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Public Prosecution Service
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Dear Sir

WILLIAM McKINNEY; GERARD McKINNEY & GERALD DONAGHEY

DECEASED

**JOSEPH MAHON, JOSEPH FRIEL, AND PATRICK O'DONNELL, SHOT AND
WOUNDED - 30 JANUARY 1972 - BLOODY SUNDAY**

We represent the families of William McKinney, Gerard McKinney and Gerald Donaghey who were shot dead on Bloody Sunday, Derry, 1972.

We also represent Joseph (Joe) Mahon and Joseph (Joe) Friel, who were both shot and wounded, and the family of Patrick (Patsy) O'Donnell who was also shot and wounded, but who has since died.

William McKinney was 26 years old when he was shot in the car park of Glenfada Park North. He had been running from the southern gable wall of the eastern block of Glenfada Park North towards the south west alleyway into Abbey Park.

William McKinney sustained two gunshot wounds, the fatal wound entered the right side of his back, traversed the upper abdomen and exited the left side of his lower chest. A bullet also passed through his left forearm. Dr Derek Carson, who performed the autopsy on William McKinney concluded that the same bullet was responsible for both injuries.

Gerry McKinney was 35 years old and was married with seven children. His wife gave birth to their eighth child days after Bloody Sunday.

Gerry McKinney was shot dead in Abbey Park, which is some yards through the alleyway leading from the south western corner of Glenfada Park North, a very short distance from where William McKinney and Jim Wray¹ were mortally wounded and where Joe Mahon lay injured, and where Joe Friel and Michael Quinn were wounded and taken to safety.

Gerry McKinney sustained one entry wound, 15 centimetres below the left armpit, and an exit wound on the right side of the back, 17cm from the midline. The lack of any injuries to his arms indicated that at the time when the bullet passed through his body, Gerry McKinney's arms were not across either the entry or exit wound, consistent with eye witness evidence that suggested that Gerry McKinney had his hands raised when he was shot.

Gerald Donaghey was 17 years old. He was shot in close proximity to where Gerry McKinney was shot. He sustained only one bullet wound, which entered his abdomen approximately 'side on', most probably with the nose of the bullet pointing downwards.

The pathologist and ballistics experts retained by the Inquiry considered both the medical and scientific evidence in order to ascertain whether any conclusions could be made regarding the range at which Gerald Donaghey was shot. They felt that the only '*potentially reliable conclusion*' that they could draw was that the range was probably no less than 1 metre.²

The Inquiry note the possibility that both men have been mortally wounded by the same bullet³

Joe Friel was 20 years old. He sustained a gunshot wound to the chest, the bullet entering the right side of the sternum, level with the second rib, and exiting the left side of the sternum below the clavicle. He was shot close to the alleyway leading from Glenfada Park North towards Abbey Park.

¹ We do not represent the family of Jim Wray (nor do we represent the family of Michael Quinn who was also shot in this vicinity).

² Chapter 107.41

³ Chapter 107.50 to Chapter 107.62

Joe Mahon was 16 years old. He was shot above his right hip, suffering multiple perforations of the bowel, in the car park of Glenfada Park North. The Tribunal are of the view that the bullet which struck Joe Mahon, had earlier passed through the body of William McKinney.

Patsy O'Donnell was 41 years of age. He was shot in the right shoulder as he crouched behind a fence on the eastern block of Glenfada Park North.

We would refer you in particular to Chapter 101 to Chapter 104 (Volume VI) of the Report of the Bloody Sunday Inquiry, in which the Tribunal review *inter alia* the medical and scientific evidence, photographic, and the evidence of civilian and media eye-witnesses concerning the shootings in Glenfada Park.

We would further refer you to Chapter 107 (Volume VI) of the Report in which the Tribunal review *inter alia* the medical and scientific evidence, photographic, and the evidence of civilian eye-witnesses concerning the shootings in Abbey Park.

The area of the Bogside in which the shootings occurred on Bloody Sunday was divided by the Inquiry into five broad areas, known as sectors.

The area of Glenfada Park, in which William McKinney was shot dead, and Joe Friel, Joe Mahon and Patsy O'Donnell were shot and wounded, and the area of Abbey Park where Gerry McKinney and Gerald Donaghey were shot dead, is in Sector 4.

The Inquiry have reached the following significant conclusions:

1. The Tribunal are satisfied that all the casualties in Sector 4 were inflicted only by Corporal E, Lance Corporal F, Private G and Private H, all of whom were members of the Anti-Tank Platoon.⁴
2. The Tribunal are sure that each of the four aforementioned soldiers fired shots in Sector 4.
3. The Tribunal are also satisfied that the known casualties in Sector 4 were the only casualties of Army gunfire in that sector. These casualties were not using or seeking

⁴ Chapter 112.4

to use firearms or bombs, nor doing anything else that could have justified any of them being shot. Furthermore, the Tribunal are satisfied that none of the casualties was doing anything that could have led a soldier to believe, albeit mistakenly, that any of them was posing a threat of causing death or serious injury.⁵

4. The Tribunal reject the submission advanced on behalf of the majority of the soldiers, that those who were killed and injured in Glenfada Park North were close to those individuals who were armed with either rifles or nail bombs and at whom it is known soldiers fired.
5. The Tribunal conclude that having considered the soldiers' evidence alongside the other evidence, that when the soldiers fired there were no gunmen or bombers in Glenfada Park.
6. The Tribunal have found no evidence of any kind that suggests that the casualties were shot by mistake or accident, save that Joe Mahon may have been the victim of a shoot through, although in any event, William McKinney was not armed or posing any threat of causing death or serious injury.
7. The soldiers who fired in Glenfada Park insisted that they had shot bombers and gunmen. The Tribunal reject this. The soldiers denied shooting the known casualties, which in the Tribunal's view they had. The Tribunal conclude that it is therefore inevitable that this materially undermines the credibility of the accounts given by the soldiers who fired.
8. The Tribunal believe that Private G deliberately targeted Gerard McKinney in Abbey Park, irrespective of his denial to Widgery that he had fired there. The Tribunal are sure that he did.
9. Private G neither had nor could have believed that he had any justification for shooting Gerard McKinney, a person who was not posing any threat of causing death or serious injury.
10. There is no evidence that Gerald Donaghey was doing anything when he was shot that could have lead any soldier to believe that he was posing a threat of causing death or serious injury.
11. In any event, if Private G targeted Gerard McKinney and not Gerald Donaghey (as the Tribunal have concluded), what in fact Gerald Donaghey was doing in this context

⁵ Chapter 112.2

was irrelevant; the shot was fired, without any justification whatever, and with complete disregard to the obvious danger to life and limb.

The Tribunal produce their conclusions in respect of the accounts given by Corporal E, Lance Corporal F, Private G and Private H at Chapter 112 of Volume VI, and state as follows:

1. The Tribunal are satisfied that the platoon commander of Anti-Tank Platoon, Lieutenant 119 did not give his soldiers any order to enter Glenfada Park. The Tribunal accept that Corporal E's evidence to Lord Widgery that he had moved of his own initiative is probably correct, irrespective of other falsehoods contained within his evidence.
2. Corporal E was probably responsible for wounding Patsy O'Donnell
3. It is more likely than not that Lance Corporal F or Private H fired the shot that mortally wounded William McKinney
4. One or other of Lance Corporal F or Private H fired the shot that wounded Joe Mahon
5. Lance Corporal F or Private G fired the shot that wounded Joe Friel
6. Private G was responsible for shooting Gerald Donaghey, the bullet recovered from Gerald Donaghey's body having been matched to Private G's rifle. It follows therefore, that if the same round was responsible for mortally wounding Gerard McKinney that Private G is also responsible for that death.

Corporal E

The Tribunal consider that Corporal E may have seen Patsy O'Donnell taking cover and deliberately shot at him or in the direction where he had gone, or he may have simply shot at the fence, not intending to hit anyone, but rather to frighten people off. If it was the former, the Tribunal consider that there was no justification for targeting Patsy O'Donnell, who was not posing any threat of causing death or serious injury. If it was the latter, the Tribunal conclude that such firing was in complete disregard of the obvious grave risk to life or limb.

In the Tribunal's view, Corporal E lied about his target. The Tribunal reach the conclusion that Corporal E, when he fired, could not have held a belief that he was justified in doing so. The Tribunal can see no grounds for supposing that Corporal E may have fired in fear or

panic or believing, albeit mistakenly, that he had identified someone armed or posing a threat of causing death or serious injury.

Lance Corporal F, Private G and Private H

The Tribunal assess the state of mind of Lance Corporal F, Private G and Private H together.

The Tribunal's view, having read the statements and listened to Lance Corporal F and Private H giving evidence, is that none of the soldiers who fired did so in the belief that he had or might have identified a person in possession of, or using or about to use, bombs or firearms. The Tribunal state that they **cannot accept as truthful** any of their varying accounts of what they say they faced when they went into Glenfada Park.

The Tribunal conclude that these three soldiers must have seen people simply trying to leave the area, many frightened and in shock at learning of the events in Rossville Street.

The Tribunal cannot see how any of the soldiers could have thought that he or his colleagues were in such danger from individuals among these people that firing at them could be justified.

The Tribunal note that William McKinney (and Jim Wray) were both shot in the back and that none of the casualties appears to have been facing the soldiers when shot.

The Tribunal are sure that these soldiers fired, without warning, either in the belief that no-one in the area towards which they respectively fired was posing a threat of causing death or serious injury, or not caring whether or not anyone there was posing such a threat. With the possible exception of Soldier H, the Tribunal consider it unlikely that they fired in a state of fear or panic.

The Tribunal believe that Private G deliberately targeted Gerard McKinney in Abbey Park, irrespective of his denial to Widgery that he had fired there. The Tribunal are sure that he did.

The Tribunal's overall assessment of the shooting in Sector 4 is that the soldiers who went in, led by Corporal E, fired at fleeing civilians, and then, in the knowledge that what they had done was unjustified, proceeded to **invent false accounts** of what they had seen and done.

The Tribunal emphasise that they have found no evidence that suggests to it that any of the four soldiers might have believed, albeit mistakenly, that he had, or might have, identified a target at which he was justified in firing.

The evidence and foregoing conclusions reached by the Tribunal point unmistakably towards the evidential test for a successful prosecution being satisfied concerning the murder of William McKinney, Gerard McKinney and Gerald Donaghey on Bloody Sunday, and the attempted murder of Joe Friel, Joe Mahon and Patsy O'Donnell

In our view, Corporal E, Lance Corporal F, Private G and Private H, acted in joint enterprise to murder William McKinney, and to attempt to murder Joe Friel, Joe Mahon and Patsy O'Donnell, amongst others, in Glenfada Park, and to murder Gerard McKinney and Gerald Donaghey in Abbey Park.

It is clear that each of those who opened fire, with high velocity rifles, did so in order to kill, in accordance with their training and the orders given to them. Each soldier opened fire, in the clear contemplation that their victims, whether specifically targeted or shot indiscriminately would be shot and killed, without any proper justification.

In light of those conclusions there is sufficient evidence to charge Lance Corporal F and Private H with murder and attempted murder. In *R v Rahman & O'rs* [2008] UKHL 45, the House of Lords addressed the issue of joint enterprise. Lord Brown formulated the approach to determining whether an accused had the *mens rea* for murder in the following terms:

"If B realises (without agreeing to such conduct being used) that A may kill or intentionally inflict serious injury, but nevertheless continues to participate with A in the venture, that will amount to a sufficient mental element for B to be guilty of murder if A, with the requisite intent, kills in the course of the venture *unless* (i) A

suddenly produces and uses a weapon of which B knows nothing and which is more lethal than any weapon which B contemplates that A or any other participant may be carrying and (ii) for that reason A's act is to be regarded as fundamentally different from anything foreseen by B." (The italicised words are designed to reflect the *English* qualification). □ (68)

Lance Corporal F and Private H (together with Corporal E and Private G who are now deceased) both fired live rounds in Glenfada Park, either in the belief that no one in the areas toward which they were firing was posing a threat of causing death or serious injury, or they fired not caring whether or not anyone there was posing such a threat. The casualties in Glenfada Park and Abbey Park were shot within a very short time of each other, and in very close proximity to each other. Each of the aforementioned soldiers were acting together in firing live rounds in Glenfada Park in circumstances where they knew, or did not care, that no one fleeing the area was posing any threat of causing death or serious injury.

Applying Lord Brown's formulation, Corporal E, Lance Corporal F, Private G and Private H fired across Glenfada Park knowing that each and everyone of them might kill or inflict serious injury to those behind fleeing that area and each continued to participate with the others in the venture. As per Lord Brown, "that will amount to a sufficient mental element" for Corporal E, Lance Corporal F, Private G and Private H to be guilty of the murder of William McKinney, Gerard McKinney and Gerald Donaghey, and for the attempted murder of Joe Friel, Joe Mahon and Patsy O'Donnell. In those circumstances both Lance Corporal F and Private H, as the surviving members of that group should be prosecuted accordingly.

In circumstances where the State, by its agents, are responsible for the death of one or more of its citizens by the use of lethal force, clearly the public interest limb for bringing a prosecution has also been met.

Accordingly, we should be grateful if you would consider the contents of this correspondence, submitted on behalf of the families of William McKinney, Gerard McKinney and Gerald Donaghey, and Patsy O'Donnell, and on behalf of Joe Friel and Joe Mahon, in advance of issuing a direction in respect of the prosecution of the surviving soldiers, Lance Corporal F and Private H for the murder of William McKinney, Gerard

McKinney and Gerald Donaghey and the attempted murder of Joe Friel, Joe Mahon and Patsy O'Donnell.

In addition we would also be grateful if in advance of issuing a direction in respect of the prosecution of Lance Corporal F and Private H, that you take into account the Tribunal's conclusions in relation to the murder of Jim Wray, the attempted murder of Michael Quinn, both in Sector 4; the Inquiry's conclusions (and our submissions to your office) in respect of the murder of Michael Kelly and Patrick Doherty and the attempted murder of Danny McGowan and Patrick Campbell; and the Inquiry's conclusions in respect of the murder of Bernard McGuigan.

We would invite you on behalf of the families of William McKinney, Gerard McKinney and Gerald Donaghey, the family of Patsy O'Donnell, now deceased, and Joe Friel and Joe Mahon to prosecute the above mentioned soldiers for the murder of William McKinney, Gerard McKinney and Gerald Donaghey, the attempted murder of Patsy O'Donnell, Joe Friel and Joe Mahon, and for perjury in respect of the sworn evidence that they gave, on oath, to the Inquiry.

In the event that you decide not to prosecute all, or any, of the above, we should be grateful if you would provide your substantive written reasons for your decision.

We await hearing from you by return.

Yours faithfully



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