

## **Stormont House Agreement monies must be protected if HIU has any hope of success in delivering to families**

Last Friday the North's foremost legal figure, Lord Chief Justice Sir Declan Morgan, met families and their lawyers following a two-week review of 55 of the 56 legacy inquests by Justice Weir.

In mapping out the way forward he said: "It is my assessment that provided the necessary resources are put in place and we obtain the full co-operation of the relevant state agencies – principally the Police Service of Northern Ireland and the Ministry of Defence – it should be possible to hear these cases within a reasonable timeframe, which I see as being about five years." (*Legacy Engagement Event - Friday February 12<sup>th</sup> 2016*).

In preparation for last Friday's meeting the LCJ said he met with "the Secretary of State, the Minister for Justice, the First and Deputy First Ministers and the Attorney General".

He added: "The meetings with local politicians have centered on the case for additional resources and how the necessary funding could be released."

"From these discussions, and from the Secretary of State's speech at the University of Ulster yesterday, I have been given to understand that, if the Northern Ireland Executive asks for resources for legacy inquests, the request would be given very serious consideration by the Secretary of State."

Theresa Villiers had said on Thursday last that: "...some of the Stormont House legacy funding could be released early to support inquests..." (*Proposed way forward in dealing with the legacy of the past – UUJ Thursday February 11<sup>th</sup> 2016*)

RFJ are supporting families in 21 of the legacy inquests.

We have long argued for a more robust enforcement of the state's Article 2 obligations by the courts in addressing the delaying and stalling tactics of the PSNI and the MoD in providing information in order to hear inquests. This too relates to resourcing. We stand by all those families as we have for over two decades.

Therefore we fully welcome the strategic approach now being taken by the LCJ including seeking the necessary resources for the coronial process.

On September 18<sup>th</sup> 2014 Relatives for Justice (RFJ) met with the Justice Minister impressing upon him the requirement on London to resource all areas of legacy work within the broader criminal justice system: the courts, inquests, Police Ombudsman and investigations.

We stressed that it was unfair to expect the Executive to carry these costs from the block grant as the incidents occurred under direct rule. We further pointed out that the UK government is the signatory to the European Convention on

Human Rights, not the Executive, and it is they who respond to judgments from the European Court and subsequent scrutiny by the Committee of Ministers concerning remedy. There are also reserved matters; areas retained by the NIO and the Secretary of State that directly relate to legacy – the Executive don't sign off on public interest immunity certificates (PII). The Justice Minister subsequently argued the position before Stormont's Justice Committee that London must pay the cost of dealing with the past.

Since then there has been a consistency in terms of public commentary and support of the position that London addresses violations that occurred on their watch.

In December 2014, and after a year of talks on addressing legacy, mechanisms were agreed to investigate the past by both governments and all the political parties to the Executive in the published Stormont House Agreement (SHA).

£150 million (*Stormont House Agreement Financial Annex*) was set aside over a 5 year period for the implementation of a Historical Investigations Unit (HIU), an Independent Commission for Information Retrieval (ICIR), an Oral History Archive (OHA) and an Independent Reconciliation Group (IRG).

Inquests were rightly kept outside of the process and separate from the agreed mechanisms above.

The agreement stated that: "legacy inquests will continue as a separate process to the HIU".

There was also an understanding that the Executive, in the context of the HIU being implemented, would then seek resources for inquests separately to the resources made available for the mechanisms agreed within the SHA; i.e. the HIU. The understanding being that the vast bulk of legacy work would transfer from the Police Ombudsman and the PSNI thus freeing up existing resources. Though Article 2 responsibilities still remain that of the UK government in London.

It is also felt that the £150 million is not sufficiently enough resource to examine all the cases the HIU would investigate. Of the over 3,600 killings 900 of these remain outstanding having received no examination at all by the HET or the Police Ombudsman. Add to that the criterion that those cases in which poor reports were given, killings by the British army requiring reinvestigation, those with new evidence, and the caseload of the Police Ombudsman of approximately 350 plus that will transfer to the HIU we suddenly get a real sense that over the 5 years £150 million is not enough. However, it was enough to get the process off to a very healthy start.

In a *BBC* interview on the *View* (Jan 28<sup>th</sup> 2016) Joint First Minister Martin McGuinness acknowledged this very fact when he said that £150 million "was not enough" - as have other party leaders. In the financial annex of SHA it states: "The paper from the party leaders estimates the potential costs of the new bodies to be higher than Government estimates." Note this means new bodies

and not existing ones. This is again referred to in the 'Fresh Start'. Both documents state clearly the £150 million is over 5 years for new bodies to be established whilst equally acknowledging that more resources are required. It is also the case that any slippage in setting up the new bodies can be carried forward as pointed out in the 'Fresh Start' "...any underspend of new legacy funding in 2015-16 may be carried forward to 2020-21 (but funding for bodies to deal with the past is subject to agreement on their establishment)." So why would the Executive then call on the Secretary of State to release funds they already know to be insufficient? Why not press her government to meet their financial obligations under Article 2? The UK Treasury must cough up.

First Minister Arlene Foster recently called for the release of these same funds to the PSNI to investigate legacy cases notwithstanding the PSNI's inability to be Article 2 compliant – not independent. The call was rejected by the NIO. (*Arlene Foster cash call for legacy investigations rejected by NIO – Irish News, Friday 5th February 2016*).

It appears that there is no coherent strategic joined up approach to legacy at Executive level with competing calls for resourcing without due regard to the one agreed inclusive mechanism that remains to be implemented – the HIU.

Implementation of the HIU, and the other mechanisms, is within touching distance and a sense of optimism exists. With genuine will and good intent we can get over the line and deliver to the vast majority of those families bereaved and individuals injured the investigative process they so desperately deserve through the HIU.

However, there is now more than some speculation that the resources sought by the LCJ will come from the £150 million and we caution against this. Drawing upon these resources will inevitably mean there is less political incentive to implement the HIU given what would become a dwindling pot. This poses a real danger.

Any short-term temptation to dip into the resources allocated for the SHA mechanisms should be studiously resisted with the longer-term view and strategic goal of implementing and delivering to all the families bereaved in the conflict being uppermost in our minds.

Figures of £82.5 million have been floated by the Department of Justice (*September 2015 – The Detail*) as being required by the LCJ to examine approximately 100 deaths through inquests, other sources suggest around £50 million. These resources must be provided for from elsewhere. It is the UK government's responsibility to resource these inquests in line with its international obligations under Article 2 – not the Executive.

To do otherwise would potentially open the floodgates concerning the so-called "Stakeknife" set of cases referred to the PSNI by the Director of the Public Prosecution Service to investigate 24 cases, possibly rising to around 50. The PSNI Chief Constable costs a financial figure of £35 million. Would the PSNI then

qualify as having a 'legitimate' stake to the 'pot' as Arlene Foster requested and would PONI and the PPS, and other agencies such as forensic, ballistic and pathology all seek their claim too? Essentially leaving nothing for the vast majority of legacy investigations yet to even start.

If such a scenario were to arise then this could be anything from £85 million, at a conservative cost, to £117.5 million for 150 killings at most. This sets into sharp relief the fact that £150 million to examine every other single case in itself falls far short and therefore we cannot afford to draw against the resources set aside for the implementation of the HIU etc. These agreed mechanisms must be protected and the only way to do so is to ensure that the resources are protected.

Ring-fencing these resources is crucial to achieving implementation and enabling progress. To do otherwise could potentially deny the vast majority of families the quality of investigations they deserve if not deny them outright.

It's a clever trick by the NIO to now have the Executive take on responsibility for ensuring Article 2 compliance by dipping into the pool of resources set aside for the legacy mechanisms agreed to in the SHA.

Let's not fall into the trap – let's all ensure that London resources the processes outside of the SHA and that the £150 million set aside for the vast majority of those bereaved and injured is used for that and nothing else.

Let's implement the mechanisms agreed to in December 2014.