**The victims caught between two worlds**

In the last while, the Belfast News Letter has published a series of articles, under the banner of “Stop the Legacy Scandal”.

This sort of approach was foreshadowed by words spoken by Mr Lowry at an event in Bangor, where it was clear that his sympathies lay in this direction.

Leaving aside the fact that the paper’s circulation is 15,000 and falling, the campaign is , in my view, not only seriously flawed but a distortion of the truth.

The first article was by Tim Collins, ex Colonel of the Royal Irish Regiment. He is not at home with pipe and slippers, reliving his old battles.

He is co-founder of New Century, a security company with a world wide business. It employs [inter alia] Dr Norman Baxter of “on-the-runs” fame. More of him later.

We can be fairly confident that New Century is heavily involved with the spooks in UK, USA and further afield.

Collins has no operational or any other experience of the Troubles, so far as is known [though he did serve somewhere with the SAS] but this does not prevent him from opining as follows:

*“Even with Gerry Adams in the shadows now with Mary Lou McDonald as the face of the movement, their main effort remains threefold: Firstly a distortion of the legacy of the Troubles and a fabricated historical narrative that obscures their sectarian murderous past by blackening the name of the British state by a huge volume of inquires into — anything — all paid for by the UK taxpayer. A key platform is the lie of collusion — which if it there was a grain of truth in it would have seen the IRA leadership wiped out. Secondly to demoralise the Protestant population by attacking their traditions — and very existence in Ireland as a wrong that must be righted. And thirdly attacking, verbally or reputationally, those who espouse liberal, cross community sentiment in order to erode the little glue that binds the society in Northern Ireland and who might, just, bring about a balanced tolerant society which will abhor parties rooted in violence like SF or unionists with little new to say. Their calculation — correctly –—relies on the three things; distorted statistics and the state rigorously pursuing an agenda of appeasing Sinn Fein and a ill informed and sympathetic left wing media eager to peddle the lies. The first is a distortion of investigations in to deaths caused during the Troubles. This myth once more relies on the acceptance that whilst republicans were responsible for over 60% of the killings, so-called loyalists around 30% and the state 10%. In fact ALL republicans killings were murder, ALL Loyalist killings were murder and almost all shootings by the security forces were within the legal duty of policemen and soldiers to discharge their weapons in self defence or in defence of those who it was their duty to protect. So with 99% of murders attributable to paramilitaries how come the focus on the state?*

There have been 21 prosecutions since 1969 of members of the security forces for killings using firearms while on duty in Northern Ireland. Nineteen of these were found not guilty. One was convicted of manslaughter and given a suspended sentence. Just one -- a soldier -- was convicted of murder and given a life sentence for murder -- however it was eventually revealed that he had been released after serving two years and three months of his sentence and had been reinstated in the Army. A total of 339 people have been killed by the security forces during the same period. Most of those killed were from the Catholic population and many were unarmed; many were killed in disputed circumstances.

*“The enthusiasm in the BBC and others to promote the distorted history is easily the most successful plank of their strategy. A perfect trinity. Where does the government stand on this? Rudderless, the current government has bigger fish to fry as far as it is concerned. The alternative, a Labour government, would be worse. Rather than ambivalent, they would be sympathetic to Sinn Fein and the pace of the witch-hunt would quicken into a blood sport against former soldiers (with the right-on military leadership looking away and shouting about female Gurkhas and transgender toilets on warships). Meanwhile there is no organised campaign to bring IRA killers to justice, indeed historically governments have sought to reduce the prospect of prosecutions for IRA terrorists, some of whom are now in the ranks of elected Sinn Fein politicians. Worse still, the current government consultation paper on ‘Addressing the Legacy of Northern Ireland’s Past’ proposes that families of IRA and loyalist victims who had their loved ones cases reviewed, not investigated, by the former Historical Enquiries Unit are not entitled to a proper criminal investigation in the murders in the future. Where should soldiers turn? Napoleon once said ‘never interrupt the enemy when he is making a mistake’. Under Peter Hain’s leadership in the Northern Ireland Office (NIO) and the flawed arrangement that resulted in hundreds of letters of comfort republicans. In effect these letters drew a line under their crimes and unless new evidence came along they were closed cases, including one sent to the Hyde Park bomb suspect John Downey. Whilst the PSNI had advised the NIO that Downey, was not wanted in Northern Ireland, the NIO changed the wording and informed him that he wasn’t wanted by any UK police force, which was incorrect.”*

Here is what Dame Heather Hallett in fact found:

1. **10.42**Under the scheme, properly administered, JohnDowney would **not** have received a letter of assurance.
2. **10.43**The PSNI’s letter to the Public Prosecution Service(PPS) on MrDowney, upon which his letter of assurance was based, failed to disclose the fact that Mr Downey was ‘wanted’ by the MPS. I have been given no satisfactory explanation for this failure by the PSNI. The error was compounded by the fact that the PSNI realised its mistake in 2008 and did nothing to correct it or at least check the nature of the assurance that had been provided to Mr Downey. In December 2011 the PSNI was provided with the ‘normal text’ of the letter of assurance sent by the NIO to Sinn Féin which referred to checks having been made with external police forces.

Here is what she said about Tim’s colleague Dr Baxter.

1. **10.47**To my mind there is no logical explanation for DCS Baxter’s failure to inform ACC Sheridan that Mr Downey was ‘wanted’ by the MPS. There is nothing improper or unlawful about police officers sharing information in these circumstances with other police officers and/or the prosecuting authorities. It is for the prosecuting authorities to decide what to do with that information. Had the information been passed on, Mr Downey would not have received a letter of assurance.

*“This project to send letters was a political one to side step the rejection in parliament of legislation that would have given an effective amnesty to IRA killers as part of a deal to keep the IRA from returning to violence.”*

Here’s what Hallett had to say about that:

**Conclusions on legal issues**

1. **10.66**The administrative scheme was not unlawful in principle.
2. **10.67**The administrative scheme did not grant immunity from prosecution.
3. **10.68**The Downey ruling is confined to its own facts and is not binding on any other judge.
4. **10.69**The issue of whether or not the administrative scheme should have been devolved in 2010 is far from straightforward and I am in no position to attempt to resolve it during a review of this nature. It should be addressed as a matter of urgency.

The rest of the article is in the same, inaccurate jingoistic vein. His criticism of “ the ill-informed and sympathetic left wing media” ; “eager to peddle lies”; of the BBC and politically correct people within the military must bring a pinkness to the cheeks of the retired colonels in the Home Counties.

Next up was Dr William Matchett. He was a Special Branch officer [ in a recent BBC radio introduction William Crawley said of him that he “spent most of his time handling agents”.]

After his initial predictable rant he said this:

*“Ex security forces also have to contend with law firms, theories of transitional justice and films …”*

Given the murders of Finucane and Nelson, some might see this as an unwise remark.

He goes on:

*“The legacy landscape is powerful and wide ranging. And for the police family, punishing.”*

Indeed it is. I spoke to Dr Matchett , after he delivered a talk in Bangor , a while back. I put the following to him.

* There is no point in having a tout who is not actively involved in the organisation-agreed
* The tout has to have access to active service units-agreed
* The usefulness of that tout is that he can forewarn of operations-agreed
* If every operation he was associated with was foiled by the state, he wouldn’t live long- agreed
* Therefore some operations that the tout was involved with had to ‘get through’-not agreed

Matchett’s fatal flaw is that he conveniently ignores what is patently obvious for the “police family”. That is that Special Branch and the Security Service and probably elements of the Army, ran significant numbers of “participating informants”. On the Republican side, little is known of these creatures, save for Donaldson. His career stats have been silenced by his killing but will no doubt emerge some day. We await the outcome of Operation Kenova, the investigation into the activities of Stakeknife, sometimes identified as Scappaticci. If further proof were required as to the activities of Dr William and his old buddies, here it is, courtesy of the Guardian:

*In the dock, Gary Haggarty sat and listened for almost an hour and a half as the judge explained the sentence he was about to receive, for offences to which he had already pleaded guilty. It took so long because there were so many crimes to be considered: 201 of them, in fact.*

*They included five murders; five attempted murders; one count of aiding and abetting murder; 23 conspiracies to murder; four kidnappings; six charges of false imprisonment; a handful of arson attacks, including burning down a pub; five hijackings; 66 offences of possession of firearms and ammunition with intent to endanger life (the weapons included two Sten submachine guns, an Uzi, 12 Taurus pistols and two AK47s); 10 counts of possession of explosives; 18 of wounding with intent and two charges of aggravated burglary. There was also criminal damage: just the one charge, although this covered the destruction of several houses during a six-month period.*

*But this was not all. There were also a number of TICs, as they are known in UK courts – offences “taken into consideration”. Offenders are allowed to admit TICs as a way of saving the police and the courts time and money, and they are usually minor additional infractions: when someone pleads guilty to shoplifting on four occasions, for example, they may ask the court to consider two further shoplifting offences as TICs.*

It is inconceivable that Special Branch did not have similar operations in place with the Republicans. Figures for the numbers of Republican informers in Belfast have been bandied about and , on some views, run into three figures.

Dr William’s illiterate rant ends thus:

*“No extra police agency. No abstract terms like collusion. No equating brave soldiers and police officers who protected democracy to cowardly terrorists who attacked it. Whilst I agree with the Secretary of State (letter to the Defence Committee, July 4) that legacy justice is “unfair and disproportionate on members of the armed forces and RUC” I strongly disagree with her belief that the proposals are the best way to address this. They make it worse and will trash the RUC. Government want your thoughts. Visit www.gov.uk ‘Addressing the legacy of Northern Ireland’s past’. Closes Sep 10. Be outraged.”*
The Bible says “*wherefore by their fruits ye shall know them”* Matthew 7:20

Dr William wrote a thesis for his doctorate . Astonishingly, there is only one mention of “participating informant”. What does this tell you about Dr William and his agenda? How did the RUC defeat the “insurgency?”. Where are his tales of derring-do? How many operations were foiled? How many informants, now known as CHIS were employed? What were the failures? How many operations got through and killed his colleagues? How much money was channelled to these touts? Matchett is silent on all these issues. Yet the Belfast News Letter puts him forward as a supporter of their cause.

Next up was academic Cillian McGrattan, his contribution included:

*“The likely outcome of this approach is also clear: it inverts the historically informed perspective that the possibilities for democratic change were frustrated and the opportunities for reconciliation were undermined by republican and loyalist terrorists — whose campaigns were rejected by the vast majority of the population.”*If you can understand that , I’m a Chinaman.

Then we had Canon Ian Ellis, as relevant to the real world as the newspaper itself.

*• Canon Ian Ellis was editor of The Church of Ireland Gazette from 2001 until last year*

Part of his contribution was to quote the words of John Paul II who presided over the scandal of child sexual abuse worldwide.

So the News Letter’s initial big idea recruited a soldier , a policeman an academic and a cleric.

**The Historical Investigations Unit-what is actually proposed?**

A body corporate, it will have a Director and four other members. The Director will be interviewed by a panel and appointed by the Minister for Justice.

The Director must have experience of managing major criminal investigations. The period of operational time is 5 years. The Director is obliged to consider the five year limit when deciding whether or not to investigate a particular case.

The SoS may grant a one year extension to the five years.

The HIU will determine its staff complement. It will be overseen by the Policing Board.

The Kenova investigation is dealing with a handful of suspects. It took a year to be fully operational. It has a team of fifty detectives and an unknown number of support staff.

How many staff will be needed for the HIU and , if the clock ticks from the moment of appointment of the Director, how could it finish its work in five, or six years?

From where will come experienced detectives?

What will the budget be?

Clause 3 [5] as far as practicable, the HIU officers should be experienced at conducting criminal investigations in NI or experienced officers from outside NI. The Courts here have said that the LIB is not human rights compliant when its officers investigate state actions in Troubles cases- so now what?

The powers of HIU officers are set out in Schedule 7. All the powers and privileges exercisable by a constable , in NI only [and surrounding UK waters]—not GB

**What will the HIU investigate?**

Death only- no other offences or matters

“death” has a particular meaning:

Clause 5 It has to be a death that is part of the caseload of the PSNI /HET or the PONI/ HID or is a death that occurred between 11 April 1998 and 31 March 2004.

So if relatives or loved ones have not made a complaint about the death to either the PSNI or the PONI , then it does not fall to be investigated, unless it is in the 1998-2004 timeframe.

A case will only go to the HIU if the CC certifies that the case was part of its caseload before 23 December 2014 and that that death requires further investigation. Or the PONI certifies that the case was part of the caseload of HID and that the case requires further investigation.

So if the police have decided that a case has no further investigative opportunities and have shelved it- it will not be part of the investigative list. Alternatively the CC might decide that although it is part of his caseload, there are no further investigative opportunities.

So far , knocked out are

* **non death cases**
* **cases not in the caseload of PSNI or PONI**
* **cases that have no further investigative opportunities**

Within 90 days the HIU has to publish a list of cases which it says are within its remit.

By clause 7 [2] the HIU must not do anything which might prejudice the national security interests of the UK or put at risk the life or safety of any person. That gives the HIU carte blanche to refuse to investigate a case where security might be compromised or an informer identified.

Deaths have to be investigated in chronological order, unless there are exceptional circumstances.

The Director has a wide discretion as to whether or not to investigate a particular death and , if he chooses to do so, the manner in which he will investigate. [clause 9 (3)]

Three possible conditions :

1. new evidence and D has reasonable grounds for believing that the new evidence is capable of leading to ID of a person, prosecution of a person or disciplinary proceedings.
2. The D has reasonable grounds for believing that a criminal offence , relating to the death has been committed and there are reasonable investigative steps that HIU could take , capable of leading to ID of a person or prosecution of a person.
3. Similar conditions for disciplinary offences.

**If none of the above A-C are present, the case is knocked out**

D must take into account any investigation that has previously been carried out and must not duplicate any aspect of that previous investigation unless it is necessary.

**If he would merely be duplicating previous investigative work- the case is knocked out**

New evidence is defined as evidence that RUC/PSNI did not know of or did not connect to the death [same for HIU]

D must take into account the reliability of the evidence and “all other relevant matters”.

**The Spooks**

A “relevant authority” **must** make available to HIU such information, documents and other material as the HIU may reasonably require.

That of course , presupposes that the HIU know of the existence of the material.

On the other hand the relevant authority **may** also make available any material which the HIU may need, in the Spook’s opinion.

What are the chances of that?

Worse, by Clause 34 the SOS may give guidance about the nature of sensitive material, such guidance can be on a case to case basis.

The DOJ can also make regulations about prejudicial material , as defined by schedule 9, if the Spook says it is.

Prejudicial material is defined as information which if disclosed generally might put at risk the life or safety of any person. Agents, obviously.

It is not clear , apart from the need to protect the material properly, what the purport of sch 9 is.

The SOS has wide powers to regulate the use of “sensitive” information , in other words , secrets.

**In summary**

Not all troubles related deaths are to be investigated .

Only those which are currently on the books of the PSNI or the PONI.

Each of these bodies must certify that the death requires further investigation.

HIU is only to investigate any of these deaths if there is “new evidence”

This means evidence that PSNI/RUC or PONI or HIU did not know of or knew of but was not aware of the relationship between the evidence and the death.

But. The new evidence is to be assessed for credibility and the evidence is to be taken into account with all other relevant information. Would this include the Shawcross test?

The Shawcross test is certainly present in Clause 7, where the HIU must not do anything which might prejudice the national security interests of the UK, put at risk the life or safety of any person.

The suggested presence of informers is a feature of many troubles murders. Some also may involve participating informants. To date these cases have not been solved because of the State’s activity in hiding these persons.

There seems to be no mechanism for a relative or interested person to make a complaint to the HIU.

So the HIU could read the papers from the PSNI or the PONI, decide that it will not duplicate the work and bin the case.

Let’s assume that the HIU considers that maybe there is an agent or informer or some State actor. It has no access to the Spooks’ warehouses. It has to ask for information. If you don’t know what the Spooks have got then it’s hard to ask for it. On the other hand the Spooks are under no obligation to hand over information, no matter how relevant it might be.

This could have been [partially] resolved by giving HIU unlimited access to the warehouses. How likely is that?

Worse, the SoS and the DOJ can both make regulations limiting the use of secrets.

So, how more effective will the HIU be, compared to PSNI/LIB or PONI?

The answer is , not a lot. The Bill is State sponsored sleight of hand.

It is selling the same old model of car [HET] , with a new paint job, a radio and go-faster stripes.

As a general weapon, the HIU director can bin cases under clause 9 if he feels that they will hinder the completion of his task in five years.

I guess that the HIU will only investigate a few hundred cases.

The sad fact is that the News Letter’s campaign is Establishment propaganda, designed to counteract nationalist and republican narratives.

Thousands of victims and survivors want to know what happened to their relatives, loved ones and friends. The HIU proposals will not deliver that. That is where the real focus should be.

Conducting a campaign about a small number of policemen and soldiers distracts.

But then again, maybe that’s the plan….