**Proposed alternative to Historical Investigations Unit (HIU).**

It is worth emphasising that current best practice across UK policing concerning serious case reviews is conducted on the premise that, *‘’A serious crime review is not a reinvestigation”*. This is extremely important when allocating investigative resources and managing the expectations of the families of victims. It must be stressed that the HIU will carry out a review of each case and if an investigative opportunity is identified then a full investigation will follow.

An alternative to an HIU and the director would be the appointment of an additional Deputy Chief Constable (DCC) on the PSNI. In order to demonstrate transparency this DCC appointment should be an officer from outside Northern Ireland.

S/He would have sole responsibility for legacy cases and the recruited investigators, this could be an enhanced Legacy Investigation Branch, (LIB) however, it may be more feasible to refer to the unit as the ‘Historical Investigations Unit’, even though it will be within the PSNI.

While the DCC would be governed by PSNI regulations and oversight by the Policing Board it would also strengthen the objectives of the proposed HIU if an additional oversight body was created. This should be a panel led by an independent Judge/retired Judge, consisting of members from outside Northern Ireland. This panel would oversee all aspects of the HIU work.

The duties of the Oversight Panel (OSP) would include-

1. Reviewing the DCC decisions as to whether a case meets the criteria for re-investigation or not;

*i.e. is there credible new evidence relating to the death and such evidence alone, or when considered in conjunction with other existing evidence, raises the reasonable suspicion that the new evidence is capable of leading to-*

* 1. *the identification of a person criminally involved in the death; or*
  2. *the prosecution of a person for a criminal offence relating to the death.*

*(The identification of a person involved in a death should only be pursued where the perpetrator is no longer amenable to the Court but evidence acceptable to the Court can be produced to prove guilt beyond reasonable doubt. Due process requires that a person remains innocent until proven guilty so any attempt to simply "identify a person involved in a death" for the purposes say of a family report would be unacceptable and potentially in breach of Article 6 HR Act especially if the involvement did not amount to a substantive criminal act.)*

1. *Evidence relating to a death is “new evidence” if—*
   1. *the individuals carrying out the investigatory processes for the investigatory authority in relation to the death—* 
      1. *did not know of the evidence, or*
      2. *did not know of the relationship between the evidence and the death; or*
   2. *the HIU reinvestigating the death* 
      1. *did not previously know of the evidence, or*
      2. *did not previously know of the relationship between the evidence and the death.*
2. *No re investigation should be launched on the basis of an allegation that a belief exists that a non-criminal or legally undefined act or omission has occurred such as the much maligned term of "collusion" or the "protection of an informant" unless there exists credible evidence to support the investigation of a substantive criminal offence by an identifiable perpetrator relative to the same.*
3. *Public Interest:*

*All cases to be reinvestigated need to establish that the public interest will be served by undertaking a fresh re investigation. If the perpetrator is deceased or of a physical or mental state that he/she could not safely be cautioned, interviewed or face a trial, then the public interest test would not be met. Likewise, if the perpetrator was no longer within the jurisdiction and not amenable to the police or extra territorial provisions of the justice system a similar public interest test would not be met.*

The proposal would be that the DCC would be required to prepare a report regarding the cases assessed and identify if 1a) and 1b) above have or have not been deemed suitable for investigation.

Whether a case is deemed appropriate for re-investigation or not by the DCC a report will be submitted to the Oversight Panel outlining their findings and the recommendations. All cases in which an investigation has been undertaken a file will be placed before the Director of Public Prosecutions (DPP). This will act as a further check and balance on the process.

Processes have concluded A further suggestion would be that the Oversight Panel would replace the proposed Independent Commission on Information Retrieval (ICIR). Rather than create a body to carry out an additional information gathering process, the HIU report should form the basis of the ‘family report’, which will be provided to the family when all other processes have concluded, albeit suitably sanitized and approved by the Oversight Panel.

It will be noted that there is no reference in these alternative proposals to non-criminal police misconduct as it is contended that all of these proposals within the draft legislation are in fact breaches of the law and indeed they breach the very ‘General Principles’ contained within the draft legislation, for example;

1. *(e) the principle that human rights obligations should be complied with.*

The concerns voiced by the Chief Constable regarding resources will be negated to an extent in that the Government has earmarked £150 million for the legacy process, while this will not fully address the funding there will be interaction between Westminster and Stormont with a view to resolving the financial implications.

The LIB currently has 1130 investigations on it books and by far is the lead investigation authority. The PSNI should be allowed to come of age and the Policing Board should be the strongest advocate for this position. Investigations into allegations against former police officers will remain the preserve of the Police Ombudsman but the investigative requirements as set out above should apply to all investigations carried out by that office.

**Deputy Chief Constable**

**Historical Investigations Unit**

DPP receives file

Directs prosecution or no prosecution – Notify HIU/OSP and interested parties

Full investigation and report submitted to the DPP and OSP

Case is suitable for investigation

Advise OSP and interested parties

OSP Agrees – Case closed and all interested parties advised.

DCC provide report to OSP

Case deemed not suitable for investigation

Assess Case for New Evidence not previously available, report to OSP

**Oversight Panel (OSP)**

**Judge/Retired Judge Led**