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CORRECTED TRANSCRIPT OF ORAL EVIDENCE To be published as HC 333-ii

House of COMMONS

MINUTES OF EVIDENCE

TAKEN BEFORE

NORTHERN IRELAND AFFAIRS COMMITTEE

POLICING AND CRIMINAL JUSTICE IN NORTHERN IRELAND

Wednesday 20 February 2008

MR AL HUTCHINSON, MR SAM POLLOCK and MR JIM COUPLAND

Evidence heard in Public Questions 78 - 140

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Oral Evidence

Taken before the Northern Ireland Affairs Committee

on Wednesday 20 February 2008

Members present

Sir Patrick Cormack, in the Chair

Mr Gregory Campbell

Rosie Cooper

Mr Christopher Fraser

Kate Hoey

Mr Denis Murphy

Stephen Pound

Sammy Wilson

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**Memorandum submitted by The Police Ombudsman for Northern Ireland**

**Examination of Witnesses**

Witnesses: **Mr Al Hutchinson**, Police Ombudsman, **Mr Sam Pollock**, Chief Executive, and **Mr Jim Coupland**, Senior Director Investigations, Office of the Police Ombudsman, gave evidence.

**Q78 Chairman:** Mr Hutchinson, could I welcome you and Mr Pollock and Mr Coupland most warmly. Thank you very much indeed for coming. We have in fact already had informal conversations on the terms of our current inquiry and we are very grateful to you for coming to give formal evidence. The Committee may well wish to have a brief private session with you afterwards and if there are things you would rather raise with the Committee in private session because of issues of confidentiality and sensitivity, then of course we are very happy to comply with that, but we would like as much on the record as is possible. I perhaps ought to advise you that we are expecting a vote in the House of Commons sometime between half past four and a quarter to five, and so we will aim to finish this session, including any private session, by half past four. Is there anything you would like to say by way of opening submission before I begin the questioning?

Mr Hutchinson: Just very briefly, it is a pleasure to be here in front of the Committee. I hope that the experience which Sam Pollock, Jim Coupland and myself bring from the Police Ombudsman's perspective can assist the Committee in its deliberations and I welcome the questions.

**Q79 Chairman:** Thank you very much indeed. Just so that we have certain things on the record, perhaps you could begin by saying something about the different types of referrals which lead to your starting a historic investigation?

Mr Hutchinson: Yes. We would receive complaints, and do receive complaints, firstly through the Historical Enquiries Team references, public references, individual complaints and agencies such as the Pat Finucane Centre, for example, and certainly the European Courts recently. So there is a variety of sources that come to us. Primarily the Historical Enquiries Team is the area of challenge.

**Q80 Chairman:** What sort of discretion do you have before deciding that you must begin a proper investigation?

Mr Hutchinson: Really, Chairman, I have none. Nuala O'Loan, my predecessor of course, I think wisely considered it and Lord Chief Justice Carswell's cited comments in the McConville case, where she addressed the subject, and Lord Chief Justice Carswell said there is no discretion by a public official when guided by the statute to obviate that. There is a practical consequence of that and we will, I am sure, talk about the workload, the prioritisation, the matrix we have to go through, but certainly I take the view I have no discretion and whatever comes to me I will eventually have to deal with.

**Q81 Chairman:** May I just ask, before we move on, what about your relationship with the Historical Enquiries team? Is it a good one? There must be a certain amount of tension?

Mr Hutchinson: I would categorise it as a good one, certainly at a leadership level. Jim, as our new Senior Director of Operations, can perhaps speak more directly to it, but in terms of our respective Gold Commands on any of the particular issues we have a protocol established, which Nuala established, and I am told that after some initial working out of that agreement that is working very fine now. To our benefit, I think the Historical Enquiries Team acts as a very cogent filter for us, in other words they have collected evidence, they have sifted through it and really when they come to us because of police involvement then it is statutorily given over to us and we actually have part of that front end work done for us. So it is a generally positive relationship.

**Q82 Stephen Pound:** Before we move on from that point, obviously this is an extremely significant area. You have talked about protocols, about precedent, and you have talked about jurisprudential rulings. What is the status of those? When you say you have no discretion, do you have no discretion by terms of the legislation that set up the structure? Is it by precedent, is it by Nuala O'Loan's actions, is it by the judge's ruling? What precisely defines and limits your discretion or absence of discretion?

Mr Hutchinson: The statutory obligation, first of all.

**Q83 Stephen Pound:** On the face of the original bill?

Mr Hutchinson: That is right. There is no discretion.

Stephen Pound: Fine. I think it is very important we establish that. Thank you.

**Q84 Mr Murphy:** Could I ask, before we move on, how many members of the public have actually approached you directly?

Mr Hutchinson: I will defer to Sam. We have about 116 cases out of historic, how many -

Mr Pollock: We have 16 public complaints.

**Q85 Mr Murphy:** Is there a particular reason why the public would contact you directly?

Mr Hutchinson: Well, again there is an obligation. I will give you one example that is very well in the public domain, which is in fact that the Finucane Centre on a particular case in Londonderry would have raised that with us on behalf of them and we have met with the complainants, certainly Loughinisland was a public complaint, I believe. So there are probably no precedent reasons why a particular family would come forward, but often it is driven by families.

**Q86 Chairman:** How far as the creation of the HET project impinged upon your Office and increased your workload?

Mr Hutchinson: I suppose, Chairman, what we have before us and what we have coming in terms of prospective cases, on the prospective cases I am led to believe by Dave Cox that we may have up to 300 cases coming at us that may involve allegations of police wrongdoing. Currently we have - Sam, correct me if I am wrong, how many do we have from HET that we have received?

Mr Pollock: Fifty-four from HET.

Mr Hutchinson: In terms of impinging on our workload, of course, we go through a prioritisation of those. We have the day to day work, which may involve serious and minor allegations and findings of police wrongdoing, as serious as shootings by police, and then of course we have the historic cases, roughly from 1968 to 1998, which come to us, the numbers which Sam talked about. So there are those two broad areas which are impacting on our organisation.

**Q87 Chairman:** Are you sinking under the weight?

Mr Hutchinson: I have used in informal session, Chairman, the phrase "tipping point" and I have become very concerned. I have now been three months on the job and I am concerned about quality, the impact, our capacity for the future, and strategically looking at it we could come to that point where we will be sinking. I have asked Jim on an urgent basis to start putting together a business case. Fundamentally, it is put on a premium model, which I think is the HET model. Of course we are independent from that, but very shortly we will probably be going to Government with a provisional idea of what that might cost us, and it probably will be significant to deal with that prospective work which is coming at us.

**Q88 Chairman:** Are we talking seven figures or eight?

Mr Hutchinson: We are looking at possibly 20 or 30 new staff, new quarters, because we are on the maximum quarters, maybe 2 to £3 million cumulative per year just for the additional historic works.

Chairman: Just for that, yes.

**Q89 Kate Hoey:** In other words, the costs are going to go up and up and up, and you are putting a plan to say, "We need more money to deal with this." Do you think we will ever come to a stage where you might actually be really radical and say, "Look, hang on, enough's enough. This whole thing's costing far too much and it's achieving very little"?

Mr Hutchinson: As I pointed out to Mr Pound, I do not think I have any legal out on this, if you will. What I am doing - and perhaps we will discuss that in other questions, but I view it as a severable unit, in other words, when Northern Ireland comes to a resolution of how it can deal with the past (1968 - 1998). I think part of it is evidence-gathering. HET is doing part of it, we are doing part of it, inquests, enquiries are doing another part of it. There is a piece of work there to resolve the issues in Northern Ireland. I am looking at it as to our piece of that could be severable. In other words, when I ask for funds it is to grow my unit, because in fact I am very worried about the impact on the present policing and the present police organisation, that bleeds over from the past to the present. So I think it has to be done, that we have to advise Government, "This is what we think as a professional Police Ombudsman organisation, what it will cost to deal with the historic enquiries that are coming at us," and I will put that in. It will be on the paper and we will start to draw down in that process just to deal with the workload that we have, but I am absolutely convinced I have no discretion except to do that the way the law is written.

**Q90 Mr Fraser:** You say about the costs and funding the problems you have got with that and you say you need more staff. One of the comments you pass is that there is a lack of availability of suitable staff. Is that because you have not got the funds to tool them up to do the job and train them appropriately, or that the wrong people are coming forward, or that there just is not the pool of the right people?

Mr Hutchinson: We really have three categories of staff. We have the developed internal staff. They are not necessarily police officers but they have developed professionally through experience and university training. We have seconded police officers from other police services outside of Northern Ireland, and then we have contracted police officers, primarily to do the historic crimes. There is a cost to each one of those levels and on our last trawl to get seconded police officers in broadly the United Kingdom we had one reply from one service. What is impinging on that, of course, is that all police services are suffering in terms of recruiting and the demographic needs and police chiefs are very reluctant to second their police officers. So we are left with a pool of contracted police officers availability and ironically that pool is probably growing as the police demographics change and more and more people retire, but again there is a very expensive premium to that. On the other hand, direct recruit - logically as a public official I cannot hire permanently staff not knowing which way this issue will go and whether or not it is severable. It is just that you cannot hire experienced criminal investigators, senior investigators.

**Q91 Chairman:** Are you able to recruit from your own former force?

Mr Hutchinson: Well, no. That is an issue of confidence in Northern Ireland. The HET, for example, has recruited from the former force, but they are doing very routine issues. We have the former police service in Northern Ireland doing some of our enquiries, but -

**Q92 Chairman:** You had your police training and career in the Royal Canadian Mounted Police, as I understand it?

Mr Hutchinson: I did.

**Q93 Chairman:** Are you able, or is there a bar on your going to other Commonwealth forces like that to recruit?

Mr Hutchinson: No, there is not, other than practicality, familiarity with the law. Certainly my experience as a police officer is that the police officers in Northern Ireland, certainly Great Britain, are as confident and capable as they would be in Canada because it is something you gain over a period of time dealing with people.

**Q94 Mr Fraser:** Can I just come back on that point? Given the difficulties you clearly face and which you have explained to us here and in your submission, that is affecting public confidence in your Office, surely?

Mr Hutchinson: I believe it is. Our satisfaction levels, according to surveys, are starting to slip. Now, I would not say that that will be maintained. Certainly it is my objective to keep the confidence level up, but there is no doubt it is impacting on our current delivery of cases because what we are doing is taking the experienced police officers, investigators, and putting them onto historic crimes investigations because that is where we need the quality, and these are multiple year-long investigations in some cases.

**Q95 Sammy Wilson:** Can I just ask a follow up question? According to the brief you have given us, Mr Hutchinson, you indicate about 21% of your costs now, your staff costs, are directed towards historic enquiries?

Mr Hutchinson: They are.

**Q96 Sammy Wilson:** The Chief Constable told us in relation to the police that it was not so much even the percentage of total costs, but it was the specific areas where he had to take expertise from, where in some cases he was saying 60% of his serious crime resources were being absorbed into this. Are you finding the same in your organisation? It is not just the kind of global or bottom line figure, but it is specific parts of your organisation that are feeling the strain?

Mr Hutchinson: I suppose that provides an apt analogy because that is really what I am saying, that we are taking our experienced police officers, former police officers, seconded police officers who have that senior investigating officer experience and putting them into the major cases, which are very complex. They range from - well, we talked about Loughinisland in Ireland, but some are multiple linked allegations of murders, the Stalker affair, you know, the very complex cases that have a big public impact in terms of outcome. We have to deal with them honestly, fairly and independently and that requires a great deal of skill. That is our cadre of experienced people.

**Q97 Chairman:** How much extra work from the public inquiry is piled upon you?

Mr Hutchinson: Not a great deal. For example, the Wright inquiry, I enquired over the impact on us and of course we have primarily derivative intelligence, not exclusively but pretty well derivative intelligence from the security agencies, primarily the police, and we would have to trawl through that, checking with the host/owner of the information and make sure that everything is synchronised as well. We might have our own intelligence that is acquired through interviews and a number of situations. So we have to pay very close attention. The Wright inquiry took three senior people three days to trawl through the information we have on that just to make sure that it met the requirements of law, met the needs of the inquiry and certainly had the sanction of the owner agencies of the information.

Chairman: Can I move on with Mr Wilson, please?

**Q98 Sammy Wilson:** I want to really explore the impact your work has on the PSNI, obviously when cases are referred to you. I suspect that if the Historic Enquiries Team refers cases to you they have not done a lot of preliminary work other than to identify there might be some wrongdoing or an allegation of wrongdoing by the police. So you are probably making requests then from the police for files and evidence. How do you find the promptness of the police in responding to those requests?

Mr Hutchinson: I will go back to Sam, but generally from my short-term experience here I have had no difficulty, have heard of no difficulty at the present time. I think there might have been some start-up issues. Nevertheless, for example, it is publicly known the Stalker referral came in and the police had about 70 boxes of evidence available for our review, apart from the documentation that we got on the original case. They have to maintain that, catalogue it, hold it securely for us until we get a chance to examine it. That would be at the top end of the spectrum. Other cases where HET would have collected the information, they called around the police stations and certainly identified officers. A lot of that material is available. But of course, we would - as is your point - have to go back and query officers. We would have to look for records on all the retired officers who were available and really that would be a piece of work for the police.

**Q99 Sammy Wilson:** Apart from collecting the information, is there any other sifting work you would require the police to do before they hand over material to you?

Mr Hutchinson: No. We would take the view, because of our independence and impartiality, that we would really take the whole basket of goods, but again, recognising the police have collected it, we would have to go back and query them on particular cases and particular files. But we would not demand of the police that they do any work. I am not sure if that is what you are implying.

**Q100 Sammy Wilson:** Yes. For example, would they be required, if there was sensitive intelligence information, to perhaps do some sifting there to make sure names were not included?

Mr Hutchinson: First of all, I would not expect them to do that because that is our job. The police need to make available all intelligence. We have a very secure intelligence unit, practice and process, so we would collect that intelligence and make our own analysis and decision on the relevance. We would expect all of it to be made available to us and not certainly culled or ---

**Q101 Chairman:** We are going to see, at Sir Hugh's invitation, the Historical Enquiries Team and the way they operate and how, and it obviously would make sense for us to pay a visit to you and do the same. Would you be content with that?

Mr Hutchinson: Absolutely, Chairman, yes.

Chairman: Because I think this would be helpful.

**Q102 Sammy Wilson:** Yes. Just two other questions. The first one is the co-operation between yourselves and retired police officers, who very often have left the service and may be the subject of the inquiry which you are conducting. It has been a fairly rocky relationship in the past. Do you believe that that is improving, and do you see any evidence that because of the emphasis on historic enquiries that actually still continues to poison relationships between your organisation and the police?

Mr Hutchinson: I think we are in a better place now than we were before. We have re-established relationships with the Federation and I will be meeting the Retired Officers' Association in a couple of weeks. I made it clear to both groups that I will be saying things that they may not like, but I think we can professionally talk about them. Will what we do in the future challenge those relationships? I think it will, but I do not think it is my role to shy from the truth and the evidence. I know what the Office says and I believe it will follow the evidence - I think the public needs to know that - within the context of the time. So I think it is better, Mr Wilson, but I think it will always be challenged and fractious, probably because we are fundamentally opposed, perhaps, in this debate over historic enquiries and the role the police carried out during the time. If I contrast that with present relationships, I think they are much stronger on the day to day cases that happen on the street because usually they are not contentious issues, they are professional issues that we deal with.

**Q103 Sammy Wilson:** Do you feel it is right in your Office when you are making reports to emphasise that you are very often judging cases in a context which is totally different from the context in which those original investigations and original police actions took place?

Mr Hutchinson: Actually, I shared that view too as a reader of headlines before I came to this job and when I started reading the reports I realised that every report had a contextual element to it. I think what has happened is that in the rush to headlines none of that is reported as well, so I think there is a bit of onus on the press to put all of that in context. Probably the most visual element that I can think of is the Omagh investigation and the issue over the tainted evidence in terms of low copy DNA. Nowadays it is not uncommon to turn on the television and see the space-suited forensic officers collecting evidence. Certainly in 1998 that was not happening and it was not happening in 1972. There was an entire context to that, so I think we are all being influenced by the one hour CSI television shows in many ways. So I will continue to put context in every report, and in fairness I think the Office did in the past, it just probably was not picked up.

**Q104 Sammy Wilson:** Just one final question. A lot of money is going into this. The whole idea was to gain greater confidence in the police today from looking at the actions of the past, but as a result of the enquiries you have concluded to date how many police officers have either had complaints against them upheld or there has been disciplinary action, et cetera? For all of this money are we getting any greater confidence, or do you believe your enquiries are instilling any confidence, or indeed turning over stones which need to be turned over and resulting in outputs which will satisfy those people who demanded the enquiries in the first place?

Mr Hutchinson: There are several points. I suspect you will have to ask the victims of the Troubles, whether they are police officer families or victims of either community, how they feel. What I am struck by when I have met several victims, individually or as groups, is that that past event, whether it was 30 years ago or 15 years ago is as vivid today as it was at that time. Jim and I met some people in Londonderry just a while ago and although it was 35 years ago as young men, they are still visibly emotionally crying about the events which happened to them, allegedly by the police. The Loughinisland ~~Ireland~~ families - I had a very difficult meeting with them and what struck me, apart from the emotion of the meeting, was that it has become intergenerational. There is a young girl whose father was killed and as a young woman now she feels that pain as much as she did, yet it happened 15 plus years ago. So it is a very present thing which I think has to be resolved. I think as police officers our work is understood - and of course once police officers are retired there is no internal discipline, so we are looking at only evidentiary criminal prospects, to collect what evidence we can. Truth is viewed differently by different people, but we have tried to stick to evidence. So we have not put any police officers in jail and we have substantiated failures in investigation in the past, but we have also substantiated that the police did their work solidly. We have tried to be fair and impartial. Again, the headlines maybe do not reflect all that work, but in fact it is probably 50:50 in terms of that.

**Q105 Chairman:** If your prime responsibility is to engender public confidence in the police and to maintain that confidence, is it possible to do that if you have this great backlog of historic investigations which you are obliged to look at, one accepts that, given the present structure? Is it really possible to do the two things, even with the extra resources which you have made quite plain you need?

Mr Hutchinson: No, it is not. Just finishing off Mr Wilson's question and following on with yours - is there confidence? - that is the very issue which concerns me, that the past is bleeding into the confidence of this present police organisation. What I want to make clear is that those people victimised by the past really need a resolution. Now, whether or not it is our Office or some office, or a combination, it is important, but the confidence is diminishing in present policing.

**Q106 Chairman:** That is what worries me. Therefore, do you think it would be better if someone else, some other office, did deal with this historic legacy and backlog?

Mr Hutchinson: Chairman, I would have no objection to that, bracketed by the period of time we are talking about, bearing in mind the Police Ombudsman now and in the future will always have grave and exceptional historic cases because time will move ahead, but for this period of time it was entirely different. It is problematic. You have HET, ourselves, inquest inquiries, all having different pieces of it and yet there is no resolution of it all. So I would certainly endorse any mechanism - and I would not be prescriptive of that - that would work, and certainly our piece of gathering evidence to feed into that process to assist.

**Q107 Chairman:** To get this absolutely clear, because this is very, very important what you are saying, you would yourself have no objection to there being, as it were, a historic ombudsman dealing with the past in addition to yourself?

Mr Hutchinson: No, I would not.

Chairman: That is very interesting. Thank you very much.

**Q108 Stephen Pound:** Just a couple of quick points before we move on from this section, bearing in mind this extraordinary and ever-increasing workload - and I understand the normal physical constraints and the constraints of the standard operational limitations that you suffer under - how do you prioritise within that? Would it be in date order, would it be on the size? Could you tell us for the record how you manage?

Mr Hutchinson: I can give you some examples. Technically what we do is we use a prioritisation matrix lifted out of ACPO in terms of all the cases, present and past, which come in. We really have to juggle experience that we acquired in Operation Ballast, for example, and Sam can speak more if you need more detail.

**Q109 Stephen Pound:** I am sorry to interrupt, but the ACPO matrix has two key salients within it. One is the likelihood of resolution. The second one would not apply in your case, I would have thought, it is where there is the probability that the perpetrator is still active and may repeat the crime. Those are not the only salients but they are two within them. What would be the prime salients of the ACPO matrix as applicable to your task?

Mr Hutchinson: I will just make the point that both those cases could apply as well. I just want to finish the point on Ballast. Just in terms of prioritisation, to show you the challenges, that diverted the Office for - 18 months, Sam?

Mr Pollock: Three years.

Mr Hutchinson: Three years altogether, and so we had to put some cases to the side. That cost about £1.8 million in terms of diverted resources.

**Q110 Stephen Pound:** Collectively?

Mr Hutchinson: Yes. So it illustrates, when you are talking about prioritisation, we just have a fixed number of people, a fixed budget, and we really have to deal with what comes in. The importance of that on the present is that in fact the police, as a result, culled their informant list. They did a whole number of things. The Surveillance Commissioner paid closer attention. So it is a very live thing bleeding over into the present, and of course we identified a number of murders which had to go back to the police to actually reinvestigate as a result of that. So when you look at a priority case it is beyond a matrix, it is very much a judgmental quality of thing where we have to make our best guess.

**Q111 Kate Hoey:** Sorry, I do not quite understand. Just tell us in simple language how you decide your priorities. You are beginning to tip, you say, the balance. How do you decide the priorities of what you are going to deal with? Is it "muggins's turn", whoever gets in first gets dealt with first?

Mr Hutchinson: I am sorry, I did not know the term.

**Q112 Kate Hoey:** That is what I mean about priority. How do you decide?

Mr Hutchinson: I am sorry, I do not mean to equivocate, but there is really no particular answer. For example, the European Court decisions which come down to the Secretary of State, Stalker, my judgment is that that is a priority.

**Q113 Kate Hoey:** So you judge?

Mr Hutchinson: Yes. We are ~~almost~~ granted discretions.

**Q114 Kate Hoey:** I am not criticising you, I am just trying to find out.

Mr Hutchinson: No, no, but we are almost back to discretions.

**Q115 Chairman:** You have to be pragmatic is what you are saying?

Mr Hutchinson: Well, we try to be pragmatic. As a consequence, of course, we almost create this hierarchy of victims again because we have to put some things to the side, but there is a quality aspect to it in every case. But we still run it through a prioritisation matrix which gets us at least to the table, where we can consider relative cases.

**Q116 Chairman:** But you could the more easily do this if you had this clear division, which you have just said a few moments ago you would welcome, between past and present and then you would be able to concentrate on your prime duty of maintaining the confidence in the force as it is and somebody else would be looking at these issues which need resolution but which go back in some cases almost 40 years?

Mr Hutchinson: Well, I agree with that, Chairman. I do not want to lose the point that something has to be done about it. We are kind of one of the only games in town, and therefore we have to treat it seriously.

Chairman: Indeed, and we will have to make some recommendations at the end of the day, informed by your evidence and other evidence, as to how we think this should best be done, but it is very helpful to have that on the record.

**Q117 Mr Murphy:** Following on from the Chairman's suggestion, Mr Hutchinson, if that was to go ahead, almost the removal of the historic cases from your current workload, do you think that would also require a similar set-up for the police as well to ensure that there is confidence, even if it is part of the PSNI who are actually seconded onto this team to work exclusively on nothing else?

Mr Hutchinson: Two points. Absolutely, I believe this agency group would have to be removed from the police to have independence and to have the confidence of the broad public, so there is no doubt the quality of the investigators in there would have to be, in my

view, primarily police officers, senior investigators who are used to investigating murders, serious crimes, link murders, a very complex business which goes back - Miss Hoey talked about how we do it - certainly murder and less primarily what we are dealing with, but not exclusively, any murder case, that is really all we are dealing with. It leaves aside the number of victims who have been injured through bombings and attacks over the years, but that is somewhat tragic as well. Yes, professional, separate from the police and severable from us. That is why I mention that I really have two businesses to deal with now. One is the past. The past could be severed from us, the legal process, the legislators and certainly legal draftsmen, but I believe it could be done

**Q118 Mr Campbell:** To pursue this a bit further, is the elephant in the room? Today we were told in the House of Commons we were told by the Secretary of State that the Saville Inquiry is now over £181 million and still not concluded and still not likely to lead to closure or resolution, and that is not to take account of the other series of inquiries, the whole issues that you have outlined in terms of how you are getting weighed down. Some people are saying there is no end to this. There is simply no end to it. Either we pour hundreds of millions into trying to resolve something which is irresolvable or we pull the shutters down. You seem to be saying, as far as the Ombudsman's Office is concerned, that you imagine a third party should be created to deal with that. Is it as stark as that?

Mr Hutchinson: Let me say this, Mr Campbell: I think it is a matter for Parliament, for the legislators, to decide on the resolution of those issues. I am trying to focus myself as a former professional policeman, and now in this job, to say that as part of that resolution (whatever it is) this piece of work has to be done. We are doing it on an evidentiary basis now. Somebody has to continue to do that. I will continue to do it until the legislature, Parliament, says I cannot.

**Q119 Chairman:** You are also saying you cannot adequately do it with what you have got at your disposal?

Mr Hutchinson: That is clear, yes. I am not trying to avoid your question, Mr Campbell, but I think that is probably ---

**Q120 Mr Campbell:** That is why I called it an "elephant in the room".

Mr Hutchinson: Yes. It is probably better for Parliament to debate and discuss that, but I am just saying there is an important piece of work and I do not want the victims of the past to be forgotten. We are talking about a premium for a price. What is that? I certainly cannot answer that.

**Q121 Chairman:** You are saying to the Committee - I want to get it absolutely clear - that it is not your role or remit to say whether a line should be drawn or not. What you are saying to the Committee is, "If a line is not drawn, we cannot carry on as we are." There have to be extra resources, and preferably a hiving off, or you will not be able to do adequately the contemporary job which we expect you to do?

Mr Hutchinson: I adopt your comments, Chairman. You have said it better than I probably could.

**Q122 Mr Campbell:** I just want to finish and ask another question. There will be many people - and I would be one of them - who would look at your work across the range of areas that you have to work in and would see that the essence of your work is that you are concentrating on a number of cases, and if you looked at the number of police officers who have served you could probably be talking about less than 1% of police officers about whom there is some suggestion of impropriety. I do not know if 1% is right, but certainly a minuscule figure, because most objective observers see the Police Force as, by and large, doing a very good job most of the time very professionally and very well. But they see your Office, looking at a small number of officers against whom an allegation of some form of inappropriate activity has taken place, and the issue of trying to deal with the past, even if it appears to be lopsided, in that on the one occasion when one person, who now happens to be the Deputy First Minister, openly admitted his involvement in terrorism when he was put in a box under oath at the Saville Inquiry and declined to give any rationale or open up any Pandora's Box about people whom he knew who might help closure be brought to some victims. Many people would say this is all about concentrating on a very small number of people, which will not bring closure, and it is not going to look at the thousands of people who were involved in an organisation, 100% of whom were law-breakers; rather, it seems to be focusing on a tiny, insignificant number of police officers about whom there is an allegation, and how can we ever get closure if there is an imbalance like that and hundreds of millions of pounds is spent on trying to do it?

Mr Hutchinson: I am not sure that is a question, Mr Campbell, but I will try to answer just a small portion of it! In that part you are right, and it really reflects my comments as a previous Policing Oversight Commissioner, where I said that HET and the Police Ombudsman - and I have not changed this view - are too narrowly focussed - they are ~~their~~ blunt instruments to deal with societal resolution, and part of that came from - although I am not an apologist for the police - the fact that my Office looks at exactly one small portion of what is a larger issue. I can only look at the police. I cannot look at other state agencies. I cannot look at the paramilitaries that were involved. So it is unfair in that sense, that I only have one piece of a puzzle. So I would adopt part of what you are saying in this sense, that the consequences of our process had the effect you talk about. I do not know about the 1%, but it is fair to say there is a very small number. Most retired police officers cooperate with us. Some do not. We have only had a handful of arrests for alleged criminal offences of former police officers. It casts again an unfair bias towards the Police Service in Northern Ireland and what they are trying to do, so it is unfair in that aspect.

**Q123 Mr Campbell:** Would it help if, in carrying out your activities, more attention was given to that type of statement you have just made?

Mr Hutchinson: Absolutely, and that is why I put it in the submission I made in terms of HET and our own Office being blunt instruments and only dealing with part of the issue.

Chairman: Thank you very much.

**Q124 Kate Hoey:** I agree with what you say there, that that was certainly the perception, that this could be very one-sided in terms of, in the end, people living in Northern Ireland who have lost loved ones over many, many years where there has not been police involvement and who feel that they are getting absolutely no ending to their misery and cannot find closure. How would you feel then if we, as a Select Committee, came up with the suggestion that actually this was politically the wrong way to go forward any more and that whilst there is a need for a Police Ombudsman in terms of today's policing, actually it is time to put an end to all these huge amounts of money which end up with, as you have just said, very few people actually being ever found guilty and for the few who are found guilty nothing happening?

Mr Hutchinson: Well, I would not tread on the grounds of the Committee. I am sure you will arrive at your own wise decision. I will just make the point I made earlier, that the Police Ombudsman will always need a grave and exceptional new evidence role to look retrospectively beyond twelve months. It is the period from 1968 to 1998 that really is both the elephant in the room and the problem for my Office currently and into the future.

Chairman: I think you have made it very plain that 1968 to 1998 is a burden too much for you and that somehow this is - you are quite right - a political issue and we have got to make our recommendations on this. Somehow, that burden has got to be lifted if you are adequately to perform the contemporary role (as I called it earlier) which Parliament and statute has placed upon you. We must deliberate and we must take other evidence and decide whether it is right that there should be another body, side by side with you, looking at other sorts of crimes. That, I fully accept, is not for you, but you have been very clear in what you have said and I would like to move on now to Rosie Cooper, if I may.

**Q125 Rosie Cooper:** Mr Hutchinson, just to go back on some detail you have referred to so far, are you satisfied with the level of access your approved staff are getting to the various bits of information by the PSNI?

Mr Hutchinson: Yes, absolutely. There are no barriers at this stage in access. We have total access. I am confident of that.

**Q126 Rosie Cooper:** That is really good. Do you believe there is adequate legislation to protect informants, and if not what legislative changes would you consider to be justified? If you ever get into a really difficult situation where people believe the information they have given to the police will come out and the informants will be identified, then this whole thing will dry up of its own accord anyway.

Mr Hutchinson: A couple of points. One, as a former police officer I know how important informants are to policing. Traditionally there is an acceptance of that and usually a neither confirm nor deny policy. Again, Lord Chief Justice Carswell spoke a bit about that and when Nuala looked at this and publicly reported Jean McConville's case she decided to break that, which can be done in exceptional circumstances, just to confirm that Mrs McConville was not an informant. The protection given by the state for informants generally is part of the accepted rule. I cannot really speak authoritatively as to the legislative changes of provisions, but I think the protection of an informant, except in the most exceptional cases, is really what the state should be doing.. There is a consequence of that in Northern Ireland - and it bleeds over again into normal policing - which is a residue of the past, that every police stop tends to lead to the belief that there are informants out there and that there is an ulterior motive behind it. I am satisfied that the police not only culled their informant list from 2003 onwards, in other words those engaged in criminal activities, but that it is a fairly robust system now, subject to a number of protections. Again, the protection principle, I think, is important for law enforcement, and of course it is not only the police. So I think that is well-established. I could not really go beyond that in terms of legislative changes, beyond that principle.

**Q127 Rosie Cooper:** What about publishing any information about informants? Does your approach differ in any way from that of the PSNI?

Mr Hutchinson: No. We have tried to be very rigorous about that and I said earlier that unless there are exceptional circumstances we would not disclose it. It has only been done in one case, after we received information, but our security handling - and if the Committee comes to our Office in Northern Ireland you will be able to see our intelligence unit and how we handle that with only access to direct vetted people and it is very electronically secure handling, because we receive information from not only the police but a number of agencies.

**Q128 Rosie Cooper:** Can I take it from your comments that you are saying the real hindrances you have are staffing and money, and that on the actual ability to do these inquiries, should they be met, you have got no hindrances whatsoever?

Mr Hutchinson: That is accurate.

**Q129 Chairman:** Would you like to amplify a point you made in your written submission in the context of these questions when you talked about "unlawful practice and policy in the use of sources" in Northern Ireland? Are you satisfied with the progress which has been made by the PSNI in changing those practices? Would you like to amplify a little on that?

Mr Hutchinson: Actually, I will ask Sam to do that because he has been more involved in the last seven years, but fundamentally that relates to participating informants following ACPO guidelines and participation allegations perhaps more where agents have been involved in murders. Sam, could you perhaps amplify that in relation to Operation Ballast, which might be the best example?

Mr Pollock: The reason it took such priority was because it was a concern that the practice at that point was still ongoing and we notified the Chief Constable of our concerns and there was an immediate response to that. We were also satisfied even with the response to the recommendations, not just in the public report but in the private confidential report to the Chief Constable on particular matters and there was a full and adequate response to that. Is the world perfect? I cannot say that, but we feel the whole conduct and performance and compliance with procedures and authorisations is absolutely correct, satisfactory, and there would be no current concerns on that.

**Q130 Chairman:** There are no current concerns?

Mr Pollock: No.

**Q131 Chairman:** So you are content with the way things are for the moment? You are content, as I understand from earlier answers, with your relations with PSNI?

Mr Pollock: Yes.

**Q132 Chairman:** You see for yourself an important and continuing role as a public watchdog and guarantee of the impartiality and the operational effectiveness of PSNI? You see all of these things as being very positive, presumably?



Mr Pollock: I do.

**Q133 Chairman:** So we keep coming back to this terrible problem of the burden of the past. Would you say there is a danger, unless we do get this balance right - and I am not asking you to say how we should do that - there is a danger of the present being overwhelmed by the past and therefore the future operation of your office being jeopardised?

Mr Hutchinson: Absolutely, and again I adopt your comments and I referred to the Oversight Commissioner's comments as the choice, policing the past or policing the future, and I am afraid we are being dragged into policing the past. But I want to emphasise the point that there are very legitimate victims across certainly the police, the military, the communities, who are crying out for some resolution, so I would never abandon them, but certainly -

Chairman: Of course. Nothing you have said to this Committee makes us consider you to be insensitive in your response to the past, but you are merely being realistic, and that is very, very helpful.

**Q134 Sammy Wilson:** Could I just ask about the submission you made to us, Mr Hutchinson, in paragraphs 2.6 and 2.7? I know you have said that you do not have discretion as to whether or not you investigate a case if it is referred to you, and it may well take some time before politically some alternative can be found, but would you have discretion along the lines in 2.6, where a case is referred to you but if there is no new evidence you could exercise discretion at that point and say, "Look, there's no point in us devoting resources to that case because there's nothing new that has come up anyhow"? Would that be one way of filtering out some cases, and what work would be required to be done? There would be a lot of work required to be done to ascertain whether or not there was new evidence, so would that be a kind of safety valve in the short-term, or do you not even have that discretion?

Mr Hutchinson: No, in fact we do that de facto. When we prioritise these cases the first step is that it is not only grave and exceptional, it is whether or not we have any new evidence, whether it has been investigated before. So that is one of the considerations. Correct me if I am wrong, Sam, but we probably have turned cases away where there is no new evidence. It is part of our requirement.

Mr Pollock: Yes.

Mr Hutchinson: But we do that. As I said earlier, I have no discretion in taking the cases in, but then we go through a process of really prioritisation and frankly putting some to the side and judging, hopefully correctly, that some are more important than the others, and that is simply a matter of resource allocation and time and priority that is available. But everything which comes through the door has to go through that filter. Is it new evidence? Has it been investigated previously? Certainly, is it grave and exceptional?

**Q135 Chairman:** But that filter itself can become clogged?

Mr Hutchinson: Well, it can, and in terms of our scoping exercise, to answer all of those questions, it simply takes time and we have to do it.

Chairman: Of course.

**Q136 Kate Hoey:** Chairman, one brief point - it might even be Mr Coupland because he is in charge of actually investigating - you talk under 2.18 about "the identification of good practice and policies that have evolved but did not exist 20 or 30 years ago". If you are investigating something which took place nearly 40 years ago in the middle of - you know, some of us who lived through that know just how difficult it was for anyone to do anything in Northern Ireland, never mind the police. What priority do you give to that in terms of looking at whether you could really investigate something that happened that length of time ago and get the evidence based on the fact that the police acted differently there by nature of the fact that they were fighting people who really saw themselves at war?

Mr Coupland: The point was raised earlier about contextualisation. You have got to contextualise it. If it is something that occurred, a homicide, 20 years ago, the ACPO manual guidance for homicide investigation was not even out then. There was no RIPA, no authorisations, so there has been a whole load of changes and legislation and police policies and practice, and when you look back you have to look back to what was available to the Police Service at that time.

**Q137 Chairman:** Not to mention the scientific advances and DNA, and all that?

Mr Coupland: Absolutely.

**Q138 Chairman:** What I would like to do now, if you are agreeable, is that it would be helpful if we had our private session now.

Mr Hutchinson: That is acceptable to us, Chairman.

Chairman: A final public question, yes.

**Q139 Stephen Pound:** Could I just say that it is unfortunate there is no representative of any of the Nationalist or Republican political parties here, but I am sure if they were here they would say that any suggestion of a diminution of your historic role would be greeted with considerable opposition in those communities. I am well aware of your sensitivity on that and I think it is extremely important, but I wanted to ask you a question specifically about the point you made about forensic evidence, particularly post-Omagh, when you said that in effect the evidence chain could be challenged on the basis of modern information and that modern techniques were not applicable then. That struck me as being in some ways one of the most terrifying things you have said, and I have to say my admiration for you and your team has grown throughout the course of this inquiry. I am just wondering how you can objectify an investigation from such a long period of time without that irrefutable, non-specific forensic evidence. Are you saying that forensic evidence can exist from 40 years ago and it will not be challenged, or are you saying that whatever forensic evidence exists it was either of such low quality that it is of no value or it would be challenged?

Mr Hutchinson: A couple of points in response to that. First of all, I think we are obliged to walk through the whole process examining possibilities of forensic evidence, carrying through an investigation to the point where we have something either to take to the Director of Public Prosecutions or not. I would mention that the final benchmark is that the Director of Public Prosecutions will make the decision based on what we have surfaced. Part of the whole problem is really what you have illustrated. There are very few evidential solutions 30 years on, because of the whole variety of reasons you have talked about. That does not stop us from having to go through that diligent process of finding it out, because that is the complaint. As I have mentioned, in some cases it not only raises expectations but in a lot of cases the police are exonerated, the points are not substantiated.

**Q140 Chairman:** It both raises the expectations and dashes the hopes at the same time?

Mr Hutchinson: It does, and I think any process on the past will risk that, unfortunately. That is not to say that public authorities should not go through the steps. A murder is never closed, in my view, in any country, and we just have to go through the process.

Chairman: I think at that point, that is very, very helpful and I would like to thank you publicly, you and your colleagues. The evidence you have given and the clarity has been very helpful to us and we will now briefly deliberate with you in private, so could I ask that the gallery be cleared, please.