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# A follow-up inspection of the Police Service of Northern Ireland Historical Enquiries Team

June 2015

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# 1. Introduction

## Legal authority and commission

- 1.1. Her Majesty's Inspectorate of Constabulary (HMIC) is an independent inspectorate which has a responsibility under section 41, Police (Northern Ireland) Act 1998, to inspect the Police Service of Northern Ireland, and to report on its efficiency and effectiveness.
- 1.2. In 2012, the Minister of Justice for Northern Ireland commissioned HMIC to inspect the role and function of the Historical Enquiries Team of the Police Service of Northern Ireland in accordance with terms of reference produced jointly by the chief constable and the Northern Ireland Policing Board. These are set out in annex A.
- 1.3. We conducted our initial inspection between November 2012 and May 2013 and the report setting out our findings and recommendations was published on 3 July 2013.<sup>1</sup> These recommendations are set out in annex B.
- 1.4. Our report had immediate effect. The then chief constable of the Police Service of Northern Ireland responded the same day with a statement, the full text of which is set out in annex C. The relevant section of it states:

“[i]n April 2012, I agreed with the Policing Board that the HMIC should be invited to conduct an inspection of the [Historical Enquiries Team's] interviewing of former military personnel.

“The report has raised significant concerns which I and my colleagues are taking very seriously. I have already met with the Policing Board this morning.

“The report presents a number of recommendations, upon which work will begin immediately. However, as [c]hief [c]onstable of [the Police Service of Northern Ireland], I must make it clear that a way forward on the sensitive and important issue of dealing with the past cannot, and should not, be left to policing alone.”<sup>2</sup>

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<sup>1</sup> *Inspection of the Police Service of Northern Ireland Historical Enquiries Team*, Her Majesty's Inspectorate of Constabulary, 2013. See: [www.justiceinspectors.gov.uk/hmic/media/inspection-of-the-police-service-of-northern-ireland-historical-enquiries-team-20130703.pdf](http://www.justiceinspectors.gov.uk/hmic/media/inspection-of-the-police-service-of-northern-ireland-historical-enquiries-team-20130703.pdf)

<sup>2</sup> Chief constable's statement in response to the publication of HMIC's *Inspection of the Police Service of Northern Ireland Historical Enquiries Team*, M Baggott, 3 July 2013.

- 1.5. The Northern Ireland Policing Board decided to establish a dedicated working group to oversee the Historical Enquiry Team's work on our recommendations. We understand that the working group has since concluded its work without publishing its findings, and that any further work is to be progressed under the auspices of the Board's Performance Committee.
- 1.6. The current chief constable, who took up his office in June 2014, has ratified the decisions made by his predecessor concerning the Historical Enquiries Team.
- 1.7. Because of their depth and scope, it became clear that the implementation of our recommendations would take time. Accordingly, the Minister of Justice for Northern Ireland waited until July 2014 before commissioning HMIC's follow-up inspection. This was to enable a sufficient period to elapse and sufficient progress to be made to render a re-appraisal of the current position meaningful. This approach and second inspection had the support of the current chief constable and the Northern Ireland Policing Board.
- 1.8. The terms of reference of this follow-up inspection are simple and concise:

“HMIC to consider the response and progress that has been made to the recommendations of HMIC's 2013 report entitled: *Inspection of the Police Service of Northern Ireland Historical Enquiries Team*”.
- 1.9. We began our fieldwork for this follow-up inspection in September 2014.

## **The Historical Enquiries Team**

- 1.10. The Historical Enquiries Team was established in September 2005, as a specialist unit, dedicated to examining all deaths attributable to the security situation that prevailed in Northern Ireland between 1968 and 1998, the period commonly referred to as 'the Troubles'.
- 1.11. This was an ambitious and, indeed, unique project for a police force to undertake; between 1968 and 1998, more than 3,260 people lost their lives in Northern Ireland due to conflict.<sup>3</sup>
- 1.12. The Historical Enquiries Team had to operate in an extraordinarily challenging environment where past and present conflict divides communities. This context led to the Historical Enquiries Team being designed not only to re-

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<sup>3</sup> HMIC recognises that, in Northern Ireland, there are differing estimates of the number of people who have died as a result of 'the Troubles'. We have used the figures supplied to us by the Historical Enquiries Team on 2 April 2013.

examine deaths attributable to ‘the Troubles’, but also to bring a “measure of resolution” to the families of those who died during this period.<sup>4</sup>

## Developments during our follow-up inspection

- 1.13. As we were undertaking our work, it was announced that the Historical Enquiries Team’s work was to be transferred to a new unit within the Police Service of Northern Ireland – the Legacy Investigation Branch. This Branch was anticipated to be “much smaller”<sup>5</sup> than the Historical Enquiries Team, as a result of the financial cuts that were affecting the police service as a whole. Notwithstanding this, the temporary deputy chief constable offered assurances that the Police Service of Northern Ireland would “continue to meet [its] legislative responsibilities with regard to the past”,<sup>6</sup> which would include investigating past cases where there was “new and compelling evidence”.<sup>7</sup>
- 1.14. On 1 January 2015, the Legacy Investigation Branch formally assumed responsibility for the work of the Historical Enquiries Team.<sup>8</sup>
- 1.15. The decision to dissolve the Historical Enquiries Team presented HMIC with choices: cancel the follow-up inspection; carry on and publish an historical report of possibly limited value; or continue the inspection and publish a report which should be of value to those who are responsible for establishing the successor bodies. We consulted widely. The response was very positive: not only was it considered right and proper that we should assess all the work and effort that the Police Service of Northern Ireland had undertaken to address our 2013 findings and recommendations, but it was also thought that our findings may help to shape any future legacy work of a similar nature. We decided to undertake a full follow-up inspection and to produce a report of substance and value.

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<sup>4</sup> This is a quote from the Council of Ministers which is the European Union’s main decision-making and legislative body: CM/Inf/DH(2008)2 revised, 19 November 2008, paragraph 49.

<sup>5</sup> *Termination of contracts for associate workers*, Police Service of Northern Ireland, 2014. A full transcript of the news release is set out in annex D.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> We have set out in annex E the announcement of the creation of the Legacy Investigation Branch by the Police Service of Northern Ireland.

- 1.16. Thereafter, on 23 December 2014, as part of the Stormont House Agreement,<sup>9</sup> it was agreed that legislation would be enacted to create a new independent body, the Historical Investigations Unit, to take forward investigations into ‘Troubles-related’ deaths.<sup>10</sup>
- 1.17. We hope that this report of our follow-up inspection will help to inform those who are to become responsible for dealing with such sensitive cases in the future.

## Our methodology

- 1.18. To ensure a consistent approach with our first inspection of the Historical Enquiries Team, HMIC used the same inspectors in the follow-up inspection. The inspectors are experienced in major crime and homicide investigations, as well as in the review of historical cases.
- 1.19. We visited seven criminal justice agencies and six non-governmental organisations. We also interviewed solicitors, chief officers and senior managers in the Police Service of Northern Ireland, the head and the deputy head of the Historical Enquiries Team, and we conducted a focus group with a cross-section of Historical Enquiries Team staff.
- 1.20. Also, we sought legal advice from two independent barristers who specialise in human rights issues.
- 1.21. We have set out in annex F a complete list of the individuals and agencies with whom we consulted during our inspection.
- 1.22. We examined 15 cases which the Historical Enquiries Team had reviewed. This involved reading family reports and examining material which was held both manually and electronically in case folders.
- 1.23. We also observed a parliamentary debate following the announcement of the *Stormont House Agreement*.<sup>11</sup>

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<sup>9</sup> *Stormont House Agreement*, Northern Ireland Office, 23 December 2014. See: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/390672/Stormont\\_House\\_Agreement.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf)

<sup>10</sup> *Ibid*, paragraphs 30 – 40.

<sup>11</sup> The Secretary of State for Northern Ireland, The Right Hon. Theresa Villiers MP, made an oral statement in the House of Commons on the Stormont House Agreement on 7 January 2015: HC Deb, 7 January 2015, c296. See: [www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150107/debtext/150107-0002.htm#15010750000001](http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150107/debtext/150107-0002.htm#15010750000001)

- 1.24. The evidence-collection phase was conducted between September 2014 and February 2015.
- 1.25. We recognise the inconvenience that any inspection process can cause and we are grateful for the cooperation and support that we were given by so many people.

## **The structure of this report**

- 1.26. There is always a balance to be struck when publishing a follow-up inspection report of this sort, between the avoidance of repetition, and the provision of sufficient context to make sense of the findings. The rationale for the initial recommendations is set out in our earlier report, and in order to make sense of our findings now, some context is required.
- 1.27. Our aim has been not to send the reader back to our earlier report and constantly cross-refer between the two, but for the reader to be able to consider this report as a self-standing document. This means that we have had to import some of what we wrote in 2013 into this report. We hope that those who are well-acquainted with the first report will forgive what to them will be repetition.
- 1.28. We set out our findings in chapter 2. In respect of each recommendation in our initial report, we set out the background that led us to make that recommendation; the recommendation itself; our findings during our follow-up inspection with regard to the implementation of each recommendation; and our conclusion about the extent to which we consider each recommendation has been appropriately addressed.
- 1.29. Inevitably, we have come across issues that fall outside our terms of reference but which we consider might be of help to those who are now responsible for taking forward the work of the Historical Enquiries Team. We have included our views on these issues in chapter 3.
- 1.30. We have set out our overall conclusions in chapter 4.
- 1.31. We have set out those recommendations which still need to be implemented in chapter 5.

## 2. The individual recommendations

### Management's overarching response

- 2.1. At the start of our follow-up inspection, the Historical Enquiries Team's senior management provided us with a confidential briefing document detailing their action in respect of each of our recommendations.<sup>12</sup> We have considered its contents alongside our findings. We are grateful to those who prepared the briefing document and we acknowledge their time and effort in producing it.
- 2.2. It is important to point out that the Historical Enquiries Team underwent substantial change as a result of our initial inspection.
- 2.3. Our report was published on 3 July 2013. On 30 September 2013, a new senior command team for the Historical Enquiries Team was appointed. Those occupying the two most senior positions in the Historical Enquiries Team, who originally were not serving police officers, were replaced by police officers from the Police Service of Northern Ireland,<sup>13</sup> with a mandate to effect the necessary changes.
- 2.4. The appointment of serving police officers to the most senior posts quashed any remaining perception that the Historical Enquiries Team was independent of the Police Service of Northern Ireland, and further structural changes also made clear that the Historical Enquiries Team was to be fully integrated into the Service's crime operations department.
- 2.5. As it set about redefining its systems and processes, the Historical Enquiries Team considered national standards and best practice, and sought advice from senior police officers in other United Kingdom forces. The Historical Enquiries Team senior command initiated a change programme and commissioned 60 separate strands of work which were designed to achieve the following:
  - create clear terms of reference;
  - develop over 30 policies;
  - create 28 standardised operating procedures;

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<sup>12</sup> This document was prepared solely for our use and, as a whole, is not available to the public, although we have been given permission to quote from it. We do so extensively throughout this report.

<sup>13</sup> A temporary detective chief superintendent and a detective superintendent were selected to lead the Historical Enquiries Team change programme.

- produce a comprehensive *Manual of Guidance*;
  - produce an induction and training pack for new staff; and
  - devise a communications strategy.
- 2.6. The outcomes of these strands of work were approved by the senior executive team of the Police Service of Northern Ireland.
- 2.7. Our views about the extent to which the Historical Enquiries Team achieved its objectives are set out in our consideration of the specific actions which were taken to address each of our recommendations.

## **Recommendation 1**

- 2.8. Given the unique operating context within which the Historical Enquiries Team was established, we had expected clear terms of reference to be in place to enable it to operate effectively, and in accordance with relevant policy, good practice and the Convention for the Protection of Human Rights and Fundamental Freedoms – which we refer to hereafter as the European Convention on Human Rights.
- 2.9. At the time of our initial inspection, we found a lack of comprehensive terms of reference for the Historical Enquiries Team, coupled with an absence of coherent and prescriptive policies. This created confusion amongst the public, non-governmental organisations and criminal justice partners about what they could expect from a review, and amongst the Historical Enquiries Team’s staff about what exactly they were required to do.
- 2.10. In our view, this prevented a clear understanding of the following:
- whether the Historical Enquiries Team was a review or an investigative body;
  - how the Historical Enquiries Team was to achieve its stated intention of “bringing a measure of resolution” to families; and
  - how and when the Historical Enquiries Team was expected to interact with other criminal justice agencies.
- 2.11. As a result, we made a recommendation.

### **Recommendation 1 from HMIC’s 2013 report**

The Historical Enquiries Team’s role and purpose need to be clarified and specific terms of reference should be published. These must be explicit about what the public and interested parties can expect from the Historical Enquiries Team.

2.12. In May 2014, the Police Service of Northern Ireland's service executive team ratified new terms of reference for the Historical Enquiries Team, setting out its purpose, vision, values and role, as well as providing specific guidance as to what it could not do.

2.13. We set out its terms of reference in full below.

“Our purpose

To conduct a thorough, exhaustive and systematic review of the investigation into deaths, occurring in Northern Ireland, attributable to ‘The Troubles’ between 1969 and the signing of the Belfast Agreement on 10 April 10 1998, with the following exceptions:

- there are ongoing criminal investigations;
- public inquiries or an independent examination has been commissioned into the circumstances surrounding the death;
- cases that are within the sole remit of another public body; and
- the chief constable directs otherwise.

Our vision

To play an active role in the transition of post-conflict Northern Ireland into the future through providing information to the public and families of those who died during ‘The Troubles’, within the constraints of our legal obligations.

Our values

We will conduct our work in a personal, professional and protective manner which enhances the confidence of all those with whom we come into contact.

Our role

- To review material to identify investigative opportunities that could progress the case and bring to justice those responsible;
- To explain to families how we intend to review their cases, our terms of reference and what they can expect from us;
- To engage with families and provide them with answers to questions, that are reasonable, lawful, justified and proportionate;

- To refer to [the Office of the Police Ombudsman for Northern Ireland], *any matter arising from our work which raises a concern of possible police criminality* or serious misconduct;
- Where there is evidence of criminality by others, to refer this to Serious Crime Branch of the [Police Service of Northern Ireland] C2 [branch]; and
- To cooperate with any mechanism, which may be established to deal with the past in Northern Ireland.

#### What we cannot do

- We cannot go where the evidence does not take us. We cannot do what the law does not allow us to do;
- We cannot discuss sensitive intelligence with families. Whilst we will have been given access to all relevant intelligence, we cannot discuss the specifics of it; and
- We cannot undertake wide ranging reviews into the broader context of ‘The Troubles’ in Northern Ireland.”

- 2.14. The Historical Enquires Team also accepted that, although it had actually been clearly defined as a review body since 2010, on occasion, it had undertaken some investigative work.
- 2.15. By way of example, in some cases, the Historical Enquiries Team staff had interviewed soldiers under caution when they had not been authorised to do so by the chief constable. This was in contravention of a memorandum of understanding introduced by the chief constable in 2010.<sup>14</sup>
- 2.16. In order to make it absolutely clear to staff that the Historical Enquiries Team’s function was one of review, following our 2013 inspection, job titles within the team were changed so that: “lead senior investigating officers” became “review managers”; “senior investigating officers” became “review supervisors”; and “investigating officers” became “reviewers”.
- 2.17. Senior managers were keen to point out to us that these were not merely cosmetic changes but were introduced in order to assist in providing clarity about roles and responsibilities.

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<sup>14</sup> The 2010 memorandum of understanding, agreed by the chief constable, was between the Historical Enquiries Team and the Police Service of Northern Ireland Crime Operations Department (C2 branch). C2 branch is responsible for conducting all Police Service of Northern Ireland investigations into organised crime and serious crime, including murder and terrorism.

- 2.18. In addition to these name changes, the Police Service of Northern Ireland sought guidance from those with appropriate knowledge and experience of reviews. They recognised that the Historical Enquiries Team process differed from the normal process of review because there was greater involvement with the families of those who had died, who were to be provided with a final written report, if they engaged with the Historical Enquiries Team.
- 2.19. In order to bring consistency to the review process and put beyond doubt the Historical Enquiries Team's function, the review process was defined as:
- “a formal and independent examination of an investigation, carried out to nationally approved standards, to assess the extent of the original investigation”.
- 2.20. The aims of this review process were fourfold:
- to identify any new lines of enquiry, including forensic opportunities, that could reasonably be progressed;
  - to establish whether any intelligence could be turned into evidence;
  - to respond to issues discussed and agreed with the victims' relatives that the Historical Enquiries Team could lawfully, justifiably, reasonably and proportionately answer; and
  - to produce a written report.
- 2.21. To ensure independence, the Historical Enquiries Team proposed that a review would only be conducted by staff who did not have any association with the original investigation or with anyone who was connected to it. Also, it intended to exclude anyone who held particular views about the incident concerned which may have called into question his or her independence or impartiality.
- 2.22. We are pleased to see that the Police Service of Northern Ireland was clear and explicit about the Historical Enquiries Team's role. In case we were left in any doubt, the briefing document with which we were provided stated that:
- “[the Historical Enquiries Team] is a review team and cannot conduct investigations – its staff do not have police powers”.
- 2.23. That said, while we were conducting this follow-up inspection, we were told of an allegation that the Historical Enquiries Team had been investigating cases since our initial inspection.
- 2.24. We were shown a letter from the head of the Historical Enquiries Team to a solicitor, dated 18 September 2014, together with notes that the solicitor had

made during a subsequent meeting with senior Police Service of Northern Ireland officers. These tended to support this claim.

- 2.25. The cases involved the Military Reaction Force<sup>15</sup> which had been deployed in Northern Ireland during ‘the Troubles’ and which had been the subject of a television documentary.<sup>16</sup>
- 2.26. We put this allegation to senior Police Service of Northern Ireland officers who denied it; they said that the Historical Enquiries Team had merely conducted a review of the television documentary, with the intention of referring any investigative opportunities to C2 branch. This work had been allocated to the Historical Enquiries Team because its staff had the knowledge and experience to conduct the review function.
- 2.27. HMIC is not in a position to judge which of these accounts may be correct, but it is clear that there are still conflicting opinions whether the Historical Enquiries Team was a review or an investigative body.
- 2.28. Overall, we are content that the Historical Enquiries Team responded positively to the first recommendation in our 2013 inspection report. Senior officers clarified the Historical Enquiries Team’s role and purpose and we anticipate that specific terms of reference would have been published, if the Historical Enquiries Team had not been replaced by the Legacy Investigation Branch.

## **Recommendations 2, 3 and 4**

- 2.29. In our initial inspection, we raised a number of concerns, the overarching theme of which was the lack of sufficient accountability to the public and to the families affected by the decisions of the Historical Enquiries Team.
- 2.30. We found in 2013 that the Historical Enquiries Team did not have any communications strategy; any public reporting mechanism, such as a published annual report; nor any means of public scrutiny.
- 2.31. As a result, we made recommendations 2, 3 and 4. We take each in turn.

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<sup>15</sup> The Military Reaction Force was a covert unit of the British Army which operated in Northern Ireland between 1971 and 1973.

<sup>16</sup> *Britain’s Secret Terror Force*, BBC *Panorama* documentary, 21 November 2013.

## Recommendation 2 from HMIC's 2013 report

The Historical Enquiries Team should publish an annual report to the public setting out what it has done to achieve its objectives, how it has responded to constructive feedback, and an acknowledgement about those things that might not have been achieved.

2.32. In the briefing document prepared for us, the Historical Enquiries Team reported that it did not intend to publish an annual report on the basis that:

“[t]he [c]hief [c]onstable of the [Police Service of Northern Ireland] no longer publishes an annual [force] report and there is no provision to enable the [Historical Enquiries Team] to do so independently”.

2.33. Rather, it was said, the Historical Enquiries Team intended to “publish quarterly performance reports on its website”.

2.34. We were told that the Historical Enquiries Team considered that, in the past, its performance had largely been measured by the number of cases which it had completed over a given period. It considered that this yardstick was “likely to have been in direct response to the previous funding arrangements”.

2.35. The Historical Enquiries Team recognised that public confidence was not only dependent upon quantity, but also upon quality, and it identified a set of broader objectives to be met through its new publication regime, namely:

- to increase accountability and accessibility;
- to improve consistency and clarity; and
- to continue to bring offenders to justice and maintain confidentiality.

2.36. With due regard to the feedback element of our recommendation, the Historical Enquiries Team acknowledged that:

“the public want to see that they are able to provide their views to the [Historical Enquiries Team] and that the [Historical Enquiries Team] will consider them”;

and that:

“[w]here a response (direct or indirect) can be provided, the public expects it to be given”.

2.37. This is consistent with the Police Service of Northern Ireland's current commitment to engagement and service delivery.<sup>17</sup>

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<sup>17</sup> *Policing with the Community 2020 Strategy*, Police Service of Northern Ireland, 2008. See: [www.psni.police.uk/pwc - 2020 v2.pdf](http://www.psni.police.uk/pwc_-_2020_v2.pdf)

2.38. Taking this into account, the quarterly performance reports that the Historical Enquiries Team intended to publish online were to show the number of cases still to be completed and were to include the following data:

- the trends identified during the Historical Enquiries Team quality assurance processes and the response to them;
- the result of the dip-sampling of intelligence;
- the issues identified from feedback and the response to it;
- the number and type of Historical Enquiries Team cases referred for investigation; and
- the time spent responding to external requests for information.

2.39. The Historical Enquiries Team also proposed to publish an annual review of performance on its website.

2.40. While the Historical Enquiries Team's response did not meet our recommendation in the way that we had envisaged, we accept that its plans were a partial alternative to the recommendation.

2.41. However, we still have some concerns about the feedback element of our recommendation.

2.42. As we report elsewhere, the Historical Enquiries Team did not intend to seek feedback by way of satisfaction surveys,<sup>18</sup> preferring to distribute information leaflets if anyone wished to comment on its work.<sup>19</sup> In addition, our recommendation to introduce an independent oversight panel was not implemented.<sup>20</sup>

2.43. We would like to have been able to assess the quality of the performance data that the Historical Enquiries Team intended to publish but none was published between September 2013 and the time of our inspection. We expect the Legacy Investigation Branch, which now has responsibility for the legacy work, to adopt the Historical Enquiries Team's proposals in this regard.

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<sup>18</sup> See recommendation 12 at paragraph 2.131 *et seq.*

<sup>19</sup> See recommendation 4 at paragraph 2.55 *et seq.*

<sup>20</sup> See recommendation 10 at paragraph 2.108 *et seq.*

### Recommendation 3 from HMIC's 2013 report

The chief constable and the Northern Ireland Policing Board should agree a mechanism through which the Historical Enquiries Team can be made more open and accountable to the public in Northern Ireland.

- 2.44. By way of response to this recommendation, the briefing document provided to us reported:

“[t]he accountability of the [Historical Enquiries Team] is achieved through its full integration into the Police Service and its broader accountability mechanisms. Through the [National Intelligence Model] processes, the work of the [Historical Enquiries Team] is examined on a monthly basis. Quarterly accountability meetings with [assistant chief constable] Crime Operations provide a forum for in-depth analysis of any facet of [the Historical Enquiries Team] work and resourcing. These arrangements mirror other parts of the Crime Operations ‘family’ and the [Police Service of Northern Ireland] generally.

“Additionally, performance data, as outlined above will be made available publicly.”

- 2.45. Clearly, this response relates to internal performance management processes, within the framework of the National Intelligence Model.<sup>21</sup>
- 2.46. Although it was envisaged that the performance data which was gathered would be made available to the public (in accordance with recommendation 2), the response does not provide for any external and independent scrutiny. This could have been addressed by the introduction of an independent oversight panel (recommendation 10).<sup>22</sup>
- 2.47. We consider that the Historical Enquiries Team could have responded to this recommendation more positively. We still have concerns about the Police Service of Northern Ireland’s mechanisms for openness and accountability with regard to legacy investigations.
- 2.48. Indeed, the head of the Historical Enquiries Team at the time of our follow-up inspection, who was transferred to the Legacy Investigation Branch, told us that, in the future, far from becoming more open, the branch would be less engaged with families than had been the case under the former Historical Enquiries Team. This is a worrying assertion and one which suggests that the direction of travel for the Legacy Investigation Branch is backwards towards

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<sup>21</sup> *Guidance on the National Intelligence Model*, National Centre for Policing Excellence (now the College of Policing), 2005.

<sup>22</sup> See paragraph 2.108 *et seq.*

introversion rather than forwards into an open and accountable body. Coupled with the absorption of the work into the Police Service of Northern Ireland, this is retrogressive.

- 2.49. We are also concerned about one particular issue that may be a demonstration of this.
- 2.50. At the start of our follow-up inspection, we heard that some earlier reports that had been provided to families were potentially flawed, as ballistic evidence, which was relevant to the reviews that had been undertaken, may have been misinterpreted.
- 2.51. We understood that a number of cases may be affected and, whilst the issue has been brought to the public's attention by the media,<sup>23</sup> we were concerned that individual families may not have been alerted to this fact.
- 2.52. In September 2014, we were told that the Historical Enquiries Team was in the process of writing to a number of the families involved. On 21 January 2015, we were told that the letters had still not been sent.
- 2.53. We found other examples of failure to respond to correspondence in a timely fashion. We accept that these examples do not provide sufficient evidence that our recommendation has been ignored, but, coupled with the approach adopted by the Historical Enquiries Team senior management, it is indicative that the mindset required to be more open with the public may not be in place.
- 2.54. Accordingly, we are not satisfied that any, or any sufficient steps have been taken to make the Historical Enquiries Team – and, by extension, its successor body – appropriately open or accountable to the public.

#### **Recommendation 4 from HMIC's 2013 report**

The Historical Enquiries Team should establish a single complaints process that is easily accessible to those who might wish to complain about any aspect of the work of the Historical Enquiries Team.

- 2.55. The Historical Enquiries Team provided the following response to this recommendation.

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<sup>23</sup> For example, on 13 August 2014, *The News Letter*, a newspaper published in Northern Ireland, reported the alleged misinterpretation of ballistics evidence in the murders of ten men in Kingsmill Road, South Armagh, in 1976. See: [www.newsletter.co.uk/news/regional/video-het-admits-evidence-mix-up-on-kingsmills-massacre-1-6234155](http://www.newsletter.co.uk/news/regional/video-het-admits-evidence-mix-up-on-kingsmills-massacre-1-6234155)

“The [Historical Enquiries Team] has broadened its response to this recommendation. The aim is expanded to enable anyone to complain about [Historical Enquiries Team] staff (if they have been involved in an interaction), provide feedback about a specific [Historical Enquiries Team] review or provide views about the work of the [Historical Enquiries Team] more generally.

“The [Historical Enquiries Team] has introduced a quality of service procedure, which creates a single, easy process to manage any type of incoming complaint or feedback. Members of the public are able to contact the [Historical Enquiries Team] by phone, email or via the website to provide initial details. Additionally, families will be provided with specific information leaflets about the work of the [Historical Enquiries Team], including details of how to complain or provide feedback.

“All complaints or feedback will be received and processed for consideration by the [Historical Enquiries Team] helpdesk. Complaints against [Historical Enquiries Team] staff will be referred either to the Human Resources department of the [Police Service of Northern Ireland] (in the case of [Police Service of Northern Ireland] employees) or to the employment agency (in the case of contracted staff). The matter will continue to be owned by the [Historical Enquiries Team] until the referral has been confirmed as having been received. It is the responsibility of the owning agency or department to deal with the complaint.

“Any feedback will be processed according to its nature. Where the feedback relates to a specific case, it is likely that the matter will be referred to the original review manager in the first instance. It is the experience of the [Historical Enquiries Team] that answers or explanations are often readily available. If feedback is of a more general nature, it will be forwarded to the deputy head of the [Historical Enquiries Team] for consideration and any action that is necessary.

“Feedback and complaints about the [Historical Enquiries Team’s] work are an important constituent of its overall performance data.”

- 2.56. We have concerns that the approach which the Historical Enquiries Team adopted with regard to agency staff was inadequate. It is simply not sufficient to refer matters of complaint back to the agency without the Historical Enquiries Team taking responsibility to deal with the matter itself.
- 2.57. Further, we were concerned during our fieldwork to be told of examples where the Historical Enquiries Team had failed to respond to correspondence. In one instance, the director of a non-governmental organisation had submitted a written complaint in December 2014 about the allegedly poor quality of a

Historical Enquiries Team report which he had received. He had still to receive a response or any form of acknowledgement some 12 weeks later.

- 2.58. However, we recognise that recent developments have led to the full absorption of the work of the Historical Enquiries Team into the Legacy Investigation Branch of the Police Service of Northern Ireland. This means that the well-established complaints regime adopted by the service generally will now apply to the work of the Legacy Investigation Branch. As such, the inadequate response of the Historical Enquiries Team to this recommendation no longer carries the risks that we have set out in the preceding paragraphs, although the timely and effective handling of complaints remains an overriding requirement.
- 2.59. Accordingly, we consider that any further independent work on this specific recommendation to the Historical Enquiries Team is not required.

## **Recommendations 5, 6 and 7**

- 2.60. Our initial inspection identified some areas within the Historical Enquiries Team that were operating well and conforming to current policing standards. One example of good practice was the work of the disclosure unit which dealt with the team's legal obligations under the Criminal Procedure and Investigations Act 1996.
- 2.61. However, we had concerns about the lack of explicit systems and practices underpinning the Historical Enquiries Team's work. We found that the Historical Enquiries Team operated in silos with different policies being implemented in each team.
- 2.62. During our initial inspection, we found that the Historical Enquiries Team had an *Operational Guide*.<sup>24</sup> Whilst that document explained the component parts of the Historical Enquiries Team, it did not provide clear guidance on policies and processes. This is particularly important when considering issues such as the records of interview and the storage of material.

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<sup>24</sup> *Historical Enquiries Team - Operational Guide*. This document is subtitled: *A document that provides an overview of the work of the [Historical Enquiries Team]*. This document has now been withdrawn. We refer to it as the *Operational Guide* in the remainder of this report.

- 2.63. The lack of consistency within the Historical Enquiries Team at that time was illustrated by the absence of a standard format for recording policy decisions. Senior investigating officers had adopted their own approach to the recording of the progress of their enquiries and the decisions taken. Many decisions had not been recorded at all. We considered this to be poor practice.
- 2.64. As a result, we made recommendations 5, 6 and 7 in our 2013 report. We take each in turn.

### **Recommendation 5 in HMIC's 2013 report**

The Historical Enquiries Team should establish clear and accessible policies and procedures that deal with all aspects of the review process. In particular, this should deal with the storage of material and the maintenance of policy files.

- 2.65. Following our initial inspection, Historical Enquiries Team managers recognised that staff needed to be given “clear, unambiguous and consistent instructions” and that “practically-based policies and procedures, which set the boundaries for all aspects of [the Historical Enquiries Team’s] work” needed to be introduced. They were conscious, though, that such policies and procedures should not “stifle the investigative experience of staff”.
- 2.66. In order to strike the right balance, we were told that all relevant members of the Historical Enquiries Team staff took part in devising and developing the policies and procedures which were so critical to its future. Prior to its adoption, the *Manual of Guidance for [Historical Enquiries Team] staff*<sup>25</sup> was forwarded to the Director of Public Prosecutions for Northern Ireland and to the Northern Ireland Policing Board for comment.
- 2.67. The former told us that he was content with the approach that the Historical Enquiries Team outlined in the *Manual of Guidance*, with the caveat that there had to be a prosecutorial focus and that evidential opportunities had to be pursued generally by the Police Service of Northern Ireland.
- 2.68. Members of the Northern Ireland Policing Board, on the other hand, were concerned that they did not see a copy of the manual until September 2014, even though it was dated April 2014. In addition, the members were unable to access any supporting policies and procedures via electronic hyperlinks from the manual in order to provide full feedback. We pursued the issue of this delay with the Historical Enquiries Team which advised us that discussions were then taking place about the relationship between the Board and the Team itself.

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<sup>25</sup> This document was in its second edition and was published in September 2014. We refer to it as the *Manual of Guidance* in the remainder of this report.

- 2.69. Operating procedures and individual policies supported the *Manual of Guidance*. These set “clear, consistent and defined parameters for every aspect of the review process”. All the documents were made available to staff electronically.
- 2.70. The *Manual of Guidance* is a comprehensive document, and although there has been little opportunity to test what has been produced, we are satisfied that the Historical Enquiries Team has addressed our initial concerns.

### **Recommendation 6 in HMIC’s 2013 report**

The Historical Enquiries Team should ensure that all material created to date has been properly and consistently catalogued and stored. In particular, the Historical Enquiries Team should ensure that case folders contain all relevant material.

- 2.71. After our initial inspection, the Historical Enquiries Team conducted an audit of more than 1,600 electronic and paper case files to establish the extent of the problem. This audit “confirmed a considerable amount of duplication and a lack of consistent recording of information and material”.
- 2.72. Work was then undertaken to rectify the situation. Duplicate material was removed and the means by which material was to be retained was standardised. We were told that case folders now contain all relevant material.
- 2.73. A records management operating procedure was also introduced, which set out how material should be handled in the future.
- 2.74. At the time of our follow-up inspection, greater use was being made of technology for storing, searching and retrieving material. We found this to be an impressive system of categorising and finding information.
- 2.75. The case folders<sup>26</sup> which we examined during our follow-up inspection were better ordered than those we had seen in the past, although they did not necessarily appear to contain any more material.
- 2.76. Overall, we are satisfied that the Historical Enquiries Team has taken appropriate actions to address our concerns.

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<sup>26</sup> These are document wallets that Historical Enquiries Team staff commonly referred to as “blue folders”.

## **Recommendation 7 in HMIC's 2013 report**

The Historical Enquiries Team should introduce policy files to record – to an explicitly set standard – decisions on cases and their rationale.

- 2.77. Upon our return, we were told that a case progress and decision log was to be kept throughout the lifetime of a review to record the nature and outcome of any enquiries and any key decisions. The log would then become a point of reference for any future enquiries about the case.
- 2.78. Further, we were advised that only supervisory staff were empowered to make policy decisions on a case and so, in effect, the logs were to be a record of decisions made by review managers and review supervisors. All decisions were to be recorded to an explicit standard and, in setting that standard, the Historical Enquiries Team made specific reference to the kind of decisions that had the greatest potential impact.
- 2.79. In addition, non-supervisory review staff were to complete a record for every case on which they worked. The Historical Enquiries Team considered that this document “[t]aken together with the case progress and decision log ... [would] provide a comprehensive record of the work undertaken (or not undertaken) during a review, including the accompanying rationale”.
- 2.80. This process was further supported by the introduction of the review report to record the activity on every case. The review report had been known previously as the senior investigating officer’s report but the Historical Enquiries Team management acknowledged that its previous use had been “sporadic”.
- 2.81. The new review report was seen as a way of introducing consistency. Not only did it prompt review staff to give the same considerations to every case, but it also enabled supervisors to assure the quality of the review process. It also acted as a prompt for supervisors when policy decisions needed to be made and recorded.
- 2.82. During our initial inspection, we had serious concerns about the lack of consistency around the review process. We consider that this revised process, if robustly applied and managed, would have addressed the concerns that gave rise to recommendation 7. However, we were not able to witness the process operate in practice as the proposed arrangements had not been implemented because of the abolition of the Historical Enquiries Team and the transfer of its work to the Legacy Investigation Branch of the Police Service of Northern Ireland.

## **Recommendation 8**

- 2.83. In our initial inspection, we found that staff who did not have a previous connection to the Royal Ulster Constabulary or the Police Service of Northern Ireland accounted for approximately 50 percent of the Historical Enquiries Team workforce. Whilst this helped to promote the team's independence, such staff brought with them different working practices. These were plain for us to see during our initial inspection.
- 2.84. This inconsistency of approach undermined public confidence in the Historical Enquiries Team. We considered it could have been mitigated by an effective induction process for staff joining the Historical Enquiries Team.
- 2.85. We stress the word "effective" because we were told during our initial inspection that recruits were provided with induction packs. However, we found evidence then that they were rarely read or used.

### **Recommendation 8 in HMIC's 2013 report**

The Historical Enquiries Team should introduce a rigorous induction programme to ensure that all staff understand the policies and practices that they should employ in their work.

- 2.86. We are impressed by the Historical Enquiries Team's response to this recommendation.
- 2.87. The new command team recognised at an early stage that, if the Historical Enquiries Team were to be successful, it was essential to have the right people in the right positions.
- 2.88. A four-week theoretical and practical programme was designed to introduce newcomers to the Historical Enquiries Team's work and its underlying policies and procedures, and to provide "an insight into... [ its]...component parts...rather than simply focusing on the conduct of reviews".
- 2.89. Upon appointment, new staff were to be allocated to an experienced manager, who became their guide and mentor throughout the four weeks. At the programme's conclusion, the manager was required formally to 'sign off' the individual concerned, confirming that all the modules had been completed satisfactorily. Only then would the new recruit be allocated to a specific team within the Historical Enquiries Team.

- 2.90. We interviewed a Police Service of Northern Ireland officer who had recently been appointed to the Historical Enquiries Team and who was the first to undertake the new induction process. He had clearly been impressed by the programme and confirmed our view that it provided a solid grounding for a new recruit to the team. However, he did not feel that a local officer, such as he, would need as much training on the historical context to the Historical Enquiries Team.
- 2.91. While we accept the officer's observations, we do not consider it appropriate for some recruits, based on their experience, to be excused part of the new induction programme. We see great merit in providing a common overview of the issues facing members of the Historical Enquiries Team, even for those who consider themselves well-versed in the history of Northern Ireland.
- 2.92. In addition, all serving staff were asked to undertake a skills validation process, with formal interviews, and, as a result, a number of staff contracts were not renewed.
- 2.93. Other members of staff, including some at a senior level, chose to leave.
- 2.94. Between December 2013 and our follow-up visit in September 2014, the Historical Enquiries Team's staff was reduced by 20 percent.
- 2.95. We also noted that continuous development had been introduced. A focus group of staff told us that there had been a lack of investment in training and development in the past. We were pleased to hear that, by the time of our follow-up inspection, all those conducting reviews had completed a national and externally accredited review officer's course.
- 2.96. We are pleased to acknowledge this comprehensive response to our initial recommendation.

## **Recommendation 9**

- 2.97. At the start of our initial inspection, the Historical Enquiries Team endeavoured to complete 40 cases per month. This was a substantial undertaking and we considered that there was an inherent risk to the quality of work carried out in each case because of the demand to ensure this number of cases were completed within a certain time.
- 2.98. During our initial inspection, we were told that the figure had been reassessed and reduced to completing 30 cases per month.
- 2.99. We remained of the view, then, that this was an ambitious objective and that even the reduced target of 30 cases a month may not be achieved without sacrificing quality.

2.100. A good quality review requires time. It seemed sensible for there to be an independent assessment of what it was possible to achieve within the cost and timescales then agreed.

2.101. Accordingly, we made a recommendation.

### **Recommendation 9 in HMIC's 2013 report**

The chief constable should commission an assessment of the outstanding cases alongside the funding and time required to complete the work of the Historical Enquiries Team.

2.102. The Historical Enquiries Team completed an assessment of its outstanding cases in November 2013. As a result, it was estimated that, at an approximate cost of £23m, its work would be completed in four years. These figures were dependent upon staffing levels remaining constant and the completion of approximately 15 cases per month.

2.103. The estimate also presupposed that previously completed reviews, other than military cases, would not be re-opened. As we have seen, following our 2013 report, the chief constable undertook to re-examine all military cases.<sup>27</sup>

2.104. The estimate does not seem to have taken into account that some families may have been provided with reports in the past which contained flawed findings and assumptions, and which needed to be reconsidered.

2.105. By the time of our follow-up inspection, the Historical Enquiries Team's staffing levels had reduced by approximately 20 percent. As a result, it was then projected that the outstanding work would take five years to complete, as the remaining staff would only be able to complete ten cases per month.

2.106. The Legacy Investigation Branch will still need to undertake legacy reviews and investigations pending the start of the proposed Historical Investigations Unit.

2.107. As a result, we consider that further action is required and that an assessment of the outstanding cases alongside the funding and time required to complete the work of the unit dealing with these cases should be commissioned.

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<sup>27</sup> Chief constable's statement in response to the publication of HMIC's *Inspection of the Police Service of Northern Ireland Historical Enquiries Team*, M Baggott, 3 July 2013. See annex C.

## **Recommendation 10**

2.108. During our initial inspection, we did not find any evidence of any quality assurance or review processes. As a publicly-funded body, operating in an area of significant public interest, we considered that it was essential for the Historical Enquiries Team to be subject to appropriate levels of independent oversight and inspection.

### **Recommendation 10 in HMIC's 2013 report**

An independent oversight panel should be established to oversee and scrutinise in the public interest all aspects of the work of the Historical Enquiries Team. This body should have unfettered access to the information it would need to carry out this responsibility.

2.109. The Police Service of Northern Ireland referred this recommendation to the Northern Ireland Policing Board, as it is responsible for the oversight and governance of the police service.

2.110. This recommendation was not adopted.

2.111. This is disappointing. Such a panel could have provided support and reassurance to those concerned about the Historical Enquiries Team and its way of working.

2.112. As we have already set out, the work of the Historical Enquiries Team has now been transferred to the Police Service of Northern Ireland's Legacy Investigation Branch. The Northern Ireland Policing Board has decided that, in future, and in accordance with its statutory responsibilities, the board's performance committee will hold the chief constable to account for the policies and practices of the Legacy Investigation Branch through its annual programme of work.

2.113. The statutory creation of what will be called the Historical Investigations Unit will also have an impact in this area and it remains to be seen what, if any, oversight arrangements are made in respect of that unit.

2.114. We want to make clear our view. Although the work of the Historical Enquiries Team was transferred to the Legacy Investigation Branch within the Police Service of Northern Ireland on 1 January 2015, that work should carry on, regardless of the name given to those who undertake it.

2.115. We consider that there remains a strong argument for the appointment of an independent oversight panel, despite the transfer of responsibilities to the Legacy Investigation Branch. If anything, that transfer strengthens the need for independent oversight, since the branch is a fully integrated part of the Police Service of Northern Ireland.

## **Recommendation 11**

- 2.116. The management of intelligence was a fundamental element of the Historical Enquiries Team process, and, during our initial inspection, we examined its intelligence system closely.
- 2.117. We found it to be robust and auditable, with both paper and computer-based records of what had been accessed and by whom. The processes were underpinned by a memorandum of understanding between the Historical Enquiries Team and the Police Service of Northern Ireland intelligence branch (C3).
- 2.118. Until 2008, an independent, seconded police officer from outside Northern Ireland had examined intelligence files received from C3 branch. His role was to review what the Historical Enquiries Team staff had extracted from the C3 branch intelligence files and assess whether they had extracted all relevant material.
- 2.119. If satisfied, the officer signed a certificate to the effect that the intelligence file had been examined and that all the relevant material had been correctly copied from the original intelligence logs.
- 2.120. This process stopped in 2008 when the individual left the Historical Enquiries Team.
- 2.121. We considered that reinstating that procedure would have safeguarded the independence of the intelligence process, while providing a measure of confidence for families, non-governmental organisations and solicitors that reviewing officers were undertaking their work on the basis of full access to all appropriate intelligence material.

### **Recommendation 11 in HMIC's 2013 report**

The Historical Enquiries Team should implement an independent audit process to verify that the Historical Enquiries Team staff have the benefit of all appropriate intelligence material held by the Police Service of Northern Ireland.

- 2.122. As this is such a contentious subject, we reproduce in full the Historical Enquiries Team's response to this recommendation in the briefing document prepared at the start of our inspection.

"The deputy head of the [Historical Enquiries Team] fulfils the role of independent intelligence assessor. The role has been introduced to ensure that the review teams are provided with all appropriate [Police Service of Northern Ireland] intelligence material and that this is represented fairly in family reports.

“The assessment looks at four key stages. Firstly it examines the intelligence extracted from the file held by C3 to ensure that all relevant intelligence has been extracted at source. Secondly it examines any redactions made by the [Historical Enquiries Team] intelligence unit to ensure that these are appropriate. Thirdly it examines how C3 intelligence is consolidated with other intelligence and provided to the review team. Finally it compares what is available to the review manager against the summary of intelligence provided in the family report.

“Additionally, the independent intelligence assessor will examine material held by the security service to ensure that any intelligence not already held by C3 is identified and requested.

“At each stage, the independent intelligence assessor will certify that the intelligence provided is appropriate, or will task further work to be commissioned.

“Through the initial family engagement, [Historical Enquiries Team] staff will explain clearly to families what will and will not be discussed with them about intelligence matters.”

- 2.123. This seems to suggest that, by following a four-stage process, an independent intelligence assessor would be able to confirm that, in every case, all relevant intelligence had been provided to a review team. It had been decided that the deputy head of the Historical Enquiries Team should perform the role of independent intelligence assessor, in addition to his other duties.
- 2.124. Whilst, in theory, this would seem to be a robust process, we suspected that the role of the independent intelligence assessor would only be performed on a dip-sampling basis. We reviewed the new *Manual of Guidance* and its supporting policies and procedures. Although confusing, these documents indicated that the Historical Enquiries Team had intended only to dip-sample 10percent of cases to consider whether all relevant intelligence had been provided, rather than undertake the full audit process that we had recommended.
- 2.125. By the time of our follow-up inspection, this system had been implemented.
- 2.126. Senior officers of the Police Service of Northern Ireland told us that the problem is exacerbated by the volume of intelligence and the fact that it is not all stored on one searchable database. In addition, we have three further concerns.

- 2.127. First, as noted, the proposed process remains on a dip-sampling basis. Our recommendation was expressed in terms of a comprehensive analysis which would guarantee that all appropriate intelligence was provided in every case.
- 2.128. Secondly, while we do not question, for a moment, the integrity of those involved in the Historical Enquiries Team approach, at the heart of our recommendation was the need and desirability of having an individual, independent of C3 branch, dedicated to this role. We consider that this would have instilled greater confidence in those who engage with the Historical Enquiries Team.
- 2.129. Thirdly, the proposed method of assessment (into the detail of which we have not gone for the purposes of this report) means that the assessor would not examine all the material held by the Police Service of Northern Ireland. As a result, we are unable to understand how that person would be able to certify that all appropriate material has been provided to the Historical Enquiries Team. Without seeing the whole picture, it does not seem possible to us for anyone to be able to confirm that all the appropriate parts of the picture had been revealed.
- 2.130. Accordingly, we are not satisfied that our initial recommendation has been adequately addressed.

## **Recommendation 12**

- 2.131. When we conducted our initial inspection, we were aware that, in an attempt to evaluate the satisfaction levels of families who engaged with the Historical Enquiries Team, an independent consulting company had been instructed to undertake a series of surveys. Those surveys had been conducted between February 2009 and August 2011 and had identified high levels of satisfaction with the Historical Enquiries Team.
- 2.132. Indeed, in the most recent survey, in August 2011, 64 percent of families had been satisfied with the performance of the Historical Enquiries Team, with only a small number of families (3 percent) expressing dissatisfaction.
- 2.133. We had some concerns about those findings.
- 2.134. Although we considered the methodology used by the consulting company was sound and well-structured, we were concerned how the families had been selected for the surveys. We found that not all the families who had received a final report had been selected to participate in a satisfaction survey. In addition, the selection process had excluded those who did not want to engage with the Historical Enquiries Team; those who disengaged along the way; and those who were still awaiting a report.

2.135. This led us to make a recommendation.

### **Recommendation 12 in HMIC's 2013 report**

The Historical Enquiries Team should extend the use of satisfaction surveys to a wider group than just those that receive a final review summary report. In addition, the survey methodology should be open to public scrutiny.

2.136. At the time of our follow-up inspection, the Historical Enquiries Team did not intend to reintroduce satisfaction surveys. Rather, it intended to rely on its proposed 'quality of service procedure', which had been expanded to include feedback.<sup>28</sup>

2.137. This is disappointing. Relying on the quality of service procedure is very much a reactive process, while surveys would have given families and other members of the public a more robust way to provide feedback.

2.138. Our initial concerns have been supported by the results of a further survey which was conducted and published after our initial inspection by Professor Bill Rolston of the Transitional Justice Institute at the University of Ulster.<sup>29</sup>

2.139. In conducting a wide-ranging survey, Professor Rolston interviewed 82 people who had engaged with the Historical Enquiries Team and found that:

“12 percent of those interviewed were unequivocally glad they had engaged with the Historical Enquiries Team and 41 percent said they were definitely not glad they had done so”.<sup>30</sup>

2.140. Further, Professor Rolston's research showed that:

“an overwhelming percentage (74 percent) of a cross-community sample of victims' families (82 interviewees) was of the view that the Historical Enquiries Team should be disbanded”.<sup>31</sup>

2.141. These conclusions, together with our findings of individual examples of letters unanswered, letters lacking sufficient detail, and letters carelessly completed,

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<sup>28</sup>See recommendation 4 at paragraph 2.55 *et seq.*

<sup>29</sup> *Satisfaction with the Historical Enquiries Team: Relatives' Views*, Professor B Rolston, Transitional Justice Institute Research Paper number 14-06, 7 August 2014. See: [www.relativesforjustice.com/wp-content/uploads/2014/01/HET-research-Relatives-Views-by-Prof-Bill-Rolston.pdf](http://www.relativesforjustice.com/wp-content/uploads/2014/01/HET-research-Relatives-Views-by-Prof-Bill-Rolston.pdf)

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

demonstrate to us the need that existed for a robust measure of public satisfaction to be in place.

2.142. If the Historical Enquiries Team had continued in place, we would not have had any hesitation in stating that the concerns which led to our initial recommendation had not been satisfactorily dealt with and that action was urgently needed to address the issue.

2.143. As we have said, the work of the Historical Enquiries Team is being transferred to the Legacy Investigation Branch of the Police Service of Northern Ireland. Therefore, in our view, those responsible for the branch's work need to address more positively this recommendation than those in charge of the Historical Enquiries Team and reintroduce satisfaction surveys, covering all those who are affected by its work.

### **Recommendation 13**

2.144. In our 2013 report, we said that, in principle, the Historical Enquiries Team's review summary reports were a good source of information; however, their efficacy as a means of accountability was potentially undermined by the fact that they were only produced in cases in which there was family engagement,<sup>32</sup> and by the fact that, so we were told, they did not always answer the questions which families raised.

2.145. During our initial inspection, we found a number of inconsistencies in how cases were dealt with, seemingly dependent on whether or not families had engaged with the Historical Enquiries Team.

2.146. The issue upon which we focused in our initial inspection report was the failure of the Historical Enquiries Team to control the way in which drafts or versions of its review summary reports were handled and shared with families.

2.147. Accordingly, we made a recommendation.

#### **Recommendation 13 in HMIC's 2013 report**

The Historical Enquiries Team should introduce a system that tracks all drafts or versions of its review summary reports so that changes can be properly documented and audited.

2.148. Following our initial inspection, a new family report was devised to replace the review summary report. We were told that it was intended to be more concise and factually based, with less conjecture and opinion. However, managers

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<sup>32</sup> Except where the case was one of state involvement.

recognised that different drafts would still be produced before arriving at a final version for the family.

2.149. In order to maintain control over these different drafts or versions, which if circulated could create confusion, the Historical Enquiries Team told us the following:

“[f]ormal policy has been written relating to draft and version control. This is explicit about the non-disclosure of reports or information to families or others until the final report is published.”

2.150. The Historical Enquiries Team clearly realised that much more robust case management processes were needed and the action which it took is a step in the right direction.

2.151. Whilst we are satisfied that the precise terms of the recommendation have been met, we were told of other issues regarding the quality of the new family reports. As they were of sufficient concern to us, we have set out the issues in chapter three of this report, so that those responsible for systems and processes in the Legacy Investigation Branch may reflect on our findings in this regard and take steps to rectify the matters which we have raised.

## **Recommendation 14**

2.152. During our initial inspection, it was persuasively argued that state involvement cases (referred to now as “military cases”) were examined less rigorously than other cases.

2.153. We considered this issue both in terms of the policy that the Historical Enquiries Team adopted, when considering the legal position in such cases, and in terms of the practice that it adopted when undertaking its reviews.

2.154. At the time of our initial inspection, we found that the Historical Enquiries Team, as a matter of policy, treated deaths where there was state involvement differently from those cases where there was no state involvement. This approach was set out in its *Operational Guide*.<sup>33</sup>

2.155. This policy appeared to be based on, at best, a misunderstanding of the law of murder.

2.156. The Historical Enquiries Team’s error was exacerbated by its failure then to consult the Director of Public Prosecution for Northern Ireland and the Attorney General for Northern Ireland, given that they were then responsible for prosecution policy.

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<sup>33</sup> See footnote 24.

2.157. We concluded that the Historical Enquiries Team approach was entirely wrong in that:

- it was clear that the Historical Enquiries Team had adopted a different approach between cases that had state involvement and those that had not; and
- the approach that the Historical Enquiries Team had adopted in state involvement cases was susceptible of legal challenge, as it appeared to be based on a misunderstanding of the law.

2.158. Accordingly, we made a recommendation.

#### **Recommendation 14 in HMIC's 2013 report**

The Historical Enquiries Team should: immediately withdraw paragraph 6.19 of its *Operational Guide*; draft a revised policy approach to state involvement cases; seek the Director of Public Prosecutions for Northern Ireland agreement to it; and then publish it to Historical Enquiries Team members and other interested parties.

2.159. Following our initial inspection, the Historical Enquiries Team withdrew the *Operational Guide* in its entirety and replaced it with the new *Manual of Guidance*. This states that there is an expectation that all Historical Enquiries Team reviews are to be conducted in the same way and to the same exacting standards.

2.160. This revised approach was agreed with the Director of Public Prosecutions for Northern Ireland.

2.161. The *Manual of Guidance* has been published to Historical Enquiries Team members.

2.162. We are satisfied that the revised policy approach taken by the Historical Enquiries Team reflects the law of murder and that this recommendation has been adopted.

#### **Recommendations 15, 16 and 17**

2.163. Under Code C, the Police and Criminal Evidence (Northern Ireland) Order 1989, if a person is suspected of involvement in a criminal offence, an interview must be carried out under caution.

2.164. Such an interview is part of an investigative process (as opposed to a review), as its purpose is to put the allegation to the suspect and elicit his or her side of the story.

- 2.165. At the time of our initial inspection, the Historical Enquiries Team's *Operational Guide* was clear that any of its teams may conduct an interview under caution. However, staff told us that, in practice, only the team which dealt with cases of state involvement undertook such interviews.
- 2.166. We were also made aware that, in a number of cases, the Historical Enquiries Team had used what has been referred to as the "pragmatic approach". This appeared to involve the notion that, when suspects should have been interviewed under caution in the normal course of events, a member of the Historical Enquiries Team could decide nonetheless to dispense with the caution, in order to interview a suspect. It was argued that this was to enable as much information as possible about the death to be obtained for the benefit of the family.
- 2.167. We understand that the term "pragmatic approach" was used in 2010, at the time when the chief constable of the Police Service of Northern Ireland decided that the Historical Enquiries Team should refer all cases which required investigation to C2 branch – leaving the team to focus solely on reviews.
- 2.168. This decision resulted in a memorandum of understanding between the Historical Enquiries Team and the Police Service of Northern Ireland Crime Operations Department (C2 branch) which set out the way such referrals should be made.<sup>34</sup>
- 2.169. In our initial inspection, we found that the Historical Enquiries Team abided by the chief constable's instruction in non-state involvement cases, referring all those that required investigation to C2 branch in the Police Service of Northern Ireland.
- 2.170. However, we were concerned to find that it had continued to conduct interviews under caution in state involvement cases in contravention of the chief constable's decision.
- 2.171. We also found that it had continued to adopt the "pragmatic approach" to dispense with the caution in some state involvement interviews.
- 2.172. The way in which the Historical Enquiries Team had operated in this area led us to make three recommendations which we consider below in turn, although we recognise that because of the transfer of the Historical Enquiries Team's work to the Legacy Investigation Branch within the Police Service of Northern Ireland, their relevance is no longer as great.

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<sup>34</sup> The memorandum of understanding, agreed by the chief constable, between the Historical Enquiries Team and Police Service of Northern Ireland Crime Operations Department (C2 branch), 2010.

### **Recommendation 15 in HMIC's 2013 report**

The chief constable should enforce his decision that any case which requires investigation should be referred to the Police Service of Northern Ireland. He should also introduce systems to provide himself with an assurance that this policy is applied in all cases.

- 2.173. To ensure that the policy was rigorously enforced, a standardised referral pro-forma was to be completed whenever the Historical Enquiries Team identified evidential opportunities. The pro-forma was designed to enable important statistical data to be distilled from the information provided.
- 2.174. As a safety net, before finalisation, all Historical Enquiries Team reviews were to be quality assured to ensure that any evidential opportunities had not been missed.
- 2.175. This process had the potential to comply with our recommendation but much would have depended upon its practical application.
- 2.176. Nonetheless, as the Legacy Investigation Branch has taken over the work of the Historical Enquiries Team, this recommendation is no longer applicable.

### **Recommendation 16 in HMIC's 2013 report**

The Historical Enquiries Team should dispense with the “pragmatic approach” and stop conducting any interviews under caution.

- 2.177. Consistent with the Historical Enquiries Team's new definition as a review body, its staff were issued with clear instructions that they were not to conduct interviews under caution, under any circumstances. When there were reasonable grounds to suspect that a criminal offence may have been committed, any interview with a suspect was to be conducted by Police Service of Northern Ireland detectives, in accordance with the memorandum of understanding discussed under recommendation 15.
- 2.178. This policy was to apply to suspects in all cases, both those with state involvement and those without any state involvement. The ill-considered “pragmatic approach” had thus been abandoned.
- 2.179. Accordingly, this recommendation has been adopted.

## **Recommendation 17 in HMIC's 2013 report**

The Historical Enquiries Team and the Police Service of Northern Ireland should review the memorandum of understanding between them to clarify the point at which cases should be referred to the Police Service of Northern Ireland C2 [branch] for investigation and to address any anomalies and inconsistency between the handling of state and non-state cases.

- 2.180. Cases were to pass to the Police Service of Northern Ireland C2 branch for investigation in accordance with the revised memorandum of understanding which we have mentioned under recommendations 15 and 16. All such referrals were to be co-ordinated through a monthly Historical Enquiries Team operational meeting to ensure that a consistent approach was adopted in all reviews and that an individual case had reached the appropriate point before referral. A case was always to be referred before any investigative action was taken.
- 2.181. We consider that the revised policy meets our concerns as expressed in this recommendation. In any event, with the transfer of work to the Legacy Investigation Branch, the concerns which gave rise to this recommendation are no longer applicable.

## **Recommendation 18**

- 2.182. A further substantial cause for concern in our initial inspection was the inappropriate approach adopted by the Historical Enquiries Team with regard to the provision of material to those who were suspected of criminality, prior to any interview under caution.
- 2.183. In our initial inspection, we were told of examples where the extent of pre-interview disclosure was dependent on whether the suspect was a member of the military or a paramilitary suspect. Substantially greater disclosure was made in the former than in the latter cases.
- 2.184. Then, we explored the rationale behind these different approaches. The Historical Enquiries Team stated that it operated on the assumption that, unlike non-state actors, soldiers involved in a shooting had cooperated with investigators at the time and had provided their identities and produced their weapons for inspection – two things which non-state actors did not do. Accordingly, its approach to pre-interview disclosure was different.
- 2.185. Once again, such an approach undermined the overarching requirement for consistency of approach in all cases.

### **Recommendation 18 in HMIC's 2013 report**

The chief constable should introduce systems and processes whereby he may be satisfied that the Historical Enquiries Team operates in a consistent way in respect of all the cases that it reviews.

- 2.186. In our follow-up inspection, we found that the Historical Enquiries Team had adopted a far more consistent approach internally. A *Manual of Guidance* had been developed, with supporting policies and procedures, covering all aspects of its work.
- 2.187. Procedures had also been introduced to ensure that all the teams were working in the same way. By way of example, exploratory work during a review was to be documented, which meant that the approach in one case could be compared to that adopted in another.
- 2.188. Of course, much hinges on the extent to which policy is put into practice, but we are sufficiently satisfied by what we inspected to conclude that the import of recommendation 18 has been recognised, acted on and adopted.

### **Recommendation 19**

- 2.189. In our initial inspection, we found that the Historical Enquiries Team seldom sought advice from the Public Prosecution Service. In particular, investigators rarely seemed to consult lawyers about any previous legal decisions, new evidence, or the status of a potential suspect.
- 2.190. Perhaps most worryingly, Historical Enquiries Team staff took the decision whether there was a case to answer at the conclusion of a review. In effect, in cases of state involvement, the Historical Enquiries Team acted as investigator and prosecutorial decision-taker – a state of affairs that has not existed in England and Wales since 1986 and in Scotland for hundreds of years.
- 2.191. We did not consider that this was adequate.

### **Recommendation 19 in HMIC's 2013 report**

The Historical Enquiries Team should hold monthly meetings with the Public Prosecution Service to discuss cases and contentious legal issues.

- 2.192. The Historical Enquiries Team was redefined as a review body. In accordance with the policy for referring cases for investigation and the memorandum of understanding agreed between it and the Police Service of Northern Ireland, the Historical Enquiries Team would not have any need to submit files of evidence for consideration by the Public Prosecution Service of Northern Ireland. That task would fall to the detectives in Police Service of Northern Ireland.
- 2.193. Nevertheless, the merit of our recommendation was acknowledged, and, by the time of our follow-up inspection, two meetings had been held between the Historical Enquiries Team senior managers and the Director of Public Prosecutions for Northern Ireland and Public Prosecution Service lawyers. Further monthly meetings between them had been planned.
- 2.194. When we spoke with the Director of Public Prosecutions for Northern Ireland, he was content with the approach that the Historical Enquiries Team intended to take, with the caveat that there had to be a prosecutorial focus and that evidential opportunities had to be pursued.
- 2.195. We consider this recommendation to have been adopted.

## **Recommendation 20**

- 2.196. If an investigation is to comply with Article 2 of the European Convention on Human Rights, the people responsible for, and carrying out, the investigation must be independent from those implicated in the events. This means not only that there must be lack of hierarchical or institutional connection, but also that there must be practical independence.
- 2.197. In our initial inspection, we found examples when there was an absence of such independence and, therefore, we made a recommendation.

### **Recommendation 20 in HMIC's 2013 report**

The chief constable should make sure that the Historical Enquiries Team introduces a policy about the deployment of staff to state involvement cases. This should include the vetting of staff regarding previous involvement in cases, in order to safeguard the independence of investigations.

- 2.198. In response to this recommendation, the Historical Enquiries Team's *Manual of Guidance* included provision for self-declarations of conflicts of interest by members of the review team, and written guidance to staff, advising them that there would be formal sanctions for failure to declare conflicts of interest. However, the Historical Enquiries Team did not introduce any procedures for vetting staff.

- 2.199. We consider that, in order to be capable of ensuring the necessary independence, any system introduced would have to include a system of vetting, with the verification of declarations to ensure that they are accurate. We also consider that that is necessary in order to provide the required appearance of independence.
- 2.200. We also have concerns about the conflict of interest procedures that the Historical Enquiries Team introduced.
- 2.201. Even if vetting and independent verification had been introduced, the information available to those who would have been responsible for vetting or verifying declarations is not comprehensive. The Historical Enquiries Team told us that it is inherently difficult to verify self-declarations, particularly for cases pre-dating the introduction of the Home Office Large Major Enquiry System information system.
- 2.202. The Historical Enquiries Team also told us that, in many hundreds of legacy cases, records do not contain an inventory of staff who worked on the original investigation. Given that a number of enquiries were undertaken jointly by representatives of the British Army and the Royal Ulster Constabulary, it is not possible for those responsible for reviews now to be assured that the process does not include former officers of the Royal Ulster Constabulary who were involved in the earlier investigation. Furthermore, the Historical Enquiries Team considered that verification was all the more difficult for any staff who had served with regional crime squads with geographic, rather than incident-specific, responsibilities.
- 2.203. The need for identifiable independence would have been strengthened by the decision to discontinue the practice of having some teams in the Historical Enquiries Team staffed with people who were not previously associated with the Royal Ulster Constabulary or the Police Service of Northern Ireland.
- 2.204. Furthermore, the procedures that the Historical Enquiries Team drew up following our 2013 report envisaged that only those on the review teams were to be asked to complete the conflict of interest declarations.
- 2.205. In practice, a number of people outside the review teams also play significant roles in reviews – for example, those providing intelligence, scientific advice and fingerprint expertise and Police Service of Northern Ireland staff members, such as district staff, who may be required to provide information to the review team.
- 2.206. The procedures that the Historical Enquiries Team drew up did not provide for conflict of interest declarations to be signed by those individuals.

2.207. Given these difficulties, we are concerned that, in practice, it would not have been possible to ensure that those involved in reviews were independent, either in fact or in perception.

2.208. In Northern Ireland, we have learned over two inspections that perceptions are as important as reality. In dealing with such sensitive issues as deaths caused by military and paramilitary agents, it is absolutely essential that, as far as possible, the relevant institutions show themselves to be independent in order to secure and retain the confidence of those affected by their work and of the public at large.

2.209. We are not yet persuaded that the Historical Enquiries Team did all that was possible to address our final recommendation.

### 3. Other aspects of our 2013 report

- 3.1. In our initial inspection, we learned of other aspects of the work of the Historical Enquiries Team that concerned us, but which did not lead directly to a recommendation. In our follow-up inspection, we were made aware of the Historical Enquiries Team's work to address those issues too. We set out briefly below our observations on one aspect on which we commented in our initial report: the quality of review summary reports.

#### The quality of review summary reports

- 3.2. In our initial inspection, we found that the quality of review summary reports varied considerably. These reports have since been replaced by 'family reports'. We have set out in paragraphs 2.148-151 the Historical Enquiries Team's response to our recommendation about the need better to control the way in which drafts or versions of reports are distributed. But, to a large extent, that recommendation was about process rather than quality.
- 3.3. In our follow-up inspection, we examined some of the new family reports and found them to be much more concise than the former review summary reports, containing less conjecture and opinion. However, we were unable to assess them as the product of the new systems and processes that the Historical Enquiries Team had devised because those available were a re-working of previous review summary reports that had not been sent to families.
- 3.4. We were informed that over 40 family reports had been prepared but that the Historical Enquiries Team was awaiting the chief constable's formal approval and the acknowledgement of the Northern Ireland Policing Board before delivering the reports to the families concerned. During the course of our follow-up inspection, 56 family reports were actually sent to families – including the 40 or more referred to above.
- 3.5. However, the overall quality of the new family reports distributed thus far was called into question. A solicitor who represents victims' families claimed that they are no more than a "skimmed-down" (sic) version of the old reports and that, on occasion, more information is available in the book: *Lost Lives*.<sup>35</sup>

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<sup>35</sup> *Lost Lives: The Stories of the Men, Women and Children Who Died as a Result of the Northern Ireland Troubles*, C Thornton, S Kelters, B Feeney and D McKittrick, Mainstream Publishing Company (Edinburgh) Ltd, June 1999.

- 3.6. On another occasion, a non-governmental organisation told us of a new family report in which a family's name had been spelled incorrectly and had a variety of misspellings throughout the report.
- 3.7. The senior managers told us that they would look into the alleged errors in the reports which they had sent. Whilst they did not feel that they could be held to account for all the Historical Enquiries Team's previous failings, they accepted responsibility for any errors that had slipped through its revised quality assurance processes.
- 3.8. We acknowledge that, as the new system is being introduced, it would be unfair to cast judgment based on such a limited sample base. However, those errors that have already slipped through the net may be an indication that the quality assurance processes needed to be tightened.
- 3.9. We accept that the Historical Enquiries Team's new senior managers cannot be held to account for all the failures of the past, but that does not mean that those who are now in charge of the Legacy Investigation Branch do not have a responsibility to put things right.

## 4. Conclusions

- 4.1. We recognise that, due to the creation of the Legacy Investigation Branch, some of the recommendations in our initial report have been overtaken by events.
- 4.2. We acknowledge here the work of the Historical Enquiries Team in response to our initial report. Nevertheless, we have reached the following conclusions: of the 20 recommendations in our initial inspection report, 10 have been met in full; 2 have been implemented in part; 3 are no longer directly relevant because of the full absorption of the Historical Enquiries Team into the Legacy Investigation Branch; and 5 have not been implemented at all.
- 4.3. The seven recommendations which we consider still require action are set out in chapter 5.
- 4.4. We acknowledge that a structured and consistent approach, which had been lacking in the past, had been introduced with more robust processes and greater use of technology for storing, searching and retrieving material. This was underpinned by a comprehensive new *Manual of Guidance* covering all aspects of the Historical Enquiry Team's work.
- 4.5. Supervisors were to keep records throughout the life of a review, detailing the nature and outcome of any enquiries with any major decisions. In addition, review staff who were not supervisors were to complete a record for every case on which they worked. It was envisaged that, taken together, the documents would provide a comprehensive account of the work undertaken (or not undertaken) during a review, with supporting rationale.
- 4.6. However, we still have concerns about three overarching issues that were the subject of our initial recommendations: vetting to ensure independence; the management of intelligence; and openness and accountability. Both severally and in combination, these elements have the potential to undermine the public's trust and confidence in the way in which legacy cases are handled.

## The European Convention on Human Rights context

- 4.7. Our initial report considered the extent to which the Historical Enquiries Team's activities could constitute, or form part of, a prompt, effective and independent investigation into state involvement cases, as required by Article 2 of the European Convention on Human Rights.
- 4.8. In that report, we noted that the Committee of Ministers of the Council of Europe had acknowledged that the Historical Enquiries Team would not be carrying out Article 2 compliant investigations in historic cases. Rather, it was envisaged that it could be a useful model for bringing a “measure of resolution” to those affected by ‘the Troubles’, and that institutions, such as the Historical Enquiries Team, “could play an important role” in satisfying the state’s continuing obligation to conduct effective Article 2 investigations, when taken together with other measures.<sup>36</sup>
- 4.9. Although the Committee of Ministers did not envisage that the Historical Enquiries Team would satisfy the Article 2 investigative requirement by itself, in our 2013 report, we considered the respects in which the Historical Enquiries Team’s process did and did not meet the four requirements of an Article 2 compliant investigation. We considered that this might be relevant to the question of whether the Historical Enquiries Team was capable of playing a role in the overall approach to satisfying the requirements of Article 2.
- 4.10. We also considered that it might be relevant to any future consideration by the Committee of Ministers whether to reopen its examination of the Historical Enquiries Team as part of its review of the United Kingdom’s compliance with the European Court of Human Rights judgments in what became known as the McKerr group of cases.<sup>37</sup>
- 4.11. In June 2014, the Committee of Ministers decided that it would review progress at their DH (Human Rights) meeting in September 2015 at the latest.<sup>38</sup>
- 4.12. Whilst work has been done in implementing some of the recommendations which are set out in HMIC's 2013 report, we have identified a number of

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<sup>36</sup> CM/Inf/DH(2008)2 revised, 19 November 2008, paragraph 49.

<sup>37</sup> *McKerr v United Kingdom (UK)* (2002) 34 EHRR 20, *Jordan v UK* (2003) 37 EHRR 2, *Kelly and Others v UK* (2000) 30 EHRR CD223, *Shanaghan v UK* (2000) 30 EHRR CD370, *McShane v UK* (2002) 35 EHRR 23, and *Finucane v UK* (2003) 37 EHRR 29.

<sup>38</sup> In accordance with Article 46 of the Convention as amended by Protocol No. 11, the Committee of Ministers supervises the execution of judgments of the European Court of Human Rights. This work is carried out mainly at four regular meetings (DH meetings) every year.

shortcomings which we consider still raise concerns about the extent to which the reconfigured Historical Enquiries Team met the requirements of Article 2.

- 4.13. If an investigation is to comply with Article 2, the people responsible for, and carrying out, the investigation must be independent of those implicated in the events. The primary concern in the present context is the degree to which those individuals conducting reviews on behalf of the Historical Enquiries Team were guaranteed to be independent of those involved in the initial investigations or the underlying events.
- 4.14. For the reasons we have discussed,<sup>39</sup> we are not convinced that the vetting and conflict of interest procedures that the Historical Enquiries Team introduced would have ensured such independence. Nor would they have provided the required appearance of independence, which in the context of Northern Ireland is pivotal.
- 4.15. The issue of independence also arises in relation to the process that the Historical Enquiries Team introduced for assessing intelligence. We would have liked to have seen the presence of an intelligence assessor, independent of C3 branch, who had access to all intelligence to ensure that all relevant material was made available to those conducting a review. The Historical Enquiries Team preferred a dip-sampling process undertaken by its deputy head.
- 4.16. Article 2 compliance also requires a sufficient element of public scrutiny to ensure accountability in practice as well as in theory. We found in our follow-up inspection that the Historical Enquiries Team did not intend to seek feedback by way of satisfaction surveys, preferring to distribute information leaflets and inviting comment. We do not consider that this approach would have been adequate to satisfy our earlier concerns.
- 4.17. In addition, our recommendation to introduce an independent oversight panel was not adopted.
- 4.18. Finally, we have deliberated about the extent to which we should comment on the full transfer of the work of the Historical Enquiries Team into the Police Service of Northern Ireland through the Legacy Investigation Branch.
- 4.19. We are mindful that a statutory Historical Investigations Unit is to be created in due course, but we have balanced that fact against the reality that the work is continuing now, and it needs to be undertaken as efficiently as possible.

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<sup>39</sup> See recommendation 20 at paragraph 2.196 *et seq.*

- 4.20. We are mindful, too, that this inspection was of the Historical Enquiries Team, not the Legacy Investigation Branch, although, as we have stated, HMIC has a legal responsibility to inspect the Police Service of Northern Ireland, and so the Legacy Investigation Branch would fall under our jurisdiction as well.
- 4.21. And so we have decided it is right that we set out our view on the transfer of work to the Legacy Investigation Branch.
- 4.22. As we have said, if an investigation is to comply with Article 2 of the European Convention on Human Rights, those who are responsible for both overseeing and carrying it out, must be independent of those implicated in the events. This means that there must be not only an absence of hierarchical or institutional connection, but also practical independence.
- 4.23. In our 2013 report, we observed that, although the Historical Enquiries Team was formally part of the Police Service of Northern Ireland, the only institutional connection was through the reporting line to the chief constable.<sup>40</sup> The Legacy Investigation Branch cannot claim the same degree of institutional independence.
- 4.24. With regard to practical independence, the Historical Enquiries Team tried to assign cases involving Royal Ulster Constabulary officers to teams which were not staffed by former officers of that force. The Legacy Investigation Branch needs to succeed in adopting the same approach if its independence is not to be compromised.
- 4.25. In accordance with the recommendations in our 2013 report, establishing clearer lines of accountability for the Legacy Investigation Branch would help to ensure the rigour and quality of its reviews. However, even then, it may be difficult to secure and maintain public confidence in the process, given the sensitivity of these cases, and the lack of independence, both in terms of reality and perception, which the Legacy Investigation Branch has from the Police Service of Northern Ireland.

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<sup>40</sup> As we observed in our 2013 report, this reporting line was disputed by representatives of a number of non-governmental organisations, who claimed that the line of accountability was, in fact, between the assistant chief constable with responsibility for crime operations and the head of the Historical Enquiries Team.

## **Relationship between the Historical Enquiries Team and successor bodies**

- 4.26. As we have stated in this report, we have been mindful that the work of the Historical Enquiries Team has been subsumed by the Legacy Investigation Branch and that, in the future, as a result of the *Stormont House Agreement*, the work will move again to the Historical Investigations Unit.
- 4.27. As a result, some might argue that our initial inspection report and this follow-up inspection report are no longer relevant. We disagree. The work of the Historical Enquiries Team continues, albeit under a different name and within a new over-arching structure.
- 4.28. Both our reports have focused on the work being undertaken, the processes and practices that underpin continuation of that work, and the safeguards and levels of accountability which we say should be in place to secure and maintain the public's confidence.
- 4.29. These issues apply to whoever undertakes this sensitive work; the change in structure, name and placement of those charged with carrying on this work is an irrelevance.
- 4.30. As we have stated, the housing of the Legacy Investigation Branch within the Police Service of Northern Ireland has created further difficulties in terms of actual and perceived independence. It is all the more important, therefore, that the recommendations which we made in our initial report in this regard, such as the need for an independent oversight panel, are reconsidered and acted upon positively.
- 4.31. And, as before, to the extent that the work of the Historical Enquiries Team is to be taken over by successor units, we consider that the underpinning structures, procedures, systems and processes need to be constructed to reflect the desirability of this review process being capable of forming part of the means by which the United Kingdom discharges its obligations under the European Convention on Human Rights.
- 4.32. In order to secure and retain the confidence of the families affected and the public at large, whatever the title of the organisation which is to be responsible for considering cases of those who were killed during 'the Troubles', the issues that we have considered in our two inspections still need to be addressed.

- 4.33. Independence in approach, consistency in procedures and processes and public accountability are themes which will not change or disappear simply by calling the reviewing body something different. The confidence of the families affected and the public at large will not be earned by its title, but rather by the quality of its work.
- 4.34. Accordingly, we take this opportunity to set out once more those recommendations that continue to be relevant from our initial report which we consider have not been fully or adequately implemented. Contrary to HMIC's usual approach, and in recognition of the developments in recent months, we have taken the unusual step of not addressing the recommendations to an individual or named organisation, lest that individual or organisation ceases to be responsible in due course for the work to be undertaken. We do not want our recommendations not to be adopted simply because a different individual or organisation becomes responsible and takes the view that a particular recommendation does not apply to him, her or it.
- 4.35. Therefore, chapter 5 sets out the recommendations which we consider should be accepted and implemented by whoever is responsible for carrying on this very important and sensitive work.
- 4.36. We hope that our two reports, this latter report building on the former, provide those who now have the duty to create the Historical Investigations Unit with a blueprint to ensure that they do not make the same mistakes that dogged the Historical Enquiries Team. In our view, it is essential that the new approach starts off as efficiently and effectively as possible; ensuring that its structures, systems, procedures and practices are appropriate must be an essential element of the new design.
- 4.37. As one prominent individual said to us: "We all need to learn from the Historical Enquiries Team experience." With that in mind, we hope that our two reports will be of help.

## 5. Outstanding recommendations

- 5.1. As we have stressed in the preceding chapters, the improvements that we sought in the Historical Enquiries Team are just as applicable to the Legacy Investigation Branch and, in due course, to the Historical Investigations Unit.
- 5.2. The fact that the outstanding recommendations are not specifically addressed to a named individual or organisation should never be taken as an excuse not to implement them, whichever named structure (be that, for example, the Legacy Investigation Branch or the Historical Investigations Unit) carries on this important work.
- 5.3. We have re-numbered the recommendations from HMIC's 2013 report sequentially for ease of future reference. We have re-worked their content where appropriate but their substance is taken from our initial inspection report. These are the recommendations which we consider have not been implemented fully or at all and which remain relevant to this important on-going work.

### **Recommendation 1 (formerly recommendation 2 in HMIC's 2013 report)**

An annual report should be published to the public setting out what the unit dealing with these cases has done to achieve its objectives, how it has responded to constructive feedback, and an acknowledgement about those things that might not have been achieved.

### **Recommendation 2 (formerly recommendation 3 in HMIC's 2013 report)**

A mechanism should be agreed through which the unit dealing with these cases can be made more open and accountable to the public in Northern Ireland.

### **Recommendation 3 (formerly recommendation 9 in HMIC's 2013 report)**

An assessment of the outstanding cases, alongside the funding and time required to complete the work of the unit dealing with these cases should be commissioned.

### **Recommendation 4 (formerly recommendation 10 in HMIC's 2013 report)**

An independent oversight panel should be established to oversee and scrutinise, in the public interest, all aspects of the work of the unit dealing with these cases. This body should have unfettered access to the information it would need to carry out this responsibility.

**Recommendation 5 (formerly recommendation 11 in HMIC's 2013 report)**

An independent audit process should be introduced to verify that the staff of the unit dealing with these cases have the benefit of all appropriate intelligence material held by the Police Service of Northern Ireland.

**Recommendation 6 (formerly recommendation 12 in HMIC's 2013 report)**

Satisfaction surveys should be reintroduced for a wider group than just those who receive a final review summary report. In addition, the survey's methodology should be open to public scrutiny.

**Recommendation 7 (formerly recommendation 20 in HMIC's 2013 report)**

A policy about the deployment of staff to state involvement cases should be introduced. It should include the vetting of staff regarding previous involvement in cases, in order to safeguard the independence of investigations.

## Annex A: Terms of reference

1. The Chief Constable and the policing Board has invited HMIC to review the procedures and approach of the HET relating to the interviewing of former military personnel.

Clarification following consultation with Board:

To examine the adequacy of the policy and procedures that are in place to ensure that the HET investigation of RMP cases is compliant with the ECHR and current policing standards.

2. The review should focus on those deaths occurring between 1970 and September 1973 in which military personnel form a key part of the investigation. These deaths were investigated jointly by the RUC and the RMP under an agreement arranged between the Chief Constable of the RUC and the General Officer Commanding whereby the RMP had responsibility for interviewing soldiers involved in the incident and forwarding details to the RUC investigators.

Clarification following consultation with Board:

To determine whether the conduct of all aspects of the HET investigation of RMP cases meet current policing standards and the requirement to provide an independent, effective, prompt and sufficiently transparent investigation of these cases under Article 2 ECHR.

3. The Chief Constable seeks reassurance that in accordance with Article 2 ECHR the HET procedures for the interviewing of former military personnel are in keeping with the requirement to provide an independent, effective, prompt and sufficiently transparent investigation.

Clarification following consultation with Board:

To confirm whether the HET is investigating cases involving the Military Police as effectively as it investigates all other cases, including those where there is no 'state' involvement at all, with a view to ensuring there is no breach of Article 3 and Article 14 of the convention. The review should include interviews with families and their representatives.

4. The Chief Constable seeks a review which takes into account recognised best practice in dealing with the interviewing of former military personnel.

Clarification following consultation with Board:

To determine whether HET investigation processes in RMP cases, as outlined in the research conducted by Professor Lundy, meet the requirement

benchmarks and standards. The review will take cognisance of the standards that applied at the time and obligations in respect of article 6.

5. The Chief Constable would value any recommendations which HMIC feels would benefit HET investigations in which former military personnel form a key part of the enquiry.

Clarification following consultation with Board:

To establish if there is consistency and equality of treatment in all of the above investigations and policies, procedures and processes in comparison with other historic cases within PSNI, bearing in mind the obligation on the PSNI to ensure balance in respect of their approach to such matters.

## **Annex B: Summary of recommendations in HMIC's 2013 inspection report**

### **Recommendation 1**

The HET's role and purpose need to be clarified and specific terms of reference should be published. These must be explicit about what the public and interested parties can expect from the HET.

### **Recommendation 2**

The HET should publish an annual report to the public setting out what it has done to achieve its objectives, how it has responded to constructive feedback, and an acknowledgement about those things that might not have been achieved.

### **Recommendation 3**

The Chief Constable and the NIPB should agree a mechanism through which the HET can be made more open and accountable to the public in Northern Ireland.

### **Recommendation 4**

The HET should establish a single complaints process that is easily accessible to those who might wish to complain about any aspect of the work of the HET.

### **Recommendation 5**

The HET should establish clear and accessible policies and procedures that deal with all aspects of the review process. In particular, this should deal with the storage of material and the maintenance of policy files.

### **Recommendation 6**

The HET should ensure that all material created to date has been properly and consistently catalogued and stored. In particular, the HET should ensure that case folders contain all relevant material.

### **Recommendation 7**

The HET should introduce policy files to record – to an explicitly set standard – decisions on cases and their rationale.

## **Recommendation 8**

The HET should introduce a rigorous induction programme to ensure that all staff understand the policies and practices that they should employ in their work.

## **Recommendation 9**

The Chief Constable should commission an assessment of the outstanding cases alongside the funding and time required to complete the work of the HET.

## **Recommendation 10**

An independent oversight panel should be established to oversee and scrutinise in the public interest all aspects of the work the HET. This body should have unfettered access to the information it would need to carry out this responsibility.

## **Recommendation 11**

The HET should implement an independent audit process to verify that the HET staff have the benefit of all appropriate intelligence material held by the PSNI.

## **Recommendation 12**

The HET should extend the use of satisfaction surveys to a wider group than just those that receive a final RSR. In addition, the survey methodology should be open to public scrutiny.

## **Recommendation 13**

The HET should introduce a system that tracks all drafts or versions of its RSRs so that changes can be properly documented and audited.

## **Recommendation 14**

The HET should: immediately withdraw paragraph 6.19 of its *Operational Guide*; draft a revised policy approach to state involvement cases; seek the DPP for Northern Ireland agreement to it; and then publish it to HET members and other interested parties.

## **Recommendation 15**

The Chief Constable should enforce his decision that any case which requires investigation should be referred to the PSNI C2. The Chief Constable should also

introduce systems to provide himself with an assurance that this policy is applied in all cases.

## **Recommendation 16**

The HET should dispense with the 'pragmatic approach' and stop conducting any interviews under caution.

## **Recommendation 17**

The HET and the PSNI should review the MoU between them to clarify the point at which cases should be referred to PSNI C2 for investigation and to address any anomalies and inconsistency between the handling of state and non-state cases.

## **Recommendation 18**

The Chief Constable should introduce systems and processes whereby he may be satisfied that the HET operates in a consistent way in respect of all the cases that it reviews.

## **Recommendation 19**

The HET should hold monthly meetings with the PPS to discuss cases and contentious legal issues.

## **Recommendation 20**

The Chief Constable should make sure that the HET introduces a policy about the deployment of staff to state involvement cases. This should include the vetting of staff regarding previous involvement in cases, in order to safeguard the independence of investigations.

## **Annex C: Chief Constable's statement in response to the publication of the HMIC Inspection of the Historical Enquiries Team report**

3 July 2013

In April 2012, I agreed with the Policing Board that the HMIC should be invited to conduct an inspection of the HET's interviewing of former military personnel. The report was commissioned due to concerns raised in Patricia Lundy's research on the issue, the need for independent examination of this sensitive area and most importantly for the families of those who have lost loved ones. I am grateful to HMIC for their hard work, the Policing Board for the constructive scrutiny and to Patricia Lundy for her valuable challenge.

The report has raised significant concerns which I and my colleagues are taking very seriously. I have already met with the Policing Board this morning.

Let me say at the outset that I am sorry that HET put in place a policy that was wrong. I accept the recommendations of the HMIC Report in full and I will work with the Board on ensuring their delivery.

The establishment of the HET in 2005 was a brave move and yet always going to be contentious. The approach was endorsed by many, including government, as a step towards a more holistic societal approach to the past; an issue which has yet to be resolved politically. The HET has done a great deal of good in bringing a measure of resolution to families.

HET is unique and so is the task they fulfil. There was no easy or established template to be followed. Notwithstanding this, a differential approach to military cases is wrong. I give you my assurance that this has ended.

The report presents a number of recommendations, upon which work will begin immediately. However, as Chief Constable of PSNI, I must make it clear that a way forward on the sensitive and important issue of dealing with the past cannot, and should not, be left to policing alone.

In response to this review and the clear public confidence issues presented, I intend to take the following action.

- All military cases will be re-examined in line with the national murder investigation manual for any evidential opportunities. I will discuss the options for this with the Policing Board.
- All guidance and operational practice within the HET will be reviewed under the direction of an Assistant Chief Constable and the recommendations within the HMIC report taken forward.
- With support and input from the Policing Board, a long term review of the HET and the wider impact of the past on PSNI will be commenced. This review will include consideration of the HET's current accountability arrangements, its longer term structure and priorities; as well as funding.

Beyond policing and beyond these immediate actions, I am mindful that there is a forthcoming report by the Criminal Justice Inspectorate on legacy issues. Importantly also, the First and Deputy First Minister have announced an all party working group which will consider the issue of the past. The future of the HET should form part of these discussions.

## Annex D: Termination of contracts for Associate Workers

30 September 2014

PSNI has given notification to their contracted Employment Agency Grafton, that they will not extend their contract beyond 31/12/14.

This decision means all temporary workers employed under this Employment Agency contract will not have their positions renewed beyond that date.

This will affect over 300 posts in a range of different disciplines across the organisation, including the Historical Enquiries Team (HET).

This decision follows confirmation from the Department of Justice that the PSNI are now required to make a total 7 percent in year cut, equating to just over £50 million. These savings have to be made over a period of six months.

Speaking on the decision, the T/ Deputy Chief Constable Alistair Finlay commented:

“Today’s news will have an impact on a large number of people. It’s not a pleasant situation to be in. While this is a difficult decision, it is a necessary one. We simply cannot engage the services of people that we cannot afford.”

In relation to the Historical Enquiries Team, DCC Finlay added:

“With cuts of this magnitude, as a Police Service, our immediate obligations must be towards keeping people safe today. The loss of these posts by the end of the year will effectively mean the closure of HET.

In the last number of weeks, we have made it clear that the current financial challenges would mean there would be change in how PSNI responds to the demands of the past and the pace at which we can service the demand.

The PSNI understands the importance of dealing with past and that a huge deal of hurt and pain continues for the many people affected by our troubled history. If we are to achieve a safe, confident and peaceful society, dealing with the past is an issue that our society must address. However, achieving a solution lies well beyond the remit of policing.”

Mr Finlay added: “As a Police Service, we will continue to meet our legislative responsibilities with regards to the past. This includes investigations where there is new and compelling evidence; as well as our responsibilities in responding to the requirements of coronial inquests.”

Mr Finlay added: “It is anticipated that we will form a much smaller Legacy Investigations Branch. In recent weeks we have met with the Policing Board to

discuss this challenge and we will continue to work with them as we progress the issue.”

Mr Finlay concluded: “What is clear is that we cannot afford to do all that we currently do and some of what we do will take longer to achieve.”

## **Annex E: Announcement of the creation of the Legacy Investigation Branch by the Police Service of Northern Ireland**

4 December 2014

The Police Service of Northern Ireland is to draw together the vast majority of its legacy operations under a single command – Legacy Investigation Branch – which will begin work early in the New Year. The Chief Constable George Hamilton made the announcement today at the December meeting of the Northern Ireland Policing Board.

The Legacy Investigation Branch will assume responsibility for what was previously the Historical Enquiries Team (HET) work as well as any murder cases which took place prior to the establishment of Crime Operations Department in 2004. The work taken on by the new branch will include the Bloody Sunday Investigation and the re-examination of the on-the-run cases.

Mr Hamilton told Board members that current financial challenges had led to a change in how the Police Service responded to the demands of the past and the pace at which this would take place.

The Chief Constable said that although HET would close at the end of this month, its work would continue, albeit at a slower pace, as part of a newly formed Legacy Investigation Branch.

Mr Hamilton said: “In the continued absence of an agreed political and societal response to Northern Ireland’s past, the Police Service plans to fulfil its statutory obligations through a new Legacy Investigation Branch. The formation of this Branch will ensure that we fulfil these legal obligations in terms of reviewing and investigating the past. It is our intention that it will be integrated into Crime Operations Department and will be accountable to me, under the direction of the Assistant Chief Constable for Crime Operations, Will Kerr.

“I have agreed to a resource level for this new Branch of about 70 officers and staff but current financial and operational pressures mean that it may take some time to get to this figure.”

The Chief Constable said he was conscious of the public interest in the PSNI’s ability to service the needs of the past and the requirement highlighted in a previous HMIC report on HET concerning the development of an appropriate accountability mechanism. Mr Hamilton said he would welcome the Board’s continued oversight of this Branch.

ACC Kerr explained that, with reduced investigative resources, it was inevitable that all of this work would take longer to complete. A small number of investigations into other Historical cases will remain with their current investigation teams in Serious Crime Branch. This is because they are at such an advanced point that any transfer to Legacy Investigation Branch would involve wasteful duplication.

Mr Kerr said: “The new structure will consolidate existing expertise and experience, provide a fully accountable means of dealing with the past and, against a background of diminished resources, form an effective buffer between investigating the past and delivering contemporary policing which has to be our priority. It is not perfect but it is the best we can do in the current unsatisfactory and unprecedented circumstances.

“We will be writing to affected families about the new structures in the coming days and also advising other interested groups of the new arrangements and timeframes in due course.”

## **Annex F: List of individuals and agencies consulted by HMIC**

### **Academia**

- University of Ulster – School of Law (Transitional Justice Institute) and School of Sociology and Applied Social Studies.

### **Advisors**

- Denis Bradley;
- Lord Robin Eames; and
- Baroness Nuala O’Loan.

### **Criminal justice agencies**

- Attorney General for Northern Ireland;
- Commission for Victims and Survivors;
- Criminal Justice Inspection Northern Ireland;
- Department of Justice for Northern Ireland;
- Northern Ireland Policing Board;
- Police Ombudsman for Northern Ireland; and
- Public Prosecution Service for Northern Ireland.

### **Law enforcement**

- Police Service of Northern Ireland chief officers and senior managers;
- Historical Enquiries Team staff;
- Senior police officers in other United Kingdom forces; and
- National Police Chiefs’ Council Homicide Working Group.

## **Legal**

- Blackstone Chambers;
- KRW Law; and
- O'Muirigh Solicitors.

## **Non-governmental organisations**

- Committee on the Administration of Justice;
- Justice for Innocent Victims of Terrorism;
- Pat Finucane Centre;
- Relatives for Justice;
- Rights Watch (UK); and
- WAVE Trauma Centre.