

Written evidence submitted by the Northern Ireland Retired Police Officers Association (NIRPOA), relating to Addressing the Legacy of Northern Ireland's past: The UK Government's New Proposals inquiry (LEG0045)

Additional Evidence

I mentioned that I would, if time permitted, go into more detail in relation to the draft Bill's clauses 15 and 16. It did not so permit.

In relation to the concept of 'reports' which might be produced by the Commission the Committee is aware of some of our Association's concerns. In principle any 'report' must be a factual piece of information which is supplied to a family for the purposes which are specified. The legislation must be absolutely clear that there can be no 'mission creep', whereby such reports are used as a vehicle for expressing unsubstantiated opinions or for attributing guilt for serious criminal offences where the criminal justice avenue has failed. Article 8, European Convention on Human Rights (ECHR), prohibits such interference with private and family life and unwarranted damage to reputation.

The attempt to describe 'Maxwellisation' processes suggests that it may indeed be envisaged that such 'reports' will be used as a vehicle for condemnation in the absence of evidence, a process to which we have objected, unsuccessfully, for many years when carried out by the Police Ombudsman. But supposing that such reports *do* become part of the new arrangements then the 'Maxwellisation' processes as described are totally inadequate. They do not go anywhere near to satisfying the provisions of Article 6, ECHR, which requires a fair trial and a balance of arms.

In particular, the new legislation must make *specific* provision for the following:

1. Any retired police officer who may be subject to investigation must, by statute, be afforded free and independent legal advice at all stages;
2. The Chief Constable of the Police Service of Northern Ireland (PSNI) must be required by statute to provide complete and timely access to any documents or other material under his control upon which a retired police officer may wish to rely during the course of any such investigation; and
3. Whilst there may need to be some sort of time limit on the response of any retired police officer who may be potentially subject to public criticism, 30 days is totally inadequate in view of the time which these investigations take, the time which is likely to have elapsed since the event, the possible complexity of the inquiry, delays in accessing relevant material or contacting potential witnesses and the need to consider legal advice.

If there are to be reports for which any sort of 'Maxwellisation' process is thought to be necessary, then the Committee might wish to consider the Green Report, which suggests more comprehensive safeguards than does the current draft Bill.

Furthermore the Committee should be aware that, quite properly in our view, the officers of the Commission will be exercising police powers - and yet no provision has been made for complaints to be raised concerning the conduct of such officers, unless the conduct reaches the threshold of criminal behaviour.

In view of our submissions over a period in excess of 15 years concerning this breach of Article 13, ECHR, in respect of the officers of the Police Ombudsman it is hard to interpret sympathetically this failure in the current draft Bill.

When I raised this in correspondence with the Northern Ireland Office I received the following response:

'The legislation does not currently make specific provision for the handling of complaints regarding the conduct of officers of the ICRIR. We recognise the importance of responsibility and accountability with regards to the exercise of police powers and are giving further consideration to options for accountability mechanisms for the conduct of any ICRIR officer'.

As far as we are aware, the only example in the United Kingdom of police powers being exercised without any form of accountability in is the office of the Police Ombudsman for Northern Ireland. Nor could this office (PONI) be entrusted with investigating complaints against officers of the Commission. We call upon members of the Committee to ensure that this abuse is neither repeated nor extended.

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