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House of COMMONS

MINUTES OF EVIDENCE

TAKEN BEFORE

NORTHERN IRELAND AFFAIRS

POLICING AND CRIMINAL JUSTICE IN NORTHERN IRELAND

TUESDAY 13 MAY 2008

The Stormont Hotel, Upper Newtonwards Road, Belfast

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SIR ALASDAIR FRASER and MR JAMES SCHOLES

SIR HUGH ORDE, MR ALISTAIR FINLAY,

MR PETER SHERIDAN and MR JOHN BRANNIGAN

Evidence heard in Public Questions 460 - 551

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Oral Evidence

Taken before the Northern Ireland Affairs Committee

on Tuesday 13 May 2008

Members present

Sir Patrick Cormack, in the Chair

Mr David Anderson

Mr Stephen Hepburn

Lady Hermon

Dr Alasdair McDonnell

Mr Denis Murphy

Witnesses: **Sir Alasdair Fraser**, Director, and **Mr James Scholes**, Senior Assistant Director, Public Prosecution Service for Northern Ireland, gave evidence.

Q460 Chairman: Good afternoon, it is nice to see you. Sir Alasdair, could I welcome you and Mr Scholes. Thank you both very much indeed for coming. We are particularly delighted to see you, Sir Alasdair. You have met the Committee before.

Sir Alasdair Fraser: Yes.

Q461 Chairman: We appreciate your coming to give evidence in this inquiry. We will have roughly half an hour of evidence which is public, on the record, and then we will have a brief session in private, which I understand you have willingly agreed to, with you and your colleague. Thank you very much indeed. First of all, is there anything you want to put on the record before we ask any questions?

Sir Alasdair Fraser: I am very happy to be here with my colleague and I hope that we can be of some assistance to you.

Q462 Chairman: I am sure you can, and we are very grateful. What do you see at the moment, Sir Alasdair, as being the key challenges facing the Public Prosecution Service?

Sir Alasdair Fraser: We are at quite an unusual stage. As a service we have finally rolled out and have taken responsibility for all of the work which PSNI was doing, therefore we are providing our services across Northern Ireland. I think the challenge is to raise our profile in the community. We are a regionally based organisation which historically was somewhat shy with a very low public profile, but I think that is a challenge that we will have to meet and we will have to be seen to be more responsive in the community.

Q463 Chairman: Thank you very much indeed. Moving towards our own specific concerns at the moment, what has been the extent of your involvement with HET?

Sir Alasdair Fraser: We have been involved with them since 2005 when we had to make a business case for additional staff. We were successful in that application and we have access to about £1.8 million of the ring-fenced budget and have employed a number of senior lawyers to take this work forward. However, it has been slow. We have had one case referred for a decision, which has been taken. We have been asked on eight occasions for advice, which we have given, but, apart from that, we have had little contact with them. Of course, for historical reasons our own records are of a very high standard and we have been able to assist them in rebuilding cases that are 30/35 years old and to explain to them upon what basis the decisions that were taken then were reached. In a somewhat unusual manner, we still have people in the office who took those decisions despite the passage of time, including James and myself, so we can give them a pretty informed view as to what has taken place.

Q464 Chairman: Do you find that they are co-operative and receptive? Is the relationship a thoroughly constructive and amicable one?

Sir Alasdair Fraser: I think they are very well led by Mr Cox and Mr James. I had the advantage of working very closely with them when they were dealing on behalf of Lord Stevens, so I have known them both for ten years.

Chairman: We would certainly concur with your remarks, having recently visited and met Mr Cox and his colleagues and associates. Can I bring in my colleague, Mr Murphy.

Q465 Mr Murphy: Thank you, Sir Patrick. Sir Alasdair, we had the opportunity the last time we visited here some months ago to meet with and discuss the work of the Historical Enquiries Team. We understand from speaking to them that to date there has been only one case referred to you from them. First of all, would you by now have expected more cases to have been referred? Do you feel as they move on to more recent cases that you will get more referrals?

Sir Alasdair Fraser: I think you have put your finger on it. I am not surprised that, given the period they are examining, they have found it difficult to secure evidence. In most of the cases we have considered what evidence was put before us and have come to a view and it has proved difficult for them to gather fresh evidence. I understand there are about 1,000 cases open, of which 500 have been completed. I think when we move from the 1970s into the 1980s then perhaps there will be an increase in the rate at which cases are referred to us. Although only one has been sent to us, it is not a criticism of their professionalism.

Q466 Mr Murphy: I must say that we were very impressed with the people we met there and with the work they were doing. I understand that your organisation has been allocated £488,000 as a contribution to the work you will need to do on that. Do you consider that to be adequate?

Sir Alasdair Fraser: At the moment we have a ring-fenced budget of £1.8 million covering 2005-10. We have spent £322,000 of that. I am informed that they anticipate that they will be sending cases to us, not in the immediate future but in the middle term. At the moment I cannot but say that we are sufficiently funded.

Chairman: That is reassuring. That is very good. Lady Hermon.

Q467 Lady Hermon: Thank you, Sir Patrick. It is delightful to see you here this afternoon, Sir Alasdair. I wonder if we could look at an issue that I know has certainly concerned the present Chief Constable and it does concern the Committee as well, and that is how one protects intelligence and how one protects human sources. The Chief Constable has actually indicated to the Committee that he and the police now find there are difficulties in bringing cases to the court with the human rights implications, obviously the right to life, and there is a risk of compromising sources. Presumably you are aware of this. How does the Prosecution Service deal with this?

Sir Alasdair Fraser: There is a very clear pathway that we have to follow. The Chief Constable is, of course, right in saying that meeting one's duties can affect whether or not a person is to be prosecuted. As you know, there is a duty on the prosecution to disclose evidence, material, information which will assist the defendant in the conduct of his defence or will undermine the prosecution's case. We, as prosecutors, have to have an arrangement with police to ensure that we are briefed with that information and we have to have arrangements with the Security and Intelligence Services. Then we are under a duty to examine that material. In the case of a trial without a jury then we move to a disclosure judge for a ruling. If we think the material ought to be disclosed, we either disclose it or stop the case. If we think there is an argument which a judge could properly determine that we do not disclose the material and a fair trial can be obtained for the defendant then we move to a disclosure judge. In the circumstances that you described, it inevitably will be an *ex parte* application with or without notice to the defence. If the judge says, "Well, I do not think you need disclose" then we, as prosecutors, are under a continuing duty during a trial to act as a minister for justice and if an issue arises during the trial which we consider may affect a defendant then we must go back to the disclosure judge and inform him of what has taken place and seek a further ruling. You have quite a sophisticated, complex mechanism. The disclosure judge is not the trier of fact and has the disadvantage, of course, that he is not in the arena of the trial.

Q468 Lady Hermon: Could I just ask you to give some indication of how influential the human rights legislation has been and, as I say, the right to life. Have cases actually been dropped? Perhaps you could give us some examples. The one that does come to mind is where the reference to right of life and protection of that person's life might well have indicated that, in fact, he was an intelligence source.

Sir Alasdair Fraser: The police, the Prosecution Service and the courts are subject to the European Convention on Human Rights, now the Human Rights Act. Clearly circumstances have arisen where one would be mindful of one's duties under Article 2, and that has occurred. As a prosecutor you either can find a way, perhaps with the disclosure judge, to continue a prosecution fairly or, if that cannot be achieved, then you stop.

Q469 Lady Hermon: Are you duty bound as the Director to refer to the Attorney General for a decision like that, Sir Alasdair, or is that a decision that, in fact, remains here in Northern Ireland with you?

Sir Alasdair Fraser: The Attorney, of course, would be receptive to any approach which I would make and if I asked her for advice she would give it, but as Director I am responsible for the conduct of prosecutions and the Attorney would look to me to meet my duties.

Q470 Lady Hermon: Yes. That has been very helpful so far. Do you think that, in fact, the legislation in Northern Ireland is adequate for the protection of witnesses who may find themselves under intimidation or in fear for their lives or, indeed, their families in fear for their lives? Is the protection adequate at the present or could more be done for witnesses?

Sir Alasdair Fraser: I think you will find that there are a number of cases decided in the Appellate Court, particularly in the House of Lords, which permit witnesses to be protected, for example by screening, by anonymity and the like. In addition to that, there is legislation which permits a witness to give evidence by video link rather than be present in court. There is a range of measures which will protect an individual, but we live in a small community.

Q471 Lady Hermon: Precisely.

Sir Alasdair Fraser: When we live in a community of this size it is very difficult for police to protect an individual, if that be necessary.

Q472 Lady Hermon: Could I sum that up by saying they are good as far as they go but not entirely adequate. Would that be fair?

Sir Alasdair Fraser: What I would say is I think they are reasonable and proportionate and I cannot identify additional means that I would favour.

Lady Hermon: Gosh, that is very interesting.

Q473 Chairman: So you have no recommendations that you would like this Committee to make in that regard?

Sir Alasdair Fraser: Not in regard to anonymity, screening or special measures. I think both Parliament and the courts have addressed those issues in a very thorough way.

Chairman: That is very clear, thank you very much indeed. Obviously we will be much influenced by those comments when we come to draft our report. Thank you very much.

Lady Hermon: Thank you so much.

Chairman: Could I move on, please, to Mr Hepburn.

Q474 Mr Hepburn: Thank you. Just some questions on the relationship between yourselves and the police. How is the protocol working that you had jointly drawn up?

Sir Alasdair Fraser: It has worked well. We have a very good, professional relationship with the police. The problems that we faced, perhaps, in the 1990s are no longer there. We have very effective arrangements in relation to the disclosure of sensitive information. We have sophisticated reporting arrangements which, because of Causeway, are by and large electronic and very advanced. We are

involved from time to time in police training, as they are with us. It is a very productive and professional relationship where each of us recognises and respects our different roles and our independence.

Q475 Mr Hepburn: At what stage would you expect to be called in to give advice to the police in a criminal investigation?

Sir Alasdair Fraser: Since the 2002 Justice Act we are under a statutory duty to provide advice. Increasingly, the police are coming to us earlier and earlier in the course of an investigation and, on occasions, before anyone is arrested. We encourage that. We encourage them preparing papers for that consultation. We ask that colleagues formalise the advice in a written manner and I hope that is of assistance to police and is moving in the right direction in the particular sense that if there is a problem, a problem, for example, about perhaps the presence of intelligence, that problem should be identified as soon as possible by the two agencies.

Q476 Mr Hepburn: You say with the protocol there is a very professional relationship between yourselves and the police, but just generally in those relationships with the police are there any tensions, Sir Alasdair, any frictions?

Sir Alasdair Fraser: It would be foolish to say there were not. There are no tensions or frictions at my level and Mr Scholes' level. What I see is an invigorated Police Service, young, at times inexperienced, committed, and impressive, and it will improve with time, as my own service will do so.

Q477 Chairman: Sir Alasdair, one of the things that Sir Hugh has expressed concern about, and indeed one of the reasons why we are conducting our present inquiry, is that he feels there is increasingly perhaps an imbalance between his responsibilities for the day-to-day policing of Northern Ireland, which is his supreme duty, and dealing with the historic past. Coming from where you are coming from, do you have any comments on that?

Sir Alasdair Fraser: The starting point is one of sympathy and perhaps a recognition of similar pressures and concerns within my own service. I think the Chief Constable is principally concerned about the haemorrhaging from the past into the present and one can fully understand that, but the past must be addressed by the responsible agencies in a thorough and professional way.

Q478 Chairman: Do you think that in respect of its recent past Northern Ireland should have its own statute of limitations?

Sir Alasdair Fraser: It is certainly a possibility and is not a unique instrument, it is relatively common in common law jurisdictions.

Q479 Chairman: Yes, that is why I ask the question. Would you favour it?

Sir Alasdair Fraser: I am happy to say, Chairman, if Parliament considered it appropriate I would be quite content, but I do not think as Director I should be contending for it as such.

Q480 Chairman: No, but you would see it as being something unexceptionable with which you could find yourself, as you say, content?

Sir Alasdair Fraser: I think if society considers that this is appropriate I would be very content. There would need to be a reasonably broad consensus for that consent to be meaningful.

Q481 Chairman: Thank you very much, that is very helpful. Taking things as they are at the moment, what do you find to be the greatest obstacles in bringing prosecutions dealing with crimes committed long ago?

Sir Alasdair Fraser: There would be a range of problems. The memory of witnesses is fickle.

Q482 Chairman: Indeed.

Sir Alasdair Fraser: And documentation would not have been kept or prepared in the manner that it would be today. With scientific techniques, whilst they give a great opportunity for finding fresh evidence, one is caught by the manner in which exhibits have been handled and their integrity. I think it is very difficult to go back 30 years and be able to put together sufficient evidence that will withstand the proper, rigorous scrutiny that it will receive.

Q483 Chairman: As one who could not, in his time, vote for the War Crimes Bill for those reasons, I fully understand why you make those points. When we went to visit the HET team we did have pointed out to us the number of very damaging attacks on police stations over the period of the Troubles which resulted in destruction of much valuable evidence. We also had pointed out to us that there were two fairly devastating attacks on the Forensic Laboratories. All of these things make it more and more difficult. What is absolutely crucial, and it has been underlined, of course, by a recent case is that if prosecutions are to be brought everybody has got to be persuaded that this truly is a fair trial and that it will stand up to the scrutiny to which you just referred.

Sir Alasdair Fraser: Things go in cycles in the legal system. At one point it might have been the treatment of individuals in police custody that was the point of focus, then whether or not someone had made some adjustment to interview notes. I think we are now in the phase where fresh, vigorous scrutiny has been brought to the manner in which exhibits are being handled, and quite properly so.

Q484 Chairman: Yes. Last year, Parliament, in its wisdom, decided that the era of Diplock was over but that there should be a remaining provision for trial without jury here. Have there been any trials without jury since Diplock?

Sir Alasdair Fraser: Yes. I am called upon to issue a certificate and if I suspect that a condition which Parliament has set is met, for example the defendant is involved in a proscribed organisation, and consider there is a risk that by reason of that the administration of justice might be affected then there will be a trial before a judge sitting alone. I take the decision on the basis of a very thorough analysis of the evidence and intelligence. In some cases I have granted a certificate and in others refused. Interestingly, I refused a certificate in a transitional case which was heading for a Diplock trial because the conditions are different.

Q485 Chairman: Yes. Can you tell the Committee how many certificates you have granted and how many you have refused.

Mr Scholes: Somewhere in the region of 22. I cannot be absolutely accurate but it is somewhere around that figure.

Q486 Chairman: 22 granted?

Mr Scholes: 22 certificates issued, yes. Obviously those cases have not come to trial yet.

Q487 Chairman: No, I appreciate that. This is very, very helpful because, after all, we were all involved in this legislation. How many refused?

Sir Alasdair Fraser: I would say one.

Q488 Chairman: One.

Sir Alasdair Fraser: I think so. It is a very small number.

Q489 Chairman: You were very proper in the remarks you made about possible legislation, but can you say on this piece of legislation that you are content with the way it is indeed allowing you to operate, or has Parliament not got it right?

Sir Alasdair Fraser: Parliament always gets it right!

Q490 Chairman: Would that that were the case, Sir Alasdair, would that that were the case.

Sir Alasdair Fraser: I would admit that in approaching the Bill I was not at ease with the prosecutor being cast as the decision-maker. I preferred the previous arrangement whereby the Attorney took that decision.

Q491 Chairman: So did I, yes. That is very interesting because we did have the Attorney before us on this very issue and I and colleagues pressed him on that point. Having said that, you are reasonably content with the way it is now enabling you to work even though you would prefer not to have that specific responsibility?

Sir Alasdair Fraser: Yes. I do not think it has been tested yet.

Q492 Chairman: No.

Sir Alasdair Fraser: One would anticipate some judicial review of a decision or perhaps an abuse application.

Q493 Lady Hermon: Against a certificate having been granted?

Sir Alasdair Fraser: Yes.

Q494 Lady Hermon: That has not yet arisen?

Sir Alasdair Fraser: It has not.

Q495 Lady Hermon: The grounds for review, if my memory serves me well, and it does not always, are judicially kept very narrow indeed, are they not?

Mr Scholes: Yes, dishonesty, bad faith or other exceptional circumstances.

Sir Alasdair Fraser: I think in this particular case my colleague is right. It is very hard to have a Director's decision overturned in the absence of malfeasance, but on this issue probably one would be applying the Wednesbury approach whether or not it was reasonable. That is probably a lower standard that the applicant would have to establish.

Chairman: Before we move into private session, are there any other questions?

Q496 Lady Hermon: Yes, Sir Patrick, I have got one. I am always very interested in finding out how morale is within an organisation. How would you describe morale, because we are looking at how we are dealing with the past in Northern Ireland? The contingent of prosecutors who are looking at the past, would you say they regard that work as something of a privilege or is it something of an albatross that they just have to get on with and do?

Sir Alasdair Fraser: It is the former. It would be viewed as difficult work within my service and it would be a feather in one's cap if one was designated to take that work forward.

Q497 Lady Hermon: Really.

Mr Scholes: Sir Alasdair Fraser: There would be no reluctance at all.

Lady Hermon: That is a very interesting response. Thank you for that.

Chairman: Thank you very much indeed. Are there any other questions? In which case, could I ask the members of the public to withdraw, please, and Sir Alasdair and Mr Scholes will stay. Thank you very much indeed.

Witnesses: **Sir Hugh Orde**, Chief Constable, **Mr Alistair Finlay**, Assistant Chief Constable, and **Mr Peter Sheridan**, Assistant Chief Constable, Head of Crime Operations, PSNI; **Mr John Brannigan**, Head of Intelligence, Historical Enquiries Team, gave evidence.

Q498 Chairman: Sir Hugh, you are extremely welcome. You have, as you say, your A Team and not enough nameplates, so perhaps you would like to introduce the anonymous gentleman.

Sir Hugh Orde: Who are you? I have never seen you before in my life! John Brannigan. John is a retired senior detective who now works on the Historical Enquiries Team. David Cox, sadly, is on annual leave. He will be well-known to some Members of this Committee, I suspect, from his previous life. He will answer all the hard questions!

Q499 Chairman: You are very welcome. Before we begin, could I just express our sense of outrage, sadness and sympathy at the appalling event which has dominated the news this morning. Please convey the Committee's sympathy to the officer concerned and his family. Is there anything you would like to say about this?

Sir Hugh Orde: Yes, thank you for the opportunity. I was not going to make an opening statement in general but I think this is important. It really underlines where Northern Ireland still is and yet again distinguishes us from other Police Services. No other officers in the UK have to be continually mindful 24 hours a day on or off duty that there is this latent threat, albeit sporadic and disorganised, which does not make it any less dangerous, as I said on the TV. The bottom line is, as it has been accurately described by the media, this was an officer on his way to work using his own car where clearly a device had been placed before it exploded within about 400 yards of his home address. The injuries are serious but not life-threatening. He had an operation at one o'clock this morning to remove shrapnel from the backs of his legs, which is where the worst of the injury was incurred. The device was clearly designed to kill. This is the third time we have not had a funeral, but it is only good luck rather than determination. In terms of indicators, what is different, in keeping with the last two in November when two officers were shot, is universal condemnation from every political party probably even more assertive in that sense across the divide. The phrase I used this morning was he was an officer on the way to protect the community and ended up being protected by the community. He was pulled out of the vehicle by local people. A nurse was nearby who rendered first aid until the experts arrived, the Fire Brigade and colleagues. Whilst it is a bad event, the fact that there has been such comprehensive condemnation shows where Northern Ireland is and the clear message is it is not going backwards. Until these people are locked up the potential continues and we will have to do our best to police it out. The other minor observation is I dealt with a couple of media crews about intelligence and the point I have been making in public, and I am happy to have a conversation in private at the end of this meeting, is our intelligence system is as good as it has ever been. In the last six years, and that is all I can speak for, the number of things that have not happened because of police action, or An Garda Síochána action with the Security Service, has been huge. Sadly, we can never mention them in any detail because the cost of achieving nothing is something that the Treasury bean counters are yet to come to terms with, but it obviously costs millions of pounds a year to maintain that level of normality and we will continue to do it.

Q500 Chairman: Thank you for that, and thank you and, through you, to all your officers for what they do to ensure that this place is as normal as possible. As you rightly said, the universal condemnation of this appalling act and the community assistance rendered to the stricken officer does itself indicate how far we have come forward even since this Committee has been coming over in the last three years. Sir Hugh, as you know, we are looking at HET. I would like to thank you for making it possible for us to have that visit. Mr Cox and his colleagues could not have been more helpful or welcoming. They gave us the opportunity to meet a random selection of victims' families who, of course, had different views on the outcome but were unanimous, I might say, in praising the sensitivity of those who had handled their cases. That is something that has come up again and again in our conversations, both public and private. Thank you for that. One thing we were very surprised to learn, Sir Hugh, when we went to the HET headquarters was that all cases are being investigated, even those where there have been prosecutions and where families have never requested further information. I even came across one where the victim had been a very old man when he was killed in the 1970s and a bachelor with no known relatives. I think the Committee does just wonder whether this is a justifiable use of resources, both financial and human. I wonder if you would like to say a word about that.

Sir Hugh Orde: I will make some very brief comments and hand over to Alistair or John. I think we made a decision early on in terms of reinvestigating every one that it was around recognising whilst many were solved, they were not solved in the holistic sense, someone may have been convicted but there may be other people outstanding. There is also the harsh reality that these people were not killed by individuals or maverick activity, these were organised killer gangs, serial killers, going around, so to miss one out means you could miss a series of crimes where this was a critical element, so it was around joining them together. As far as the families are concerned, I think the odd case may seem a bit strange and if someone does not want investigation we do not want to make it worse for them but, again, doing the basic reinvestigation which was described to you does enable us to make sure we do not miss perhaps critical elements of a series of crimes. Interestingly, and I am sure Dave will have mentioned this, a number of people, whilst they do not engage at the beginning, one of the reasons we may overrun is when they hear we have done it they want to engage at the end. In other words, the questions we would like to get before we start the review we get at the end. I do not know if Alistair or John would like to add anything to that.

Mr Finlay: I think that covers most of it, the interconnections between the different cases. The other thing to be remembered is where you either have no family or no family engagement it generally means that the scope and size of the amount of work that is done is smaller. A lot of the work is the unanswered questions that come from victims' families and those are the answers they are looking for. Those who do not have family engagement are probably smaller in scope but it means we have then got the complete picture and we have joined up that tapestry of interconnected incidents some of which, until you revisit them, you do not know are interconnected. John deals with the intelligence so maybe sees a bigger picture.

Mr Brannigan: What we would like to do is get it right once and not to have to go over cases again. We find that where you get fragmented families, and we do get grandchildren coming along enquiring as to the death of their loved one much later after the process has started, and that is all through the media where they hear of HET and we get letters from as far away as Australia and America enquiring about their distant relative and the fact they have no near relatives, we feel that it is necessary to open each case and go through all the different areas within that investigation and have it complete and it is there forever. We will place that file within the central store and it is there for anyone to pick up in future years.

Q501 Chairman: Obviously what you say is on the record and people will be able to reflect on that, and the Committee will. We were

told by the Retired Police Officers' Association, Sir Hugh, that some families have been, as they put it, "re-traumatised" by the investigation. Are you aware of this? How common a reaction is that?

Sir Hugh Orde: You will have met my Family Liaison Officer or someone at the HET, so I will leave it to the experts to talk about it. Generally speaking, my gut reaction is that would be highly unusual. I do remember a case when I was on Stevens where we had to reinvestigate a case which to say we re-traumatised the family would not be right but it was a family that went through some pain because of what we were doing, which in a way lends itself to the wider debate about how you deal with the past, I think. We recognised we were only ever going to be one bit of it and now, according to Denis Bradley's inquiries moving on, that is a hugely positive step to offer closure for families. We never claimed this was a universal solution, but what we are saying is at least we are doing something which we think is quite legitimate and on balance is bringing more success. I do not know if there is any hard evidence.

Mr Brannigan: From my knowledge of HET, we have not experienced too many complaints of people being traumatised by us approaching them, but we have had a number of cases where people have clearly said that they do not want anything done. Equally, we have had fragmented families where some members of the family have said, "We don't want anything", but other members have come along saying, "Yes, I do want an investigation". We have no clear evidence that people are being traumatised by our investigations.

Q502 Chairman: We, of course, will have to address all of these issues of how the past should be dealt with and we are meeting with virtually everybody who has an involvement in this. I would just like to ask you one more question before I bring in Lady Hermon, and that is this: we were told when we visited the HET headquarters that it was unlikely that the project would be completed within the initial planned six-year period. What are your views on the overrun? How long is it likely to be? Is it going to be adequately resourced?

Sir Hugh Orde: When we started it, it was a sort of unique step into the dark, frankly, no-one had ever tried this, to my knowledge, anywhere in the world. It is quite interesting, having given evidence in Strasbourg to the Secretariat raising some specific cases, I fear we are now going to be in demand in other places looking at their history as a model of best practice. That is a huge statement around what the Secretariat thought of what we were doing, and they would have had a presentation very similar to the one you had. It may overrun, but much of that is around the families wanting to know more. Our determination was to be victim-focused, so we feel obliged to do that. Alistair or John may have some scope on time. It is a finger in the air, frankly, because we are at 1972/73 at the minute and as you get closer to the end of the game, does that make it more complicated or less complicated. There may be more questions, there may be more completeness in the files, as one would expect, as we get to the more modern ones. All of that having been said, what we are delivering is petty cash compared to other methods, a more legalistic approach to dealing with the past. Government has given us £32 million or £34 million, I lose the odd million here or there.

Q503 Chairman: What is that between friends!

Sir Hugh Orde: At the minute, essential. I have said on record that I am committed to keeping this going as long as it needs to keep going because I think it is adding far more value than it is costing in terms of hard fiscal cash. The reality, of course, is if there is no more additional money that, like everything else, will be drawn out of my current budget. This is different from public inquiries because I am funded for this separately by Government. I do not know if Alistair has got a point on that.

Mr Finlay: The other point is public inquiries is a single victim essentially and we are looking at 3,265 deaths. The range of victims, if you like, are the families left behind and if you multiply that by a factor of whatever, we are dealing with a huge number more. In terms of scoping how long this is going to take, I do not have a firm figure that I can give. I think part of this is we have done this process of gathering papers and such like together, but until you start the family engagement and know what the questions are and look for the interconnections you maybe do not know the size of it and it is not one-size-fits-all. It is very difficult to project at this stage other than to say I think there are somewhere in the region of 1,100 cases that are already opened. So of the 3,265 ---

Q504 Chairman: Roughly a third.

Mr Finlay: Are opened.

Q505 Lady Hermon: May I just follow on from that point, Alistair. Of the 1,100 cases that have been opened, one of the reasons you gave for identifying and reinvestigating every single death, not just unresolved deaths and murders was that you "could identify interconnected cases". Has HET identified any interconnected cases?

Mr Finlay: Yes. There are numbers of series.

Q506 Lady Hermon: Are you able to say publicly which cases those are?

Mr Brannigan: I am not able to say with any great detail what they are, but what I can say is a number of cases are connected. We were able to link those through intelligence, through weapon history and general circumstances.

Q507 Chairman: These are cases that you did not previously think were connected?

Mr Brannigan: We did not know if they were previously connected.

Q508 Lady Hermon: These are early cases?

Mr Brannigan: These are early cases that are connected.

Q509 Chairman: These are not cases that have been taken out of sequence?

Mr Brannigan: No, but in cases that have been taken out of sequence we see a clear pattern there and we see them as linked.

Q510 Lady Hermon: Are you hopeful of prosecutions in those cases?

Mr Brannigan: Every case we have to treat on its merits and what evidence we have. It is really a case of digging down into the circumstances and evidence.

Mr Finlay: One of the great advantages that we have now that we did not have before is the range of techniques. The role of the crime analyst and the computer tools that are available to the crime analyst to map out a picture showing the interconnections is a facility that we have available to us today that detectives in yesteryear did not have, and maybe did not have the opportunity through more electronic means and assessing of information to join the pattern together in a way that we are able to do now so you can see where, as John says, the linkages are and make connections between them. It is an evolving map of interconnected events that tend to emerge from HET.

Q511 Chairman: I was interested in what you said about the out of sequence cases. Does that mean that some of those also connect with the very early ones?

Mr Brannigan: Not particularly. If we look at some of the cases that happened in the 1990s, there was no relevance to something that happened in the 1970s in terms of personalities who may have been involved. To give you an example: in 1972 there were 470 deaths due to the Troubles and of those, as Alistair said, there was no real analysis done in those early days to the depth that we do now and we are seeing patterns that we can connect.

Q512 Lady Hermon: I am sorry to repeat myself, but is HET hopeful of prosecutions in those linked cases?

Sir Hugh Orde: No is the short answer. Do I see the HET as prosecuting lots of people? No, I do not. Does that mean there will be no prosecutions? No, I think there may be some but the opportunities by definition are limited, certainly in the 1970s' cases. I think the more modern we become probably the greater the chances as we come up to the more modern where exhibits and things are more likely still to exist, but in the older cases, no. I have been roundly criticised for setting it up on the grounds that this is nothing to do with the police. I happen to think that victim care is something to do with the police and the feedback we are getting to date is that this is of value. I am not being defensive about it but success for me is not the number of prosecutions; success for me is we have allowed some people to move on in their lives to a degree that they would not have been able to move on if HET had not existed and given them that interaction and opportunity to ask questions they have never had before because simply people were too busy at the time.

Q513 Lady Hermon: Can I put just one other matter. We have looked at the families and we have looked at the victims, but can I just ask about the impact on police officers who will be asked by HET to cast their minds back to the 1970s and 1980s and the trauma that is caused to retired police officers and their families. What concern does the Police Service have about them?

Sir Hugh Orde: An awful lot. In fairness, I think it would be fair to say they are keen to engage.

Mr Brannigan: Yes. We have found that a lot of ex-police officers are keen to engage and have left their phone numbers. Some others have said they do not want to be contacted. We do write out to them as opposed to door stepping them and we give them the opportunity either to co-operate or not. Some people do not respond, but by and large we have found good co-operation from retired officers.

Q514 Lady Hermon: Thank you.

Mr Brannigan: We do respect their wishes in that if they say "no" we will not harass them to get that information but we will do it in a courteous way.

Q515 Chairman: Sir Hugh, before you came we had Sir Alasdair this afternoon and he gave in public evidence the comment that to date only one case had actually been referred to him. He did not make any complaint about this, but he ---

Sir Hugh Orde: I bet he did not!

Q516 Chairman: He merely gave it as a statistic. How many do you reckon he is going to get?

Sir Hugh Orde: I think that is an impossible question, Chairman. I understand why you are asking it. In the older cases, not a lot. I am not going to put on Sir Alasdair's plate stuff which we could not make decisions on. It is easy to say, "We have got something here, give it to the DPP", but that is not fair. We have got to be comfortable that we have got a case that we think in our professional judgment has some chance of life before we hand it over to the Director to direct on. I think it would be unfair just to offload everything on him to say we did not make a decision. John may have a better view, but I do not think we are looking at huge numbers.

Mr Brannigan: I do not think there will be overall. Perhaps in the cases towards the end of the process we will have more that will go towards ---

Q517 Mr Murphy: Why then was the decision made not to start with the latest cases and work the other way, given that time is moving on and people are retiring? Surely it would have been much better from an evidence point of view to investigate the later cases first.

Mr Brannigan: If we look at the family issues and the cases from 1969-70, the people, relatives and the victims' families by the time we get to look at their cases would be much older. It is a big, big issue that we have and I do not think there was any easy answer as to where to start. I think within our process the integrity of a lot of documents, including exhibits, will be more intact than they were for the 1969-70 cases, so they will still be there in the systems that we have.

Q518 Chairman: But basically your reason was compassion for the ageing?

Mr Brannigan: It was a judgment call, yes.

Sir Hugh Orde: It could have gone either way, frankly. There was a long debate about it.

Q519 Dr McDonnell: We have explored that quite a bit. Some people have suggested that there is significant overlap between the Historical Enquiries Team's inquiries and the Police Ombudsman's inquiries. Do you agree with that? Do you see them as different animals?

Sir Hugh Orde: They are certainly very different. The Ombudsman has a very limited remit. The Ombudsman cannot investigate ordinary, for want of a better description, murders outwith any suggestion of police malpractice; it is as simple as that. It may help if Alistair talks on how we operate jointly.

Mr Finlay: There is a lot of co-operation and joint working that goes on between the Ombudsman and HET over those cases where there is joint interest, if you like. I do not see it as a duplication of effort over the same cases, they are coming at it from different aspects. There is routine co-ordination and exchange of views on a regular basis, is that not right, John?

Mr Brannigan: Yes, indeed. We have monthly meetings with the Ombudsman to discuss cases that are of mutual interest and we exchange material. The Ombudsman is legally obliged to investigate some of the cases where the police have been involved in the shooting, so those cases have to be passed to them. Other cases where there is some doubt or where there are allegations of collusion or ineffective investigations we do discuss in some depth with the Ombudsman. I cannot speak for the Ombudsman, but certainly they would be strapped for resources and finance to deal with the volume of cases that we have for even the minor complaints of maybe an ineffective investigation in the 1970s.

Q520 Dr McDonnell: So really you do not see a lot of overlap and the bit of overlap that there is you work it out?

Mr Brannigan: Yes.

Sir Hugh Orde: Yes.

Mr Finlay: The Ombudsman is discharging that oversight over inquiries that are going on within HET that the Ombudsman does not have the resources to pick up at that time but maintains that ongoing, regular interest and update.

Q521 Chairman: The Ombudsman has said in public evidence to this Committee that he would like to see the historic hived off from his current responsibilities. He actually said in as many words that there is a danger of the past overwhelming the present. Any views on that?

Mr Sheridan: I think about 70% of their work is currently in the past. Judging from the letters I get, a lot of current stuff is not going to be dealt with.

Q522 Chairman: That was his point.

Mr Sheridan: That is my sense of where it is at the minute.

Q523 Dr McDonnell: Could you see any circumstances where this aspect of the work would come under one umbrella?

Sir Hugh Orde: Yes. It would be interesting to see what Lord Eames and Denis Bradley come up with in terms of is there a wider solution. Am I determined to keep HET under our command? No, I am not persuaded it is necessarily the right place, it depends where it would fit in something else if some other model is developed. I would be very concerned if the work we had clearly stated we were going to do was not done and I would want to have a serious conversation around that. As we always saw it right from the beginning, this was part of a spectrum of outcomes or ways of dealing with history, it was never going to be the whole one. On the Ombudsman's observation, Chairman, if one looks at the model in the Republic, of course their legislation is different, they postdate our Ombudsman and their retrospective powers, when they were severely limited, were to a very short period of time pre-appointment. If the current Ombudsman thinks that is the right way forward, I have no difficulty with that at all. I need the Ombudsman today to do what the key role is, which is to deal with misbehaviour by current serving officers to maintain confidence in police.

Q524 Chairman: That was the reason for the office being established.

Sir Hugh Orde: I am at one with that.

Q525 Mr Hepburn: The PSNI was set up as a new organisation and the Police Ombudsman was set up to look into things like current misbehaviour by police officers. The very fact that they are getting involved in historic inquiries into the 1970s when there may have been wrongdoing by police officers, do you not think that taints the current PSNI when the Ombudsman is doing both?

Sir Hugh Orde: My big concern about all of the historic events that are going on is that it is reaching such a level of activity, and I say this with some experience of living through the Lawrence Inquiry, the murder of Stephen Lawrence in London and the inquiry into that, by the time that one inquiry reported some many years later the changes had been achieved. The Metropolitan Police took several years to recover from that impact because it was seen as if it was only yesterday, which was your point, and it narrows the gap. I have lost count of the number of public inquiries we have had both North and South. We have all of the historic events from the Ombudsman's office and we have our own Historical Enquiries Team which may find something out which then has to go to Al Hutchinson to investigate. You reach a point where distilling one from the other is hugely difficult and confidence in policing, as I have said, will suffer as a consequence of that, and unjustly so.

Mr Sheridan: I have personal evidence of it because the Ombudsman did an investigation into the death of Sammy Devenny in 1972 when the police ran through his house after a riot. He was beaten with batons, taken to hospital and died some weeks later of a heart attack, not the injuries. The Ombudsman did a reinvestigation in 2002 and she found, quite rightly, what had happened in the event. I was the Commander in Derry at the time and was interviewed and there was a lot of stress around it and eventually I had to say, "Look, I was 12 years of age when this happened", but in their mind time had collapsed and they were of the view this was currently what was happening.

Chairman: Could we move on to inquiries with Mr Anderson.

Q526 Mr Anderson: Sir Hugh, it is good to see you again. In the written submission you sent us you mentioned your concerns about the information management procedures of the various inquiries and the fact they do not provide sufficient protection. Can you expand on that?

Sir Hugh Orde: Yes, I can. It is one of the key issues that causes me concern. This is no specific criticism of inquiries and the role they have been asked to do, it is the fact that I am losing control of more and more secret and extremely sensitive material which includes the names of covert human intelligence sources which historically, of course, would have been recruited on the clear understanding their names would be retained by the Police Service and would never go outside that control. None of my officers can ever say that ethically again because it is not right in inquiries like this and the Ombudsman gives powers to require that information to be divulged. We expressed those concerns in writing to all the inquiries at the start and sought to make sure processes and procedures were in place to minimise the impact, but the fact is you lose control when it goes outside the organisation. Likewise, the Ombudsman who, in fairness, has a very sophisticated and secure system for document retention that mirrors ours to the highest level, so it can be done but it is very expensive, of course. The long-term implications of this, in my judgment, and it is a judgment, are, if you look at the current threat to the United Kingdom, will we be able to successfully recruit sources, young men and women, from the communities where these current terrorists are being drawn from and radicalised who may be 20 now, so in 20 years' time, come a public inquiry, will only be in their 40s and their identities will not be secure. I think that has huge implications, which is why we feel it is very important. The risk is compromise and the wider the audience then the wider the risk, it is as simple as that. I do not know if Peter wants to expand.

Mr Sheridan: It is very difficult for people to sign up to be covert human intelligence sources at the best of times and one of the guarantees we used to give them in the past was that their identities would remain confidential, but we cannot do that any more. In the contract with that covert human intelligence source it becomes more and more difficult to persuade them that their identities will always remain secret. It stretches further into the courts, PII and protecting identities of informants in investigations.

Q527 Lady Hermon: Picking up on what Sir Hugh just said about the serious implications that are not just confined to Northern Ireland but our dealing with al-Qaeda and right across the United Kingdom, that is the point you are making?

Sir Hugh Orde: I think it has national and international implications. The other side is what agencies will be prepared to deal with us from outside if they feel they cannot be protected. There ways of minimising the risk and I think that we need to be confident when that material is outwith our control those risks are minimised, and I think there are certain standards that need to be maintained. It is a big issue.

Q528 Mr Murphy: Sir Hugh, have there actually been any incidents of covert human intelligence sources being identified as a result of public inquiries to date?

Sir Hugh Orde: Not to date, and likewise in prosecutions. We will step back, much to our frustration on many occasions, when the disclosure rules force us either to withdraw or divulge a source under Article 2. It is really a very simple, albeit frustrating, decision: you step back.

Q529 Mr Murphy: Just to follow on from that. One of the powers the Secretary of State has is to prevent the publication of evidence being published that would normally be placed in front of the inquiry. You are on record as saying to us that you thought it would place the minister in "an invidious position of seeming to intervene in the inquiry".

Sir Hugh Orde: It is a matter for the minister really, but I think it must be difficult if you set up an inquiry, a public inquiry, albeit in the Inquiries Act the word "public" does not feature in it, to be as public and as open as possible and then you are the same person who says, "I am sorry you can't hear this bit". In terms of public confidence in the process that does not seem to make sense to me.

Q530 Mr Murphy: But if that particular piece of information is to protect the very people you have just described, if he does not make the decision then who should?

Sir Hugh Orde: One could argue the judge of the inquiry might. There is a debate around this currently.

Mr Finlay: It is a legal debating issue. What we see at the moment is the traditional PII route and the legislative route that is in the Inquiries Act and we have got Lord MacLean particularly in the Billy Wright Inquiry who believes that he cannot and should not be the arbiter around that. He believes the Secretary of State is the right person to do it. Equally, the Secretary of State would have a view, we think, that he is not the arbiter because it has been provided for in the legislation that the chairman would do it. It has never come to fruition as yet because everything that we have had to deal with has been negotiated because we know about this issue. It is a grey area and an area which is uncertain and our position would be that it does not need to be uncertain, it could have that certainty if they clarified it.

Q531 Mr Anderson: Are you saying the certainty would come if you had the same sort of relationship you have got with the Ombudsman where the systems in the inquiries were the same as your systems?

Mr Finlay: There are two different things there. One is the clarification between a system whereby there is the granting of immunity over the release of that information to another body and the other is the framework of controls round the storage and management of information once it goes outwith our control. Our concern about inquiries is we have very strict regimes of control of the information and we are subject to oversight and inspection on that; the inquiries are not. The inquiries have been reluctant to engage in a process

where they would give us assurances as to what that framework looks like. Although we tried at the beginning to get Memorandums of Understanding to see how this would work, fairly understandably the inquiries at that stage were reluctant to sign up to something which would appear to perhaps fetter their scope.

Q532 Chairman: Each inquiry is effectively *sui generis*, is it not, and they all are taking very different approaches?

Mr Brannigan: Absolutely, yes.

Q533 Chairman: That cannot be easy for you, can it?

Sir Hugh Orde: No, it is not. I must try to remember what I say more often!

Q534 Lady Hermon: We will remind you!

Sir Hugh Orde: I am also very much on record as saying I will provide whatever the inquiry demands because that is what the law requires me to do. I think I have an absolute right equally to raise concerns at committees such as these and in places that are important because we need to understand what that means. Alistair leads on this for me, but we have a whole department providing information. There are very different ways of dealing with not only inquiries but now we have to deal with inquests, and again a different approach has been adopted by the coroner which is a very constructive approach which may minimise the impact, but still it is an awful lot of work.

Q535 Chairman: We will come to inquests in a second. On the Billy Wright Inquiry, for instance, when are you going to give your response to this so-called Position Paper?

Sir Hugh Orde: Alistair?

Mr Finlay: This week.

Sir Hugh Orde: Are we giving it this week, Alistair?

Mr Finlay: Yes.

Chairman: There we are, very positive news. Lady Hermon, you want to ask about inquests.

Q536 Lady Hermon: Coroners' inquests have been described by some of our witnesses as being similar to a "mini public inquiry" in terms of the workload for the police. Is that how you have found it? Tell us the impact? For example, how many people within the police now are involved, for example, in the Rosemary Nelson Inquiry and the Billy Wright Inquiry? You have said that the coroners' inquests are quite separate. Are these different police officers or is it just one room full of very hardworking police officers, men and women police officers, involved in this?

Sir Hugh Orde: I will leave Alistair to deal with the details. It is just another piece of business of dealing with history, so the strategic impact of public inquiries adds to the mix of all these things coming into the public domain which increases the pressure on confidence in policing. In terms of the structure, it is Alistair's daily life.

Mr Finlay: There is not a team that deals with each individual issue. The teams, if you like, are researching different parts of each inquiry or inquest, as the case may be. We move the capacity around depending on where the demand is coming from at a particular time.

Q537 Lady Hermon: So how big is your team, Alistair?

Mr Finlay: At the moment we are running with about 60 people and we have got a legal team which is of about 20.

Q538 Lady Hermon: Is that exclusively what they do?

Mr Finlay: Yes.

Q539 Lady Hermon: They do not do any other what I would call "normal" policing?

Mr Finlay: No. Those are the ones who are exclusively devoted to that side. They will then pass out work to other specialists, in particular Peter's area.

Q540 Chairman: Are these very experienced officers?

Mr Sheridan: Most of the people at Alistair's end are former police officers who are doing that but they require intelligence staff and the only people who can do that are current serving officers, so then it comes across to my department who will research whatever they need for whatever inquiry it is. That takes a considerable number of people depending on what it is. They also have to service requests from the Ombudsman into past investigations and, as I said, 70% of the work is into past investigations. You get all that information, including inquests, that requires intelligence and background and consistently researching that information.

Q541 Lady Hermon: So much of your time is personally taken up?

Mr Sheridan: Department time?

Q542 Lady Hermon: Yes, department time, just looking at the past at inquiries and the coroners' inquests.

Mr Sheridan: I would say probably a good 25% of individual officers' time because it is a group of people who continually research old systems and it just depends on the level. One month ago there were 600 separate requests from different parties that came in. The inquiries are up and running now, so by its very nature they have got all the information and all the intelligence they need so there is less of that happening, but it is very hard.

Sir Hugh Orde: It is huge, which is why I have expressed publicly concern about its impact on current policing. It is not just any individual but the key experts, many of whom have retired and we have had to bring them back, who understand the legacy systems. We do not just press a name on a computer and get everything. Everything has to be right because I cannot afford to give wrong information or misinformation to an inquiry, we would be rightly criticised for it. It is a huge piece of work.

Q543 Chairman: On this impact on current operations, how serious is that at the moment or is that merely a fear for the future?

Sir Hugh Orde: No, it is consistently serious. These are people, particularly in Peter's department, who should be dealing with the top end of criminality and terrorism because those are the expertise and skills we need. When you are looking for old covert source material and intelligence material these are the people who understand it, so when you get a request, I do not know, for all INLA intelligence you cannot just go and press a button, you have got to look at all PIRA intelligence and may have to look at lots of intelligence which may mention it in there. It is not easy. That is what we have been trying to articulate, maybe inadequately, to try and underline why the impact is substantial.

Q544 Chairman: You are articulating it very adequately now and I would give you as much opportunity as you would like because this is on the record.

Mr Sheridan: It means those officers who are doing that are not looking at preventing last night's event.

Q545 Chairman: Indeed.

Mr Sheridan: So in terms of researching and assessing current intelligence, a proportion of their time is spent researching intelligence from the past rather than trying to prevent next week's robbery or next week's murder.

Q546 Chairman: Indeed, Sir Hugh, it was your comments on this at an earlier stage that really provoked us into conducting this inquiry.

Sir Hugh Orde: We are grateful for it. It is important. It is not something we take lightly. We will continue to provide that information and, in addition to all of Alistair's people, there are a number of very important players, for example Colin Port, the Chief Constable of Avon and Somerset. He has to have substantial legal support because the inquiry has chosen to employ retired detectives to review his independent investigation, which I am told is a substantial report which I think Colin has some issues with. He now has a QC and counsel at our expense and a whole team to do that piece of work, so the work gets farmed out as well.

Mr Finlay: That was a creation of the inquiry that separated them off.

Q547 Chairman: Yes, absolutely. All of this is in the context of a Northern Ireland which, although very much better and more normal, still has, as we have been reminded all too horribly today, a real and continuing threat, especially from dissident republicans.

Sir Hugh Orde: It is certainly not the environment it was even five years ago, never mind ten or 15 years ago, but, as I said in my opening, Chairman, we are still different and the effort has to be in maintaining normality to enable, for example, a business conference last week to go ahead unheeded. That was a massive police operation.

Q548 Chairman: I was there, you did very well.

Sir Hugh Orde: That is exactly the point where nothing happened where nothing is success and nothing does not come easily or cheaply, it requires huge effort to achieve that objective.

Q549 Chairman: What was the cost of that?

Sir Hugh Orde: I could not put a figure on it yet because I have not had it costed in that sense, but a substantial effort, not just with us but our colleagues in An Garda Síochána. The interesting thing was the best the dissidents could come up with was 38 hoax calls. A huge effort to deal with, but most people at the conference would not even have noticed.

Q550 Chairman: No, absolutely. Before we move into private session, could I just ask you one thing for the public record similar to a question that I asked Sir Alasdair before you came in. How do you consider your relationship with the Prosecution Service? Is it one that is fraught with tension?

Sir Hugh Orde: We have our moments. I do not know if Peter wants to comment on that.

Mr Sheridan: It has improved over the last few years and there is a recognition, particularly in the PPS, of much more need for working together and the issue about creating silos and we are independent, I have seen a change in that. In the most serious of cases, even at the intelligence stage, I would despatch the senior investigating officer down to the PPS and they would be pleased with that and that is not something that happened in the past. I have seen huge improvement around that.

Sir Hugh Orde: In individual cases Peter is absolutely right. Where the debate now needs to shift is towards looking at models in the rest of the UK around speedy justice and proportionality and what is necessary to prosecute a case. That is the debate which I am very much engaged with the Minister on progressing because I think it is hugely important in terms of freeing up frontline resources and frontline policing rather than creating much paperwork which is never going to be used because eventually the majority of people arrested by the police spookily are guilty and want to plead guilty at the earliest opportunity, not two years down the line.

Q551 Lady Hermon: And then hopefully getting a sentence instead of bail or a suspended sentence?

Sir Hugh Orde: I have made several on-the-record comments on those particular issues.

Chairman: Yes. At that point we will rescue you from any more. Thank you to you and your colleagues for the public session, we are very grateful. You have kindly said you will stay to brief the Committee in private.