

## **RHI Summary from 13/01/2008 until 15/01/2008**

The Robert Hamill Inquiry commenced oral hearings on Tuesday 13<sup>th</sup> January 2009 in the Interpoint building in Belfast as scheduled.

**The Inquiry's Chairman, Sir Edwin Jowitt, began by recounting the process by which the Inquiry was created. He explained that the commencement of oral proceedings has been delayed since he opened the Inquiry in 2005 due to the large amount of preparation and a number of legal challenges.**

Anonymity requests were made after the Inquiry first served papers on potential witnesses. Initially only one application for anonymity was granted. The Inquiry's decision was judicially reviewed and overturned by the High Court in Belfast in 2006. A subsequent appeal by the Inquiry was unsuccessful. The Inquiry was then granted leave to appeal to the House of Lords and was successful in their application. The current situation is that a number of witnesses who will give evidence to the Inquiry have been granted anonymity.

*Note: Where a witness has been granted anonymity, access to the Inquiry is restricted and the public gallery is closed. In such 'closed' sessions, an applicant will present evidence to the panel with their legal representative(s) present as well as other legal representatives who have an interest in the evidence which that witness is expected to give. The Inquiry team will establish which representatives have an interest prior to their attendance so that full participation does not occur unless necessary. Organising attendance for hearings in this manner is aimed at reducing the overall cost to the public as if some legal representatives are present when they do not need to be then this would be an unnecessary depletion of public funds. Transcripts for such hearings will be made available via the Inquiry's website.*

Furthermore, in January 2007, a request for an extension to the Inquiry's terms of reference was made on the behalf of Robert Hamill's family by the Inquiry team. Both the Hamill family and the Inquiry Panel believed that the terms of reference should have been expanded to allow analysis of the role that the Director of Public Prosecutions (DPP) played in the investigation into Robert Hamill's death. This request was refused over a year later by the Secretary of State for Northern Ireland, Shaun Woodward MP. As a result, the Hamill family sought a judicial review believing that the Minister had not applied the correct test. The judicial review resulted in the Secretary of State's decision being quashed in July 2008 on the ground that he had applied the wrong test – that of fresh evidence – rather than the correct test, that of the public interest.

In response to his decision being overturned, the Secretary of State made interested parties aware that the terms of reference would not be changed as the decisions of the DDP and his staff were already covered by the existing terms of reference. Counsel to the Inquiry, Ashley Underwood QC, said (later on day 1) that the decisions of the DDP were relevant as they may have shaped the investigation into the murder of Robert Hamill.

The Chairman explained that the cross-examination of witnesses was to be lead by Mr Underwood. He said that points which any of the full participants wished to raise for cross-examination should be communicated to Mr Underwood before questioning. In the event that Mr Underwood was not going to ask the questions which a party had indicated to him or if an interested party wished to carry out their own cross-examination of a witness, the Chairman would expect to be approached by those involved so that he can decide the appropriate course of action.

*Note: The Chairman's description of how cross-examination would be carried-out appeared to be similar to the Rosemary Nelson Inquiry where only Counsel to the Inquiry and Panel member ask questions and exercise discretion over what questions witnesses are asked. However, since the Robert Hamill Inquiry opened, subsequent oral hearings have shown that cross-examination by the legal representatives of interested parties will be permitted.*

The Chairman referred back to his previous assurance (made when opening the Inquiry in 2005) that anyone who gives evidence to the Inquiry will not be obliged to answer a question if their answer could risk self-incrimination in either a police disciplinary hearing or a criminal prosecution for which they have not yet been convicted. He explained that an undertaking has been given by the Attorney General, to the effect that no evidence which individuals give to Inquiry (whether it be orally, or contained in a document) will be used in a criminal prosecution except where they face a charge of conspiring with others or falsifying evidence which they provide to the Inquiry.

The Chief Constable of the Police Service of Northern Ireland (PSNI which replaced the name Royal Ulster Constabulary in November 2001) has also given a limited undertaking not to discipline serving officers giving evidence to the Inquiry, if such evidence did not show them to have committed serious misconduct. However, the Chairman has now revoked his earlier assurance that evidence given to the Inquiry will not be used in police disciplinary proceedings. He explained that the principle against self incrimination which applies in criminal proceedings does not apply to a disciplinary hearing by an employer as this was a civil procedure.

It was also said by the Chairman that the Inquiry would have no formal rules of evidence and may consider hearsay evidence.

**Mr Underwood in his opening submission presented a brief synopsis of the events and investigations which followed Robert Hamill's murder and highlighted a number of key individuals and the roles that they played on the evening of Mr Hamill's murder and in the subsequent investigations.**

During the early hours of 27<sup>th</sup> April 1997, four police officers from the Royal Ulster Constabulary (RUC) were in an armoured police vehicle yards from the scene of the serious assault which lead to Robert Hamill's death. As a result, the Hamill family lodged a complaint against the RUC which alleged that a criminal offence had been committed and that police officers neglected their duty to assist and protect him. In 1997, the complaint was dealt with by the RUC and supervised by the Independent Commission for Police Complaints (ICPC).

In 2000, the new body of the Police Ombudsman for Northern Ireland (PONI, the body which replaced the ICPC and has the power to launch its own investigations) raised concern over an RUC investigation into allegations that an RUC officer, Reserve Constable Robert Atkinson, had leaked information on the murder investigation to one of a number of suspects.

The PONI did not launch its own investigation and instead supervised a new Complaints and Discipline investigation that was started in 2001 by the internal investigations unit of the RUC. This investigation was more focused on the early stages of the murder investigation and recommended that two of the officers be reprimanded.

After this fresh investigation, Michael and Andrea McKee were convicted in 2002 of conspiring to pervert the course of justice by providing false statements to the police. They had falsely provided alibis for Reserve Constable Atkinson, a fact which was discovered when Mrs McKee was re-interviewed by the PSNI in 2001 and said that her first statement given in 1997 was correct. In doing so, she had admitted that a second statement given (which provided Constable Atkinson with an alibi for calls made to the McKee home) was false.

Constable Atkinson is alleged to have told one of Mr Hamill's suspected attackers how to dispose of his clothes and to have kept him informed on the progress of the police investigation. This allegation was initially brought to the attention of the police by Mrs McKee (whose niece had dated the suspect involved). Constable Atkinson was also one of four police officers who were in a nearby police vehicle on the night of the attack.

Both Constable Atkinson and his wife, Eleanor, were notified of pending prosecutions in 2002 relating to accusations of conspiring to pervert the course of justice as a result of Mrs McKee's admission. However, prosecutions were not pursued as the DPP said that Mrs McKee could not be advanced as a truthful witness. The decision followed her inability to travel from Wales (where she is now resident) to attend a preliminary hearing when her son was ill. This decision was taken as she had provided an explanation to the judge which gave more detail than the information which had been given to police by staff at an out of hours doctors service which they attended when the police called to verify her explanation. Counsel representing the Atkinsons, Ms Margaret Ann Dismore, said that her clients deny the accusations made against them.

Reference was also made to press statements released by the RUC after Robert Hamill's murder. Mr Underwood said that the press releases required assessment to see if they were accurate or if they were used to portray the RUC and Protestants in a 'false light' and deter Catholics from coming forward with evidence.

An opening submission was also made by Counsel to the Hamill family, Mr Barra McGrory QC, in which he reminded those in attendance of aspects of Robert Hamill's life and what his life meant to his family, partner and children. He emphasised that during the course of proceedings this should not be forgotten.

## Medical Evidence

From late afternoon on Tuesday 13 January 2008 until Friday 16 January 2008, the Inquiry heard evidence regarding the injuries which medical practitioners had caused Robert Hamill 's death. On 13 January 2008, day 1, Mr Underwood said that whilst medical experts (some commissioned independently by the Inquiry) have advanced a number of contributory possibilities, they were in agreement that there was an unbroken causal chain between the assault and Robert Hamill's death.

Mr Underwood highlighted that doctors at the Royal Victoria Hospital (where Robert Hamill was moved to and subsequently died) were unsure whether it was a lack of oxygen, septicaemia, pulmonary embolus (a blood clot) or blood poisoning which had contributed to his death.

**Comment [MSOffice1]:** Embolus was used in the transcript

One issue that the Inquiry has to consider is whether the assault on Mr Hamill left him in a condition whereby he was deprived of oxygen until he reached the Accident and Emergency Unit at Craigavon Area Hospital. Mr Underwood said (day 1) that if this was a contributory factor, there could be an issue about the lack of first aid given to Mr Hamill at the scene of the assault.

The Inquiry instructed an independent pathologist, Dr. Lawler, who suggested that Robert Hamill died as a result of a rare complication caused by a drug which was administered to treat his head injury (day 2). However he agreed with the state pathologist, Prof. Crane, that Robert Hamill's death was caused by his head injuries. After examining medical notes, the original pathologist's report and evidence given by Prof. Crane at the criminal trial of suspects (who were subsequently not prosecuted due to an alleged lack of evidence), Dr. Lawler was of the opinion that bruising and abrasions to Robert Hamill's head were likely to have been caused by punches/kicks/ and/or stamping on the victim's head – forms of attack which are expected to be recounted to the Inquiry by a number of witnesses.

On Thursday 15 January 2008 (day 3), Prof. Crane gave evidence to the Inquiry on the autopsy which he performed on Robert Hamill after he died on 8<sup>th</sup> May 1997. Prof. Crane said that he had consulted a neurologist, Dr Herron, to help inform his analysis. He (Crane) concluded that Robert Hamill died of a severe axonal injury caused by the assault which happened on 27 April 1997. This type of injury is caused when a force (in this case unknown) accelerates the head in one direction and is suddenly stopped and is an injury commonly associated with car accident injuries such as whip-lash.

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It has been suggested to the Inquiry in their pre-hearing investigations that Robert Hamill may have been hit by a flying bottle however Prof. Crane quickly discounted this possibility. Whilst he acknowledged that there is some debate amongst medical practitioners over the grading of such axonal injuries, he said that being struck by a bottle would not have caused the level of trauma associated with Robert Hamill's Injuries. Prof. Crane also discounted the possibility that Robert Hamill had encountered complications as a result of a drug administered by neurologists who treated him (a theory which had been advanced by Dr. Lawler).