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## Inquiries Update

### **The Billy Wright Inquiry**

This Inquiry was due to resume oral hearings on 26th January 2009 after a Christmas recess; however hearings were delayed until Monday 2nd of February. The Inquiry was expected to hear two further weeks of oral hearings after Christmas but instead witness testimony has continued into March and is expected to resume again on Monday 27th April for one week.

On 2nd February, the Inquiry heard evidence from witness HAG (Head of the security service Assessment Group) for the second time. HAG told the Inquiry how he had facilitated a meeting between Special Branch and the then Chief Executive of the Northern Ireland Prison Service, Alan Shannon, the purpose of which was to discuss the possibility of 'mounting an eavesdropping operation' against Billy Wright. The Inquiry also heard evidence from the Reverend William McCrea, a Democratic Unionist Party (DUP) Member of the Legislative Assembly for Northern Ireland (MLA). Rev. McCrea told the Inquiry that he had received documents and an anonymous phone call in early December 1997 warning that both he and Billy Wright were going to be murdered.

Notable witnesses in March were former Chief Constable, Sir Ronnie Flanagan, and former Assistant Chief Constable (ACC) in charge of PSNI's crime operations department, Mr Sam Kincaid. The evidence of a number of other security service witnesses was heard in camera. Such sessions are closed in that only the legal representatives of the witness, the Inquiry Panel and the witness themselves are present and no transcript of proceedings is released.

Two members of the Steven's Inquiry Team, Mr Taylor and Mr McFadden, gave evidence on Thursday 5th February which was followed by evidence from PSNI Assistant Chief Constable Finlay on 6th February. The Inquiry has decided not to release transcripts for these dates which resulted in an application for judicial review challenging this position being lodged on behalf of David Wright on 26th March.

Unfortunately the Inquiry Chairman, Lord McLean, issued a restriction order on 26th March under section 19 of the Inquiries Act 2005 which prohibits publication of any evidence provided on 5th and 6th February. In addition, restriction orders were issued in relation to the evidence of witness ZBS which was heard on 23rd and 24th March 2009.

### **The Rosemary Nelson Inquiry**

Hearings at the Rosemary Nelson Inquiry continued from 8th February until 5th March. Former ACC Sam Kincaid also gave evidence to this Inquiry during February. In addition, the Inquiry heard evidence from the Chief

Constable of Avon and Somerset, Colin Port, who headed an investigation into Rosemary Nelson's murder in 1999. Another important witness during February was former Acting Chief Constable for Kent, Robert Ayling. Mr Ayling headed a group of officers commissioned by the Inquiry to prepare a report on whether the RUC investigated Rosemary Nelson's murder with due diligence.

The majority of recent hearings have been screened as the witness has been granted anonymity or hearings have been held in closed session.

An application for judicial review was made on behalf of the PSNI to the High Court on 11 February which challenged a decision by the Inquiry not to make findings of fact 'as to whether or not RUC officers made derogatory and threatening remarks about Rosemary Nelson while questioning her clients'. PSNI representatives argued that such a decision conflicts with a list of issues which the Inquiry identified as needing consideration 'in order to discharge the task conferred upon it by the Secretary of State' and supported their argument further with reference to other decisions made by the Inquiry as well as a previous application for judicial review on behalf of the PSNI being refused in December 2008.

The Inquiry timetable is running to schedule and oral evidence from witnesses completed on Thursday 5th March. Final oral submissions by Inquiry participants are due to commence on 27th April 2009 when the Inquiry resumes.

### **The Robert Hamill Inquiry**

After oral hearings commenced in January 2009, the Inquiry heard evidence from both state and Inquiry appointed medical experts which found Robert Hamill had severe head injuries comparable to those caused in a car accident.

Whilst the Inquiry has not issued a list of issues which they find pertinent to fulfilling their task, witness hearings have been grouped in such a way as to allow these issues to be revealed before the first witness in each group has been called.

Hearings of medical staff finished in January and the Inquiry then moved to the next group of witnesses who were in the vicinity of Portadown town centre when Robert Hamill was attacked. In turn this rather large group of witnesses has been divided into subcategories. The first subcategory were witnesses who were in or coming from Thomas Street (where Robert Hamill was coming from) or Woodhouse Street which are side streets feeding into the town centre. The second subgroup relates to persons making their way towards the scene after being dropped-

off by a bus at the bottom of Market Street, which includes a number of people who were key witnesses and suspects in the murder investigation.

After the murder of two soldiers and a police officer recently in Northern Ireland, the Inquiry took the decision on 10th March to provide all police officers giving evidence with temporary anonymity until a threat assessment regarding their safety has been carried out by the security forces. As a result, the Inquiry has heard the evidence of police officers since mid March in closed sessions but has been releasing the transcripts for such hearings.

On 25th March the Inquiry released a press statement referring to the failure of a witness to attend the Inquiry to the High Court. Ms. Tracey Clarke has failed to comply with a notice issued in January under section 21 of the Inquiries Act 2005 to compel her to attend the Inquiry on 28th January 2009. Ms. Clarke has still not attended over eight weeks later and has not produced evidence of an alleged medical condition which is preventing her from attending the Inquiry. Ms Clarke was a highly significant witness in the investigation into Robert Hamill's murder in 1997.

### Key Issues Developing Around the Inquiries

Some operational practices and trends arising with the Public Inquiries give rise to concern. Firstly, a substantial number of hearings have taken place in camera which raises issues as to the transparency of an Inquiry's work. Such hearings substantially increased for the Nelson Inquiry in December 2008 and January 2009. Similarly, the Wright Inquiry held a number of in camera sessions in March 2008.

However, the Wright Inquiry has indicated that it will release a public summary of these closed hearings and it was initially thought that such summaries would be released for each in camera hearing. Instead it seems that the Inquiry will release a composite summary of all recent in camera sessions but has not yet done this. The substance and effectiveness of these summaries at improving transparency remains to be seen. Furthermore, it will be important to see if they strike an effective balance between the Inquiry's task to uncover the truth and obligations which the Inquiry has to ensure that its work does not breach Article 2 of the European Convention on Human Rights, or release information detrimental to public interests and/or national security. This is perhaps one practice which other public Inquiries should adopt, in particular the Rosemary Nelson Inquiry as the Inquiry will not produce transcripts or indicated that summaries will be available for in camera sessions which it holds.

At present, the Robert Hamill Inquiry had not held in camera sessions. Instead the Inquiry has had closed sessions for any witnesses granted anonymity and the Inquiry releases transcripts for these hearings. The reason that such evidence is heard in closed session is due to the

fact that the Inquiry does not currently have the facility to screen anonymous witnesses as to do so would see an increase in the Inquiry's costs. It is vital to recognise this consideration which the Hamill Inquiry has given to reducing operating costs in light of recent criticisms over the costs of public inquiries. We take the view, that this is only an acceptable situation in the event that heavy redaction of transcripts for closed hearings does not occur.

Another problematic trend developing around the Inquiries is that substantial delays in releasing transcripts for the Nelson and Wright Inquiries have occurred. For instance it was March 2009 before a number of transcripts from December 2008 (Days, 83, 85, 89 and 90) were released and delays in the releasing of transcripts from mid-February 2009 are still persisting. Transcripts which are currently outstanding from February cover high profile witnesses in the Nelson case such as Sam Kincaid and Robert Ayling. The Inquiry does not at present publicise reasons on its website nor has it released a statement to explain the reason or necessity behind such delays.

Transcripts for hearings which took place at the Billy Wright Inquiry this February are also not yet released and are the subject of controversy. Evidence from members of the Stevens Inquiry Team given on Thursday 5th February and serving Assistant Chief Constable Allister Finlay on 6th February have been withheld by the Inquiry. It has been learned that the Inquiry initially intended to redact information from these transcripts but that when such deletions were performed the transcripts became unreadable as they made no sense. A restriction order forbidding anyone from releasing any evidence given by these witnesses has been made by the chairman and is currently the subject of a judicial review (see Inquiries Update above). The Chairman has stated his justification for this action as being the potential threat to life and national security which could occur if this evidence were released. An in camera hearing regarding this application was heard in the High Court on Tuesday 31st March but was adjourned until Wednesday 22nd April.

Such a restriction on evidence given in an open hearing appears both ludicrous and suspect in light of the fact that the restriction order was released on the same date that legal representatives for David Wright lodged papers for a judicial review - some five weeks later. The Inquiry's delay in doing so is questionable considering it was a matter of hours before a blanket restriction order was released for witness ZBS on the same day of his hearing, 23rd March, and then replaced by amended version on 24th March and a transcript with redactions was released.

On the other hand, restriction orders relating to the evidence given by ZBS raise further problems as they do not contain any justifications to show that they were necessary which causes one to question the reasoning behind these orders.