning the street sweeper lorry had parked there and the men were stood behind it. The gunmen's knowledge of the yard and the men's routines was possibly from a scouting or dry run by Wendy Ann Davies and a male driver from the previous day. A number of men in the yard can recall that a Vauxhall

Astra had driven into the yard and a woman fitting the description of Wendy Ann Davies got out and put a bag of rubbish into one of the skips. The woman took a few minutes to look around the yard before getting back into the car.

Robert Cooke had just driven in to the yard at approximately 7.25 a.m. and was standing speaking to two of his colleagues, one of which was my father and the other was James Meighan. Robert Cooke glanced over his shoulder and saw a white car pull up to the gate. He then turned to go towards the office to get a key for the work vehicle when he saw the two gunmen opening the gate and walking one in front of the other into the yard. He described one as being tall and the other with the taller gunman carrying an assault rifle against his chest as if in a military procession.

They were dressed all in black and wearing black ski masks and walked towards him and his colleagues, my father was standing with his back to the gunmen.

The street sweeper lorry that had been parked in front of the canteen window would normally have been parked at the other end of the yard. The gunmen opened fire and the first to be shot was my father as he was caught out in the open and had his back to the gate when the gunmen arrived. Robert Cooke and James Meighan ran to the cover of the street sweeper lorry, Robert Cooke ran behind the lorry and James Meighan ran around the front of the lorry.

The other men heard two loud bangs or cracks and thought that someone had lit firework bangers. At first Gerard Joyce and the others thought it was Gerard McCrory as he would have been known to pull a prank and light fireworks around Halloween. It wasn't until they saw one of the tyres of the lorry being blown out and then heard someone shouting 'Fenian Bastards' and 'Take that you Fenian bastards' that they realised it was an actual attack.

As the firing continued and bullets were flying all around them and striking the lorry the men; Seamus O'Rourke, James Meighan, Gerard Joyce, Arthur 'Arder' Armstrong and Daniel McCluskey and Robert Cooke attempted to hide under the lorry.

Mark Rodgers who had been sitting on the bench in front of the office window attempted to run for the cover of the lorry. The bullet that killed Mark Rodgers had ricocheted off the kerb before striking him. It is believed that he then crawled to the lorry as he was found under the lorry and his face had scratch marks which may have been the result of him trying to take cover under the industrial street brushes attached to the lorry.

Martin Elliott was standing outside the front door of the office / canteen building. When the shooting started he froze. A bullet hit him in the arm. His twin brother Peter Elliott, who had been or went inside the building went out and grabbed his brother pulling him inside. He had saved his brother while the shooting continued, however Martin Elliott has subsequently died of renal failure in 2013 due to what Peter Elliott said was an alcohol addiction which developed following the attack on the yard. He is considered to be the third victim of the gun attack.

Arthur 'Arder' Armstrong ran for the office / canteen door and tripped falling inside. Others had been inside and some were pulled inside at which point the door was closed. This saved a large number of men.

Gerard Joyce, while taking cover behind the lorry saw Gunman A, approaching from the back of the lorry and shouted to the others that one of them was coming and to run. Some of the men ran towards the skip bay. While they ran from the cover of the lorry towards the skips Gunman B, who was standing in the middle of the yard opened fire on the men.

Robert Cooke remained behind the lorry as the Gunman B continued shooting. He could see the bullets passing through the back of the lorry and striking the wall of the canteen building. Suddenly he felt a bullet strike him in the right buttock with the bullet passing through his lower back and exiting through his left buttock. He fell to ground and as he did so he could see Mark Rodgers fall also. The two men

fell facing each other. Mark Rodgers said he was hit and Robert Cooke put his hand to his back and felt the blood saying to Mark Rodgers 'I am hit too'.

Robert Cooke could see the feet of Gunman B under the lorry and he lifted his head slightly to see the feet of Gunman A standing behind him. The two gunmen engaged in a brief conversation – Gunman A – “I have two down here – Gunman B – “I have one down here”

Gunman B had continued shooting at the other men as they ran from the cover of the lorry and Gerard Joyce was hit in the arm as he ran. There were three skips positioned along the wall. Gerard Joyce was between skips 1 and 2. James Meighan was hit in the leg as he got to the skips and fell beside skip 1.

Gunman B followed the men and was firing continuously. Seamus O'Rourke was behind skip 2. Gerard Joyce said that he had planned to jump into one of the skips, but felt bullets hit him as he approached the skip and was preparing to jump. He said it felt like he had been lifted by a gush of wind and flew through the air. He crawled towards the back of the skip and was hit again by bullets.

The gunman fired continuously with bullets cutting through the skips and striking the walls at the back. Gerard Joyce described this as sparks or explosions against the walls with bullets passing through the metal of the skips.

Gerard Joyce was shot several times. The surgeon who operated on him at the Royal hospital could only describe to him that he had multiple wounds as they could not determine exactly how many times he was shot. He was shot in both legs shattering both his tibia and fibula, an artery in one of his legs was severed. He was also shot in the abdomen and left arm.

Gunman B reloaded his weapon – he had two magazines taped together. Robert Cooke who had been shot and was lying pretending to be dead just below the canteen window, Gunman A put his foot on his back and fired his weapon, but it jammed. He then stood on top of Robert Cooke to peer into the canteen.

Gunman A cleared his weapon and fired another burst of fire into the canteen. A bullet was later found in Robert Cooke's pocket and it is believed that it was from Gunman A clearing his gun. The men who had made it into the canteen had taken cover in front of a row of cupboards and kitchen counter just under the window.

The bullets were striking the walls at the other side of the building. Gunman A could not see any of the men and then tried the door of the office/canteen building before walking off.

### **The RUC Investigation**

One of the RUC investigating officers, Detective McClatchy informed our family that the items used by the murder gang including overalls belonging to the Belfast City Council had all been found at the home of Wendy Ann Davies, Moltke Street in the Donegall Road area following the murder.

Another RUC detective, Kevin Sheehy told our family that they knew who was responsible for the murder of my father and Mark Rodgers but that they would not charge them as they were under investigation as part of a bigger case, however their arrests as part of that bigger case did not materialise.

According to both the PSNI HET and OPONI, the only items in evidence in 2008 was a balaclava and a glove or gloves. However, in a subsequent meeting with the HET we were informed that the balaclava had disappeared and the other items were no longer in storage. The HET also said that the weapons had been used in subsequent murders.

I have been informed by my solicitor, Kevin Winters, that the murder weapons used to murder my father were a .45 sub machine gun and a VZ58 7.62mm selective fire rifle.

The .45 sub machine gun had been used in one murder before my father's murder and had been used in two separate murders after my father's murder.

The VZ58 7.62mm selective fire rifle had been used in three murders and three attempted murders in 1993.

### **The PSNI HET Review and LIB Investigation Processes**

I contacted the PSNI HET in 2012 and sought to have the circumstances surrounding my father's murder investigated. The HET was one of the main organs of the state that was established to discharge the British Government's duties under Article 2 ECHR.

I requested that my father's case be taken out of chronological order due to the ill-health of my aunt, my father's sister. My aunt has since passed away *and we have still not* received the PSNI HET RSR. Six months after I had made contact with the PSNI HET they contacted members of Mark Rodgers family to inform them that the circumstances concerning the murders of my father and Mark Rodgers had been taken out of chronological order due to the failing health of my aunt. The HET investigating officers were Nigel Hardiker and Brian Roberts. Nigel Hardiker subsequently left the HET in July 2013.

The PSNI HET had been in contact with me and my family to inform us that they were conducting a review of the case. This began in 2012. Employees of the PSNI HET informed us that during their Review of the investigation material they had established that there was:

- Obvious collusion
- Weapons were used in other murders after and possibly before the Kennedy Way incident
- Police presence - Gunmen passed through RUC checkpoint in getaway car – HET said the getaway car was the only car allowed through the checkpoint

The HET personnel have subsequently denied making these ascertains to my family and the family of Mark Rodgers when interview by PSNI officers. One reason for this is that the HET personnel are liable to prosecution for breach of the Official Secrets Act and any admission would attract criminal charges.

I and other family members were given sight of material relating to these comments during a visit from the HET investigators and I can confirm that the HET had established collusion, police presence and weapons links to other murders and attempted murders.

The HET informed us that the only items in evidence in 2008 was a balaclava and a glove or gloves.

However, in a subsequent meeting with the HET, we were told that the balaclava had disappeared and the guns were no longer in storage. The HET also said that the weapons had been used in subsequent murders. We have since learned that the murder weapons had been used in murders and attempted murders before and after they were used in the murder of my father and Mark Rodgers on 26<sup>th</sup> October 1993.

We have also since learned that a threat was received concerning the Kennedy Way Depot but there was no forthcoming warning to my father or his work colleagues. Despite having received information of threat the RUC failed to warn the employees at the Kennedy Way Depot.

We were informed by the HET on 23<sup>rd</sup> July 2013 that a draft report had been completed and would be forwarded to our family once editing and checks had been completed. We were subsequently contacted by the HET and informed that the HET had been suspended and they were no longer in a position to deliver the report.

We as a family continue to pursue the HET for the HET RSR without result. Due to this impasse we were forced to instruct KRW LAW LLP in December 2014 when it then became apparent that the HET was being abolished and our family became even further frustrated with the process.

I have since, through KRW LAW LLP, made contact with the PSNI LIB, which was established to review and complete the work of the HET in an effort to get the Review Summary Report concerning my father's murder.

KRW LAW LLP informed me that a copy of the HET RSR concerning the murder of Mark Rodgers was provided in March 2016. Since that date KRW LAW LLP have sought to have the HET RSR concerning the murder of my father completed and provided to me. KRW LAW LLP have attempted, through correspondence with the PSNI Legacy Investigation Branch to resolve this matter in a positive and constructive manner, which has proved to be futile.

Given this inordinate delay and the frustration and distress that has come with it, I instructed KRW LAW LLP to lodge a judicial review challenge as there were a number of meritorious grounds of challenge readily available to me:

- Irrationality – a delay of more than three years in this matter is clearly irrational
- Legitimate expectation – In July 2013, HET advised that the RSR concerning my father's murder was near completion and was in draft format. This clearly demonstrates that I was entitled to rely upon such representations and therefore have a legitimate expectation. Further, given that there were established processes in place that allowed for the release of such reports, there also exists a procedural expectation; and,
- Breach of Article 2 ECHR – The reference to father's death in the HET RSR concerning the murder of Mark Rodgers has revived the government's Article 2 obligation in this case. The LIB's failure to release the HET RSR concerning the murder of my father has breached Article 2 by further delaying the government's procedural obligation to discharge it.
- The Judicial Review is listed for hearing on 26<sup>th</sup> November 2018 and if my challenge is successful I fear that any investigation into my father's murder will not be completed for another number of years. In the absence of an investigative mechanism that will be properly resourced, rigorously independent and sufficiently empowered to provide an unconstrained account of all aspects of the incident resulting in the murder of my father our family will never be aware of the true circumstances surrounding his murder and the murder of colleague and injury to others.

### **My Concerns relating to Draft Northern Ireland (Stormont House Agreement) Bill**

The sensitivities surrounding the murder of my father and Mark Rodgers as in many cases of Loyalist violence have always given rise to the allegations of connivance of the RUC and other agencies with the loyalist perpetrators. The sensitivities encompass direct and indirect participation with the perpetrators in the actual planning and execution of the offence and also the subsequent investigations.

The draft Bill concerning to the independence of the HIU under section 7 Exercise of Functions by the HIU provides for the efficiency and independence of the HIU to carry out investigations. The section provides in subsection (1) that the HIU must exercise its functions in a manner that is (a) consistent with the general principles; (b) fair and impartial; (c) proportionate; (d) effective and efficient; and (e) calculated to secure (i) the independence of the HIU, and (ii) the confidence of the public in the HIU.

However, in the subsequent subsection (2) the HIU is restricted in carrying out its functions which might (a) prejudice the national security interests of the UK. This subsection has a wide interpretation and will restrict any conclusion and/or findings of the HIU at the reporting stage in relation to knowledge of any threat prior to the incident and knowledge after the event where informants have

provided specific detail and identities of perpetrators. This view is in consideration of the recently released report of Patrick Walker in March 1980. The policy employed by the RUC in the protection of agent of the RUC Special Branch and also the agents of other agencies including the MOD and MI5 was adopted in March 1980. The report of Patrick Walker; 'Report on the interchange of intelligence between Special Branch (SB) and CID and the RUC units involved, including Crime Branch C1 (1)'.

The 'Walker Report' recommended that any informers/agents recruited by RUC CID, the department responsible for crime detection, should whenever possible be passed to Special Branch, the intelligence gathering section of the RUC, reporting to the Home Office.

The Walter Report states; 'All proposals to effect arrests, other than those arising direction out of an incident, must be cleared with SB to ensure that no agents, either RUC or army, are involved. [...] If an individual has made an admission and the CID officer considers he may have intelligence of value to give, SB should be allowed to question the individual on more general matters. It is important that CID should not proceed immediately to a charge whenever an admission has been obtained.'

Following the implementation of the 'Walker Report' individuals who were under the charge of RUC SB or other agencies as agents became known to RUC CID officers as 'protected species'. The PSNI is the organisation that retains legal liabilities of the RUC who were responsible for the handling of agents and also the protection of agents from arrest and detection that were handled by other agencies.

The foregoing section read in conjunction with Schedule 3 (7) (4) of the Draft Northern Ireland (Stormont House Agreement) Bill also raises concerns in respect of the definition of collusion and also the whether the threshold of collusion had been reached, which rests with the Chief Constable of the PSNI.

Also, Schedule 10 of the draft document prohibits the disclosure of sensitive information if the Secretary of State considers it to be prejudicial to the national security interests of the UK. This effectively limits the amount of information that can be passed to the families of victims and does not therefore secure any confidence in the processes proposed. One of the significant factors in the murder of my father was that the individuals involved in the planning and implementation of the attack on my father and his colleagues were aware of specific detail concerning the absence of security forces personnel in and around areas leading to and from the Kennedy Way area on the morning of 26<sup>th</sup> October 1993.

The PSNI HET did not draw any opinions or conclusions to the knowledge of the assailants of the absence of security forces on any of the several routes from their original location to the scene of the murder.

In my opinion, I and my family have been failed by the previous investigative mechanism established to address the unsolved murder of the conflict. The murder of my father was not carried out by Loyalist paramilitaries acting alone rather that they were acting in unison with members of the British Security Forces and therefore the role of the RUC in the events prior to the incident and in the investigation that followed was consequently tainted and incapable of preventing the attack or bringing the murderers to justice. This position is further compounded by the provisions of proposed legislation which give the Chief Constable of the PSNI and the Secretary of State for Northern Ireland key roles in the HIU process.

The important elements to ensure the maximising of the independence and effectiveness of the HIU will be to ensure that it is properly resourced, rigorously independent and sufficiently empowered to access all relevant documents, both sensitive and non-sensitive intelligence relating to each case.

**ENDS: 3<sup>rd</sup> September 2018**

## **SUBMISSION FROM GERARD JOYCE**

**3<sup>rd</sup> September 2018**

**(SUBMITTED AS AN APPENDIX TO THE SUBMISSION OF LRW LAW LLP)**

**NORTHERN IRELAND OFFICE CONSULTATION:**

**“ADDRESSING THE LEGACY OF NORTHERN IRELAND’S PAST”**

### **Introduction**

I, Gerard Joyce, wish to be part of the submission by KRW LAW LLP, to the Northern Ireland Office Legacy Consultation concerning my family’s experiences through the flawed PSNI HET process concerning the review of the shooting incident at my place of employment at the Belfast City Council Cleansing Depot on 26<sup>th</sup> October 1993. I had been interviewed by the RUC during the initial investigation into this incident in which two of my colleagues were murdered and five injured including myself. I was not contacted by the Historical Enquires Team during their review of the circumstances surrounding the murder and attempted murder of me and my colleagues.

### **The morning of 26<sup>th</sup> October 1993**

On the morning of Tuesday 26<sup>th</sup> October 1993 I left my home at approximately 6.45 a.m. and had travelled by taxi to Andersonstown Park arriving at my place of work at the usual time of approximately 7.30 a.m. Other workmen were arriving for their work at the Belfast City Council depot on Kennedy Way, Belfast. One of the first to arrive at approximately 6.45 a.m. was, James Cameron.

He arrived at that time every morning as he opened the yard and admitted other work colleagues as they arrived for work on foot or by car.

All but one of the employees at the Kennedy Way Depot had arrived for work and were all clocked in for 7.30 a.m. The usual practice was that the men would have been allocated their various tasks and informed about what area they would be working that day. However, on that particular morning there was a delay in delegating their work. The men were told to wait in the yard as senior managers of the Belfast City Council were en route to the Kennedy Way Depot to speak to them.

The morning of Tuesday 26<sup>th</sup> October 1993 was significant as due to be held later that morning was the first funeral of one of the Shankill Bombing victims. On the previous Saturday 23<sup>rd</sup> October 1993 an IRA bomb had exploded prematurely at Frizzell’s fish shop on the Shankill Road killing ten people, including one of the bombers and injuring approximately 57 others. This bomb was targeted at the UDA/UFF who had an office on the first floor of the building. As result of this atrocity there was a great deal of fear in Nationalist areas that loyalist paramilitaries would strike back and target Nationalists.

The fear in Nationalist communities was therefore palpable and people can remember that there was a ‘bad atmosphere’ with many people being extra careful and conscious of anything strange or different in their areas. The first reprisal was within hours of the bomb on the Shankill Road.

Many of the employees based at the Kennedy Way Depot noticed the absence of the usual ‘ring of steel’, which was the daily police and military checkpoints in West Belfast the men encountered as they made their way to work. The usual checkpoints were absent and the usual patrol were also noticeably non-existent.

Raymond Mullan can recall that morning vividly and said that there were obvious signs that something was going to happen. His route to his place of work was up Kennedy Way from the lower end where the security gates were located. There was always an army checkpoint at the upper end of lower Kennedy Way where DC Business Park is located. However, on this morning there was no checkpoint at that location.

One of the last to arrive at the Kennedy Way depot was Vincent Murdock. He was late for work and his wife had given him a lift from their home in the nearby Coolnasilla Park.

### **The Shooting**

The shooting began shortly after this between 7.30 a.m. and 7.35 a.m. when two masked gunmen entered the Depot on Kennedy Way, and opened fire with two automatic weapons, one of which was a Czech manufactured VZ58 assault rifle (Gunman B) and the other was described as being an RUC issue Sten gun (Gunman A). The gunmen were alleged to have been wearing Belfast City Council (BCC) yellow florescent vests and would therefore not have raised any suspicions as they approached the gate.

Raymond Mullan was standing with colleagues as they always did outside the canteen and office building. Raymond Mullan saw the gunmen enter through the gates and as they were wearing the BCC yellow vests was not concerned until he saw one of them raise his gun and the shooting started. He said that the gunmen knew everything about the yard and the daily routine – where they congregated on arrival etc.

Some of the men were standing outside the canteen building as they usually did, however on that morning the street sweeper lorry had parked there and the men were stood behind it. The gunmen's knowledge of the yard and the men's routines was possibly from a scouting or dry run by Wendy Ann Davies and a male driver from the previous day. A number of men in the yard can recall that a Vauxhall Astra had driven into the yard and a woman fitting the description of Wendy Ann Davies got out and put a bag of rubbish into one of the skips. The woman took a few minutes to look around the yard before getting back into the car.

Robert Cooke had just driven in to the yard at approximately 7.25 a.m. and was standing speaking to two of his colleagues. When Gerard Joyce entered the James Meighan. Robert Cooke glanced over his shoulder and saw a white car pull up to the gate. He then turned to go towards the office to get a key for the work vehicle when he saw the two gunmen opening the gate and walking one in front of the other into the yard. He described one as being tall and the other with the taller Gunman carrying an assault rifle against his chest as if in a military procession.

They were dressed all in black and wearing black ski masks and walked towards him and his colleagues, James Cameron was standing with his back to the gunmen.

The street sweeper lorry that had been parked in front of the canteen window would normally have been parked at the other end of the yard. The gunmen opened fire and the first person to be shot was James Cameron as he was caught out in the open and had his back to the gate when the gunmen arrived. Robert Cooke and James Meighan ran to the cover of the street sweeper lorry, Robert Cooke ran behind the lorry and James Meighan ran around the front of the lorry.

The other men heard two loud bangs or cracks and thought that someone had lit firework bangers. At first Gerard Joyce and the others thought it was Gerard McCrory as he would have been known to pull a prank and light fireworks around Halloween. It wasn't until they saw one of the tyres of the lorry being blown out and then heard someone shouting 'Fenian Bastards' and 'Take that you fenian bastards' that they realised it was an actual attack.

As the firing continued and bullets were flying all around them and striking the lorry the men; Seamus O'Rourke, James Meighan, Gerard Joyce, Arthur 'Arder' Armstrong and Daniel McCluskey and Robert Cooke attempted to hide under the lorry. Mark Rodgers who had been sitting on the bench in front of the office window attempted to run for the cover of the lorry. The bullet that killed Mark Rodgers had ricocheted off the kerb before striking him. It is believed that he then crawled to the lorry as he was found under the lorry and his face had scratch marks which may have been the result of him trying to take cover under the industrial street brushes attached to the lorry.

Martin Elliott was standing outside the front door of the office / canteen building. When the shooting started he froze. A bullet hit him in the arm. His twin brother Peter Elliott, who had been or went inside the building went out and grabbed his brother pulling him inside. He had saved his brother while the shooting continued, however Martin Elliott has subsequently died of renal failure in 2013 due to what Peter Elliott said was an alcohol addiction which developed following the attack on the yard. He is considered to be the third victim of the gun attack.

Arthur 'Arder' Armstrong ran for the office / canteen door and tripped falling inside. Others had been inside and some were pulled inside at which point the door was closed. This saved a large number of men.

Gerard Joyce, while taking cover behind the lorry saw Gunman A approaching from the back of the lorry and shouted to the others that one of them was coming and to run. Some of the men ran towards the skip bay. While they ran from the cover of the lorry towards the skips Gunman B, who was standing in the middle of the yard opened fire on the men.

Robert Cooke remained behind the lorry as the Gunman B continued shooting. He could see the bullets passing through the back of the lorry and striking the wall of the canteen building. Suddenly he felt a bullet strike him in the right buttock with the bullet passing through his lower back and exiting through his left buttock. He fell to ground and as he did so he could see Mark Rodgers fall also. The two men fell facing each other. Mark Rodgers said he was hit and Robert Cooke put his hand to his back and felt the blood saying to Mark Rodgers 'I am hit too'.

Robert Cooke could see the feet of Gunman B under the lorry and he lifted his head slightly to see the feet of Gunman A standing behind him. The two gunmen engaged in a brief conversation – Gunman A; I have two down here – Gunman B; I have one down here.

Gunman B had continued shooting at the other men as they ran from the cover of the lorry and Gerard Joyce was hit in the arm as he ran. There were three skips positioned along the wall. Gerard Joyce was between skip 1 and 2. James Meighan was hit in the leg as he got to the skips and fell beside skip 1.

Gunman B followed the men and was firing continuously. Seamus O'Rourke was behind skip 2. Gerard Joyce said that he had planned to jump into one of the skips, but felt bullets hit him as he approached the skip and was preparing to jump. He said it felt like he had been lifted by a gush of wind and flew through the air. He crawled towards the back of the skip and was hit again by bullets.

The gunman fired continuously with bullets cutting through the skips and striking the walls at the back. Gerard Joyce described this as sparks or explosions against the walls with bullets passing through the metal of the skips.

Gerard Joyce was shot several times. The surgeon who operated on him at the Royal hospital could only describe to him that he had multiple wounds as they could not determine exactly how many times he was shot. He was shot in both legs shattering both his tibia and fibula, an artery in one of his legs was severed. He was also shot in the abdomen and left arm.

Gunman B reloaded his weapon – he had two magazines taped together. Bob Cooke who had been shot and was lying pretending to be dead just below the canteen window, Gunman A put his foot on his back and fired his weapon, but it jammed. He then stood on top of Bob Cooke to peer into the canteen.

Gunman A cleared his weapon and fired another burst of fire into the canteen. A bullet was later found in Robert Cooke's pocket and it is believed that it was from Gunman A clearing his gun. The men who had made it into the canteen had taken cover in front of a row of cupboards and kitchen counter just under the window.

The bullets were striking the walls at the other side of the building. Gunman A could not see any of the men and then tried the door of the office / canteen building before walking off.

### **The RUC Investigation**

I have been informed by my solicitor, Kevin Winters, that the murder weapons used were a .45 sub machine gun and a VZ58 7.62mm selective fire rifle. The .45 sub machine gun had been used in one murder before and had been used in two separate murders after. The VZ58 7.62mm selective fire rifle had been used in three murders and three attempted murders in 1993.

### **The PSNI HET Review and LIB Investigation Process**

The PSNI HET was one of the main organs of the state that was established to discharge the British Government's duties under Article 2 ECHR. I was made aware by my solicitor, Kevin Winters, that the case in which I was injured was taken out of chronological order due to the ill health of a relative of one of the deceased. The HET did not contact me during the review process, which began in 2012. I have also been made aware that members of the HET informed the families of the deceased that during their review of the investigation material they had established that there was

- Obvious collusion;
- Weapons were used in other murders after and possibly before the Kennedy Way incident;
- Police presence - Gunmen passed through RUC checkpoint in getaway car – HET said the getaway car was the only car allowed through the checkpoint.

HET personnel have subsequently denied making these ascertains to my family and the family of Mark Rodgers when interview by PSNI officers. One reason for this is that the HET personnel are liable to prosecution for breach of the Official Secrets Act and any admission would attract criminal charges.

I and other family members were given sight of material relating to these comments during a visit from the HET investigators and I can confirm that the HET had established collusion, police presence and weapons links to other murders and attempted murders.

The HET informed us that the only items in evidence in 2008 was a balaclava and a glove or gloves. However, in a subsequent meeting with the HET the Cameron family were told that the balaclava had disappeared and the guns were no longer in storage. The HET also said that the weapons had been used in subsequent murders.

We have since learned that the murder weapons had been used in murders and attempted murders before and after they were used on 26<sup>th</sup> October 1993.

I have also since learned through KRW LAW LLP that a threat was received concerning the Kennedy Way Cleansing Depot but there was no forthcoming warning me or my work colleagues. Despite having received information of threat the RUC failed to warn the employees at the Kennedy Way Depot.

### **Concerns relating to Draft Northern Ireland (Stormont House Agreement) Bill**

The sensitivities surrounding the injury to me and the murder of James Cameron and Mark Rodgers as in many cases of loyalist violence have always given rise to the allegations of connivance of the RUC and other agencies with the loyalist perpetrators. The sensitivities encompass direct and indirect participation with the perpetrators in the actual planning and execution of the offence and also the subsequent investigations.

The draft Bill concerning to the independence of the HIU under section 7 Exercise of Functions by the HIU provides for the efficiency and independence of the HIU to carry out investigations. The section provides in subsection (1) that the HIU must exercise its functions in a manner that is (a) consistent

with the general principles; (b) fair and impartial; (c) proportionate; (d) effective and efficient; and (e) calculated to secure (i) the independence of the HIU, and (ii) the confidence of the public in the HIU.

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The policy employed by the RUC in the protection of agent of the RUC Special Branch (SB) and also the agents of other agencies including the MOD and MI5 was adopted in March 1980. The report of Patrick Walker; 'Report on the interchange of intelligence between SB and CID and the RUC units involved, including Crime Branch C1(1)'.

The 'Walker Report' recommended that any informers / agents recruited by CID, the department responsible for crime detection, should whenever possible be passed to SB, the intelligence gathering section of the RUC.

The Report states; 'All proposals to effect arrests, other than those arising direction out of an incident, must be cleared with Special Branch to ensure that no agents, either RUC or army, are involved. [...] If an individual has made an admission and the CID officer considers he may have intelligence of value to give, Special Branch should be allowed to question the individual on more general matters. It is important that CID should not proceed immediately to a charge whenever an admission has been obtained.' Following the implementation of the 'Walker Report' individuals who were under the charge of Special Branch or other agencies as agents became known to RUC CID officers as 'protected species'.

The PSNI is the organisation that retains legal liabilities of the RUC who were responsible for the handling of agents and also the protection of agents from arrest and detection that were handled by other agencies.

The foregoing section read in conjunction with Schedule 3 (7) (4) of the Draft Northern Ireland (Stormont House Agreement) Bill also raises concerns in respect of the definition of collusion and also the whether the threshold of collusion had been reached, which rests with the Chief Constable of the PSNI.

Also, Schedule 10 of the draft document prohibits the disclosure of sensitive information if the Secretary of State considers it to be prejudicial to the national security interests of the UK. This effectively limits the amount of information that can be passed to the families of victims and does not therefore

One of the significant factors in the shooting was that the individuals involved in the planning and implementation of the attack were aware of specific detail concerning the absence of security forces personnel in and around areas leading to and from the Kennedy Way area on the morning of 26<sup>th</sup> October 1993.

The HET did not draw any opinions or conclusions to the knowledge of the assailants or the absence of security forces on any of the several routes from their original location to the scene of the shooting.

The position as regards the Draft Northern Ireland (Stormont House Agreement) Bill and the proposed investigative mechanism, the Historical Investigations Unit is deficient of the necessary independence concerning cases where connivance between state agencies and loyalist terrorist groups. Therefore, the HIU is not independent from the PSNI as inheritors of the RUC.

Also the only provision where consideration is given to injured persons at section 19 of the Draft Bill, which relates to injured persons may request a copy of the 'family report'.

There is no consideration given to injured persons where no death has occurred.

In my personal opinion I was not considered as part of the HET process and the Draft Bill has also omitted to address the plight of injured person in unsolved loyalist terrorist cases. **ENDS: 3<sup>rd</sup> September 2018**