

October 2013

BRIEFING NOTE FOR JOURNALISTS

John Patrick Cunningham

SUMMARY: John Pat was shot and killed by British soldiers (Life Guard Regiment) in fields near his home at Benburb, County Armagh, on Saturday 15 June 1974 at approx. 11.50 am.

The two soldiers responsible have had four opportunities to explain their actions. They have refused to do so. Neither has ever been subject to disciplinary procedures.

BACKGROUND: John Pat was 27-years-old and would be described today as a vulnerable adult. He had a mental age of between 6 and 10. He also had a fear of men in uniforms.

A year before the shooting, his GP came upon John Pat taking refuge in a ditch from British soldiers who were poised to arrest him. The GP made representations to the British Army and the RUC locally at the time about John Pat's fear of men in uniforms.

John Pat had no formal work but spent most of his time helping at local farms and the Servite Priory in Benburb.

THE KILLING: On the morning of 15 June 1974, John Pat was returning from the Priory along a country lane (Carrickaness Road). There are no independent witnesses to what happened next.

According to statements made by some of the British soldiers involved, ten of them were travelling in two land-rovers when some spotted John Pat standing on the left hand side of the road and looking towards a hedge. All 10 soldiers got out of their vehicles.

John Pat ran across the road and into a field, pursued by soldiers A, B and E. The remaining seven soldiers claim they either remained beside their vehicles or took up covering positions and did not see what happened next.

Soldiers A and E jumped over a gate and ran into the field, while soldier B took up a position at a second gateway into the same field. All three soldiers claim they shouted at John Pat to stop and then opened fire.

Soldier A fired 3 shots from 100 yards and soldier B fired 2 shots (there is no record in the RUC file as to the distance

from which B fired at John Pat but it must have been less than 100 yards).

John Pat, who posed no threat and who was running away, was hit by either 2 or 3 bullets (all the shots passed through his body and it was therefore impossible to determine which of the two soldiers fired the fatal shot).

Soldier E claims he called on John Pat to stop and saw him put his right hand into his jacket, prompting him to cock his weapon. As he did so, he heard shots being fired and saw John Pat fall to the ground.

THE INTERVIEWS: Soldier K, a military doctor, pronounced John Pat dead at 12.15 pm. No firearms were found with John Pat or in the area.

A local priest was initially prevented from giving John Pat the last rites; he however told the soldiers "If you want to stop me, you will have to shoot me".

Seven of the 10 soldiers in the patrol gave statements to the Special Investigation Branch (SIB: the investigatory branch of the Royal Military Police) the following day, Sunday 16 June.

Soldier L never gave a statement. Soldiers A and B were questioned under caution by two members of the RUC on Tuesday 18 June.

Soldier A said: "I've taken legal advice on the matter and I've been advised not to make a statement at this time". He was then asked six questions, declining to answer any of them except to say he was in charge of the patrol and that he had called on John Pat to stop.

Soldier B also said "I've taken legal advice and I don't wish to make a statement at this time". He was asked a further four questions and declined to answer them. The interview lasted five minutes.

These two interviews are the only known accounts that soldiers A and B have ever given about John Pat's death. In total they cannot have lasted more than 10 minutes.

Three months later (September 1974) the RUC submitted a report to the DPP who decided not to bring criminal charges against the soldiers involved.

In October 1975 an SIB officer in Lisburn asked for statements to be taken from soldiers A and B in order to answer a political question. (This remains unexplained.)

In November 1975 the SIB officer was informed that the soldiers would not be giving statements on receipt of advice given by solicitors in Northern Ireland.

As soldiers A and B have never given an account of their actions the HET traced them and wrote to them requesting that they assist their review.

Soldier B did not respond to the HET requests.

Soldier A sought legal advice and declined to be interviewed on a voluntary basis or to provide a voluntary statement. Solicitors acting for him also advised that if he was questioned under caution he would refuse to answer any questions or provide any form of written prepared statement.

HET FINDINGS: "Soldiers A and B were later briefly interviewed under caution and exercised their right to silence. A file was submitted to the DPP who concluded, 'I do not consider that the evidence warrants any criminal proceedings'."

"HET concludes that because of the absence of original case papers, it is not possible to establish whether the investigation into John Pat's death was independent. HET also concludes that **by not obtaining the soldiers accounts of what happened more vigorously, the investigation was not as thorough or effective as it could have been.**" (emphasis added)

"John Pat's death was an absolute tragedy that should not have happened. He was a vulnerable adult who was unarmed and shot as he was running away from soldiers."

"There is no evidence that he posed a threat to the soldiers or anyone else."

"The soldiers have declined to provide an account of what happened."

"Although the HET cannot be critical of them for exercising their legal rights, the consequence of their decisions has resulted in the full facts of the case about John Pat's death never being established."

QUESTIONS FOR THE RUC: The RUC Detective Inspector in charge of the case must have had a reasonable suspicion that soldiers A and B had committed a criminal offence because he interviewed the soldiers under caution.

(The HET points out that, when an investigating officer has reasonable grounds to suspect that a person may have committed a criminal offence, the law requires that they are cautioned before they are questioned about the offence.)

Why did the RUC fail to question the soldiers in a more in-depth way?

This failure robustly to question the soldiers ensured there was never going to be sufficient evidence to prosecute.

The DPP decided not to prosecute on the available evidence (as there was no independent evidence it could only rely on the soldiers' very sketchy accounts).

On 17 January 2013, the MoD finally apologised to the Cunningham family. The Minister of State for the Armed Forces wrote:

"The HET report makes it clear that John was blameless and, accordingly, I believe it is right and proper to make an apology to you on behalf of the Government. ... I do not believe that anything I can say will ease the sorrow you feel for the death of a much-loved relative, but I hope that the findings of the Historical Enquiries Team and our full and sincere apology will be of value by setting the record straight on these tragic events."

Following the HET report the PSNI told the solicitor acting on behalf of the family that a PSNI investigation would follow. The family adopted a watch and wait attitude but refused to meet with the PSNI. As it became clear in the wake of the HMIC report into the HET that the PSNI was using the vacuum to take over all investigations in British Army cases the family decided to call on the PSNI to stop any investigation and allow for a completely independent body to take over these cases.