**COUNCIL OF EUROPE AT STRASBOURG**

**COMMITTEE OF MINISTERS FINUCANE DECISION AT MARCH 2021 MEETING**

[‘Notes on the agenda’ i.e. the Secretariat report for the Committee is below]

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| <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a1b20e>**1398th meeting, 9-11 March 2021 (DH)****H46-38 McKerr group v. the United Kingdom (Application No. 28883/95)**Supervision of the execution of the European Court’s judgmentsReference document[CM/Notes/1398/H46-38](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Notes/1398/H46-38)[December 2021 CM decision – 7. noted that despite setbacks experienced as a result of the COVID-19 pandemic, there has nonetheless been some progress in legacy inquests, invited the authorities to respond fully to the questions posed at the Committee’s last examination of the case concerning the functioning of the OPONI and the Police Service of Northern Ireland;] |

***Decisions***

The Deputies

1.         recalling that these cases concern procedural violations of Article 2 of the Convention due to various shortcomings in the investigations into the death of the applicants’ next-of-kin in Northern Ireland in the 1980s and 1990s, either during security force operations or in circumstances giving rise to suspicion of collusion in their deaths by security force personnel;

*As regards individual measures*

2.         reiterated their profound concern about the ongoing delays in the *McKerr*, *Shanaghan* and *Kelly and Others* cases due to systemic delays in inquest proceedings and Office of the Police Ombudsman for Northern Ireland (OPONI) investigations underlining the urgency of making progress in the necessary general measures;

3.         decided, without prejudice to the Committee’s evaluation of the general measures, to close the examination of the *McShane, Collette and Michael Hemsworth* and *Hugh Jordan* cases by adopting Final Resolution [CM/ResDH(2021)50](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/ResDH(2021)50);

4.         decided to reopen their consideration of the individual measures in the case of Finucane in order to supervise the ongoing measures to ensure that they are adequate, sufficient and proceed in a timely manner; invited the authorities to clarify how the ongoing police and OPONI processes will proceed promptly and in line with Convention standards given the issues raised by both of those bodies in recent statements;

*As regards general measures*

5.         noted with interest the authorities’ confirmation that it remains their intention to introduce legislation in the light of the Stormont House Agreement to address legacy issues as soon as possible; nevertheless reiterated their profound concern about the delay and continued lack of detail on that proposed legislation or any timetable for these proposals which has been under discussion for over six years;

6.         underlining the importance of ensuring that any proposed legislation will enable, in the shortest possible timeframe, effective investigations into all outstanding cases in compliance with their obligations under the Convention; exhorted the authorities to take all measures to expedite the finalisation of this legislation and to provide full details to enable a comprehensive assessment to be made in time for the Committee’s next examination; recalled in the meantime, **the vital role** played by the inquest system and the OPONI in investigating cases;

7.         *with regard to the inquest system*, noted with interest that despite the difficulties caused by the COVID-19 pandemic, some progress is now being made, inquests are resuming and recovery planning is underway; strongly encouraged the authorities to step up their efforts to accelerate as far as possible to meet their target of the conclusion of all inquests within five years; invited the authorities to provide concrete information and explanations as to what steps are being taken to ensure that all of the relevant statutory bodies are complying with their disclosure obligations to allow inquests to proceed within the current planned timeframes and prevent unnecessary delays;

8.         *with regard to OPONI*, in light of the ongoing chronic delays in its work as highlighted by the Ombudsmen themselves, invited the authorities to provide the following information:

**a.  the response to the five-yearly legislative review of its powers, in particular recommendation 15 regarding the power to compel police officers (serving and retired) as witnesses and suspects;**

b.  their assessment as to the impact that the revised memorandum of understanding on disclosure between the PSNI and the OPONI has had and whether it has facilitated the OPONI’s work;

c.  what response has been given to the OPONI’s bid for additional staff;

9.         *with regard to police investigations*, invited the authorities to provide further details about the use of other police services from across Great Britain to ensure independence:

a.  in what circumstances and how often have these powers been used? and

b.  how does this work in practice?

10.       decided to resume consideration of the progress on all of the above issues at their 1419th meeting (December 2021) (DH), at the latest.

SECRETARIAT *NOTES ON THE AGENDA* FOR THE COMMITTEE AND ANALYSIS

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| **MINISTERS’ DEPUTIES** | Notes on the Agenda | **CM/Notes/1398/H46-38** | 11 March 2021 |

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| **1398th meeting, 9-11 March 2021 (DH)**Human rights**H46-38 McKerr group v. the United Kingdom (Application No. 28883/95)**Supervision of the execution of the European Court’s judgmentsReference documents[DH-DD(2021)101](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2021)101), [DH-DD(2020)1117](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2020)1117), [DH-DD(2020)722](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2020)722), [DH-DD(2020)479](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2020)479), [CM/ResDH(2020)367](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/ResDH(2020)367), [H-Exec(2021)11](https://search.coe.int/cm/Pages/result_details.aspx?Reference=H/Exec(2021)11), [CM/Del/Dec(2020)1390/H46-32](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Del/Dec(2020)1390/H46-32) |

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| **Application** | **Case** | **Judgment of** | **Final on** | **Indicator for the classification** |
| 28883/95 | MCKERR | 04/05/2001 | 04/08/2001 | Structural and/or complex problems |
| 37715/97 | SHANAGHAN | 04/05/2001 | 04/08/2001 |
| 24746/94 | HUGH JORDAN | 04/05/2001 | 04/08/2001 |
| 30054/96 | KELLY AND OTHERS | 04/05/2001 | 04/08/2001 |
| 43290/98 | MCSHANE | 28/05/2002 | 28/08/2002 |
| 29178/95 | FINUCANE | 01/07/2003 | 01/10/2003 |
| 43098/09 | McCAUGHEY AND OTHERS | 16/07/2013 | 16/10/2013 |
| 58559/09 | COLLETTE AND MICHAEL HEMSWORTH | 16/07/2013 | 16/10/2013 |

**Case description**

These cases concern investigations into the deaths of the applicants’ next-of-kin in Northern Ireland in the 1980s and 1990s, either during security force operations or in circumstances giving rise to suspicion of collusion in their deaths by security force personnel.

*McKerr group*: the European Court found various combinations of the following shortcomings in the **investigations** into the deaths: lack of independence of investigating police officers; lack of public scrutiny or information to victims' families about the reasons for decisions not to prosecute; defects in the police investigations; limitations on the role and scope of the inquest procedure; absence of legal aid for the representation of the victims’ families; and delays in inquest proceedings (procedural violations of Article 2). The *McShane* case also concerns a failure by the State to comply with its obligations under Article 34.

*McCaughey and Others* and *Hemsworth*: the European Court found that there had been excessive delay in the inquest proceedings which had concluded in 2012 and 2011 respectively (procedural violations of Article 2), caused by, *inter alia*, the quality and timeliness of the disclosure of material. Under Article 46 of the Convention, the Court indicated that the authorities had to take, as a matter of priority, all necessary and appropriate measures to ensure, in similar cases of killings by the security forces in Northern Ireland where inquests were pending, that the procedural requirements of Article 2 would be complied with expeditiously.

**Status of execution**

At its last examination of this group of cases in December 2020, the Committee adopted an interim resolution in which it, *inter alia,* called upon the authorities to follow up on their previous commitments to publish and introduce legislation in the United Kingdom Parliament to implement the Stormont House Agreement to address legacy issues, as set out in the New Decade, New Approach publication.

*Individual measures:*

In their submissions of October 2020 and 25 January 2021 (see [DH-DD(2020)931](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2020)931) and [DH-DD(2021)101](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2021)101)), the authorities submitted updated information in respect of the individual measures in all these cases, which have principally taken the form of either one or a combination of three types of investigation: inquests, Historical Enquiries Team (HET) investigations and Police Ombudsman of Northern Ireland (PONI) investigations. At its last examination in December 2020, the Committee instructed the Secretariat to prepare an updated analysis of the status of the investigations and litigation in the individual cases in time for the present meeting. Details are set out in [H-Exec(2021)11](https://search.coe.int/cm/Pages/result_details.aspx?Reference=H/Exec(2021)11).

*The Finucane case:*

Full details of the background of the *Finucane* case, the Committee’s supervision and recent developments are set out in the [Notes](https://hudoc.exec.coe.int/FRE#{%22EXECIdentifier%22:[%22CM/Notes/1377bis/H46-44E%22]}) prepared for the Committee’s examination, at the 1377bis meeting (September 2020) (DH) and the 1390th meeting (December 2020) (DH).

On 30 November 2020, the authorities provided information setting out their response to the Supreme Court judgment of 27 February 2019 in which the Supreme Court found that none of the inquiries into Mr Finucane’s death taken so far, including the “deSilva review”, had amounted to an Article 2 compliant investigation (see [DH-DD(2020)1117](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2020)1117) for full details). Following consideration of all options available, the Secretary of State decided not to establish a public inquiry at this time, noting, in particular, that a review process into the case was due to commence in early 2021 by the Legacy Investigation Branch of the Police Service of Northern Ireland (PSNI), and that PONI investigations were ongoing. The fact that a decision on a police review was due shortly was an important development because it would consider whether further investigative steps could be taken and, if so, whether the PSNI should take them. It was important to allow the police and PONI processes to progress because they could play an important role in addressing the issues identified by the Supreme Court. The government committed to re-assessing whether a public inquiry is necessary to resolve any outstanding obligations under Article 2 of the Convention in light of the police and PONI processes. The authorities consider that all necessary steps are being taken to ensure compliance with both the domestic courts’ and Strasbourg Court’s decisions in this case. At its last examination, the Committee noted this information provided very shortly before the meeting and instructed the Secretariat to provide an assessment of it for the present meeting with a view to considering whether to reopen the individual measures.

In a public statement also of 30 November 2020, the PSNI Chief Constable indicated that, in his view, there are currently no new lines of inquiry and that the PSNI were deciding if a further review was merited given all the previous investigations. He also made it clear that it was unlikely that the PSNI would enjoy a perception of independence in the case, given the accepted state involvement. It was therefore highly likely that both any review, and then an ensuing investigation, would need to be led independently.[[1]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn1)

In separate public statement the same day, the PONI commented that although 13 separate matters arising from the de Silva review had been formally referred to the PONI by the PSNI in February 2016, events connected to the murder of Pat Finucane were not central to any of the ongoing investigations.[[2]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn2) Furthermore, she underlined that the additional matters which have not yet progressed to investigation will only be advanced when resources allow.

On 21 December 2020, further to domestic litigation initiated by the applicant’s family, the Northern Ireland High Court made an order (uncontested by the Secretary of State) which acknowledged, *inter alia,* that the time taken by the Secretary of State to respond to the United Kingdom Supreme Court judgment of 27 February 2019 was excessive and incompatible with the applicant’s Article 2 Convention right to promptness and reasonable expedition in the investigation into her husband’s murder. It awarded GBP 7,500 in damages to Mrs Finucane which has been paid.

In detailed and extensive submissions received on 8 February 2021, the applicant’s representatives set out multiple concerns about the government’s decision not to hold a public inquiry (see [DH-DD(2021)167](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2021)167) for full details). They note that the police and PONI processes relied upon by the government are limited in scope and resource dependent, as also indicated in the Chief Constable and PONI statements (see above). They consider that these processes will only create further unnecessary delay, as evidenced also by the delay in the *McKerr* group as a whole and are not capable of compliance with Article 2 and the delivery of an effective investigation. They do not consider that the PSNI Legacy Investigations Branch can be sufficiently independent in the present case. They note that PONI only has the remit to investigate alleged misconduct or criminal action by police in Northern Ireland (not the actions of officers of the Security Service and Secret Intelligence Service, which may be required in this case). Furthermore, neither the PSNI Legacy Investigation Branch nor PONI has the full range of powers to compel witnesses, one of the procedural flaws identified by the Supreme Court. In their view, the only mechanism that has the necessary powers highlighted by the Supreme Court is a public inquiry.

*General measures*:

·         Overview

From the start of the execution process in 2003, the United Kingdom authorities have adopted many general measures to respond to the shortcomings in the investigations identified by the Court. These were mainly focussed on reforms to inquest proceedings, and on the work of the Office of the Police Ombudsman of Northern Ireland (OPONI) and the HET: bodies set up after the events to ensure effective investigations. As a result, the Committee had closed its supervision of many aspects of the general measures prior to 2009. However, questions were still outstanding regarding the functioning of the OPONI.

It then became clear, as also demonstrated by the fact that some of the individual investigations in this group have still not completed two decades after the Court’s judgments, that the package of measures initially presented to the Committee and existing mechanisms for conducting investigations into legacy cases were not working effectively or promptly in practice.[[3]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn3) Further measures were required to ensure that outstanding legacy investigations could be conducted to prevent similar violations in the future. Some elements identified were that:

-       The HET, one of the key mechanisms originally presented by the United Kingdom authorities as part of the package of general measures, was disbanded in September 2014 after an inspection[[4]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn4) by Her Majesty’s Inspectorate of Constabulary brought to light shortcomings in its systems and processes, finding that it, as a matter of policy, treated state involvement deaths differently from other deaths in a manner inconsistent with Article 2 of the Convention.

-       The OPONI has suffered considerable delays in its work,[[5]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992" \l "_ftn5" \o ") with predicted completion of historical investigations extending years beyond what was initially intended and problems in obtaining disclosure of relevant information from the PSNI.

-       The more recent *McCaughey and Others* and *Collette and Michael Hemsworth* judgments, of 2013, indicated that excessive delay in the inquest proceedings were continuing.

Therefore, in June 2014,[[6]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992" \l "_ftn6" \o ") the Committee *inter alia,* urged the authorities to ensure that that work to improve the current system was completed as soon as possible. It also welcomed in particular the proposal[[7]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992" \l "_ftn7" \o ") to create a single, investigative mechanism, considering that the establishment of such a body would be a significant development with potential to bring meaningful and positive change to the investigation of legacy cases.

It was thus a key turning point for the supervision of these cases, when on 23 December 2014, the Governments of the United Kingdom and Ireland published the Stormont House Agreement (see [DH-DD(2015)81](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2015)81)), which was welcomed by the Committee.[[8]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn8) The Agreement relates to a number of issues and, most significantly for the execution of this group of cases, it announced the establishment of four new institutions to deal with the past, including a single independent investigative body, the *Historical Investigations Unit* (HIU), to take over the investigation of legacy cases from both the OPONI and the HET.[[9]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn9)

Since then, the United Kingdom authorities have continuously kept the Committee updated as to the progress in the passage of legislation for the establishment of the HIU as part of the general measures. Full details of the proposals in relation to that body and the steps taken to establish it can be found in the [Notes](https://hudoc.exec.coe.int/FRE#{%22EXECIdentifier%22:[%22CM/Notes/1340/H46-30E%22]}) for 1340th meeting, [Notes](https://hudoc.exec.coe.int/FRE#{%22EXECIdentifier%22:[%22CM/Notes/1355/H46-29E%22]}) for 1355th meeting and the [Notes](https://hudoc.exec.coe.int/FRE#{%22EXECIdentifier%22:[%22CM/Notes/1377bis/H46-44E%22]}) for 1377bis meeting. The Agreement also announced that appropriate steps would be taken to improve the way *legacy inquests* function.

Given the authorities’ indications concerning the proposed establishment of this body, the Committee shifted its focus away from the supervision of the functioning of OPONI and the Legacy Investigations Branch of the PSNI, which had taken over the work of the disbanded HET to follow developments in the creation of the HIU.  However, the HIU and the other legacy institutions have not yet been established. This lack of progress has been a matter of serious concern for the Committee for several years, most recently in its interim resolution adopted at its meeting in December 2020.[[10]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn10)

In response to that interim resolution, the authorities reiterate their commitment to reforming the existing investigative bodies and to bringing forward legislation to address the legacy of the Troubles. They recall, as previously noted by the Committee, the publication in July 2019 of an analysis of over 17,000 written responses to the public consultation on draft legislation seeking to implement proposals set out in the Stormont House Agreement.

They confirm that it remains the intention of the government to introduce this legislation as soon as possible but that further engagement with key stakeholders needs to take place before progress can be made.  The Covid-19 pandemic has presented a number of challenges to their ability to engage in the effective and sensitive manner required on these issues, but engagement is continuing.

·         Detailed summary

A brief update on the three existing investigative bodies is set out below:

i)              Legacy inquests

The Committee has noted with satisfaction[[11]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn11) steps to establish and reinforce a specialised Unit - the Legacy Inquest Unit - which, funded in February 2019, is now under the remit of the Lord Chief Justice of Northern Ireland as the President of the Coroners’ Courts. It is supported by increased capacity in the PSNI, the Public Prosecution Service and other justice agencies.

In their most recent communications in October 2020 and January 2021, the authorities explain that the full impact of the COVID-19 pandemic on the five-year plan for legacy inquests[[12]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn12) is not yet known but that there will inevitably be delay because, whilst progress is now being made, inquests were adjourned pending suitable arrangements to enable safe participation of witnesses and support staff. The first of the remaining inquests in the programme was heard in November and December 2020 and assessments of feasibility of listing legacy inquests continue. Discussions are also ongoing between the Department of Justice and the Coroner and his team to support the acceleration of the programme. A new Presiding Coroner was appointed on 8 January 2021 with whom work will continue on recovery planning.

ii)             The Office of Police Ombudsman of Northern Ireland (OPONI)

The Committee has recalled[[13]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992" \l "_ftn13" \o ") that, pending the establishment of the HIU, the OPONI[[14]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn14) continues to play a vital role in investigating historical cases and giving answers to families. In their most recent submissions of October 2020 and January 2021, the authorities note that the OPONI’s budget has been one of the most protected by the Department of Justice in Northern Ireland and note that, in 2019-2020, OPONI was provided with a resource budget uplift of 2%. Moreover, additional funding was made available in 2017-2018[[15]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn15) and 2018-2019[[16]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn16) to fund requests from the Ombudsman in respect of investigations into Troubles-related serious crime. The new Police Ombudswoman for Northern Ireland began her seven-year term in July 2019.

The authorities indicate that they remain committed to ensuring that all necessary measures continue to be taken to ensure that the OPONI has the capacity to conduct its work in an effective and timely manner.

iii)            Police investigations

The authorities explain that investigations relating to the conduct of the military or security services and any suspected involvement in a death is the responsibility of the PSNI, which is hierarchically and institutionally independent of the former Royal Ulster Constabulary (RUC). They note however that the practical independence of the police to investigate certain deaths remains the subject of litigation in the domestic courts, including an appeal to the Supreme Court.

The Chief Constable of the PSNI is conscious of the need to ensure that, where appropriate, incidents involving the security forces are investigated by officers independent of those implicated in the incident. In particular, under section 98(1) of the Police Act 1996 the Chief Constable can appoint officers from another police service in Great Britain to carry out an investigation (for example, a number of investigations linked to the Troubles have been referred to the former Chief Constable of Bedfordshire (England) Police, Jon Boutcher[[17]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn17)).

*Latest submissions from NGOs:*

A large number of submissions have been received during the Committee’s examination of these cases, highlighting the ongoing problems as regards prompt and effective investigations into the deaths of the applicants’ relatives during the Troubles.[[18]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn18)

Most recently, submissions were received in early February 2021 from Relatives for Justice, the Committee on the Administration of Justice (CAJ), and the Pat Finucane Centre (see [DH-DD(2021)179](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2021)179),
[DH-DD(2021)181](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2021)181) and [DH-DD(2021)185](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2021)185)).

In sum, they are, for the most part,[[19]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn19) [**footnote refers to the Malone House Group exception**] particularly concerned about the serious delay in the establishment of the HIU and the apparent change in approach announced by a Written Ministerial Statement of March 2020,[[20]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn20) which they do not consider would comply with Article 2 of the Convention. Setting out other broader domestic developments, they indicate that they are deeply concerned that the government will continue to delay indefinitely to legislate for the legacy institutions or will do so in a manner incompatible with the Convention. The CAJ notes that whilst some other mechanisms in Northern Ireland (set out below) can deliver degrees of Article 2 compliance there remain significant gaps which demonstrates the need for the Historical Investigations Unit.

Whilst they welcome the developments in relation to legacy inquests, they consider that clarification is still needed on steps taken to ensure that all agencies (in particular the PSNI and the Ministry of Defence) are complying with their legal obligations to identify and disclose relevant material to legacy inquests given the ongoing excessive delays experienced to date.

They underline that the OPONI remains chronically underfunded, which has a serious impact on its ability to investigate legacy cases and is still causing excessive delays in its work. The Pat Finucane Centre indicates that its work on historical investigations was suspended during COVID due to staffing shortages. Some NGOs note ongoing issues with disclosure of relevant information to the OPONI and that there are other gaps in the PONI’s powers that have been long identified by Ombudsmen but for which remedial legislation has not progressed.

They note with concern that the Legacy Investigation Branch of the PSNI is tasked with investigating legacy cases even though it has been found by the Northern Ireland Court of Appeal that the requisite practical independence has not yet been demonstrated so that it has the capacity to investigate certain cases with state involvement.[[21]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn21)

**ANALYSIS BY THE SECRETARIAT**

*Individual measures:*

In accordance with the Committee’s decision at its last meeting, the Secretariat has prepared an updated analysis of the status of the investigations and litigation in the individual cases with a view to examining whether any could be closed (see [H-Exec(2021)11](https://search.coe.int/cm/Pages/result_details.aspx?Reference=H/Exec(2021)11) for full details).

In summary, the Committee might wish to adopt a final resolution for the *McShane,* *Collette and Michael Hemsworth* and *Hugh Jordan* cases, where all possible individual measures have been taken, without prejudice to its evaluation of the general measures.

The Committee might wish to reiterate its profound regret that the inquests and investigations in the cases of *McKerr, Shanaghan,* and *Kelly and Others* have still not been completed due to delays in both the inquest proceedings and PONI investigations. These chronic delays appear to demonstrate the incapacity of the existing structures to complete investigations promptly, underlining the need to make progress with the required general measures on which their progress depends, without further delay.

*The Finucane case:*

Under Article 46 of the Convention, as far as individual measures are concerned, the aim of *restitutio in integrum* is to put the applicants, to the extent possible, in the position in which they would have been had the requirements of the Convention not been disregarded. Individual measures should be timely, adequate and sufficient to ensure the maximum possible reparation for the violations found by the Court.[[22]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn22) The obligation of a Contracting State to conduct an effective investigation as required by Article 2 of the Convention persists as long as such an investigation remains feasible but has not been carried out or has not met the Convention standards.[[23]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn23)

It appears from the information submitted that the authorities acknowledge that, as underlined by the Supreme Court, the investigations conducted thus far into Mr Finucane’s murder have not met Convention standards. They are still examining whether further investigative measures are feasible and refer to pending reviews by the police and the OPONI.

The Committee might therefore wish to reopen the individual measures in the Finucane case to be in a position to supervise the investigative measures underway and, in particular, to ensure that they are adequate, sufficient and proceed in a timely manner. The Committee’s supervision would appear to be particularly important at this stage given the delays to date, as acknowledged by the Secretary of State of Northern Ireland in domestic litigation in December 2020.  Given that the Court’s judgment dates from 20 years ago and relates to a murder that took place over 30 years ago, the authorities must take all measures to ensure that there is no further delay.

In that context, the Committee might also wish to invite the authorities to clarify how the ongoing police and PONI processes will proceed promptly and in line with Convention standards given the issues raised by both those bodies in recent statements.

*General measures:*

When it last examined the functioning of the three existing investigative bodies in detail, in 2014, the Committee noted a number of outstanding issues. Since then, other issues have also arisen (see below). Moreover, it should be noted that the work of these bodies is interconnected. For example, legacy inquests and PONI investigations cannot progress unless they receive adequate information (disclosure) from the PSNI.

In the absence of meaningful and co-ordinated reform, the situation at domestic level remains characterised by complexity and delay where the families affected have frequently turned to the domestic courts to try and secure any advances in the investigations by the different bodies.

In light of the concerns about the capacity of the existing mechanisms to conduct effective investigations into legacy cases in a timely manner (also acknowledged by the government as not delivering for victims and for wider society[[24]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn24)), it is positive that the authorities reiterate their commitment to introducing legislation to address legacy issues as soon as possible and indicate that work to that end continues.

However, the delay and lack of detail on the proposed approach or draft legislation under consideration, particularly given that it has been under discussion for over six years and has already included a detailed consultation process with over 17,000 responses, remain matters of profound concern. Moreover, there appears to be no clear vision on reforming the existing bodies so that they can work effectively together.

Whilst, as previously underlined by the Committee, it is of course primarily for the United Kingdom, as the respondent State, to choose, subject to supervision by the Committee of Ministers, the means to be used to discharge its obligations under Article 46 of the Convention, it is recalled that the measures must be timely, adequate and sufficient. Initiating new plans at this stage would appear to risk further delay when the need to avoid any setbacks is paramount.

It is clear that there are complex and sensitive issues at stake and it is vital that any proposals garner trust and confidence from the public. However, it is imperative that the authorities now take all measures to expedite the finalisation of the legislation to establish the HIU and make sure that, it will enable, in whatever format, in the shortest possible timeframe, effective investigations into all outstanding cases in compliance with their obligations under Article 2 of the Convention.

·         Detailed analysis of the existing investigative bodies

i)              Legacy inquests

It is positive that, despite the difficulties caused by the COVID-19 pandemic, some progress is now being made and recovery planning is underway. The authorities should be encouraged to step up their efforts to accelerate as far as possible to meet their target of the conclusion of all inquests within five years.

Separately, according to civil society and as evidenced by some of the outstanding cases in this group, one of the main causes for delay and repeated adjournments in inquest proceedings is related to slow disclosure of information to the coroners by the statutory agencies and in particular, PSNI and the Ministry of Defence. Indeed, disclosure for the inquest in the *McKerr and Others* case, initiated in 2007, has been ongoing for over a decade. Disclosure has not yet commenced for the inquest in *Kelly and Others* which was initiated in 2015. Whilst the authorities indicate that there is increased capacity in PSNI and other bodies to support the Legacy Inquest Unit, they have provided no concrete details related to disclosure processes. The authorities should provide concrete information and explanations as to what steps are being taken to ensure that all of the relevant statutory bodies are complying with their disclosure obligations to allow inquests to proceed within the current planned timeframes and prevent unnecessary delays.

**ii)             OPONI**

In their submissions, the authorities confirm that they would be happy to provide any further information requested by the Committee about the OPONI’s functioning. Indeed, given that the body proposed to take over the investigation of legacy cases from the OPONI has not been established, and in light of the lengthy delays in the OPONI’s work as reiterated in multiple Rule 9 submissions by both civil society and two different PONI themselves[[25]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn25) and as also seen in the ongoing investigation into the *Shanaghan and Others* case, questions raised before the Committee some years ago[[26]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn26) now reassert themselves whilst others have arisen given the passage of time.

**The first relates to PONI’s powers to compel retired police officers to appear as witnesses and suspects. This was already raised in 2009**[**[27]**](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn27) **and 2014**[**[28]**](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn28) **but has not yet been resolved. In the most recent OPONI five yearly legislative review of its powers, published in November 2020,**[**[29]**](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn29) **the PONI has repeated a recommendation**[**[30]**](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn30) **to amend the legislation to provide powers to compel police officers (serving or retired), as witnesses and suspects to attend for interview and produce documents within a reasonable time.**[**[31]**](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn31) **The authorities should confirm their response to that recommendation given its potential importance to ensure that the PONI possesses the necessary means and powers to conduct effective investigations in conformity with Convention requirements.**

Second, it would be useful if the authorities could provide their assessment on the impact that the revised memorandum of understanding on disclosure[[32]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn32) between the PSNI and PONI, previously noted with interest by the Committee in September 2020, may have had on the OPONI’s capacity to proceed with and finalise investigations.

Finally, in line with previous decisions strongly encouraging the authorities to take all necessary measures, including the provision of resources, to ensure that the OPONI has the capacity to continue its work in an effective and timely manner in compliance with Article 2,[[33]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn33) the authorities should confirm if a response to the PONI’s bid for additional staff mentioned in its five yearly legislative review[[34]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn34) has been given.

iii)            Police investigations

Given the ongoing questions pending before the Supreme Court about the practical independence of the Legacy Investigations Branch to carry out investigations into certain deaths, as here, with state involvement, it would be useful if the authorities could provide more details about the use of other police services in Great Britain to ensure independence in these types of investigations. In what circumstances and how often have these powers been used? How has this worked in practice? Can this be replicated and on what scale to provide independent public scrutiny, build public confidence and trust with victims’ families?

Concerns have also been raised as to its capacity to deal with its caseload in a timely manner. In submissions of 2019,[[35]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992" \l "_ftn35" \o ") the authorities indicated that it had a caseload of 1,130 incidents involving deaths of over 1,400 persons but that only 22 were under active review. Such a caseload was acknowledged to pose considerable financial and human resource challenges. More recently, the Chief Constable himself has expressed concern that the PSNI does not have the resources to complete case reviews and re-investigations in a timely manner.[[36]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftn36)

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| Financing assured: YES |

[[1]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref1) <https://www.psni.police.uk/news/Latest-News/301120-statement-from-chief-constable-simon-byrne-following-the-announcement-from-the-secretary-of-state-on-the-murder-of-pat-finucane/>

[[2]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref2) [Police Ombudsman Media Releases, PSNI Ombudsman Press Releases - Police Ombudsman for Northern Ireland](https://www.policeombudsman.org/Media-Releases/2020/Police-Ombudsman-statement)

[[3]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref3) See information document [CM/Inf/DH(2014)16-rev](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Inf/DH(2014)16-rev) for more details.

[[4]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref4) See [Inspection of the Police Service of Northern Ireland Historical Enquiries Team - HMICFRS (justiceinspectorates.gov.uk)](https://www.justiceinspectorates.gov.uk/hmicfrs/publications/hmic-inspection-of-the-historical-enquiries-team/).

[[5]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref5) See communications submitted by two PONI in 2014 (DD-DH(2014)1042) and 2019 ([DH-DD(2019)890](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2019)890) and [DH-DD(2019)306](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2019)306)).

[[6]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref6) See the decision adopted at the 1201st meeting (June 2014).

[[7]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref7) Within the context of the *Haass* process, an all Northern Ireland Party Group to consider issues relating to the Troubles.

[[8]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref8) See the decision adopted at the 1222nd meeting (March 2015).

[[9]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref9) See § 30 of the Stormont House Agreement. See also [DH-DD(2015)629](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2015)629), [DH-DD(2016)430](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2016)430) and [DH-DD(2017)871](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2017)871) where the authorities explain that the HIU was due to consider all cases in respect of which the OPONI and HET had not completed their work.

[[10]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref10) See also, for examples, the decisions at the 1294th meeting (September 2017), 1318th meeting (June 2018), 1340th meeting (March 2019), and 1355th meeting (September 2019).

[[11]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref11) See the decisions adopted at the 1340th meeting (March 2019) and 1259th meeting (June 2016).

[[12]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref12) The intention was to conclude the current caseload of 52 inquests, relating to 93 deaths between the 1970s and 2000s, within a five-year period following an initial set-up phase lasting one year (2019-2020). To date, four cases have been completed, five cases are awaiting findings and two cases are at hearing stage, although currently adjourned.

[[13]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref13) See the decisions at the 1355th meeting (September 2019) and 1377bis meeting (September 2020).

[[14]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref14) Since 2010, a Historical Investigations Directorate has been tasked with looking at matters where there are allegations that members of the police may have been responsible for deaths or serious criminality in the past. It has approximately 25 staff, drawn from a variety of professional backgrounds and its work is focussed on the period of the Troubles.

[[15]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref15) GBP 526,000.

[[16]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref16) GBP 100,000.

[[17]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref17) <https://opkenova.co.uk/> : currently investigating 236 killings that took place in the Troubles in the 1970s and 1980s.

[[18]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref18) A summary of these submissions and the authorities’ response were set out in the [Notes](https://dm.coe.int/dg1/execution/documents_execution/1355th%20meeting%20%28September%202019%29%20-%20H46-29%20McKerr%20group%20v.%20the%20United%20Kingdom%20%28Application%20No.%2028883/95%29) for the 1355th meeting, the [Notes](https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016809c89c0) for the 1369th meeting and the [Notes](https://hudoc.exec.coe.int/FRE#{%22EXECIdentifier%22:[%22CM/Notes/1377bis/H46-44E%22]}) for the 1377bis meeting.

[[19]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref19) With the exception of the Malone House Group: see [DH-DD(2020)500](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2020)500) and [DH-DD(2020)705](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2020)705).

[[20]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref20) <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-03-18/HCWS168/>

[[21]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref21) *McQuillan v Police Service of Northern Ireland [2019] NICA 13.* The PSNI have been granted leave to appeal to the Supreme Court and the hearing has been listed for June 2021.

[[22]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref22) See *Ilgar Mammadov v. Azerbaijan,* no. 15172/13, GC judgment of 29/05/2019, § 170.

[[23]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref23) See, mutatis mutandis, Abu Zubaydah v. Lithuania, no. 45454/11, judgment final on 8/10/2018, § 682.

[[24]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref24) See foreword by Secretary of State for Northern Ireland to the [Consultation Paper](https://search.coe.int/Users/huber_d/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/M86MOKKS/Addressing%20the%20Legacy%20of%20Northern%20Ireland%27s%20Past%20-%20GOV.UK) “Addressing the legacy of Northern Ireland’s Past”.

[[25]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref25) See for example DD-DH(2014)1042, [DH-DD(2019)306](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2019)306) and [DH-DD(2019)890](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2019)890).

[[26]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref26) See [CM/Inf/DH(2014)16-rev](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Inf/DH(2014)16-rev) for more details.

[[27]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref27) See [CM/ResDH(2009)44](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/ResDH(2009)44).

[[28]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref28) See Memorandum prepared in 2014: [CM/Inf/DH(2014)16-rev](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Inf/DH(2014)16-rev).

[[29]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref29) Review under Section 61(4) of the Police (Northern Ireland) Act 1998, available on [Police Ombudsman Media Releases, PSNI Ombudsman Press Releases - Police Ombudsman for Northern Ireland](https://www.policeombudsman.org/Media-Releases/2020/Police-Ombudsman-publishes-review-of-legislation).

[[30]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref30) Previously made in 2007, 2011 and 2018 reviews.

[[31]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref31) See Recommendation 15.

[[32]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref32) [Police Ombudsman Media Releases, PSNI Ombudsman Press Releases - Police Ombudsman for Northern Ireland](https://www.policeombudsman.org/Media-Releases/2020/New-agreement-with-PSNI-over-provision-of-informat). See details in [DH-DD(2020)722](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2020)722).

[[33]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref33) See decisions adopted at the 1377bis meeting (1-3 September 2020) and 1355th meeting (September 2019).

[[34]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref34) At paragraph 3.14.

[[35]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref35) See [DH-DD(2019)845](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2019)845).

[[36]](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a18992#_ftnref36) See his evidence to the Northern Ireland Affairs Committee <https://committees.parliament.uk/oralevidence/800/html/> .