

# Relatives for Justice

Stormont House Agreement briefing to families March 2015

*Background to SHA - the central role of families*

# Contextual backdrop leading to SHA - *The role of families*

- The determination and persistence of families to campaign for truth, justice and accountability and not to be fobbed off
- Families actively righting the wrongs of the past using the courts, the law and publicly campaigning
- Families exposing bad processes such as the HET - OPONI (under Al Hutchison)- and challenging and changing the nature of inquests using the ECHR
- Families ensuring that a human rights Article 2 compliant process must underpin and be at the heart of any emergent future process to deal with the past
- Ensuring openness and transparency

# *What hasn't worked & why?*

## The PSNI's HET

- HET failed because it wasn't Article 2 compliant - wasn't independent
- Operated illegally concerning how it approached killings by the British Army
- Failed to hold British soldiers to account - *including providing a potential abuse of process defence*
- Failed to address the wider issue of collusion
- Following a series of damning judgments from ECtHR against the British State the HET was also used politically by the establishment (NIO/PSNI et al) as part of a 'package of measures' in a bid to convince Europe (CoM) that they were now 'investigating' killings in a compliant manner
- Families exposed this lie also
- RFJ's published analysis of the HET in 2005/6 (including continual observations & reporting) was vindicated in the report by Prof. Patricia Lundy, the subsequent role played by the Policing Board, and the findings of the HMIC
- Those who continued to breathe life into the HET undoubtedly delayed a real and meaningful truth recovery process for families

# Obstruction of the Office of the Police Ombudsman

Following the GFA the Police Act 1998 paved the way for the Police Ombudsman to be established in Nov 2000 initially examining current complaints only - Nuala O'Loan was appointed in 1999 overseeing the establishment of the office

In 2001 the powers were extended under the Regulations of Complaints for the Ombudsman to investigate retrospectively where a complaint was 'grave & exceptional' - essentially opening the door for families to lodge complaints about the killings of their loved ones in 'historic cases' involving police wrongdoing & criminality

The NIO withheld vital resources from the office as a means to hampering investigations into RUC wrongdoing

This tactic failed but it did delay some key reports including 'Operation Ballast'

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- Under Al Hutchinson (appointed 2007) the influence of the NIO/DOJ & RUC Special Branch in curbing the role of the office to operate effectively and independently was in evidence
- Hutchinson succumbed to these influences and effectively handed over control
- Key reports criticising the RUC were rewritten and watered down significantly - Claudy, McGurk's & Loughinisland
- Senior staff resigned and families campaigned and legally challenged the office
- The CAJ published a key report on OPONI failings, including the process of appointing Hutchinson, and the Historic Directorate was suspended following an inspection report in Nov 2011 by CJINI that found serious failings including that the operational independence of the office was lowered - compromised

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- Hutchinson announced his intention to go in late Nov 2011 and Dr. Michael Maguire succeeded him in 2012 re-establishing and reorganising the Historic Investigations Directorate (HID)
- Dr. Maguire has demonstrated a determination to ensure that the effectiveness and independence of the office is beyond compromise. This was particularly evident in the unprecedented legal challenge to the PSNI concerning access to over 100 requests for intelligence relating to scores of murders
- In the face of such determination to independently examine historic cases DOJ (formerly the NIO) made cuts to his budget - a tactic previously used against Nuala O'Loan
- These cuts came at a time when CJINI re-inspected the office over an 18 month period citing the HID as a model of best practice and that operational independence had been restored
- So when the office seeks to maximise its remit and do the work with families we see how the system reacts
- We are advising families who haven't already lodged complaints with the Ombudsman to speak with us about assessing the merits of making a complaint

# Inquests

- Following cases successfully taken to ECtHR under Article 2 the domestic UK investigative framework was exposed as being significantly flawed and in contravention of the Convention - some comments in judgments cited 'impunity'
- The outcomes of the judgments meant significant changes were required by the UK Gov. to remedy how they carried out investigations into State killings and collusion that must be independent, impartial, effective, & prompt. The next of kin - families - were also required to be involved
- This meant that the process of how inquests were conducted also required remedy/change. Previously inquests could not compel British soldiers or RUC members involved in killings. The nature scope and remit of examination were also hampered not to mention juries being directed and unable to make key findings such as unlawful killing. It also meant that key evidential material would now be required for inquests to be held.

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- These changes obviously wrong-footed the State and with the devolution of Criminal Justice & Policing and the creation of a local Attorney General (AG) it also meant that historic inquests could also be reopened
- Inquests contain the real potential to work and where families can be legally represented and witnesses now compelled including those within the BA/RUC/PSNI who have been responsible for killings
- Families can also make applications to have inquests reopened where fresh/new evidence emerges and/or where key evidence was withheld from the original inquest. These applications are made to the AG under Section 14 of the Coroners Act 1959
- RFJ are also asking families to examine and evaluate the merits of making a Section 14 application where appropriate in the above circumstances and anyone seeking advice and guidance should speak with us

# Obstructions/delaying tactics to Inquests

- The PSNI established a Legacy Support Unit (LSU) in 2009 (under section 8 Coroner's Act) to examine the relevance of material and evidence necessary to conduct inquests
- The LSU has been at the heart of controversy given that it is made up mostly of former RUC Special Branch officers who retired under Patten and reentered the PSNI as 'civilian' or 'consultant' staff
- This gatekeeping unit hold clear vested interests in ensuring that key evidence that families and their legal reps require is withheld and delays masked as 'a lack of resources' are common place
- The MoD are also playing a similar delaying tactic and in addition attacks on legal aid enabling families to be legally represented are common practice despite the PSNI and MoD also availing of public funding without hindrance
- RFJ have documented this area of obstruction and made key submissions to the the CoM of Europe concerning a clear breach of Article 2 - *copies of our submissions are available on request*

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- A clear objective of the State, and unionist politicians, is to have inquests halted
- The role of the NI Retired Police Officers Association (NIRPOA), made up of former senior RUC officers including former heads of SB, is to also have inquests halted
- At a private seminar on legacy inquests with the NIRPOA the then PSNI ACC Drew Harris, now DCC, and DCC Judith Gillespie discussed how potentially damaging to the reputation of the RUC these inquests were and need to counteract
- The seminars, first revealed by RFJ at the inquest into the UVF murder of R Mallon, also discussed how former officers should tactically engage and give evidence at inquests - or more likely not give evidence - when called
- This is why there was so much focus on moving inquests into the Eames/Bradley CGP and which has persisted since then through to Haass/O'Sullivan Panel of Parties to the more recent SHA
- Thankfully lobbying by families and RFJ has ensured that inquests will not be part of the SHA and will continue separately

# Changes to Coronial process

Nov 2014 LCJ comments on dealing with the past in Court of Appeal judgment in the case of Pearse Jordan - HIAI model - (RFJ would be totally against such an approach)

This, we are told, was motivated by the volume of legacy cases taken by families within the judicial system - civil cases; judicial reviews; & inquests reopened

RFJ understands that currently there are plans to restructure the coronial inquest system; appoint at least two High Court judges; and to hear linked cases thematically

The relevant legislation permitting this is the Legal Aid & Coroners' Court Bill 2014 passed by the Stormont Assembly

RFJ view this as an opportunity to address delaying tactics and to more effectively identify patterns and policies of violations and abuse rather than cases being addressed in isolation

# Initiatives to deal with the past

- CGP - Eames/Bradley Jan 2009
- Haass/O'Sullivan Panel of Parties Jan 2013
- Stormont House Agreement Dec 2014
- Common themes within all three
- Common obstructions from those with vested interests and who see truth, justice & accountability as a real threat
- However, families have created the impetus for the current SHA ensuring that effective independence (Article 2) is paramount and we should rightly see this as a measure of success
- Whilst there are battles remaining nevertheless you should also take some comfort from the impact you are all having and the fact that despite the odds the State has failed to curb your momentum and and determination for truth
- It is in this context that we would view SHA as a glass half full and an opportunity to further achieve truth, justice and accountability
- Finally the matter of an inquiry into the State killing of Pat Finucane remains outstanding from Weston Park agreement and must also be addressed