

16 January 2007

Mr Desmond Whitters

Dear Mr Whitters

Your Complaint

The investigation into the allegations, which both you and Mrs Whitters made, of police misconduct, which resulted in the death of your son, Paul, on 15 April 1981, has now been completed. I write now to articulate the allegations, which you made, what was established during the investigation, and the conclusions, which I have reached in respect of those allegations.

I would like to thank you for your patience and understanding in what has proved to be a long and difficult investigation. I recognise that this investigation, and this report, may cause you and your family some distress and may bring back painful memories for you. Any reference I make to your son Paul is done with sensitivity. I do not direct any criticism towards him in any way. My comments and findings deal with the facts and the evidence that is available.

The law relating to various allegations in your complaint is very complex. I therefore make reference to specific legal provisions in order to explain the nature of the investigation carried out by my Office, and the conclusions, which derive from that investigation.

continued/..

Your complaint related to the occasion on which police officers from the Royal Ulster Constabulary were deployed to a bakery in Derry in response to a riot. Your son, Paul, was involved in that riot. A baton round was fired at him. He was struck in the head and died of his injuries ten days later.

Your complaints involve allegations that a police officer murdered your son; that police failed to conduct a proper investigation; that police failed to keep you updated about the progress of the investigation, and that police officers lied.

Allegation 1

That a police officer murdered your son. They could have tried to arrest him instead of firing a baton round

You state that the officer who fired the fatal shot, deliberately fired at your son's head with intent to kill him rather than at the lower body. You state there was no reason to fire a plastic baton round at Paul and that police could have tried to arrest him.

Allegation 2

That police failed to conduct a proper investigation into your son's death

You state that the investigating officer failed to conduct local enquiries for witnesses at the time; that several independent witnesses were later identified but the investigating officer failed to interview those witnesses, which should have resulted in a re-interview of those police officers who were present at the scene of the shooting.

Allegation 3

That police officers failed to keep you updated about the progress of the investigation

You state that the police failed to contact you and keep you informed about the progress of the investigation.

Allegation 4

That police officers failed to tell the truth

You state that police officers failed to tell the truth in the statements they made regarding the shooting and the investigation.

The Circumstances Leading to this Complaint

During the afternoon and evening of Wednesday 15 April 1981 rioting occurred in part of the city centre area of Derry, in particular in William Street. During this riot a crowd tried to get into the bakery from the main entrance on William Street. A party of police officers was sent to the bakery under the command of Inspector Robert Boyd. The police were positioned at the loading bay area inside the bakery premises, their objective being to prevent any attempt by the rioters to enter the bakery.

It was a daily routine for a lorry to arrive at the bakery with a consignment of bread from Belfast. The lorry driver would always telephone the bakery security guard, before his arrival to ensure it was safe to deliver the bread. On this occasion the security guard informed the lorry driver that the William Street entrance was blocked with rioters and directed him to go to the rear entrance on Great James Street, as it was quiet at the time.

At approximately 8.15 p.m. the lorry arrived at the rear entrance of the bakery in Great James Street. Although gated, this rear entrance was too small to allow the lorry access to the unloading bay inside the bakery. There is a small pedestrian door, contained within, but to one side of, the small double gates. The lorry driver decided to park his lorry outside but near the rear entrance. The lorry had a rear tail lift to assist loading and unloading. The lorry driver wheeled the trolleys of bread to the tail lift and the security guard pushed them into the unloading bay of the bakery.

After some trolleys had been unloaded from the lorry a crowd of youths suddenly appeared from the top of Great James Street, having just come from the William Street area via Lower Road. Some of these youths, including your son, Paul, covered their faces with masks. Stones were thrown at windows belonging to business premises next to the bakery, (McDowell & Duncan Ltd). Civilian witnesses have stated that they heard shouts of “Can *anyone drive*”, “*hi-jack*” and “*Are the police in there?*”

Fearing the youths were intent on hi-jacking the lorry, the security guard ran into the bakery to tell the police officers waiting inside that the youths were going to hi-jack the lorry. The security guard closed the gates behind him, but left the small pedestrian door open. The lorry driver knew the police were inside the bakery, but he stated that he closed the tail lift, knowing that the lorry would not drive away with the tail lift down. He then jumped into his vehicle and drove away from the scene. (At what point in the incident he drove away is disputed by several eyewitnesses).

Several police officers ran to the pedestrian gate, looked out onto Great James Street and saw Paul and other rioters in the road. There is evidence that Inspector Boyd issued a warning to the rioters to stop or baton rounds would be used, although no loudhailer was used. At the inquest into your son's death the Inspector agreed that the warning given by him was unlikely to have been heard because of the background noise. The crowd did not react to the warning.

Inspector Boyd immediately directed Constable David Galway to fire a baton round at Paul who was identified by police and the security guard as “the lead rioter”, or “the leading rioter.” in their statements of April 1981. Constable Galway stated in his second statement of February 1982 that “As *Whitters* was that slightly bit more in front of them I got the impression *Whitters* was the ringleader. When I fired towards *Whitters* the rest of the mob were approximately one to two feet behind and on either side of him”. The security guard stated that Paul was at the front of the crowd and wore a bright green mask. You have stated that “it is wrong to infer that someone is a leader in an illegal enterprise simply because of their positioning, and that Paul was shot because he was the nearest and most easily available target.” The inquest report referred to Paul as “the leader.” In reporting the evidence available to me I do not make any judgement as to whether Paul was, or was not, a ringleader in this matter. I am simply reporting the evidence of witnesses.

Constable Galway fired one aimed plastic bullet at Paul who was struck on the forehead, and fell to the ground. Officers ran out and dragged Paul into the bakery grounds. At least five further baton rounds were discharged to disperse the rioters who were advancing towards the bakery.

Paul was taken to Altnagelvin Hospital, Derry, with serious head injuries. He was later transferred to the Royal Victoria Hospital, Belfast where he died 10 days later on 25 April 1981 as a result of his injuries.

The police investigation into the incident in which your son was shot, began on 16 April 1981. The investigating officer was Detective Inspector McFarland. This officer retired from the police service before you made your complaint to me.

The RUC investigation resulted in the transmission of two files to the Director of Public Prosecutions, who stated that there would be no criminal prosecution of the police officers involved. An inquest file was also prepared, and the Coroner, Mr J.H.S. Elliott (now deceased) held an inquest on 10, 13 and 14 December 1982.

The Investigation

I am not permitted to investigate any complaint, which refers to a matter that is more than 12 months old, unless the matter has not previously been investigated, or it had been investigated and there is new evidence, and the matter should be investigated because of the gravity of the matter or the exceptional circumstances. However, I have exercised my powers under Section 6 RUC (Complaints etc) Regulations 2001, and decided to conduct an investigation, because it was clear to me that, despite the fact that there had previously been a police investigation, the matter should be investigated because of the gravity of the matter, and because it had been indicated that there was new evidence which might be available.

This investigation was conducted under Section 56 of the Police (Northern Ireland) Act 1998. The investigator appointed was Mr Andreas McIver. The main task for my investigator was to investigate your complaint, and to identify any '*significant new evidence*', which might amount to criminal misconduct and which was not available to the Director of Public Prosecutions or to the Coroner at the time at which they considered the circumstances of and any responsibility for your son's death.

If no criminal misconduct were identified the investigator must then consider whether there is evidence available indicating that a police officer, who is still serving, had acted in breach of the Discipline Code which was in existence at the time. I am aware that my investigator has informed you that the police officers involved in this case have all retired from the police service prior to you bringing this complaint to my attention. It is not possible to deal with any misconduct by way of disciplinary proceedings once an officer has left the police, as he is no longer subject to any disciplinary process. Disciplinary matters have been investigated, but I can now only make comment on my findings, which I shall discuss below.

The available papers

In considering this allegation I sought any available papers. As stated above, this case has already been before both the Director of Public Prosecutions and the Coroner, and their files were sought for the purposes of the investigation. Other papers, which may have been relevant such as police journals, police note books and other investigation notes are not available, although there were police papers, which were retrieved. It cannot be established exactly how many police officers were involved in the investigation, although two civilian eyewitness statements were taken by two different police officers. Other statements show that additional police officers were involved in ensuring the continuity of evidence recovered from the scene (so that it could be used in any subsequent proceedings) and submitting it to the Northern Ireland Forensic Science Laboratory. There are also statements from officers involved in providing photographic and mapping evidence of the place at which your son was shot.

Examination of the statements recorded by Detective Inspector McFarland show that the only eyewitness statements recorded initially were from police officers at the scene, and from the civilian security guard and the lorry driver. One statement was recorded from an eyewitness who had come out of the premises of North West Amateur Camera Society at 34 Great James Street on being told that there was stoning going on outside and that members should move their cars. It appears that no statements were recorded from any other civilians as to what had happened. Statements were recorded from the crew of the ambulance, which took Paul to hospital, and from the forensic scientist who examined the baton gun.

Both the Investigating officer and his superior officer recommended no prosecution of the officer in June 1981. The Superintendent to whom they reported, stated in his report, on 24 June 1981 that *“by their attitude and conduct the participants evidenced their determination to inflict injury on the*

*police present and to seriously damage property.” He also recommended “No Prosecution”. Finally the Chief Superintendent, to whom the file was submitted, stated that RUC Code 34(19A) were complied with and recommended to Chief Constable Crime,” that *there should be no further action.”**

On 11 December 1981, Detective Inspector McFarland, informed the Detective Chief Inspector that *“it became apparent that there were at least seven persons who witnessed the death of Whitters, who had not previously been interviewed. I had some difficulty obtaining the statements, but eventually on 26/11/81 I received them from the solicitor (Francis T McNicholl) acting on behalf of the deceased’s father.”*

Detective Inspector McFarland went on to say,

“In general all of the additional witnesses agreed that the IP [injured party] was rioting but allege that he could have been captured by the police without the use of the Federal Riot Gun.”

A letter was sent to the Director of Public Prosecutions, which stated that,

“I feel that these statements add nothing to what is already known about the incident but felt that you should be given the opportunity of seeing these before we proceed with the inquest.”

The Director of Public Prosecutions

The Director of Public Prosecutions has considered the matter of murder or manslaughter, and directed ‘no prosecution’ against any police officer, having assessed the evidence on 4 September 1981 and again on 29 July 1982, following the submission of further evidence by Detective Inspector McFarland. I have been advised by the Public Prosecution Service that the Director of Public Prosecutions would have considered the issues of lawful self-defence and reasonable use of force when Detective Inspector

McFarland first submitted a case file, and then on a second occasion when he submitted further evidence obtained from civilian witnesses. Decisions as to prosecution are the responsibility of the Director.

The Coroner

An inquest file was also prepared, and the Coroner, Mr J.H.S. Elliott (now deceased) held an inquest on 10, 13 and 14 December 1982.

His findings are as follows: that there was rioting in support of the Maze Hunger Strike, and that an unsuccessful attempt was made to enter the main entrance to the bakery in William Street. A police Mobile Support Unit consisting of Inspector Boyd and 4 constables went into the bakery. A lorry was delivering supplies to the bakery. The rioters some of whom were masked, approached the lorry. The police inspector gave an order to fire and a constable fired a single baton round at the lead rioter, who was about 18 or 20 yards away and masked.

The Coroner did not refer the matter back to the police or the Director of Public Prosecutions. The Coroner has since died but we were able to access his hand written notes and these have been transcribed to assist my investigation.

Your civil action

You have informed me that you pursued a civil action against the RUC in which there was an out of court settlement, with no admission of liability, by the RUC. Unfortunately there are no records available from either your original solicitor or the PSNI Legal Services about this civil action, as your original solicitor, Mr McNicholl has since died and both his and the PSNI records have been destroyed.

You have informed me that you no longer possess any records about the civil case, however, you have provided me with a statement of what he could recall. Brief details are as follows:

- In September 1983 Father Dennis Faul and Father Raymond Murray were instrumental in taking your case to the United Nations in Geneva;
- The civil action was that your son's right to life had been contravened;
- The action was dismissed on a technicality;
- In 1984 Mr McNicholl pursued a civil action against the RUC on your behalf;
- In 1986 or 1987 the RUC offered to settle the civil action out of court but without any admission of liability;
- Mr Whitters states that you had decided that the only reason for pursuing such an action against the RUC was to obtain funding for an intended application before the European Court of Human Rights. This was the reason why you accepted the settlement offer from the RUC of £17,500;
- Because of your personal circumstances you were not able to take the matter further.

Report by Dr Keith Borer for your civil action

I have established that you instructed your solicitor, Mr McNicholl, to pursue a civil action against the Chief Constable of the RUC. Mr McNicholl then instructed Dr Keith Borer, a scientist and weapons expert based in Durham, England, to conduct tests on the weapon used by Constable Galway and to present his findings in support of your civil action. A copy of the original Report was obtained by my investigator from Dr Borer, who was also

interviewed and produced new evidence, beyond that which was available to the Director of Public Prosecutions and the Coroner.

The retired police officers

The retired police officers connected with this case were invited for interview by my investigator but they have all declined to attend, by communicating with my office through the PSNI. I do not have the power to compel retired police officers to undergo an interview by my investigators unless there are reasonable grounds for arrest, and there is *significant evidence*, which supports those reasonable grounds. You have stated that *“it is difficult to uncover new evidence many years after the fact in particular in a situation where those charged with investigating crime, the RUC covered up crimes committed by their own members.”* I can only assure you that we made every effort to find evidence and that we did in fact obtain fresh evidence in the course of this investigation. That evidence did not, however, give any reason to arrest any officer. It is, of course, the case that it is very difficult to conduct such investigations so many years after an event. We do, however, do all we can.

Following my meeting with you, on 4 July 2006, I wrote again to the original investigating officer, retired Detective Inspector McFarland. I advised Mr McFarland again of your complaint, and referred to his refusal to speak to Mr McIver about the case. I advised Mr McFarland that I had now completed my investigation and that based on the evidence obtained to date, I would state, in my final report, that there were failings in the original police investigation, I would comment about the failures of the investigation, and that I would be stating that he did not assist with my enquiry. Mr McFarland responded to my letter in writing by stating that he had no recall of the actual investigation and requested that I put any questions I had in writing and he would try and assist. My Senior Director of Investigations, Mr Justin Felice, wrote to Mr McFarland explaining in detail the questions to which I would like answers.

Mr McFarland's response was that he felt I was threatening him and he stated he could not answer many of the questions "*as I have no recall of the investigation*". He wrote to the Minister of State complaining that I was threatening him. I replied to his letter stating that "*I wish to place on record that I was issuing no threat to you, but was simply giving you an opportunity to assist my investigation into the shooting to death by police of a young man.*"

Mr McFarland only answered a few of the questions but in a critical manner and very briefly. He ended his response by stating he regretted he could not "*be of further assistance to Mr and Mrs Whitters*" and that he had no desire to frustrate my investigation. I have referred to Mr McFarland's response to some of the questions he did answer, at the relevant points in this letter.

In conducting this investigation I had to take into account the law, policies and practices that were in force at the time of the shooting. The standards against which any officer's conduct in this matter will be judged are the standards of 1981. Any wrongdoing, criminal or disciplinary, must therefore be proved beyond a reasonable doubt.

I also consider it necessary to reflect on the context in which police officers were operating at the time. During April 1981 tensions between the nationalist community and the security forces in Derry were high. Prisoners in the Maze Prison were on hunger strike for political status, and rioting in the city was an almost daily occurrence in support of the prisoners' cause. There is some evidence that police officers, in general, were required to perform long tours of duty, under very dangerous and stressful situations over long periods of time. The workload of detectives was also very high and the resources, support systems and procedures, which are available today, did not exist at that time. This is not to excuse or justify any failure. It is simply to record the fact.

This investigation has been conducted in two phases. The initial review of the police investigation uncovered a number of matters of concern. Those matters were communicated to you and I therefore directed that a small team of investigators be formed to deal with those matters, and to carry out a

thorough independent investigation. This has been a long and difficult investigation, compounded by issues such as: difficulty in tracing witnesses; difficulty in locating, or the destruction of, documents; the fact that the Coroner and your original solicitor have since died; the fact that the Ministry of Defence was very slow in responding to requests for information; and the fact that retired police officers have, for the most part, refused to assist with this investigation.

Before I discuss the outcome of your allegations I would like to share with you the initial matters which caused me some concern, and which were the reasons for directing a more detailed investigation. Mr McIver has already discussed these matters with you in the course of the investigation. These points are as follows:

Point 1

The issue of intent to kill

The question of whether Constable Galway deliberately aimed at Paul's head with the intent to kill him required further investigation. I had to determine whether there was an issue in relation to murder or manslaughter. I shall discuss this in more detail under Allegation 1 below.

Point 2

Minimum force and self-defence

It was necessary to establish whether police could have taken alternative action before firing baton rounds? It was necessary to seek to establish whether the use of baton rounds was necessary and proportionate. I shall discuss this in more detail under Allegation 1 below.

Point 3

The baton round end-cap

Baton rounds caused 17 deaths and many serious injuries over the years in Northern Ireland. We now know that there were “end caps” which were fitted to the baton rounds in use in 1981. A Northern Ireland Forensic Science laboratory scientist told police, in February 1982, that the end cap was designed to allow for the build up of gases immediately before being discharged from the cartridge case. Ideally this metal seal was supposed to drop away from the baton round just after it left the muzzle of the gun. The scientist explained that he had conducted tests and had discovered that certain batches of baton rounds consistently failed to lose their metal seals or end caps. This gave rise to questions about whether the end caps remained with the baton round on discharge, and if so, whether a baton round striking a person, with its end cap still attached, might contribute to serious or fatal injury. I felt that it was essential to establish if the relevant authorities knew this matter, and whether the matter had been appropriately dealt with, to prevent further deaths and serious injuries if that were possible.

I am now satisfied that the police did discuss their concerns about the end-cap with the Ministry of Defence after Paul's death. I do not know whether it was as a consequence of Paul's death, but I have received a copy of a document from the Chemical Defence Establishment, Porton Down, which shows that, in September 1981, a meeting was held involving senior Police, Army and the Chemical Defence Establishment personnel regarding this and other related matters.

The document shows the concerns the police had at the time, that the end cap might stay attached to the round until it hit the person at whom it was fired, thus causing serious or fatal injury. The police were told that the end cap would make no difference to the wounding effect of the baton round. They were also told the probability of a serious or lethal injury being produced by a blow to the head of a baton round was very high, and that the addition of the

end cap would not significantly increase this probability or the extent of the injury. Again I state this simply to inform you of the available evidence.

I have made further enquiries of the Chemical Defence Establishment, who were very slow to respond. This caused delay in this investigation. My investigator has received confirmation from the Chemical Defence Establishment that they do not hold any other material that would support my earlier concern that the authorities were not addressing the issue of the end cap. The Northern Ireland Office also assisted with my enquiry; and they too do not hold any material, which would give cause for further concern.

I am now satisfied that all the relevant authorities were aware of this issue by September 1981.

Initially it appeared that the investigating officer may have failed to provide the Director of Public Prosecutions and the Coroner with all the available evidence in relation to the end cap. . A mark was found by a scientist on Paul's mask. The scientist attributed that mark to the end cap travelling in flight with the baton round, and hitting Paul. During the first stage of the investigation I was concerned that the police had suppressed that statement.

However, further enquiries and access to additional documents now show that this is not the case. I am now satisfied that both the Director of Public Prosecutions and the Coroner were provided with all the available evidence regarding that statement.

I also noted that the autopsy report does not make any reference to any marks attributable to an end cap, nor does it give any opinion other than the injuries *were consistent with his having been struck on the forehead by a plastic bullet*". Attempts were made to obtain Paul's original hospital records for further examination, but I was informed all hospital records have since been destroyed. Dr Borer's report contains extracts from some medical reports by Mr Fannin, Dr Press and Dr Walton.

Point 4

The baton gun and the baton round

From documentation recovered I have found that, in October 1971, a joint Army/RUC Committee recommended that a suitable riot gun should be acquired by the RUC, and in October 1978 the Webley Schermuly riot gun was procured.

It is a smooth-bore gun which fires 25-grain PVC baton rounds one and a half inches in diameter. This baton round was tested prior to its introduction by the Chemical Defence Establishment, Porton Down, to ensure that the rules governing its use were such as to minimise the risk of injury.

This baton round has an effective range of 30-50 metres and Force regulations at the time prohibited it from being fired at less than 20 metres, unless the safety of police or others was seriously threatened. This restriction was imposed to prevent serious injury or loss of life. The document, which was dated October 1981, stated that it should be recognised, however, that fatal injuries could still occur at ranges up to 40 metres. The document also refers to a more powerful baton round which was being used by the Army at the time, but had not been issued to the RUC.

The governing principle in the use of the riot gun is that it was a defensive, and not an offensive, weapon. It was to be used in public order situations to protect the lives of police officers or members of the public and to defend property. The document goes on to state, *"its effectiveness in this role can be judged by the very small number of police casualties during the present emergency"*. The document does not make any reference to the number of civilian deaths and serious injuries.

The riot gun is a firearm within the meaning of the Firearms Act and its use should have been subject to rigid control in compliance with the RUC Code and a Force Order.

The RUC Force Orders for use of baton gun

Regulations concerning the use of baton guns were in existence at the time. They do not specify whether the round can be used to protect property.

The main points of those Regulations were as follows:

- The only limitation on use was that *“they should not be fired at a range of less than 20 metres unless the safety of policemen or others is seriously threatened. Severe injury may be inflicted if the baton round is fired at less than 20 metres.”*
- The senior officer on the ground was responsible for authorising the use of a baton gun.
- Baton rounds should only have been fired after a verbal warning had been given by the senior officer using a trans-hailer or PA system.
- Rounds had to be fired at selected persons; not indiscriminately.
- Aim had to be at the lower part of the person’s legs and never at the head or neck.

It was necessary to examine the extent of police compliance with these rules on 15 April 1981.

THE FINDINGS OF THE INVESTIGATION

Allegation 1

That a police officer murdered your son. They could have tried to arrest Paul instead of firing a baton round.

1. The evidence in relation to the incident at the bakery and the requirements of the RUC Force order on the use of baton guns

In order to consider the allegation that a police officer murdered your son, Mr McIver reviewed all the material, which is now available. That included all the evidence available to the Director of Public Prosecutions and the Coroner, (both civilian and security force) as well as new evidence provided by Dr Borer and others. The evidence is as follows:

- There had been a riot and rioters had been attempting to gain entry to the front of the bakery in William Street since 4.30 pm, according to the security guard. Police had been called to the bakery. They took up a position inside the loading bay area. It has not been possible to establish at what time they arrived.
- Some of those present (a number varyingly described as being from 3 to 25) made their way around to the back of the bakery at Great James Street at some time after 8.15 pm. One of those present, who was involved in the riot, puts the number at 10-15. The Security Guard describes "*twelve youths*"
- The lorry was parked by the driver on the footpath facing down towards Strand Road. It was 50 feet long.
- There were five police officers at the scene of the shooting, four constables and an Inspector Boyd. It appears that the other four were behind Constable Galway, who described himself as being in the gateway at the bakery, but not out on the street.
- Both civilian and police witnesses give evidence that the youths were involved in stone throwing on Great James Street.

- There is conflicting evidence in relation to whether the lorry was present in Great James Street at the time when Paul was shot. Inspector Boyd gave the protection of the lorry from hi-jacking as the reason for his giving the order to Constable Galway to shoot his baton gun at Paul. It has been argued that the lorry was not present at the time of the shooting and it could not, therefore, have been hi-jacked, and hence the police had no cause to take the action, which they did take.
- The Security Guard said that he told police that the rioters intended to hi-jack the delivery lorry. The lorry driver gave evidence to the inquest that he "*heard them saying "hi-jack"*". It is not clear when the lorry left the scene.
 - The security guard said in his statement the lorry was driven away "*after the police had moved out.*" He stated at the inquest the lorry was still there after the shooting but changed his mind saying the lorry was driven away before the shooting;
 - The four police constables all stated that the youths were at the lorry;
 - Inspector Boyd indicated that the lorry was at the scene. He stated at inquest that it remained there until he instructed the driver to move it after the shooting;
 - The lorry driver says that he started to drive away and heard police challenging the crowd, although he did not hear what was said. He told the coroner that he could not see police as he was climbing into the lorry but he heard a bang and then he drove off. He stated that there were 4 youths at the lorry. He ended his evidence by stating, "*It would be wrong to say I had gone when the shots were fired*". The lorry driver was also interviewed by my investigator and could not add anything to his original statement;
 - Three civilian eyewitnesses stated that the lorry driver drove away before the police appeared.

- It is the case however that Inspector Boyd has stated that his sole reason for instructing Constable Galway to fire at Paul was to protect the lorry.
- Inspector Boyd also acknowledged in his evidence that *“I did not know if there were any rioters at it [the lorry] and I could only see the rear offside of the lorry. I could not put my head out of the door without putting myself in grave danger. It was danger to the lorry, not to any person, that made me regard the situation as urgent. I had to consider the location of the people and if I had delayed the rioters might have come too close to be fired on. I was afraid we might be overcome as I had a very small force at my disposal. That was not my main consideration as we could have closed the door. Had the lorry not been there I would simply have closed the gates and sent for reinforcements.”*

On the basis of this evidence Inspector Boyd’s sole concern was to protect the lorry. The use of the baton gun for that purpose was not permissible at a distance of less than 20 metres. There is no evidence to suggest that Paul intended to hi-jack the lorry and hence I can see no justification for the decision to fire the plastic baton round at him.

2. The evidence in relation to the distance between Constable Galway and your son

- Paul and a group of youths were engaged in the rioting in Great James Street. There is significant difference in witness accounts as to how far Paul was from Constable Galway when the shot which killed him was fired:
- Seven civilian eyewitnesses state that Paul was at distances varying from 3.3 yards (the smallest distance) to 13.3 yards (the greatest distance) from Constable Galway when he was shot. One witness, who

gave evidence for you at the inquest, showed my investigator where, he said, Paul was standing. The distance between this location and the gate at which Constable Galway appeared was measured at 40 feet (or 13.3 yards). The individual who was involved in the rioting, and who has given us a statement, has said that he thought that Paul was between 7 and 10 metres from the gate. Several witnesses state that Paul was in the middle of the road.

- Police witnesses state that he was between 20-25 yards and 20 metres away. One officer, Constable Henderson, stated that the rioters had been 5-6 yards away from doorway but had moved back before the shot was fired.
- Dr Borer's evidence is of great importance to this case. He produces colour photographs and describes the street layout of Great James Street. He refers to the distance from the bakery door to the wall of the house opposite as being 19.5 metres. He also provides colour photographs of the bakery doors and describes a 'long tunnel' behind those doors. He states, "*this would tend to make distances outside seem greater to a person moving up this passage*".
- He refers to the conflicting accounts given, regarding the range at which the shot was fired, and whether or not Constable Galway was within or outside the bakery door when he fired. He refers to Constable Galway stating that Paul was in the middle of the road when he fired; Dr Borer has calculated that range as 10.7 metres. He compares this with the ranges given by the civilian witnesses as being 7-10 metres. He concludes the range being between 7-12 metres and states, "*it could not have been as high as 20 metres*".
- Constable Galway made two statements as to where Paul was standing – in his first statement dated 15 April 1981, he stated that "*there were "20-25 youths at the lorry, some of whom were masked...I picked the lead rioter and aimed one shot at the lower part of his body."*"

In his second statement he stated that Paul *“was on the Francis Street end of Great James Street which was a position on an incline above the bakery gateway.”*

- Constable Galway also states that, apart from the Inspector and two named colleagues, *a number of other policemen were 3/4 feet behind us in the gateway.”*
- Constable Henderson states that he saw *“20-25 youths at the lorry”* among whom was Paul.
- Constable Carson stated that *“the lorry was parked on the right as you looked out of the gate”*. He further states that the youths *“were on my left and across the road.”*
- Constable Sayers stated that *“the rear of the lorry was very close to the rear gate”*
- Inspector Boyd stated that he saw *“15-20 rioters approaching the premises from the direction of Lower Road. They were throwing missiles which were striking the front of Stevenson’s premises [the bakery] and the articulated lorry. He stated at inquest that “the lorry was parked adjacent to the footpath.... the rear of the lorry was level with the entrance to the bakery and the 15-20 people were at the other side of the entrance. They were not around the lorry..”*
- Paul was described by one eyewitness as falling *“in front of the doorway of McDowell and Duncan’s”*. He was described by a number of eyewitnesses as throwing stones at the window of McDowell and Duncan’s, which was beside the bakery. He was described by the security guard as coming to McDowell and Duncan’s shop and stopping there.

- The verdict at the inquest contained the following words, “...*the Inspector, who gave a warning, which may have been inaudible...*” and “...*the leader...who was about 18 to 20 yards away...*”. You have stated to me that the inquest finding on this crucial point was wrong.”

There is a significant disparity between the police evidence and the civilian witness evidence. I have concluded, in the light of all the evidence that Paul could not have been 20 metres from police when he was shot. The shooting of the Federal Riot Gun was not therefore in accordance with RUC rules requiring that the gun should not be fired at distances of less than 20 metres unless the safety of a policeman or others was seriously threatened.

3. The evidence as to whether the safety of a policeman or others was seriously threatened.

- There is no evidence to suggest that any policeman was seriously threatened at the time at which Paul was shot. All the officers were inside the gate, until the moment when Constable Galway came through the gate and shot Paul. No one else was identified as being at risk of any serious injury.
- Inspector Boyd stated that he was acting on information he received from the security guard. Inspector Boyd’s evidence is that it was, “...*danger to the lorry and not to any person that made me regard the situation as urgent...*”. He said he saw rioters outside, some of whom were throwing stones; he had reason to believe the rioters were intent on stealing the lorry. The security guard stated in his statement to the inquest that he “*told police that a crowd was trying to take the lorry.*” Inspector Boyd stated that he saw that Paul was ahead of the other rioters and was about to throw something. Police stated that they believed there were rioters at or near the lorry. They also believed a criminal act was taking place and there was reasonable grounds to

believe a further criminal act of theft of the lorry was about to take place.

- In addition, Constable Galway gave evidence that Paul *“was about to throw something in my direction”*. Civilian eyewitnesses provide varying accounts of the incident. One stated at the inquest, *“...there may have been people throwing there...”* Another eye-witness said Paul was *“...bending down to pick up a stone and straightened up when the small gate to the bakery burst open...”*
- Nobody else was reported to be injured on this occasion.

There is no evidence, therefore, to support any contention that the safety of police or others was seriously threatened.

4. The evidence in relation to the use of the baton gun by Constable Galway on the instruction of the senior officer present

- The gun used by Constable Galway was a Webley Schermuly riot gun (known by police as a “Federal Riot Gun.”) He was instructed by Inspector Boyd to fire at Paul and did so.

It is therefore clear that the baton gun was used on the instruction of the senior officer present as required by the RUC Force Order.

5. The evidence in relation to the giving of a verbal warning by the senior officer, using a trans-hailer or PA system.

- Inspector Boyd stated he did give a verbal warning to the rioters, but admitted that it was possible it had not been heard because of the noise. Inspector Boyd said he did not have time to get his loudhailer from his vehicle. The lorry driver stated he heard police shouting but could not hear what was being said before the shot was fired. Inspector Boyd admitted at the inquest that, *“the regulations were not observed*

but they were observed as well as I could observe them in the circumstances”.

- No other witness has stated that they heard any warning.

I have therefore concluded that the requirement that a verbal warning should have been given by the senior officer using a trans-hailer or PA system was not complied with.

6. The evidence in relation to whether the round was fired at a selected person, not indiscriminately.

- Constable Galway stated that on the instruction of the Inspector, he aimed one shot at Paul. The Inspector stated that he instructed the Constable to fire at Paul.

I have concluded that the shot which caused Paul’s death was not fired indiscriminately, but was fired at Paul.

7. The evidence in relation to whether Constable Galway aimed at the lower part of Paul’s legs and not at his head or neck.

- This is probably the most difficult evidence to assess. Constable Galway stated that he *“aimed one shot at the lower part of his body.”* Paul was shot in the forehead.
- There is different evidence from different witnesses, both civilian and police. The evidence suggests that Paul had either just thrown a stone at the police or was in the act of so doing (the police version). The police witnesses describe him as being upright. He may, however, have been stooping or coming up from that position at the moment he was shot. A number of civilian witnesses describe him as either in the process of bending down or standing back up.

- Constable Galway's evidence is that Paul "*was about to throw something in my direction*". Civilian eyewitnesses provide varying accounts of the incident. One civilian witness stated at the inquest, "*...there may have been people throwing there...*" Another civilian witness stated that Paul was "*...bending down to pick up a stone and straightened up when the small gate to the bakery burst open...*"
- There is conflicting evidence in relation to whether there was any defect in the gun, which may have caused it to misfire.
- On 16 April 1981 the Northern Ireland Forensic Science Laboratory received from police a spent baton round, a spent baton case and a baton gun from which the baton round had been discharged. It was examined by a firearms expert and he stated that he found it to be "*in good condition and I found no defects in its sighting arrangements or its firing mechanism. At test it functioned correctly.*"
- It is not known where the baton gun was stored between April 1981 and August 1985. It is not possible therefore to state categorically that there is a proper audit trail on the weapon, which was subsequently examined on 14 August 1985.
- However, Dr Borer, who acted as your expert witness in this matter, states that on 14 August 1985 he carried out a test firing of Constable Galway's weapon on an open RUC range. He fired a total of 35 shots, in groups of five, using a new target for each set. His point of aim was always in the middle of the target. The tests conducted by Dr Borer were described by him as being different from those carried out by the scientist in 1981.
- Dr Borer states that not a single shot went beneath the aiming point. His results were that the majority of his shots fired high and to the right and he provides an average that "*the rounds hit 20 inches high*".

- Dr Borer discusses why Paul was hit on the head. He states:
 - He considers it unlikely that Constable Galway aimed at Paul's head.
 - The head is a small target compared with the body and for this reason is rarely the target of choice.
 - The test showed that Constable Galway's riot gun fired high by around 20 inches at 15 yards.
 - He states baton rounds are quite consistent in propellant and velocity. Because of their design riot guns of that pattern will tend to fire high at ranges up to 25 yards.
 - He ends his report by stating, *"From the above I would argue that it was foreseeable that*
 - a) *a baton round if fired at someone standing close could hit them on the head,*
 - b) *a hit square on the head of a normal person could result in serious injury or death"*.
 - He concludes that Paul *"was hit square on the forehead when he was erect."*
- If Dr Borer is correct in his report, had Constable Galway deliberately aimed for Paul's head, then that single shot would have missed and Paul would not have been struck in the head.
- If Dr Borer's evidence is correct, it tends to show that Constable Galway told the truth regarding his point of aim, (at the lower part of the body) but tragically the shot went high and struck Paul in the head.

- At no point did Constable Galway say that he aimed at Paul's lower legs – he said that he “*aimed at the lower part of his body*”. There is no other eyewitness evidence in relation to where Constable Galway aimed his gun.
- My investigator, Mr McIver, spoke to Dr Borer on the telephone about this matter. His first comment when asked about his report was, “...*the police officer is innocent...*”. Mr McIver visited Dr Borer in England to conduct an interview and take possession of the original report, which Dr Borer still retained. During this interview Dr Borer referred to the telephone conversation stating he should not have made the comment about the police officer being innocent. He did say however that the officer was not to know the weapon fired high, and the officer was not to blame. He declined to include this in his statement, but my investigator has recorded both the telephone conversation and interview in his own statement. Dr Borer stated he travelled to Northern Ireland where he visited the scene, obtained copies of statements and photographs and conducted official test firing of the weapon.

I have therefore concluded that it cannot be proved beyond a reasonable doubt, (and this is the standard of proof which is required in such cases), that Constable Galway fired the gun at Paul's head, in contravention of the RUC Policy. He himself states that he fired the gun at “*the lower part of his body,*” he does not say that he aimed at Paul's lower legs. He was never questioned about what he meant by his statement about “*the lower part of his body.*”

Dr Borer's evidence, combined with the evidence of eyewitnesses that Paul had been stooping down and standing up again, does introduce a reasonable doubt as to whether Constable Galway fired at Paul's head.

Nevertheless, on the basis of the photographs, the physical examination of the scene, the various witness statements and Dr Borer's evidence I have concluded that whilst it is not possible to say how far Paul was from the officer when he was shot, it is clear that he was nearer to the officer than 20 metres and that there was no serious threat to the safety of anyone at the time when he was shot. He was also shot in the head. The shooting was therefore clearly not consistent with the RUC rules.

Is there new evidence to show that Paul was murdered?

- The law requires that in order to prove murder, the court must be satisfied that the intent to unlawfully kill another human being or cause grievous bodily harm existed. A person does not commit murder, if on the facts, as he believes them, his use of force is reasonable to prevent crime, effect an arrest or in self-defence.
- The Director of Public Prosecutions had all the evidence to which I have alluded above on the second occasion on which he directed on this case, with the exception of the statement of the young man who was himself involved in the riot. His statement was consistent with that of other civilian witnesses. The Director had seen the statements of the civilian witnesses who came forward after the initial investigation. The most significant elements of their evidence are in relation to the distance between Paul and Constable Galway when Constable Galway fired, and the evidence as to the level of rioting, which was taking place. The Director has already considered this evidence.
- I have not found any '*significant new evidence*', in relation to either murder or manslaughter, which was not already available to the Director or the Coroner at the time, and which would warrant a new criminal investigation today. There is no new evidence, which proves that Constable Galway murdered your son. On the other hand Dr

Borer's evidence, (which was not available to the DPP or Coroner), and all of the other available evidence, tends to suggest that Constable Galway did not deliberately aim for Paul's head.

- The evidence is that Constable Galway intended to shoot Paul with his baton gun, which would, at the very least, have inflicted an injury. The evidence indicates that Paul was not at a distance in excess of 20 metres as required by police regulations. Police were armed with personal protection weapons, at least two baton guns and batons. Constable Galway stated in his statements that he fired as he did because he was ordered to do so by Inspector Boyd.
- The Director knew that this was the reason why he fired. He knew that, on the available evidence Constable Galway fired at Paul as soon as he came through the gate, without stopping to consider any alternative action. Inspector Boyd, having ordered Constable Galway to fire, did not re-consider the matter and did not even take the time to get a loudhailer to warn the youths, audibly, that baton rounds would be fired. No alternative action was considered, and the sole purpose of firing the baton gun was to prevent the hi-jack of the lorry, which was parked immediately outside the bakery gates through which the police came to fire the fatal shot. There is no evidence that Paul was intending to hi-jack the lorry. The only evidence is that he had been throwing stones. Inspector Boyd admitted at inquest that he could simply have withdrawn and shut the gates. The lorry driver was able to drive away as the shots were fired. There is no new significant evidence, which was not available at the time of the second Direction by the Director of Public Prosecutions.

CONCLUSION

I conclude that this element of this complaint is not substantiated in that there is no new evidence that Constable Galway murdered your son, and the Director of Public Prosecutions has directed that on the existing evidence there will be no prosecution.

However, the use of the baton gun in these circumstances was not in accordance with RUC rules, in that there is no evidence to support any contention that the safety of police or others was seriously threatened, the gun was used at a range of less than 20 metres, and no verbal warning was given by the senior officer, using a trans-hailer or PA system. It is my view that it was wrong and unjustifiable to fire a baton gun at Paul in this way, on this occasion, given the known risk of the use of plastic baton rounds, and the fact that he was within 20 metres of the officer who fired the gun, was unarmed and was throwing stones.

Police have not made any statement that they attempted to consider alternative tactics, such as the arrest of one or more of the rioters. All the evidence indicates that the only information they had was from the security guard who had stated that the youths were going to hi-jack the lorry. They did not take any time to consider the matter or to verify what they had been told. There is no evidence of any damage to the lorry, and no evidence of any other damage than a couple of broken windows. Nobody, other than Paul was injured during the incident. There is no evidence that he had any intention to hi-jack the lorry.

I therefore substantiate the element of your complaint that police did not attempt to arrest Paul, and find that they should have considered other options before resorting to the use of the baton gun.

Allegation 2

Police failed to conduct a proper investigation into your son's death

The evidence

- Detective Inspector McFarland was the investigating officer in this case. He has declined to be interviewed although he has corresponded with me in writing. There are no grounds to interview this ex-officer for misconduct, and as I cannot compel Mr McFarland to be interviewed for any disciplinary matters I can only make comment based on the available evidence.
- Great James Street is a long road that gradually slopes down towards the junction with Strand Road. This was, and still is, an area of small business premises and residential accommodation. Directly opposite the rear entrance of the bakery is a row of terraced houses.
- It was clear from the beginning of the investigation that there would have been eyewitnesses to the riot, and to the shooting of your son. Detective Inspector McFarland should have noted that the lorry driver's statement referred to "...people at their door..." This should have alerted Detective Inspector McFarland to the possibility of there being civilian eyewitnesses.
- Detective Inspector McFarland only received statements as to shooting of Paul from the police officers at the scene, the security man and the lorry driver. There is no evidence that any officer was interviewed by him, nor were the security guard or the lorry driver. The first two statements prepared by Constable Galway were not taken by any other officer. The third statement was taken by Detective Inspector Martindale following his interview of Constable Galway on 22 February 1982. During the inquest Detective Inspector Martindale stated that he had not read the civilian statements and his interview of Constable

Galway was not, therefore informed by their content. They are all witness statements and there is no evidence that Constable Galway was cautioned in relation to his evidence although he does acknowledge that he will be liable to prosecution if he has wilfully stated anything which he knows to be false or does not believe to be true.

- Detective Inspector McFarland stated at the inquest that he was satisfied he had the full story and admitted he did not think it necessary to make local enquiries of the neighbouring houses. He did not give a valid reason why he failed to do this. He also stated that he thought he had made a press appeal but would have to check. We have researched this point and cannot find any evidence of a press appeal. There are no other documents on this subject.
- Detective Inspector McFarland submitted his first report to the Director of Public Prosecutions based only on the evidence and statements he had obtained. The Director of Public Prosecutions directed 'no prosecution'.
- Detective Inspector McFarland was later made aware that there were several eyewitnesses who had already made statements to your solicitor. This was not through his own efforts, rather as a result of a pamphlet written by Father Denis Faul and Father Raymond Murray who reproduced extracts of those eyewitness accounts. Detective Inspector McFarland did obtain copies of those statements from your solicitor and submitted them to his superior officer on 11 December 1981. Since Mr McNicholl, the solicitor, is dead it has not been possible to question him about the circumstances in which these statements were taken or about his views in relation to the matter.
- They were submitted by a Superintendent from RUC Complaints and Discipline Branch to the Director of Public Prosecutions on 8 January 1982 with a statement that, *"I feel that these statements add nothing to*

what is already known about the incident but felt you should be given the opportunity of seeing these statements before we proceed with the inquest.” The Director of Public Prosecutions again directed ‘no prosecution’.

- There is no evidence that Detective Inspector McFarland explored those statements further, nor is there any evidence that he put the content of the statements to the officers, that he continued with the investigation to test those civilian statements, or that he re-visited the scene to check on positions and distances. He seems to have made no comparison of the differing accounts of all the witnesses. He does comment in a report that he did approach those witnesses, but he states they did not want to speak to him and he felt this was because they were afraid there might be inconsistencies in their accounts. It is not clear why he says this. There is nothing in the papers to justify such a statement.
- Those witnesses have provided me with statements, which state that at no time did the police approach them. However, I do note that there is no evidence that the Director of Public Prosecutions gave any further directions to the Investigating Officer before making his second decision.
- Mr McFarland’s general response to the many questions put to him about this matter was that he could not recall the investigation.
- I have taken into account the situation at the time and the possibility of there being difficulties in conducting local enquiries for eyewitnesses in that particular part of Derry. However, it is clear that Detective Inspector McFarland felt he had “*the full story*” without first trying to identify all available witnesses to the incident. Detective Inspector McFarland had a duty to fully investigate this incident to search for the truth, to gather all the available evidence, to test it and then present the

full facts to the DPP and to the Coroner. Detective Inspector McFarland failed to trace all available witnesses.

- Detective Inspector McFarland reported to his managers the outcome of the inquest. He observed that Inspector Boyd admitted that the Regulations on Use of Baton Guns were not observed with regard to the range within which the gun should not have been fired unless there was serious threat to anybody's safety, and that the warning may not have been heard. He also gave a summary of the evidence given by each witness.
- DI McFarland did not make any disciplinary recommendations in respect of the matter. Mr McFarland has stated that this was not in his remit as his role was purely to conduct a criminal investigation. He stated that RUC Complaints and Discipline Branch would have dealt with this particular aspect and that they would have prepared a file. I have not identified any material from the police to show that the matter was referred by Complaints and Discipline Branch for disciplinary investigation, or that there was any consideration of any disciplinary action against any officer.
- The reports submitted by Detective Inspector McFarland were considered by a Detective Chief Inspector, the Superintendent and Sub-Divisional Commander of Strand Road, and the Divisional Commander for the area. Each of these officers simply endorsed the view of the officer who had previously received the file. Inspector McFarland concluded his Report by saying that "*There is evidence to show that the IP [injured party] was a very active rioter*" and "*that Inspector Boyd was justified in ordering the use of the Federal Riot Gun and Constable Galway carried out the order in a proper and lawful way.*" The Superintendent in Strand Road stated that "*the participants evidenced their determination to inflict injury on the police present and to seriously damage property.*" He described the incident as "a

determined and vicious riot.” There is no evidence that any of Mr McFarland’s superiors sought to question his report in any way.

- The failure by police to carry out a proper investigation does not, in itself, constitute new evidence, which would assist in the investigation of the death of your son. It would give cause for disciplinary investigation but the officers have now retired and this is not possible.

Conclusion

- **In the absence of an account from Detective Inspector McFarland, and based on the evidence obtained from the files gathered, together with the statements obtained as part of my investigation, I conclude that this allegation is substantiated.**

Allegation 3

That police officers failed to keep you updated about the progress of the investigation

The evidence

- I have taken into account that the issue of keeping bereaved families updated on police investigations is considered as good practice today, and that this was not the case in 1981. However, it was perfectly reasonable for a family, who found themselves in this situation to expect some form of contact from the police explaining what happened and how the investigation was progressing.
- You have stated to me that no officer spoke to you whilst Paul was in Altnagelvin Hospital. No officer was present or spoke to you at the Royal Victoria Hospital when Paul was transferred there or when he died. When you returned home to Derry you received a phone call from

police asking a family member to go to Belfast and identify Paul's body. This caused great distress to all your family.

- The next contact which you had with police was when Detective Inspector McFarland called to your home to return Paul's bloodstained clothes during the Christmas holidays. Mr Whitters recalls Detective Inspector McFarland "*smirking when he handed the bloody package over.*"
- Mr McFarland has stated he does not have any journals or notes relating to his original investigation and I cannot find any evidence, in a statement, report or note, which would indicate that he made any effort to contact you or keep you informed on the investigation, even on an irregular basis.

Conclusion

This allegation is substantiated.

Allegation 4

That police officers failed to tell the truth

The evidence

- All the police officers deployed to the bakery provided written statements, which were passed to the Director of Public Prosecutions and to the Coroner. All those police officers other than Constable Galway gave evidence at the inquest. Under the law at the time Constable Galway was entitled not to appear at the inquest. His statements were read out in court.

- All civilian witnesses provided written statements; a number of them also gave evidence at the inquest. These witnesses state the lorry had been driven away before the shot was fired at Paul. The police, in contrast, state the lorry was still outside the bakery at the time of the shooting.
- When giving oral evidence the security guard initially stated that the lorry was still there after the shooting but then changed his mind and said that the shooting took place after the lorry had driven away. Meanwhile the lorry driver was certain that he heard the shots as he was getting into the lorry before driving away.
- There were further conflicting accounts between the police and civilian eyewitness evidence regarding numbers, and locations of various individuals.
- All of these conflicting accounts were made available to the Coroner and jury whilst listening to the evidence during the inquest. The Coroner did not give any instructions to the relevant authorities regarding any witness, police or civilian, whom he suspected of telling lies.
- The Coroner told the jury there were five vital points to consider in the case:
 - How many youths were involved in the disturbance?
 - Did the police believe the lorry at the bakery was going to be hijacked?
 - Was the lorry driven off before or after the boy was shot?
 - Was the regulation warning given and was it possible that people had not heard it?
 - At what range was the fatal plastic bullet fired?
- All the evidence suggests that the officers came from the bakery towards the street and that the shot was fired immediately. There is no

suggestion by any witness that police were on the street in the minutes before the shot was fired.

- I am cognisant of the fact that the police officers all gave evidence that the shot was fired at a range of at least 20 metres, whilst all the other evidence shows that this cannot have been the case. I am aware that the officers would have known that the baton round should not have been fired at a distance of less than 20 metres in the circumstances described by Inspector Boyd. However it is not possible to state categorically that these officers lied, particularly given the evidence of the difficulty of calculating distances which was reported to be described by the Coroner and by Dr Borer, who stated in his report that the *“long tunnel [through which Inspector Boyd and his colleagues approached Great James Street} would tend to make distances outside seem greater to a person moving up this passage.”*
- I have also noted that Detective Inspector McFarland stated in his report of 11 December 1981 that he spoke to each of the seven persons who witnessed Paul's death and that they declined to make further statements to him but stated that the wording of their existing statements is true. Those people have given me statements, and six of them state definitively that they were not approached by police, interviewed or asked to make further statements. The seventh individual states that he cannot remember being asked to make any further statement. I can find no evidence that Mr McFarland did speak to them.

Conclusion

- **I have noted the various discrepancies in the witness accounts, which I have already commented upon in the previous paragraphs. You have complained that the officers lied in their statements and/or their evidence to the inquest into Paul's death.**

I do not accept that there is evidence that police officers were lying in these matters.

- **However I have compelling evidence from six eye-witnesses that they were not approached or interviewed by Detective Inspector McFarland, and there is no evidence to cast any doubt on that testimony. Accordingly I substantiate this part of the allegation on the basis that there is no evidence that Detective Inspector McFarland sought to interview the six individuals, although he said that he did, and that he said that the reason that they would not give further statements was that there might be inconsistencies in their statements. There is no evidence to support this.**

CONCLUDING OBSERVATIONS

Your very serious allegation of murder has been carefully assessed and considered. I have considered also the report by Lord Gifford QC in which Paul's death was described as "*a murder for which I can see no possible defence.*" My investigator spoke to Lord Gifford about this matter. Lord Gifford explained to Mr McIver that he had visited the scene, that he had spoken to witnesses, that he had taken notes not statements, he had no material from his enquiry, he did not attend the inquest, and he had no contact with the police. He accepted that his investigation was not complete.

The evidence, ultimately including the statements taken by Mr McNicholl, was put before the Director of Public Prosecutions to consider any criminal prosecution. The DPP directed 'no prosecution' on two occasions. The Coroner did not refer the matter to the authorities for further investigation. Both the Coroner and the Director had access to all the statements and would have been able to direct further investigation. They did not do so.

At our meeting on 12 January 2006 Mr Paul O'Connor raised the issue of the Director of Public Prosecutions now considering charges of Grievous Bodily Harm. I have now considered this matter, and consulted the Public Prosecution Service, and it is my understanding that the Director of Public Prosecutions would have considered all criminal offences, and does not consider it appropriate to re-open the matter.

I have submitted to the Director the additional evidence in the form of Dr Borer's Report and a statement, which he made to us together with a statement by my Investigator, Mr McIver, The Director has now responded as follows:

"I requested that a review of prosecution decisions in this case be carried out in accordance with Paragraph 4.11 of the Code for Prosecutors. This has now been completed. I write to inform you that it has been concluded that the original direction for no prosecution which issued on 4 February 1982 and which was confirmed in a further direction dated 29 July 1982 should stand."

It is my view that a number of officers involved in this case have acted in a manner which I consider to have been disproportionate and wrong. Whilst the action in firing the gun would not satisfy the Human Rights Law test of proportionality or indeed necessity, the evidence however does not support the allegation of murder. There is no evidence that Inspector Boyd acted in a professional manner when told about the situation in Great James Street. It was his actions, which caused Constable Galway to fire his gun. It was that action which killed your son. Inspector McFarland did not conduct a proper investigation and his superior officers made no apparent attempt to ensure that he did so.

Although I have substantiated most of your allegations I am not able to take the matter any further. My powers do not allow me to recommend disciplinary proceedings because the police officers concerned have now retired from the police service.

If you have any queries in relation to this matter please do not hesitate to contact me when you have had an opportunity to think about it.

Yours sincerely

NUALA O'LOAN (Mrs)
POLICE OMBUDSMAN FOR NORTHERN IRELAND