



Submission delivered by PFC to the Policing Board regarding the future of the HET.

12th September 2013

The Pat Finucane Centre has engaged critically with the Historical Enquiries Team, on behalf of families since it began reviewing cases in 2006. At least 140 of our cases have either been completed or are on-going.

The PFC is firmly of the view that families benefit from 3rd party support. This has been evidenced in various reports,¹ and in our own experience.

Our aim has been to ensure maximum disclosure of information to a family in the least traumatic of circumstances. We have never accepted the first draft of a HET report. We have consulted with families and gone back to the HET with questions and clarifications for as long as was necessary and for as long as a family wished us to do. In a number of cases we have demanded, and secured, a redraft of the RSR when the original was unacceptable.

The Pat Finucane Centre would like to make the following comments;

- It is important to put on record that the HET includes many individuals who have carried out their work with integrity, professionalism and openness. This should be acknowledged and families have made this point to us.
- The PFC has met staff who treated families with great respect and dignity and were deeply affected by the loss suffered by those they have met.
- Some HET reports have been thorough, well written, have disclosed important information unknown to a family and have facilitated further actions, legal and otherwise.
- For a number of families the process has contributed to a measure of truth recovery and healing.
- In this context it is vital that the proverbial baby not be thrown out with the bathwater. Where good work was done and a measure of truth recovery was provided to families no-one should devalue, minimise or pour scorn on the findings and conclusions in these cases. No-one speaks for everyone.

¹ Commission for Victims and Survivors (2012) Final report, Comprehensive Needs Assessment, Chapter 4. Lundy, Patricia (2012) *Research Brief: Assessment of the Historical Enquiries Team (HET) Review Processes and Procedures in Royal Military Police (RMP) Investigation Cases*. HMIC Inspection of the Police Service of Northern Ireland Historical Enquiries Team, 3rd July 2013 and Amnesty International, *Northern Ireland: Time to Deal with the Past*, 12th September 2013, London, Amnesty International.

- For others the HET process has re-traumatised them and actually made the situation worse. Too many HET reports have regurgitated the original official narrative and provided no new information whatsoever.
- Some HET staff, a minority, have been insensitive, unprofessional and condescending.
- The HET at this stage can probably best be described as having fallen victim to 'institutional capture'-ie. they have become overly sympathetic to the situation of the RUC and British army during the conflict.
- Contrary to what has been claimed, some HET reports have confirmed evidence of collusion.² Nevertheless there appears to be an institutional inability to call a spade a spade when faced with overwhelming evidence of collusion as for example in the case of Sam Marshall in Lurgan.
- It is our observation that PSNI has sought, over several years, to compromise the limited independence enjoyed by the HET at the outset. They have succeeded.
- The introduction of PSNI civilian staff, the PSNI taking control of the budget from Department of Justice, the change in policy in respect of live investigations and the ever increasing percentage of ex PSNI/RUC staff within the HET have steadily eroded the arms-length position of the HET from the PSNI. The PSNI role in gate-keeping intelligence is a recipe for cover-up and obfuscation.

Response of families to current crisis

- There is no single uniform view amongst families. There are different views between and even within families. As noted above, no-one speaks for everyone.
- In respect of investigations into British army killings there is, however, an overwhelming legacy of suspicion, distrust and hurt. It is the PFC's view that a process of resignations and radical reform of the HET will not be sufficient to regain any measure of credibility among victims or NGOs.
- In fact, the recommendations of the HMIC, if fully implemented, will make the situation infinitely worse. Recommendation 15-that any case that requires investigation should be referred to C2 - simply beggars belief. We wouldn't even attempt to convince families that this would conform with the Article 2 requirements of any new investigatory process.
- PSNI involvement in or management of any investigative body which emerges from this crisis would embroil this Board and the PSNI in an unprecedented confrontation with families and NGOs and would result in endless litigation. It would have a seriously detrimental effect on the climate within which current policing operates.
- The response of the Chief Constable to the HMIC report which would see the PSNI reviewing all army cases confirms our experience in the McGurks Bar fiasco that this Chief Constable hasn't a clue when it comes to dealing with the past. Such reviews require greater not less independence. The DNA of the PSNI is inextricably linked to the DNA of the RUC which was central to the original illegal cover-up of British Army killings between 1970 and 1973.
- If we are to fix what is broken there must be independence from the PSNI.

² For example the RSR into the murder of John Toland, 22nd November 1976 and the RSR into the murder of Henry Cunningham 9th August 1973.

Where does this leave other families in cases not involving the state?

- Relatives face a terrible dilemma at present. Some had just begun to engage and were hopeful that something might come out of the process. Others were on the verge of receiving reports when delivery was suspended in July. Some ask us 'can we in the PFC not simply ring up the HET and ask for the RSR to be delivered?' We shouldn't and couldn't. And each month family members pass away.
- The present impasse is disastrous for many relatives. This cannot be allowed to drift for 6, 12, or 18 months. We need to make new arrangements and we need to do so soon. We probably also need to make interim arrangements.
- Each individual family ultimately has the right to decide if they wish to receive a report that has already been completed or where only minor details were being inserted, names of family members etc.
- If some families are to receive reports in cases not involving the state (army killings or where there is evidence of collusion) it would be vital to have independent third party scrutiny of such reports* 1) to confirm that there is no evidence of state involvement and 2) to quality check the actual report. This would be a short term remedy only.
- In the medium term all investigations should be carried out by a body independent of the PSNI. A number of the HMIC recommendations should then be revisited to ensure that lessons are learnt.

Ends.

****UPDATE 9th OCTOBER 2013: Having discussed this amongst staff and with other organisations we no longer believe that third party scrutiny at this stage is feasible. This will not impact on a families right, and our responsibility to you, to examine these reports and go back with a list of issues and questions at some stage in the future to whichever body will then be dealing with these cases.***



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