



House of Commons  
Northern Ireland Affairs  
Committee

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**Policing and Criminal  
Justice in Northern  
Ireland: the Cost of  
Policing the Past:  
Government Response  
to the Committee's  
Third Report of Session  
2007–08**

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**Second Special Report of Session  
2007–08**

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## The Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

### Current membership

Sir Patrick Cormack MP (*Conservative, South Staffordshire*) (Chairman)  
Mr David Anderson MP (*Labour, Blaydon*)  
Mr Gregory Campbell MP (*Democratic Unionist Party, East Londonderry*)  
Rosie Cooper MP (*Labour, West Lancashire*)  
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### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/niacom](http://www.parliament.uk/niacom). A list of Reports of the Committee in the present Parliament is at the back of this volume.

### Committee staff

The current staff of the Committee are Steve Priestley (Clerk), Judy Goodall (Inquiry Manager), Duma Langton (Committee Assistant), Becky Crew (Secretary), Karen Watling (Secretary), Becky Jones (Media Officer) and Jim Lawford (Senior Office Clerk).

### Contacts

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## Second Special Report

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The Committee published its Third Report of Session 2007-08 on 7 July 2008.<sup>1</sup> The Government's response from Mr Paul Goggins MP, Minister of State for Northern Ireland, was received in the form of a letter and memorandum on 30 September 2008. The response is published as the Appendix to this Report.

In the Government response, the Select Committee's conclusions and recommendations are in bold text: the Government's response is in plain text.

## Appendix: Government response

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Letter from Paul Goggins MP, Minister of State for Northern Ireland, to Sir Patrick Cormack MP, Chairman of the Committee.

The Committee recently published their report into Policing the Past. We are appreciative of the Committee's work in this important area and have given its contents careful consideration.

### HISTORICAL ENQUIRIES TEAM

As the Committee has acknowledged in the report the work of the Consultative Group on the Past will also make an extremely valuable contribution in deciding the best way forward. Their report is expected before the end of the year and our response to the helpful recommendations contained in your report is therefore influenced by the need to consider both sets of recommendations in parallel. Once we are in a position to do so we will of course update the Committee on our thinking.

### PUBLIC INQUIRIES

We note the Committee's helpful comments on Public Inquiries and have responded in the attached document. As the Committee is aware following the loss of data by the Rosemary Nelson Inquiry an independent consultant was appointed to review information security arrangements at all the public inquiries underway in Northern Ireland. This work was completed in mid-July and steps have been taken to work with the inquiries to implement the recommendations. A follow up review will also be conducted during late 2008, early 2009.

Attached is a formal response to the Report which I hope you will find helpful.

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<sup>1</sup> Northern Ireland Affairs Committee, Third Report of Session 2007-08, *Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past*, HC 333

**1. We were impressed by the personal commitment, sensitivity and professionalism of the Chief Constable, the Director of HET and the other staff involved in the HET. The project is unique and challenging, and it is clear to us that there is a real determination to provide information and answers to those who were bereaved during the Troubles. Whilst the memories are painful, families have appreciated the efforts made by the HET team to listen to their questions and to attempt to explain the circumstances of their relatives' deaths. (Paragraph 25)**

The Government agrees with this assessment of the Historical Enquiries Team and all staff involved with the HET appreciate this endorsement of their work. The Government fully supports the HET. The project plays an important role in dealing with the legacy of the past and providing a measure of resolution for families.

**2. We were surprised to find that all cases are automatically reviewed by the HET. We accept that there are benefits in building a complete picture of often interconnected events. We also accept that a family which initially chooses not to participate in a case review may later change this view; and that there will be occasions where family member (such as a grandchild) might only feel able to participate once an older relative has come to terms with the re-examination of painful past events, or has died. In such circumstances, the fact that the HET has carried out a comprehensive review of all cases will enable it to help families at a time that is right for them. Nevertheless, we conclude that in some cases scarce resources are being used to investigate historic cases where there is little likelihood of helping a family and limited opportunity of securing a conviction. (Paragraph 26)**

See response to recommendation 3.

**3. It is clear that the HET project will need significant additional funding if it is to continue with its current approach and complete reviews of all of the deaths within its remit. We are not convinced that the funding is being targeted as effectively as it might be. We recommend that alternative ways of prioritising cases are identified so as to focus resources on those cases where the next of kin of the deceased specifically request it or where the existence of forensics or other exhibits provides investigative opportunities which could contribute to a successful prosecution case. We recommend that a mid-term project review is conducted, with a view to establishing the costs and benefits of continuing with the HET in its current form, and identifying ways in which the scope of the exercise and the prioritisation of cases could be adjusted so that the project can be completed within budget and with maximum benefits. (Paragraph 27)**

The HET project is unique and understandably has attracted a great deal of interest and scrutiny from a range of commentators. The litmus test of success is of course the views and feelings of families who engage with the HET process and in the majority of cases the feedback has been positive. Prior to its establishment HET did consider a range of alternative approaches to the reviewing of cases. However in evaluating the available options it became clear there is no perfect solution, each having advantages and disadvantages. The current chronological approach has the benefit of being objective, easily understood and explained and fair to the families that have waited longest. Additionally cases can be exempted from the chronological approach in cases of

- Previously opened investigations
- Humanitarian considerations
- Issues of serious public interest
- Linked series of murders

However despite the view that a credible and workable alternative to the chronological approach is unlikely, it is accepted that it may be appropriate to consider the matter further during any review process. There are potential benefits that may be gained from conducting a review of the project. However given the forthcoming report from the Consultative Group on the Past and the need for further consultation with the Chief Constable and others involved in the HET project on the precise nature of any review a final decision has not yet been taken.

**4. The financial investment in the HET has been considerable, but little information about its progress and the benefits it has brought to families has been made available to the public. We recommend that the results of the review we call for above are published. (Paragraph 28)**

Many reports and information on the HET project have already been published. As noted above, a final decision on the precise nature of any review has yet to be taken. The Government's view is that, if it decided to proceed with a review the results should be published.

**5. We are concerned that the demands of running the HET project, and the likely overspend, might compromise the ability of the PSNI to fulfil its primary role of policing the present. We also recognise that some families and organisations have questioned whether the PSNI is sufficiently independent and would prefer the historic investigations to be managed by an independent agency. We return to this point in paragraph 40. (Paragraph 29)**

Funding for the HET project is ring fenced and additional to the budget of the PSNI. Nonetheless there are pressures placed on the PSNI by the continuing need to provide information on past events. The Government recognises the need to find a way of addressing the legacy of the past which does not compromise the ability of the police and other criminal justice agencies to deal with the present. The Consultative Group on the Past is currently examining whether a consensus exists on what such an approach might be.

**6. The Patten Report underlined the importance of an independent, properly resourced Ombudsman's Office which had community confidence and support. Our predecessor Committee noted in 2005 that Northern Ireland's first Police Ombudsman, Mrs Nuala O'Loan, had constructed from scratch a credible police complaints system in Northern Ireland. However, the extension of the Ombudsman's remit to include historic cases is having a damaging effect on the efficiency of the Office. The number of complaints about the former Royal Ulster Constabulary (RUC) arising from the years of the Troubles and the inadequate provision of additional resources have compromised the Ombudsman's ability to investigate complaints against the PSNI. There is a risk that**

**this reduced capability will damage public perception of the Ombudsman's Office and public confidence in policing. (Paragraph 43)**

The Police Ombudsman has expressed his concerns both to the Committee and to the Consultative group in evidence sessions and his position has been widely covered in various press articles. In addition he has submitted a business case to the Department which he asked to be considered in conjunction with the conclusions of the NIAC and Consultative report. The Minister of State, Paul Goggins, has discussed with the Ombudsman how the problems facing his office might be addressed and has agreed with the Mr Hutchinson that final decisions should await the outcome of the work undertaken by Lord Eames and Denis Bradley.

**7. We have considered the case for a transfer of responsibility to carry out historical work from the Ombudsman to a newly-created independent body. We have also considered whether the Historical Enquiries Team, part of which is based in London and is staffed entirely by officers and former officers from forces outside Northern Ireland, could take on this function, or whether the resources of the Ombudsman's office should be increased, to allow him to carry out historical work without impacting on his core responsibilities. We are, however, mindful of the Minister's comment that he prefers to await the conclusions of the Eames/Bradley Group before reaching any decision. We, too, wish to avoid pre-empting any conclusion that the Group may come to on this issue. We therefore make no recommendation in this Report, beyond noting that the question of who has responsibility for conducting investigations into grave or exceptional cases involving alleged police misconduct in the period before the establishment of the PSNI is of the utmost importance, and that it will have to be resolved sooner rather than later. We intend to return to this. (Paragraph 44)**

The Government notes the Committee's comments on the additional pressures that investigating historic cases places on the Police Ombudsman's resources. As stated in response to recommendation 6, the Police Ombudsman has submitted a business case for additional annual funding to investigate historic cases.

The challenges facing the Police Ombudsman are amongst the many issues being considered by the Group as part of its work. The Government is grateful to the Committee for the considered views set out in its recent report, and notes that these views have also been shared with the Group during its consultation. The Committee's report has been brought to the attention of the Group, so that Group members can take the Committee's comments into account during the Group's deliberations.

**8. The disclosure of intelligence information to inquiries clearly presents challenges for the police, and for other organisations which are required to provide sensitive information. The process of agreeing necessary redactions requires considerable input from key police staff who understand the implications of disclosing specific items of intelligence. This necessarily requires them to divert their attention from more current issues of concern, which include, most critically, monitoring the threat posed by dissident terrorists. The provisions in the Inquiries Act 2005 for agreeing and resolving disputes about redactions have yet to be tested and it is therefore possible that difficulties may emerge with the way that those provisions work in practice. It is**

**crucially important that the workings of the Act are carefully monitored. The Committee may wish to return to this issue in a subsequent inquiry. (Paragraph 63)**

While it is correct that no disputes regarding redactions have yet been tested in the Courts, the Government considers that the process has in fact been tested to a high degree during the course of the Northern Ireland inquiries and, in particular, the Billy Wright Inquiry.

The case for redactions can be made either under Section 19 of the Inquiries Act 2005, by claims for Public Interest Immunity or by a less formal process in agreement with the inquiry panel. So far, the less formal processes experienced in the Wright and Nelson inquiries have been very effective where participants have benefited from a number of constructive discussions. It is important that those providing information to an Inquiry articulate the case for redaction in a constructive way whilst giving the Inquiry panel access to all relevant material.

Formal processes have also been effective. The Chairman of the Billy Wright Inquiry will in due course be issuing a Restriction Order under Section 19 of the Inquiries Act 2005 to protect material that has been made available to the Inquiry. This shows that Section 19 can be used positively both to ensure that the Inquiry has access to all relevant material while at the same time protecting sensitive information that may be contained in such material.

**9. The need for the PSNI to provide sensitive information to inquiry panels was an inevitable consequence of the Government's decision to conduct the inquiries and, as we have previously discussed, there are legal provisions to prevent the disclosure of sensitive information beyond an inquiry if necessary. The inquiries must be able to operate independently of the Government and the agencies which provide them with information. It would not be appropriate for any of those agencies to appear to attach any conditions to its cooperation, nor to dictate an inquiry's internal procedures. The Minister of State at the Northern Ireland Office has underlined the fact that as public authorities in their own right, inquiries have the same obligations under ECHR Article 2 as any government department or the PSNI. Inquiry chairmen must take full responsibility for the management of information within their safekeeping and ensure that they meet their obligations under human rights legislation. It is important for them to recognise that the future safety and indeed possibly the lives of certain people who have supplied sensitive information could well depend upon their decisions. (Paragraph 67)**

The Government has noted the Committee's comments and agrees fully with its assessment that inquiries must be able to operate independently of those Government bodies and agencies which provide them with sensitive material, or which established and sponsors them. They must also be *seen* to operate independently. The Government recognises the importance of full co-operation with inquiries by all those with relevant information, and notes that the inquiries have statutory powers to compel evidence if necessary. It also agrees that an inquiry's internal procedures are a matter for the inquiry. However, as a consequence of their own obligations under Article 2 of the ECHR and other relevant legislation, it is appropriate for Government bodies or agencies who establish inquiries or provide material to them to seek assurances from the Inquiry that sensitive information will be adequately protected. It may also be legitimate for certain restrictions

to be placed on the onward disclosure of that information by the inquiry, for those reasons which the Committee has recognised and outlined in its report.

In terms of information security, the Northern Ireland Office has written to the Inquiries to remind them of their responsibilities under the Official Secrets Act 1989. It is of the utmost importance that the Inquiries, like all public bodies, give due care, attention and diligence to how they handle sensitive and personal information.

The Minister of State explained in the evidence he gave to the Committee on 21 May, that security measures are in place with the Inquiries for holding sensitive information. The Government has noted the Committee's recognition that all the independent public inquiries are public authorities for the purposes of the Human Rights Act 1998 and as such, are subject to Article 2 obligations. It is important that these Article 2 obligations are understood by the Inquiries and all those bodies engaging with them.

**10. The loss or inadvertent disclosure of sensitive intelligence information by an inquiry panel or its staff could have serious consequences, including the risk to life. The PSNI has expressed specific concerns about the inquiries' information management procedures. These concerns must be addressed to ensure that the inquiries meet their Article 2 obligations and to enable the PSNI to work cooperatively with the inquiries, and provide them with the information they require without further delay. If the inquiries are unable to demonstrate to the Government that their procedures are adequate, steps must be taken to implement improvements. We recommend that if the particular issues raised by the PSNI were not included in the Government's review of inquiry information management procedures, they should be included in a further review which should be conducted forthwith, as a matter of urgency. (Paragraph 68)**

The Government has noted the concerns expressed by the PSNI and by the Committee on the Inquiries' information management procedures, and recognises that these concerns have been exacerbated by the loss of the data by the Rosemary Nelson Inquiry.

First, it is worth noting that a statutory framework exists within the Inquiries Act 2005 to protect sensitive evidence that is given to an inquiry—including information which, if disclosed during the course of the inquiry, might damage national security or pose a threat to the safety of individuals. It is important to distinguish between the deliberate disclosure of evidence material for the purposes of the inquiry (which is governed by this statutory framework, set out in sections 18-20 of the Inquiries Act and by the rules on Public Interest Immunity), and the accidental disclosure of sensitive information, which the measures outlined below are designed to prevent. Many of the submissions made to the Committee, including by the PSNI, cover both.

As the Committee is aware, each Inquiry agreed to put in place a set of operating procedures to handle sensitive information, before it was able to receive that information. Immediately following the loss of data by the Rosemary Nelson Inquiry, the Government engaged an independent consultant to review information security arrangements at the Inquiry, as well as at the other public inquiries underway in Northern Ireland. The independent consultant completed his review of the inquiries' security procedures in mid-July. Importantly, the review concluded that overall there was an adequate or good level of security being applied within all of the independent public inquiries (including the

Rosemary Nelson Inquiry which, he noted, had taken some immediate steps to improve its information security arrangements after the data loss). However, the review also made a series of recommendations both to the Inquiries and to the Northern Ireland Office outlining a range of steps to be taken in order to improve information security and assurance. For the Northern Ireland Office, these steps included strengthening the security memorandum in place with each Inquiry; taking steps to mitigate the risk in transporting sensitive information from the Inquiries; having sight of the Inquiries' corporate risk registers; and ensuring all Government agencies adhere to the appropriate rules when supplying sensitive information. Northern Ireland Office officials have met each of the Inquiries to discuss the Northern Ireland Office recommendations, and how each Inquiry proposes to implement the recommendations falling to it. The Government will also be re-engaging the independent consultant towards the end of 2008 to conduct a follow-up review, to ensure that real change is being implemented in the inquiries, and that any weaknesses which were identified in the security review have been addressed.

The Government is satisfied that the concerns about information management expressed by the PSNI have been addressed adequately during the course of the review and that appropriate action is being taken. The Government considers that appropriate arrangements have been agreed with the Inquiries for the handling and storage of sensitive information and, crucially, that these have been independently verified as at least adequate by an independent third party. The Inquiries are fully accountable for the information in their possession; though, as stated above, where the Northern Ireland Office can assist in strengthening arrangements it is doing so, and where improvements can be made by the Inquiries, they are also committed to implementing these.

**11. The very high annual cost of inquiries into past events is financially unsustainable. We note with concern that the latest estimated cost of the Saville Inquiry alone is £183 million and that inquiry is still not completed. The cost to organisations such as the PSNI that contribute to the statutory inquiries is also considerable, in terms of money and resources. The PSNI estimates that its costs for working with the inquiries over the next two years alone will come to over £6 million. We fully accept the Chief Constable's concerns that the diversion of experts from their current duties is bound to impact upon effective policing in Northern Ireland. The cost of inquiring into the past is an issue that, at some point, will have to be faced. Such inquiries cannot become a permanent feature of life in Northern Ireland. We recommend that the NIO take further steps to control the costs of Northern Ireland's statutory inquiries and that inquiries other than those already under way or announced should only be established if agreed by the Northern Ireland Assembly. (Paragraph 73)**

The Government has noted the Committee's comments in relation to the cost of inquiries into past events. The cost of all the current public inquiries remains a matter of concern for the Government, and the Government acknowledges that working with the inquiries carries a resource cost for the PSNI which some people might consider would be better spent on other policing activities. However, this remains an issue in which there is no clear cut answer and as with most decisions a balance must be struck. The public inquiries into the deaths of Rosemary Nelson, Robert Hamill and Billy Wright were established in the light of serious allegations about the actions of state agencies, including the RUC, which had caused considerable public concern. The suggestion that the type of acts generally referred to as "collusion" may have been committed by those in society charged with

upholding the law and in whom we must have the utmost faith and trust, is extremely serious, and the establishment of the public inquiries has played an important part in demonstrating that the actions of the State can be subject to rigorous scrutiny. None of the public inquiries have yet concluded their work so it is impossible to assess their success, but Government does not think it is unreasonable to say that their establishment has played at least some part in helping to improve public confidence in the PSNI and in achieving the acceptance of the police service by all Northern Ireland's political parties.

As part of that process, in parallel with the inquiries, the Consultative Group on the Past was established in June 2007. As the Committee is aware, it has been tasked with consulting widely on how Northern Ireland can best approach the legacy of the Troubles and will make recommendations to the Government on any steps that might be taken to support the building of a shared future which is not overshadowed by this past. To do this it has been asked to take into account the resource implications of anything it might recommend. The Group is expected to report in the coming months.

**12. The statutory inquiries place significant demands on the PSNI at a time when police officers are still subject to attacks from dissident terrorists. No other police force in the United Kingdom is required to operate in such an environment, and at the same time to service the demands of the extensive range of historic investigations which are underway in Northern Ireland. The NIO must continue to ensure that the PSNI has a budget sufficient to fulfil its operational remit and to meet its legal obligations with regard to servicing the statutory inquiries. (Paragraph 74)**

The NIO will continue to ensure that PSNI has a budget sufficient to meet its operational and legal needs.

**13. There are outstanding legal obligations which require the coroner to investigate a number of deaths which occurred during the Troubles. The PSNI has a duty to cooperate with the coroner and to provide him with whatever information he requires to conduct those inquests. Since some of that information might include intelligence which could identify an informant, issues similar to those raised by the PSNI regarding the disclosure of sensitive intelligence information to the statutory inquiries might apply to the contentious inquests. The coroner has a duty under Article 2 of the European Convention on Human Rights to take steps to protect the lives of informants who could be put at risk through disclosure of information which might identify them. We recommend that an information management code of conduct be drawn up by the coroner, after consultation with the appropriate agencies, to protect sensitive information provided to him as part of the inquest process, and that any public disclosure of such information is made in accordance with the coroner's obligations under ECHR Article 2. (Paragraph 80)**

This recommendation relates to procedures adopted by coroners in Northern Ireland and therefore falls to the Coroners Service for Northern Ireland.

**14. We note that no specific additional funding has been provided to the PSNI in recognition of the extra workload arising as a result of the inquests and that resources have instead been allocated from the main policing budget. There are already significant and unique demands on the PSNI and we are concerned that the volume of**

**work required to cooperate fully with the inquests may compromise the PSNI's ability to direct adequate resources to other high priority areas of policing. We recommend that the impact of the inquests on the PSNI's resources and any consequential effect on current policing capacity is reviewed during 2009 and the budget revised accordingly. (Paragraph 81)**

It is important that the volume of work associated with inquests does not compromise PSNI's ability to direct adequate resources to other high priority areas of policing. The Government will monitor carefully the impact of the inquests on PSNI's resources and operational capacity.