

Ms Elizabeth McCabe  
66 Gortamaddy Drive  
Ballycastle  
County Antrim  
BT54 6RP

PPS Ref: 954506

30<sup>th</sup> July 2020

Dear Ms McCabe,

I am writing to let you know the outcome of the Public Prosecution Service (PPS) consideration of a file we received from the Office of the Police Ombudsman for Northern Ireland (OPONI) in relation to a shooting incident at the Whitehall Maisonettes on Divis Street on 15<sup>th</sup> August 1969, which resulted in the death of your father, Hugh McCabe.

On 7<sup>th</sup> November 2018 Mr Hardy, Assistant Director for Central Casework in the Public Prosecution Service, wrote to you to confirm that a file had now been received and that one person had been reported for a decision to be taken as to prosecution. I am the Senior Public Prosecutor responsible for deciding whether a prosecution should be brought in respect of this suspect.

Before I proceed further, I would like to first express my sincere sympathy to you and your family circle regarding the tragic loss of your father. I recognise that you and your family will have endured much grief and distress since your father's death and I hope that this letter does not cause you further upset.

The allegation against the reported suspect is that he was an RUC officer deployed on the roof of Hastings Street RUC station and that he unlawfully fired his weapon causing the death of your father. The primary offence under consideration in these circumstances was the offence of murder.

I have now carefully considered all of the evidence and information provided by OPONI in the investigation file and have reached a decision. A prosecution can only be directed where: (i) there is sufficient evidence available to provide a reasonable prospect of obtaining a conviction; and (ii) where prosecution is in the public interest. These are the two limbs to what is known as the "Test for Prosecution". It is only if the evidence is assessed as providing a reasonable prospect of conviction that one proceeds to the second stage of assessing the public interest.

In reaching a decision in this case I have carefully considered a significant volume of material submitted by OPONI and have also taken into consideration additional witness evidence provided to OPONI by two witnesses who did not previously give evidence to the Scarman tribunal. Having carefully weighed up all of this evidence, I have concluded that the

evidence available is insufficient to afford a reasonable prospect of obtaining a conviction of the suspect in respect of any offence. Accordingly, a decision has been taken not to prosecute the reported individual in relation to this matter. I recognise that this decision will be deeply disappointing for you and hope that the explanation provided below assists you in understanding the reasons for it.

The standard of proof required in a successful criminal prosecution is high. The prosecution must satisfy the court of the defendant's guilt beyond a reasonable doubt. In order to obtain a conviction, it is necessary for the prosecution to establish beyond a reasonable doubt, through admissible evidence, all the essential ingredients of an offence.

In the context of this case there are a number of issues that the prosecution would be required to prove:

- (i) That the shot that killed your father was fired by police.
- (ii) That the reported suspect was the person who fired the fatal shot; or that he was acting as part of a joint enterprise with any other person who fired the fatal shot.
- (iii) That the fatal shot was fired unlawfully, i.e. not in reasonable self-defence or defence of another.

At the outset it is important to note that a number of difficulties arise in this case, primarily due to the passage of time since the incident itself and the consequent unavailability of evidence. Some of the witnesses who provided accounts in 1969 are now deceased, as are a number of police officers present at the time. Whilst it may be possible for the evidence provided by some of these deceased witnesses to be admitted in written form as hearsay evidence, this would be likely to be subject to challenge as it would not be possible for this evidence to be tested in court by way of cross-examination. This is considered to be a significant issue in this case as there are substantial discrepancies between a number of accounts which have been provided by various witnesses. A number of these are also contradicted by the available forensic evidence. A further issue arises as a key witness who was with your father when he was shot cannot be located and has not at any stage provided a witness account.

In relation to the first issue outlined above it is considered, taking all of the available evidence at its height, that there is a reasonable prospect of it being proven beyond reasonable doubt that the round which killed your father was fired by an officer from the roof of Hastings Street RUC station. A review of the available forensic evidence has been carried out by an experienced forensic scientist as part of this investigation. He has concluded that the shot which killed your father had a trajectory consistent with having been fired from the roof of Hastings Street RUC station. He rejects the possibility of the Browning machine gun mounted on Shorland vehicles in the area as having

fired the fatal shot. This conclusion has been based on an examination of the trajectory of the bullet fired and the wounds inflicted by the fatal shot. It should be noted that it has not been possible for the clothes worn by your father on the night in question, the bullet recovered from his body, or the weapons used by officers on the roof of Hastings Street Station to be examined as these are no longer available.

The second issue which falls to be considered relates to the identity of the person who fired the fatal shot. Significant difficulties arise in respect of this issue. Police records are available to identify the officers who were present on the roof of Hastings Street station at the relevant time and the weapons in their possession at that time. These records show that there were two officers present. One was armed with a .303 rifle, and one with a .762 SLR rifle. The officer armed with the .762 rifle is now deceased. The officer armed with the .303 rifle is the suspect identified on this file. The scientist conducting the review of the forensic evidence in this matter has concluded that it is not possible to conclusively establish which weapon fired the fatal shot. He has concluded that it was most likely that the fatal shot was fired by the officer who is now deceased.

It has not been possible for the suspect to be interviewed after caution for medical reasons, and the only evidence available from him is the account which he provided at the time. The suspect has admitted to firing his weapon from the roof of Hastings Street station, but stated that this was in response to a male on the roof of the stairwell of the Maisonettes who was armed with an automatic weapon and firing from it. The suspect did not provide any description of this person, nor did he confirm whether this person was injured by any of his shots. An account was also provided by the other officer on the roof who stated that he returned fire at the Maisonettes after seeing muzzle flash coming from there. He did not specify whether this was on the roof of the stairwell or the main block and also did not confirm whether any injuries were sustained by any person as a result of shots which he fired. It is likely that any attempt to rely on the accounts of these officers as evidence would be subject to challenge, but for the purposes of reaching a decision in this matter, all available evidence has been considered at its height.

As outlined above, I do not consider that it can be established with the required degree of certainty that the suspect was responsible for firing the fatal shot. Whilst both officers provided accounts of firing in the relevant area, the forensic evidence indicates that it is most likely that the shot was fired by the deceased officer and not the reported suspect.

I have also given very careful consideration as to whether it can be established that the suspect acted in the course of a joint enterprise with the other officer on the roof of Hastings Street station. To establish liability on this basis it would have to be shown that there was an agreement between the officers, either tacit or express, to fire unlawful shots with the intention to cause at least serious injury. There is no evidence available of such an agreement being in place.

As the evidence cannot establish that the reported suspect was responsible for firing the fatal shot, or party to a joint enterprise to fire unlawfully, there is no reasonable prospect of a conviction in this case.

As noted above, the third issue that fell for consideration in this case was whether the evidence provided a reasonable prospect of establishing that the discharge of the weapon that caused the death of your father was unlawful (i.e. not in reasonable self-defence or defence of another). As explained above, the evidence does not enable us to prove that the reported suspect did in fact fire the fatal shot and therefore this issue did not fall to be determined.

You have waited many years to reach this stage of the process. I appreciate that coming such a long time after your father's death, this outcome will be deeply disappointing to you and your family. I wish to assure you that the decision was reached after a most careful examination of all of the evidence and information available.

I appreciate this is a lot of information to take in at this stage. You may have some questions about the decision or some other aspect of the process, either now or in future. I hope that the meeting today has provided an opportunity for these questions to be answered. It is important to tell you at this stage that you have the right to request a review of this decision. The review process is set out in full in the PPS Code for Prosecutors, which is available on our website at [www.ppsni.gov.uk](http://www.ppsni.gov.uk) or we can post a copy to you or your solicitor on request.

Yours sincerely,



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Lynne Carlin

on behalf of

The Director of Public Prosecutions for Northern Ireland



