

PATRICK FINUCANE INQUIRY

OPENING REMARKS ON BEHALF OF THE FINUCANE FAMILY

Preliminary Hearing: 10 June 2026

By way of opening remarks, the following matters will be addressed on behalf of the Finucane family (the 'Family') at the first preliminary hearing: [I] COLLUSION [II] ACCOUNTABILITY [III] RIGHTS [IV] DEMOCRACY.

I: COLLUSION

1. STATE SPONSORED MURDER: The execution of Patrick Finucane on 12 February 1989 in front of his family was a state sponsored murder. Two gunmen burst into the Finucane home and violently confronted the family who were eating their Sunday dinner. They fired 14 times at Patrick at close range with the intention to kill him. Geraldine Finucane was injured by a bullet hitting her leg. The gunmen narrowly avoided killing the children. Michael was 17. Katherine was 12. John was 8. Those who organised and carried out the murder included British State agents in the Ulster Defence Association ('UDA'). They were to varying degrees employees, surrogates and assets of the Ministry of Defence ('MOD'), the Special Branch of the Royal Ulster Constabulary ('RUC SB'), or both. The UDA was known by these agents' handlers to be conspiring to kill Patrick Finucane, other lawyers, and other people in the Catholic nationalist community whom they called 'legitimate' targets. Brian Nelson profiled Patrick as the target. William Stobie supplied the guns. Ken Barrett told the Special Branch that he carried out the killing in 1991. They were all members of the UDA. Tommy Lyttle and Brian Nelson were parts of its chain of command. They saw themselves as collaborating with the security forces to defeat the republican enemy rather than informing on their loyalist comrades and enjoyed State enabled impunity for doing so. For their part, the security forces gave them both protection and assistance, before and after the murder, and more generally they helped to create an ideological climate in which the targeting of civil rights lawyers was accepted as a legitimate aim of counterterrorism.
2. SYSTEM: The symbiotic relationship that produced the Finucane murder was part of a pre-existing widespread and systematic practice that stretched back into the 1970s, which successive UK Governments allowed to exist with "*wilful and abject failure*" to subject it to legal framework, monitoring or serious censure.¹ There was extensive passage of information from the security forces to the UDA and failure to act on prior intelligence. When murders occurred, information was deliberately withheld from police investigations;

¹ Report of the Patrick Finucane Review (2012) ('De Silva Review') [§§26, 35, 37]

and in subsequent decades there was obstruction of justice. Although other agencies were involved, the operation of the system primarily located in three covert agencies. In the army there was the Force Research Unit ('FRU') whose existence was the subject of restraining injunctions when first written about by Liam Clarke and the FRU's ex-member, Martin Ingram, in 1999.² There was the RUC SB, which had historically enjoyed the status and power of an organisation within an organisation.³ The Security Service ('MI5') played its role before 1989 when its existence was not officially admitted and its conduct before had no statutory basis. The Review conducted by Sir Desmond De Silva is the only investigation to date to have begun to explore what and when Government, and the Law Officers were told, and the extent to which Ministers and their civil servants failed to make reasonable enquiries, but as the UK Supreme Court ruled in 2019, De Silva's review did not have the power to compel the attendance of witnesses; and unlike this Inquiry, those witnesses who consented to meet with De Silva "*were not subject to testing by way [of] challenging probes as to the veracity and accuracy of their evidence*".⁴ The issue, yet to be determined by way of a human rights compliant inquiry (see [13ff] below), is the full extent to which the political, military and intelligence chain of command enabled the misfeasance of collusion to generate and thereafter become complicit in its concealment.

3. COLLUSION: There is no single, statutory or judicially settled definition of 'collusion' in Northern Ireland, but there were two defining arrangements of the state practices that were responsible for Patrick Finucane's murder that should never be overlooked, because, at the very least, they implied (as Lord Stevens concluded) that the State indeed sanctioned killings.⁵ First, men like Brian Nelson and Ken Barrett who conspired to murder Patrick Finucane were deliberately inserted or otherwise allowed to remain in the UDA, not to prevent crime; but perpetrate it.⁶ Tommy Lyttle, as chairman of the UDA, was afforded "*an entirely improper degree of protection*" and Brian Nelson was inserted into the UDA and kept there in the knowledge that he regarded it as legitimate to murder republicans and in doing so "*would, to all intents and purposes, properly be considered as acting as an employee of the Ministry of Defence*".⁷ Second, from the 1970's through to 1992 the UDA remained a lawful organisation even though various branches of police, army, MI5 and the

² Kenova Final Report (November 2025) [§§9.2-9.3 and Annex B pp 156-165 §§1.32]

³ PONI *investigation into the circumstances surrounding the death of Raymond McCord Junior and related matters* (22.01.07) ('Op. Ballast Report') [§33.10] De Silva Review [§§23.46-23.50. 23.53-23.56]

⁴ *In re Finucane* [2019] UKSC 7 [2019] NI 292 §134 ('Finucane SC Judgment')

⁵ Stevens Inquiry III - Overview and Recommendations, 17.04.03 ('Stevens III') [§4.8]. For the various definitions of collusion by UK inquiries, see amongst others, (1) Stevens Inquiry III [§§1.3, 4.7-4.9] (2) Cory Collusion Inquiry Report – Patrick Finucane 01.04.2004 HC 470 ('Cory Report') [§§1.271-1.275, 1.293] (3) Billy Wright Inquiry Report, the Lord MacLean ('Wright Inquiry') [§1.33] (4) De Silva Report [§§1.129-130]

⁶ Nelson was convicted in 1992 for conspiracy to murder others but was never charged with the murder of Patrick Finucane. Barrett was convicted for Patrick's murder in 2004.

⁷ De Silva Report [§77, 79-86]

UK Government not only knew it to be a paramilitary organisation that was murdering people (and that its claimed military wing, the Ulster Freedom Fighters was a “*fiction*”) but it was doing so in conspiracy with agents of the security forces.⁸ The refusal to proscribe the UDA and the multiple assassinations were part of the same system: murder with impunity with the complicity of the British state, with no legal framework, involving the repetitive execution of IRA suspects and others associated with one side of the conflict. This was far more than turning a blind eye. It was enablement and facilitation in which the legality and the UDA and its penetration combined, such as to produce De Silva’s expression of “*significant doubt*” that Patrick Finucane would have been murdered “*had it not been for the different strands of involvement by elements of the state*”. Not only could the murder have been prevented, but De Silva concluded that “*a series of positive actions by employees of the State actively furthered and facilitated his murder*” and then in the aftermath “*there was a relentless attempt to defeat the ends of justice*”.⁹

4. ADMISSION: The fact of the collusion is not disputed by the UK Government although the journey to admission has been torturous. Two decades after the murder, the Cameron Government in 2011 accepted the conclusions of Lord Stevens and Judge Cory as “*shocking levels of state collusion*”, although instead of ordering a public inquiry the Government appointed Sir Desmond to conduct a private review, and at that stage the Prime Minister apologised to the Family on behalf of the UK Government.¹⁰ In the light of De Silva’s findings, both the previous Government and the present Government have accepted that there was collusion in the sense of an “*agreement or arrangement between individuals or organisations, including government departments, to achieve an unlawful or improper purpose*”.¹¹ In ordering this Inquiry after a further 12 years of previous Governments refusing to do so, the present Secretary of State in 2024 recognised the enormity of “*the trauma of those who have lost loved ones*” and if there is “*nothing that any of us can do to bring them back or erase the deep pain that was caused*” what remains within the power of the State is to “*seek transparency to help provide answers to families and work together for a better future for Northern Ireland*” and to ensure that this Inquiry “*finally provide[s] the information that the Finucane family has sought for so long*”.¹²

⁸ For National Archive material on the policy of non-proscription principally contained in Series CJ 4 and FCO 87 released since the De Silva Review, see the summaries in M Urwin, *A State in Denial: British Collaboration with Loyalist Paramilitaries* (Cork: Mercier Press, 2016); and her web-supplement *Turning a Blind Eye* (coverhistory.ie, 2023)

⁹ De Silva Report [§115]

¹⁰ Owen Paterson, SOS for Northern Ireland, Hansard HC 12.10.11, Vol. 533, cc 335-337, col. 335;

¹¹ De Silva Review Exec. Summary §§114-116 adopting the Wright Report [1.33] and David Cameron, Prime Minister, Hansard HC Deb, 12.12.12, Vol. 555, col. 295

¹² Hillary Benn, Secretary of State for Northern Ireland, Hansard, HC Deb, 11.09.24, Vol. 753, c 841-842

II: ACCOUNTABILITY

5. ABILITY TO ACCOUNT 'Accountability', like collusion, has a range of meanings. It includes, in this context: those responsible being required *to account* for their actions; *the creation of the fullest possible account* of the facts to indicate causation, culpability and preventability; and *to account for missed opportunities* then and now to avoid repetition. The surviving victims of the event – who were previously not accounted for - must also be *allowed to give their account* of the wrongs done to them and to express their views on why that was so and its impact, not just on them, but on their surrounding society. The overall process must be a means of *publicly accountable learning*, so that state and other relevant organisations can be *held to account in the future* and to bring about structural and policy change. To mention these features of accountability that are well established in the common law,¹³ and not just under the European Convention of Human Rights ('ECHR'), is to underscore that they have not yet been achieved in relation to Patrick Finucane's murder. Indeed, the central problem that confronts many of the NI legacy cases, and certainly this one, is the *ability to account* – the *account-ability* - is subject to enormous individual, institutional and structural challenges. Enabling the Family and society to know the truth has the odds stacked against it
6. DEFICITS: Of that which remains to be accounted for, the identity of those of the security forces and other officials who engaged in the collusion and the precise nature of the assistance which they gave to the perpetrators before, during and after the crime, has never been disclosed into the public domain, or otherwise properly accounted for.¹⁴ Still less can it be said that a privately conducted review without the powers of compulsion, or the involvement of the Family has fully interrogated the evidential and legal systemic context in which the murders took place. More broadly, to this day, it remains unclear why it has taken so long for the truth in relation to the murder to come out, and the human cost that has been borne not only by the Family, but by society at large in terms of confidence in the rule of law and the proper functioning of democracy in Britain and Northern Ireland (see [16ff] below).
7. FIVE FEATURES REQUIRING ACCOUNTABILITY: The vehicle for achieving accountability is now the Inquiry's Terms of Reference ('TOR'). Of its wide ranging terms, the Chair has indicated

¹³ *R v HM Coroner for North Humberside and Scunthorpe ex p Jamieson* [1995] QB 1, 24 ("the relevant facts [must be] fully, fairly and fearlessly investigated"); *R v Secretary of State for Health ex parte Wagstaff* [2001] 1 WLR 292, 312 ("nothing has been swept under the carpet and...no punches have been pulled"); and *R (Chong Keyu) v Secretary of State for Foreign and Commonwealth Affairs* [2012] EWHC 2445 Admin §157 "(1) establishing the facts; (2) learning from events; (3) catharsis or therapeutic exposure; (4) reassurance and rebuilding public confidence; (5) accountability, blame and retribution; (6) political considerations")

¹⁴ Finucane SC Judgment §§2, 20

that he will work to identify which issues are of relevance.¹⁵ For the Inquiry's approach to that exercise, the Family therefore identify five broad features of the murder arising before, during and after the event that the State has hitherto failed to adequately account for, and which they would like the Inquiry to consider. They are (1) Targeting, (2) Preventability, (3) Perpetration, (4) Concealment and (5) Other Barriers to Truth and Reparation. Below are non-exhaustive indicative summaries of the relevance of these pathways

8. First. TARGETING: Patrick Finucane was targeted in various ways prior to his murder with the knowledge and involvement of State agents and agencies, ranging from slander, libel and spreading of false propaganda, to unlawful covert surveillance operations and officially endorsed practices of harassment, abuse and intimidation.¹⁶

- 8.1. PREJUDICE: RUC officers had directed threats to Patrick through his clients when in custody, and to Patrick himself,¹⁷ and UDA suspects spoke of being encouraged by police to attack republican sympathisers, those names including Patrick Finucane.¹⁸ In his investigations into Shoot to Kill allegations, John Stalker encountered Martin McCauley's solicitor in Crumlin Road Court probably in 1985, which would have been Patrick Finucane, only to be berated by a Sergeant as to whether he knew who he was talking to. He was told, "*The solicitor is an IRA man - any man who represents IRA men is worse than an IRA man. His brother is an IRA man also and I have to say that I believe a senior policeman of your rank should not be seen speaking to the likes of either of them. My colleagues [the other RUC officers in attendance] have asked me to tell you that you have embarrassed all of us in doing that. I will be reporting this conversation and what you have done to my superiors.*" Stalker's conclusion at the time was that a solicitor who performs his duty to the courts was sufficient evidence of being an IRA sympathiser.¹⁹

- 8.2. JUSTIFYING: The prejudice operated at the highest level as part of counterterrorism discourse in legitimising the use of exceptional powers. Douglas Hogg as Minister of State had told the House of Commons Select Committee debating the Prevention of Terrorism (Temporary Provisions) Bill 1989, less than a month before the murder, that there were criminal defence lawyers in Northern Ireland who were "*unduly sympathetic to the cause of the IRA*" causing Seamus Mallon of the SDLP to tell him in fury that he had made lawyers in the province the "*targets of assassins bullets*" and

¹⁵ <https://finucane.independent-inquiry.uk/document/chairmans-statement-on-terms-of-reference/>

¹⁶ Finucane SC Judgment §§19, 45(vii), (ix), 132

¹⁷ De Silva Review [§§18.9-18.18]

¹⁸ De Silva Review [§§73-78]: see also [§§23.40-23.45]

¹⁹ John Stalker, *Stalker - Ireland, Shoot to Kill and the Affair* (Harrap, London, 1988) pp 48-49

to call him a “*patsy*” of those who had briefed him in putting the rule of law at risk.²⁰ These are matters that Geraldine Finucane first endeavoured to make a statement about at the inquest in 1990 but was prevented from doing so.²¹

8.3. MALIGNING: What De Silva disclosed is that the Hogg statement to Parliament was born out of a dossier on “*two solicitors with terrorist connections*”, being Oliver Kelly and Patrick Finucane. The dossier was supplied by the RUC Chief Constable’s office to the Minister after a meeting in November 1988 to illustrate an RUC belief about a cohort of lawyers “*in the pocket*” of the IRA and/or “*involved in terrorism*”. Of the dossier’s purpose to demonstrate “*undue sympathy*”, De Silva found that it could not substantiate the claim, amounting to, at its height, that he came from a “*staunchly Republican family*”: some of his siblings, not him, had been imprisoned for republican activity; Patrick served on the board of the Northern Irish Civil Rights Association (‘NICRA’); had campaigned against H-Block ill-treatment; and he had clients who were in the PIRA.²² At the same time, it is now known from the De Silva Review that the Security Service (‘MI5’) were engaged in an unsupervised propaganda initiative within the broader loyalist community – belatedly described in internal documents as operating on “*dangerous ground*” - in which they too briefed against not just IRA personnel, but prominent figures in the nationalist and republican communities, including Patrick Finucane by “*fanning the rumours and speculation linking him to the IRA*”.²³ De Silva found that the effect of the propaganda was to “*associate Finucane with the activities of his clients*” with the aim “*to discredit and ‘unnerv*e him”.²⁴

8.4. LEGITIMISING: In the battle between State and Republican paramilitaries, the Security Forces therefore came to regard lawyers representing suspects or the families of people shot dead, as unofficial agents of the IRA. In turn the stance of the RUC and MI5 gave legitimacy to the UDA conceiving lawyers as justifiable targets. Internal records disclosed by De Silva make it clear that criminal defence lawyers and what were then described as civil liberties lawyers, such as Oliver Kelly (who Patrick served his apprenticeship with), P J McCrory (who acted for the families of the Gibraltar SAS shootings and whose son became DPP of Northern Ireland) and Patrick Finucane himself, were characterised as synonymous with their clients, but were also regarded as a “*thorn in the side*” of the security forces because of the legal actions they were

²⁰ De Silva Review [§§66-68] [§§14.1-14.5]. For the whole exchange, see Hansard Official Report, Standing Committee B, 17 January 1989; cc 505 ff c. 508 (Hogg) , c. 518-19 (Mallon) that was recited by Hillary Benn in HC Deb, 11.09.24 , Vol. 753, c 841-842

²¹ Finucane SC Judgment [§5] De Silva Review [§§23.32-23.34]

²² De Silva Review [§§ 14.8-14.47, 14.61] Vol II pp 203-204 at §iv, pp 209-212]

²³ De Silva Review [§§62-65, §§15.12-15.14, 15.22-15.29, §§15.30-15.33]

²⁴ De Silva Review [§15.32-15.33]

taking to court.²⁵ That this should have been done at all was wrong. It breached basic United Nations Standards on the protection of lawyers, protecting them to perform their functions “*without intimidation, hindrance, harassment or improper interference*” and for them “*not to be identified with their clients or their clients’ cause as a result of discharging their functions*”.²⁶ What compounded the objectionable conduct here is that State agencies maligned lawyers as ‘terrorists’ at the time when the security forces knew that Patrick Finucane was the subject of targeting and had repeatedly failed to act on that intelligence.²⁷

9. Second. PREVENTABILITY: State agents and agencies, including at least the FRU of the British Army, the RUC SB, and MI5, had prior-awareness of the targeting of Patrick Finucane but declined to take any steps to prevent it, including by way of warning, and otherwise operated an unsafe and unaccountable system of human intelligence gathering that endangered life.²⁸

9.1. FOREWARNING: Again, we now know that in 1981,²⁹ 1985³⁰ and 1988³¹ there was detailed and assessed as reliable intelligence that Patrick Finucane was being imminently targeted by the UDA and considered a priority to murder, but there was a deliberate decision not to tell him. For context, De Silva came to a general conclusion that “*with few exceptions those regarded to be a ‘thorn in the side’ of the security forces were not provided with protection during the period of the Troubles*”.³² He also regarded the claim that Nelson’s intelligence had led to the saving of 70 lives to be “*baseless*” finding only three occasions in which action was taken to avert a threat,³³ of which one of those was a conspiracy to murder Gerry Adams, an elected Member of Parliament and President of Sinn Féin.

9.2. INACTION: While De Silva found the RUC SB was primarily not acting upon intelligence that was generally passed to them by FRU, the crux of the problem was that *both agencies knew* that the intelligence was not acted upon, therefore a practice existed in the years before Patrick Finucane’s murder in which the army and the police had prior notice of a series of planned UDA assassinations, yet nothing was done to seek to prevent these attacks.³⁴

²⁵ De Silva Review Chapters 14, 16 and 23 including [§§23.23-22.24]

²⁶ UN Basic Principles on the Role of Lawyers (1990), Principles 16(a) and 17-18

²⁷ De Silva Review [§70, 16.73]

²⁸ Finucane SC Judgment §§4, 9-11, 15-22, 25, 33, 45(iv)-(vi) (viii), 131, 133

²⁹ De Silva Review [§§53-53, §§16.24-16.46] Vol. II pp 181-188 and 189-190, 191-193

³⁰ De Silva Review [§§55-56, §§16.47-16.58] and exhibits in Vol. II pp 194, 195

³¹ De Silva Review [§§69-70, §§16.59-16.86] and exhibits in Vol. II pp 196, 197-198, 199-200

³² De Silva Review [§9.65]

³³ De Silva Review [§7.248]

³⁴ De Silva Review [§§38-40]

- 9.3. DISCRIMINATION: If the system of state affiliation with the UDA is factored in (including materials released to the National Archive since the De Silva Review³⁵) what Sir Desmond called “*an extraordinary state of affairs*”³⁶ is far more explicable as part of a prioritisation of a relationship with the UDA that at the time was in symbiotic relationship with the Security Forces. This was institutionalised discrimination over whose right to life to protect.
10. Third. PERPETRATION: State agents/agencies were involved in a series of positive actions that furthered and facilitated the planning, execution and immediate aftermath of the conspiracy to murder Patrick Finucane:
- 10.1. ASSISTANCE: De Silva has described the acts of the State agents, including naming and detailing the conduct of Brian Nelson, William Stobie and Ken Barrett, and how they acted in concert with various presently anonymised other persons.³⁷ Rather than the agents being exploited for intelligence by the agencies it was often the reverse. Indeed a near industrial scale of materials was leaked by the security forces to the UDA, with Brian Nelson as the primary recipient, which were then used to plan and perpetrate crime.³⁸
- 10.2. PATTERN: Patrick Finucane’s murder was not an isolated incident, but part of an institutionalised pattern of unlawful conduct in which State agents associated with the UDA carried out serious human rights violations up to and including murder and then evaded arrest, of which (according to De Silva) the murders of Terence McDaid (May 1988) and Gerard Slane (September 1988) were closely related, as were the near miss conspiracies to assassinate Gerry Adams (May 1987) and the lawyer, Oliver Kelly (June 1981).³⁹
- 10.3. EVOLUTION: Of overlapping significance is that throughout the 1970s off duty RUC and UDR personnel associated with the Ulster Volunteer Force had murdered over 100 Catholic victims (often using on a rotating basis guns stolen from the British army sources) in circumstances which suggest a system and pattern, and even if some of the perpetrators were prosecuted, the themes of impunity and collusion were never investigated.⁴⁰ By the 1980’s collusion was institutionalised into a counterinsurgency

³⁵ See M. Urwin *Turning a Blind Eye* (coverthistory.ie, 2023), fn. 8 above

³⁶ De Silva Review [§40]

³⁷ De Silva Review [§§27-37, 79-87] [§§88-91] [§§95-99, 105-107]

³⁸ De Silva Review [§§45-49, §§24.3-24.20]

³⁹ De Silva Review [§§34-36, 44, 60-61, §§7.134, 7.139-7.140, 7.151-7.152, 7.249-7.269, 9.52, 16.5-16.21]

⁴⁰ *Re Barnard* [2019] NICA 38 §§12-27, 34 and [2017] NIQB 82 §200 and Kenova Final Report (November 2025) [§§42.15-42.20]

policy with a systematic approach to assisting non-state actors, enabling state agent deniability, and fabrication that the State was acting legally when it was not.

11. Fourth. CONCEALMENT: The original and subsequent investigations of the murder were compromised by lack of due diligence and obstruction of justice by State agents/agencies, of which knowledge and responsibility for the concealment would not have been limited to security forces operating in Northern Ireland alone but extended to Government and Security Services in London.⁴¹

11.1. WITHHOLDING: Neither the original CID investigation nor the inquest made any investigation of the extent to which the death resulted from collusion with state agents. In part that was caused by deliberate withholding of information by RUC SB from the CID, including intelligence emanating from before and after Nelson had compiled a Profile or P-Card on Patrick Finucane, obtained a photograph of Finucane and his client Patrick McGeown outside court, and carried out a reconnaissance on the family home.⁴² Further, CID officers have made various claims as to how they were advised “*not to get too involved*” in the murder investigation and being denied access to important intelligence from and about suspects.⁴³

11.2. OBSTRUCTING: Over the years there has been obstruction of justice. Although MI5 and RUC SB had intelligence that Nelson had “*undoubtedly*” conducted the ‘recce’ they never pursued the intelligence with FRU or sought to investigate Nelson.⁴⁴ Files and tape recordings were hidden or destroyed. Nelson’s so-called “*intelligence dump*” was removed by the army from the normal place of storage for several months to effectively hide it from Stevens, with the knowledge of RUC SB.⁴⁵ During the Stevens I investigation in 1989-1990 the army deliberately lied to investigators in suggesting that it had not employed informants in Northern Ireland at all, which De Silva regarded an attempt to deflect the Stevens Investigation from learning of the existence of Brian Nelson.⁴⁶ Nelson was also tipped off as to his pending arrest and just before the rescheduled interview, the offices of John Stevens were set on fire.⁴⁷ In what De Silva described as a “*deliberate act designed to obstruct the investigation*” the RUC SB 1991 recording of Barrett ‘admitting’ his involvement in the murder had ‘*disappeared*’

⁴¹ Stevens III [§§1.3-4, 3.1-3.7] Cory Report [§§1.269-1.270] De Silva Review [§§115-116, §§24.89-24.93, 24.186-24.190]

⁴² De Silva Review [§§80-87, §§ 23.73-23.80]

⁴³ De Silva Review [§§88-91, 93] [§§23.57-23.74] [§§23.90-23.117]

⁴⁴ De Silva Review [§§23.77-23.80]

⁴⁵ De Silva Review [§§95-99, §§24.49-24.69]

⁴⁶ De Silva Review [§102, §§24.41-23.44]

⁴⁷ De Silva Review [§§24.81-24.86]: see also [§§24.89-24.93]

by the time of the Stevens III Investigation in 1999.⁴⁸ During Judge Cory's investigation in 2003, MI5 raided his offices and forcibly removed a hard drive against his wishes causing him to complain to the Metropolitan Police, and draw back from further action because he feared a diplomatic incident.⁴⁹

12. Fifth. OTHER BARRIERS TO TRUTH AND REPARATION: Other efforts to achieve compliance with the laws protecting the right to life and overall accountability have otherwise been frustrated by systemic barriers to expeditious and reliable information retrieval, independent review and the fullest possible transparency given the nature of the crime and its consequences for the operation of the rule of law in a democratic society. The following matters are also relevant to the recommendation that the Inquiry may consider investigating:

12.1. DIGNITY: Although the UK Government now accepts the fact of collusion, this family and families and communities in similar situations were denigrated for years for suggesting that the British State had killed their loved ones, and indeed especially before 1998, potentially risked their lives for doing so. In more recent years, the Family (and other families) have continued to meet with procrastination and insultingly piecemeal approaches to investigating the case that have been overwhelmingly demoralising and are an affront to human dignity.⁵⁰

12.2. DELAY: There has been unconscionable delay at every juncture, and whether this has arisen through bad faith, or institutional resistance, or a combination of the two, the barriers to effective investigation continue to this day.⁵¹ One of the great challenges of this Inquiry is the extent to which (with respect) Northern Ireland has got used to special pleading on delay because of the sensitivities and complexities of the law enforcement context of the Troubles. On the future of this Inquiry, there can be no reason why the files of statements and documents, which were accumulated by the three Stevens investigations and then added to by the De Silva Review cannot be made promptly available to the Inquiry.⁵² The Family welcome that, in the remarks of the Chair on the day the TOR were published, he indicated that Government Ministers and the PSNI had already been encouraged to make preparations for the disclosure exercises that would now begin.⁵³

⁴⁸ De Silva Review [§§99-104, §§23.118-23.132]

⁴⁹ 'Pat Finucane: Security service wiped hard drives' BBC 08.10.19 <<https://www.bbc.co.uk/news/uk-northern-ireland-49963689>> Op, Kenova Interim Report (March 2024) p. 32

⁵⁰ For the damages awards made to the Family for delay, see *Re Finucane* [2023] NIKB 42

⁵¹ *Re Finucane* [2022] NIKB 37 §§78, 97, 127 (Judgment of Scofield J).

⁵² De Silva Review [§6]

⁵³ <https://finucane.independent-inquiry.uk/document/chairmans-statement-on-terms-of-reference/>

- 12.3. CANDOUR: It appears that agencies misled each other and external investigations. This is an area poised to be subjected to a statutory ‘duty of candour and assistance’ contained in the Public Office (Accountability) Bill 2025 (see especially Part 2, ss 4-8 and Schedule 1, Part 1), but it is worthy of itself for the Inquiry to consider the impediments to candour that operated under the common law, both in terms of external candour to courts, inquests and investigations, and internal candour both horizontally within agencies and vertically in terms of the failure or otherwise to escalate matters up the chain of operational and political command.
- 12.4. LAW: Several areas of law enforcement and counterterrorism are still in need of rigorous legal frameworks. Even after the Regulation of Investigatory Powers Act 2000 (‘RIPA’) there are still problems with the HUMINT (human intelligence agents); and the Undercover Policing Inquiry in England and Wales confirms that the UK still lacks what De Silva found to be absent in the 1990s: i.e. “*agent running...carried out within a rigorous framework*” and a system “*structured to ensure adequate oversight and accountability*”.⁵⁴ Equally the Security Services are governed by legislation as old as this case; with neither the Security Services Act 1989 or the Intelligence and Security Act 1994 providing for codes of practice. Although UK armed services used intelligence and other services, such as interpreters, in Afghanistan and Iraq, their use was and remains also largely unregulated. Finally, the law on legacy itself remains under construction, with various parts of the NI Troubles (Legacy and Reconciliation) Act 2023 repealed and with pending replacement by the NI Troubles Bill 2025.

III: RIGHTS

13. GENERAL PRINCIPLES: All the above provides the justification for the TOR that mandates this Inquiry in “*pursuit of the truth... to complete an Article 2 compliant investigation into the Murder of Patrick Finucane*”. Given that critical link to complying with law that has not yet been complied with, it is important to be clear about what that means, including aspects of the law that have not necessarily been articulated in the years of contesting the need for an Article 2 compatible inquiry into failings of this magnitude in theory alone:
- 13.1. MINIMUM FEATURES: The minimum constituent features of the procedural obligation to investigate death and ill-treatment engaging credible claims of state responsibility under Article 2 and 3 of the ECHR are well established. As exemplified by the Judgment in *Finucane v United Kingdom*,⁵⁵ the investigation must be (a) independent

⁵⁴ De Silva Review [§112]

⁵⁵ *Finucane v UK* App. 29178/95 (2003) 37 EHRR 29

(§68), (b) adequate, including *“being capable of leading to the... identification and punishment of those responsible”* (§69), (c) conducted with *“promptness and reasonable expedition”* (§70), and (d) with *“a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory”* and *“in all cases the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests”* (§71).

13.2. PURPOSE: The *“essential purpose”* of the Article 2 obligation has long been recognised to concern, not only the *“effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies”,* but also *“to ensure their accountability for deaths occurring under their responsibility”* (§67).

13.3. ACCOUNTABILITY: The obligation is therefore not simply focused on criminal investigations and prosecutions but, in state agent cases, is also directed to ensuring accountability since *“[p]roper procedures for ensuring the accountability of state agents”* are *“indispensable in maintaining public confidence and meeting the legitimate concerns that might arise from the use of lethal force”*.⁵⁶ The investigation must *“ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others.”*⁵⁷

14. MATTERS RELEVANT TO STATE COLLUSION: The fact that this will be an inquiry into an admitted course of conduct of State collusion in crime is relevant to the way that the Strasbourg court has applied the general principles:

14.1. SYSTEMIC CONTEXT: The requirement to focus on *“dangerous practices and procedures”* and *“discreditable conduct”* means that the investigation must be *“broad enough”* to address *“all the surrounding circumstances, including such matters as the planning and control of the operations in question”*.⁵⁸ To this end, the investigation should include *“lessons learned”* following the identification of *“wider systemic issues”*.⁵⁹

⁵⁶ *Re Finucane* [2022] NIKB 37 §62(c) *McKerr v UK* App. 28883/95 (2002) 34 EHRR 20 §§111, 137, 160

⁵⁷ *Amin v Secretary of State for the Home Department* [2003] UKHL 51 [2004] 1 AC 653 §31

⁵⁸ *Al-Skeini v UK*, App. 55721/07 (2011) 53 EHRR 589 §163

⁵⁹ *R (Ali Zaki Mousa) v SSD* [2013] EWHC 1412 (Admin) [2013] HRLR 32 §§147-149

14.2. STATE PRACTICE: Given the published findings of Stevens, Cory and De Silva, the starting position for this inquiry is an accepted “state” or “administrative” practice of human rights violations. A ‘state practice’ arises where there is “*an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but a pattern or system*”.⁶⁰ The constituent elements of a ‘state practice’ are “*repetition of acts and official tolerance*”.⁶¹ However, in circumstances where there is an arguable case of “state” or “administrative” practice there is no need to show that the higher echelons of government necessarily knew about it. That is because “*it is inconceivable that the higher authorities of a State should be, or at least should be entitled to be, unaware of the existence of such a practice. Furthermore, under the Convention those authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected*”.⁶² This is not a submission that De Silva had made to him and it is highly relevant to responsibility that the political and military chain of command must bear for the collusion that took place under their control.

15. RESTORATIVE JUSTICE: The lasting aim of a human rights-based investigation is to assist in the process of restorative justice, of which the concept of the “*right to the truth*” is central and there must be a particular high premium on transparency:

15.1. RIGHT TO THE TRUTH: The concept underlines the great importance “*not only*” for the bereaved family, “*but also for other victims of similar crimes and the general public*” who have “*the right to know what had happened*”. By contrast it urges caution against claims to “*State secrets*” that are “*often invoked to obstruct the search for truth*” and of themselves do damage to confidence in adherence to the rule of law and give the appearance of collusion in and tolerance of unlawful acts.⁶³

15.2. TRANSPARENCY AND REPARATIONS: As the Family have been victimised by the misuse of State secrecy in this very case, it is no wonder that they are compelled to take a fact sensitive stance against further claims to withhold evidence on national security grounds, and to in effect produce another process and report from which they and the public are excluded. They do so, not out of intransigence, but out of lived experience. State secrecy functioned to enable State involvement in Patrick Finucane’s murder and enabled official tolerance of State impunity thereafter. Truth

⁶⁰ *Ali Zaki Mousa*, Ibid, §192 applying *Ireland v UK*, App. No. 5310/71 (1979) 2 EHRR 25 §159

⁶¹ *Caraher v UK* App. No. 24520/94 (2000) 29 EHRR CD119, pp 121-122

⁶² *Ireland v UK*, Op Cit. §159. See recently *Georgia v Russia*, App. No. 13255/07, 03.07.14 §§123-124

⁶³ *El Masri v TFR of Macedonia* App. 39630/09 (2013) 57 EHRR 25 §175, 177, 191-192

is part of reparation and recovery.⁶⁴ Secrecy and closed proceedings are contrary to both. This Inquiry, perhaps more than any other in British history, will need to break new ground in how it enables the Family and the wider public to know and account for that which has hitherto been covered up.

IV: DEMOCRACY

16. PERSON: As the Chair and his team embark on this investigation it is important to comprehend that there is something both deeply personal and deeply political about Patrick Finucane and his continuing significance to Anglo-Irish societies. As to the personal, while it need not be said to justify why this Inquiry is necessary, or to make a claim that Patrick Finucane had a right to life just like anyone else, it does need to be reiterated in clear and unequivocal terms that Patrick Finucane was never a member of an unlawful organisation; or indeed anything other than a man who did his lawful best for his clients in a time when the operation of the rule of law could not be counted upon.⁶⁵ As Detective Superintendent Alan Simpson, as Senior Investigating Officer, told the coroner in 1990 when it was too little too late, Patrick was “*a law abiding citizen going about his business*” and the Coroner confirmed him to be a “*law abiding citizen going about his professional duties in a professional manner...known inside and outside the legal profession*” who “*discharged his duties with vigour and professionalism*”.⁶⁶ If some of his Family held republican sympathies, and others were avowed pacifists, this was unremarkable at that time and in that place, and if its members had suffered discrimination and the failures of the State in protecting them from being forcibly expelled by a mob from their original home in Percy Street in West Belfast, and some of the members lost their jobs because they were Catholics, they were also not alone. The ethics of lawyering were powerful to Patrick Finucane, perhaps best encapsulated by the words of Geraldine Finucane within days of the murder and repeated thereafter, that “*Pat would have represented the people who shot him*”.⁶⁷

17. LAWYER: The relevance to this case of the rule of law and Patrick Finucane’s type of lawyering in defence of democratic values could not be greater, but in embarking upon this Inquiry the fragility and hypocrisy concerning claims to the operation of the rule of law in Northern Ireland during this period must not be forgotten. Patrick Finucane was a human rights lawyer before human rights lawyers existed. He entered the legal profession after 1973 when the English common law contained many pious platitudes about the liberty of

⁶⁴ *Gomes Lund et al v Brazil* (Merits, Reparations and Costs) 24.11.10 Series C No 219 §201

⁶⁵ Cory Report [§§1.12-1.13] De Silva Review [§§14.35-14.36, 19.70]

⁶⁶ De Silva Review Vol II, Statement of A. Simpson 13.0.02 [p.133 at 139] Cory Report [§1.13]

⁶⁷ Legal World Mourns Murdered Solicitor, The Irish News, 16.02.89, LCHR, *Beyond Collision* (2002) p. 4

the subject and equality before the law, but these maxims were not applied equally between Catholics and Protestants in Northern Ireland. They did not prevent the discriminatory use of internment powers, or the torture of the 'hooded men', or the shootings on Bloody Sunday, or the personal events that befell the Finucane family and many families like them.

18. BRAVERY: Patrick Finucane and Peter Madden created their firm in 1979. While they acted for a range of marginalised individuals and groups, including representing loyalist clients and a wide range of others, they became associated with high profile republican cases, such as Bobby Sands during the hunger strikes (1981) and Patrick McGeown whose alleged murder of two soldiers at Casement Park was found to bear no case to answer (1988). They brought some of the first civil actions for wrongful deaths caused by plastic bullets and ill-treatment in custody. They revived the capacity of inquests to highlight the shoot-to-kill deaths. At a time when it was still rarely done in England, they started to take individual complaints for their clients to the European Court of Human Rights, such that the Article 2 principles so often cited are part of the Madden-Finucane legacy.
19. INJUSTICE: Patrick Finucane lived and died for defending the law. He was amongst a very limited cohort of lawyers at the time who used the standards and principles associated with the rule of law and the common law statements on civil liberties to hold up a mirror to the political and legal establishment, and ultimately, he was murdered for doing that. His death was not only a tragedy for his family but was catastrophic for the rule of law in Northern Ireland. This undoing of law and traducing of democracy occurred not from below by lawless and disaffected groups, but from above by the State, its agencies and its agents. The rule of law has continued to be undone each time a full and fearless investigation into the systemic context for this murder has been stopped. The failure to give the Finucane family or wider society the truth even now, is one of the reasons why Northern Ireland in its effort to establish democratic politics is largely post-violence, but it is not yet post-conflict. This Inquiry has a role to play in making that transition, to ensure that this family, and all families bereaved by violence during this era know the full truth about what happened to their loved ones and enjoy the dignity and equality of justice that is due to them.

DANNY FRIEDMAN KC
CHRISTOPHER JACOBS
SEAMUS MCILROY

MARTIN HOWE
DAVID ENRIGHT
HOWE + Co

4 JUNE 2026