



# Relatives for Justice

Submission to Policing Board  
Working Group on the  
Historical Enquiries Team

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## **Relatives for Justice (RFJ)**

Relatives for Justice (RFJ) is a regionwide NGO providing support and advice services to individuals and families bereaved and injured during the conflict.

During the last financial year over 3,200 individuals received support. Provision includes therapeutic services, complementary therapies, vocational and non-vocational training, transgenerational programmes, advice services and legal and advocacy support.

With a long experience in archiving and recording experiences of conflict related trauma in 2012/13 Relatives for Justice worked with the families to produce reports on Clonoe, the Ormeau Road Bookies killings, the Gerard Lawlor community inquiry and the Loughinisland massacre.

These reports are an indication of the close partnership approach that Relatives for Justice employs in supporting families to record their experience, and correspondingly identify outstanding issues of truth and justice.

## **RFJ and the Historical Enquiries Team (HET)**

When the Historical Enquiries Team (HET) was first established Relatives for Justice and its members held a strong position that this was not a useful or compliant intervention.

It quite clearly was not Article 2 compliant as it was directed by the PSNI, and for victims of State killings, and killings where collusion was alleged and/or evidenced, this was a fundamental point of difficulty.

In submissions to the parties, governments and to the Eames Bradley Consultative Group on the Past Relatives for Justice maintained a position that a formal transitional justice mechanism was required to meet the concerns of those affected by conflict related killings. Indeed we argue that the commissioning of the Consultative Group on the Past and its recommendations for a legacy commission reflect the general acknowledgement that the HET was completely insufficient.

Whilst the State has legal obligations relating to investigating past violations it is clear that new policing cannot be asked to deal with the past given its central

relationship to the many harms caused and existing vested interests via key personnel from during the conflict that remain in significant positions of power within the PSNI. Herein is the very core of the HET problem.

This policy of total non-engagement by our organisation, mandated by our membership, lasted until 2011 when families requested that this shift to a policy of critical engagement.

From 2011 RFJ has worked with 75 families who have engaged with the Historical Enquiries Team. From the period of 2006 until 2011 RFJ provided back-up support to approximately 120 families but did not attend HET meetings or engage with the HET. RFJ have also been approached by a significant number of families who had engaged the HET on their own only approaching us once they received an unsatisfactory report.

### **Relatives for Justice and the HMIC**

Since its commission by the Policing Board RFJ has engaged with Her Majesty's Inspectorate of Policing to convey the experiences of the families who work with RFJ and the concerns that they have regarding the Historical Enquiries Team.

Four families met with the HMIC. While their experiences were unique and individual given the differing circumstances of the killings and the nature of the investigations, all families pointed to the same thematic failings, which are by and large reflected in the HMIC report.

All of these failings went beyond operational day-to-day failings, and highlighted fundamental structural deficiencies.

### **Relatives for Justice and the Policing Board**

#### **Families' Submission**

As members will be aware last Thursday 5<sup>th</sup> September families who were affected by HET investigations made a submission regarding their experiences and recommendations for the Policing Board.

This followed a month of families meeting together to share experiences and views following the HMIC report.

Individual families had different points of view and experiences however consensus was reached on the points below.

312 families were consulted as part of the submission presented last week.

- a. The publication of the report confirmed the worst fears that families had when it was established that there had been State interference
- b. That despite families' lack of confidence in the process having this confirmed by the HMIC left families feeling wounded and harmed
- c. Families feel a sense of fear that they are getting older and that they need resolution as they have lived with trauma and the lack of truth for too long
- d. That families have no faith whatsoever in the HET, that it is irreformable
- e. That families affected by direct State killings have no faith whatsoever in the PSNI investigating the killings of their loved ones
- f. That the PSNI Legacy Unit is an example of bad faith and bad practice and a threat to confidence in new policing
- g. That there exists regular interference within the PSNI by senior officers that hold vested interests in concealing the facts and preventing truth

The full submission is attached as Annex A

### **Relatives for Justice Submission**

Among the main statutory duties and responsibilities of the Policing Board is the duty

- to secure an effective and efficient local police service
- to consult widely with local people about the policing of their area
- to monitor everything the police do and how well they perform against the targets set by the Policing Board
- to make sure local people get best value from their local police
- to oversee complaints against senior officers
- to discipline senior officers

Key Requirements of Article 2 of the European Convention on Human Rights:

Independence

Effectiveness

Promptness

Transparency and Accountability.

The HMIC report examined these key areas and found failings in all aspects. For Relatives for Justice the compromising of principles of independence has remained at the heart of the gravest concerns regarding the HET. The HMIC report vindicates these concerns.

The requirement for independence of investigation and investigators applies especially to cases where the State is directly responsible for a killing. The illegal operation of the HET in this regard<sup>1</sup> is especially concerning and has drawn much of the comment and led to the suspension of all military cases.

As the Committee of Ministers considered the execution of the Article 2 judgement of 2001<sup>2</sup> the Chief Constable and the head of the Historical Enquiries Team gave evidence to the Committee<sup>3</sup>. A crucial part of this was the statement that the Secretariat considered the HET to be independent in its approach and that it provided “a useful model for bringing a “measure of resolution” to those affected in long-lasting conflicts”<sup>4</sup>. This consideration led to a closing by the Committee of this element of its examination of the judgment in 2009.

In this context it is completely disingenuous for any member of the PSNI or the HET to pretend that the HET had never been intended to be framed by Article 2 considerations.

It is of exceptional concern that these suspended cases now appear to “have been returned to Crimes Operations from Historical Enquiries Team (‘HET’) following the recent Her Majesty’s Inspectorate of Constabulary (‘HMIC’) report”<sup>5</sup>. As if this move would remedy the flawed investigations to date.

The exceptional concern not least arises from the make up of the Legacy Unit within the PSNI. As disclosed at the Shoot to Kill inquests on 31<sup>st</sup> May 2013 four out of six personnel in the unit are former members of Special Branch or RUC intelligence, with 57 years experience collectively.

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<sup>1</sup> “Inspection of the Police Service of Northern Ireland Historical Enquiries Team” Her Majesty’s Inspectors of Policing July 2013 85

<sup>2</sup> Chamber judgments *Hugh Jordan v. the United Kingdom* ECHR (app no [24746/94](#)) 2001, *McKerr v. the United Kingdom* ECHR (App no 28883/95) 2001, *Kelly & Others v. the United Kingdom* ECHR (App No 30054/96) 2001, and *Shanaghan v. the United Kingdom* ECHR (App No 37715/97) 2001

<sup>3</sup> Information contained in answers to Freedom Of Information request from Relatives for Justice to PSNI F2011-02374 PSNI

<sup>4</sup> European Court of Human Rights Committee of Ministers Interim Resolution CM/ResDH(2009)441; *Action of the Security Forces in Northern Ireland (Case of McKerr against the United Kingdom and five similar cases)*; Measures taken or envisaged to ensure compliance with the judgments of the European Court of Human Rights in the cases against the United Kingdom listed in Appendix II 19/03/2009

<sup>5</sup> Affidavit Tim Hanley PSNI 13/08/2013 In the High Court Justice in Northern Ireland Secretary of State for Northern Ireland and Chief Constable of the Police Service of Northern Ireland vs Kevin R Winters et al, Relatives for Justice and Caral Ní Chuilin Minister for Culture Arts and Leisure. 2013 No: 82228

For victims of direct State violence this is a case of going from the frying pan into the fire of vested interests and significant conflicts of interest.

For victims of loved ones killed by other actors there are equally substantial concerns. The HET is yet to make conclusions in any single case that collusion was a factor in the killings. For families who are clear about patterns, including where evidence of collusion in the killing of their loved ones exists, the proposed reforms of the HET will not address their concerns.

Article 2 standards applied to cases where the State is directly responsible must also be applied when allegations of collusion exist.

It was put to us by a representative from the Policing Board that all cases of collusion are automatically referred to the Police Ombudsman for investigation.

This is flawed in two respects.

Firstly cases where agents are being run by the Military – in particular Force Research Unit and Military Reconnaissance Force – will not be referred to the Ombudsman. Given the emergent extent of infiltration into different arms of non-State actors this gives rise to the necessity of Article 2 compliance.

Secondly for many families if an agent was involved in the killing of their loved one, the family is unaware of this and this would only be uncovered through truly independent investigation.

Examples of this scenario are Operation Ballast when the independent investigation uncovered many killings in which collusion was evidenced where the families had no idea that this was the case until contacted by the Ombudsman's office.

Further, in the inquest of Gervaise McKerr, Sean Burns and Eugene Toman after sight of some of the Stalker Report, the coroner John Leckey directed that the inquests of Royal Ulster Constabulary officers John Quinn, Allan McCloy and Paul Hamilton killed by an IRA landmine October 1982 be reopened. Again none of these three families had previously considered the killings to be suspicious other than the IRA killed had their loved ones. These killings may have been preventable and are now being placed under that umbrella of a growing caseload involving agents and collusion.

The role of Special Branch in collusion is well documented by Lord Stevens in his three reports, by Judge Cory in his recommendations following Weston Park and

indeed in Sir Desmond De Silva's report on the killing of Patrick Finucane. RUC Special Branch had a track record of cover up. That personnel from this organisation are now placed in key strategic positions of authority and engaged in key decision-making regarding investigations and legacy matters is of major concern.

Indeed due to the nature of collusion it is particularly important in the investigation of non-State killings that a compliant mechanism be found that addresses all of these types of killings from across the community where wrongdoing, turning a blind eye or worse exists concerning the taking of life.

This vested interest approach to legacy that shields certain past actions also places the wider project of bringing about accountable policing at huge risk. The HET and its management by the PSNI to date have already caused considerable damage.

In short it is Relatives for Justice's submission that the findings in the HMIC report, which pertain to where the State is directly responsible, must apply to all killings. If the HET is incapable of investigating where the State is clearly culpable the HET cannot be trusted to identify and examine where the State's role is covert or hidden. Equally any internal reformed mechanism within policing will inevitably be dependent upon key sections of the police that have been at the heart of the HET problem. Confidence is gone in the HET and the PSNI regarding legacy issues. Legacy must be the task of a separate independent mechanism away from policing.

## **Conclusions**

The new beginning to policing promised a break from the bad policing of the past. Those who were affected by the worst of bad policing were promised that they could have confidence in new policing with new accountability mechanisms, which were built on the safeguarding of human rights.

The Historical Enquiries Team and the actions of the Chief Constable in not holding the HET to account at an early stage call into question those promises.

The position of the Chief Constable in this regard is one that causes at the very least significant alarm. That he was advised in 2010 by the Director of Public Prosecutions that the HET was acting illegally and that he did nothing to address this, in fact denigrating the reputation and research of Dr Patricia Lundy, must give rise to significant questions about his position. His disregard of such

fundamental criticism of a critical transitional mechanism in favour of vested State interests recalls the worst of our past.

Relatives for Justice ask that the Working Group on the HET consider the following points:

1. That the HET is irreformable regarding all investigations;
2. That no case involving direct State killings be redirected to the PSNI.
3. That the HET and all cases currently being investigated be immediately suspended.
4. Recalling the recommendations from the United Nations Committee Against Torture<sup>6</sup> that the Working Group redefine its remit to work towards a fully independent and Article 2 investigation mechanism.

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<sup>6</sup> Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013)CAT/C/SR.1160 and 1161 Para 46