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Our Ref: EM/0121981

Your Ref:

Date: 10 June 2025

Hilary Benn
House of Commons
London
SW1A 0AA

By email only to: bennh@parliament.uk

Dear Mr Benn,

Re: INVESTIGATION IN TO THE DEATH OF DENIS DONALDSON

I refer to the above matter and write to you on behalf of my clients, Alice and Jane Donaldson, the bereaved wife and daughter of Denis Donaldson who was murdered in Co. Donegal in 2006. I have been provided with previous correspondence passing between you and my clients, including your letter of 11th October 2024 and my clients' response of 24th March 2025.

You will be aware of the circumstances surrounding Mr Donaldson's death, and the family's concerns about the inadequacy of investigations in both Northern Ireland and the Republic of Ireland. My clients are fully aware of and understand the statutory responsibilities which fall to the authorities in the Republic of Ireland to investigate deaths which occur in these circumstances. While they understand that you do not have the power to intervene directly in those investigations, the family believe that the Irish State is not fulfilling its statutory obligations under Article 2 of the ECHR.

The investigation by An Garda Síochána has been ineffective and incomplete. The extent of the Gardai's mishandling of this case is reflected by the fact that the Garda Ombudsman (*Fiosrú*) has now issued proceedings against the Gardai under section 96 of the Garda Síochána Act 2005. Recently, the High Court in Dublin was told that Gardai have no investigative interest in the criminal conspiracy which led to the exposure of Mr Donaldson up to the moment he was murdered. That reaffirms what Gardai have repeatedly told my clients over the course of the last 19 years. Critical information and persons of interest in the conspiracy which led up to the murder of Mr Donaldson have not been included within this Garda investigation. Importantly, that includes information held by UK authorities which is relevant to the conspiracy to expose and murder Mr Donaldson. Alongside this, the inquest proceedings into Mr Donaldson's death have been adjourned on 27 consecutive occasions.

That was the reason the family first made a request in April 2021 for a Judge-Led Commission of Investigation to the Ministers of Justice, in Northern Ireland and the Republic of Ireland. Among those people of good standing in public office who co-sponsored the family's request for a Judge-led Commission of Investigation was the former Chief Commissioner of the Northern Ireland Human Rights Commission, Professor Monica McWilliams and the former Police Ombudsman for Northern Ireland Baroness Nuala O'Loan. In response to a Member of the Legislative Assembly (08.08.2021), the Northern Ireland Minister of Justice wrote that since the request by the family for a Judge-Led Commission of Investigation "*covered a cross jurisdictional issue and could have raised questions of*

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national security, the correspondence was passed to, and accepted by, the Northern Ireland office for response as a reserved matter.” No response has ever been received by the Northern Ireland Office and despite the family’s stated desire to engage, no Secretary of State has ever met with the family.

Our clients would remind you of the statutory responsibility of the UK Government, to properly and effectively investigate these matters in circumstances where Mr Donaldson’s death was clearly linked to his work as an Intelligence Agent, for both the PSNI and the British Security Services (MI5). This linkage has been publicly acknowledged by former PSNI Chief Constable Sir Hugh Orde and by your predecessor as Northern Ireland Secretary of State, Theresa Villiers.

Furthermore, during proceedings in the High Court in Dublin, Justice Alexander Owens stated that this case is a matter of the most serious and highest public interest. The family believe that public interest, and State obligations under Article 2 of the ECHR can only be served by some form of statutory public inquiry. The family have therefore renewed their call for the establishment of a Commission of Investigation with a cross border dimension.

State bodies on both sides of the border undoubtedly hold information which will be relevant to any investigation, and it is considered that a Commission of Investigation would be the most effective mechanism to facilitate the disclosure of such sensitive information. Constitutional and legal solutions to facilitate information sharing on a cross- border basis would be required. This was possible in the Smithwick Tribunal and is being explored in relation to the Omagh Bomb inquiry and a new approach to Legacy cases as well. In addition, a Commission of Investigation may also be better equipped to deal with the sensitive and confidential materials that would undoubtedly form a significant part of the disclosure in Mr Donaldson’s case. An apposite example of this in the UK occurred when the Alexander Litvinenko Inquest was replaced by a public inquiry as it was determined that the scale of material to which public interest immunity may apply meant that a fair Inquest hearing could not take place given the Coroner’s inability to consider ‘closed’ evidence.

The fact that Denis Donaldson’s death occurred outside of Northern Ireland does not absolve the UK Government of its duties to effectively investigate the circumstances surrounding the death. It is a matter of record that the chain of events which led to Mr Donaldson’s murder occurred in Northern Ireland. Evidence recently given in the High Court in Dublin (*Adams V BBC*) made this clear once again. The genesis and antecedents of the murder of Mr Donaldson are embedded in the conflict in Northern Ireland, before the Good Friday Agreement. The chain of events which led to the exposure of Mr Donaldson and his subsequent murder began in Northern Ireland. It is a widespread belief that the murder of Mr Donaldson was “troubles-related”. However, the current provisions of the UK government’s Legacy Act include arbitrary time limitations imposed as to what type of case can be considered “troubles related.” On the face of it, this would appear to deny my clients’ right to access investigative mechanisms, such as the ICRIR, otherwise available for cases deemed “troubles-related”. The inevitable outcome of this approach, if not resolved, would be to leave my clients with no effective mechanism for truth recovery and investigation of matters of the utmost public concern.

In my client’s response to you (24 March 2025), it was suggested that ongoing discussions about reforms to the Legacy Act between the UK and Irish governments could resolve this issue. You have not yet replied. That letter suggested that this could be done by amending the legislation to provide a discretionary power enabling the Chief Commissioner of the ICRIR to accept referral of case, like her father’s, where the murder was clearly “troubles-related” and an Article 2 compliant investigation has been not already been effectively delivered. As we understand, the ICRIR already has the power to conduct investigations or recover information which may be outside this jurisdiction.

We understand that cross jurisdictional investigations are more difficult for legal and political reasons. However, this does not obviate the need for the UK Government to do everything within its power to set up, or at a minimum, facilitate an effective investigation. To this end, we would suggest that there are meaningful steps which can be taken at this point including, but not limited to:

- Ensuring that the Legacy Act is amended to give ICRIR the necessary powers to investigate cases which occur after the GFA but are nonetheless regarded as “troubles-related”;
- Supporting the family’s call for a Judge-Led Commission of Investigation, to be established by the Minister of Justice in the Republic of Ireland, but with a cross-border dimension facilitated by you as Northern Ireland Secretary of State, through which UK agencies provide disclosure; or
- Setting up an Inquiry under the Inquiries Act 2005 which is able to deal more effectively with the cross border dimension as well as dealing with sensitive and ‘closed’ materials which will inevitably arise in this case.

We therefore repeat our clients call for you to meet with them, to discuss how you propose to deal with this case. We respectfully submit that meeting with the family is a vital step to properly inform the UK Government’s approach to meeting its ongoing statutory obligations under Article 2 of the ECHR, and to inform your approach to the wider question of Legacy in Northern Ireland.

Yours faithfully

PA DUFFY & COMPANY

Enda McGarrity

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