

CAJ's submission no. S358A

Addendum to CAJ's and PFC's joint submission to the Committee of Ministers in relation to the supervision of Cases concerning the action of the security forces in Northern Ireland

September 2011

**Submission to the Committee of Ministers from the
Committee on the Administration of Justice (CAJ) & the Pat Finucane Centre (PFC) in
relation to the supervision of**

Cases concerning the action of the security forces in Northern Ireland.

Jordan v the United Kingdom, judgment of 4 May 2001, final on 4 August 2001
Kelly and Ors v the United Kingdom, judgment of 4 May 2001, final on 4 August 2001
McKerr v the United Kingdom, judgment of 4 May 2001, final on 4 August 2001
Shanaghan v the United Kingdom, judgment of 4 May 2001, final on 4 August 2001
McShane v the United Kingdom, judgment of 28 May 2002, final on 28 August 2002
Finucane v the United Kingdom, judgment of 1 July 2003, final on 1 October 2003

September 2011

We respectfully request that this addendum submission and the enclosed Criminal Justice Inspector (CJINI) Report "An Inspection into the independence of the Office of the Police Ombudsman for Northern Ireland", published on 6 September 2011, are put before the 1120DH meeting of the Ministers' Deputies to be considered in conjunction with our submission filed in August 2011.

The Committee on the Administration of Justice (CAJ) and the Pat Finucane Centre (PFC) are deeply concerned at the findings of this report in which the Chief Inspector of Criminal Justice in Northern Ireland Dr. Michael Maguire stated:

"The way in which the OPONI deals with the investigations of historic cases has led to a lowering of its operational independence. The investigation of historic cases has the capacity to undermine the entire work of the OPONI and serve to decrease public confidence in the work that it undertakes. It is essential that these issues are addressed in response to this report."

In recommending that the Police Ombudsman's Office should be suspended from conducting historic investigations due to a "lowering of independence" the CJINI Report highlighted a number of significant concerns namely: include an inconsistent investigation process; a varied approach to communication with stakeholders and differences in quality assurance; a senior management team divided around the production of reports in this area and a fractured approach to governance and decision making and the handling of sensitive material.

The Criminal Justice Inspection further determined that:

- Reports into historic cases were altered or rewritten to exclude criticism of the RUC with no explanation;
- Senior officials in the Office requested to be disassociated from reports into historic matters after original findings were dramatically altered without reason;
- Staff investigating some of the worst atrocities of the conflict believe police have acted as ‘gatekeepers’ to withhold key intelligence from them; and,
- There were major “inconsistencies” exist in the Police Ombudsman’s investigations of Loughinisland, McGurk’s Bar and Claudy.

The resulting “lowering of operational independence” and loss of public confidence means that the Office is no longer fit for purpose and unable to fulfil its primary statutory duty under Section 51 of the Police (Northern Ireland) Act 1998 which states:

- (4) The Ombudsman shall exercise his powers under this Part in such manner and to such extent as appears to him to be best calculated to secure –
- (a) the efficiency, effectiveness and independence of the police complaints system; and
 - (b) the confidence of the public and of members of the police force in that system.

We have called for the immediate resignation of the current Ombudsman in light of the findings of this CJINI report. We are therefore deeply concerned that on 8 September 2011 the current Ombudsman advised the Justice Committee of the Northern Ireland Assembly that he intends to remain in office until 1 June 2012 to oversee the implementation of the reforms recommended in the CJINI Report. We have deep concerns about his capacity to carry this out given that he has stated to the Justice Committee that he does not accept all of the findings made by the CJINI which led to its six following recommendations:

- The Police Ombudsman should suspend the consideration of historical cases through the Critical Review Panel and initiate an immediate review to consider the most effective way of managing those investigation reports which are awaiting publication;
- The Police Ombudsman should suspend historical case investigations except those currently being pursued jointly with the PSNI until the Strategic Plan for the Historic Investigations Directorate has been adequately resourced and becomes fully operational;

- The Police Ombudsman should commission a full review of the Confidential Unit and the protocol for dealing with sensitive information ensuring that the needs of the OPONI as a civilian oversight body, are fully represented in the review and integrated within the recommendations;
- The OPONI policy for the investigation of State related deaths (Article 2 European Convention on Human Rights) should be reviewed and clarified. Clear and unambiguous guidance on the policy should be provided to all staff;
- The Police Ombudsman should carry out an immediate skills and competency audit of everyone having significant input into complex cases to ensure that staff are appropriately equipped to deal with such investigations;
- The prioritisation regime contained in the Strategic Plan for the Historic Investigations Directorate should be reviewed and consulted on to reflect the needs of victims' families, the police and the wider public interest.

We and the Shanaghan family received correspondence on 7 September confirming that the Ombudsman has temporarily suspended historic investigations:

“and has decided not to publish any further historic reports until a review of processes associated with the delivery of historic investigations has been completed.”

While we agree that in light of the CJINI report there is a need to suspend these investigations, we are concerned at the further distress and delay to be suffered by the Shanaghan family and approximately one hundred other families who have engaged with this office.

The Shanaghan family have now been waiting for more than ten years for implementation of effective measures to deal with the violation of Article 2 ECHR found by the European Court, and while we note that the OPONI has indicated in correspondence that the review of these processes will be prompt, the family have little confidence that this will be adhered to given the ongoing delay they have suffered since their engagement with this office in 2005.

We urgently request that the contents of the report published by the CJINI and our earlier submission of August 2011 are given urgent consideration by the Ministers' Deputies.

Committee on the Administration of Justice (CAJ)
Pat Finucane Centre (PFC)