

# Statutory Report

Public statement by the Police Ombudsman pursuant to Section 62 of the Police (Northern Ireland) Act 1988.

Relating to:

INVESTIGATION INTO POLICE HANDLING  
OF CERTAIN LOYALIST PARAMILITARY  
MURDERS AND ATTEMPTED MURDERS  
IN THE NORTH WEST OF NORTHERN  
IRELAND DURING THE PERIOD 1989 TO  
1993

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# 1.0

## Introduction

- 1.1. On 25 May 1991, Eddie Fullerton, a Sinn Féin councillor, was murdered at his home in Buncrana, County Donegal. The Ulster Freedom Fighters later claimed responsibility for the murder. In this public statement, I will refer to this organisation as the UDA/UFF.<sup>1</sup>
- 1.2. In November 2006, the former Police Ombudsman, Nuala O'Loan, received a complaint from Mr Fullerton's family. The complaint raised questions and concerns over the murder and the role played by the Royal Ulster Constabulary (RUC) in the subsequent An Garda Síochána (AGS) investigation. The family alleged that RUC officers '*colluded*' with loyalist paramilitaries in the murder of Mr Fullerton and failed to assist the AGS investigation.
- 1.3. On 12 August 1991, the UDA/UFF murdered Patrick Shanaghan as he was driving from his home to work in Castlederg, County Tyrone. Four days later, on 16 August 1991, the UDA/UFF murdered Thomas Donaghy as he arrived for work at Portna Eel Fishery, near Kilrea, County Derry/Londonderry. On 16 September 1991, the UDA/UFF murdered another Sinn Féin councillor, Bernard O'Hagan, as he arrived for work at Magherafelt Technical College, Magherafelt, County Derry/Londonderry. The Shanaghan, Donaghy, and O'Hagan families also made complaints to this Office, including allegations that RUC officers '*colluded*' with loyalist paramilitaries in the murders.

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<sup>1</sup> Whenever it carried out a terrorist attack, the UDA used the cover name Ulster Freedom Fighters (UFF) when claiming responsibility. The UFF were proscribed in November 1973 but the UDA was not proscribed as a terrorist organisation until August 1992. I consider that the UDA and UFF were the same organisation. For the purposes of this public statement, it shall be referred to as the UDA/UFF.

1.4. In January 2013, my predecessor, Dr Michael Maguire, commenced an investigation into a series of murders and attempted murders carried out by the 'Derry/North Antrim' Brigade of the UDA/UFF during the 1989-1993 period. For the purposes of this public statement I shall refer to them as the North West UDA/UFF. This investigation incorporated the following attacks:

- 1.5.
- I. The murder of Gerard Casey at Rasharkin, County Antrim, on 4 April 1989;
  - II. The murder of Eddie Fullerton at Buncrana, County Donegal, on 25 May 1991;
  - III. The murder of Patrick Shanaghan at Castlederg, County Tyrone, on 12 August 1991;
  - IV. The murder of Thomas Donaghy, at Kilrea, County Derry/Londonderry, on 16 August 1991;
  - V. The murder of Bernard O'Hagan at Magherafelt, County Derry/Londonderry, on 16 September 1991;
  - VI. The attempted murder of James McCorriston at Coleraine, County Derry/Londonderry, on 14 February 1992;
  - VII. The murder of Daniel Cassidy at Kilrea, County Derry/Londonderry, on 2 April 1992;
  - VIII. The attempted murder of Patrick McErlain at Dunloy, County Antrim, on 28 August 1992;
  - IX. The murder of Malachy Carey at Ballymoney, County Antrim. Mr Carey was shot on 12 December 1992 and died the following day as a result of his injuries;
  - X. The murders of Robert Dalrymple, James Kelly, James McKenna, and Noel O'Kane at Castlerock, County Derry/Londonderry, on 25 March 1993. A fifth man, Gerard McEldowney, was seriously injured in this attack; and
  - XI. The murders of John Burns, Moira Duddy, Joseph McDermott, James Moore, John Moyne, Steven Mullan, and

Karen Thompson at the Rising Sun Bar, Greysteel, County Derry/Londonderry, on 30 October 1993. An eighth victim, Samuel Montgomery, died as a result of injuries sustained in the attack on 14 April 1994.

- 1.6. In addition to public complaints from the Fullerton, Shanaghan, Donaghy, and O'Hagan families my Office also received complaints from Gerard McEldowney and the family of Noel O'Kane. Their complaints were accepted for investigation under Section 52 of the Police (Northern Ireland) Act 1998 (the 1998 Act).
- 1.7. The RUC (Complaints etc) 2001 Regulations (the 2001 Regulations) allow the Police Ombudsman to consider public complaints which are outside the normal time, namely made within 12 months of the alleged conduct, if they *'should be investigated because of the gravity of the matter or the exceptional circumstances.'* My predecessors were of the view that the complaints made by the Fullerton, Shanaghan, Donaghy, O'Hagan, and O'Kane families, and Mr McEldowney met this *'grave or exceptional'* definition. Their complaints were, therefore, accepted for investigation.
- 1.8. Dr Maguire also identified a number of evidential, suspect, and intelligence links between the above attacks that merited a thematic enquiry where they were investigated as a series. He, therefore, exercised his legislative power to commence an *'own motion'* investigation under Section 55(6) of the 1998 Act. Although no public complaints had been made in respect of a number of the attacks, he determined that it was in the public interest to include them in the thematic investigation.<sup>2</sup>
- 1.9. A number of the victims referred to in this public statement were targeted due to their real, or perceived, association with the republican movement. Loyalist paramilitaries viewed them as *'legitimate targets.'* Messrs

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<sup>2</sup> These related to the Greysteel attack, the murders of Gerard Casey, Daniel Cassidy, and Malachy Carey, and the attempted murders of James McCarriston and Patrick McErlain.

Fullerton and O'Hagan were elected Sinn Féin representatives. Gerard Casey and James Kelly were claimed as members of the Provisional Irish Republican Army (PIRA) by that organisation. Other victims, however, had no connections with the republican movement.

- 1.10. This investigation generated more than 640 investigative actions, including interviews of former police officers and other witnesses. A number of former police officers either declined to, or were unable to assist. However, 72 co-operated and provided accounts as to their roles, decisions, and actions during relevant police investigations. I thank those who took the time to assist this investigation.
- 1.11. Forensic examinations were commissioned and my investigators reviewed approximately 3,100 pieces of intelligence held by police, in addition to RUC investigation papers relating to the attacks. Other material was obtained and reviewed from the Public Prosecution Service (PPS), Public Records Office for Northern Ireland (PRONI), and the Coroner's Service for Northern Ireland.
- 1.12. Two former police officers were interviewed under criminal caution as a result of issues identified during the course of this investigation. My predecessor, Dr Maguire, submitted files of evidence to the PPS regarding these former officers. The PPS subsequently directed that neither of these former police officers should be prosecuted. I am unable to consider the question of disciplinary proceedings relating to any potential misconduct as all of the relevant police officers are now retired.
- 1.13. In this public statement I have criticised the actions of a number of RUC officers serving during the relevant period. However, given the passage of time, it has not been possible to identify all those responsible for actions or omissions criticised by me. I have provided an opportunity for any identifiable officer, subject to criticism, to respond. I have considered

these responses and incorporated them into this public statement, where I consider it appropriate.

- 1.14. This document is a public statement detailing my reasons for actions, decisions, and determinations in respect of these complaints and linked matters. The investigation conducted by my Office into the allegations made by the above complainants is also outlined in this public statement.
- 1.15. Prior to its release, an earlier draft of this public statement was forwarded to the Police Service of Northern Ireland (PSNI) and the Ministry of Defence (MOD). Responses were received from both which I have again reflected, where I consider it appropriate, in this public statement.



## 2.0

# The Circumstances of the Murders and Attempted Murders

### **The Murder of Gerard Casey**

- 2.1. Mr Casey was murdered at his home in Rasharkin, County Antrim, shortly after midnight on 4 April 1989. Masked men broke down the front door of the house before shooting Mr. Casey in his bedroom, in front of his wife and infant daughter, who were not injured. He was pronounced dead at the scene.
- 2.2. Earlier that night, masked and armed men had stolen a Peugeot car from an address in the Ballymoney area. It is believed that this car was used in the murder. It was later located on fire at approximately 12:55am off the Glenstall Road, Ballymoney.
- 2.3. The UDA/UFF claimed responsibility for the murder. PIRA later stated that Mr Casey was one of its members. A number of individuals were arrested and interviewed but, to date, nobody has been prosecuted for Mr Casey's murder.

### **The Murder of Eddie Fullerton**

- 2.4. Mr Fullerton was murdered at his home in Bunrana, County Donegal, at approximately 02:15am on 25 May 1991. Masked men broke down the front door of the house and shot him six times. His wife was present at the time but was not injured. He was pronounced dead at the scene.
- 2.5. Earlier that night, masked and armed men had held a family hostage at an address outside Bunrana, prior to stealing their Mitsubishi Lancer car. It

is believed that this car was used in the murder. It was later found on fire at 4:05am, at Coney Road on Culmore Point, County Derry/Londonderry.

- 2.6. The UDA/UFF claimed responsibility for Mr Fullerton's murder, stating that it was in retaliation for the PIRA murder of Ian Sproule, near Castlederg, County Tyrone, on 13 April 1991. They alleged that Mr Fullerton had assisted in the targeting of Mr Sproule. A subsequent AGS investigation found no evidence to support this claim.
- 2.7. In 2009, a number of individuals were arrested by PSNI regarding the murder of Mr Fullerton. They all denied being involved and were subsequently released without charge. To date, no individual has been prosecuted for the murder.

### **The Murder of Patrick Shanaghan**

- 2.8. Mr Shanaghan was murdered at approximately 8:25am on 12 August 1991 as he was driving to work along the Learmore Road, near Castlederg, County Tyrone. A lone gunman opened fire as Mr Shanaghan drove past, striking him four times. He was pronounced dead at the scene.
- 2.9. The UDA/UFF claimed responsibility for the attack, stating that Mr. Shanaghan was '*an active member of republican death squads operating in the area.*' His family have always denied this claim, stating that Mr. Shanaghan was a Sinn Féin member who in his spare time worked on the family farm and attended Irish cultural events.
- 2.10. A number of individuals were arrested and interviewed about Mr. Shanaghan's murder but were subsequently released without charge. No individuals, to date, have been prosecuted for the murder.

## **The Murder of Thomas Donaghy**

- 2.11. Mr Donaghy was murdered at approximately 8:25am on 16 August 1991 as he arrived for work at the Portna Eel Fishery, near Kilrea, County Derry/Londonderry. He was shot multiple times at close range by two masked men who then made their escape on foot along an adjacent river bank. He was pronounced dead at the scene.
- 2.12. The UDA/UFF claimed responsibility for the attack, stating that Mr. Donaghy was a PIRA commander, adding that *‘while the Protestant genocide continues, the Republican movement will pay a heavy price.’*
- 2.13. A number of individuals were arrested and interviewed about the murder, but later released without charge. No individuals, to date, have been prosecuted.

## **The Murder of Bernard O’Hagan**

- 2.14. Mr. O’Hagan was murdered at approximately 9:25am on 16 September 1991 as he arrived for work at Magherafelt Technical College, Magherafelt, County Derry/Londonderry. A lone gunman approached him in the car park and fired a number of shots, striking Mr O’Hagan three times in the head. The gunman then fled the scene on foot. Mr O’Hagan was pronounced dead at the scene.
- 2.15. The UDA/UFF claimed responsibility for the murder, claiming that Mr. O’Hagan *‘had recently been to the mainland organising ASUs.’*<sup>3</sup> The O’Hagan family have always denied this allegation, stating that the deceased had no involvement with republican paramilitaries.

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<sup>3</sup> Active Service Unit (ASU) – An ASU was a small, largely self-contained grouping or ‘cell’ that carried out terrorist attacks. The cell structure was devised to minimise the risk of infiltration and exposure by the security forces.

- 2.16. A large number of staff and students witnessed the murder and provided descriptions of the gunman to police. However, despite a number of individuals being arrested and interviewed about the attack, nobody has been prosecuted for Mr. O'Hagan's murder.

### **The Attempted Murder of James McCorriston**

- 2.17. Mr McCorriston was shot at approximately 7:25am on 14 February 1992 as he was walking to work in Coleraine, County Derry/Londonderry. He sustained serious injuries but survived the attack. Two men fled the scene on foot and were later observed standing beside a red Ford Cortina car.
- 2.18. The UDA/UFF claimed responsibility for the attack, stating that Mr. McCorriston was a PIRA member. When police located and searched the relevant red Ford Cortina car, they recovered a quantity of ammunition wrapped in PVC tape and other items, including a hairbrush. Fingerprint marks recovered from the PVC tape matched those of Person N, as did hair samples from the seized hairbrush.
- 2.19. Person N was arrested but denied being involved in the attack. He could provide no explanation as to why his fingerprint marks and hair matching his own were found inside the Ford Cortina. He was charged with the attempted murder of Mr. McCorriston but later convicted of the lesser offence of Possession of Ammunition in Suspicious Circumstances. He was sentenced to nine years imprisonment. A number of other individuals were arrested but denied being involved and were later released without charge. No other individuals, to date, have been prosecuted for the attack.

### **The Murder of Daniel Cassidy**

- 2.20. Mr. Cassidy was murdered at approximately 3:00pm on 2 April 1992, as he sat in his car talking to friends at Coleraine Street, Kilrea, County Derry/Londonderry. He was shot four times at close range and was

pronounced dead at the scene. The gunmen fled in a car that had pulled up alongside Mr. Cassidy's vehicle.

- 2.21. The UDA/UFF claimed responsibility for the attack, stating that Mr Cassidy was '*Commanding Officer of a PIRA unit in the South Derry area.*' A blue Renault 9 car, believed to have been used in the attack, was later found abandoned in the car park of a nearby church. An unsuccessful attempt had been made to set it on fire.
- 2.22. The murder was witnessed by a number of individuals who provided statements to police. However, the three men involved in the attack wore balaclavas. A number of individuals were later arrested. They all denied being involved and were subsequently released without charge. To date, no individual has been prosecuted for Mr Cassidy's murder.

### **The Attempted Murder of Patrick McErlain**

- 2.23. Mr McErlain was shot at approximately 7:10am on 28 August 1992 as he was driving along the Bellaghy Road, outside Dunloy, County Antrim, towards his workplace in Ballymena. He was struck a number of times but survived the attack. His brother, who was travelling with him, was not injured.
- 2.24. The UDA/UFF claimed responsibility for the attack, stating that Mr McErlain was '*a leading figure in PIRA in North Antrim and South Derry Brigade.*' A lone gunman was believed to have carried out the attack, opening fire with an assault rifle as Mr McErlain drove past.
- 2.25. There were no witnesses to the attack. Police later located an Austin Princess car which was believed to have been used in the shooting. A number of individuals were arrested. They all denied being involved and were subsequently released without charge. No individuals, to date, have been prosecuted for the attack.

## **The Murder of Malachy Carey**

- 2.26. Mr Carey was shot by a lone gunman at approximately 5:40pm on 12 December 1992, as he was walking along Victoria Street, Ballymoney, County Antrim. He was taken to hospital but died the following morning as a result of injuries sustained in the attack.
- 2.27. The UDA/UFF claimed responsibility for the murder. A witness stated that they saw a masked gunman run from the scene on foot, before getting into a black Ford Granada car which then drove off. The witness identified the driver of this vehicle, Person R, who was subsequently arrested and interviewed about the attack. He admitted to having been involved and was later convicted and sentenced to life imprisonment for the murder of Mr Carey.
- 2.28. A number of other individuals were arrested but denied being involved and were later released without charge. No other individuals, to date, have been prosecuted for Mr Carey's murder.

## **The Castlerock Murders**

- 2.29. Robert Dalrymple, James Kelly, James McKenna, and Noel O'Kane were murdered at approximately 9:00am on 25 March 1993 as the van they were travelling in arrived for work at Gortree Park, Castlerock. A fifth man, Gerard McEldowney, was seriously injured but survived the attack.
- 2.30. Two gunmen got out of another van and opened fire before being driven from the scene by a third male. The van believed to have been used in the attack was later found burned out at Springbank Road, Castlerock. The UDA/UFF claimed responsibility for the attack, stating that Mr Kelly was

'OC<sup>4</sup> of PIRA in the Maghera area.' PIRA later confirmed that he was one of its members.

- 2.31. Person H was one of four individuals arrested on suspicion of the Greysteel murders. During police interview, he confessed to having been involved in both the Greysteel and Castlerock attacks. He was subsequently convicted in respect of both attacks and sentenced to life imprisonment. A number of other individuals were arrested on suspicion of the Castlerock attack but denied being involved and were later released without charge. To date, no other individuals have been prosecuted.

### **The Greysteel Murders**

- 2.32. At approximately 9:55pm on 30 October 1993, two masked gunmen entered the lounge area of the Rising Sun Bar, Greysteel, County Derry/Londonderry. They indiscriminately opened fire, killing Moira Duddy, Joseph McDermott, James Moore, John Moyne, and Karen Thompson at the scene. John Burns and Steven Mullan died in hospital later that night and an eighth victim, Samuel Montgomery, died from injuries sustained in the attack on 14 April 1994. A number of other customers were injured.
- 2.33. The UDA/UFF claimed responsibility for the attack, which was believed to have been in retaliation for the PIRA bombing of Frizzell's Fish Shop, Shankill Road, Belfast, on 23 October 1993 which killed nine people. They stated that it was a *'continuation of their threat against the nationalist electorate who would pay a heavy price for the slaughter of nine Protestants.'*
- 2.34. Police arrested a number of individuals on suspicion of the murders. During interview, Persons F, G, H, and I admitted having carried out the attack. They were subsequently convicted of the murders and sentenced

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<sup>4</sup> OC – Officer in Command

to life imprisonment. Person H was also convicted of his role in the Castlerock attack. Person II pleaded guilty to Withholding Information and Perverting the Course of Justice and received a suspended custodial sentence.



## 3.0

# The Complaints and Scope of the Police Ombudsman Investigation

- 3.1. In addition to Gerald McEldowney, the families of Messrs Fullerton, Shanaghan, Donaghy, O'Hagan, and O'Kane, made public complaints to my Office. These complaints contained a number of allegations, questions, and concerns in respect of police actions before and after the attacks. These are set out in full later in this public statement. However, in summary, they relate to the issues set out below.

### The Fullerton Family

- 3.2.
- I. That the RUC colluded with loyalist paramilitaries in the murder of Mr Fullerton. This involved passing on information that assisted in targeting him. RUC officers also assisted loyalist paramilitaries to cross the border undetected back into Northern Ireland, following the murder;
  - II. That the RUC failed to assist AGS investigation into the murder of Mr Fullerton. This was due to his position as a Sinn Féin elected representative;
  - III. That the RUC failed to inform AGS that the weapons used in the murder of Mr Fullerton were subsequently used in other loyalist paramilitary attacks; and
  - IV. That the RUC failed to disseminate to AGS all the available intelligence relating to individuals suspected of having been involved in the murder of Mr Fullerton.

### **The Shanaghan Family**

- 3.3.
- I. That Mr Shanaghan was constantly harassed by the RUC and military in the ten years prior to his murder;
  - II. That members of the RUC made death threats against Mr Shanaghan;
  - III. That the RUC failed to properly investigate a number of complaints that Mr Shanaghan made prior to his murder;
  - IV. That the RUC failed to meet its Article 2 European Convention of Human Rights (ECHR) obligations by not properly dealing with intelligence relating to threats to Mr Shanaghan's life. This amounted to collusion;
  - V. That the RUC conducted an ineffective investigation that failed to prosecute any individual/s for Mr Shanaghan's murder;
  - VI. That RUC officers failed to take steps to save Mr Shanaghan's life following the attack; and
  - VII. That the RUC were involved in a visit by English police officers to the home of the boyfriend of Mr Shanaghan's sister on the day of the murder.

### **The Donaghy Family**

- 3.4.
- I. That Mr Donaghy's name was on a list of documents recovered from the home of a loyalist paramilitary. This individual was charged and later convicted of an offence relating to this incident, but of none relating to Mr Donaghy's murder. The family do not know the identity of this individual;
  - II. That the RUC failed to notify Mr Donaghy or any of his family about his personal details being contained within this list of documents;

- III. That approximately eight months before Mr Donaghy's murder, cameras were found outside the family home. The family wanted more information about this incident, including whether the RUC had knowledge and/or control of these cameras. The family alleged that this incident raised issues similar to those relating to the murder of Roseann Mallon;<sup>5</sup>
- IV. That there was at least one informant involved in the murder of Mr Donaghy;
- V. That there were ballistics and intelligence links between the murder of Mr Donaghy and other loyalist paramilitary attacks, including the Castlerock murders and the murders of Gerard Casey, Daniel Cassidy, and Malachy Carey;
- VI. That there was a Vehicle Check Point (VCP) less than a mile from Mr Donaghy's place of work two days before his murder. The family would like to know if the individual referred to in Point I. was stopped at this VCP;
- VII. That witnesses state that a Ford Granada was used in the murder. The family would like to know if this car was stopped at the above VCP;
- VIII. That the security forces were aware of loyalist weapons hidden at Hunter Hill, near Aghadowey, County Derry/Londonderry. Before the area was searched, however, the weapons were moved by loyalist paramilitaries as the result of a *'tip-off'*;
- IX. That for three weeks prior to Mr Donaghy's murder there was a heavy security force presence in the Kilrea area. This was lifted, however, the evening before the murder.

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<sup>5</sup> Roseann Mallon was shot dead on 8 May 1994, at her home outside Dungannon, County Tyrone, by the UVF.

- The same occurred before the murders of Gerard Casey, John Joe Davey,<sup>6</sup> and Malachy Carey; and
- X. That Mr Donaghy was arrested on 2 February 1990 under terrorist legislation and taken to Castlereagh Holding Centre. During his detention, a RUC officer told him he would '*be dead*' if he continued to associate with his brother, Johnny Donaghy.

### **The O'Hagan Family**

- 3.5. I. That, after becoming a Sinn Fein councillor in May 1989, Mr O'Hagan was harassed by the RUC and military;
- II. That, on 3 October 1989, UDR members were observed taking photographs of Mr O'Hagan's home;
- III. That the RUC did not conduct a full and thorough investigation of Mr O'Hagan's murder;
- IV. That the RUC failed to interview all potential witnesses;
- V. That the RUC failed to utilise the full potential of a photo-fit image by not publishing it in the media;
- VI. That documentation containing the personal details of Mr O'Hagan was left at a public dump in Dungiven; and
- VII. That there was evidence of collusion between the security forces and loyalist paramilitaries. The RUC lifted '*road blocks*' in the area, allowing the murder to take place.

### **The O'Kane Family**

- 3.6. I. That the RUC failed to conduct a proper forensic examination of the various scenes;
- II. That police failed to trace and interview witnesses;

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<sup>6</sup> John Joe Davey was shot dead by loyalist paramilitaries near his home at Gulladuff, County Derry/Londonderry, on 14 February 1989.

- III. That a number of identified suspects were not thoroughly investigated;
- IV. That the Castlerock attack was not linked to other attacks carried out by the North West UDA/UFF;
- V. That the RUC failed to seize weapons used in the attack, despite having prior information as to their whereabouts; and
- VI. That a RUC Special Branch informant was involved in the attack.

### **Gerard McEldowney**

- 3.7.
  - I. That the works van he travelled in was regularly stopped by members of the security forces in the period leading up to the attack. This also occurred as they were leaving Gortree Park the evening before the attack;
  - II. That a prominent loyalist was observed in the period prior to the attack, watching the Gortree Park site;
  - III. That, while at Castlereagh RUC Holding Centre, a police officer told him that the only *'problem'* with the Castlerock attack was that he *'didn't go down the main street in Maghera in a box'*; and
  - IV. That police informed him that they had a sketch plan of his house and knew where he slept. They stated that they would pass this on to the loyalist paramilitaries who had carried out the Castlerock attack.
  
- 3.8. My predecessors did not receive any other public complaints relating to this series of attacks. My investigators, however, met with a number of other victims and survivors of attacks which were relevant to this investigation. Some of them asked to be kept updated as to the progress of the investigation. Others, while not wishing to make a public complaint, raised a number of questions

and concerns. These concerns will be referred to later in this public statement.

3.9. This investigation has examined the relevant RUC investigations in accordance with the Terms of Reference set out below:

- I. Establish if a member of the RUC or agent of the RUC was culpable in any of the murders or attempted murders, including the supply of information to the paramilitaries responsible, or withholding information;
- II. Establish if the RUC were in possession of intelligence which, if acted on, may have prevented any of the murders or attempted murders;
- III. Establish if the police investigations were adversely impacted by the non-dissemination of intelligence or otherwise obstructed;
- IV. Establish if all reasonable lines of enquiry were pursued in respect of the dissemination of intelligence and, if not, assess the quality of the wider RUC investigation with a particular emphasis on suspect strategies, intelligence, and forensic opportunities;
- V. Establish if the RUC had informants in positions of leadership within the UDA/UFF who may have influenced the activities of the North West UDA/UFF, or had access to intelligence from such sources under the control of any government agencies, and to establish the context of reporting from the informant and the nature of any tasking by the RUC;
- VI. Identify missed opportunities by the RUC, including strategic linking of the murders that may have impacted on the continued operations of the UDA/UFF in the North West, and whether earlier intervention may have prevented the continued criminality of the gang,

including escalation of their activities which ultimately led to multiple murders at Castlerock and Greysteel;

- VII. If criminality, misconduct, or other failings are identified by members of the RUC, identify individual accountability, extending to RUC senior management, where conduct was of a repeated, serious, or widespread nature; and
- VIII. Other strategic objectives for the investigation as determined to be necessary.

3.10. This investigation sought to address the complaints of the families and the Terms of Reference. The original RUC investigation papers were secured during the investigation and are retained by my Office.

3.11. A number of the families have alleged that there was '*collusion*' in respect of police actions relating to the murders and attempted murders examined during this investigation. In order to properly address this issue, I have considered the various definitions of collusion provided by a number of tribunals and inquiries, and former Police Ombudsmen. There is no universally agreed definition of collusion. It has been described as '*having many faces*,' in the context of investigating complaints about state collusion during the 'Troubles.' The term has been described as being anything from deliberate and wilful actions to a more passive '*wait and see*' attitude (or looking the other way and keeping a discrete if not malicious silence).<sup>7</sup>

3.12. A number of independent inquiries and investigations have sought to define or describe what constitutes collusion. In his April 2003 report into alleged collusion between paramilitaries and state

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<sup>7</sup> Doctor Hannah Russell, *The Use of Force and Article 2 of the ECHR in Light of European Conflicts* (Oxford & Portland Oregon, 2017), 196.

security forces, Sir John Stevens stated that collusion could be evidenced in many ways ranging *'from the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, through to the extreme of agents being involved in murder.'*<sup>8</sup>

3.13. He further stated that *'the failure to keep records or the existence of contradictory accounts can often be perceived as evidence of concealment or malpractice. It limits the opportunity to rebut serious allegations. The absence of accountability allows the acts or omissions to go undetected. The withholding of information impedes the prevention of crime and the arrest of suspects. The unlawful involvement of agents in murder implies that the security forces sanction killings.'*<sup>9</sup>

3.14. *'The co-ordination, dissemination and sharing of intelligence were poor. Informants and agents were allowed to operate without effective control and to participate in terrorist crimes.'*<sup>10</sup>

3.15. *'Nationalists were known to be targeted but were not properly warned or protected. Crucial information was withheld from Senior Investigating Officers. Important evidence was neither exploited nor preserved.'*<sup>11</sup>

3.16. Canadian Judge Peter Cory was asked to investigate allegations of collusion by members of the British and Irish security forces in Northern Ireland, and to report on his recommendations for any further action, such as whether a public inquiry was warranted.

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<sup>8</sup> Stevens Enquiry: Overview and Recommendations, April 2003, at Para 1.3

<sup>9</sup> Stevens Enquiry: Overview and Recommendations, April 2003, Paras 4.7-4.9.

<sup>10</sup> Stevens Enquiry: Overview and Recommendations, April 2003, Paras 4.7-4.9.

<sup>11</sup> Stevens Enquiry: Overview and Recommendations, April 2003, Paras 4.7-4.9.



Judge Cory's investigation was carried out in the context of six particular cases, one of which related to the murders of two RUC officers, Chief Superintendent Harry Breen and Superintendent Bob Buchanan, in March 1989. In his report, published in October 2003, he stated *'How should collusion be defined? Synonyms that are frequently given for the verb to collude include: to conspire; to connive; to collaborate; to plot; to scheme; The verb connive is defined as to deliberately ignore; to overlook; to disregard; to pass over; to take no notice of; to turn a blind eye; to wink; to excuse; to condone; to look the other way; to let something ride...'*<sup>12</sup>

3.17. Judge Cory investigated allegations of collusion in the context of a number of other murders, to determine if there was sufficient evidence to warrant public inquiries into the deaths. In his 2004 report into the murder of Patrick Finucane, Judge Cory reprised his earlier definition of collusion, adding that there must be public confidence in government agencies and there can be no such confidence when those agencies *'are guilty of collusion and connivance.'*<sup>13</sup> For these reasons, he was of the view that any definition of collusion must be *'reasonably broad'*. He stated *'Army and police forces must not act collusively by ignoring or turning a blind eye to the wrongful acts of their servants or agents. Supplying information to assist them in their wrongful acts or encouraging them to commit wrongful acts. Any lesser definition would have the effect of condoning or even encouraging state involvement in crimes, thereby shattering all public confidence in these important agencies.'*<sup>14</sup>

3.18. In his report into the murder of Robert Hamill, also published in 2004, Judge Cory applied a definition *'...substantially the same as*

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<sup>12</sup> Cory Collusion Inquiry Report: Chief Superintendent Breen and Superintendent Buchanan (October 2003), Paras 2.55-2.56.

<sup>13</sup> Cory Collusion Inquiry Report: Patrick Finucane (London: The Stationery Office, 2004), Para 1.39.

<sup>14</sup> Ibid, Para 1.39.

*that set out in the Finucane case. The only difference is that in the Finucane case more than one Government agency was involved while in this case only one agency, the police force, was involved.*<sup>15</sup>

- 3.19. He further stated *'In the narrower case how should collusion be defined for the purposes of the Robert Hamill case? At the outset it should be recognised that members of the public must have confidence in the actions of Government agencies, particularly those of the police force. There cannot be public confidence in a Government agency that is guilty of collusion or connivance in serious crimes. Because of the necessity of public confidence in the police, the definition of collusion must be reasonably broad when it is applied to police actions. That is to say that police forces must not act collusively by ignoring or turning a blind eye to the wrongful acts of their officers or of their servants and agents. Nor can the police act collusively by supplying information to assist those committing wrongful acts or by encouraging them to commit wrongful acts. Any lesser definition would have the effect of condoning, or even encouraging, state involvement in crimes, thereby shattering all public confidence in important Government agencies.'*
- 3.20. Judge Cory then turned to considering whether the action or inaction of police either directly or indirectly contributed to the death of Mr Hamill. He stated *'In this regard it is necessary to examine collusive acts which may have indirectly contributed to the killing by generally facilitating or encouraging or turning a blind eye...That is the evidence may reveal a pattern of behaviour by a Government agency that comes within the definition of collusion. This evidence may add to or form part of the cumulative effect*

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<sup>15</sup> Cory Collusion Inquiry Report: Robert Hamill (London: The Stationery Office, 2004), Paras 2.222.

*which emerges from a reading of the documents. Both perspectives will be considered in determining whether the evidence indicates that there may have been acts of collusion by the police. However the aspect of a direct contribution by the police will have a greater significance in my consideration of what may constitute collusive acts in this case.'*

3.21. *'The vital importance of the police force to the community as a whole and to the administration of justice cannot be over emphasised. The first contact members of a community have with the justice system is through police officers. As members of the justice system, police officers must act judiciously. They must always strive to enforce and apply the law fairly, evenly, without bias or discrimination. It can never be forgotten that the role of the police is to serve and protect the entire community not just one segment of it.'*<sup>16</sup>

3.22. The Smithwick Tribunal into the murders of Chief Superintendent Breen and Superintendent Buchanan was headed by Judge Peter Smithwick and was prompted by the recommendations of Judge Cory in his 2003 report on the murders. At the first public sitting of the Tribunal on 16 March 2006, Judge Smithwick offered the following definition of collusion: *'The issue of collusion will be considered in the broadest sense of the word. While it generally means the commission of an act, I am of the view that it should also be considered in terms of an omission or failure to act. In the active sense, collusion has amongst its meanings to conspire, connive or collaborate. In addition I intend to examine whether anybody deliberately ignored a matter, turned a blind eye to it or*

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<sup>16</sup> Ibid, Paras 2.226-2.228.

*pretended or unawareness of something that one ought morally, legally or officially to oppose.*<sup>17</sup>

3.23. In her book, *'The Use of Force and Article 2 of the ECHR in Light of European Conflicts, and Suspicious Deaths,*<sup>18</sup> Dr Hannah Russell offered Sir Desmond De Silva's definition of collusion, from his report into the murder of Patrick Finucane, as the preferred definition:

- I. *'Agreements, arrangements or actions, intended to achieve improper, fraudulent or underhand objectives; and*
- II. *Deliberately turning a blind eye or deliberately ignoring improper or unlawful activity.'*

3.24. Previous Police Ombudsmen have relied on the Judge Cory and Judge Smithwick definitions of *'collusion'* when applying them to the facts of particular murders during the 'Troubles.' Former Police Ombudsman, Al Hutchinson, described collusion as something which may or may not involve a criminal act. I broadly concur with these views. I am also mindful of judgment of the then Lady Justice Keegan at paragraph 44 of *Re Hawthorne and White's Application*, she stated:

*"Collusion is another feature of the historical landscape. Whilst this term denotes sinister connections involving State actors it is not a criminal offence in itself. It has also been notoriously difficult to achieve a universal, accepted definition. In this case the definition*

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<sup>17</sup> Report of the Tribunal of Inquiry into Suggestions that Members of An Garda Síochána or other Members of the State Colluded in the Fatal Shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on 20<sup>th</sup> March 1989 (Dublin: The Stationery Office, 2013), Para 1.7.7.

<sup>18</sup> Doctor Hannah Russell, *The Use of Force and Article 2 of the ECHR in Light of European Conflicts* (Portland: Hart Publishing, 2017).

*adopted was that of Judge Smithwick which frames the concept in the broadest sense emphasising that it includes legal and moral responsibility.*"<sup>19</sup>

3.25. I have carefully considered each of the definitions, aware that there are areas of overlap and also differing emphasis. While these definitions are useful, I recognise that there is no agreed definition of collusion. I have identified a number of common features, as follows:

- I. Collusion is context and fact specific;
- II. It must be evidenced but is often difficult to establish;
- III. Collusion can be a wilful act or omission;
- IV. It can be active or passive (tacit). Active collusion involves deliberate acts and decisions. Passive or tacit collusion involves turning a blind eye, or letting things happen without interference;
- V. Collusion by its nature involves an improper or unethical motive;
- VI. Collusion, if proven, can constitute criminality or improper conduct (amounting to a breach of the ethical Code of the relevant profession); and
- VII. Corrupt behaviour may constitute collusion.

3.26. In the context of my role as Police Ombudsman I am mindful that different Ombudsmen have applied varying definitions of collusion to the facts of each complaint or case. I do not intend to rehearse all of these definitions but I am in favour of broad definitions encompassing collusive behaviours reflecting the views of Lord Stevens and Judge Cory. This applies to acts and omissions which

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<sup>19</sup> [2018] NIQB 94, at para 44

can encompass collaboration, agreements, or connivances. It can also include the more passive *'turning a blind eye.'*

- 3.27. In June 2016, my predecessor, Dr Maguire, applying the Smithwick definition, found that collusion played a significant role in respect of police actions concerning the murders of six men at the Heights Bar, Loughinisland, on 18 June 1994.
- 3.28. His public statement was challenged as being *'ultra vires'*<sup>20</sup> by the Northern Ireland Retired Police Officers Association (NIRPOA). Following prolonged legal proceedings, on 18 June 2020 the Northern Ireland Court of Appeal delivered a ruling on the Police Ombudsman's role as provided for in Part VII of the 1998 Act. The Court ruled that the Ombudsman's role was investigatory and not adjudicatory in nature. Decisions as to whether a police officer's actions amounted to criminality or misconduct were for other forums such as a criminal court or disciplinary panel.
- 3.29. Paragraph 40 of the Court of Appeal judgment stated, *'It is clear that the principal role of the Ombudsman is investigatory. The complaint defines the contours of the investigation and in this case informed the terms of reference about which no complaint has been made. There is no power or duty created by the statute for the Ombudsman to assert a conclusion in respect of criminal offences or disciplinary misconduct by police officers. The Ombudsman is required to provide recommendations to the DPP if he considers that a criminal offence may have been committed. Such a recommendation is a decision which could form part of a PS [Public Statement]. Once he makes such a recommendation he has no role thereafter apart from supplying information on request.'*

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<sup>20</sup> A legal term meaning to act beyond the power or authority of the body.

- 3.30. The Court, in explaining the legal framework in the 1998 Act, outlined at paragraph 43, *'That framework specifically excluded any adjudicative power for the Ombudsman in the determination of criminal matters or disciplinary matters. The confidence of the public and police force was to be secured by way of the independence, efficiency and effectiveness of the investigation coupled with an adherence to the requirements of the criminal law before any finding of a criminal offence could be made against a police officer and the conduct of a disciplinary hearing with all the protections afforded within that system before disciplinary misconduct could be established. The thrust of the appellants' case is that the statutory scheme would be undermined if the Ombudsman was entitled to use section 62 as a vehicle for the making of such findings. We agree that the legislative steer is firmly away from the Ombudsman having power to make determinations of the commission of criminal offences or disciplinary misconduct but will address later how this affects the content of a PS.'*
- 3.31. At paragraph 55, the Court outlined the powers of the Police Ombudsman in respect of officers, where there was a question of criminality and/or misconduct, should a police officer have resigned or retired. *'There may well be circumstances, of which this appeal may be an example, where a police officer will have resigned as a result of which the officer would no longer be subject to any disciplinary process. By virtue of section 63(1) (e) of the 1998 Act the Ombudsman has limited powers in a PS to identify a person to whom information relates if it is necessary in the public interest. That is a strict test. We accept that a person can be identified by inference, a so-called jigsaw identification. We do not consider that the power to make a PS provides the Ombudsman with the power to make determinations in respect of retired officers. We accept, however, that the statutory scheme does enable the Ombudsman in respect of such officers to indicate what recommendations might*

*have been made, what reasons there were for the making of such recommendations and whether disciplinary proceedings would have been appropriate.'*

3.32. In relation to the Police Ombudsman's role in deciding on a case where there was a complaint of collusion, the Court clarified at paragraph 63 as follows: *'Apart from the passages set out at paragraph 4.200, 9.9 and 9.40 the nine chapters of the substantive PS provide what the Ombudsman stated at paragraph 1.12, namely as comprehensive a narrative as possible. The determinations he made in the three offending paragraphs were not in our view decisions or determinations to which section 62 applied and overstepped the mark by amounting to findings of criminal offences by members of the police force. The remaining paragraphs were part of the narrative. We do, however, accept that in light of the families' complaint in the context of Article 2 it would have been appropriate for the Ombudsman to acknowledge the matters uncovered by him were very largely what families claimed constituted collusive behaviour.'*

3.33. My interpretation of this judgment is that, in the absence of determinations of criminality or misconduct by the appropriate authority, my role is limited to commenting on the matters raised in a complaint. My investigation having established the detailed narrative based on the complaint, I can conclude whether the evidence identifies collusive behaviours on the part of police, as alleged. In arriving at my conclusions on indicators of collusive behaviour I am mindful of the broad definitions of collusion provided by Lord Stevens and Judge Cory.



## 4.0

# The Origins, Use, and Recovery of Weapons Used in the Attacks

- 4.1. In June 2016, my predecessor, Dr Maguire, issued a public statement concerning the murders of six men at the Heights Bar, Loughinisland, County Down, on 18 June 1994. Part of this public statement detailed his investigation and findings relating to police actions associated with the loyalist importation of weapons and ammunition into Northern Ireland in December 1987 by the UDA/UFF, Ulster Volunteer Force (UVF), and Ulster Resistance.
- 4.2. I am of the view, based on the evidence and intelligence reviewed during this investigation, that weapons which formed part of this importation were used by the North West UDA/UFF in a number of the attacks referred to in this public statement.

### **The Firearms Importation**

- 4.3. In his public statement regarding the Loughinisland murders Dr Maguire stated that, by June 1987, the RUC had received intelligence indicating that a loyalist coalition of the UDA/UFF, UVF, and Ulster Resistance had finalised plans for the importation of a large quantity of weapons into Northern Ireland. The consignment consisted primarily of VZ58 assault rifles ('AK47s')<sup>21</sup> and Browning type 9mm semi-automatic pistols. By late October 1987 Persons C and D, two members of Ulster Resistance, were reported to have told associates that they would not have to wait much longer for the weapons.

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<sup>21</sup> VZ58 assault rifles were manufactured in the former Czechoslovakia for military use. They are externally similar to the better known AK47, which discharge 7.62mm rounds. Loyalist paramilitaries who acquired VZ58s in late 1987/early 1988 often referred to them as 'AKs' or 'AK47s.'

- 4.4. Police were aware that the UDA/UFF leadership held a meeting on 4 January 1988, where a senior member stated that the arrival of weapons from the arms importation was imminent.
- 4.5. Police were aware on 7 January 1988 that loyalist paramilitaries had taken delivery of weapons which included VZ58 assault rifles and 9mm pistols.
- 4.6. On the evening of 7 January 1988, police followed a senior UDA/UFF member and Person E from Belfast UDA/UFF Headquarters to Portadown. They were joined there by Person D who is believed to have played a central role in the importation. At that time, he was under military surveillance.
- 4.7. Persons D, E, and the senior UDA/UFF member then met with other senior loyalist paramilitaries at a location in the Portadown area, where they discussed the distribution of the weapons. Person E assumed responsibility for taking delivery of the UDA/UFF share of the weapons.
- 4.8. On the morning of 8 January 1988 a three-vehicle convoy, consisting of Person E and two other individuals, drove from Belfast to a car park in Tandragee, where they met a fourth individual. Police surveillance teams had followed the convoy from Belfast to the car park in Tandragee. The four individuals then exited the car park in their respective vehicles, whereupon police became '*unsighted*' as to their whereabouts a short time later.
- 4.9. Dr Maguire's investigation established that Person E and the other individuals drove to a farm near Markethill, owned by James Mitchell. Once there, they loaded their vehicles with weapons from the arms importation.
- 4.10. In his public statement, Dr Maguire was of the view that there had been an unexplained failure by police not to search the farm which '*permitted the prompt undetected removal of the remaining weapons.*' He concluded that the proximity of the Mitchell farm to Tandragee, combined with intelligence

held by police about previous loyalist paramilitary activities at that location involving James Mitchell, should have resulted in police searching it.

- 4.11. Shortly before 12:00 hours on 8 January 1988, the police surveillance teams located Person E and the first two individuals again, travelling in the same three-vehicle convoy towards Portadown. They were stopped by police at Mahon Road, Portadown, and Person E and his associates were arrested.
- 4.12. When their vehicles were searched, police recovered 61 VZ58 assault rifles, 30 Browning type 9mm semi-automatic pistols, 150 hand grenades, and a significant amount of ammunition.
- 4.13. Police described Person E as a senior Belfast UDA member. He was subsequently convicted of various firearms offences and imprisoned, as were the other two individuals.
- 4.14. On 4 February 1988, police searched a property at Flush Road, North Belfast. They recovered 38 VZ58 assault rifles, 17 Browning pistols, 100 hand grenades, a RPG7 rocket launcher, and an amount of ammunition.
- 4.15. Police subsequently received intelligence, following the Mahon Road arrests, that James Mitchell had received a *'tip-off'* that police intended to search his farm. This resulted in the remaining firearms being moved to another location.
- 4.16. In his public statement concerning the Loughinisland murders, Dr Maguire referred to a RUC Special Branch report, dated 11 February 1988, which stated that *'The arrests and seizures (at Mahon Road) were brought about as the result of a covert operation mounted from Special Branch HQ over a period of months and culminating with the above arrests on 8 January. Over a protracted period a secret, reliable and well-placed source within the higher echelons of the UDA had been reporting the existence of a major arms*

*acquisition operation being conducted by the UDA on behalf of that organisation, the UVF and Ulster Clubs (Ulster Resistance)...'*

### **The VZ58 Assault Rifles**

4.17. The recovery of 99 VZ58 assault rifles, and other weapons and ammunition at Mahon Road and Flush Road, represented a partial success for the security forces. This prevented a number of weapons imported into Northern Ireland in 1987 by loyalist paramilitaries being used to carry out sectarian attacks.

- 4.18.
- Upon Dr Maguire's request, the PSNI reviewed the use and recovery of VZ58 assault rifles in Northern Ireland. In 2018 the PSNI reported their findings to my Office. In addition to confirming that police had recovered 61 VZ58s at Mahon Road, Portadown on 8 January 1988 and had seized 38 of the rifles at Flush Road on 3 February 1988, the PSNI reported the following: 144 VZ58 weapons (in total) have been recovered by police in Northern Ireland since 1988;
  - 124 of the above VZ58 weapons are suspected by police of not having been used prior to recovery;
  - 18 VZ58s have been fired but have not been seized by police.

It follows that at least 162 VZ58 assault rifles were imported to Northern Ireland by loyalist paramilitaries, of which 38 were used in various incidents, including murder, between 1988 and 2005.

4.19. The PSNI report establishes ballistic links between the use of VZ58 weapons, the murders of 70 persons and the attempted murders of numerous other members of the public.

4.20. It is possible that some, if not all, of the 18 VZ58 assault rifles used by loyalist paramilitaries between 1988 and 2005, but not seized by police, and other VZ58s that were neither used nor recovered, may have been destroyed

during the decommissioning of paramilitary weapons, overseen by the Independent International Commission on Decommissioning (IICD).<sup>22</sup>

### **The Browning 9mm Pistols**

- 4.21. Police seized 47 Browning type 9mm 'Hi-Power' pistols at Mahon Road and Flush Road in early 1988. They had serial numbers ranging between 44651 and 46995, all of which were prefixed by 'L'.
- 4.22. In addition to these weapons a further 34 Browning pistols, with 'L' serial numbers falling within the prescribed range, have since been recovered in Northern Ireland. Of these, 21 have been forensically linked to 11 attacks attributed to loyalist paramilitaries.
- 4.23. 9mm ammunition recovered at Flush Road bore a headstamp that identified the manufacturer but not the batch or consignment. Ammunition of this type had first been used in Northern Ireland in 1984. The headstamp could not, therefore, be solely attributed to ammunition that formed part of the 1987 loyalist arms importation.
- 4.24. Without recovering the relevant weapon, it was not possible to confirm whether a Browning 9mm pistol, which formed part of the 1987 loyalist arms importation, had been used in a particular attack.

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<sup>22</sup> The IICD published their final report on 4 July 2011 (their official remit having come to an end on 8 February 2010). On the same day the Northern Ireland Office issued a ministerial statement observing that between September 1997 and February 2010 the IICD provided a 'mechanism, entirely independent of government, to execute the decommissioning of paramilitary arms in a manner that rendered them permanently inaccessible or unusable...The IICD did not provide the British and Irish governments with an inventory when they submitted their final report...(but) made arrangements for the safe retention of the records of decommissioned arms by the United States Department of State in Washington.' This ended a process during which the UVF and Ulster Political Research Group (UPRG), on behalf of the UDA had announced, in June 2009 and January 2010 respectively that they had decommissioned their weapons.

## Summary

- 4.25. 99 VZ58 assault rifles and 47 Browning type 9mm 'Hi Power' semi-automatic pistols, which were believed to have formed part of the 1987 loyalist importation, were recovered by police at Mahon Road and Flush Road in early 1988. However, at least 63 VZ58 assault rifles and 34 Browning pistols reached loyalist paramilitaries. Many of these weapons were subsequently used in numerous murders and other serious criminal offences.

### **The Supply of VZ58 Assault Rifles and Browning 9mm Pistols to the North West UDA/UFF**

- 4.26. In his public statement regarding the Loughinisland murders, Dr Maguire outlined enquiries undertaken by this Office to establish '*whether any members of the RUC were involved in, or had knowledge of, the circumstances in which loyalist paramilitaries acquired VZ58 assault rifles, semi-automatic Browning type pistols and other weapons in 1987.*' This was primarily concerned with the origins of the VZ58 assault rifle used in the attack at the Heights Bar, Loughinisland.
- 4.27. This investigation has given further consideration to the 1987 loyalist arms importation. It has specifically examined the acquisition of VZ58 assault rifles and Browning 9mm pistols by the North West UDA/UFF, which were then used in a series of attacks between 1989 and 1993. This was in the context of additional information disclosed by the PSNI to my Office<sup>23</sup> in late 2018 which detailed the extent of the surveillance operation mounted by the security forces between 7 and 8 January 1988; additional enquiries undertaken by the police following the arrest at Mahon Road, Portadown; and subsequent police operations, which resulted in recovery of weaponry originating from the importation.

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<sup>23</sup> This information came to the attention of the former Police Ombudsman, Dr Maguire, as a result of civil proceedings brought by the families of the Sean Graham Bookmakers attack against PSNI.

- 4.28. Intelligence received by police indicated that Ulster Resistance had stated that the UDA/UFF and UVF would have to pay the current price for weapons to replace those recovered by police in early 1988.
- 4.29. My investigators reviewed intelligence reports which indicated that, in February 1988, North West UDA/UFF leaders were finalising plans for the movement of weapons.
- 4.30. Between March and April 1988, police received further intelligence that the North West UDA/UFF had received a consignment of weapons, including a number of 9mm pistols.
- 4.31. During the course of May and June 1988, more intelligence was received, confirming that the North West UDA/UFF had acquired up to five 'AK47s.' (A reference to VZ58 assault rifles.)
- 4.32. Intelligence received by police in early 1989 indicated that Ulster Resistance, including Person E, were in discussions with loyalist paramilitaries from the North West UDA/UFF regarding the distribution of weapons.

### **The Use and Recovery of Firearms linked to the North West UDA/UFF between April 1989 - November 1993**

- 4.33. Between 1989 and 1993, police recovered a number of weapons, originating from both the 1987 loyalist importation and other sources, which they believed had been in the possession of the North West UDA/UFF.

#### **Recovery 1**

- 4.34. In late February 1989, police arrested two men in the Portrush area with links to the North West UDA/UFF. Following their arrests, two Browning pistols were also recovered. The serial numbers of the pistols fell within the

parameters of those seized at Mahon Road and Flush Road. Both weapons were forensically examined but could not be linked to any attacks.

- 4.35. The two men were both subsequently convicted of Conspiracy to Murder an individual.

### **Recovery 2**

- 4.36. In late December 1989, children playing near a wooded area at Gortycavan Road, Articlave, County Derry/Londonderry, found a VZ58 assault rifle and a Martini Henry .303 rifle in undergrowth.<sup>24</sup> Further police searches led to the discovery of 53 rounds of Chinese manufactured 7.62mm calibre ammunition.

- 4.37. Both weapons were forensically examined but could not be linked to any previous attacks. In March 1991, police arrested two suspected members of the North West UDA/UFF and interviewed them about the weapons. They both denied any knowledge of them and were subsequently released without charge.

### **Recovery 3**

- 4.38. In late September 1992, police recovered two VZ58 assault rifles, a double-barrelled shotgun, a handmade sub-machine gun, and a quantity of ammunition from a location at Carnelis Road, Mosside, County Antrim.
- 4.39. One of the VZ58 assault rifles had previously been used in the murder of Patrick Shanaghan and attempted murder of Patrick McErlain. The other had no history of previous use. The shotgun had been stolen from a Ballymoney address in 1988. Both it and the sub-machine gun had no history of previous use.

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<sup>24</sup> The Martini-Henry is a breech-loading single-shot rifle that was used by the British Army between 1871 and 1918.



- 4.40. In October 1992, police arrested two suspected members of the North West UDA/UFF, Persons A and B, regarding the September 1992 recovery. Both denied any knowledge of the weapons and were subsequently released without charge.

#### **Recovery 4**

- 4.41. On 8 April 1993, police carried out a search at Downhill, near Castlerock, County Derry/Londonderry and recovered a .38 Smith and Wesson revolver, Radom 9mm pistol, and Walther P5 pistol. Forensic examinations confirmed that all three weapons had been used in the Castlerock murders on 25 March 1993.
- 4.42. The Smith and Wesson revolver had been previously used in the murders of Eddie Fullerton and Thomas Donaghy, and the attempted murder of James McCorriston. It had originally been a Personal Protection Weapon (PPW) which was stolen from the home of a former police officer in Garvagh in February 1988. On 3 November 1993, police recovered weapons and ammunition at Ballygudden Road, near Eglinton. This included a discharged cartridge case, which was subsequently forensically linked to the Smith and Wesson revolver.
- 4.43. Other than its use in the Castlerock attack, the Walther P5 pistol had no previous history of use. It had been stolen from the vehicle of a UDR member in Coleraine, County Derry/Londonderry, in March 1992.
- 4.44. The Radom Pistol had previously been used in the murder of Daniel Cassidy. Its origins are unknown.

## **Recovery 5**

- 4.45. On 3 November 1993, as part of their investigation into the Greysteel murders, police recovered the VZ58 assault rifle and Browning pistol used in the attack. This was during searches at Ballygudden Road, Eglinton.
- 4.46. The VZ58 rifle had been previously used in the murder of Gerard Casey on 4 April 1989. The Browning pistol had no history of previous use.
- 4.47. A Russian Baikal shotgun which was used in the Greysteel attack, but not discharged, was also recovered at Ballygudden Road. It had been stolen from a private address near Eglinton, in October 1988.

## **Recovery 6**

- 4.48. On 4 November 1993, as part of the same investigation, police recovered a shotgun and hand grenade at two separate locations near Ardlough Road, outside Derry/Londonderry. The shotgun had been stolen from a County Tyrone address in May 1989. It was believed that the hand grenade was part of the 1987 loyalist arms importation.
- 4.49. Shotguns were used in the murders of Gerard Casey and Thomas Donaghy. However, they are difficult to forensically link to shootings as that they are smooth bore weapons. This means that lead pellets fired from smooth shotgun barrels are indistinguishable from other discharged lead pellets. The rapid recovery of a shotgun, following its use, may offer forensic opportunities in respect of the deposition of gunshot residue at the scene or on the clothing of a suspect.

## **Other Firearms used in the Attacks**

- 4.50. A Star .22 calibre pistol was used in the murders of Bernard O'Hagan and Malachy Carey, and the attempted murder of James McCorriston. It has

never been recovered and there is no record of it having been used following these attacks. It was originally a PPW stolen from a former UDR soldier during an armed robbery in the Dungiven area in July 1975. All PPWs issued to members of the military were test fired prior to issue. Discharged bullets and cartridge cases were then retained for future potential comparative purposes.

- 4.51. A Browning 9mm semi-automatic pistol was used in the murders of Eddie Fullerton and Daniel Cassidy. It has never been recovered. However, bullets recovered from both scenes confirmed that it was the same weapon used in both attacks. It is possible that it originated from the 1987 loyalist arms importation.

### **List of Weapons**

- 4.52. **Weapons 1 & 2** - Two 9mm Browning 'Hi-Power' semi-automatic pistols with no history of previous use, believed to have been part of the 1987 loyalist arms importation. Both weapons were recovered in late February 1989 and two men, arrested at the same time, were subsequently convicted of Conspiracy to Murder.
- 4.53. **Weapon 3** – A VZ58 assault rifle with no history of previous use, believed to have been part of the 1987 loyalist arms importation.
- 4.54. **Weapon 4** – A .303 Martini-Henry rifle, with no history of previous use. Weapons 3 and 4 were recovered by police in late December 1989.
- 4.55. **Weapon 5** – A 9mm Browning 'Hi-Power' semi-automatic pistol that was used in the murders of Eddie Fullerton and Daniel Cassidy. To date, this weapon has not been recovered.
- 4.56. **Weapons 6 & 7** – Two VZ58 assault rifles recovered by police in late September 1992. The first was used in the murder of Patrick Shanaghan and

attempted murder of Patrick McErlain. The second had no history of previous use. They were both believed to have formed part of the 1987 loyalist arms importation.

- 4.57. **Weapons 8 & 9** – A double-barrelled shotgun and handmade 9mm sub-machine gun, both recovered by police in late September 1992. Both had no history of previous use.
- 4.58. **Weapon 10** – A Star .22 calibre pistol used in the murders of Bernard O'Hagan and Malachy Carey, and the attempted murder of James McCorrison. To date, it has not been recovered.
- 4.59. **Weapon 11** – A .38 Smith & Wesson revolver, used in the murders of Eddie Fullerton and Thomas Donaghy, and the attempted murder of James McCorrison. It was recovered by police on 8 April 1993.
- 4.60. **Weapon 12** – A Radom 9mm semi-automatic pistol used in the Castlerock murders. It was recovered by police on 8 April 1993.
- 4.61. **Weapon 13** – A Walther P5 semi-automatic pistol, used in the murder of Daniel Cassidy and the Castlerock murders. It was recovered by police on 8 April 1993.
- 4.62. **Weapon 14** – A VZ58 assault rifle used in the Greysteel murders and the murder of Gerard Casey. It was recovered by police at Ballygudden Road, Eglinton, on 3 November 1993.
- 4.63. **Weapon 15** – A 9mm Browning 'Hi-Power' semi-automatic pistol used in the Greysteel murders. It was recovered by police at Ballygudden Road, Eglinton, on 3 November 1993.
- 4.64. **Weapons 16 & 17** – Two shotguns, recovered on 3 and 4 November 1993 respectively. The first was recovered at Ballygudden Road, Eglinton, the

second near Ardrough Road, outside Derry/Londonderry. It is not known whether either of these weapons were used in any of the attacks referred to in this public statement.

## Summary

- 4.65. All the VZ58 assault rifles linked by police to murders and attempted murders by the UDA/UFF between 1989-1993, referred to in this public statement, were recovered by the RUC and destroyed. I have, therefore, been unable to commission independent examinations of these weapons in order to establish the accuracy of previous ballistic linkages.
- 4.66. PSNI have previously informed my Office, in respect of another investigation, that recovered weapons were routinely destroyed, following forensic examination, if they were not being used as evidence in criminal proceedings. I have previously stated that, in my view, this ought not to have occurred. I remain critical of this blanket approach to the destruction of weapons that may have been used in unsolved crimes.<sup>25</sup>
- 4.67. Following the principle that '*best evidence*' should always be secured and preserved, I am of the view that potential forensic opportunities were lost because of the destruction of these weapons, particularly in respect of related unsolved murders and attempted murders.
- 4.68. Two Browning type 'Hi Power' 9mm pistols were recovered on 25 February 1989 and a VZ58 assault rifle was then used in the murder of Gerard Casey on 4 April 1989. This supported intelligence received by police from early 1988 onwards that weapons from the 1987 loyalist arms importation were being distributed to the North West UDA/UFF. The acquisition of these weapons indicated that this paramilitary group was intent on escalating its military activities. The North West UDA/UFF used these weapons in ten

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<sup>25</sup> Public Statement by the Police Ombudsman re: The Circumstances of the Murder of Damien Walsh at the Dairy Farm Complex on 25 March 1993, P. 90-91.

murders and a number of attempted murders during the 1989-1993 period. Based on the available information, I am of the view that these weapons formed part of the 1987 loyalist arms importation.

- 4.69. The North West UDA/UFF did not limit their use of weapons to those acquired from the 1987 loyalist firearms importation. A further nine murders, referred to in this public statement, were committed using other weapons, including PPWs stolen from serving or former members of the security forces.
- 4.70. However, VZ58 assault rifles were regularly used by loyalist paramilitaries following the 1987 loyalist arms importation. This included the multiple murders at Greysteel on 30 October 1993 and Loughinisland on 18 June 1994.

## 5.0

# Threat Management and Preventability of the Attacks

- 5.1. This investigation has considered whether the RUC recognised the emerging threat posed by loyalist paramilitaries following the 1987 arms importation. This included reviewing what, if any, action police undertook to counteract, and minimise, this threat.
- 5.2. By 1989, the RUC had established Regional Tasking and Co-ordinating Groups (TCGs) that were responsible for the management of all counter-terrorist operations in Northern Ireland. North Region TCG was based at Ballykelly Camp and covered the Derry-Londonderry/North Antrim area.
- 5.3. My investigators established that the majority of TCG records detailing the management of covert operations during the 1989-1993 period have been destroyed. However, they located a number of references to TCG operations on a RUC intelligence database. This included limited information relating to a number of North Region TCG operations carried out between January 1986 and December 2000.
- 5.4. Resources available to North Region TCG during the 1989-1993 period included police and military surveillance teams, informant handling units, technical experts, and specialist armed units.
- 5.5. My investigators reviewed the available records which indicated that, following the murder of Gerard Casey on 4 April 1989, North Region TCG increased their efforts to counter the increased threat posed by loyalist paramilitaries in the North West region.

- 5.6. Within days of Mr Casey's murder, North Region TCG commenced a covert operation targeting an individual who police suspected was involved in the murder. This operation continued for several months. Preparations were also put in place to conduct surveillance on a number of other North West UDA/UFF members. This indicated an intent by RUC Special Branch to develop intelligence profiles of North West UDA/UFF members and thwart their terrorist activities.
- 5.7. My investigators examined an intelligence report which indicated that the North West UDA/UFF leadership was concerned by the number of approaches RUC Special Branch officers were making towards their members. Again, this suggested that RUC Special Branch were seeking to improve their intelligence-gathering capabilities against loyalist paramilitaries within North Region.
- 5.8. From 1991 onwards, the North West UDA/UFF escalated their campaign of violence, including in a sectarian attack at Greysteel on 30 October 1993.
- 5.9. Eddie Fullerton, a Sinn Fein Councillor, was shot dead at his home in Buncrana, County Donegal, on 25 May 1991. An Garda Síochána conducted the murder investigation and believed that loyalist paramilitaries from Northern Ireland had carried out the attack. Later that year Patrick Shanaghan, Thomas Donaghy, and Bernard O'Hagan were also shot dead by the UDA/UFF.
- 5.10. Although North Region TCG initiated a covert surveillance operation following the murder of Gerard Casey, my investigators established that, by late 1991, RUC Special Branch were not consistently acquiring accurate and actionable intelligence about the North West UDA/UFF. However, my investigators also established that this intelligence situation began to improve over the following two years.



- 5.11. Covert police operations against the North West UDA/UFF increased during 1992, when surveillance was conducted on a number of members. During this period, however, they were responsible for the murders of Daniel Cassidy and Malachy Carey, in addition to the attempted murders of James McCorrison and Patrick McErlain.
- 5.12. Police arrested a number of individuals following the above attacks. Person N was arrested following the attempted murder of James McCorrison and subsequently convicted of a related firearms offence. Another individual, Person R, was convicted of the murder of Malachy Carey. These convictions, when added to the recovery of weapons detailed in Chapter 4 of this public statement, indicated that police had partial success in disrupting the activities of the North West UDA/UFF during the period.
- 5.13. In addition to undertaking covert surveillance operations during the period, this investigation established that RUC Special Branch sought to recruit members of the North West UDA/UFF as informants. This was a recognised police tactic, aimed at disrupting loyalist paramilitary activities in the region.
- 5.14. This investigation also established that police gathered intelligence on the North West UDA/UFF through covert surveillance operations targeted at the Belfast leadership.

### **Intelligence Caches**

- 5.15. This investigation has sought to establish what action was taken by police to warn identified individuals of the existence of threats against them. I am of the view that, on a number of occasions, the receipt of threat intelligence about specific individuals engaged the State's obligations to protect the lives of its citizens as provided for by Article 2 of the European Convention on Human Rights (ECHR).

5.16. In his report concerning the murder of the Belfast solicitor, Patrick Finucane, the late Sir Desmond de Silva QC considered this issue under the heading, *'The difficulties of exploiting threat intelligence in the 1980s.'* He stated that *'I am mindful of the need to recognise the limitations of the authorities in seeking to deal with threat intelligence. Prior knowledge of a threat to an individual does not necessarily mean that the State can be expected to prevent that individual from being attacked. It is, however, reasonable to expect the authorities to take proportionate and appropriate steps to seek to reduce the risk to an individual under serious threat. I also recognise that many of the most well-known republican and loyalist paramilitaries were undoubtedly alert to the fact that they were potential targets for terrorist attack.'*

*'By the late 1980s many paramilitaries had installed security doors and alarms at their homes to provide a degree of protection. Some members of these organisations would move house regularly or register vehicles at different addresses to seek to avoid surveillance by the security forces or an opposing terrorist group.'*

*'The RUC would clearly have faced difficulties in seeking to protect such paramilitaries. I am under no illusion that some of the senior PIRA figures referred to in this report would not have had any interest in receiving advice on their personal security from RUC officers in the context of the late 1980s in Northern Ireland. The reality is that PIRA at that time were murdering police officers and conspiring to murder many more.'*

*Whilst I accept the difficulties faced by the RUC in this respect, there is one critical qualification that I must add. I approach this subject from the starting point that the obligations upon the State to protect the right to life of its citizens apply universally. The law makes no distinction between the right to life of an individual actively engaged in terrorism; someone leading a normal, law-abiding life; or indeed an agent*

*providing information to the security forces. However difficult it may have been, the reality is that police officers in Northern Ireland were charged with the task of protecting the lives of individuals who were, in some instances, themselves seeking to murder security force personnel.'*

- 5.17. The RUC policy at the time in respect of warning individuals at risk was set out in Force Order 33/86 entitled, *'Threats against the Lives of Members of the Security forces, VIPs or other Individuals.'* This stated that when a threat was received *'Local Special Branch (SB) concerned will inform the Sub-Divisional Commander (SDC) in whose area the subject resides or works and the SDC will take whatever action he wishes necessary. If the information received indicates that an attack on any person is imminent, the member receiving the information will immediately take all necessary action to inform the person at risk.'* On 3 July 1991, it was replaced by Force Order 60/91, which contained the same instructions as quoted above.
- 5.18. The Force Order placed clear responsibility on the local RUC Sub-Divisional Commander to assess whether threat warnings to identified individuals was necessary. If the threat against the individual was considered imminent, in accordance with the Force Order, a threat warning should then be issued. If the threat was not considered imminent, the Sub-Divisional Commander could take whatever action they considered appropriate.
- 5.19. This investigation has sought to establish what assessment was undertaken by police as to whether it was necessary to warn identified individuals of the existence of threats against them. I am of the view that the receipt of intelligence of an imminent threat to the life of an identifiable individual by police engaged the State's obligations to take steps to protect the lives of its citizens as provided for by Article 2 of the European Convention on Human Rights (ECHR). I acknowledge

that the jurisprudence on the obligations imposed on the State by Article 2 to protect life has developed considerably since the events detailed in this public statement.

- 5.20. There was a responsibility on local police commanders to make informed and accountable decisions in respect of threat warnings. These police commanders were reliant on relevant threat intelligence being shared by RUC Special Branch. The lack of relevant records made it difficult to identify personal culpability in respect of the failings this investigation has identified regarding this sharing of information and intelligence. It is my view that some of the victims should have been informed that their details had been found in some of the loyalist ‘caches’.

### **Background to UDA/UFF Intelligence Gathering**

- 5.21. Brian Nelson was arrested as part of the Stevens Inquiry into alleged collusion between the security forces in Northern Ireland and loyalist paramilitaries.<sup>26</sup> It entered the public domain that Nelson was an informant for the military when actively involved in loyalist terrorism.
- 5.22. Brian Nelson was instrumental in developing an intelligence gathering system for the UDA/UFF in Belfast. This investigation has gathered evidence indicating that this system was adopted outside Belfast by other units, including the North West UDA/UFF. This significantly enhanced their intelligence gathering capabilities.

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<sup>26</sup> In 1989, John Stevens, the then Deputy Chief Constable of Cambridgeshire Constabulary, was appointed to lead the first of three inquiries he conducted into allegations of collusion between the security forces and loyalist paramilitaries in Northern Ireland. His investigation led to the arrest of Brian Nelson in 1990 and his subsequent conviction in 1992.

- 5.23. The late Sir Desmond de Silva QC stated *'It appears to have been Nelson's express purpose that other UDA members and Brigades should independently involve themselves in targeting.'*<sup>27</sup>
- 5.24. This investigation has established that the North West UDA/UFF was a mainly self-sufficient paramilitary unit during the 1989-1993 period. This included the ability to gather their own intelligence for use in the selection and targeting of victims.
- 5.25. The intelligence 'caches' referred to below were recovered by the security forces between November 1989 and September 1993. Their existence confirmed that, during this period, the UDA/UFF had placed greater emphasis on their intelligence gathering structures and targeting techniques.
- 5.26. This investigation has established that the UDA/UFF developed a system where they built intelligence profiles on individuals within the nationalist and republican communities, including members of PIRA and Sinn Féin. This contributed towards creating a comprehensive and current intelligence picture which provided UDA/UFF with targets when planning attacks.

### **UDA/UFF Intelligence Gathering in Derry/Londonderry**

- 5.27. In early November 1989, an individual linked to the North West UDA/UFF was observed acting suspiciously near the home of a known republican in Derry/Londonderry. Police arrested him and searched his address, where they found documentation containing

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<sup>27</sup> In the executive summary of his report on the murder of Belfast solicitor Patrick Finucane, Sir Desmond de Silva stated that Brian Nelson became an agent for the FRU, 'a covert section of the Army which ran agents in Northern Ireland,' reporting on the activities of the UDA, between 1984 and 1985. Following a period living in West Germany he was re-recruited by the FRU in 1987 and persuaded to move back to Northern Ireland, where he was tasked with re-infiltrating the UDA as an Intelligence Officer.

the details of several hundred individuals. This included information relating to Sinn Féin and suspected PIRA members.

- 5.28. The documentation contained names, addresses, vehicle details, photographs, and other information. Most of the documentation was of military origin, including army intelligence reports. Other material had been obtained from newspaper articles and other sources in the public domain. None of the recovered documentation originated from the RUC.
- 5.29. Personal information relating to Gerard Casey, Eddie Fullerton, Patrick McErlain, and Malachy Carey was contained within this documentation.
- 5.30. Nine other individuals were subsequently arrested in connection with the seizure of this material. Police established during their interviews that documentation had been collected and catalogued over several years for the sole purpose of facilitating UDA/UFF targeting for attacks.
- 5.31. All ten of the arrested individuals were convicted in November 1991 of a number of offences relating to the recovered documentation. They received prison sentences of various lengths. The first individual, arrested near the home of the known republican, received a six year sentence.
- 5.32. An intelligence ‘*cache*’ of this nature posed a significant threat to those named within the documentation. This placed a responsibility on the local RUC Sub-Divisional Commander to issue threat warnings to identified individuals, if the threat against them was considered imminent. If the threat was not considered imminent, the Sub-Divisional Commander could take whatever action they considered appropriate, in accordance with the relevant RUC Force Order.

- 5.33. Gerard Casey was murdered by the UDA/UFF on 4 April 1989. At that time, there was no available intelligence which could have forewarned of, or prevented, Mr Casey's murder. However, as stated above at paragraph 5.29, Mr Casey's personal information was contained in documentation obtained by police in November 1989, seven months after Mr Casey's murder.
- 5.34. Eddie Fullerton was murdered on 25 May 1991 at his home in Buncrana, County Donegal. As stated at paragraph 5.29 above, Mr Fullerton's personal information was found in documentation obtained by police in November 1989. However, this investigation has not found any record that Mr Fullerton was warned by police. My investigators spoke with the family of Mr Fullerton who stated that he was not warned about threats against him by either the RUC or AGS. This investigation has established that two Sinn Féin Councillors from the Derry/Londonderry area were warned by police that their personal details had been found within the relevant intelligence '*cache*'. This included vehicle registration numbers, addresses, telephone numbers, and other information indicating that they were being targeted by loyalist paramilitaries. The recovered documentation relating to Mr Fullerton consisted of newspaper cuttings detailing his role as a Sinn Féin Councillor.
- 5.35. Patrick McErlain was murdered on 28 August 1992 while driving on the Bellaghy Road, Dunloy towards his workplace in Ballymena. As stated at paragraph 5.26 above, Mr McErlain's personal information was found in the documentation in the intelligence '*cache*' discovered by police in November 1989. However, this investigation has not found any record that Mr McErlain received a threat warning from police.
- 5.36. Malachy Carey was shot on 12 December 1992, when walking on Victoria Street, Ballymoney and later died from his injuries in hospital.

Police had received intelligence in September 1989 indicating that Mr Carey had been targeted by Person A. This investigation has been unable to establish whether Mr Carey was informed of the specific threat based on this intelligence. Mr Carey's personal information was discovered in the documentation obtained by police in November 1989, as referred to above. This investigation has established that Mr Carey was informed of a threat on 9 December 1989, following the discovery of this documentation in November 1989.

### **Ulster Volunteer Force (UVF) Intelligence**

- 5.37. In late November 1989, the RUC received a handwritten list of the names, addresses, dates of birth, and vehicle details of 31 individuals. This list was understood to have originated from within the UVF. Police were informed by Special Branch that there was no *imminent* threat against any of the named individuals. The list included the names of Gerard Casey, Malachy Carey, and Patrick McErlain. By this time Mr Casey had already been murdered, indicating that the individuals on the list were being targeted by loyalist paramilitaries. Police notified Malachy Carey in early December 1989 about the threat against him. My investigators, however, have found no record that a warning was provided to Patrick McErlain.

### **Portrush**

- 5.38. In February 1991, following an earlier sectarian attack on a house in the Portrush area, police arrested Person J, a suspected member of the North West UDA/UFF. They searched his address and recovered documentation containing the details of over 250 individuals, including typed documentation of military origin. The military material contained the names of suspected PIRA members.



- 5.39. Person J was a former member of the Ulster Defence Regiment (UDR). When interviewed by police, he denied being involved in terrorism, stating that the documentation was for his personal security. He stated that he had found some of the military documentation during a UDR patrol and recorded other information at military briefings. He was charged and remanded into custody, but was later released on High Court bail.
- 5.40. Police established that the military material discovered in February 1991, had originated from the Tyrone and Fermanagh area, and had been created two to three years prior to its recovery. Other documentation found at that time listed members of Magherafelt District Council, which included Bernard O'Hagan, and this documentation also contained the address of Thomas Donaghy's father.
- 5.34 On 31 May 1991, an Assistant Chief Constable (ACC) instructed that there was no requirement to issue any threat warnings relating to the Portrush documentation find. He stated that there was no indication that the material had fallen into the hands of a terrorist organisation. He added that he would keep this decision under review, should any further information come to light.
- 5.41. Thomas Donaghy was murdered on 16 August 1991 as he arrived for work at Portna Eel Fishery, near Kilrea. Further, Bernard O'Hagan was murdered on 16 September 1991, as he arrived for work at Magherafelt Technical College.
- 5.42. In September 1991, Person J was convicted of Possession of Material likely to be of Use to Terrorists and sentenced to 12 months imprisonment. By then, the UDA/UFF had murdered Thomas Donaghy and Bernard O'Hagan. Police identified Person J as a suspect in Mr Donaghy's murder as he had been observed in the area

prior to the attack. He was arrested and interviewed about the murder, but subsequently released without charge.

- 5.43. There is no record that either Mr Donaghy or Mr O'Hagan were issued with threat warnings in respect of the Portrush documentation find. This investigation has found no evidence that the relevant ACC, now deceased, reviewed his decision, following the murders of Mr Donaghy and Mr O'Hagan not to issue threat warnings to any other person whose information was contained in the documentation find.

### **Drumaduff**

- 5.44. In June 1991, a member of the public found a significant quantity of police documentation at a rubbish dump at Drumaduff, near Limavady, County Derry/Londonderry. Subsequent media articles claimed that the documentation contained the names and addresses of 21 prominent republicans, including those of Eddie Fullerton.
- 5.45. An internal police investigation concluded that the documentation had originated from Strabane RUC Station, having been mistakenly discarded with kitchen waste rather than being incinerated. A senior police officer informed the media at the time that there was nothing of a sensitive nature contained within the documentation.
- 5.46. My investigators interviewed a number of former police officers involved in the relevant internal RUC investigation. They stated that no personal information relating to Mr Fullerton was contained within the documentation. This was confirmed by a former Sinn Féin Councillor from Derry/Londonderry, who informed my investigators that he had been given the documentation by the member of the public who had initially discovered it at the rubbish dump.

## **Snugville Street**

- 5.47. On 7 November 1991, a loyalist intelligence ‘cache’ was found at an address in Snugville Street, Belfast. Patrick McErlain’s name was included on a list of individuals allegedly connected to North Antrim PIRA. Documentation examined by my investigators established that reports were submitted regarding the ‘cache’ to senior police at RUC Headquarters, including CID and Special Branch. There was uncertainty amongst senior police as to whether an appropriate warning had been provided to Mr McErlain. A note attached to the relevant file, dated 18 December 1991, stated ‘*Personalities informed by Belfast SB.*’
- 5.48. However, this investigation has found no record that Mr McErlain was specifically informed about this potential threat to his safety.

## **Ballymoney**

- 5.49. On 12 January 1992, police searched the Ballymoney address of a suspected UVF member who was also a former member of the UDR. They recovered a revolver, ammunition, and explosives, in addition to RUC and UDR notebooks. Contained within the notebooks were the names of individuals suspected by the author of being members of PIRA, which included Daniel Cassidy.
- 5.50. This investigation has found no record that Mr Cassidy received a threat warning from police about this matter.
- 5.51. The suspected UVF member told police that he had gathered the information contained in the notebooks when serving in the UDR. He stated that he had used a police notebook when his UDR notebook became full.

- 5.52. The RUC submitted the relevant notebooks for forensic examination. This examination identified that one of them contained faint indentations of the names and addresses of a number of individuals from the Dunloy area, including Patrick McErlain's wife.
- 5.53. This investigation has found no evidence that police provided Mr McErlain with a warning regarding this matter. His wife, however, later stated in a media article that he had been warned about potential threats to his life two years before his attempted murder on 28 August 1992. She added that he believed his name was on a '*loyalist death list*' discovered in Ballymoney earlier that year. This indicated that it was possible Patrick McErlain had been notified by police about the relevant threat, however my investigation found no police records in relation to this notification.
- 5.54. As part of the January 1992 operation, police also searched the Ballymoney address of another suspected UVF member. They recovered a VZ58 assault rifle, three handguns, a .22 rifle, sub-machine gun, shotgun, and a large quantity of ammunition. In another related search, police recovered four 50 kilogram bags of fertiliser, two balaclavas, and a number of military jackets.
- 5.55. The two suspected UVF members were arrested, as was another individual who was a part-time UDR member. During police interviews, he admitted supplying police and military documentation to one of the suspected UVF members.
- 5.56. The part-time UDR member informed police that he had been pressurised into supplying the documentation, together with the times and routes of RUC and UDR patrols. He stated that he had also been asked, but refused, to supply UDR uniforms, weapons, and ammunition.

- 5.57. The suspected UVF members were convicted of various terrorist offences and imprisoned. The part-time UDR member was acquitted of passing information to loyalist paramilitaries. None of the recovered weapons were linked to any of the attacks referred to in this public statement.
- 5.58. This incident highlighted that the UVF, like the UDA/UFF, were capable of collating information for the purposes of targeting members of the nationalist and republican communities. It also demonstrated their connections with members of the military.

### **Summary**

- 5.59. This investigation has established that, by 1989, the RUC were in receipt of an emerging intelligence picture indicating that the UDA/UFF and UVF were focused on targeting prominent members of the nationalist and republican communities. They had also acquired the weaponry required to carry out attacks.
- 5.60. Although this intelligence was supported by the murder of Gerard Casey in April 1989, concerted proactive efforts by the RUC to disrupt the activities of the North West UDA/UFF did not commence until 1992. By then, this loyalist paramilitary grouping had developed into a well-equipped and informed unit with the capacity to carry out multiple terrorist attacks.
- 5.61. Some of the recovered documentation included material that originated from military sources. I am of the view that the North West UDA/UFF were receiving information from a number of former or serving members of the military. I shall expand on this view in Chapter 6 of this public statement.

5.62. UDR members would have been aware of the identities of suspected republican paramilitaries, Sinn Féin representatives, and perceived PIRA sympathisers in their local areas.

5.63. It is my view that the significant amounts of documentation recovered by the RUC from loyalist intelligence '*caches*' indicated that both the UDA/UFF and UVF had access to security force information for targeting purposes. This indicated that they possessed the capability to carry out individual and '*mass*' attacks as required.

### **Threats to Life and RUC Response**

5.64. The details of a number of the victims referred to in this public statement were contained within documentation recovered by police from the relevant loyalist intelligence '*caches*.'

5.65. The security situation in Northern Ireland at this time caused police to receive a large amount of threat intelligence. They were, therefore, familiar with their responsibilities as outlined in the relevant RUC Force Orders, referred to at paragraph 5.17 above. I am of the view, given the available evidence and intelligence, that the application of these Force Orders was inconsistent in respect of a number of the victims referred to in this public statement.

5.66. This investigation has established that Mr McErlain was not warned of the potential threat to his safety following the loyalist intelligence '*cache*' find in Snugville Street in November 1991. Following the discovery of documentation in Ballymoney in January 1992, there is no evidence that police provided Mr McErlain with a warning, despite the documentation containing details of Mr McErlain's wife and her address. At the time of his attempted murder, Mr McErlain was living with his wife and children in Dunloy. Although a media article stated that Mrs McErlain believed her husband had been warned about

potential threats to his life two years before his attempted murder in August 1992, there is no record of a threat warning to Mr McErlain in police documentation viewed by this Office. In light of the inconsistent evidence in relation to threat warnings to Mr McErlain, I am unable to conclude whether he received a warning from police subsequent to the documentation finds in November 1991 and January 1992.

- 5.67. Malachy Carey was shot on 12 December 1992, when walking on Victoria Street, Ballymoney and later died from his injuries in hospital. Police had received intelligence in September 1989 indicating that Mr Carey had been targeted by Person A. This investigation has been unable to establish whether Mr Carey was informed of the specific threat based on this intelligence. Mr Carey's personal information was discovered in the documentation obtained by police in November 1989, as referred to above. This investigation has established that Mr Carey was informed of a threat on 9 December 1989, following the discovery of this documentation in November 1989.
- 5.68. This investigation has found no evidence that Messrs Fullerton, Donaghy, O'Hagan, and Cassidy received threat warnings, following the discovery of their personal details in various intelligence 'caches'. All four were subsequently shot dead by the North West UDA/UFF. I am mindful, when taking this view, that not all of the relevant documentation could be located by my investigators.
- 5.69. The fact that individuals were convicted of offences relating to possession of the information likely to be of use in the furtherance of terrorism, including murder by terrorist organisations, was clearly relevant to the assessment of risk to those affected. In my view, possession, in and of itself, inferred a real risk to life to the individual identified. It was necessary for there to be an evaluation of this risk upon the material being discovered in the possession of a person or

person who saw its utility for a terrorist purpose. Although in some cases threat warnings were issued, I found no evidence of a consistent approach to risk assessment and would expect to see contemporaneous evidence of the evaluation of risk of harm, the ongoing review of risk and that those persons affected had been notified of the risk, even after the passage of time. This is particularly so where persons identified within the material were later murdered.



## 6.0

# The Role of Special Branch and Relevant Intelligence

- 6.1. This investigation examined the intelligence that was available to the RUC prior to attacks, in addition to other relevant intelligence received during the 1989-1993 period. Before summarising intelligence relating to the UDA/UFF, an overview of this paramilitary organisation is outlined below.

### **The Ulster Defence Association**

- 6.2. The Ulster Defence Association (UDA) was formed in September 1971 with the declared aim of 'defending Ulster' and to combat Irish Republicanism, particularly PIRA.
- 6.3. The UDA often used the pseudonym of the Ulster Freedom Fighters (UFF) when claiming responsibility for a terrorist attack. The UFF was outlawed in November 1973, but the UDA was not proscribed until August 1992. It is my view that the UDA and UFF were the same organisation. For the purposes of this public statement, therefore, I use the abbreviation UDA/UFF.
- 6.4. It is important to understand that, although the UDA operated a structured system and adopted military ranks, this was fluid and personnel often changed. From the early 1970s, the UDA had a Supreme Commander who oversaw meetings with regional leaders, known as Brigadiers. Military and political strategies were discussed and agreed by UDA Brigadiers at these meetings.

- 6.5. In December 1987, a senior member of the South Belfast UDA was murdered by PIRA. In January 1988, a senior member of North Belfast UDA, Person E, was arrested by the RUC, along with two other men at Mahon Road, Portadown. They were in possession of the UDA/UFF share of a loyalist arms importation referred to earlier in this public statement. The North Belfast member was subsequently convicted and imprisoned regarding this matter.
- 6.6. These events led to a loss of support for the Supreme Commander. He was unpopular with some '*rank and file*' members who thought he was trying to steer the organisation down a more political route, whereas they believed increased military action was required. In March 1988, the UDA Supreme Commander resigned and was not replaced.
- 6.7. The UDA/UFF was divided geographically into six battalions, each headed by a Brigadier. The battalion areas were in North, South, East, and West Belfast, South East Antrim, and the North West Brigade, based in Counties Antrim and Derry/Londonderry. Following the resignation of the Supreme Commander, the organisation was led collectively by the six Brigadiers who formed an Inner Council. This included the North West Brigadier.
- 6.8. The battalions were sub-divided into companies and units, also known as '*cells*'. The UDA copied the PIRA tactic of forming small, largely self-sufficient units where information was shared as required on a '*need to know*' basis. This minimised the risk of security force informants compromising proposed terrorist operations. The autonomy within the cell structure meant that Inner Council members may have known that an attack was imminent in a certain Brigade area but would not have been aware of the specific details.

- 6.9. Following the removal of the Supreme Commander, Brigadiers favoured attacking PIRA members and Sinn Féin councillors who they regarded as one and the same. This tactic was aimed at creating maximum fear within the wider nationalist community. It would involve an increase in sectarian attacks, often in retaliation for republican paramilitary violence. The UDA/UFF believed that this would allow them to negotiate a more favourable peace on their terms.
- 6.10. The RUC sought to penetrate the UDA/UFF at all levels through the use of informants and other covert tactics. This did not always provide intelligence that police were able to develop in order to prevent attacks. However, this investigation identified examples of police successfully acting on accurate intelligence to recover weapons and make arrests.

### **RUC Special Branch and Intelligence Management**

- 6.11. RUC Special Branch had the primary responsibility for gathering and exploiting intelligence on republican and loyalist terrorist activity in Northern Ireland during the relevant period. Special Branch operated Tasking and Coordination Groups (TCGs) in North, South, and Belfast Regions. TCGs were responsible for devising and implementing counter-terrorist operations that deployed a wide range of intelligence gathering tactics. These included physical and technical surveillance, in addition to a significant number of informants. This was in line with the United Kingdom (UK) Government's approach of using an intelligence-led strategy to counter terrorism in Northern Ireland.
- 6.12. Special Branch informant handlers were attached to specific police stations within each RUC division. Handling units had a degree of autonomy and reported to their Regional Headquarters who, in turn,

reported to Special Branch Headquarters (HQ) in Belfast. Units within HQ were responsible for the assessment and dissemination of intelligence. A unit known as E3B dealt with all intelligence relating to loyalist paramilitaries.

- 6.13. E3B normally consisted of five police officers supervised by a Chief Inspector. However, Sir Desmond de Silva stated that '*...the E3B section was in practice limited in its ability to assess intelligence relating to loyalist terrorism. A Security Service report commissioned by the Chief Constable in December 1988 concluded that E3B has neither the time, resources nor a sufficient data base to collate and analyse intelligence.*'<sup>28</sup> This is relevant when considering the policing response to the increased threat posed by the North West UDA/UFF during the relevant period.
- 6.14. All of the attacks referred to in this public statement occurred in RUC North Region, which covered Derry-Londonderry, North Antrim, and parts of Counties Tyrone and Fermanagh. North Region Special Branch were responsible for the management of all intelligence regarding terrorist attacks within the region, including that relating to the activities of suspected UDA/UFF members.
- 6.15. My investigators interviewed a number of former RUC Special Branch officers, of various ranks, who worked in North Region during the relevant period. They assisted in providing an important insight into structures and working practices within the region at the time.
- 6.16. The Regional Head of Special Branch (RHSB North) was a Detective Chief Superintendent, who was supported by the Deputy Head (DHSB North), a Detective Superintendent. The overall Head of RUC Special Branch (HSB), an Assistant Chief Constable, was

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<sup>28</sup> De Silva Report, Para 3.10.

based at RUC Headquarters in Belfast. The Regional Head was responsible for all Special Branch activity within their relevant area. This included the management of intelligence and counter-terrorism operations.

- 6.17. Details of incoming intelligence and all operational activities within North Region were communicated on a daily basis to RUC Special Branch HQ. This was to enable a force-wide strategy to be facilitated, allowing a co-ordinated multi-agency approach that involved the military, Security Service, and other government agencies.
- 6.18. All received information was forwarded to RUC Special Branch HQ where it was analysed and prioritised as required. This was to ensure that all relevant security forces personnel were aware of the terrorist situation in Northern Ireland at any given time.
- 6.19. Information received in North Region was assessed by the relevant TCG, before being graded as to its reliability. It was prioritised accordingly and disseminated to relevant individuals, depending on its sensitivity. Once this process was completed, the information was referred to as intelligence.
- 6.20. Some intelligence was promptly disseminated to police investigating attacks but, on other occasions, intelligence was deemed too sensitive to share. In these instances, intelligence could be partially disseminated in a redacted format to particular individuals, or withheld for a period of time. The latter tactic was known as '*Slow Waltz*'.<sup>29</sup> The protection of informants and methodology was a significant feature of RUC Special Branch's intelligence strategy.

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<sup>29</sup> '*Slow Waltz*' was a term used in RUC Special Branch intelligence reports, indicating that the dissemination of relevant intelligence should be delayed for a period of time. This was often in order to protect the informant who had provided the intelligence.

Compromising an informant could have resulted in their death or serious injury. High-grade or imminent threat intelligence relating to terrorist activities often led to North Region TCG mounting covert operations.

### **The Available Intelligence Pre and Post the Attacks**

- 6.21. This investigation examined intelligence received by police both before, and after, the attacks referred to in this public statement. This was to establish whether intelligence existed which, if acted upon, could have prevented attacks. This investigation also sought to establish whether relevant intelligence was shared by Special Branch in order to assist the police investigations into these attacks. It is important to clarify that, in general, intelligence is not initially treated as evidence even if it would, in principle, be admissible in legal proceedings. Intelligence is information that has been assessed and graded as to its relevance and quality, before a decision is taken as to how it can best be utilised. It can allow the SIO to initiate and develop lines of enquiry which are capable of progressing the overall investigative strategy. These lines of enquiry may, in turn, generate further evidential opportunities outside the intelligence gathering processes.

### **Gerard Casey**

- 6.22. At the time of Mr Casey's murder, police possessed limited intelligence regarding the activities of the North West UDA/UFF. This was partly due to the relatively low number of loyalist paramilitary attacks in the region in the preceding years. As the number of attacks increased, particularly from 1991 onwards, RUC Special Branch expanded its intelligence gathering network. This was evidenced by an increase in the number of arrests and counter-terrorist operations during this period.

### **Pre-Incident intelligence**

- 6.23. There was no pre-incident intelligence that could have forewarned police of Mr Casey's murder on 4 April 1989.

### **Post-Incident intelligence**

- 6.24. Several pieces of intelligence received after Gerard Casey's murder named suspected North West UDA/UFF members as having been involved. However, the information was of a general nature. Police arrested and interviewed Persons A, J, and K who were all named in the relevant intelligence. All three were subsequently released without charge. Other suspected North West UDA/UFF members were later arrested but, to date, no individual has been charged or prosecuted for Mr Casey's murder.
- 6.25. Intelligence received in 1993 provided the names of four individuals, Persons A, B, J, and K, believed to have been responsible for the murder of Mr Casey.
- 6.26. This investigation has established that, following Mr Casey's murder, North Region TCG commenced a covert surveillance operation against Person K, who they viewed as a main suspect for the murder. They also began to build intelligence profiles on other individuals who they believed were involved in loyalist terrorist activity in the North West.

### **Intelligence from 1989 to 1991**

- 6.27. Over two years later, Eddie Fullerton was murdered in Bunrana, County Donegal. My investigators examined over 2,000 intelligence reports submitted during the 1989-1991 period. This review provided

a fuller understanding as to what the RUC knew about the North West UDA/UFF by the time of the Mr Fullerton's murder.

- 6.28. Some of the reports examined by my investigators indicated that the UDA/UFF leadership were concerned by the number of approaches RUC Special Branch were making towards its members in a bid to recruit them as informants. An unsuccessful approach had been made to a senior loyalist paramilitary. Intelligence reports, examined by my investigators, indicated that RUC North Region Special Branch made concerted efforts, following Gerard Casey's murder, to infiltrate the North West UDA/UFF by recruiting members as informants.
- 6.29. During this period, police arrested a significant number of suspected North West UDA/UFF members. This led the UDA/UFF leadership to organise anti-interrogation training so its members could resist approaches to become informants, as well as withstand questioning when in police custody.
- 6.30. Intelligence was also received regarding the location of a number of loyalist weapon hides. This assisted in the recovery of weapons referred to in Chapter 4 of this public statement. Other intelligence named members of the UDA/UFF leadership, dates and times of Inner Council meetings, weapons movements, and finance plans.
- 6.31. Intelligence detailed the impact that arrests and the recovery of weapons was having on the UDA/UFF, in addition to concerns about informants within the organisation. My investigators examined a RUC Special Branch report, written in 1991, which stated that efforts were ongoing to recruit informants within the North West UDA/UFF.
- 6.32. This investigation has established that, although there were no loyalist attacks between the murders of Gerard Casey and Eddie



Fullerton in the North West, RUC Special Branch were aware of the growing threat posed by the North West UDA/UFF. The investigation also established that police were making efforts to disrupt the activities of loyalist paramilitaries in the area. I will discuss the effectiveness of these disruption tactics later in this public statement.

## **Eddie Fullerton**

### **Pre-Incident Intelligence**

- 6.33. Intelligence received in September 1989 indicated that the UDA/UFF may have been planning an attack in the Republic of Ireland. The ACC responsible for RUC Special Branch directed that efforts be made to obtain more details regarding any proposed attack. This investigation has been unable to establish if any more specific information was gathered.

### **Post-Incident Intelligence**

- 6.34. Shortly after the murder, police received intelligence that Person A controlled the UFF unit that was responsible for Mr Fullerton's murder. Further intelligence was received that Person W was also involved in Mr Fullerton's murder. Police assessed that, due to its sensitivity, this information could not be disseminated further. This investigation has found no evidence that the RUC shared this intelligence with their AGS counterparts, who were investigating Mr Fullerton's murder.
- 6.35. In the months following Mr Fullerton's murder, AGS asked the RUC to research five individuals from Northern Ireland who they regarded as suspects. The relevant research was conducted but no intelligence linking these five individuals to the murder was identified. This information was passed to AGS.

- 6.36. In March 1992, the RUC received intelligence stating that two UDA/UFF members, Persons N and O, may have been involved in the murder of Mr Fullerton, in addition to the murder of Bernard O'Hagan and attempted murder of James McCorriston. This investigation has not established if this intelligence was passed to AGS prior to November 1993. It was, however, circulated to other Special Branch departments and the RUC's Criminal Investigation Department (CID).
- 6.37. In January 1993, AGS requested information on four UDA members, Persons J, K, N, and O who they regarded as suspects. My investigators have been unable to establish whether the RUC replied to this request. In December 1993, AGS asked for information on a further individual, Person F, who by this time had been charged with the Greysteel murders. The RUC responded that they held no intelligence linking Person F to Mr Fullerton's murder.
- 6.38. Senior detectives from the RUC met with their counterparts in AGS in November 1993, and provided them with the names of four UDA members, Persons J, K, N, and P, who they believed may have been involved in Mr Fullerton's murder. Two of the named individuals were already serving prison sentences for other offences connected to loyalist terrorism.

### **Patrick Shanaghan**

#### **Pre-Incident Intelligence**

- 6.39. Patrick Shanaghan was shot dead on 12 August 1991, nearly three months after the murder of Mr Fullerton. The RUC had previously warned Mr Shanaghan on two occasions that his life was under threat. These threats will be further discussed later in this public

statement. On 17 February 1989, he survived an attempt on his life when a loyalist gunman fired eight shots at him outside his family home.

### **Post-Incident intelligence**

6.40. My investigators established that there was limited intelligence received following Mr Shanaghan's murder. One report indicated that the UVF may have been responsible. Other intelligence stated that a UDA/UFF leader from Belfast had knowledge that an attack was going to take place. In September 1991, it was reported to Special Branch that PIRA believed Mr Shanaghan had been shot by the RUC or UDR.

6.41. Police received intelligence that Person P, a North West UDA/UFF member, was involved in the murder. In September 1994, intelligence named another two UDA/UFF members who may have been involved. The intelligence relating to these three individuals was shared with police investigating Mr Shanaghan's murder. All three were arrested and interviewed about Mr Shanaghan's murder but later released without charge.

### **Thomas Donaghy**

#### **Pre-Incident intelligence**

6.42. There was no pre-incident intelligence that could have forewarned police of Mr Donaghy's murder on 16 August 1991.

#### **Post-Incident intelligence**

6.43. Shortly after the murder, intelligence was received indicating that the attack had originally been planned for 13 August 1991 but did not

take place. Additional intelligence was received, over the following days, naming two men who were involved. However, no other details were provided. My investigators also viewed police documentation where Persons A and K were suspected of having been involved in the murder.

## **Bernard O'Hagan**

### **Pre-Incident intelligence**

- 6.44. There was no pre-incident intelligence that could have forewarned police of Mr O'Hagan's murder on 16 September 1991.

### **Post-Incident intelligence**

- 6.45. There was no intelligence received in the months following the murder. In March 1992, police received intelligence stating that either Persons N or O, or both, were suspected of having been involved. At the time, Person N was *'on the run'* as he was also suspected of having been involved in the attempted murder of James McCorrison on 14 February 1992. He was subsequently located and arrested in June 1992. Person O was in custody at the time of Mr O'Hagan's murder.

- 6.46. In September 1992, further intelligence indicated that Persons N and P were involved in the murder.

- 6.47. **James McCorrison**

### **Pre-Incident intelligence**

- 6.48. There was no pre-incident intelligence that could have forewarned police of this attack, which occurred on 14 February 1992.

## **Post-Incident Intelligence**

- 6.49. Police did not receive intelligence indicating who sanctioned, planned, or carried out the attack on Mr McCorrison. A red Ford Cortina car used by the gunmen was recovered near the scene which yielded forensic evidence that identified Person N as a suspect. He went '*on the run*' and was not arrested until June 1992, after which he was charged and convicted of a firearms offence connected to the attack. Person N was also suspected of having been involved in the murders of Eddie Fullerton and Bernard O'Hagan.
- 6.50. Police received information naming two individuals who were believed to have bought the red Ford Cortina linked to the attack. One of them was arrested and questioned about the shooting, but provided police with an alibi witness. He was subsequently released without charge. I have found no evidence that the second named individual was arrested and questioned about the attack.
- 6.51. My investigators examined Police Officer 1's policy file in respect of another investigation where he recorded that Persons J, N, and O were suspected of having carried out the attack on Mr McCorrison.

## **Daniel Cassidy**

### **Pre-Incident intelligence**

- 6.52. There was no pre-incident intelligence that could have forewarned police of Mr Cassidy's murder on 2 April 1992.

### **Post-Incident intelligence**

- 6.53. There was no specific intelligence received after the murder as to who was responsible. General intelligence indicated that Person B's North West UDA/UFF carried out the attack. Two other individuals were blamed by republicans for this attack.

### **Patrick McErlain**

#### **Pre-Incident intelligence**

- 6.54. There was no pre-incident intelligence that could have forewarned police of the attempted murder of Mr McErlain, which occurred on 28 August 1992.

#### **Post-Incident intelligence**

- 6.55. Shortly after the attack on Patrick McErlain, intelligence indicated that PIRA suspected Person Q as having been responsible. Police issued Person Q with a threat warning three days after the attack in accordance with existing guidance. PIRA murdered Person Q and another man in April 1994.

### **Malachy Carey**

#### **Pre-Incident intelligence**

- 6.56. There was no pre-incident intelligence that could have forewarned police of Mr Carey's murder in December 1992.

### **Post-Incident intelligence**

- 6.57. Intelligence was received naming a North West UDA/UFF member, Person B, as having organised the murder. This information was passed to police investigating the attack who arrested Person B and another individual, Person S, who was suspected of having been the gunman. Both denied being involved and were subsequently released without charge.

### **The Castlerock Murders and Attempted Murder**

#### **Pre-incident intelligence**

- 6.58. There was no pre-incident intelligence that could have forewarned police of this attack, which occurred on 25 March 1993.

#### **Post-Incident intelligence**

- 6.59. The UDA/UFF claimed that James Kelly was targeted as he was a senior PIRA member. PIRA later confirmed that he was a member. None of the other victims had any paramilitary connections.
- 6.60. On 2 March 1993, James Kelly, along with Noel O’Kane, Robert Dalrymple, and James McKenna had been stopped by police in a Transit van. By 8 March, RUC Special Branch had confirmed that James Kelly was working in the Gortree Park area of Castlerock. This intelligence was circulated to local police on the instructions of the Sub Divisional Commander at Coleraine RUC Station.
- 6.61. My investigators interviewed the former RUC Special Branch officer who recorded the sighting of James Kelly in Gortree Park. He confirmed that Special Branch were interested in James Kelly working at this location because he was a suspected PIRA member.

He described the intelligence report as low grade. It would have been circulated to uniformed police personnel via the local Intelligence Collator. He stated that Special Branch were unaware that James Kelly was being targeted by loyalist paramilitaries and that the attack came as a surprise to them.

- 6.62. Police received intelligence naming the two men believed to have purchased the van used in the attack. Following the murders, police arrested 11 individuals who were all subsequently released without charge. However, one of the 11 individuals, Person H, was later convicted for his role in both the Castlerock and Greysteel murders, and was sentenced in 1995 to life imprisonment.

## **The Greysteel Murders and Attempted Murders**

### **Pre-Incident Intelligence**

- 6.63. In early October 1993, police received a non-specific intelligence report indicating that loyalist paramilitaries intended to increase their military campaign against the nationalist community.
- 6.64. On 23 October 1993, a PIRA bomb exploded inside Frizzell's Fish Shop on the Shankill Road, Belfast. Ten people were killed, including the PIRA member who had carried the bomb into the shop. This investigation has established that police were aware that loyalist paramilitaries were seeking to carry out a retaliatory attack, although no specific details were known.
- 6.65. Police received intelligence indicating that, following this attack, the UDA/UFF leadership were discussing retaliatory attacks.
- 6.66. On the evening of 23 October 1993, loyalist paramilitaries shot dead a delivery driver, Martin Moran, in South Belfast. They were also



responsible for the attempted murder of Anthony Brown in Mount Street, Belfast. On 26 October 1993, UDA/UFF gunmen opened fire on staff at the Kennedy Way Council depot in West Belfast. Two men, James Cameron and Mark Rodgers, were shot dead and five others injured.

- 6.67. Following this, intelligence was received indicating that UDA/UFF decided that the response to the Shankill Road bombing had to be wider and not solely restricted to Belfast. The intelligence continued that it was not known what specific action was being taken. All Assistant Chief Constables were appraised of this intelligence.

**Comments by Loyalist Prisoners at Castlereagh RUC Holding Centre on 30 October 1993**

- 6.68. In the days following Martin Moran's murder and the attacks at Mount Street and Kennedy Way, several suspected West Belfast UDA/UFF members were arrested and detained for questioning at Castlereagh RUC Holding Centre. During an interview on the morning of 30 October 1993, one of the arrested individuals made comments to detectives suggesting that a loyalist paramilitary attack was imminent in the North West. He stated that it was going to be 'a *massacre*' in retaliation for the Shankill Road bombing. Another arrested individual made similar comments.
- 6.69. This information was passed to the interview supervisor at Castlereagh, a Detective Chief Inspector, who at 2.20pm informed the Duty Superintendent at Strand Road RUC Station in Derry/Londonderry. My investigators interviewed the Detective Chief Inspector who made a written record, at the time, of the incident.
- 6.70. He stated that, despite police efforts to obtain further information, the detained individuals added nothing. He maintained contact with

the Duty Superintendent at Strand Road RUC Station who informed him that security in the North West was '*tight*.' He interpreted this as meaning that security was at a high level throughout the region.

- 6.71. He added that he briefed the CID Duty Officer and Special Branch Duty Officer, both Detective Superintendents, about the information. He also contacted TCG North Region to arrange for Vehicle Check Points (VCPs) to be put in place. My investigators interviewed the CID Duty Officer who, at that time, was based at Castlereagh RUC Station. He informed my investigators that it was common for UDA/UFF detainees to boast about attacks and also to be deliberately vague so as not to incriminate themselves.
- 6.72. My investigators could find no records relating to VCP timings and locations in the North West on 30 October 1993.

### **Post-Incident intelligence**

- 6.73. During the early hours of 31 October 1993, police received three anonymous telephone calls naming individuals who may have been involved in the attack. Police arrested eight individuals later that day, and searched 17 addresses in the North West area. Intelligence was received indicating that Person B, one of those arrested, had sanctioned and organised the attack.
- 6.74. Police continued to make arrests over the coming days. By 8 November 1993, five men had been charged in connection with the murders. Much of the intelligence received, following this period, focused on a ceasefire between loyalist paramilitary organisations and PIRA, although further attacks remained possible. Intelligence indicated that the UDA/UFF were struggling to find members prepared to take part in attacks.

## Covert Operations

- 6.75. This investigation sought to identify covert surveillance operations mounted by North Region TCG against members of the North West UDA/UFF during the period 1989-1993. This was another policing tactic that, when combined with the increased recruitment of informants, indicated increased efforts by RUC Special Branch to improve its intelligence coverage of the North West UDA/UFF.
- 6.76. North Region TCG files were routinely destroyed. However, my investigators reviewed documentation which provided dates and brief details about a number of North Region TCG operations mounted against loyalist paramilitaries during the 1989-1993 period. A number of these resulted in the recovery of weapons and ammunition.
- 6.77. Other operations related to efforts to conduct covert surveillance on suspected North West UDA/UFF members. The available documentation does not contain details as to the outcome of these operations. However, it evidenced that RUC Special Branch made efforts to conduct covert surveillance in the months prior to the Greysteel attack on a number of North West UDA/UFF members.
- 6.78. However, my investigators also viewed documentation indicating that a number of covert operations, relating to members of the North West UDA/UFF, were conducted during September and October 1993, ending prior to the attack at Greysteel. I am aware of the circumstances surrounding the cessation of these operations. However, I am satisfied that they were not relevant to the issues that I must consider in respect of the murders and attempted murders outlined in this public statement.

## 7.0

# THE USE OF INFORMANTS BY THE RUC

- 7.1. A central focus of this investigation has been the RUC use of informants within loyalist paramilitary organisations during the 1989 - 1993 period. The use of informants as an intelligence gathering tool is an established policing tactic. The use of informants for intelligence gathering purposes during the Northern Ireland 'Troubles' was no different and saved lives. Police, given the hostile conditions they often operated within, could not have fulfilled their core duty to prevent and detect crime, unless they had an intelligence-gathering system capable of providing relevant and accurate information.
- 7.2. Individuals who supplied information to police during this period were referred to as informants, agents, or sources. Since the introduction of the Regulation of Investigatory Powers Act 2000 (RIPA), legislation which governs the use and conduct of informants, they have been referred to as Covert Human Intelligence Sources (CHIS). For the purposes of this public statement, I will refer to them as informants.
- 7.3. At paras. 112-113, in his Executive Summary to the Report on the murder of Patrick Finucane, Sir Desmond De Silva QC noted the importance of the use of agents within terrorist groups:

*"[112.] There are ... some broad themes that may still have relevance to the world of intelligence-gathering. I have not concluded that the running of agents within terrorist groups is an illegitimate or unnecessary activity. On the contrary, it is clear that the proper use of such agents goes to the very heart of tackling terrorism. The principle lesson to be learned from my report, however, is that agent-running must be carried out within a*

*rigorous framework. The system itself must be so structured as to ensure adequate oversight and accountability. Structures to ensure accountability are essential in cases where one organisation passes its intelligence to another organisation which then becomes responsible for its exploitation.*

*[113.] It is essential that the involvement of agents in serious criminal offences can always be reviewed and investigated and that allegations of collusion with terrorist groups are rigorously pursued. Perhaps the most obvious and significant lesson of all, however, is that it should not take another 23 years to properly examine, unravel and publish a full account of collusion in the murder of a solicitor that took place in the United Kingdom.”*

- 7.4. This investigation examined a significant number of intelligence reports concerning the activities of the North West UDA/UFF between 1989 and 1993. My investigators interviewed a number of former RUC Special Branch officers who worked in North Region during this period. They included informant handlers, senior officers responsible for the management of informant handling, and the then Deputy Head of RUC Special Branch North Region. These former officers provided a valuable contextual insight into the structures and strategies adopted by RUC Special Branch at the time.
- 7.5. It is evident that RUC Special Branch sought to disrupt and infiltrate both loyalist and republican paramilitary organisations in the North West by actively seeking to recruit informants at all levels within their ranks. This was also an integral part of the British Government’s policy of an intelligence-led strategy to counter terrorist activity in Northern Ireland.
- 7.6. Through the use of informants, RUC Special Branch sought to obtain an accurate picture of the activities of loyalist and republican paramilitary organisations. This was essential to allow the security forces to operate in

a concerted, targeted manner aimed at frustrating terrorist operations, and securing arrests and convictions.

- 7.7. RUC Divisional Special Branch officers were responsible for the recruitment and management of informants at a local level. The Head of RUC Special Branch North Region, a Detective Chief Superintendent, was responsible for either authorising or declining the recruitment of an informant. Such decisions depended on a number of factors and were case specific.
- 7.8. All of the former RUC Special Branch officers interviewed as part of this investigation stated that their aim was to infiltrate loyalist and republican paramilitary organisations, including the UDA/UFF, from *'top to bottom.'* Special Branch made concerted efforts to recruit informants from within all ranks of the North West UDA/UFF. Although some of these approaches were rebuffed by the individuals concerned others were successful, leading to the recruitment of informants.
- 7.9. This investigation has established that information obtained from an informant was recorded on a form known as a SB50. This information was then assessed for its accuracy and potential for development and dissemination before being graded accordingly. At this stage in the process, the information became known as intelligence.
- 7.10. All intelligence obtained from informants within North Region was then forwarded to Regional Headquarters. They liaised with the relevant Tasking and Coordinating Group (TCG) responsible for devising and implementing counter-terrorist responses to the developing intelligence picture at any given time.
- 7.11. Although my investigators analysed intelligence, they were unable to review individual informant files as PSNI stated that they are no longer in existence. These files would have contained details of recruitment dates, rationales for authorisation, details of payments and other rewards, and

performance reviews. They would have also included dates when informants were de-registered and the reasons why they were no longer utilised. The lack of access to this documentation restricted my investigators' ability to assess and understand intelligence gathering structures and decision making processes at the time. The absence of this documentation is particularly egregious, where there was suspicion on the part of handlers or others, that informants may have engaged in the most serious criminal activity engaging Article 2 of the Convention that could not have been authorised as part of their use and conduct

- 7.12. This investigation has established the identities of a number of individuals within North West UDA/UFF who were informants handled by RUC Special Branch during the period. This, in itself, was not surprising. My investigators, however, identified concerns regarding the management of a number of these informants. They were being actively tasked and utilised by Special Branch handlers, despite there being intelligence and evidence linking them to serious sectarian crimes, including murder. This would have been outside the acknowledged policy that existed at the time.
- 7.13. My investigators interviewed a former senior Special Branch officer who worked in North Region during this period. He stated, when asked, that he did not believe an informant ever told a handler that they had been involved in murder.
- 7.14. He added that he did not believe a police officer would have continued to use an informant who made such an admission, as an admission of this nature would require the informant to be cautioned and arrested. The senior RUC Special Branch officer whose responsibility it was to authorise or reject potential informants is deceased. This investigation was, therefore, unable to fully explore the decision making process involved in the recruitment of informants.
- 7.15. The former senior Special Branch officer accepted that some informants may have been suspected of murder. This, however, could not be proven.

His belief was that handlers at the time were often dealing with what he described as *'low lifes'*, but they had to try and obtain reliable intelligence from these individuals in order to effectively infiltrate terrorist organisations.

- 7.16. He stated that the situation was not *'black and white'* and that grey areas existed. Some informants were accomplished liars who did not always tell the truth. He stated that handlers had to accept at face value what they were being told as true, unless they could prove otherwise. He held regular discussions with the Regional Head of Special Branch about the recruitment of informants who were suspected of being involved in terrorism. The advice given to handlers was that informants must not *'break the law.'* However, it was the duty of the handler to probe, test and assess the information and intelligence provided by the informant so as to evaluate their reliability and the accuracy of the intelligence provided by them. It is not correct to assert that handlers had to accept what they were being told by informants at face value.
- 7.17. Another former senior Special Branch officer informed my investigators that they attempted to recruit informants at every level from within paramilitary organisations. He considered that it was the role of Special Branch to recruit from *'top to bottom'*, whether it be PIRA or the UDA/UFF. This improved their chances of obtaining accurate intelligence. He added that the process had to be *'within the law.'*
- 7.18. He stated that informants were warned in advance of the conditions for their registration, including, *'no involvement in crime full stop, including beatings, robberies and murder.'* On occasions, when a high level informant was involved, these conditions were reinforced by a more senior Special Branch officer who would be present during meetings with the informant. He stated that if circumstances arose where an informant intended to participate in a crime, then authorisation for participation in a crime or for continued use would be required from the Regional Head of Special Branch and the relevant Assistant Chief Constable.



- 7.19. He stated that membership of a proscribed organisation could be interpreted as participating in crime. Recruiting an informant who played a central role in a paramilitary organisation, rather than on the periphery, carried high risks and the corresponding police strategy had to consider, and attempt to minimise, the risk to the public.
- 7.20. The motivation for an individual to become an informant is complex. Reasons can include financial gain, the prospect of a reduced custodial sentence, or retribution against another paramilitary member. In a separate investigation conducted by my Office about the role of informants, police officers expressed the view that certain informants were regarded as a '*protected species*'.
- 7.21. Others expressed a genuine desire to help police and move away from a life of paramilitary crime. I am also aware of allegations made by paramilitaries that they were threatened and pressurised by RUC Special Branch officers until they believed that they had no option but to become an informant and supply information to police.
- 7.22. I am of the view, given the available evidence and information, that the suspected involvement of an individual as a member of a terrorist organisation was, in most cases, a Special Branch prerequisite, as opposed to an impediment, for their recruitment as an informant. The former Special Branch officers interviewed by my investigators all stated that in order to obtain accurate and actionable information, which could be effectively used to counter paramilitary organisations, an informant had to be closely connected to ongoing terrorist activities.
- 7.23. These unique circumstances raised many issues in respect of the absence of legislation and guidance at the time regarding the police management of informants. Special Branch officers interviewed by my investigators stated that there was a lack of legislation and guidance in respect of

informant management. However, they continued in their efforts to infiltrate paramilitary organisations, while simultaneously attempting to act within the law. I acknowledge the legal and ethical dilemmas faced by handlers at the time when faced with unclear guidance as to how they were expected to perform their duties. However, police also had common law duties and a duty to protect life.

### **The Use of Informants in the North West**

- 7.24. A number of RUC Special Branch informants provided intelligence that was either relevant to the attacks referred to in this public statement or other UDA/UFF activity in the North West between 1989 and 1993. Other '*casual contacts*' also provided information to police.<sup>30</sup>
- 7.25. This investigation identified examples of informants providing intelligence that led to significant amounts of weapons and ammunition being recovered by police. These recoveries impacted upon the effectiveness of the UDA/UFF as a terrorist organisation and may have saved lives.
- 7.26. Other intelligence supplied by loyalist informants in the North West led to the arrest and conviction of paramilitaries. Information regarding planned attacks allowed the security forces to put in place disruption tactics which prevented them and allowed individuals to be warned that their lives were at risk.
- 7.27. Intelligence was also obtained regarding weapons smuggling, fund raising, and about members of the security forces who were providing information to loyalist paramilitaries. RUC Special Branch in North Region, therefore, achieved some success against the North West UDA/UFF and gathered useful intelligence.

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<sup>30</sup> Casual Contacts were other sources of information, including human, who were able to report on peripheral events surrounding terrorist activity.

7.28. I am mindful of the challenging policing environment that existed during the 'Troubles' and the unique circumstances faced by the RUC. However, this investigation has identified concerns regarding the handling of a number of informants within the North West UDA/UFF during the relevant period which was contrary to accepted RUC practice and policy at the time.

### **Summary**

7.29. This investigation has established that during the relevant period, a number of informants provided Special Branch with information relating to the activities of the North West UDA/UFF.

7.30. This investigation has not established that any police officer committed a criminal offence by protecting an informant from arrest and/or prosecution. On the contrary, my investigators identified a number of occasions where informants were arrested and reported to the Director of Public Prosecutions (DPP) for prosecution.

7.31. I am of the view that a number of North West UDA/UFF informants were directly involved in serious and violent crime, including murder, while handled by RUC Special Branch. Other UDA/UFF informants were in possession of information that would, in my view, have been of significant value to police in preventing attacks and the loss of life. However, they failed to disclose this information to their handlers. There is no evidence contrary to accepted practice that the relevant handlers tested or probed this failure. There is evidence from a senior Special Branch officer in North Region that police accepted, at face value, information provided by informants.

7.32. Although the senior Special Branch officer indicated to my investigators that before an informant could be deregistered, there must be evidence proving that the informant had been involved in murder. This is not the correct test. The function of informant handlers was to make an

assessment of all information and intelligence provided by or about the activities of the informant. This assessment was necessary in order to decide whether the continued use of the informant was a high risk so that any 'rewards' deriving from the relationship, were outweighed by the informants criminal activity.

- 7.33. Informants failed to provide information which could have led to prompt arrests in relation to a number of the attacks outlined in this public statement. This would have provided police with additional evidential opportunities. I am of the view that these informants chose not to do so, in order to avoid being arrested and prosecuted for serious offences themselves.
- 7.34. I accept that there are those who have moral objections to individuals involved in serious criminality being actively targeted for recruitment by police as potential informants. However, I also accept that often only those deeply embedded within terrorist organisations could provide the high-grade, actionable intelligence which police required to disrupt paramilitary activities, secure convictions, and prevent loss of life.
- 7.35. There should, however, be a direct correlation between the risks and rewards inherent in the recruitment and use of any informant. Consideration of the risks associated with the particular individual and their engagement should be proportionate to the potential intelligence rewards that are anticipated. If recruitment can be justified, ongoing management of the informant should include continuous assessment of the value of the intelligence provided and oversight of the relationship, in a manner which is proportionate to the continuing risks posed by, or to, the informant. However, in accordance with RUC policy and practice at the time, a handler ought to have terminated a relationship with an informant where there was information that the informant was involved in murder or serious criminality. I acknowledge that a Home Office circular from the time states that *"the need to protect an informant does not justify*

*granting him immunity from arrest or prosecution for the crime if he fully participates in it with the requisite intent...the handling of informants calls for the judgment of an experienced officer...there must be complete confidence and frankness between supervising officers and subordinates; and a decision to use a participating informant should be taken at a senior level.<sup>31</sup>*

- 7.36. In the context of the 'Troubles', the 'rewards' should have been the provision of information that undermined the paramilitary organisation and disrupted its activities. This would have included information that prevented terrorist attacks, and protected against the loss of life and serious injury to the public, as well as the destruction of property. Information of value would have included intelligence leading to the arrest and conviction of offenders.
- 7.37. RUC Special Branch must have been confident of their ability to acquire this information, otherwise the rationale for recruiting the relevant informants would have been questionable. It has not been possible for this investigation to conduct a thorough assessment of the decision making processes of relevant senior police officers due to the non-retention of records by police. The explanation given by police for the failure to retain these records was the need to protect the security of the relevant informants. Those records related to the authorisation, recruitment, and management of informants during the relevant period.
- 7.38. I have considered how RUC Special Branch managed a number of informants, who were well-placed to report on the activities of the North West UDA/UFF.
- 7.39. Intelligence and evidence indicated that one of these individuals was involved in murders. A Special Branch handler told my investigators that

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<sup>31</sup> Home Office Circular No 35/1986 'Consolidated Circular to the Police on Crime and Kindred Matters'

in order to control and prevent the terrorist activity of UDA/UFF members in the North West, they were authorised to recruit him as an informant. However, he continued to be involved in murders. It is unclear whether he was de-registered when police became aware of his involvement in murders. This investigation has established that he later resumed providing intelligence to police and continued as an informant for several years.

- 7.40. I am of the view that RUC Special Branch ought to have recognised the significant risk attached to the recruitment of this informant. There are, however, no records of the considerations and decisions that ought, in my view, to have accompanied the recruitment and continued use of this informant. My investigators have been advised that the records relating to this decision making have been destroyed. As previously expressed, it is my view that records ought to have been retained, particularly where the informant was involved in murder or serious criminality. Given the role of this individual and his involvement in a number of murders, these records ought to have been retained for evidential purposes.
- 7.41. This informant did not provide his RUC Special Branch handlers with any intelligence relating to the attacks referred to in this public statement. However, given the intelligence examined by my investigators, I am of the view that he was in a position to do so. Subsequent intelligence from other sources indicated that, at a crucial stage in the series of attacks, he deliberately misled his handlers. Other intelligence indicated that he intended to manipulate the relationship with his handlers in order to acquire information relating to police investigations into a number of the attacks.
- 7.42. There is also information that an informant, who was providing intelligence to RUC Special Branch periodically at this time, was responsible for, and participated personally in, a number of the paramilitary attacks outlined in

this statement. He did not provide intelligence regarding any of the attacks outlined in this public statement.

- 7.43. It is my view that handlers ought to have been equipped with information necessary to enable them to probe and question informants about their activities. Handlers had a duty to probe and assess all relevant information relating to the activities of an informant. Based on the information then available to police, and this informant's failure to report on any of the attacks, I am of the view that his Special Branch handlers ought to have recognised that he was withholding information and was potentially involved in some of the attacks.
- 7.44. This investigation has identified a number of concerns regarding the recruitment and management of these informants. However, a full assessment of the handling of these informants would have required access to relevant RUC Special Branch records, which were not retained. In view of the RUC's knowledge of the role performed by these informants I am of the view that these records should have been retained given their evidential value. I have been unable to establish the rationale for the decision not to retain these records.
- 7.45. The matter is further aggravated by the RUC's failure to alert the then Director of Public Prosecutions to the status of one of these informants when consideration was being given to prosecutions relating to the role played by that individual.

## 8.0

# SECURITY FORCE INVOLVEMENT WITH LOYALIST PARAMILITARIES

- 8.1. My legislative remit is limited to investigating the conduct of serving and former police officers. However, I am of the view that I cannot fully explain the rationale for my actions, decisions, and determinations in this public statement, without referring to the role of the military, primarily the Ulster Defence Regiment (UDR).
- 8.2. This investigation has identified several prominent loyalist suspects who had links to the UDR. These included serving and former members either prior to, or during, the 1989-1993 period. My investigators have sought to establish what police knew of these links and what, if any, action was taken in respect of them.
- 8.3. My investigators also reviewed intelligence indicating that a number of serving police officers were associating with, or supplying information to, loyalist paramilitaries. This investigation has also sought to establish what action police took in respect of these individuals.
- 8.4. The late Sir Desmond de Silva QC stated that *'The context in which the security forces operated in Northern Ireland during this period must be considered before analysing the scale and nature of leaks from members of the security forces to loyalist paramilitaries. In the late 1980s, high levels of security force personnel were maintained in order to tackle the paramilitary violence in Northern Ireland. In 1989, there were over 11,277 full-time RUC officers and 1,605 RUC officers working in the part-time Reserve. The Ulster Defence Regiment (UDR) had 2,947 full-time officers and 3,283 part-time officers. The regular*



*British Army had 11,200 officers serving in Northern Ireland in 1989...'*<sup>32</sup>

- 8.5. *'The large numbers of security force personnel, many living within tightly knit communities in Northern Ireland at the time, undoubtedly meant that occasional instances of association with paramilitaries and the exchange of information were almost inevitable...'*
- 8.6. *'However, whilst the context of the time may indeed explain why there were leaks to loyalist paramilitaries, it cannot, in my view, justify any assistance being provided by members of the security forces to loyalist terrorists. Nor could it justify an acceptance by the security forces and intelligence agencies that such leaks had to be tolerated as inevitable. The trust of the public in the security forces demands that individuals tasked with upholding the rule of law must adhere to the highest possible standards of conduct and that any allegations as serious as collusion with members of paramilitary organisations must be investigated with the utmost rigour.'*
- 8.7. He continued that *'In my view, the scale and seriousness of the collusion between some members of the security forces and loyalist paramilitaries should have necessitated urgent and rigorous action on the part of the authorities to pursue those responsible...Limited action does appear to have been taken with respect to some members of the UDR in the late 1980s. Several members of the UDR were convicted for criminal offences relating to loyalist terrorist activity during this period.'*<sup>33</sup>
- 8.8. *'The scale and nature of the 'leaks' from members of the security forces to loyalist paramilitaries during the late 1980s has never properly been acknowledged. The leaks of information certainly*

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<sup>32</sup> De Silva Report – Chapter 11, Para 11.3.

<sup>33</sup> Ibid Paragraph 11.57.

*involved much contact between junior UDR and RUC officers and members of the UDA. However, there is evidence to suggest that the leaks could also originate from comparatively senior officers and, on occasions, relate to sensitive intelligence information...'*<sup>34</sup>

- 8.9. *'The Security Service made a detailed assessment in 1985 that 85% of the UDA's intelligence came from the security forces. Having examined a very large volume of material relating to UDA activity in the late 1980s, I am satisfied that the proportion of their intelligence originating from the security forces would have remained largely unchanged by February 1989. I have no doubt that the UDA were heavily reliant on RUC and UDR leaks to carry out its targeting and attacks during this period...'*
- 8.10. *'The nature of these findings should not be held to impugn the reputation of the majority of those who served in the RUC and the UDR to uphold the rule of the law in extraordinarily difficult circumstances. Nevertheless, although only a minority of officers engaged in such activity, the leaks can only be described as wide spread in their extent...'*
- 8.11. *'I am satisfied that leaks to loyalist paramilitaries were not institutional in the sense that there was an official or unofficial policy or strategy to authorise the provision of information to such groups. However, there was certainly an institutional failure on the part of the RUC and the UDR to take the necessary action to tackle the issue of leaks prior to the Stevens I Investigation. Both the RUC SB and Army intelligence were fully aware of the extent of leaks, but the action taken to combat such leaks was, in my view, inadequate in view of the scale of the problem.'*

#### **UDR Members Alleged Involvement with Loyalist Paramilitaries**

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<sup>34</sup> Ibid Paragraph 11.11.

- 8.12. This area of the investigation focused on several prominent loyalist paramilitaries with links to the UDR. Some were suspected of involvement in a number of the attacks referred to in this public statement, while others held influential positions within the North West UDA/UFF.
- 8.13. Person J was a former British soldier who later joined the UDR. He was stationed in the North West.
- 8.14. Less than 24 hours before the murder of Gerard Casey, Persons J and K were spoken to by police who had observed them acting suspiciously near an unoccupied building at Finvoy Road, Ballymoney, close to Gerard Casey's home in Rasharkin. They informed police that they had stopped to '*relieve themselves*' and were allowed to continue their journey. Following the murder, police arrested Person K on suspicion of being involved but treated Person J, who was a serving UDR member, as a witness.
- 8.15. During interview, Person J maintained the same explanation for his presence at the unoccupied building on Finvoy Road. He named Person K and another former UDR member as alibi witnesses for him at the time of the murder.
- 8.16. Person J resigned from the UDR in 1991. He was arrested under terrorist legislation on a later date and questioned again about Mr Casey's murder. He provided the same account as he had in 1989. Police received intelligence in 1993 indicating that Person J was involved in the murder.
- 8.17. The resignation of Person J from the UDR coincided with increased intelligence linking him to North West UDA/UFF activities, along with Person K. Person J was linked by intelligence to a number of attacks,

including the murders of Eddie Fullerton and Thomas Donaghy. He was later arrested regarding a sectarian attack in the Portrush area and, during a follow up search, police recovered documentation which included details of members of the nationalist and republican communities, in addition to military briefing sheets. Person J told police that he found these when on a UDR patrol in the Dungiven/Claudy area in January 1990. He was charged in connection with this documentation and was subsequently convicted and received a custodial sentence.

- 8.18. Person K was linked to Gerard Casey's murder by intelligence and arrested on suspicion of it. He was also arrested on suspicion of the attempted murder of James McCorriston, the murders of Thomas Donaghy and Daniel Cassidy, and the Castlerock and Greysteel attacks. On each occasion he denied being involved, and was released without charge due to there being insufficient evidence to connect him to the attacks.
- 8.19. Person A was also a former UDR member but this was prior to the series of attacks referred to in this public statement. Intelligence indicated that Person A held a senior position within the North West UDA/UFF. Other intelligence indicated that he was suspected of having imported weapons into Northern Ireland assisted by a serving UDR member, Person V.
- 8.20. Person V was stationed in the North West and his role within the UDR permitted him access to intelligence documents. He also attended RUC District Action Committee (DAC) meetings where sensitive information was discussed.
- 8.21. Following Gerard Casey's murder, RUC Special Branch received intelligence indicating that Person V had provided the UDA/UFF with information that assisted in the murder. Special Branch passed this

intelligence to the military authorities but I have found no evidence that it was forwarded to police investigating the murder.

- 8.22. My investigators interviewed a former senior Special Branch officer from North Region. He stated that DAC meetings were held on a monthly basis and attended by the Regional Head of Special Branch, along with other senior police and military personnel. Person V, in attending these meetings, would have had access to high level, strategic intelligence of relevance to loyalist paramilitaries. The former Special Branch officer added that it was normal practice for police to pass intelligence concerning the involvement of military personnel in paramilitary activity to the military authorities to deal with.
- 8.23. The only other information relating to this matter was documentation indicating that Person V was dismissed from the UDR in late 1989. This investigation has found no evidence that police conducted any enquiries in respect of Person V's links to loyalist paramilitaries. Person V was never arrested in respect of Gerard Casey's murder.
- 8.24. Person Q was a UDR member linked to some of the attacks subject to this public statement. My investigators interviewed a former RUC officer who attended sensitive briefings where Person Q was present. He described Person Q as having '*sectarian tendencies*' and was so surprised at seeing him in attendance that he raised the matter with a member of military intelligence. My investigators found no evidence that this matter was investigated by police.
- 8.25. This investigation has established that six other serving or former members of the military had links to loyalist paramilitary organisations in the North West during the period in question.
- 8.26. My investigators also established that a number of weapons used in the attacks originated from members of the security forces. The

Walther P5 pistol used in the Castlerock attack was a Personal Protection Weapon (PPW) stolen from the car of a UDR member in March 1993. The .22 Star pistol used in the murders of Bernard O'Hagan, Malachy Carey, and the attempted murder of James McCorrison, was a PPW stolen from a UDR member during an armed robbery in 1975.

- 8.27. This investigation reviewed the intelligence relating to both of these thefts but there was nothing to link either UDR member to any loyalist paramilitary organisation. My investigators also reviewed the available police documentation relating to both incidents.
- 8.28. In January 1992, police searched the Ballymoney address of a former UDR member and recovered RUC and UDR notebooks containing the names of a number of suspected PIRA members, including Daniel Cassidy and Patrick McErlain. The UDR member informed police that he gathered this information while in the UDR.
- 8.29. Another individual arrested in connection with this matter was a part-time UDR member. He told police that he was pressurised by loyalist paramilitaries to obtain security force documentation, including information relating to UDR and RUC patrol patterns. He was also asked to secure weapons, ammunition, and uniforms, but refused to do so.

### **Other Alleged Military Involvement with Loyalist Paramilitaries**

- 8.30. My investigation identified a number of instances where documentation originating from military regiments posted to Northern Ireland during the period 1989-1993 was found in the possession of loyalist paramilitaries. The most significant discovery in the North West was at the home of Person BB in November 1989.

- 8.31. Documentation forwarded anonymously to the Antrim Guardian in August 1992, purporting to be from the UVF, contained the details of a number of republicans, including Daniel Cassidy and James Kelly. A subsequent police investigation could not identify the source of this 'leak.' However, it was established that the documentation was of military origin.
- 8.32. This documentation contained the names of 28 UDR members identified as having links to loyalist paramilitaries. They included a soldier who was sentenced to nine years imprisonment in 1988 for stealing weapons from a UDR base in Coleraine. It also referred to a UDR member who supplied information relating to the theft of the same weapons, and a Belfast-based UDR member convicted of supplying the details of republican paramilitary suspects in 1988.

### **Summary**

- 8.33. I am of the view, given the available evidence and information, that a significant number of serving and former UDR members had links with loyalist paramilitaries in the North West during the period in question. This included senior figures within the North West UDA/UFF. The infiltration of the regiment in this manner allowed paramilitaries access to weapons, training, intelligence, and uniforms which added to their effectiveness in carrying out sectarian attacks. As previously stated, I have no jurisdiction over the military but can consider the police response to these matters.
- 8.34. Police investigating the attacks referred to within this public statement arrested a number of serving and former UDR members suspected of having been involved in the commission of terrorist offences. A number of these arrests resulted in individuals being convicted and imprisoned. Police were also successful in discovering a number of loyalist intelligence 'caches', containing documentation which emanated from

military sources. Again, a number of individuals were convicted in respect of these incidents.

8.35. However, I am of the view that police did not always act in a sufficiently robust or pro-active manner when in receipt of information indicating that serving UDR members were also actively involved in loyalist paramilitary activities. My investigation has identified examples where two individuals, Persons Q and V, attended security force briefings where they had access to sensitive information of use to loyalist paramilitaries. Special Branch received information that a member of the UDR had provided information which had assisted the UDA/UFF in their murder of Gerard Casey. The Special Branch assessment of this information was that the UDR member was Person V. Although Person V was subsequently dismissed from the UDR, I have found no evidence to indicate that police investigated his links to the UDA/UFF and the murder of Mr Casey.

8.36. Person Q attended security force briefings at the same time as police were in possession of intelligence identifying him as having links to loyalist paramilitaries. A former police officer informed my investigators that he raised his concerns at the time but this investigation has been unable to ascertain what, if any, action was taken in respect of Person Q. I am of the view that certain sections of the UDR were infiltrated by a number of loyalist paramilitaries during the Northern Ireland 'Troubles.' I am of the view that police did not adequately investigate a number of these instances.

### **RUC Officers Alleged Involvement with Loyalist Paramilitaries**



8.37. In addition to members of the UDR, this investigation also identified a number of instances where serving RUC officers were named in intelligence as being associated with loyalist paramilitaries.

### **Police Officer 23**

8.38. Police Officer 23 was stationed in the North West in 1988. Police received intelligence that he was a close associate of Person JJ, a prominent loyalist, and other individuals who shared similar views.

8.39. Police Officer 23 was observed in the company of Person JJ and his associates in vehicles stopped by police. A car which he had access to was also sighted outside the home of Person JJ. Their relationship was identified as an issue by local police. My investigators established that this matter was brought to the attention of the local Sub-Divisional Commander who decided to take action in respect of Police Officer 23.

8.40. My investigators reviewed all the available intelligence held by police at that time regarding Person JJ. This indicated that associates of his were actively seeking intelligence from UDR members for use in targeting members of the republican community. Person JJ was suspected of having been involved in a number of serious offences including murder, attempted murder, and firearms offences. He was arrested under terrorist legislation and questioned about UVF membership, armed robbery, and possession of a firearm. He denied being involved but was charged with the latter offence. Later intelligence indicated that Person JJ remained involved with loyalist paramilitaries.

8.41. Police searched the home of Person JJ in 1988 and recovered a shotgun and ammunition. These were held under a firearms certificate issued to Police Officer 23. During interview, Person JJ informed police

that Police Officer 23 had been shooting rabbits at his address and had stored the weapon and ammunition there for safe keeping.

- 8.42. My investigators reviewed the relevant RUC file of evidence submitted to the DPP. This established that the only record of an interview with Police Officer 23 was a note indicating that he had declined to provide a written account, stating *'I'll say nothing till I see somebody about it.'* The DPP subsequently directed that both Person JJ and Police Officer 23 be prosecuted. Police Officer 23 was convicted of allowing another person to have unauthorised possession of his shotgun and was fined £150. Person JJ was fined the same amount for unauthorised possession of the shotgun and ammunition. My investigators have established that the relationship between Police Officer 23 and Person JJ was of concern to the RUC.
- 8.43. In 1988, a senior police officer spoke to Police Officer 23 about concerns regarding his association with Person JJ. Police records indicated that, as a result of this conversation, Police Officer 23 gave an undertaking to 'cool' the relationship. However, following this, there were several further sightings of Police Officer 23 in the company of Person JJ. Police Officer 23 was transferred to Belfast towards the end of 1988. I have been unable to establish the reason for this transfer.
- 8.44. Following the transfer, there were no further reports of Police Officer 23 fraternising with Person JJ or other suspected loyalist paramilitaries. My investigators identified no links between Police Officer 23 and any of the attacks referred to in this public statement. However, he maintained his association with a prominent loyalist linked to paramilitaries in the North West. I am of the view that the response by police to this instance was inadequate.

#### **Police Officer 24**

- 8.45. In 1988 Person KK, a suspected loyalist paramilitary, was arrested for firearms offences. During police interview, he indicated that both Police Officers 23 and 24 were involved with loyalist paramilitary organisations.
- 8.46. As a result of this information, two senior detectives, Police Officers 1 and 16, interviewed Police Officer 24 under criminal caution. He stated that he had known Person KK since childhood and denied the allegations. Police Officer 23 was also interviewed under criminal caution and also denied the allegations, stating that he had previously argued with Person KK in a bar.
- 8.47. Police submitted a file of evidence to the DPP who directed 'No Prosecution' against either police officer in respect of the allegations made by Person KK. In June 1989, Person KK was convicted of a number of firearms offences and sentenced to 18 months imprisonment.
- 8.48. My investigators reviewed all of the relevant intelligence held by police regarding Person KK. This indicated that he was on the fringes of loyalist paramilitary activities in the North West. There was no intelligence to link him to any of the attacks referred to in this public statement. Given the allegations made by Person KK against two serving police officers, I am of the view that police investigated this matter in an appropriate manner. Police Officers 23 and 24 were interviewed under criminal caution and a file of evidence was submitted to the DPP.

## **Police Officer 25**

- 8.49. In January 1989, Police Officer 25 was dismissed from the RUC for passing information to loyalist paramilitaries. Later that year it was reported that he had approached members of the UDA/UFF in an attempt to find out who had passed the information to the RUC which resulted in his dismissal.
- 8.50. This investigation established that Police Officer 25 was a Reserve Constable based in Derry/Londonderry at the relevant time. Enquiries with PSNI and the Public Prosecution Service (PPS) were unable to establish if the RUC conducted a criminal investigation in respect of the activities of this officer. PSNI also held no discipline files relating to the matter. My investigators reviewed the personnel file of Police Officer 25 but it held no information regarding the circumstances of the dismissal.

## **Police Officer 12**

- 8.51. Police Officer 12 was based in the Derry/Londonderry area during the period 1989-1993. In late 1989, police became aware that Police Officer 12 was frequently a bar which was also used by known loyalist paramilitaries. Intelligence was received in late 1991 stating that Police Officer 12 was passing information to loyalist paramilitaries. My investigation found no evidence that the RUC conducted a criminal investigation at the time. Police Officer 12 was subsequently moved to another policing district because of threats to his safety.
- 8.52. My investigators interviewed Police Officer 12 under criminal caution about these matters. He stated that he frequented the bar at the time because it was near to his home, and a safe place for him to socialise. He stated that some '*regulars*' who drank in the bar were suspected of being involved in loyalist paramilitary activity. He denied ever speaking

to any of them about his occupation or having passed information to them.

- 8.53. Following this interview, my investigators submitted a file of evidence to the PPS concerning the offence of Misconduct in a Public Office. The PPS subsequently directed 'No Prosecution' against Police Officer 12. As he is no longer a serving police officer, no misconduct investigation could be conducted by my Office.
- 8.54. My investigators also reviewed the personnel and disciplinary records of Police Officer 12 held by PSNI. My investigators found no evidence within these records that he was subject to a criminal investigation at the time regarding his alleged links with loyalist paramilitaries.
- 8.55. Prior to these matters coming to the attention of my investigators, they interviewed Police Officer 12 as a witness during an earlier phase of this investigation. This related to the detention of Eddie Fullerton at Strand Road RUC Station following his arrest during a border protest in January 1990. Police Officer 12 was one of a number of custody staff who dealt with Mr Fullerton during his subsequent detention. This investigation did not find any evidence that Police Officer 12 passed information to loyalist paramilitaries concerning Mr Fullerton or any other individual.

### **Summary**

- 8.56. The police officers referred to in this Chapter have been highlighted because they featured within intelligence reports and/or other documentation examined as part of this investigation. I accept that the RUC were faced with unique challenges during the 'Troubles' given that a number of police officers lived within communities that also contained loyalist paramilitaries, some of whom they had grown up with. The PSNI have advised that they now have a policy in place

regarding the disclosure of associations which could be perceived to be inappropriate and the likely consequences for the failure to do so. This guidance did not exist during the period 1989-1993.

- 8.57. I am aware of another instance where a police officer severed contact with an individual, whose relative was a suspected loyalist paramilitary. This was, in my view, a professional and commendable response.
- 8.58. Police Officers 23 and 24 were formally investigated by police regarding allegations made by Person KK. However, Police Officer 23 was not investigated regarding his association with Person JJ. Instead, he was moved to a different policing district.
- 8.59. Police Officer 12 was not formally investigated at the time regarding allegations that he was involved with loyalist paramilitaries. Although Police Officer 25 was dismissed from the RUC for allegedly passing information to loyalist paramilitaries, my investigation found no evidence that he was subject to a criminal investigation by the RUC.
- 8.60. This investigation has identified a number police officers with links to loyalist paramilitaries during the period when the North West UDA/UFF was one of the most prolific terrorist organisations in Northern Ireland. I am of the view that the RUC adopted an inconsistent and inadequate approach when dealing with a number of these police officers. In reaching this conclusion, I am mindful of the comments of Sir Desmond De Silva QC in his report on the murder of Patrick Finucane at paragraph 11.8 as follows:

*'... whilst the context of the time may indeed explain why there were leaks to loyalist paramilitaries, it cannot, in my view, justify any assistance being provided by members of the security forces to loyalist terrorists. Nor could it justify an acceptance by the security forces and intelligence agencies that such leaks had to be tolerated as inevitable.'*

*The trust of the public in the security forces demands that individuals tasked with upholding the rule of law must adhere to the highest possible standards of conduct and that any allegations as serious as collusion with members of paramilitary organisations must be investigated with the utmost rigour.'*

- 8.61. Finally, although I have highlighted in this Chapter a number of failings on the part of former police officers in their association with paramilitaries, I am also mindful of the comments of Sir Desmond De Silva in the aforementioned report at paragraph 11.54, as follows:

***'The limitations of the leaks***

*[11.54] It is important to note that, although security force leaks to loyalist paramilitaries were widespread, they were none the less limited in scope. As I noted at paragraph 11.4, thousands of individuals were serving in the security forces at this time. I am satisfied that the majority of members of the RUC and the UDR did not provide assistance or information of any kind to loyalist paramilitaries.'*

## 9.0

# The Murder of Gerard Casey – The RUC Investigation

- 9.1. Shortly after midnight on 4 April 1989, Gerard Casey was murdered by the UDA/UFF at his home in Shamrock Park, Rasharkin. Two gunmen forced open the front door of the address with a sledgehammer before shooting Mr Casey a number of times in front of his wife and infant daughter.
- 9.2. Neighbours heard shots and watched as the gunmen fled the scene in a Peugeot car driven by a third accomplice. They alerted a local doctor and called the emergency services. At 12.17am, a doctor attended and examined Mr Casey, pronouncing him dead at the scene.
- 9.3. At approximately 11:00pm on 3 April 1989, masked gunmen forced their way into an address at Finvoy Road, Ballymoney, taking the occupants hostage. The family were restrained with plastic ties and twine, while their Peugeot car was stolen. It was subsequently used in the murder.
- 9.4. Police were notified of the shooting at 12:10am and attended the scene.

### **Initial Police Response**

- 9.5. My investigators reviewed all the available documentation relating to the RUC investigation. Following the shooting, police set up a number of Vehicle Check Points (VCPs) in the Rasharkin area in an attempt to intercept the gunmen. Other police patrols set up VCPs in the Ballycastle and Cushendall areas.



- 9.6. Police secured the scene and commenced a Serious Incident Log, A Detective Constable attended and supervised initial enquiries, prior to more senior detectives arriving. The RUC Superintendent in charge of the area also attended.
- 9.7. A witness informed police that a red Peugeot car had been used by the gunmen. Its details were circulated to other police patrols in the area. At 12:55am, police officers manning a VCP at Agivey Bridge observed a fire approximately a quarter of a mile away in the vicinity of Glenstall Road, Ballymoney. Police attended and discovered the Peugeot car used in the attack on fire at a Department of the Environment (DOE) sewage works. It was later examined by a Scenes of Crime Officer (SOCO) but was completely burnt out. Nothing of an evidential value was recovered.
- 9.8. During the early hours of 4 April 1989, police carried out checks at the addresses of four prominent loyalist suspects in the area. Three of whom were home in bed while the fourth was at his girlfriend's house. The exact times of these visits were not recorded and it is unclear what caused police to conduct them.

### **Post-Mortem Examination**

- 9.9. The brother-in-law of Mr Casey attended the scene and formally identified the deceased before he was taken to the mortuary at Route Hospital, Ballymoney. The State Pathologist for Northern Ireland carried out a post-mortem examination and concluded that cause of death was *'Bullet and shotgun wounds to the head and trunk.'* The pathologist concluded that an assault rifle and shotgun had been used in the murder.

## **RUC Investigation Team**

- 9.10. The Detective Chief Inspector in charge of the murder investigation, Police Officer 2, supervised the forensic examination of the various scenes, which were also mapped and photographed. A team of 16 detectives supported by forensic scientists, military weapons experts, specialist search teams, and SOCOs worked on the investigation which was based at Ballymoney RUC Station. The investigation was managed on the Home Office Large Major Enquiry System (HOLMES) computer system.
- 9.11. Police Officer 2 kept a policy log which ran from 4-22 April 1989. It recorded all the major decisions made during the police investigation. This allowed my investigators to make an objective assessment regarding the quality of the RUC investigation. I am of the view that the police investigation was properly resourced.

## **Witnesses**

- 9.12. House-to-house enquiries were carried out and police made an appeal for witnesses through the media. Mr Casey's wife and a number of Shamrock Park residents provided statements to police, as did the family whose Peugeot car was stolen and used in the attack. They stated that the three men involved wore overalls, balaclava masks, and leather gloves. They were armed with a sawn-off shotgun and two handguns. A family member stated that one of the men had a Belfast accent, adding that there were at least six individuals involved because they saw others outside the address. They also stated that one of gunmen was carrying a long bag and a sledge hammer. At approximately midnight, their car was driven away but they were unable to untie themselves and contact police until approximately 1:45am.

- 9.13. Two members of the public informed police about a suspicious man they had observed walking along Finvoy Road, trying to hitch a lift, at approximately 11:20pm on the night of the murder. This individual was identified, interviewed by police, and subsequently eliminated from the RUC investigation.
- 9.14. Police recorded 36 witness statements from members of the public who came forward to assist. On 10 April 1989, police set up four VCPs from 11:00pm until 1:00am at various locations in the area. Questionnaires were prepared and passing motorists were stopped and questioned by detectives to establish if they were in the area at the time of the murder.
- 9.15. One motorist informed police that they observed a red Ford Fiesta car, with three men in it, parked at the DOE sewage works on Glenstall Road at approximately 11:00am on 2 April 1989. Police viewed this as a significant sighting and obtained a list of all red Ford Fiesta cars in the Derry/Londonderry and North Antrim areas. 998 vehicles were identified and researched as to whether any of them were linked to loyalist paramilitaries. The available police documentation does not detail whether this led to new lines of investigation being initiated. Enquiries at the sewage works established that no staff had been working at the time and none of them owned a red Ford Fiesta. The car was never traced by police.

### **Searches**

- 9.16. Police searched hedgerows and grass verges on the routes between where the Peugeot car was stolen, the Casey address, and where it was later found abandoned at Glenstall Road. Police found a sledgehammer on a grass verge at Bendooragh Road, Ballymoney. '£14.12' was written on it in red pen. It was submitted for forensic examination as police believed it may have been used to break down

the front door of the Casey address. The examination was unable to determine whether it was used in the attack. Police made enquiries at local hardware shops and outlets selling similar makes of sledgehammer but could not determine where it had been purchased.

## **Forensic Examinations**

### **The Casey Address**

- 9.17. Police recovered two discharged cartridge cases from the scene. Tape liftings were taken from the carpets, bedding, and front door. Soil and glass samples were taken from the front garden. All of these items were submitted to the Northern Ireland Forensic Science Laboratory (NIFSL) for forensic examination.
- 9.18. The examination concluded that the discharged cartridge cases had been fired from a VZ58 assault rifle, which had no history of previous use. A bullet head from the VZ58 assault rifle, shotgun pellets, and wadding from a 12-gauge shotgun were also recovered during Mr Casey's post-mortem examination.
- 9.19. The same VZ58 assault rifle was later used in the attack at the Rising Sun Bar, Greysteel, on 30 October 1993. It was recovered by police during a search at Ballygudden Road, Eglinton, on 3 November 1993.

### **The Finvoy Road Scene**

- 9.20. Tape liftings were recovered from carpets in the kitchen, hallway, living room, and bedroom. Further tape liftings were taken from a number of chairs at the address. The twine and plastic ties used to restrain the occupants were also recovered and submitted for forensic examination.

- 9.21. The plastic ties were examined for fingerprints but none were found. The twine was also examined for comparison with restraints used in other offences but this did not result in additional lines of enquiry.

### **The Glenstall Road Scene**

- 9.22. The Peugeot car was examined by a SOCO but it was burnt out. Nothing of an evidential value was recovered from it.

### **Other Lines of Investigation**

- 9.23. Mr Casey's wife told police that approximately four weeks before the murder, men claiming to be from the DOE called to their house, asking to inspect the drains. She later thought this was suspicious. Police conducted enquiries with the DOE and established that this had been a genuine call.
- 9.24. The SIO heading the murder investigation explored the possibility that UDA/UFF members from Belfast may have been involved. In his relevant policy log he recorded that there was '*...the strong possibility of involvement of loyalist paramilitaries from outside the division particularly from the Belfast area it was decided to obtain all Police and Military VCP logs for the period of 48 hours preceding the murder and the period of 24 hours following the murder in an effort to trace movement of paramilitary persons to and from the Ballymoney area.*'
- 9.25. Detectives gathered all the available records from security force VCPs carried out between midnight on 1 April to midnight on 4 April 1989 in the Coleraine, Ballymoney, Ballymena, Antrim, Newtownabbey, Oldpark, Tennent Street, Antrim Road, and North Queen Street areas. Police also collated UDR VCP records covering routes between Belfast and Coleraine between 12:10am and 2:00am on 4 April 1989.

- 9.26. This information was passed to RUC Special Branch to analyse. Police sought to establish whether any suspected loyalist paramilitaries had travelled to and/or from the Ballymoney area in the 48 hours prior to Mr Casey's murder, or the 24 hours afterwards. My investigators were unable to find any record as to the outcome of these enquiries.
- 9.27. Police also obtained a list of loyalist paramilitary suspects from the Tynedale area of North Belfast. Further enquiries were made at Antrim Road RUC Station in respect of UDA/UFF suspects in the North Belfast area. No intelligence was received linking any individual from Belfast to the murder.
- 9.28. Enquiries were made at Finvoy Bowling Club which was situated near the address from where the red Peugeot car was stolen. Police spoke to 14 members who were at the club on the night of the murder but no information was obtained that advanced the RUC investigation.

### **Identification Procedures**

- 9.29. My investigators found no record of any identification procedures taking place. A review of witness statements obtained during the police investigation identified no individuals who saw the gunmen unmasked.

### **Intelligence and Arrests**

- 9.30. My investigators reviewed the available intelligence which existed at the time. I am of the view that there was no intelligence that could have forewarned of, or prevented, the murder of Gerard Casey.
- 9.31. Initial intelligence following the murder was vague and contradictory in nature, including which organisation was responsible.

- 9.32. Information received in April and May 1989 indicated that Person A may have been involved in the murder. This intelligence was of a general nature and lacked detail. Police investigating the murder were aware of this intelligence.
- 9.33. The RUC investigation file referred to two loyalist paramilitaries, Persons L and M, who were arrested in a hijacked car on 25 February 1989. They were in possession of two loaded Browning pistols and a sledgehammer. During police interviews one of them admitted transporting the weapons on behalf of a UDA/UFF unit, who he stated intended to murder a local republican.
- 9.34. Persons L and M were both sentenced to 17 years imprisonment after pleading guilty to Conspiracy to Murder in respect of this individual. A third individual, believed to have been involved with Person L and M, was researched by police investigating the murder, but not arrested.
- 9.35. One of the men told police that they had been instructed to leave the hi-jacked car and weapons at a vacant house on the Finvoy Road, Ballymoney, to be collected by the UDA/UFF members carrying out the attack. Finvoy Road is a short drive from the Casey address and was where Persons J and K had been observed acting suspiciously by police on 3 April 1989, approximately 24 hours prior to the murder.
- 9.36. On 5 April 1989, police arrested Person K. At that time there was intelligence connecting him to the UDA/UFF but none which indicated that he was actively involved in terrorist activity. Person K provided an explanation for his presence on Finvoy Road with Person J. He also provided an alibi witness for his whereabouts at the time of the murder. Police checked the alibi and later released Person K without charge. Later intelligence indicated that he became an active UDA/UFF member.

- 9.37. Person J was interviewed as a witness by police and supported the account of Person K. My investigators reviewed the relevant RUC interview records. Although treated as a witness, it was clear from the line of questioning that police were suspicious of his account. He was on long-term sick leave from the UDR at the time and would later be discharged from the regiment. Following this, intelligence indicated that he became an active UDA/UFF member. In 1991, he was arrested under terrorist legislation about another matter. During relevant police interviews he was asked again about the Casey murder. He provided the same account as he had in April 1989.
- 9.38. Police arrested Person T in May 1989 on suspicion of the murder. He provided an alibi witness and was later released without charge. My investigators viewed no intelligence linking this individual to the murder of Mr Casey.
- 9.39. In late 1989, Person U was arrested and charged with possession of documents likely to be used for terrorist purposes. This related to the recovery of a loyalist intelligence 'cache' by police in November 1989. The 'cache' contained a document with the word 'dead' written beside Mr Casey's name. Person U denied being involved in the murder and was not charged with it.
- 9.40. In February 1990, Person A was arrested and questioned about Mr Casey's murder. Person A denied any involvement and was subsequently released without charge. My investigators could find no explanation as to why he was only arrested then, when police were in possession of information linking him to the attack in April and May 1989. Intelligence indicated that Person A was an active member of the North West UDA/UFF. The intelligence received in April and May 1989 was of a general nature.



- 9.41. In late 1992, police interviewed another individual who was in prison. My investigators have been unable to establish why he was questioned about the Casey murder. He denied being involved and stated that he had no knowledge of the attack
- 9.42. Four years after Mr Casey's murder, following the Greysteel attack, police received information indicating that Persons A, B, J, and K were involved. Persons A and K had previously been arrested on suspicion of the murder. Person J was interviewed, but as a witness. Person B was arrested a number of times relating to attacks referred to in this public statement. My investigators have been unable to establish if he was interviewed about the murder of Mr Casey.
- 9.43. Police received intelligence in July 1989 indicating that the UDA/UFF had received information from a member of the UDR, which police assessed was Person V, which assisted in targeting Mr Casey. Person V, as stated previously in this public statement, attended intelligence briefings with police in North Region. RUC Special Branch forwarded this intelligence to the military who subsequently dismissed Person V from the UDR. I have found no evidence that this intelligence was passed to police investigating Mr Casey's murder. Person V was not arrested or ever spoken to by police about the murder.

### **Concerns Raised by the Casey Family**

- 9.44. Although no formal complaint was received in relation to Mr Casey's murder, my predecessor, Dr Maguire, decided to conduct an investigation of his own motion in relation to this attack. My investigators met with his family and their legal representative in March 2014. At that meeting, they raised the following concerns:

- I. That members of the RUC assaulted and threatened Mr Casey when he was detained at Castlereagh RUC Holding Centre;
- II. That the RUC failed to effectively investigate the murder;
- III. That members of the RUC failed to question the Greysteel murder suspects about Mr Casey's murder despite there being a weapons linkage;
- IV. That, during a prior house search, a police officer made a sketch of the layout of rooms at the Casey address; and
- V. That police did not follow correct procedures when seizing and confiscating Mr Casey's legally held shotgun during the same search. This led to a revocation of his shotgun certificate.

#### **Allegations of Assaults and Threats at Castlereagh RUC Holding Centre.**

- 9.45. At 8:00am on 5 October 1988, Mr Casey was arrested at his home address under Section 12 of the Prevention of Terrorism Act 1984 (the 1984 Act). He was taken to Castlereagh RUC Holding Centre. On 6 October 1988, while detained there, Mr Casey made a complaint to a doctor that he had been assaulted during an interview with detectives the previous day. He was medically examined and photographed. The relevant interview room was sealed off, forensically examined, and photographed.
- 9.46. Mr Casey declined to make a statement or sign the medical report completed by the doctor who recorded his complaint. At the time, the doctor noted that Mr Casey had marks on his neck and cheeks.
- 9.47. The complaint was investigated by the RUC's Complaints and Discipline Branch. A file of evidence was submitted to the DPP in

March 1989. In May 1989, the DPP directed 'No Prosecution' against any police officer subject to investigation. A report was also submitted to the Independent Commission for Police Complaints (ICPC) for their consideration. In August 1989, a decision was taken that no disciplinary proceedings be initiated against any police officer subject to investigation.

- 9.48. The 2001 Regulations state that complaints received under Section 52 of the 1998 Act can only be investigated if *'the complaint has not otherwise been investigated by the police.'* My Office cannot, therefore, investigate the assault allegation made by Mr Casey as it was investigated by RUC Complaints and Discipline Branch at the time.

#### **That the RUC Failed to Effectively Investigate the Murder**

- 9.49. My investigators reviewed the relevant RUC Policy Book maintained by Police Officer 2. This provided an insight into the investigative strategy and major lines of enquiry undertaken by police.
- 9.50. My investigators established that the murder investigation was adequately resourced and that identified initial lines of enquiry were completed. However, I am of the view that there were delays concerning the arrests of Persons A and J. Additionally, intelligence linking Person V to the murder was not shared by RUC Special Branch with the investigation team. This investigation has been unable to establish why an individual linked to the murder, along with Persons L and M, was researched by police but not arrested. It has also not been possible to establish if Person B was interviewed about the murder of Mr Casey, after 1993 intelligence linked him to it.
- 9.51. I am of the view, having reviewed the available intelligence, that police could not have prevented, or been forewarned of, Mr Casey's murder.

- 9.52. Gerard Casey was the first person to be murdered by the North West UDA/UFF for several years. This may explain why police lacked accurate, high quality intelligence regarding the murder. The majority of intelligence was anonymous, speculative, or of a poor quality. However, police were aware that part of the 1987 loyalist arms importation had been distributed to the North West UDA/UFF for use in attacks.
- 9.53. Police received intelligence regarding the murder in April, May, and July 1989. After this, no intelligence was received until November 1993, following the Greysteel murders. RUC Special Branch shared all intelligence relating to the murder with the police investigation team, except that linking Person V to the attack.
- 9.54. As previously stated, intelligence was received following the murder that a serving UDR member was assisting the UDA/UFF by collating intelligence on various individuals, including Mr Casey. It added that he attended intelligence briefings with police. The RUC assessed that this individual was Person V.
- 9.55. RUC Special Branch passed the intelligence to the military authorities who later discharged Person V from the UDR. I have found no evidence, however, that the intelligence was disseminated to police investigating Mr Casey's murder. A former senior Special Branch officer informed my investigators that it was normal procedure to forward intelligence regarding military personnel to their authorities to deal with.

**That members of the RUC failed to question the Greysteel murder suspects about Mr Casey's murder despite there being a weapons linkage.**

- 9.56. The VZ58 assault rifle used to murder Mr Casey was the same weapon used in the attack at the Rising Sun Bar, Greysteel, on 30 October 1993. It was recovered by police during a search at Ballygudden Road, Eglinton, on 3 November 1993. Police investigating the Greysteel murders were aware that the same VZ58 rifle was used in both attacks.
- 9.57. Following the Greysteel attack, police arrested and interviewed 17 individuals. Four of these admitted responsibility for the attack and were charged and later convicted of the murders. My investigators reviewed their interview records, together with those of another individual who was arrested. These interview records gave no indication that they were questioned about the murder of Gerard Casey, despite the weapons link.
- 9.58. However, during the Greysteel investigation, police obtained information relating to Mr. Casey's murder. This named four individuals who were involved. Three of them, Persons A, J, and K, had previously been arrested and interviewed by police. This investigation has been unable to establish if the fourth individual, Person B, was ever interviewed about the murder.
- 9.59. Paramilitary organisations in Northern Ireland during the 'Troubles' used a 'Quartermaster' style system to store and distribute weapons for use in terrorist attacks. Prior to an attack, the weapon would have been removed from a 'hide' and given to the gunmen involved, before being cleaned and returned to the 'hide' afterwards.
- 9.60. A number of individuals, therefore, could have handled a weapon prior to it being recovered by the security forces. While police may have been able to prove that an individual used a weapon in an attack, it did not necessarily mean that the same individual used that same weapon in other attacks. It was, however, circumstantial evidence that could have been used during suspect interviews.

**That during a previous search of the Casey address, a police officer made a sketch of the layout of the rooms.**

**That police failed to follow the correct procedures when seizing Mr Casey's legally held shotgun, which led to his firearms certificate being revoked.**

- 9.61. At approximately 8:00am on 21 January 1988, Mr Casey was arrested by police at his home address under Section 12 of the 1984 Act. Police officers from a Mobile Support Unit (MSU) searched the property in the presence of Mr Casey, his wife, and their three children. The search included every room and the roof space. Police recovered a Sinn Féin booklet and a magazine during the search.
- 9.62. My investigators established that a sketch of Mr Casey's home was made during this search. This was in accordance with normal police practice at that time as part of the search process. The practice is still in place today.
- 9.63. Mr Casey was arrested again on 5 October 1988 and his legally held shotgun was seized by police. Mrs Casey informed my investigators that she witnessed a police officer making a sketch of the layout of the house on this occasion as well. My investigators were unable to locate the relevant search documentation for this second search.
- 9.64. Following the seizure of the shotgun, police initiated procedures to revoke Mr Casey's firearms certificate as intelligence indicated that he was a senior PIRA member. A report was forwarded to the Sub-Divisional Commander at Ballymoney RUC Station and Mr Casey's firearms certificate was subsequently revoked.
- 9.65. Article 30 (1) of the Firearms (Northern Ireland) Order 1981 states that a firearms certificate may be revoked by the Chief Constable if he is

satisfied that possession of the firearm by the holder is likely to endanger the public safety or the peace.

- 9.66. I am of the view, given the available evidence and intelligence, that the relevant Sub-Divisional Commander at Ballymoney, acting on behalf of the Chief Constable, was entitled to revoke Mr Casey's firearms certificate. An appeal process, to the Secretary of State, was available at that time for those wishing to contest a Chief Constable's decision.

### **Summary**

- 9.67. I am of the view, given the available evidence and information, that police investigating Gerard Casey's murder completed all initial lines of enquiry. There was no witness or forensic evidence to link any individual to the attack.
- 9.68. The timing of the arrests must be compared against the available evidence and intelligence at the time. Person K was arrested on 5 April 1989, primarily due to his presence on the Finvoy Road with Person J the night before the murder. At that time, there was limited intelligence linking him to loyalist paramilitaries.
- 9.69. Person J, who was a UDR member at the time of the murder, was not arrested until 1991. I have been unable to establish why he was not arrested at the same time as Person K. I am of the view that the decision to initially treat Person J as a witness, as opposed to a suspect, may have impeded the RUC investigation. This delay may have led to the loss of important evidential opportunities which the SIO could have utilised to develop new lines of enquiry.
- 9.70. Intelligence was received in April and May 1989 that Person A was involved in the murder, although it did not specify his role. This was forwarded to the RUC investigation team. Person A, however, was not

arrested until February 1990. My investigators have been unable to establish a reason for this delay. I am of the view that this delay may have led to the loss of important evidential opportunities which the SIO could have utilised to develop new lines of enquiry.

- 9.71. I have found no evidence that intelligence linking a member of the UDR, who police assessed to be Person V, to the supply of information which assisted the UDA/UFF to target and murder Mr Casey was shared with the investigation team. I am of the view that this intelligence ought to have been shared with the SIO investigating the murder.
- 9.72. This investigation has been unable to establish why an individual linked to the murder, along with Persons L and M, was researched by police investigating the murder, but not arrested. I have also found no record that Person B was ever arrested and interviewed about the murder, despite being linked to it in 1993 intelligence.



## 10.0

# The Murder of Eddie Fullerton - The RUC Investigation

- 10.1. At the time of his murder, Mr Fullerton was a Sinn Féin councillor who held seats on both Buncrana Urban Council and Donegal County Council. He lived in Buncrana, County Donegal, with his wife Diana. Their six children were grown up and had all moved out of the family home. On the evening of 24 May 1991, Mr Fullerton attended a council meeting in Letterkenny. He arrived home at approximately 1:00am the following morning and, after watching some television, went upstairs to bed at approximately 2:00am.
- 10.2. At approximately 2:15am, a number of armed men broke down Mr Fullerton's front door with a sledgehammer and made their way upstairs. They shot Mr Fullerton six times on the first floor landing. An Garda Síochána (AGS) were contacted and attended. Mr Fullerton was pronounced dead at the scene.
- 10.3. At approximately 11:50pm, four armed and masked men with Northern Irish accents had forced their way into a house in the isolated area of Shandrum, outside Buncrana. They held a family hostage for approximately two hours before stealing their Mitsubishi Lancer car and a sledgehammer. Both the car and sledgehammer were subsequently used during the murder of Mr Fullerton.
- 10.4. Following the attack, the gunmen made their escape over the border into Northern Ireland. The Mitsubishi Lancer car used in the attack was found on fire shortly after 4:05am at Coney Road on Culmore Point, on the Northern Ireland side of the border.

- 10.5. The UDA/UFF later claimed responsibility for the murder, stating that it was in retaliation for the PIRA murder of Ian Sproule on 13 April 1991 near Castlederg, County Tyrone. They alleged that Mr Fullerton assisted in targeting Mr Sproule by providing PIRA with a '*leaked*' AGS document containing personal information about him.

### **The Murder of Ian Sproule**

- 10.6. This document allegedly contained Mr Sproule's personal details and linked him to a number of incendiary device attacks in County Donegal during 1987. A subsequent AGS investigation found no evidence to support the claim that Mr Fullerton provided PIRA with any documentation. The Fullerton family have always maintained that Mr Fullerton played no role in the murder of Mr Sproule.
- 10.7. At the time, a regional newspaper reported that PIRA handed a journalist an AGS document which they claimed justified their decision to murder Mr Sproule. A later newspaper article, quoting unnamed AGS sources, stated that the '*leak*' came from an individual who attended a meeting of Donegal County Council in Lifford, two days before Mr Sproule's murder. PIRA later stated that they recovered the document from a loyalist intelligence '*dump*' in Castlederg. However, as Mr Fullerton was the sole Sinn Féin representative at the Lifford meeting, his family believe that this newspaper article led to him being targeted in revenge for Mr Sproule's murder.
- 10.8. AGS were responsible for the investigation of Mr Fullerton's murder but, as it was believed that those responsible came from Northern Ireland, the RUC assisted in a number of lines of enquiry. My investigators considered allegations made by the Fullerton family about RUC conduct both prior to, and following, the murder.

## **Assistance from An Garda Síochána**

- 10.9. Following a formal request by my Office, my investigators met with AGS officers who provided them with information and documentation relating to the investigation of Mr Fullerton's murder. I would like to thank them for their assistance in this matter.

## **Initial Police Response**

- 10.10. Buncrana AGS were notified of Mr Fullerton's murder at 2:30am on 25 May 1991, the first officers attending the scene at 2:34am. AGS initially contacted Strand Road RUC Station at 2:50am, then again at 3.18am, once they became aware of the house takeover and that those responsible spoke with Northern Irish accents.
- 10.11. At 4:07am, Strand Road RUC Station received a report from the Northern Ireland Fire Brigade that a car was on fire at the Coney Road sewage treatment works on Culmore Point. Police attended and the car was forensically examined and photographed prior to being taken to NIFSL for further examination. Although the vehicle registration plates had been destroyed, the chassis number confirmed that it was the Mitsubishi Lancer car linked to the murder of Mr Fullerton.
- 10.12. My investigators examined all the available RUC documentation, including the C6 Station Register<sup>35</sup> at Strand Road RUC Station. This register detailed police actions in response to the burning car at Coney Road. The register records that CID and the relevant Duty Inspector were notified.
- 10.13. My investigators interviewed a number of former RUC officers who were on duty at the time of the murder. These included

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<sup>35</sup> A C6 Register is an occurrence book

Communications Room staff and officers on patrol duties. Although their accounts provided useful information regarding policing structures and processes at the time, none of them recalled being tasked to assist with the murder investigation.

- 10.14. My investigators also interviewed a number of former RUC officers who attended the Coney Road scene, but they could provide nothing of significant value. However one former officer, who was Station Duty Officer at Shantallow RUC Station on the night in question, recalled being notified of the murder by Communications Room staff at Strand Road RUC Station.
- 10.15. He stated that there was a direct phone line between Strand Road RUC Station and Donegal AGS. He stated that he updated the relevant C6 Station Register and informed CID and the relevant Duty Inspector. My investigators interviewed the relevant CID officer. However, he offered limited information. He confirmed that the incident was passed to Shantallow CID the following morning for further enquiries.

### **RUC Investigation Team**

- 10.16. Although AGS led the murder investigation, they sought considerable assistance from the RUC, given that they believed loyalist paramilitaries from Northern Ireland were responsible. A Detective Inspector, Police Officer 3, was responsible for supervising all RUC enquiries requested by AGS. These were managed from a Major Incident Room (MIR) based at Strand Road RUC Station which utilised a paper-based enquiry management system, the Major Incident Room Standardised Administrative Procedures (MIRIAM). Once completed, all investigative actions and related evidence were forwarded to AGS. My investigators reviewed these enquiries and established that they were generally completed in a timely manner.

- 10.17. My investigators interviewed Police Officer 3, who stated that his deputy at the time was a Detective Sergeant. They reviewed all incoming AGS requests, before raising investigative actions that were then allocated to detectives based at Strand Road RUC Station. Their team was also supported by detectives from the Regional Intelligence Office. Police Officer 3 informed my investigators that they did not use the computerised Home Office Large Major Enquiry System (HOLMES) because they were assisting AGS, who had primacy for the investigation.
- 10.18. Police Officer 3 confirmed that there were established procedures in place for information sharing between the RUC and AGS. Any requests relating to Mr Fullerton's murder were made either verbally or in writing between the RUC Border Liaison Officer (BLO), a Superintendent, and his AGS counterpart. Strand Road RUC Communications Room also forwarded messages received from AGS. He stated that an official AGS-RUC liaison desk was not established until 1996.

### **RUC Enquiries**

- 10.19. My investigators reviewed the relevant RUC Action Sheets which were generated by AGS requests. These detailed enquiries conducted by the RUC and identified a number of police officers who worked on the investigation. My investigators interviewed a number of these former police officers but they could provide no information that progressed this investigation.
- 10.20. The Action Sheets examined by my investigators indicated that the following enquiries were conducted by RUC officers:
- A military vessel was utilised to search part of the Lough Foyle shoreline. Nothing of note was found;

- House-to-house and witness enquiries were carried out in the Culmore Point area, including interviews of security staff at Coolkeeragh Power Station;
- Enquiries were conducted regarding a helicopter sighting in the Culmore Point area around the time of the murder;
- The Mitsubishi Lancer car was forensically examined. No evidence was recovered as it had been burnt out;
- Enquiries were conducted regarding a number of vehicles observed acting suspiciously both prior to, and following, the murder in the Derry/Londonderry and Buncrana areas;
- Witnesses who observed the Mitsubishi Lancer car burning on Coney Road were interviewed;
- Details were obtained of all vehicles that passed through relevant Permanent Vehicle Check Points (PVCPs) between 9:00am on Friday 24 May 1991 and 9:00am on Saturday 25 May 1991;
- A list of suspected loyalist paramilitaries from the Derry/Londonderry area, and vehicles linked to them, was generated;
- Continuity statements were obtained from police witnesses regarding the examination of the Mitsubishi Lancer car, and the recovery of a latex glove at the Coney Road scene. It was submitted for forensic examination but nothing of an evidential value was recovered; and
- Photographs of the Coney Road scene and copies of related forensic reports were obtained.

10.21. The helicopter sighted at Culmore Point was initially reported by a member of the public at 2:40am on 25 May 1991. My investigators reviewed police documentation indicating that a military helicopter had been scheduled to fly between Ballykelly Camp and Ebrington Camp at the relevant time. The RUC requested information from the military on 6 June 1991, as to whether the crew or pilot had observed anything

suspicious in the area. My investigators were unable to locate a response from the military to the RUC request.

- 10.22. I am of the view, given the available evidence, that the RUC completed the majority of these enquiries in a thorough and timely manner. An outstanding investigative action related to an AGS request to interview security personnel who were at the Culmore Road PVCP between 2:00am and 6:00am on 25 May 1991. My investigators found no record of this enquiry being completed. My investigators interviewed the Detective Constable who was allocated the relevant investigative action. He could not recall the outcome of the enquiry.

### **Ballistics**

- 10.23. The RUC assisted with relevant ballistic examinations. It was established that a 9mm Browning pistol and a .38 Smith and Wesson revolver were used in the murder of Mr Fullerton.
- 10.24. The Smith and Wesson revolver would later be used in the murder of Thomas Donaghy, the attempted murder of James McCorrison, and the Castlerock murders. It was originally a PPW that was stolen from the Garvagh home of a RUC Reserve Constable in February 1988.
- 10.25. On 8 April 1993, police carried out a search at Downhill near Castlerock, County Derry/Londonderry, where they recovered the Smith and Wesson revolver, together with two other weapons. A discharged cartridge case from the Smith and Wesson was recovered by police at Ballygudden Road, Eglinton, on 3 November 1993. This was during a police search that formed part of the Greysteel murder investigation.

- 10.26. The 9mm Browning pistol was later used in the murder of Daniel Cassidy. Although this weapon has never been recovered, an examination of spent cartridge cases recovered from the Fullerton and Cassidy scenes established that they had been discharged from the same weapon.
- 10.27. RUC Special Branch possessed intelligence indicating that the North West UDA/UFF were in possession of Browning 9mm Hi-Power semi-automatic handguns. Two of them were recovered from Persons L and M, following their arrests, on 25 February 1989. I am of the view, given their serial numbers that they originated from the 1987 loyalist arms importation.

#### **RUC - AGS Communications**

- 10.28. My investigators interviewed a number of former RUC officers involved in the relevant investigation. They stated that there were good informal relations between the RUC and AGS at the time. Although the BLO relationship focused on more strategic matters and the sharing of sensitive information, day-to-day liaison between the two police forces was usually through telephone calls or border meetings.
- 10.29. However, these informal methods of contact were rarely documented, meaning that it was difficult for my investigators to establish the level of liaison, and nature of information shared, during the murder investigation. Senior RUC and AGS officers attended monthly regional meetings and quarterly Headquarters meetings. My investigators were unable to find any minutes for these meetings covering the relevant period. However, my investigators examined AGS documentation which indicated that senior AGS and RUC officers discussed the progress of the investigation. Information was shared, including that relating to suspects. One AGS report indicated some procedural issues relating to the sharing of intelligence. However, the



documentation evidenced an overall good working relationship between the RUC and AGS.

- 10.30. An Garda Síochána also provided this investigation with details of an internal report, dated January 1994. It referred to a meeting between senior police officers from the RUC and AGS where details of Persons I, J, K, and P were discussed, as having been responsible for Mr Fullerton's murder. The report stated that the RUC had interviewed all four individuals about the murder and other serious crimes, but there was insufficient evidence to charge them.
- 10.31. My investigators contacted the relevant RUC Border Liaison Officer but he chose not to assist the enquiry. Efforts to locate his relevant police journals, minutes of meetings he attended with AGS officers, and other relevant documentation were unsuccessful. AGS contacted the Border Liaison Officer for County Donegal on behalf of this Office. He informed them that he could not remember the events with any certainty and therefore was unable to assist this investigation.

### **Arrests**

- 10.32. In 2009 the PSNI, at the request of the AGS, arrested Persons I, J, K, and P on suspicion of Mr Fullerton's murder. AGS had also requested that four other individuals be arrested. Person W, who was not one of the 8 individuals AGS had requested to be arrested, was arrested by the PSNI at the time also. The duration of the interview periods of the 5 individuals ranged from 27 minutes to 70 minutes. They all denied being involved and were subsequently released without charge. To date, no individual has been prosecuted for the murder of Mr Fullerton.
- 10.33. In December 2021, a man was arrested in Muff, County Donegal in connection to the murder of Mr Fullerton. He was questioned by the AGS, and was subsequently released without charge.

## Complaint by the Fullerton Family

10.34. The family of Mr Fullerton raised a number of questions and concerns regarding the actions of RUC officers both prior to, and following, the murder. These were as follows:

- I. That the RUC unlawfully arrested Mr Fullerton on 13 January 1990 while he was engaged in a peaceful border protest;
- II. That following the arrest of Mr Fullerton, members of the RUC passed his personal details to loyalist paramilitaries who used the information to assist in targeting him;
- III. That the RUC failed to question individuals convicted of criminal offences linked to the weapons used in the murder of Mr Fullerton. They obstructed the AGS investigation by failing to disclose these links and interview suspects because of Mr Fullerton's political beliefs;
- IV. That the RUC failed to assist the AGS investigation by not sharing with them all relevant intelligence;
- V. That the RUC failed to record a statement from a witness who lived near the location where the Mitsubishi Lancer car was set on fire following the murder. This witness is alleged to have observed three men get into an unmarked RUC car, indicating that police facilitated the escape of the murderers;
- VI. That Mr Fullerton's murder was part of a campaign by the security forces, including members of the RUC, to assassinate high profile Irish republicans;
- VII. That RUC officers allowed those responsible for Mr Fullerton's murder safe passage across the border; and

VIII. That the Fullerton family were concerned about the role played in the murder by police informants and an organisation known as 'The Committee.'<sup>36</sup>

**That the RUC unlawfully arrested Mr Fullerton on 13 January 1990 while he was engaged in a peaceful border protest.**

**That following the arrest of Mr Fullerton, members of the RUC passed his personal details to loyalist paramilitaries who used the information to assist in targeting him.**

10.35. Mr Fullerton was one of 11 individuals arrested at Fanny Wylies Bridge, Lenamore Road, on 13 January 1990. The bridge is situated on the Derry/Londonderry-Donegal border and, at that time, had been blocked with concrete blocks by the military as part of an ongoing security operation.

10.36. Following his arrest, Mr Fullerton was taken to Strand Road RUC Station where he was photographed and interviewed. He was subsequently charged with the offence of Interference with a Border Crossing contrary to Section 19(a) of the Northern Ireland (Emergency Provisions) Act 1978. The matter was heard at Londonderry Magistrates Court in September 1990, when the charges were withdrawn against all 11 individuals. My investigators have been unable to establish the reason why the charges were withdrawn.

10.37. Mr Fullerton's family alleged that the arrest was unlawful. They alleged that the RUC obtained his personal details during the detention process, which were then passed to loyalist paramilitaries.

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<sup>36</sup> 'The Committee: Political Assassination in Northern Ireland', Sean McPhilemy, Roberts Rinehart, 1988.

- 10.38. Mr Fullerton was arrested at 12:40pm on 13 January 1990 by Police Officer 5. He chose not to assist this investigation. Enquiries with PSNI were unable to locate his relevant notebook entry.
- 10.39. My investigators interviewed another former police officer, Police Officer 6, who was on duty at Fanny Wylies Bridge from 5:00am on 13 January 1990. He stated that approximately 100 RUC officers were deployed in the area for several hours prior to the arrests taking place.
- 10.40. He stated that he had no direct dealings with Mr Fullerton, adding that police were aware of where the border was, and had been warned by their supervisors that any arrests should only take place on the Northern Ireland side. My investigators reviewed other RUC documentation which indicated that approximately 80 demonstrators were present at the protest. A tractor, at one point, was used to remove concrete blocks from the road.
- 10.41. My investigators examined Mr Fullerton's relevant Custody Record from Strand Road RUC Station. This documented that police interviewed him on two occasions. At that time, Strand Road RUC Station did not have audio recording facilities so the interview records were handwritten.
- 10.42. My investigators have been unable to locate the interview records relating to Mr Fullerton or any of his co-accused. My investigators traced the two detectives who interviewed Mr Fullerton, but they could offer nothing of an evidential value. PSNI do not retain the relevant notebook entries of either officer.
- 10.43. Mr Fullerton's Custody Record revealed that he was photographed by a Constable from RUC Photography Branch, Police Officer 9, at 4:59pm on 13 January 1990. My investigators interviewed Police Officer 9, in addition to Police Officers 10, 11, and 12, three members

of Custody staff who had dealings with Mr Fullerton during his time at Strand Road RUC Station.

- 10.44. Police Officer 9 stated that, while he had no specific recollection of meeting Mr Fullerton, he would normally have been tasked by a Custody Sergeant to photograph a prisoner. My investigators have been unable to locate the relevant photographs of Mr Fullerton.
- 10.45. My investigators examined the Custody Records of the 11 arrested individuals, but none of them contained photographs. Police Officers 10, 11, and 12, when interviewed by my investigators, all had different recollections of RUC procedures in 1990 for photographing prisoners. There is no record of Mr Fullerton having made a complaint regarding his treatment at Strand Road RUC Station. The relevant Custody Record stated that he was treated in accordance with his rights at the time.
- 10.46. Enquiries with the Northern Ireland Court Service, PPS, and PSNI were unable to establish why the charges were withdrawn against all 11 individuals in September 1990. My investigators interviewed the solicitor who represented Mr Fullerton during these criminal proceedings. He could not recall the relevant case, other than it was withdrawn after a number of hearings. He retained no documentation regarding the matter. My investigators interviewed another solicitor who represented one of Mr Fullerton's co-accused but he, also, could not recall the case and held no relevant documentation.
- 10.47. My investigators were unable to recover the full RUC prosecution file in respect of the arrests of Mr Fullerton and the other individuals. I am unable to make a determination on the lawfulness of an arrest, as this is a matter which can only be determined by a Court.

- 10.48. As stated previously in this public statement, my investigators interviewed Police Officer 12 under criminal caution about intelligence that he socialised in a local bar with suspected members of North West UDA/UFF. Following this, a file of evidence was submitted to the PPS who subsequently directed 'No Prosecution' against him.
- 10.49. I have found no evidence to support the allegation that any member of the RUC supplied information about Mr Fullerton to the UDA/UFF.

**That the RUC failed to question individuals convicted of criminal offences linked to the weapons used in the murder of Mr Fullerton. They obstructed the AGS investigation by failing to disclose these links and interview suspects because of Mr Fullerton's political beliefs.**

**That the RUC failed to assist the AGS investigation by not sharing with them all relevant intelligence.**

- 10.50. Immediately after the murder, AGS asked the RUC to carry out intelligence checks on a number of individuals from Northern Ireland who they suspected may have been involved. My investigation has established that this information was provided by the RUC in a timely and accurate manner.
- 10.51. In June 1991, AGS asked the RUC for information regarding two unidentified UVF members from the Derry/Londonderry area who may have been involved in the murder. RUC Special Branch provided two separate pieces of information regarding this request in July 1991. This included that they held no intelligence indicating that UVF members from the Derry/Londonderry area were involved in Mr Fullerton's murder.

- 10.52. My investigators reviewed an AGS report, dated late June 1991, which referred to reliable information they had received regarding a number of individuals suspected of having murdered Mr Fullerton. This report stated that the relevant information was largely consistent with information supplied by the RUC.
- 10.53. In late August 1991, AGS requested information from the RUC regarding an individual. RUC Special Branch responded to this request the following day, forwarding all relevant intelligence regarding this individual. They stated that they held no intelligence linking him to Mr Fullerton's murder.
- 10.54. In January 1993, AGS requested information on Persons J, K, N, and O who they regarded as suspects in Mr Fullerton's murder. My investigators have found no record of a response from RUC Special Branch to this request.
- 10.55. In November 1993, the RUC received further intelligence regarding Mr Fullerton's murder. Later that month, senior RUC officers met with their AGS counterparts and shared this intelligence. It stated that Persons J, K, N, and P were responsible for the murder. My investigators have viewed AGS documentation confirming that this meeting took place and the relevant intelligence was shared.
- 10.56. This investigation has established that senior RUC officers informed their AGS counterparts that they had interviewed Persons J, K, N, and P about Mr Fullerton's murder but there had been insufficient evidence to charge them. AGS records examined by my investigators confirmed that the RUC informed AGS that these individuals had been interviewed about Mr Fullerton's murder. The relevant interview records no longer exist.

- 10.57. In December 1993, AGS requested information on Person F, who had recently been charged with the Greysteel attack. RUC Special Branch replied later that month stating that they held no intelligence linking him to Mr Fullerton's murder.
- 10.58. In January 2007, following a further review, AGS formally requested the arrests of Persons J, K, N, and P. They were arrested and interviewed by PSNI in June 2009, in addition to a fifth individual, Person W. All five denied the allegations and were subsequently released without charge. During his 2009 interview, Person K stated that he had been previously interviewed about Mr Fullerton's murder. In December 2021, a man was arrested in Muff, County Donegal in connection to the murder of Mr Fullerton. He was questioned by the AGS, and was subsequently released without charge.

**That the RUC failed to record a statement from a witness who lived near the location where the Mitsubishi Lancer car was set on fire following the murder. This witness is alleged to have observed three men get out of the car and get into an unmarked RUC car, indicating that police facilitated the escape of the murderers.**

- 10.59. The RUC interviewed a member of the public, Witness A, who lived at Culmore Point, not far from the scene of the burnt out Mitsubishi Lancer. He stated that he may have observed Mr Fullerton's murderers crossing the border, back into Northern Ireland. He worked for a media company at the time and had received a telephone call in the early hours of 25 May 1991 asking him to attend the Bunrana and Culmore Point scenes to record film footage. Witness A subsequently travelled to both scenes.
- 10.60. Witness A informed police that, prior to receiving the telephone call, he was awakened at approximately 3:00am by his dogs barking. He



looked outside and observed three men walking along the foreshore. Witness A later provided a witness statement to a RUC officer detailing his observations. Between 1991 and 2013, Witness A provided seven statements to the AGS, RUC, legal representatives of Mr Fullerton's family, and my own investigators regarding this incident. These accounts described the same sequence of events but varied in some respects. My investigators treated Witness A as a significant witness when they interviewed him.

- 10.61. Witness A informed my investigators that he observed three men, dressed in hooded camouflage clothing, walking along the foreshore before they *'ducked'* down behind a wall. He stated that he then saw what he described as a high powered Ford Sierra drive along the road, turn around, and pick up the three men. He stated that the Ford Sierra was of a similar make and model to the type used by the RUC at the time. The car then drove away in the direction of Culmore Road. He stated that later that morning, while at the scene of the burnt out Mitsubishi Lancer, he informed a RUC officer about this incident.
- 10.62. Later that day he was visited by a plain clothed RUC officer and two senior uniformed officers, from the RUC and AGS, who he spoke to in a car outside his house. The police officers asked Witness A to recount what he had seen. He stated that the police officers seemed relieved when he told them that he would not be able to recognise the three men if he saw them again.
- 10.63. Witness A informed my investigators that he wished to clarify an account he had previously provided to a solicitor representing Mr Fullerton's family. He had informed the solicitor that the Ford Sierra was a police car. Witness A informed my investigators that this was only an opinion on his part.

- 10.64. My investigators also interviewed the wife of Witness A. She stated that her husband was awakened by their dogs barking, before he informed her that there were people on the beach outside. She vaguely recalled that she heard a car driving past their house at speed. Her husband later told her that he thought it sounded like a police car.
- 10.65. This investigation established that, although the RUC did use armoured unmarked vehicles in 1991, there were no records indicating whether any Ford Sierra cars were on patrol that night. There were no records of any police vehicles crossing at the PVCs. My investigators interviewed a number of former police officers who were on patrol in the Derry/Londonderry area on the night of Mr Fullerton's murder. None of them had any knowledge of the incident in question.
- 10.66. My investigators interviewed a number of former RUC officers who attended the scene of the burnt out Mitsubishi Lancer car. None of them recalled Witness A speaking with any senior police officers. However, one former officer recalled speaking to Witness A, who informed him about the three men he had observed walking outside his house the previous night.
- 10.67. Scene photographs taken at the time focused on the burnt out vehicle and did not identify any potential witnesses. My investigators established, from the available police documentation, that two RUC Superintendents attended the Coney Road scene. They both declined to assist this investigation and enquiries to locate their relevant police journals proved unsuccessful.
- 10.68. Documentation examined by my investigators also established that three AGS officers, including the Border Liaison Superintendent, attended the Culmore Point scene. At the request of my investigators, AGS officers engaged with the relevant AGS Border Liaison Superintendent for County Donegal. He informed them that he could

not now remember the events at that time with any certainty and therefore was unable to assist this investigation. His successor to the role, however, stated that the RUC and AGS had a good working relationship at the time in the Donegal-Derry/Londonderry area. AGS records indicated that the RUC and AGS Border Liaison Superintendents met regularly in respect of Mr Fullerton's murder.

- 10.69. Despite establishing that a number of senior RUC and AGS officers attended the Culmore Point scene, this investigation has been unable to identify the senior police officers who spoke to Witness A outside his house. Witness A could not describe the police officers and my investigators have been unable to locate any police documentation relating to their visit. Witness and CCTV enquiries conducted in the Culmore Point area by my investigators proved negative.

**That Mr Fullerton's murder was part of a campaign by the security forces, including members of the RUC, to assassinate high profile Irish republicans.**

- 10.70. My investigators viewed a World in Action television documentary entitled '*Marked for Murder*' which was aired in June 1991, the month after Mr Fullerton's murder.
- 10.71. I have referred in Chapter 5 of this public statement to several loyalist intelligence '*caches*.' One of these contained a number of newspaper articles that referred to Mr Fullerton. Two of the '*caches*' were featured in the '*Marked for Murder*' television documentary. There was also an incident where Mr Fullerton received a threatening post card from a suspected loyalist paramilitary group on 2 April 1990.
- 10.72. The first intelligence '*cache*' concerned a large amount of police documentation found at a rubbish dump at Drumaduff, near Limavady, in June 1991. This incident attracted considerable media attention at

the time. An internal RUC investigation concluded that the security breach was caused by *'human error.'*

- 10.73. Police stated that a bag found containing documentation intended for incineration had been mistakenly deposited at the wrong rubbish collection point. A senior police officer stated that this had been a *'serious mistake'* but dismissed allegations of collusion as *'nonsense.'* He stated that none of the relevant documentation was of a sensitive nature and it contained no photo montages.
- 10.74. My investigators conducted enquiries with both the PSNI and PPS but were unable to locate the relevant RUC investigation report. However, two police officers involved in the investigation, a Detective Chief Inspector and Detective Sergeant, informed my investigators that the Drumaduff documentation did not contain any material relating to Mr Fullerton or any other leading republicans. This was confirmed by a local Sinn Féin councillor who viewed the relevant documentation. He stated that, had it contained information relating to Mr Fullerton, he would have informed the media given that the find occurred less than a month after his murder.
- 10.75. The second significant loyalist intelligence *'cache'* followed the arrest of an individual who had been observed acting suspiciously outside the home of a Derry/Londonderry republican in November 1989. During follow-up searches, police recovered a large amount of documentation relating to suspected PIRA members and leading republicans in the area. One typed document entitled *'IRA Personnel 1989 Republic of Ireland'* included the home address and a photograph of Mr Fullerton.
- 10.76. In November 1991, ten individuals were convicted of various offences relating to this intelligence *'cache.'* None of the relevant documentation originated from the RUC, although some military material was

included. I have found no evidence that Mr Fullerton was informed of this incident.

- 10.77. The television documentary included a RUC montage of suspects, including a photograph of Mr Fullerton. My investigators established that this was an open source image that had been imposed onto a supposed RUC document by the programme makers for theatrical purposes.
- 10.78. My investigators interviewed a Sinn Féin councillor from the Derry/Londonderry area. He stated that he was asked to attend Strand Road RUC Station where he was informed by police that they had recovered documentation from loyalist sources containing his personal details. He recalled seeing a photograph of Mr Fullerton amongst the documentation. He could not recall when this meeting took place or which police officers were present.
- 10.79. This investigation has established that the relevant RUC Force Order (Force Order 33/86) at the time, relating to threats to life, instructed that all threats against an individual should be passed to RUC Special Branch, who would then disseminate the information accordingly. The relevant RUC Force Order contained no guidance as to what action should be taken regarding a threat made against a resident of the Republic of Ireland.
- 10.80. The family of Mr Fullerton informed my investigators that he was not warned of a threat against him by either the RUC or AGS. This investigation found no records to indicate that the RUC provided a threat warning to him. The AGS informed my investigators that they held no records indicating that they had received information from the RUC that Mr Fullerton was under threat from loyalist paramilitaries.

- 10.81. On 2 April 1990, Mr Fullerton received a postcard with a Derry/Londonderry postmark from the *'Maiden City Action Force.'* It contained the following handwritten message, *'Hello Eddie, just to let you know you are next.'* It was signed *'Colonel Murray.'* He handed the postcard to AGS, who investigated the matter as the offence occurred in their jurisdiction. The AGS made the RUC aware of the details of the threat and sought their assistance in conducting a number of enquiries. The RUC responded to an AGS request for information about this grouping. The *'Maiden City Action Force'* was thought to have been the pseudonym for a loyalist paramilitary organisation.
- 10.82. My investigators established, following a review of relevant documentation, that AGS made enquiries with the RUC at the time, who provided them with information relating to the *'Maiden City Action Force.'* AGS records indicated that Mr Fullerton was concerned about the threat and was taking extra security measures.
- 10.83. On 13 June 1991, a second postcard was sent to the Fullerton family address bearing a Coleraine postmark. Written on one side of the card was *'RIP'* and on the other side *'UFF'*. This was forwarded to AGS by the family but my investigators have been unable to establish if the RUC and/or NIFSL were requested to conduct any additional enquiries.
- 10.84. A third documentation find in the Portrush area followed the arrest of Person J in February 1991. In 1993, RUC Special Branch received intelligence naming him as one of four individuals responsible for the murder of Mr Fullerton. Documentation recovered from the Portrush address referred to a number of republicans, but not Mr Fullerton.
- 10.85. I note the family's concerns that Mr Fullerton was murdered as part of a campaign by security forces. My jurisdiction is limited to the investigation of police conduct and does not extend to the investigation

of the actions of other members of the security forces. However, this investigation has found no evidence that Mr Fullerton's murder was part of an RUC campaign by the security forces, including members of the RUC, to assassinate high profile Irish republicans.

**That RUC officers allowed those responsible for Mr Fullerton's murder safe passage across the border.**

- 10.86. In May 1991, there were three Permanent Vehicle Check Points (PVCPs) situated on the border between Donegal and Derry/Londonderry. They were staffed 24 hours a day by the military, supported by the RUC. A computerised system at each PVCP recorded the vehicle registration numbers of all vehicles that passed through in either direction.
- 10.87. The PVCP at Culmore Road was the nearest one to where the burnt out Mitsubishi Lancer car was found. It was positioned approximately half a mile inside the Northern Ireland border. The scene of the burnt out car was also in Northern Ireland, but it had been abandoned at a location between the border and the relevant PVCP. The distance from the deposition site to the scene of the murder was approximately 13 miles and it was estimated that a car journey between the two points would have taken approximately 16 minutes. AGS set up VCPs following Mr Fullerton's murder, but it is probable that the stolen car would have passed these locations prior to them being established.
- 10.88. The other two PVCPs were situated on the Letterkenny Road and Buncrana Road. The RUC were first made aware of the attack at 2:50am when the Communications Room at Strand Road RUC Station received a message of a *'report of shooting from Buncrana Garda.'*
- 10.89. Those responsible for Mr Fullerton's murder could have walked back into Northern Ireland via any number of routes after setting the

Mitsubishi Lancer on fire. Most border crossing roads had been blocked by the military but were often made accessible again by local residents within a short period. This investigation was unable to establish if all border crossings were impassable at the time of Mr Fullerton's murder.

- 10.90. Efforts by my investigators to identify police and military personnel on duty at Culmore Road PVCP on the night of the murder proved unsuccessful. No records existed in respect of roster duties. My investigators established that police officers staffing the checkpoint would have primarily been uniformed personnel from Shantallow RUC Station. My investigators interviewed a number of former police officers who performed these duties. Conflicting accounts were obtained. Some stated that the PVCP was staffed solely by military personnel at night, while others recalled that it was military and RUC officers.
- 10.91. Following the murder, AGS requested the details of all the vehicles that passed through the Culmore Road and Bunrana Road PVCPs for a 24 hour period between 9:00am on 24 May 1991 and 9:00am on 25 May 1991. The RUC forwarded the requested PVCP records to AGS in a timely manner. My investigation established that approximately 6000 vehicles passed through these PVCPs during the relevant period.
- 10.92. AGS officers reviewed this information and asked the RUC to conduct further enquiries regarding a number of vehicles of interest to them. These enquiries related to vehicles with similar registration plate numbers to a number of cars observed in the Bunrana area around the time of the murder.
- 10.93. Two vehicles with links to the security forces were recorded as having crossed into Northern Ireland at the Bunrana Road PVCP on the night of the murder. These crossings occurred at 2:06am and 7:10am



respectively on 25 May 1991. My investigators traced and interviewed the driver of the vehicle that made the first crossing. He stated that, at the time, he worked for an electrical appliance retailer situated on a military base in Northern Ireland. He stated that he used the vehicle for non-work related purposes and often drove to social events in Donegal. He added that he could not recall the evening in question but it was likely that he could have crossed the border at the relevant time as the events he attended often ended late at night.

- 10.94. This investigation did not establish the reason for the second car crossing at 7:10am. My investigators identified the owner of the vehicle but he is now deceased. The car was also registered to the same electrical appliance retailer referred to above.
- 10.95. There was no record of any police vehicles passing through the PVCPs during the relevant period. Neither was there any record of a Ford Sierra car crossing into Northern Ireland.
- 10.96. This investigation considered whether those responsible for Mr Fullerton's murder crossed the border by a route other than through a PVCP. At the time, AGS asked the RUC to carry out a number of enquiries in respect of a boat which may have been used to cross Lough Foyle. The RUC did so, but there was no evidence or intelligence gathered to support this theory. This investigation has found no evidence that a RUC officer allowed those responsible for Mr Fullerton's murder safe passage across the border back into Northern Ireland.
- 10.97. This investigation has found no evidence or intelligence that the RUC assisted those responsible for Mr Fullerton's murder to cross the border, back into Northern Ireland.

## Summary

- 10.97. I am of the view that in general, the RUC enquiries conducted on behalf of the AGS, were completed in a timely and thorough manner. Although, my investigators have found no record that AGS intelligence requests in June 1991 and January 1993 were responded to by RUC Special Branch.
- 10.98. As referred to earlier in this public statement, I have not found any evidence that the RUC made either Mr Fullerton or AGS aware that personal information relating to him had been found in a loyalist intelligence 'cache' in Derry/Londonderry in November 1989.

## 11.0

# The Murder of Patrick Shanaghan – The RUC Investigation

- 11.1. Mr Shanaghan was 33 years old when he was murdered. He was a single man, with no children, who lived with his mother on the family farm at Killen, outside Castlederg, County Tyrone. He was employed as a labourer for the Department of Environment (DOE), in addition to helping run the farm. On Monday 12 August 1991, he left home in a yellow Bedford van, to drive to work in Castlederg.
- 11.2. At approximately 8:25am, Mr Shanaghan was driving along the Learmore Road when a gunman stepped out of the laneway of a farm and opened fire with a VZ58 assault rifle, discharging at least 20 rounds as the van drove past. Mr Shanaghan was shot a number of times and lost control of the van, which veered off the road before coming to a halt in a hedge, approximately 70 yards further along the road.
- 11.3. Prior to the gunman opening fire, another motorist had overtaken Mr Shanaghan's van. On hearing the gunfire, the motorist looked in his rear view mirror and saw a masked man standing at a gap in the hedge holding a rifle. The motorist watched as the front windscreen and driver's window of the Bedford van shattered. He then drove to a nearby farm where he phoned Strabane RUC Station to report the attack.
- 11.4. Mr Shanaghan was struck by four bullets and several bullet fragments. A pathologist later concluded that, due to the severity of his injuries, death would have been rapid.

- 11.5. Later that day, the UDA/UFF claimed responsibility for the murder in an anonymous phone call to a BBC newsroom. The caller stated that *“The UFF accepts responsibility for shooting Patrick Shanaghan this morning. He was targeted because he was known to be an active member of republican death squads operating in the area.”*
- 11.6. Police later arrested four men on suspicion of Mr Shanaghan’s murder but they were all subsequently released without charge. To date, no individual has been prosecuted for his murder.
- 11.7. Mr Shanaghan was a Sinn Féin member who was involved in local politics and Irish cultural events. He was aware that he was a target for loyalist paramilitaries, having survived an attempt on his life in February 1989 when shots were fired at him as he left his home. In December 1990 and April 1991, he was notified by police that his life was under threat. The first warning related to an incident where a security forces document, containing his name and photograph, went missing from a military vehicle as it travelled between Strabane and Castlederg. The second warning was as a result of police receiving information that he was being targeted by loyalist paramilitaries.
- 11.8. Police possessed intelligence that Mr Shanaghan was an active member of a PIRA unit, an allegation his family have always denied. He was arrested on numerous occasions under terrorist legislation but never charged with any offence. Between April 1985 and May 1991, his home was searched on 16 occasions by the security forces. During the same period he was the subject of 41 stop checks.

### **Initial Police Response**

- 11.9. My investigators reviewed all of the available documentation held by police relating to Mr Shanaghan’s murder. A number of witnesses in the area heard two bursts of gunfire. They attended the scene to find

Mr Shanaghan seriously wounded in the driver's seat of his van. He appeared to be unconscious but two witnesses stated that they saw his head move.

- 11.10. Police at Castleberg RUC Station were first informed of the attack at 8:31am. A uniformed Inspector, Police Officer 13, and two Constables drove to the scene, arriving at 8:40am. Police Officer 13 stated that there were several bullet holes in the windscreen of the Bedford van and a number of its windows were broken. On approaching the van he observed Mr Shanaghan, who he recognised, sitting slumped in the driver's seat still wearing his seat belt. He had a significant wound to his right leg. Police Officer 13 examined Mr Shanaghan for signs of life but stated that he could find none.
- 11.11. One of the Constables climbed into the van through a broken window and checked Mr Shanaghan for signs of life but was unable to detect a pulse. Police Officer 13 requested additional resources to attend the scene, including a doctor. Police secured the scene and began to divert traffic. A Serious Incident Log was opened which recorded the details of individuals entering and leaving the scene.
- 11.12. Police at Omagh and Kesh RUC Stations were tasked to set up VCPs in their respective areas in an attempt to apprehend the gunmen. An Garda Síochána were also notified of the attack.
- 11.13. At 8:58am, a RUC Mobile Support Unit (MSU) attended and assisted with cordon security prior to searching the scene, as well as adjacent fields and hedgerows. A discharged cartridge case was found on the Killen side of the driveway, where the gunman had emerged from and opened fire. A further five discharged cartridge cases were found on the Castleberg side of the same driveway. A strike mark was located on a tree opposite the driveway. All six cartridge cases were handed

to a SOCO for forensic examination, in addition to another discharged cartridge case and piece of bullet jacketing found nearby.

- 11.14. At 9:05am, a local doctor arrived to examine Mr Shanaghan. He was not allowed access to the scene by Police Officer 13 who stated that it had to be preserved until CID arrived. The doctor left at 9:08 am, but returned ten minutes later, when he again was not allowed access to Mr Shanaghan.
- 11.15. A Detective Inspector attended and took responsibility of the scene. He established parameters for the MSU searches and supervised the forensic examination and photography of the area.
- 11.16. At 9:20am, a local priest entered the scene and administered the last rites to Mr Shanaghan. Prior to this, he had also been denied access.
- 11.17. At 9:42am, a Detective Superintendent, Police Officer 14, arrived at the scene. He was the senior detective in the area and assumed overall responsibility for the police investigation from that point onwards.
- 11.18. At 9:45am, a second doctor arrived. He was allowed to enter the scene and examine Mr Shanaghan, who he declared dead at 9:50am. Mr Shanaghan was taken to the Mortuary at Omagh Hospital, for a post-mortem examination.
- 11.19. The SOCO who examined the scene recovered 14 discharged cartridge cases and several pieces of bullet jacketing from the area where the gunman was standing when he opened fire. Mr Shanaghan's van was examined for bullet damage, in addition to glass samples being recovered from it.

- 11.20. The SOCO estimated that the gunman, upon emerging from the laneway, opened fire on the driver's side of the van as it went past. After being hit, it travelled for a further 72 metres before coming to rest in a hedge. The van was later removed from the scene and conveyed to NIFSL for further examination.
- 11.21. The SOCO also located and photographed a tyre mark on the laneway from where the gunman had emerged. He decided that the tyre mark was too narrow for a plaster cast impression of it to be made. The entire scene was mapped and photographed.
- 11.22. A Forensic Scientist attended and assisted the SOCO with the scene examination. The Forensic Scientist later examined all of the recovered exhibits, including those recovered from Mr Shanaghan's van and during the post-mortem examination. He established that the weapon used in the murder was a VZ58 assault rifle of Czechoslovakian origin, capable of firing high velocity ammunition.

### **RUC Investigation Team**

- 11.23. Police Officer 14 established a Major Incident Room at Castleberg RUC Station. The investigation was managed on the (HOLMES) computer system. A team of 23 detectives worked on the investigation at various stages, supported by scientific staff and other specialist units.
- 11.24. The RUC investigation generated a total of 289 documents, 43 investigative actions, and 14 messages. 48 witness statements were recorded. Lines of enquiry were identified and progressed, the focus being to identify witnesses and exploit forensic and intelligence-related opportunities.

- 11.25. My investigators were unable to locate the policy log of the Senior Investigating Officer. This would have been expected to contain all the major strategic decisions made by him during the RUC investigation and his rationale for them. My investigators recovered sufficient documentation, however, to allow an objective assessment to be made regarding the quality of the investigation of Mr Shanaghan's murder.

### **Post-Mortem Examination**

- 11.26. A senior pathologist carried out the post-mortem examination of Mr Shanaghan at Omagh Hospital Mortuary at 2:15pm on 12 August 1991.
- 11.27. He concluded that cause of death was due to a *'Bullet wound of the chest.'* He added that *'A bullet or large fragment of bullet had passed through the chest from right to left and had lacerated each lung as well as passing through the spine. The combined effect of the injuries would have caused his rapid death. Numerous other bullets and bullet fragments had struck the deceased's body. The injuries were of a type caused by bullets of high velocity. All appeared to have come from his right.'*

### **Witnesses**

- 11.28. Witness enquiries were conducted in the immediate vicinity. Police visited 135 addresses in the Castlederg, Killen, and Aghnahoo areas, completing 195 witness questionnaires. The information gathered from these enquiries was limited and did not significantly advance the RUC investigation.
- 11.29. A VCP was set up on Learmore Road between 7:30am and 9:30am on 13 August 1991, in an effort to identify witnesses. Police stopped 44 vehicles and asked their occupants if they were in the area at the



time of the murder. Police completed questionnaires and a number of individuals were identified who were in the vicinity around the relevant time. Witness statements were later recorded from them.

- 11.30. All sightings of individuals or vehicles in the area at the time of the attack were resolved, with one exception. This concerned a report received on 14 August 1991 that a blue/maroon-coloured taxi had been observed at around 8:30am on the morning of the murder at the Shanog/Scraghey Road junction. A member of the public observed two men, aged approximately 45 and 20 years old, in the taxi but could provide no further information. My investigators found no record within the RUC investigation papers that these men were ever identified.
- 11.31. Police Officer 14 made a number of witness appeals via the media. He encouraged witnesses to come forward with information that might assist the investigation. This included the murder being featured on the 'Police Six' television programme.

### **The Mitsubishi Colt**

- 11.32. On 15 August 1991, a red Mitsubishi Colt car was discovered by two boys in undergrowth at Crockfad Wood on the Baronscourt Estate, outside Newtownstewart, County Tyrone. It was found at a remote location, approximately four miles from the murder scene, which offered no potential for house-to-house enquiries. When examined, the car had no vehicle registration plates or license tax. The scene was secured and, after it was declared safe, the vehicle was conveyed to Strand Road RUC Station for forensic examination. This examination identified nothing of evidential value.
- 11.33. A SOCO photographed the tread pattern of the car's tyres for potential comparison purposes. Police traced the previous owner of the Mitsubishi Colt who lived in Belfast. He informed them that he had

advertised the car for sale in the *'Belfast Telegraph'* newspaper, before selling it to two men on 5 August 1991. The men were aged approximately 40 and 20 years old and introduced themselves as father and son. He added that he might be able to recognise the older man if he saw him again.

11.34. My investigators traced and interviewed the previous owner who confirmed that he attended Strand Road RUC Station on 23 August 1991, where he examined the Mitsubishi Colt car. He confirmed that it was the same vehicle he had sold to the two men on 5 August. He stated that police showed him and his wife, who was also present during the sale of the car, photo albums of suspects but they were unable to identify either of the men.

11.35. The Mitsubishi Colt car recovered from Crockfad Wood was never forensically linked to the murder of Mr Shanaghan. The police hypothesis, however, was that it was involved. From the available documentation, this investigation has been unable to establish if the tread patterns of its tyres were compared to the tyre mark found in the laneway off Learmore Road.

### **Ballistics**

11.36. Mr Shanaghan's van was struck by at least 15 bullets, shattering the front driver and passenger windows. The rear passenger window was also broken and seven bullet holes were located in the front windscreen.

11.37. The driver's side of the van sustained considerable damage. There was also a bullet entrance hole to the rear passenger door. The pattern of the bullet damage was consistent with the gunman having opened fire as the van approached and then continuing to fire as it drew alongside and travelled past him.

- 11.38. All of the recovered bullets and cartridge cases were 7.62mm x 69mm issue and had been fired from a single weapon, a Czechoslovakian manufactured VZ58 assault rifle.
- 11.39. On 29 September 1992, a VZ58 assault rifle was found during a police search in the Ballymoney area. Forensic tests identified it as the weapon used in the murder of Mr Shanaghan. It had also been used in the attempted murder of Patrick McErlain. It was examined for fingerprints but none were located.
- 11.40. I am of the view that police utilised the majority of forensic opportunities to recover evidence to progress the investigation. Apart from identifying the VZ58 assault rifle used in the attack, these examinations did not lead to significant new lines of investigation. My investigators have been unable to establish why the tyres of the Mitsubishi Colt recovered at Crockfad Wood were not compared against the tyre mark found at the murder scene.

### **Intelligence and Arrests**

- 11.41. After reviewing the available intelligence, I am of the view that there was no specific information prior to the attack that could have prevented, or forewarned of, the murder of Mr Shanaghan on 12 August 1991.
- 11.42. Mr Shanaghan survived an earlier attempt on his life at his home address on 17 February 1989. Following this attack, police searched the addresses of two suspected loyalist paramilitaries who lived in the Castlederg area. Nothing of significance was found and no arrests were made. My investigators reviewed the relevant police investigation and intelligence files, but these provided no rationale for the searches. This investigation was unable to locate relevant SIO Policy Logs which may have explained the decision to search these addresses.

- 11.43. Shortly before the attack, RUC Special Branch became aware that UDA/UFF were planning an attack for 12 August 1991. There were no other details as to what this entailed. Following the attack, police concluded that this intelligence related to the murder of Mr Shanaghan and that the North West UDA/UFF may have been involved.
- 11.44. This investigation established that there was limited intelligence following the murder. One piece of intelligence indicated that it may have been the UVF but there were no specific details.
- 11.45. Police circulated the details of Person X on the Police National Computer (PNC), stating that he was suspected of having been involved in the murder. This investigation has been unable to establish why police circulated his details. Person X, to date, has not been arrested in respect of Mr Shanaghan's murder.
- 11.46. In November 1991, police arrested Persons Z and AA on suspicion of the murder, after intelligence was received linking them to the attack. Person Y was also subsequently arrested. Persons Z and AA were suspected of having links to loyalist paramilitary groups and were observed together in the vicinity of the murder scene on 10 August 1991. Person Y had links with the area where the Mitsubishi Colt was discovered on 15 August 1991. During police interviews all three denied being involved and were subsequently released without charge.
- 11.47. Further intelligence received indicated that Person P was involved in the murder. He was arrested in August 1994 but denied being involved and was later released without charge.

## **Complaint by the Shanaghan Family**

- 11.48. Mr Shanaghan's family raised a number of questions and concerns regarding the actions of RUC officers both prior to, and following, the murder. These are set out below.

**They alleged that he was subjected to constant harassment by the security forces in the ten years prior to his murder. They alleged that he was stopped and searched on a daily basis.**

- 11.49. I am mindful that Mrs Mary Shanaghan (Patrick's mother) brought proceedings in the European Court of Human Rights alleging that her son Patrick was killed in circumstances disclosing collusion by members of the security forces and invoking Articles 2, 13 and 14 of the Covention. I address the judgment later in this Chapter. However, the issues of harassment were referred to by the Court in their judgment<sup>37</sup> as follows:

*"[20.] Patrick Shanaghan was stopped and questioned by RUC and UDR officers on a daily basis. The Shanaghan family home, which the applicant shared with her son, was searched sixteen times between 1985 and 1991. No illegal material was ever found. According to the applicant, sometimes the RUC would not even enter certain rooms indicating that the search was not a concerted effort to locate and seize illegal material but was carried out solely to harass the family."*

- 11.50. This investigation established that Mr Shanaghan was arrested on ten occasions between 1988 and 1991 under terrorist legislation. These arrests related to a number of PIRA attacks on members of the security forces in the Castleberg area. On each occasion he was released without charge. The available RUC documentation did not contain any

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<sup>37</sup> Shanaghan v United Kingdom (Application No. 37715/97)

rationale for the arrests. However, during the period in question, police possessed intelligence linking Mr Shanaghan to PIRA activity.

- 11.51. Between April 1985 and his murder, Mr Shanaghan was stopped and searched by the security forces on 41 occasions. Approximately 350 sighting reports were submitted in respect of him. I have viewed the C6 register from Castlederg Police Station which contains an entry from a senior police detective, Police Officer 14, in January 1991, which was an instruction that Patrick Shanaghan was to be stopped and searched on each occasion he was sighted and the local CID was to be informed. Police Officer 14 was interviewed by my investigators and stated that he believed this instruction was fully justified by the intelligence that indicated that Patrick Shanaghan was a leading member of the PIRA.
- 11.52. I acknowledge the family's strong contention that Patrick Shanaghan was not a member of PIRA, and their concerns that the actions of the security forces in the ten years prior to his murder amounted to harassment. I am unable to determine whether or not the actions of police amounted to harassment that is a matter for the Courts. I can however, where there is sufficient evidence, form a view as to whether the family's complaints are legitimate and justified.
- 11.53. This investigation has established, based on available intelligence, that police regarded Mr Shanaghan as a senior PIRA member. He was suspected of targeting members of the security forces and being heavily involved in terrorist activity. My investigators have been unable to obtain records that evidence that Mr Shanaghan was stopped and searched on a daily basis. However, police records obtained by my investigators evidence that Mr Shanaghan was stopped 41 times in a period of 6 and a half years. In addition, the Shanaghan home was searched a total of 16 times and I note that no illegal material was

found.<sup>38</sup> I am also mindful that Mr Shanaghan was arrested on 10 occasions during this period. However, there is no record that Mr Shanaghan was charged with any offence.

11.54. I fully acknowledge the family's perception that the nature and frequency of the interactions with police amounted to harassment. However, I am unable to conclude on this aspect of their complaint in light of the available intelligence, and the directions of Police Officer 14 referred to above.

**They alleged that Mr Shanaghan was mistreated while in police detention.**

11.55. Police records indicated that Mr Shanaghan made complaints on six occasions regarding his treatment in police custody at various times between 1986 and 1990.

11.56. During a period of detention at Castlereagh RUC Holding Centre between 9 and 15 April 1986, Mr Shanaghan alleged that he was assaulted and mistreated by police. This allegation was made to a doctor before his release but he declined to engage with the police officer who attempted to record his complaint. A senior police officer directed that no further action be taken in respect of the matter. Given that Mr Shanaghan declined to engage with police attempting to address his allegation, this matter has been incapable of investigation.

11.57. Mr Shanaghan made two separate allegations of assault on 19 and 20 July 1988, while being detained at Strand Road RUC Station. He declined to make a witness statement about either incident. Police investigated the matter and submitted a file of evidence to the DPP

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<sup>38</sup> Shanaghan v United Kingdom (Application No. 37715/97) at para 20

who subsequently directed 'No Prosecution' against any police officer subject to investigation.

- 11.58. Between 11 and 13 December 1989, Mr Shanaghan was detained again at Castlereagh RUC Holding Centre. During his detention he made two allegations of assault. He declined to provide witness statements in respect of either incident. Police investigated the allegations and submitted a file of evidence to the DPP who directed 'No Prosecution' against any police officer subject to investigation.
- 11.59. On 5 February 1990, during a further period of detention at Catlereagh RUC Holding Centre, Mr Shanaghan alleged that he was refused access to toilet facilities. He provided a statement and the matter was investigated by police, prior to a file of evidence being submitted to the Independent Commission for Police Complaints (ICPC). No disciplinary action was taken in respect of any police officer subject to investigation.
- 11.60. The 2001 Regulations state that complaints received under Section 52 of the 1998 Act can only be considered if *'the complaint has not otherwise been investigated by the police.'* My Office cannot, therefore, investigate the assault allegations made by Mr Shanaghan as they were investigated by RUC Complaints and Discipline Branch at the time.

**They alleged that police officers threatened to kill Mr Shanaghan.**

- 11.61. In April 1996 Witness B alleged that, while in police custody at Castlereagh RUC Holding Centre in March 1995, police officers threatened to kill him *'just like they had Patrick Shanaghan.'* He stated that, on 3 March 1995, while being interviewed, a police officer *'threatened that he would have me shot, the same as Paddy Shanaghan. He stated he would get somebody to do it.'* During the



same interview another police officer remarked, *“Patrick Shanaghan was threatened in that same chair and the same will happen to you when you leave here.”*

- 11.62. These allegations were investigated by police and a file of evidence was submitted to the DPP who directed ‘No Prosecution’ against any police officer subject to investigation. Again, as these matters have already been the subject of a prior police investigation and no new evidence has emerged during the intervening period, it is not within the legislative remit of my Office to re-investigate them.

**They alleged that there was a failure by the RUC to properly address complaints.**

- 11.63. During this period, complaints made by members of the public against police were investigated by the RUC and supervised by the ICPC in accordance with legislative requirements. Where allegations of a criminal nature were made, files of evidence were submitted to the DPP who would then decide whether there was sufficient evidence to merit criminal proceedings against any police officer subject to investigation.

- 11.64. I acknowledge the concerns raised by the Shanaghan family as to the independence of these investigations. However, I am unable to re-consider them for the reasons I have already outlined above.

**They raised concerns regarding the loss of a security force montage containing the photograph and personal details of Mr Shanaghan.**

- 11.65. Mr Shanaghan was warned by police on two occasions that his life may be at risk. These warnings were communicated to him in accordance with the relevant RUC Force Order at the time.

11.66. The first warning followed the loss of a security force montage containing the photographs and personal details of a number of individuals, including Mr Shanaghan. The montage was amongst a number of items which went missing from a military vehicle travelling between Strabane and Castlederg on 10 December 1990. Police investigated this incident and concluded that there was no criminal intent on the part of any individual, the equipment having fallen from the moving vehicle at some point during the journey. When the vehicle was later examined, its rear door was found to have a faulty locking mechanism.

11.67. The second warning was delivered to Mr Shanaghan by police on 27 April 1991. It stated that he was being actively targeted by loyalist paramilitaries. On both occasions, I am of the view that the warnings were delivered to Mr Shanaghan in a timely and appropriate manner, in accordance with RUC policy at the time.

**They alleged that police colluded by failing to protect the life of Mr Shanaghan.**

11.68. Given the attempt on his life on 17 February 1989, and the later threat warnings provided in December 1990 and April 1991, I am of the view that Mr Shanaghan knew he was being targeted by loyalist paramilitaries. This raised the following questions:

- I. Did the RUC conduct a thorough and professional investigation of the attempted murder of Mr Shanaghan on 17 February 1989; and
- II. Did the RUC respond appropriately and take all reasonable steps to minimise the threat which existed regarding Mr Shanaghan?

**Did the RUC conduct a thorough and professional investigation into the attempted murder of Mr Shanaghan on 17 February 1989?**

- 11.69. At approximately 8:40pm on 17 February 1989, Mr Shanaghan was shot at eight times as he was leaving his home. The lone gunman then escaped by running across adjacent fields. Mr Shanaghan was not injured in the attack.
- 11.70. This investigation reviewed all the available police documentation relating to the attack. This allowed my investigators to assess the quality and scope of the RUC investigation.
- 11.71. I am of the view that the initial policing response to the attack was prompt and appropriate. Uniformed officers attended followed by CID officers, including a Detective Inspector, who took charge of the investigation. Specialist resources were tasked including a SOCO, police dog handler, photographer, forensic scientist, and police search team. The scene was forensically examined and a number of items were recovered for further examination.
- 11.72. Six discharged 9mm cartridge cases were recovered from the scene. Forensic examinations established that the weapon used was a 9mm pistol which had previously been used in separate shooting incidents at Maguire's Bar, Drumquin, and Sproule Road, Castlederg, on 25 November 1988. Nobody was injured in these attacks and no individuals were arrested.
- 11.73. The police dog that attended the scene detected a scent leading from the Shanaghan residence to a grassed laneway which emerged onto the nearby Glen Road. A number of foot and tyre marks were found at this location, which may have been left by the gunman when making his escape. This area was preserved overnight and the following day

plaster cast impressions were taken of the relevant marks. It was thought that the foot mark was made by a Dunlop Wellington boot.

- 11.74. Police searched the addresses of Persons Z and AA following the attack and footwear was recovered belonging to the former. This was compared to the plaster cast impression of the footprint marks recovered at the Glen Road scene but they did not match. There was no footwear identified at the address of Person AA of a similar nature to the boot believed to have left the mark at the scene. There was no rationale contained within the available police documentation as to why these addresses were searched. Neither individual was arrested. However, they were arrested in November 1991 on suspicion of Mr Shanaghan's murder, prior to subsequently being released without charge.
- 11.75. Mr Shanaghan was unable to provide a description of the gunman but told police that he had observed a Vauxhall Cavalier near his home in the days prior to the attack, which he regarded as suspicious. He provided police with the registration number of this vehicle, adding that the driver was male with a bald patch on his head. He declined to provide a statement and this investigation has been unable to establish whether this car or its driver were ever traced.
- 11.76. House-to-house enquiries were conducted at a number of addresses in the area. None of the occupants spoken to by police were able to provide any information that assisted the RUC investigation.
- 11.77. There was limited intelligence received following the attack. One report stated that the UVF were '*probably*' responsible. However, there was no detailed, specific information which could have assisted the police investigation. No individuals were arrested in respect of the attack. I am of the view that there was no intelligence that could have prevented, or forewarned of, this attack.

11.78. I am of the view, given the available evidence and information, that the attempted murder of Mr Shanaghan on 17 February 1989 was investigated by police in a thorough and timely manner.

**Did the RUC respond appropriately and take all reasonable steps to minimise the threat which existed in respect of Mr Shanaghan?**

11.79. The RUC policy in respect of warning people at risk was set out in Force Order 60/91, entitled *'Threats against the lives of members of the security forces, VIPs or other individuals.'* This stated that when a threat was received *'Local SB concerned will inform the sub-divisional commander (SDC) in whose area the subject resides or works and the SDC will take whatever action he considers necessary. If the information received indicates that an attack on any person is imminent, the member receiving the information will immediately take all necessary action to inform the person at risk.'*

11.80. The security situation in Northern Ireland at the time was volatile and unpredictable. Police dealt with a large number of threats to life and a significant amount of intelligence was being gathered and assessed in respect of these. Mr Shanaghan was a target for loyalist paramilitaries and survived an attempt on his life in February 1989. Police warned him in December 1990 and April 1991 of an increased threat to his personal safety.

11.81. Mr Shanaghan was believed to have taken a number of security precautions such as frequently residing at other addresses, installing security lights around his house, and changing the direction in which he approached his home address. I am of the view that he was aware of the threat to his life and undertook measures to enhance his personal safety and reduce the risk of further attack.

11.82. This investigation has highlighted that police did not have a complete intelligence picture of loyalist paramilitary activities in the Castlederg area at the time. This made obtaining accurate, specific intelligence about an imminent attack difficult. I have been unable to establish what, if any, action police took in respect of the April 1991 intelligence that Mr Shanaghan was being targeted by loyalist paramilitaries, other than informing him of the threat.

**They alleged that there was a failure by the RUC to conduct an effective murder investigation.**

11.83. The Shanaghan family, dissatisfied with the outcome of the relevant Coroner's Inquest, held their own unofficial enquiry, presided over by a retired American judge. This was held at Aghyaran GAA Club and heard evidence from a number of witnesses between 17 and 19 September 1996. The judge concluded *"Patrick Shanaghan was murdered by the British Government and more specifically with the collusion of the police. I would not hesitate to indict members of the Royal Ulster Constabulary from top to bottom."*

11.84. The Shanaghan family also made a formal complaint that was investigated by the RUC's Complaints and Discipline Branch. These enquiries were supervised by the ICPC and an Assistant Chief Constable.

11.85. On 14 July 1996, the Shanaghan family lodged a complaint in respect of two police officers refusing a doctor access to the scene to provide medical assistance to Mr Shanaghan. They further alleged that a third police officer failed to request an ambulance to attend the scene.

11.86. The RUC Complaints & Discipline Branch investigation of these allegations resulted in Police Officer 13 receiving a disciplinary sanction in respect of his failure to allow a doctor access to Mr

Shanaghan at the scene. There was insufficient evidence to merit disciplinary action against the other two police officers subject to investigation. The ICPC were satisfied with the conduct and outcome of the RUC investigation and informed the Shanaghan family that the failure to request an ambulance was caused by a breakdown in communications, as opposed to negligence on the part of any individual police officer.

- 11.87. In respect of the delay in Mr Shanaghan receiving medical assistance, the senior pathologist who conducted the post-mortem examination concluded that death would have been very rapid, given the severity of his injuries. While two police officers examined Mr Shanaghan at the scene and believed him dead, other witnesses stated that they saw his head moving.
- 11.88. I am of the view, given the available evidence that, even if police officers attending the scene believed Mr Shanaghan was dead, their duty to preserve life overrode all other considerations, including the need to preserve the crime scene. The decision to not afford Mr Shanaghan urgent medical assistance at the scene was incorrect and further raised suspicion and mistrust in the police investigation. Police Officer 13 received a disciplinary sanction for his failure to allow a doctor access to Mr Shanaghan.
- 11.89. The Shanaghan family further alleged that a police officer who attended the scene knew that the attack was going to take place. This was based on a deposition made to the Coroner by a police officer that he was tasked to attend the scene at 8:00am. The shooting did not occur until 8:25am. The family also alleged that the police investigation was poor as they failed to take a plaster cast of a tyre mark found at the scene.

- 11.90. These allegations were investigated by RUC Complaints and Discipline Branch and supervised by the ICPC. The investigation concluded that the police officer concerned made a genuine error recording the time he attended the scene in his police issue notebook. A Forensic Scientist examined photographs of the tyre mark at the scene and supported the decision not to take a plaster cast impression. It was concluded that the tyre mark was of poor quality and, therefore, of limited evidential value. The family were notified of these findings in correspondence from the ICPC.
- 11.91. Again, as these allegations have been previously investigated, and no new evidence has come to light, I am not permitted to re-investigate these allegations.

**They wanted to know about the circumstances surrounding the police visit to an address in Sussex.**

- 11.92. At the time of the murder, the boyfriend of Mr Shanaghan's sister lived in Sussex. The family raised concerns that, within hours of Mr Shanaghan's murder, police attended the home of this individual.
- 11.93. My investigators established that the RUC asked Sussex Police, on a date prior to the murder, to visit this individual to establish why his car had been observed in Northern Ireland on an earlier date. I am of the view that this was a genuine enquiry and was not related to the murder investigation. The timing of the visit by Sussex Police was a coincidence.

**The European Court of Human Rights**

- 11.94. An application to the European Court of Human Rights was made by Mrs Shanaghan arguing that in relation to her son's murder by an unknown gunman, that there had been violations of Articles 2, 13 and



14 of the European Convention on Human Rights. She also contended that there was an inadequate investigation into the murder and the circumstances evidenced collusion by members of the security forces.<sup>39</sup>

- 11.95. On 4 May 2001 the Court published its judgment and held that there had been a number of procedural shortcomings in the investigation following Mr Shanaghan's murder including a failure to promptly or effectively investigate allegations of collusion, which collectively constituted a violation of Article 2. Although the Court held that the RUC investigation into Mr Shanaghan's murder was conducted promptly and effectively, this could not be said of the allegations of collusion and the Court noted that investigation was conducted by RUC officers who were part of the security community suspected of colluding in the death. Further the Court found that the supervision of the investigation by the Independent Commission for Police Complaints (ICPC) was not sufficient to safeguard the independence of the police investigation into the murder.
- 11.96. As there were ongoing civil proceedings in Northern Ireland at the time the application was considered by the Court, no findings were made by it on the issue of state involvement in Mr Shanaghan's murder and it found no violations of Articles 13 and 14 of the Convention.

### **Summary**

- 11.95. My investigators reviewed the overall standard of the RUC investigation of Mr Shanaghan's murder. This included an assessment of the initial policing response, resources deployed to the enquiry, and lines of investigation subsequently pursued. It considered intelligence gathered prior to, and following, the murder, suspects, arrests, and any

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<sup>39</sup> Shanaghan v United Kingdom (Application No. 37715/97)

investigative failings or missed evidential opportunities. My investigators also considered whether identified failings were deliberate on the part of police.

- 11.97. The murder took place in an isolated rural location offering limited witness and house-to-house opportunities. Only one individual, a passing motorist, witnessed the actual shooting but was unable to describe the gunman.
- 11.98. This investigation assessed the initial RUC scene management and initial investigative actions. All the necessary specialist resources were deployed to maximise recovery of the available evidence. The area was searched, mapped, photographed, and forensically examined by a SOCO and Forensic Scientist. I have already commented on the failure of police to allow a doctor to examine Mr Shanaghan at the scene.
- 11.99. The Mitsubishi Colt car found at Crockfad Wood was recovered and forensically examined. Police believed that it was used in the murder although this was never definitively proven. The husband and wife who previously advertised and sold the car were shown photographs of suspected loyalist paramilitaries but could not identify either of the two men who had purchased it from them.
- 11.100. Four men were arrested and interviewed on suspicion of the murder. They all denied being involved and were released without charge due to lack of evidence. My investigators were unable to establish why Person X was circulated as a suspect, yet not arrested. They were also unable to establish why there was a delay in arresting Person P.
- 11.101. I am of the view that police conducted a thorough investigation of the attempted murder of Mr Shanaghan on 17 February 1989, but were unable to gather sufficient evidence to identify and prosecute those

responsible. There was limited intelligence. This investigation has not identified any missed opportunities or deliberate omissions on the part of police.

## 12.0

# The Murder of Thomas Donaghy

- 12.1. Thomas Donaghy was 38 years old when he was murdered by the UDA/UFF. He lived with his fiancée and four month old son in Kilrea, County Derry/Londonderry. He had worked at Portna Eel Fisheries on the River Bann, outside Kilrea, for the previous three years.
- 12.2. At approximately 8:05am on 16 August 1991, Mr Donaghy arrived at work and parked his car next to a colleague, Witness C, beside an adjacent fisheries building at the side of the River Bann. Both men sat in their vehicles and awaited the arrival of their foreman, Witness D, to open the premises.
- 12.3. A short time later, two masked gunmen appeared from behind a nearby building and opened fire on Mr Donaghy from close range. The gunmen then ran away along the riverbank towards nearby floodgates.
- 12.4. Witness C told police that he had arrived at the Fisheries that morning and parked in his usual place. A minute later, Mr Donaghy arrived and parked beside him. Witness C stated that, within seconds, he heard gunshots and glass breaking. He stated that he looked to his right and saw the heads and shoulders of two masked men standing at the other side of Mr Donaghy's car. Witness C took cover and was confronted by one of the men who pointed a gun at him and told him to lie down. He then heard another shot being fired.
- 12.5. The gunmen ran from the scene towards the floodgates. Witness D arrived and Witness C informed him what had happened, before phoning police to report the attack. Witness C described the gunmen as between 5'8"-5'10" tall, average build, and wearing combat jackets

with dark trousers and black woollen masks. Witness C stated that he saw one weapon which he thought was a sawn-off shotgun.

- 12.6. Mr Donaghy sustained multiple injuries to his face, neck, chest, and right shoulder. He was pronounced dead at the scene by a doctor, before being taken to Coleraine Hospital Mortuary. The State Pathologist for Northern Ireland carried out a post-mortem examination and concluded that Mr Donaghy's injuries were caused by a sawn-off shotgun and a rifled weapon.
- 12.7. The UDA/UFF later claimed responsibility for Mr Donaghy's murder. In the following months, police arrested seven individuals and interviewed them about the murder. They were all subsequently released without charge. To date, no individual has been prosecuted for the murder.
- 12.8. My investigators established that Mr Donaghy first came to the attention of the security forces in 1973, when intelligence was received indicating that he was a PIRA member. He was arrested in 1977 and subsequently charged with various terrorist offences, for which he received a 19 year prison sentence. He was released in 1988, following which intelligence was received that he was involved with PIRA again.
- 12.9. In 1989, he was arrested on suspicion of being involved in the murder of a police officer and the attempted murder of another police officer in Coleraine. He denied the allegations and, following police interview, was released without charge. He was arrested in 1990 on suspicion of committing a murder in Kilrea, but again was subsequently released without charge.
- 12.10. This investigation has established that Mr Donaghy was of interest to the security forces and was the subject of numerous sighting reports,

including one at Portna Eel Fisheries where the UDR searched his car in November 1989. My investigators examined security force records which established that between his release from prison in 1988 and his murder, he was stopped on 51 occasions and 137 sighting reports were submitted regarding him.

- 12.11. The UDA/UFF released a statement on the day of Mr Donaghy's murder claiming responsibility, alleging that he was a local PIRA commander. It stated that '*While the Protestant genocide continues, the Republican movement will pay a heavy price.*'

### **Initial Police Response**

- 12.12. At 8:14am, police arrived at Portna Eel Fisheries, having been notified of the shooting. The scene was secured and the Duty Inspector, based at Coleraine RUC Station, attended. Prior to this, he instructed that VCPs be put in place in an effort to apprehend the gunmen.
- 12.13. The senior CID officer for the area, Police Officer 1, a Detective Superintendent, attended and initially took responsibility for the investigation. Initial actions included the use of two police dogs who sought to track the gunmen in the direction they were last seen heading. Four specialist police teams attended and were tasked to search the banks of the River Bann. My investigators could find no record of the outcome of these searches.
- 12.14. Two SOCOs examined the scene and recovered four discharged cartridge cases and four bullet heads at, or close to, Mr Donaghy's car. Military weapons experts attended to assist with the ballistic examination of the scene, which was also mapped and photographed. All the recovered items were submitted to NIFSL for further examination.

## **RUC Investigation Team**

- 12.15. A Major Incident Room was set up at Kilrea RUC Station and Police Officer 2, a Detective Chief Inspector, was appointed as Senior Investigation Officer (SIO). There was no SIO Policy Book within the available police documentation. Other documentation, however, was reviewed which enabled my investigators to assess the quality of the RUC investigation.
- 12.16. A computerised HOLMES account was used to manage the investigation. My investigators reviewed this account and established that 83 investigative actions were allocated and 21 witness statements recorded during the course of the RUC investigation. In addition, 220 house-to-house questionnaires, 41 message forms, 15 reports, and 43 other documents were created. A team of 14 detectives worked on the enquiry and case conferences were regularly held to review investigative progress.
- 12.17. My investigators examined documentation relating to case conferences where sightings, suspects, vehicles, ballistics, and media strategies were discussed. This documentation provided information regarding proposed searches and the categorisation of suspects and vehicles. It also demonstrated that other recent terrorist attacks were researched to assess evidential and intelligence links.

## **Searches**

- 12.18. Specialist police teams searched the scene of the murder and the surrounding areas between Portna Eel Fisheries, Bann Bridge, and Hutchinson's Quay. They also searched possible routes taken by the gunmen. My investigators found no records to indicate that anything of evidential value was recovered during these searches.

## Witnesses

- 12.19. Police sought to identify witnesses who may have observed the gunmen in the area both prior to, and following, the murder. They conducted house-to-house enquiries and set up VCPs to question passing motorists. These enquiries identified a number of individuals who possessed information concerning sightings of individuals and vehicles. My investigators reviewed these accounts for information relating to the movements of loyalist paramilitary suspects around the time of the attack.
- 12.20. Police Officer 2 provided a series of media briefings via the local press, radio, and television. It is unclear whether any of these appeals were successful but police recorded witness statements from a number of local residents and visitors to the area. Police also considered the hypothesis that the gunmen may have conducted reconnaissance at Portna Eel Fisheries prior to the murder.
- 12.21. Police interviewed 40 members of a local angling club but none of them recalled anything suspicious around the time of the murder. However, a significant account was obtained from Witness E. He stated that he arrived at the Fishery at approximately 6:30am on the morning of the murder. He parked his car, before walking along the riverbank towards Hutchinson's Quay.
- 12.22. He passed two men walking in the opposite direction towards Portna Eel Fisheries. He did not recognise them as being 'local.' He stated that they were both of medium height, although one had a heavier build than the other and was wearing glasses. He was unable to describe them in any greater detail. Police showed Witness E two photo albums of suspected loyalist paramilitaries but he was unable to identify the men he saw.



- 12.23. Witness F lived beside the tow path which ran along the River Bann, approximately half a mile from Portna Eel Fisheries. He stated that he observed two men behaving suspiciously near his house at approximately 7:20am, three days before the murder. He stated that they were approximately 50 metres away from him and attempted to hide behind bushes when they thought they were being watched. Witness F provided police with descriptions of the two men.
- 12.24. My investigators interviewed Witness F who stated that his sighting of the two men probably occurred on the morning of 13 August 1991. He stated that he was not asked by police to participate in any identification procedures or shown suspect photo albums. Witness F informed my investigators that, although the two men were approximately 50 metres from him, he might have been able to recognise them again.
- 12.25. A member of the public, who declined to provide a witness statement to police, stated that he had been fishing at Portna Eel Fisheries at 7:15am on 12 August 1991, four days prior to the murder. He saw three men in a bronze-coloured Ford Granada, which he described as a 1981 or 1982 model. He stated that the men were strangers to the area and provided the following descriptions of them:
- I. Male 1 - (Driver) 5'9" tall, approximately 11 stone in weight, aged in his early thirties, black hair, wearing a three quarter length green wax fishing coat;
  - II. Male 2 – 6' tall, aged in his late twenties, broad build, with sandy/ginger hair; and
  - III. Male 3 – approximately 20 years old with a light brown crew cut.
- 12.26. On 4 September 1991, despite declining to make a statement, police showed this witness two photo albums of suspected loyalist

paramilitaries. He was unable, however, to make a formal identification. The available RUC documentation does not contain details of the individuals who featured in the photo albums.

### **Ballistics**

- 12.27. All of the ballistic evidence recovered from the scene was submitted to NIFSL for forensic examination. This established that a .38 Smith and Wesson revolver and 12 gauge shotgun were used in the murder, firing four and three rounds respectively. The discharged cartridge cases were examined for fingerprints but none were found.
- 12.28. The revolver had previously been used in the murder of Eddie Fullerton. It was later used in the attempted murder of James McCorriston and the murders at Castlerock. It was recovered on 8 April 1993 during a police search at Bishops Road, Downhill, near Castlerock, County Derry/Londonderry. It had originally been a PPW which was stolen from the home of a retired police officer in February 1988.

### **Intelligence and Sightings**

- 12.29. This investigation has reviewed the available intelligence which existed at the time of the attack. I am of the view that police were not in possession of intelligence which could have prevented, or forewarned of, Mr Donaghy's murder.
- 12.30. Shortly after the murder, intelligence was received stating that those responsible were from the local area. This report also stated that the attack had originally been planned for an earlier date but for an unknown reason, had been called off. This intelligence was forwarded to the murder investigation team.

- 12.31. Enquiries established that Police Officer 15 stopped a gold-coloured Ford Granada at 7:10am on 13 August 1991, near Bann Bridge in Kilrea. The vehicle was being driven by Person J. Police Officer 15 recognised Person J, but not the accompanying passenger. Police Officer 15 described the passenger as around 28 years old, quite tall, with shoulder length, dirty fair hair. Both men were wearing waxed jackets. Police Officer 15 chose not to assist this investigation.
- 12.32. A further police sighting of a vehicle linked to Person K, parked near the River Bann several days before the murder, was also considered by the RUC investigation team. At 7:15am, on 7 August 1991, Witness G, a police officer, was driving to work when they observed a white Vauxhall car in a car park near the Bann Bridge. Witness G stated that two men got out of the car and walked in the direction of the river. Witness G reported this sighting to the local RUC Collator. My investigators interviewed Witness G who confirmed this account.
- 12.33. Witness H informed police that, at approximately 7:15am, on 16 August 1991, he observed a Rover car emerging from the Portna junction onto the main Portglenone Road, before heading towards Kilrea. Police showed Witness H a photograph of a Rover car which belonged to Person K. He stated that the vehicle he had seen was identical.
- 12.34. These sightings were instrumental in police identifying potential suspects for Mr Donaghy's murder. They also strengthened the hypothesis that Police Officer 15 stopping the vehicle may have been the reason why the attack did not go ahead on 13 August. Further research was carried out by the murder investigation team in respect of Persons J, K, and the relevant vehicles. RUC Special Branch were asked to carry out checks on eight loyalist paramilitary suspects, including Persons A, J, and K.

- 12.35. Other information, received in August 1991, named two men who may have been involved in Mr Donaghy's murder. This information was not specific and RUC Special Branch attempted to develop the information. Police Officer 2 was informed and there is no record of any further action in respect of this intelligence.

### **Suspects and Arrests**

- 12.36. From an early stage of the RUC investigation, Police Officer 2 identified a number of suspects based on the intelligence and sighting reports that he received.
- 12.37. On 28 November 1991, Police Officer 16, his DSIO, recorded that Persons A and K were suspected of having been involved in the murder and were to be arrested in early December 1991. On the relevant date Persons A, J, K, and another loyalist paramilitary suspect were arrested under Section 14 (1)(b) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (the 1989 Act). A fifth suspect was arrested the following day. This investigation reviewed the available custody documentation and established that all five suspects were interviewed on numerous occasions but, subsequently released without charge. My investigators were unable to locate the relevant interview records.
- 12.38. Person N was arrested in June 1992 on suspicion of the murder but, again, released without charge following interview. Another individual was arrested in 2001, but again later released without charge. My investigators were unable to locate any custody documentation or interview records relating to either arrest.

## **Coroner's Inquest**

- 12.39. On 25 May 1994, an inquest into Mr Donaghy's death was held at Cookstown Courthouse. The presiding Coroner concluded that, *'On Friday, 16 August 1991, shortly after arriving at his work at Portna Eel Fishery, about 8am, Mr Donaghy was shot in the head by two unidentified gunmen. He died almost immediately. A terrorist organisation later admitted to his murder.'*
- 12.40. On 25 May 1994, a solicitor made an application on behalf of Mr Donaghy's family regarding the admission of additional evidence. This consisted of three witness statements from John Donaghy, Ann Donaghy, and Francis Gerard Donaghy. These referred to alleged harassment of the deceased over a period of time by unidentified members of the security forces. A further statement was submitted from a witness who had been in the vicinity of Portna Eel Fisheries on the morning of the murder. The Coroner ruled that there were no grounds for these statements to be admitted at the Inquest.

## **Complaint by the Donaghy Family**

- 12.41. Mr Donaghy's family raised a number of questions and concerns regarding the actions of RUC officers both prior to, and following, the murder. These were as follows:

**They alleged that Thomas Donaghy's name was found within a loyalist intelligence cache, whereby a person was later charged and convicted for possession of such information for terrorist purposes. This discovery occurred around 12 months before Mr Donaghy's murder. The person involved was convicted after the murder but was not prosecuted for any offences connected with it, for example, conspiracy to murder. Mr Donaghy's family are still not aware of this individual's name.**

- 12.42. This allegation referred to typed and handwritten documentation recovered from the home address of Person J following his arrest in February 1991. During interview, Person J told police that he had found the typed documents in a plastic bag while on a UDR patrol between Dungiven and Claudy in January 1990. He stated that he had retained this documentation and compiled the handwritten notes during UDR briefings.
- 12.43. The relevant documentation contained the names and addresses of 254 individuals of interest to the security forces. The typed documents were identified as military material, originating from Counties Tyrone and Fermanagh two to three years earlier. The address of Mr Donaghy's father was on one of the lists. Previous Custody Records for Thomas Donaghy had listed this as his home address.
- 12.44. Person J was subsequently charged with Possession of Documents Likely to be of Use to Terrorists. He was convicted of this offence in September 1991 and sentenced to 12 months imprisonment.
- 12.45. In December 1991, Person J was arrested and interviewed about Mr Donaghy's murder while serving his custodial sentence. He was not charged and subsequently returned to prison. My investigators have been unable to locate any custody documentation or interview records relating to his arrest and interview.

**They alleged that following the intelligence find, none of them were ever contacted and informed of any threat against Mr Donaghy.**

- 12.46. The RUC policy in respect of warning people at risk was set out in Force Order 60/91, entitled '*Threats against the lives of members of the security forces, VIPs or other individuals.*' This stated that when a threat was received '*Local SB concerned will inform the sub-divisional*

*commander (SDC) in whose area the subject resides or works and the SDC will take whatever action he considers necessary. If the information received indicates that an attack on any person is imminent, the member receiving the information will immediately take all necessary action to inform the person at risk.'*

- 12.47. My investigators located a RUC report, dated 5 June 1991, appended to the RUC prosecution file of Person J. This referred to the decision of an ACC on 31 May 1991 that there was no need, at that stage, to notify any of the individuals mentioned in the recovered documentation. This decision was to be reviewed if new information came to light.
- 12.48. This investigation has found no evidence that any of the Donaghy family, whose details were within the relevant documentation recovered from the address of Person J, were notified by police.
- 12.49. I am of the view that senior RUC officers considered issuing threat warnings in respect of the 254 individuals but concluded that this was not necessary as no individual was at risk of an '*imminent attack*.' Mr Donaghy was shot dead six months after the discovery of the relevant documentation. Person J was arrested and interviewed about the murder in December 1991, but was subsequently released without charge.

**They alleged that around eight months prior to the murder security cameras were found outside the family home, which they believe may have been installed by the military or police. The family would like to know more details about this and whether the police had knowledge or control of the cameras. The family have stated that the issues surrounding this are similar to those raised during the Roseann Mallon case.**

12.50. My investigators made enquiries with PSNI and the MOD to establish whether any records existed indicating that Mr Donaghy was under security force surveillance prior to his death. None were located.

12.51. I have referred to RUC North Region TCG structures and procedures earlier in this public statement. My investigators reviewed available TCG documentation but could find no record that Mr Donaghy's home was under covert surveillance at the relevant time. However, he was regarded as a senior and active PIRA member by the security forces.

**They alleged that there were at least one, or more agents/informants, involved in his murder. The family would like this allegation to be investigated.**

12.52. To date, no individuals have been prosecuted for Mr Donaghy's murder. This investigation has reviewed the intelligence that was available to police both prior to, and following, the attack. I have applied to the facts of this case the presumptive policy that I will neither confirm nor deny (NCND) whether any individual was an informant. I will not depart from the NCND policy in this instance.

**They stated that there are links through ballistics and intelligence with Thomas Donaghy's murder and other murders including those at Castlerock and the Casey, Cassidy, and Carey murders. The family wished to establish if those links were properly and thoroughly investigated by the RUC.**

12.53. I have referred to weapons and ballistic linkages in Chapter 4 of this public statement. The .38 Smith & Wesson revolver used in the murder of Thomas Donaghy was also used in the Castlerock murders, in addition to the murder of Eddie Fullerton and attempted murder of James McCorrison.



12.54. I am of the view, given the available evidence, that the SIO viewed weapons and ballistic linkages as an important line of enquiry. This enabled him to establish links to other attacks. However, the North West UDA/UFF operated a 'Quartermaster' system at the time for the storage, maintenance, and distribution of weapons. This meant that, while a specific weapon could have been used in several attacks, it did not necessarily mean that the same individual/s were involved.

**They alleged that there was a Vehicle Check Point (VCP) two days before the murder less than a mile from Thomas Donaghy's place of work. The family query if the person who was charged with possession of the documents mentioned above, was stopped at this VCP?**

12.55. This referred to the VCP on the Rasharkin side of the Bann Bridge, near Kilrea, on 13 August 1991 when Person J was stopped at 7:10am driving a gold-coloured Ford Granada. He was accompanied by another unidentified male. Person J was arrested on suspicion of Mr Donaghy's murder in early December 1991. He was later released without charge.

**They stated that witnesses said that a Ford Granada was used during Mr Donaghy's murder. The family enquire as to whether a Ford Granada was stopped at the VCP mentioned above?**

12.56. This investigation has identified no evidence that a Ford Granada was sighted on the day of the murder. The gunmen fled the scene on foot. The sighting of the gold-coloured Ford Granada occurred on 13 August 1991.

**They alleged that the security forces were made aware of some weapons hidden at Hunter Hill near Aghadowey. The family believe that the loyalist paramilitaries who hid them were 'tipped**

**off', which enabled the weapons to be moved prior to any security force search commencing.**

- 12.57. On 8 April 1993, weapons and ammunition were recovered during a police search at Bishops Road, Downhill, County Derry/Londonderry. This included the .38 Smith & Wesson revolver used in Mr Donaghy's murder. Police had previously searched this area in December 1992 but nothing was found. This investigation has found no evidence that loyalist paramilitaries were *'tipped off'* prior to the commencement of a search.

**They alleged that for three weeks prior to the murder, there was a heavy security force presence in the Kilrea area. However, this was lifted during the evening prior to the murder. The same pattern occurred prior to the murders of Gerard Casey, John Davey, and Malachy Carey. The family would like this matter to be investigated.**

- 12.58. This investigation sought to review both police and military records in order to establish the extent of security force activity in the Kilrea area in the days prior to the murder. No relevant documentation was located that could progress this line of enquiry.

**They stated that Mr Donaghy was arrested on 2 February 1990 and detained under terrorism legislation. Mr Donaghy's family alleged that while he was in police custody at Castlereagh, detectives told him that he would be dead as long as he associated with Johnny Donaghy.**

- 12.59. My investigators found no records indicating that Thomas Donaghy was in police custody on 2 February 1990. However, he was arrested on 12 February 1990 under the 1989 Act and detained until 15 February 1990. He was not charged and made no complaints to either

police or doctors who visited him on three occasions while he was in custody. He declined the presence of a solicitor and was interviewed on 22 occasions. My investigators found no evidence that he was threatened during this period of detention.

### **Summary**

- 12.60. The limited intelligence received, following the murder, was shared with the investigation team in a timely manner. Seven individuals were arrested on suspicion of Mr Donaghy's murder, including Persons A, J, K, and N. Five of the arrests took place in December 1991, one in June 1992, and the seventh in July 2001. None of the arrested individuals were named in the intelligence received in August 1991. All seven arrested individuals were later released without charge. I have been unable to establish the specific rationale for the arrests, although all seven had links to the North West UDA/UFF.
- 12.61. Police sought to identify and interview witnesses who had observed individuals acting suspiciously both on the day of the murder and those preceding it. The individuals responsible for Mr Donaghy's murder would have been involved in a significant amount of planning prior to the attack taking place. Therefore, relevant sightings formed an important aspect of the RUC investigation, given the absence of forensic evidence and intelligence.
- 12.62. Witness C was the only individual who witnessed Mr Donaghy's murder. He stated that both of the gunmen wore balaclava masks, meaning that he could not participate in identification procedures. Witness E was shown two photo albums of loyalist paramilitary suspects but was unable to identify either of the individuals he observed on the morning of the murder. Another member of the public who was fishing on the River Bann four days before the murder observed a gold-coloured Ford Granada containing three '*strangers*'.

He was also shown photo albums of loyalist paramilitary suspects but could not make a positive identification.

- 12.63. Witness F, who lived on the River Bann approximately half a mile from Portna Eel Fisheries, observed two men acting suspiciously on the riverbank two to three days before the murder. I have been unable to establish why police did not show this witness photo albums of loyalist paramilitary suspects.
- 12.64. My investigators interviewed Witness G, who observed a Vauxhall Cavalier car linked to Person K parked near Bann Bridge at 7:15am on 7 August 1991. Witness G stated that they did not see the face of the man who got out of this car and walked towards the riverbank. This might explain why police did not show photo albums of loyalist paramilitary suspects or ask Witness G to participate in any other identification procedures. My investigators, however, could find no explanation for this in the relevant RUC documentation.
- 12.65. Police Officer 15 chose not to assist this investigation. My investigators, therefore, were unable to establish if he was shown photo albums of loyalist paramilitary suspects. My investigators were unable to locate relevant suspect interview records to establish whether or not arrested individuals were challenged with these relevant sightings and witness accounts.
- 12.66. I am mindful that once police have identified viable suspects, then photo albums of suspects are not shown to witnesses. This is to avoid compromising other identification procedures, such as Identification Parades. I also appreciate that, during the 'Troubles,' police often experienced significant difficulty in convincing some witnesses to participate in identification procedures, due to the fear of retribution.

- 12.67. I am of the view that, from an early stage of the RUC investigation, police suspected that Persons J and K were involved in the murder, based on a number of the sightings referred to above. The intelligence that an earlier attack was called off, was partially corroborated by the evidence of Police Officer 15, who stopped Person J and another individual on 13<sup>th</sup> August 1991, just three days before the murder.
- 12.68. I have found no evidence to explain why a number of arrests were delayed until early December 1991. I have also found no record that the gold-coloured Ford Granada, or any other vehicles, were seized by police for forensic examination. These were evidential opportunities which, if progressed, may have advanced the police investigation.
- 12.69. I have previously referred to an incident in February 1991, where personal information relating to Mr Donaghy was found within a loyalist intelligence 'cache.' Person J was arrested and convicted, in September 1991, of an offence relating to this find. Three days before Mr Donaghy's murder, Person J and another individual were stopped near to the scene of the murder. Person J was arrested in December 1991 on suspicion of Mr Donaghy's murder but subsequently released without charge. I have found no evidence that Mr Donaghy was ever warned about this matter by police.

## 13.0

# The Murder of Bernard O'Hagan – The RUC Investigation

- 13.1. Bernard O'Hagan was 38 years old when he was murdered. He was a Business Studies lecturer at Magherafelt Technical College and lived in Maghera with his wife, Fiona, and three young children. In 1989, he was elected as a Sinn Féin councillor for the Sperrin Ward and was due to stand for the party at the 1992 Westminster elections.
- 13.2. At approximately 9:25am on 16 September 1991, Mr O'Hagan arrived at Magherafelt Technical College on the Moneymore Road in Magherafelt, County Derry/Londonderry. He parked his maroon-coloured Ford Sierra car in a parking space facing the front entrance of the college. At that time, there were a number of members of staff and students in the vicinity.
- 13.3. Mr O'Hagan got out of his car and reached back inside to retrieve some paperwork. A lone, unmasked gunman walked up to him and fired eight shots from close range. Mr O'Hagan was struck three times in the head. The gunman then ran away onto the main road outside the college. Colleagues of Mr O'Hagan phoned the emergency services and police and paramedics arrived within minutes. At 9:34 am, a local priest arrived and administered the last rites. At 9:57am, a doctor examined Mr O'Hagan and confirmed that he was dead.
- 13.4. Mr O'Hagan's brother, John Joseph, attended the scene and formally identified him to police. Mr O'Hagan was taken to the mortuary at the Mid Ulster Hospital where a post-mortem examination took place. The senior pathologist who conducted the examination concluded that,

*'Death was due to bullet wounds to the head, hit by three bullets, but only one was responsible for his death. The other bullet wounds were to the left ear area and left cheek area. The weapon used was of a low velocity fired at close range approximately 12 inches.'*

- 13.5. The UDA/UFF claimed responsibility for Mr O'Hagan's murder in a telephone call to the BBC later that day. The caller stated *'UFF volunteers this morning executed Bernard O'Hagan in South Derry. O'Hagan had recently been to the mainland organising ASU's. The UFF wish to state where the government fail to protect our citizens, we reserve the right to execute known republican murderers.'*
- 13.6. This investigation found no evidence or intelligence that Mr O'Hagan was involved in any paramilitary activity. He was a republican activist and Sinn Féin councillor.

### **Initial Police Response**

- 13.7. Police secured and preserved the scene. An Incident Control Point (ICP) was set up at the front of the college. Police arranged for all students and staff to gather in the Assembly Hall so they could establish who had witnessed the attack.
- 13.8. Two students provided police with descriptions of the gunman which were circulated via police radio transmissions to all patrols in the area. A uniformed Inspector and MSU arrived, to assist with securing the scene. The Inspector directed that house-to-house enquiries be commenced in the immediate area.
- 13.9. At 9:40am, the military were notified of the murder. They set up a series of VCPs in the surrounding area. They also deployed a helicopter to assist, in addition to search and tracker dogs. CID officers arrived and recorded statements from staff and pupils who had witnessed the

attack. The senior police officer in the area, a Superintendent, attended the scene and ensured that sufficient resources were made available.

- 13.10. SOCOs conducted a forensic examination of the scene, including Mr O'Hagan's car and other vehicles parked nearby which the gunman may have touched. Several fingerprint marks were recovered which were submitted to RUC Fingerprint Branch for examination. Eight discharged cartridge cases were located on the ground near Mr O'Hagan's Ford Sierra car. A bullet fragment was also recovered from a wall of the college building.
- 13.11. Mr O'Hagan's Ford Sierra car was conveyed to Magherafelt RUC Station where, during a further forensic examination, two bullet fragments were recovered from its interior. All of the recovered items were submitted to NIFSL for examination
- 13.12. A Detective Superintendent, Police Officer 1, attended the scene and initially took charge of the investigation. Specialist resources were requested which included photography, mapping, and military weapons specialists, who assisted with the ballistic examination of the scene.

### **RUC Investigation Team**

- 13.13. Police Officer 1 established a Major Incident Room at Magherafelt RUC Station using the paper-based MIRIAM system to manage the investigation. He was assisted by other senior detectives, however, following the murder of a police officer in Swatragh, he was diverted on 17 September 1991 to lead that investigation. A team of 25 detectives worked on the investigation, supported by other specialist staff. My investigators reviewed the available police documentation to assess the quality of the RUC investigation.



## Witnesses

- 13.14. Mr O'Hagan was murdered in the car park of the college which, at that time, was busy with staff and pupils. The unmasked gunman had been observed in the college building prior to the attack. Police interviewed a number of staff and students who witnessed the murder. Statements were recorded from them, which included descriptions of the gunman.
- 13.15. Witness I, a member of staff, was seated in a college minibus parked near the college's main building. She saw Mr O'Hagan park beside her and get out of his Ford Sierra car before he leaned back into the vehicle. She watched as a gunman ran towards Mr O'Hagan and fired a shot, followed by *'two or three'* more. She stated that the gunman was holding a pistol and stood over Mr O'Hagan, before running off towards the college entrance. Witness I provided a description of the gunman. She stated that she might be able to recognise him again.
- 13.16. Witness J, a student, watched Mr O'Hagan park his car at the college. She stated that she was speaking to a friend when she heard *'four or five'* gunshots. She turned around and saw Mr O'Hagan lying on the ground with the gunman standing over him. He was holding a pistol, which he fired at Mr O'Hagan a further two times.
- 13.17. She stated that the gunman then ran off towards the main entrance of the college. She stated that he was aged in his late twenties, slight to medium build, and around 5'9" tall, with short, black hair. He was wearing silver-rimmed glasses and dark-coloured clothing. Following the attack, she ran into the college to raise the alarm. She was able to provide police with a detailed description of the gunman.
- 13.18. Witness K was speaking to Witness J at the time of the shooting. She corroborated Witness J's account and described the gunman as around 19 years old, approximately 5'9" tall, clean shaven, and of slim

build. He had short, black hair which was swept back at the front and cut tightly into the back of his neck. The gunman had a pale complexion. He was wearing dark-rimmed glasses, blue denim jeans, white trainer-type shoes and a dark-coloured bomber type jacket. She added that he was wearing '*something white*' beneath the jacket which was partially zipped up. She stated that, while she did not know the gunman, she would be able to recognise him again.

- 13.19. Witness L, a student, had arrived at the college with Witnesses M and N. She observed Mr O'Hagan drive into the college and park his car, before the gunman approached the Ford Sierra holding a clipboard in his left hand and a black handgun in his right hand. The handgun had a silencer attached to it. Witness L stated that the gunman shot Mr O'Hagan four to five times and continued firing after Mr O'Hagan had fallen to the ground. Witness L provided a detailed description of the gunman who, she stated, then ran away from the college towards the Moneymore Road. Witnesses M and N provided similar accounts to police.
- 13.20. Eight other students either witnessed the attack or events closely associated with it and made statements to police. They all provided consistent accounts, with broadly similar descriptions of the gunman. Another nine witnesses heard the gunshots and, although their accounts were recorded on questionnaires, there are no records of witness statements having been recorded from them. A further seven witnesses observed the gunman running from the scene and provided police with descriptions.
- 13.21. A member of college staff, Witness O, stated that she saw a man in the college at approximately 8:35am. She described him as approximately 24 years old, short black hair, stocky build, with a fattish face. He was wearing a denim jacket and jeans, and carrying a folder under his arm. She stated that he was walking along a corridor towards

doors that led out to the car park. Witness O stated that it was unusual for a student to be in that part of the college at such an early hour.

- 13.22. A college lecturer, who would not provide a statement, informed police that he observed the gunman in the college, prior to the shooting. Nine other students or staff also witnessed part of the attack but declined to provide witness statements. I am of the view that this reluctance may have been because they feared repercussions if they had assisted the police investigation.
- 13.23. Three witnesses assisted police in preparing a photo-fit image of the gunman, based on the descriptions they had provided. This image was circulated to the media and police stations in the area in an attempt to identify the gunman.
- 13.24. Over 650 people were spoken to during house-to-house enquiries conducted in the area around the college. Police completed questionnaires, which resulted in several further lines of enquiry being identified. These primarily involved sightings of suspicious vehicles in the area. However, none of the relevant witnesses could provide accurate descriptions. Police, therefore, were unable to identify the vehicles and eliminate them from the investigation.
- 13.25. Within the original police documentation, my investigators located the transcript of a 'Police Six' witness appeal, dated 19 September 1991. 'Police Six' was a television programme aired on Ulster Television (UTV) where police asked for assistance from members of the public in solving crimes. The transcript referred to the photo-fit image of the gunman which was shown on the programme. My investigators were unable to locate a recording of the programme itself. Police also released a press statement on 23 September 1991 to coincide with a reconstruction of the murder.

- 13.26. As part of the reconstruction, detectives were present on the college grounds and surrounding area. A mobile police station was set up at the front of the college and a public address system utilised. The reconstruction led to a number of additional witnesses being identified and interviewed by police.

### **Vehicles**

- 13.27. Police traced and interviewed the owners of all the vehicles that were parked in the college grounds at the time of Mr O'Hagan's murder. All roads and areas of wasteland within a five mile radius of the college were searched for abandoned or burnt out vehicles, but none were found.
- 13.28. Enquiries were conducted to trace several vehicles seen in the vicinity of the college at the time of the murder. None of these assisted in identifying a vehicle which the gunman may have used to escape from the scene.

### **Ballistics**

- 13.29. Eight discharged cartridge cases and a number of bullet fragments found both at the scene, and recovered during Mr O'Hagan's post mortem examination, were submitted to NIFSL for forensic examination. This established that they had all been fired from a single weapon, a .22 calibre pistol. A .22 calibre bullet head was also recovered during the post-mortem examination. However, the rifling detail on it was badly obscured meaning that there was insufficient detail for comparison purposes.
- 13.30. The weapon was identified as a PPW that was stolen in 1975 from the Limavady home of a former UDR member. It was later used in the

murder of Malachy Carey and attempted murder of James McCorrison. The weapon has, to date, not been recovered.

### **Fingerprints**

- 13.31. The relevant RUC fingerprint file is no longer in existence. My investigators, however, established that fingerprint and palmprint marks were recovered from the exterior of Mr O'Hagan's car. These were available for comparison with fingerprint marks obtained from suspects. The relevant RUC documentation stated that elimination fingerprint and palmprint marks from the car's previous owner were required. From the available records, this investigation has been unable to establish whether any elimination or suspects prints were forwarded to RUC Fingerprint Branch for comparison purposes.

### **Intelligence and Arrests**

- 13.32. I am of the view that there was no intelligence that could have prevented, or forewarned of, the murder of Mr O'Hagan. There were no immediate arrests following his murder.
- 13.33. At that time, loyalist paramilitary organisations were targeting suspected PIRA members and Sinn Féin representatives. Mr O'Hagan was not suspected of being involved in paramilitary activity. In 1989, he had been stopped by the security forces in a vehicle with a suspected PIRA member.
- 13.34. As a local Sinn Féin councillor, Mr O'Hagan was well known and his public profile and political beliefs would have brought him to the attention of loyalist paramilitaries.
- 13.35. In February 1991, police arrested a suspected loyalist paramilitary, Person J, on an unrelated matter. During a subsequent search of his

address police recovered the personal details of 254 republicans and suspected PIRA members. A handwritten list contained the details of a number of Magherafelt District Council members, including the name and address of Mr O'Hagan. This indicated that Mr O'Hagan was of interest to loyalist paramilitaries.

- 13.36. On 31 May 1991, an ACC directed that there was no requirement to warn any of the 254 individuals whose details were found during the search of Person J's address. His rationale was that there was no evidence to indicate that any of the seized documentation had fallen into the hands of loyalist paramilitaries. He added that this decision should be reviewed in the event of further information coming to light. This investigation has been unable to establish whether any review took place. Mr O'Hagan was shot dead less than four months later.
- 13.37. In February 1992, Person J was interviewed by police about Mr O'Hagan's murder, when arrested on suspicion of the attempted murder of James McCorriston. He denied any involvement and was later released without charge.
- 13.38. Police received intelligence that Persons N and O were involved in the murders of Bernard O'Hagan and Eddie Fullerton, and the attempted murder of James McCorriston.
- 13.39. Following the attempted murder of Mr McCorriston on 14 February 1992, Person N went '*on the run*' to avoid being detained. He was arrested in June 1992 and interviewed by police. He denied being involved but was subsequently charged with the attempted murder of Mr McCorriston and remanded in custody.
- 13.40. When on remand, he was produced from prison and interviewed by police about the murders of Thomas Donaghy, Bernard O'Hagan, and Daniel Cassidy. He also took part in Identification Parades in respect

of Mr O'Hagan's murder. Witnesses I, J, K, L, and another female attended the Identification Parades but none of them could identify the gunman. During police interview, Person N denied being involved in any of the above murders. He was not charged with any offences relating to Mr O'Hagan's murder.

- 13.41. In June 1994, Person N was sentenced to nine years imprisonment for a firearms offence linked to the attempted murder of James McCorriston.
- 13.42. In April 1992, Person O was arrested on suspicion of the attempted murder of James McCorriston and murder of Daniel Cassidy. This investigation has established that Person O was in prison at the time of Mr O'Hagan's murder. This related to the loyalist intelligence 'cache' found in the Derry/Londonderry area in November 1989.
- 13.43. Almost a year after the murder of Mr O'Hagan, further intelligence was received stating that Persons N and P were involved. This intelligence, which was of a general nature, was shared with the senior detectives investigating the murder. Persons N and P were both in custody at the time the intelligence was received. Person P had been sentenced to four and a half years imprisonment in late 1992 for an unrelated matter. My investigators were unable to locate relevant police interview records relating to Person P. This investigation was unable to establish if he was interviewed about Mr O'Hagan's murder.
- 13.44. My investigators also viewed intelligence received at the end of 1993. This stated that Person N was the gunman and Person J drove the getaway car. By this time, both individuals had been imprisoned for other matters and had already been interviewed by police about the murder.

### **Coroner's Inquest**

- 13.45. The Inquest in respect of Mr O'Hagan's murder was held on 25 May 1994. The presiding Coroner concluded that Mr O'Hagan had been murdered by loyalist paramilitaries. My investigators reviewed a copy of the relevant Inquest file along with other material held by the Public Records Office for Northern Ireland (PRONI).
- 13.46. The solicitor representing Mr O'Hagan's family made representations at the Inquest regarding a number of issues. These included the failure of the RUC to apprehend the gunman, set up VCPs after the murder, and properly preserve the scene. These issues were addressed by police officers who were called as witnesses to the Inquest.

### **Complaint by the O'Hagan Family**

- 13.47. Mr O'Hagan's family raised a number of questions and concerns regarding the actions of RUC officers both prior to, and following, the murder. These were as follows:

**Upon becoming a Sinn Fein Councilor in May 1989, Mr O'Hagan was subjected to harassment by the RUC and British Army. The UDR were seen taking photographs of the family home.**

- 13.48. My investigators established that, between May 1989 and his murder, Mr O'Hagan was stopped by police on 9 February 1989, 9 June 1989, 21 June 1989, 20 December 1989, 20 August 1990, and 25 March 1991. He was sighted at various republican events but his movements were not routinely monitored. In early 1989, he was stopped by the security forces in a car accompanied by Thomas Donaghy, a suspected PIRA member. The same car was later sighted outside Mr Donaghy's house.



13.49. Police recorded three sightings of Mr O'Hagan on 7 June 1989, 2 October 1989, and 11 October 1989. My investigators interviewed a number of police officers who either stopped or sighted Mr O'Hagan on one of the above dates. They all stated that these were routine and not targeted. Given the available evidence and intelligence, I am of the view that police stops and sightings of Mr O'Hagan were reasonable and proportionate, given the wider security situation in Northern Ireland at that time.

**They alleged that, on 3 October 1989, members of the UDR had taken photographs of the O'Hagan home.**

13.50. Mr O'Hagan's family stated that, on 27 October 1989, he made a complaint via his solicitor that, on 3 October 1989, members of a UDR patrol took photographs of his home and the surrounding properties.

13.51. My investigators established that this complaint was investigated by the RUC. This led to an exchange of correspondence between the RUC and Mr. O'Hagan's solicitor. In a letter, dated 23 February 1990, police stated that the relevant UDR members had been interviewed. Patrol members stated that they had used binoculars to scan the general area as opposed to targeted surveillance of the O'Hagan residence. Police concluded that the binoculars, as opposed to a camera, had been used for a legitimate reason and took no further action in respect of the matter.

13.52. On 15 March 1990 Mr O'Hagan's solicitor replied, stating that the accounts of UDR members had been accepted at face value, while that of a witness who supported their client's complaint was discounted. He concluded that Mr O'Hagan saw no further point in progressing the complaint. Mr O'Hagan's family believe that this incident was the beginning of a '*state campaign*' to murder him.

13.53. This matter has already been the subject of an investigation by police, therefore, I am unable to re-investigate this matter. I have no jurisdiction to investigate the conduct of members of the military.

**They alleged that the RUC did not conduct a full and thorough investigation into Mr O'Hagan's murder. It is alleged that police failed to preserve the scene of the murder at Magherafelt Technical College car park.**

13.54. At the time of the murder, there were numerous staff members and students on the college grounds. Following the attack, various individuals attempted to assist Mr O'Hagan prior to the arrival of the emergency services. This may have resulted in the scene becoming contaminated, which was unavoidable given the circumstances. The priority for any police officer attending such a scene is the preservation of life. The scene is then secured and preserved to allow a thorough examination that will maximise the recovery of evidence.

13.55. A Serious Incident Log was commenced at 9:31am which recorded initial efforts by police to secure and preserve the scene. An early entry stated that there was a *'slight problem with ----- brothers attempting to take photographs and encroaching onto preserved area.'* Police arranged for individuals who witnessed the murder to gather in the main hall while the scene was forensically examined, photographed, and mapped. Senior police officers, including the Divisional Commander, attended and ensured that sufficient resources were made available. These included a helicopter, search teams, and tracker dog.

13.56. Following the murder, the scene outside the college would have been confused and chaotic. This may have resulted in a degree of unintentional contamination. I am of the view that the scene was managed in a professional and organised manner, given the

circumstances and difficulties faced by police. This investigation has found no evidence that police deliberately failed in their duties in this respect.

**The O'Hagan family alleged that the RUC failed to interview all the available witnesses.**

- 13.57. My investigation established that students and staff who attended the college on the day of the murder were recorded by police using a card index system. Over 650 individuals were spoken to, including witnesses at the college, during house-to-house enquiries, and at a later reconstruction. Nine individuals who witnessed the murder declined to assist the police investigation. I am of the view, having reviewed the relevant RUC investigation files, that police did not miss any opportunities in respect of identifying and interviewing witnesses to Mr O'Hagan's murder.

**They alleged that the RUC failed to utilise a photo-fit image of the murderer to its full potential by not publishing it in the media.**

- 13.58. Photo-fit images are designed to encourage members of the public to provide information to police about individuals who they think might resemble the image. The photo-fit image of the gunman was produced and distributed to regional television stations and newspapers. It was also circulated to all police stations in the area in an attempt to identify the gunman. The murder was covered on the 'Police Six' television programme, where a further appeal for witnesses was made. I am of the view that police took all reasonable steps to circulate the relevant photo-fit image.

**They alleged that that there is evidence of collusion between the State and loyalist terrorists because the RUC lifted road blocks early allowing those responsible the opportunity to commit the crime.**

13.59. In September 1991, RUC policy regarding VCPs emphasised ensuring the safety of those personnel involved, and using the element of surprise to disrupt terrorist activity. This meant that ‘snap’ VCPs were often set up at random locations for short periods of time. This minimised the risk to security force personnel involved and maximised the potential to disrupt terrorist activity. This investigation was unable to locate any records of VCPs in the Magherafelt area on 16 September 1991.

13.60. Witnesses stated that a lone gunman carried out the attack, before running out of the college grounds towards the town centre. Police believed that he was then picked up in a vehicle. This investigation found no evidence to support the allegation that VCPs were deliberately lifted in order to facilitate the gunman’s escape.

**They alleged that documentation containing the personal details of Bernard O’Hagan was left at a public dump site in Dungiven.**

13.61. This allegation related to police documentation found on a public dump at Drumaduff, Dungiven, in June 1991. An internal RUC investigation concluded that documentation had been accidentally deposited there, having originated from Strabane RUC Station. My investigators were unable to locate the relevant documentation or corresponding RUC investigation papers. My investigators interviewed a number of police and civilian witnesses regarding this matter. None of them could recall the details of Mr O’Hagan being included in the Drumaduff documentation.

## Summary

- 13.62. I am of the view, given the available evidence, that the initial actions of police at the scene were appropriate. A significant number of witnesses were interviewed and three of them assisted police in composing a photo-fit image of the gunman. Five of the witnesses later attended an Identification Parade containing Person N but were unable to identify the gunman who shot Mr O'Hagan.
- 13.63. There were no early arrests. Person J was interviewed about the murder of Mr O'Hagan following his arrest in late February 1992 on suspicion of the attempted murder of James McCorrison. He denied being involved and was subsequently released without charge. Intelligence received named Persons N and O as being responsible for the murder. By this time Person N was '*on the run*' because he was wanted in connection with the attempted murder of James McCorrison. Person O was in custody at the time of Mr O'Hagan's murder.
- 13.64. I am of the view that there was a lack of accurate intelligence regarding the activities of the North West UDA/UFF during the period in question. This contributed towards early arrests not being made regarding this and other attacks. All intelligence relating to the murder was shared with the RUC investigation team.
- 13.65. On 17 September 1991, a police officer was murdered in Swatragh which necessitated resources being re-directed from the investigation of Mr O'Hagan's murder. Consequently, a witness appeal at the college did not proceed as planned. This investigation has been unable to establish whether this appeal took place on a later date. Two murders in the same area on consecutive days reflected the heavy demands on finite police resources that was a constant theme throughout the Northern Ireland 'Troubles.'

- 13.66. This investigation was unable to establish whether the area inside the college where the gunman was sighted was forensically examined by police. This enquiry may have been discounted due to the volume of people using the premises, but no such rationale is recorded. However, I am of the view that efforts by police to identify and prosecute those responsible for Mr O'Hagan's murder were thorough.
- 13.67. Mr O'Hagan's details were included in documentation recovered from an address in Portrush in February 1991, as referred to previously in this public statement. The relevant ACC, now deceased, decided on 31 May 1991 not to inform any of the individuals, whose details were included in the documentation, of this matter.
- 13.68. This decision was to be reviewed if new information came to light. Personal information relating to Thomas Donaghy was also included in the documentation. As stated previously in this public statement, I have found no evidence that this decision was reviewed either before, or following, the murder of Thomas Donaghy in August 1991. Mr. O'Hagan was shot dead the following month. I have found no record that Mr O'Hagan was informed by police that his details were found in the documentation so as to allow him to review his personal security.

## 14.0

# The Attempted Murder of James McCorriston – The RUC Investigation

- 14.1. Mr McCorriston was 31 years old at the time of the attack. He lived with his parents and brother at the family home in Coleraine and was employed as a labourer by the local council.
- 14.2. My investigators have engaged with Mr McCorriston and updated him about the progress of this investigation. He did not make a formal complaint. However, the former Police Ombudsman, Dr Maguire, included an examination of police conduct in relation to this attack in his thematic investigations because of evidential and intelligence links to other attacks in this series.
- 14.3. At approximately 7:25am on Friday 14 February 1992, Mr McCorriston left his home for work. As he walked along a footpath through derelict ground near his house, he was approached by two men. One of the men produced a handgun and shot Mr McCorriston. A struggle ensued and Mr McCorriston was shot again before the two men ran away. Although seriously injured, Mr McCorriston managed to make his way home, before collapsing.
- 14.4. Mr McCorriston was taken by ambulance to Coleraine Hospital where he was treated for gunshot wounds to his neck and abdomen. He underwent several operations and his condition was originally described as critical. He recovered, however, and was subsequently discharged from hospital.

- 14.5. A number of individuals were in the area at the time of the attack. One witness stated that, at around 7:30am, he heard shots and looked out of his bedroom window. He saw two men running across derelict ground towards a nearby church. Both men were aged in their twenties, around 5'9" tall, medium build, and wearing dark wax three quarter length coats. One of them was wearing a black balaclava and was pushing something into his pocket. The witness made a '999' call to police at 7:33am.
- 14.6. Another witness was walking nearby when he heard two gunshots. He observed two men at a garage near the scene, standing beside a red Ford Cortina car with 'L' plates. One of the men was in the process of taking off a boiler suit. The witness continued walking but looked back and saw the men had walked away from the Cortina. He contacted police and provided descriptions of both men. Other witnesses provided similar accounts about hearing gunfire and seeing two men running from the scene. None of them, however, were able to provide detailed descriptions of the men, other than to say that they were not local.
- 14.7. The UDA/UFF claimed responsibility for the attack in an anonymous telephone call later that day to the BBC newsroom. The caller stated that they carried out the '*attempted assassination*' of Mr. McCorrison as he was a PIRA member.
- 14.8. A number of individuals were later arrested regarding the attack, including Person N, who was subsequently charged with the attempted murder of Mr McCorrison. This charge was not progressed by the DPP, but he was convicted of a related firearms offence and sentenced to nine years imprisonment.



## **Initial Police Response**

- 14.9. At 7:33am, Coleraine RUC Station were notified of the shooting. The first police officers arrived at the McCorriston address at 7:40am and provided first aid until an ambulance arrived. The scene was identified, secured, and a Serious Incident Log commenced.
- 14.10. A Detective Chief Inspector, Police Officer 2, attended and took charge of the investigation, assisted by a Detective Inspector, Police Officer 16. Their enquiries were overseen by a Detective Superintendent, Police Officer 1. The scene was mapped, photographed, and forensically examined by a SOCO. Police Officer 2 initiated house-to-house enquiries and the scene and surrounding areas were searched a number of times by police.
- 14.11. The SOCO recovered two discharged cartridge cases and a fob containing two car keys at the scene of the shooting. The keys were subsequently found to open the red Ford Cortina car at the garage, which a witness saw two men standing beside. Police developed a theory that one of the gunmen dropped the keys when fleeing the scene of the attack. The Ford Cortina car was conveyed to NIFSL for further examination.

## **RUC Investigation Team**

- 14.12. A Major Incident Room was set up at Coleraine RUC Station and the investigation managed on the HOLMES computer system. My investigators have been unable to establish how many staff worked on the RUC investigation. However, 26 detectives were involved in case conferences held in the two-day period following the attack. The RUC investigation generated 75 investigative actions, 63 witness statements, and 49 messages forms.

- 14.13. This investigation failed to locate any SIO policy logs, which would have been expected to record all major decisions made during the RUC investigation and the rationale for them. My investigators, however, recovered other documentation which allowed them to assess the quality of the RUC investigation.
- 14.14. The first police briefing took place at Coleraine RUC Station at 12:05pm on 14 February 1992. A decision was taken to search the houses of four suspected UVF members from the Coleraine area. Nothing of evidential value was found during these searches. Enquiries were initiated in respect of the red Ford Cortina car and parameters established for house-to-house enquiries in the vicinity of the attack.
- 14.15. A significant line of enquiry related to a Ford Granada car stopped by police outside Coleraine, shortly after midnight, on 14 February 1992. Persons K, N, and O were in the car. When police searched the boot of the vehicle, they found two pairs of plastic gloves and two pick axe handles.
- 14.16. Later that day, between 10:00am and 10:25am, a witness observed a man acting suspiciously outside an address in Castlerock. The man, whose trousers were wet, subsequently drove away in a red Ford Fiesta car parked nearby.

### **Vehicles**

- 14.17. Police traced and interviewed the previous owner of the Ford Cortina car, a Belfast resident. He stated that he sold the car to two men on 12 February 1992, after they had called to his house to view it. He had previously advertised the car in the 'Belfast Telegraph' newspaper. He provided police with detailed descriptions of both men and handed over a number of banknotes that they had given him as payment for

the car. These were examined for fingerprints, but none were found. The man confirmed that the fob and car keys found near the scene belonged to the Ford Cortina that he had sold to the men. On 19 February 1992, he attended an Identification Parade containing Person K but was unable to identify either of the men who bought the car from him.

- 14.18. The Ford Cortina was searched and a number of items recovered from it for further forensic examination. A black bin bag was found in the glove compartment which contained 13 rounds of .38 ammunition wrapped in a yellow duster, bound with black PVC tape. From the rear seat, police recovered a plastic bag containing clothing, a hairbrush, and toiletries. A pair of black boots were also found in the rear.
- 14.19. A fingerprint mark was recovered from the black PVC tape which matched those of fingerprints belonging to Person N. A head hair recovered from the hairbrush also matched samples taken from Person N.
- 14.20. Police arrested a number of individuals following the attack. One of them, Person G, owned a red Ford Fiesta car which police believed was the car observed outside the address of Person K in Castlerock on 14 February 1992. During police interviews, Person G admitted lending the car to Person N on 12 February 1992, the understanding being that Person N would return it the following day. Person N, however, did not return the car until 14 February 1992. The Ford Fiesta was forensically examined but nothing of evidential value was recovered.
- 14.21. Person G was arrested again, following the attack at the Rising Sun Bar in Greysteel, on 30 October 1993. During these interviews, he admitted lending the Ford Fiesta to Person N in the knowledge that it was going to be used in a UDA/UFF attack. When Person N returned

the car, he told Person G that the operation had been '*a total balls up.*' This admission could not be used as evidence against Person N as it was made during a criminal interview by a co-accused.

### **Ballistics**

- 14.22. Police established that two weapons were used in the attack. The first weapon was a .22 Star pistol, which had previously been used in the murder of Bernard O'Hagan. It was used again in the murder of Malachy Carey. This weapon has never been recovered.
- 14.23. The second weapon was a .38 Smith and Wesson revolver, previously used in the murders of Eddie Fullerton and Thomas Donaghy. It was used again in the Castlerock murders on 25 March 1993, prior to being recovered the following month during a police search at Bishop's Road, Downhill, County Derry/Londonderry.

### **Intelligence**

- 14.24. I am of the view, having reviewed the relevant intelligence, that police could not have forewarned of, or prevented, the attack on Mr McCorrison. Following the attack, police received limited intelligence regarding it.
- 14.25. This investigation viewed RUC documentation from April 1992 which indicated police suspected Persons G, J, N, and O as having been involved in the attempted murder of Mr McCorrison and the murder of Daniel Cassidy. I have been unable to establish the origins of this information.
- 14.26. Information was received naming two other individuals as having been involved in the purchase of the red Ford Cortina car linked to the attack. This was passed to the RUC investigation team who arrested

one of these individuals. He was interviewed but subsequently released without charge. I have found no record that the other individual was arrested.

### **Arrests**

- 14.27. Person N went '*on the run*' until arrested by police in late June 1992. During interview, he denied being involved in the shooting of Mr McCorrison. He admitted borrowing the red Fiesta of Person G. He could not provide an explanation as to why his fingerprint was found on the black PVC tape recovered from the Ford Cortina linked to the attack. He also could not provide an explanation as to why a hair recovered from a hairbrush in the same car matched his own. Person N was subsequently charged with the attempted murder of Mr McCorrison.
- 14.28. Person K was arrested in mid-February 1992. He denied being involved in the attack and provided an alibi witness. When asked what he was doing when stopped in a car with Persons N and O at midnight on 14 February 1992, he provided an explanation. He agreed to take part in an Identification Parade but the owner of the red Ford Cortina did not identify him as one of the men who purchased the car from him. Person K was subsequently released without charge.
- 14.29. Person J was arrested in April 1992, following the murder of Daniel Cassidy. He was interviewed about the murder of Mr Cassidy and attempted murder of James McCorrison. He denied being involved in either attack and was subsequently released without charge.
- 14.30. Person O was arrested on suspicion of a number of loyalist paramilitary attacks during the period 1989-1993. This investigation has not established if police ever questioned him about the attempted murder of Mr McCorrison.

## Summary

- 14.31. My investigators reviewed all of the relevant documentation relating to the RUC investigation. It is my view that the content of a number of key witness statements obtained from members of the public were of poor quality. They did not contain detailed descriptions of the men seen in the area around the time of the attack. They also did not include distances involved, how long these individuals were under observation, weather/lighting conditions at the time, and whether they would have been able to recognise them again. These omissions may have impacted upon the ability of witnesses to attend Identification Parades and identify suspects.
- 14.32. I am aware of the difficulties that the RUC faced when seeking members of the public to come forward and provide witness evidence or participate in Identification Parades. However, I am critical of the failures in respect of obtaining detailed and adequate witness statements from members of the public, which potentially impeded the investigation into this attack.
- 14.33. There was limited intelligence available both prior to, and following, the attack that could have assisted police in identifying those responsible or allowed them to develop new lines of enquiry. Forensic evidence secured the conviction of Person N for a firearms offence linked to the attack. This aspect of the investigation was professionally handled by Police Officer 2 and his team. They were unable to secure sufficient evidence to charge any other individual suspected of having been involved in the attack.

## 15.0

# The Murder of Daniel Cassidy – The RUC Investigation

- 15.1. Daniel Cassidy, known as Danny, was 40 years old and lived with his wife and four children in Kilrea, County Antrim.
- 15.2. At approximately 3:00pm on 2 April 1992, Mr Cassidy was sitting in his blue Peugeot car on Coleraine Street in the centre of Kilrea. He was talking to three friends through the open front passenger window of his vehicle. A blue Renault 9 car pulled up alongside his vehicle and two masked gunmen got out, opening fire on Mr Cassidy. He was shot a number of times and died at the scene. The gunmen then got back into the Renault, driven by a third man, which performed a 'u-turn' and drove away from the scene. The murder was witnessed by a number of bystanders.
- 15.3. The Renault 9 car used in the attack was later found in the car park of Moneydig Presbyterian Church, approximately six miles from the scene. Two incendiary devices left in the car had failed to fully ignite.
- 15.4. Mr Cassidy was shot four times at close range. Two of the bullets struck the back of his head, a third the back of his right shoulder, and the fourth the right side of his back.
- 15.5. The UDA/UFF later claimed responsibility for the murder stating, '*The UFF admit responsibility for this afternoon's assassination of Daniel Cassidy at Kilrea. Cassidy was a Commanding Officer of a PIRA unit in the South Derry area.*'

- 15.6. No individual has ever been prosecuted for the murder of Mr Cassidy.
- 15.7. This investigation has established that police held intelligence that indicated Mr Cassidy had been an active PIRA member since the 1970s. Intelligence received in 1991 described Mr Cassidy as the Officer Commanding, Coleraine PIRA.
- 15.8. My Office has not received any public complaints in respect of Mr Cassidy's murder. However, his family did make a number of complaints following his death and at the corresponding Inquest. These are referred to later in this public statement.

### **Initial Police Reponse**

- 15.9. Garvagh RUC Station were informed of the attack and police attended the scene. Witnesses provided them with a description of the gunmen's car which was circulated to all police patrols in the area. Approximately 30 individuals had gathered, and this initially impeded police efforts to secure and preserve the scene. An Incident Control Point was established, cordons put in place, and a Serious Incident Log commenced at 3:16pm. This was closed at 5:54pm when police left the scene.
- 15.10. At 3:18pm, a doctor attended the scene and examined Mr Cassidy. He could detect no signs of life.
- 15.11. At 3:32pm a Detective Chief Inspector, Police Officer 2, attended the scene and took charge of the investigation, directing immediate lines of enquiry. VCPs were set up throughout North Antrim and County Derry/Londonderry. SOCOs attended and forensically examined the scene, including Mr Cassidy's car. A Forensic Scientist also attended and assisted with this examination.



- 15.12. A number of items were recovered from the scene and submitted to NIFSL for further forensic examination. These included four discharged cartridge cases and a single bullet. Three of the discharged cartridge cases were located inside Mr Cassidy's car while the fourth was lying on the road beside it. The scene was also mapped and photographed.
- 15.13. A post-mortem examination was carried out at Coleraine Hospital Mortuary the following day. This was conducted by the State Pathologist for Northern Ireland. The cause of death was recorded as *'bullet wounds of head.'*
- 15.14. The scene of the car park at Moneydig Presbyterian Church was mapped, photographed, and forensically examined. Three black balaclavas were recovered from the blue Renault 9 car along with two improvised incendiary devices that had failed to ignite. Police believed that the gunmen had attempted to set the car on fire in an attempt to destroy forensic evidence. The car was conveyed to NIFSL for further examination. It was examined for fingerprint marks but none were identified.

### **Witnesses**

- 15.15. A number of witness appeals were made during the course of the RUC investigation. Police Officer 2 sought to identify witnesses and encouraged them to come forward. These appeals were circulated via local newspapers, radio stations, and television channels.
- 15.16. Witness P was kneeling by the front passenger window, talking to Mr. Cassidy, at the time of the attack. He stated that he observed a blue Renault car pull up alongside Mr Cassidy's vehicle. A masked man got out of the car and opened fire with a handgun, causing the front driver's window to shatter.

- 15.17. Witness P stated that he began to run away, whereupon he heard further shots. When the shooting stopped he returned to the car and saw that Mr Cassidy had been shot in the head. He checked for signs of life but could find none. He was unable to describe the gunmen. Two other men were also present at the time of the attack and both provided witness statements to police. Neither could provide an accurate description of the attackers.
- 15.18. A number of individuals made statements to police, providing descriptions of the gunmen. An off duty police officer, Police Officer 17, was driving along Coleraine Street when he observed the blue Renault 9 car pull up alongside Mr Cassidy's vehicle. He stated that a man wearing a blue boiler suit and black balaclava got out of the front passenger side of the Renault. He was carrying a handgun and fired two shots through the front driver's window of Mr Cassidy's car. The gunman then opened the door and fired another three shots.
- 15.19. Police Officer 17 stated that the gunman then got back into the Renault 9 car which performed a 'u-turn' in the street, before driving off towards Coleraine. He described the gunman as being approximately 5'8" tall and of slim build. He stated that there were two other masked men in the Renault 9 car, a driver and a rear seat passenger. Police Officer 17, who was not in possession of a police radio at the time, then drove to Kilrea RUC Station and reported the attack.
- 15.20. A witness, who resided on Coleraine Street, stated that the gunman was approximately 6' tall, of stocky build, and broad-shouldered. He was wearing a dark boiler suit, mask, and gloves. Another witness provided a similar description, adding that the gunman '*was built like a weight lifter and moved slowly.*'

- 15.21. A witness who was driving along Coleraine Street, at the time of the attack, described the gunman as approximately 6'4" tall, with a very large, broad frame, and a *'big belly.'* He was wearing dark blue clothing. He stated that one of the other men in the car was dressed similarly but was much smaller. He was also carrying a handgun.
- 15.22. Another witness stated that the first gunman was 6'2"-6'4" tall, with a large stomach. He was wearing dark clothing, a mask, and carrying a handgun. The mask only came down to his chin. A second gunman was approximately 5'10" tall and of slim build. He was wearing dark clothing and armed with a handgun. The witness stated that the first gunman pointed his gun in the air and fired a shot, prior to firing two shots through the driver's window. The second gunman then opened the driver's door and fired two shots into the car. After the shooting, the car they were travelling in performed a *'u-turn'* in the street before driving off.
- 15.23. Other members of the public witnessed various parts of the attack and provided statements to police. A number of them described a blue car, possibly a Ford Orion, following the blue Renault 9 used by the gunmen. Police subsequently traced this vehicle and eliminated it from their enquiries. It was not connected to the attack.
- 15.24. Following the murder, a car connected to Person K was observed in the vicinity of Moneydig Presbyterian Church. However, the individuals who informed police of this sighting declined to provide statements. At approximately 6:31pm, Persons G and K were stopped in the same vehicle at a police VCP in the Coleraine area. Person K informed police officers at the VCP that he had been using the car all day.
- 15.25. Police traced the previous owner of the Renault 9 car, an Eglinton-based car dealer. He stated that he sold the car on 10 March 1992 to a man who he described as aged in his 20s, approximately 5' 7" tall,

and of slim build. The buyer informed him that he was from Kilrea. Police conducted further enquiries and established that the details supplied by the buyer were false. The relevant sales invoice was recovered but not forensically examined as the buyer had not touched it.

### **Identification**

- 15.26. All the witnesses described the gunmen as wearing balaclava masks. This limited identification strategies in respect of suspects who were later arrested. My investigators interviewed the car dealer who sold the blue Renault 9 car used in the murder. He stated that both he and a member of his staff provided police with descriptions of the man who bought the car. He stated that police did not ask him to view any suspect photo albums or assist in creating a photo-fit image of this individual. He added, however, that he had only been able to provide a general description of the man, given the number of customers he dealt with every day.

### **Forensic Examinations**

- 15.27. The discharged cartridge cases recovered at the scene of the murder were examined for fingerprints but none were found. Nothing of evidential value was identified following the forensic examination of Mr Cassidy's Peugeot car. There were no fingerprint marks recovered from the Renault 9 car abandoned at Moneydig Presbyterian Church.
- 15.28. A forensic examination of the Renault 9 car established that petrol had been poured around its interior with the intention that this would be ignited by the two incendiary devices. However, only the surface of the rear seats sustained any fire damage. This allowed for the recovery and forensic examination of three balaclavas. A number of hairs and tape liftings were taken from each of them.

- 15.29. Police asked NIFSL if any evidential links could be made between the blue Renault car and three suspects, Persons J, K, and O. The examining Forensic Scientist concluded that there was no link although a single, incomplete hair recovered from one of the balaclavas displayed some similarities to the head hairs of Person K. The recovered hairs were of a fragmentary nature and of limited evidential value, bar the colour of a hair recovered from the balaclava fell within the colour range of Person K's hair. The Forensic Scientist added that the balaclavas had probably been worn on more than one occasion.

### **Ballistics**

- 15.30. The forensic examination concluded that there were two weapons used in the murder. The first weapon was a Browning 9mm pistol, previously used in the murder of Eddie Fullerton. The second weapon was a Radom 9mm pistol that had no history of previous use. The Radom pistol was recovered during a police search at Bishops Road, Downhill, on 8 April 1993, having been subsequently used in the Castlerock murders. The Browning pistol has never been recovered.

### **House-to-House Enquiries and Searches**

- 15.31. Police conducted house-to house enquiries in Coleraine Street and adjacent residential areas. They also visited addresses along the route between Coleraine Street and Moneydig Presbyterian Church, where the blue Renault 9 car was abandoned. A number of witnesses were identified and statements recorded from them, as referred to earlier in this public statement. Specialist police teams searched hedgerows and grass verges along the route. My investigators were unable to establish whether anything of evidential value was recovered during these searches.

## **Intelligence**

- 15.32. I am of the view, given the relevant intelligence that police could not have prevented, or forewarned of, the murder of Mr Cassidy. Police received limited intelligence following the attack, indicating that a North West UDA/UFF unit under the control of Person B committed the murder.
- 15.33. Intelligence was also received from republican circles, suggesting a number of individuals who may have been involved. One of these was Person Q. Police Officer 2 focused his arrest strategy around known North West UDA/UFF suspects.

## **Arrests**

- 15.34. Persons J, K, and O were arrested in early April 1992 and interviewed about the murder of Mr Cassidy and attempted murder of James McCarriston. Persons J and O denied being involved and provided alibi witnesses for the time of the murder. Person K also denied being involved. They were all subsequently released without charge.
- 15.35. Persons A, B, and G were also arrested in April 1992. All denied being involved and provided details of their movements on the date of the murder. Person N was arrested in June 1992 but, again, denied being involved. They were all subsequently released without charge. Person CC was arrested in October 1992 but provided an alibi witness and was later released without charge.
- 15.36. Police took hairs samples from each of the above suspects which were forwarded to NIFSL for comparison against hairs recovered from the balaclavas found in the abandoned Renault 9 car. I have referred to these examinations earlier in this public statement.

## **Previous Complaints to the RUC**

15.37. My Office has not received any public complaints made to the RUC about the police investigation regarding the murder of Mr Cassidy. However, there were a number of previous complaints which my investigators have reviewed.

**Mr Cassidy's family alleged that, following his murder, the security forces colluded with the loyalist paramilitaries who were responsible. These allegations were made against both the RUC and UDR.**

15.38. The Inquest into Mr Cassidy's murder was heard at Coleraine Courthouse on 18 May 1992. During it, the solicitor representing Mr Cassidy's family alleged that the RUC and UDA/UFF had colluded in his murder. He specifically alleged that Mr Cassidy had been harassed by members of a RUC Mobile Support Unit (MSU) based at Garvagh RUC Station.

15.39. The solicitor referred to an incident when Mr Cassidy was stopped at a VCP in Kilrea. It was alleged that an identified RUC Sergeant assaulted Mr Cassidy and told him that he *'would put a hole in his head big enough to put his fist through.'* On another occasion, it was alleged that other members of the same MSU had threatened to kill Mr Cassidy. Both of these alleged incidents occurred a week before Mr Cassidy's murder.

15.40. My investigators were unable to locate RUC documentation relating to either of these complaints. Enquiries with PSNI were unable to identify the RUC Sergeant who was alleged to have assaulted Mr Cassidy. PSNI held no records relating to any individual of that name and rank having been attached to a MSU in 1992.

**Allegations were made at the Inquest about the poor crime scene examination of Mr Cassidy's car.**

- 15.41. A relative of Mr Cassidy's stated that, when he collected the car from Garvagh RUC Station on 8 April 1992, he found a bullet in it. This complaint led to a RUC Complaints and Discipline Branch investigation regarding the initial crime scene examination of Mr Cassidy's car. As a result of this investigation, the SOCO who carried out the relevant examination received a disciplinary sanction.
- 15.42. The allegations made by the late Councillor Dallat were investigated by the RUC's Complaints and Discipline Branch who forwarded a file of evidence to the DPP. The DPP subsequently directed 'No Prosecution' against any police officer subject to investigation. The investigation was supervised by the Independent Commission of Police Complaints (ICPC) who, following the DPP direction, decided that no disciplinary action be taken against any police officer subject to investigation. Similarly, no criminal or disciplinary proceedings were initiated in respect of the complaint by Mr McGrath.
- 15.43. Due to these matters having been the subject of previous investigations, and in the absence of any new evidence, I am unable to re-investigate these complaints. However, this investigation has considered these complaints when looking at the wider allegations of collusion made in respect of the attacks which are outlined in this public statement. The issue of collusion is dealt with in detail at Chapter 22 of this public statement.

**Summary**

- 15.44. Mr Cassidy was murdered by the UDA/UFF who claimed that he was a leading PIRA member. Three men were involved in the murder although others may have performed supporting roles.



- 15.45. A significant number of witnesses were identified and interviewed by police. None of them, however, were able to provide facial descriptions of the gunmen as they wore balaclava masks. One of the gunmen, however, had a distinctive build. I have been unable to establish why the original owner of the car used in the attack was not asked by police to participate in identification processes.
- 15.46. Police responded quickly to the incident although there were concerns regarding the actions of an off duty Constable, Police Officer 17. At the relevant Inquest, questions were asked as to why he did not attempt to apprehend the gunmen following the attack. It was established that his PPW was in the boot of his car at the time of the murder. He stated that this was the reason why he did not intervene and, instead, drove to the nearest police station to report the attack.
- 15.47. The relevant crime scenes were identified and forensically examined. A number of items were recovered and submitted to NIFSL for further examination. This led to the two weapons used in the attack being identified. Other forensic evidence was identified, however police considered that it not sufficient evidence to merit charges being brought against any individual.
- 15.48. Police arrested eight individuals who were all suspected North West UDA/UFF members, including Person B, on suspicion of Mr Cassidy's murder. They were all interviewed, denied the allegations, and subsequently released without charge. A number of them were arrested in respect of other attacks referred to in this public statement.

## 16.0

# The Attempted Murder of Patrick McErlain – The RUC Investigation

- 16.1. Mr McErlain was 26 years old at the time of the attack. He lived in Dunloy with his wife and two children. He was employed as a joiner. His wife, Margaret, was a former Sinn Féin councillor who came from a republican family in the village. Her brother and another local man were shot dead by the military in February 1984.
- 16.2. Investigators from my Office attempted to liaise with Mr McErlain and update him about the progress of this investigation. He did not make a formal complaint in respect of the attack and efforts to engage with him have proven unsuccessful. However, this attack was included in the overarching investigation due to a number of evidential and intelligence links to other attacks in this series.
- 16.3. At approximately 7:10am on 28 August 1992, Mr McErlain was driving to work in his dark green Renault 18 car, accompanied by his brother, Brendan. They travelled along the Bellaghy Road towards Ballymena and were approximately three miles outside Dunloy when the attack occurred.
- 16.4. Approximately half a mile from the Killagan Road junction, they approached the brow of a hill where a brown Austin Princess car was parked unattended on their side of the road facing towards them. Mr McErlain reduced his speed in order to pass the stationary vehicle. As he did so, a masked gunman armed with a VZ58 assault rifle stepped out from a hedgerow opposite the Austin Princess and opened fire.

- 16.5. Mr McErlain saw the gunman and shouted a warning to his brother, before accelerating past the Austin Princess. He was shot in the left thigh, right leg, body, and left arm, sustaining serious injuries. Despite this, he retained control of the car and drove on for another mile before colliding with a fence on the Killagan Road. His brother was uninjured. They raised the alarm at a nearby house, from where the emergency services were telephoned.
- 16.6. Mr McErlain was taken by ambulance to a local hospital and later transferred to the Royal Victoria Hospital in Belfast. His brother told police that the gunman was around 5'9" tall, of stocky build, and wearing a cream/brown-coloured three quarter length jacket.
- 16.7. At approximately 8:50am, the Austin Princess car was found burnt out on the site of a disused garage at Killagan Road, approximately half a mile from where the attack had taken place.
- 16.8. At 12:40pm, a male telephoned the BBC newsroom, using a recognised codeword, and stated, "*The UFF admit responsibility for this morning's assassination bid on Paddy McErlain a leading figure in PIRA in North Antrim and South Derry Brigade.*" Although police arrested four people and questioned them about the attack, no individual has ever been prosecuted for the attempted murder of Mr McErlain.
- 16.9. This investigation has established that police held intelligence indicating that Mr McErlain was a senior PIRA member linked to a number of paramilitary attacks in the Dunloy area. Between March 1986 and October 1991, he was arrested eight times under terrorist legislation but released without charge on each occasion.

## Initial Police Response

- 16.10. At approximately 7:35am, the first police officers arrived and secured the scene. A Serious Incident Log was opened and a uniformed Inspector attended who co-ordinated initial enquiries until detectives arrived.
- 16.11. A senior detective, Police Officer 1, arrived at approximately 8:15am and took responsibility for the investigation. The scene was forensically examined by a SOCO who recovered 18 discharged 7.62mm cartridge cases. These were submitted to NIFSL for further examination. The area was photographed, mapped, and searched by police.
- 16.12. Police attended the scene at Killagan Road where Mr McErlain lost control of his car and collided with a fence, prior to seeking aid at a nearby house. The occupier of the house stated that Mr McErlain was conscious but unable to speak when he first saw him. He had a severe wound to his left thigh. The occupier then telephoned the emergency services at 7:33am. Mr McErlain was taken to hospital, where a number of bullet fragments were later recovered from him. These were also submitted to NIFSL for further examination.
- 16.13. Mr McErlain's Renault car was examined at the Killagan Road scene. The driver's window was broken, with bullet holes along the driver's side and beneath the boot lid. There was minor damage to the front of the car, where it had collided with the fence. It was photographed and then removed for further forensic examination. Nothing of an evidential value was recovered from it.
- 16.14. Police attended the disused garage where the Austin Princess car was found abandoned. At 7:30am, a local resident had noticed a fire at the rear of this site. When they had went to look, they found the

Austin Princess on fire. They noted the vehicle registration number before the fire fully took hold. Police attended the scene and the car was photographed and forensically examined. Nothing of an evidential value was recovered from it.

### **RUC Investigation Team**

- 16.15. A Major Incident Room was set up at Ballymena RUC Station and the investigation was managed on the paper-based MIRIAM card index system. A Detective Superintendent, Police Officer 1, led the investigation, supported by a Detective Inspector, Police Officer 18, and a team of 12 detectives.

### **Witnesses**

- 16.16. Police conducted house-to-house enquiries both at the scene of the attack and where the Austin Princess car was abandoned. Other witness enquiries were conducted in the wider Dunloy and Ballymena areas. A total of 134 witness questionnaires were completed.
- 16.17. On 4 September 1992, police carried out a reconstruction. VCPs were set up between 6:00am and 7:30am in Dunloy and on the Killagan Road and Frosses Road. Motorists were asked if they had been in the area at the time of the attack. This led to a number of individuals being identified who observed the Austin Princess in the area prior to the shooting.
- 16.18. A number of media appeals were made, one focused on attempting to identify previous owners of the Austin Princess car. The attack featured on the 'Police Six' television programme, which included footage of all three scenes.

- 16.19. By 29 August 1992, Mr McErlain had sufficiently recovered from his injuries to be interviewed by police in hospital. He provided them with a verbal account but declined to make a witness statement. He also referred to a suspicious vehicle which had followed him three days prior to the attack. He declined to provide more specific details unless his solicitor was present.
- 16.20. On 10 September 1992, police again interviewed Mr McErlain in hospital, this time in the presence of his solicitor. On this occasion he provided a witness statement. He stated that a silver Ford Sierra car had followed him on the morning of 25 August 1992 from Ballee to the M2 roundabout at Antrim. He provided two possible registration numbers for the car, adding that its rear window was fitted with a red brake light strip or '*disco type*' light.
- 16.21. A Bellaghy Road resident informed police that she had been in bed on the morning of the attack when she heard gunshots. She had looked out of a window and heard a car start up before it drove past her house. The car was brown and the driver looked up towards her house as he drove by. She described him as aged between 25-30 years old, well built, with '*blackish*' short hair. She provided police with a verbal account but declined to make a witness statement.
- 16.22. Another witness informed police that she observed a brown Austin Princess car in the Ballymena area at approximately 6:50am on the morning of the attack. There were several men in the car. This investigation has been unable to establish what, if any, action police took in respect of this information.

### **Vehicles**

- 16.23. The last known owner of the car, Witness Q, was traced and interviewed by police. He stated that he had advertised the car for

sale in the 'Belfast Telegraph' during April or May 1992. Two men, accompanied by a small child, had called to view the car at approximately 10:30pm on 7 May 1992. Witness R, the wife of Witness Q, had shown the men the car which they agreed to buy after a test drive.

- 16.24. Witness R described the first male as approximately 35 years old, 5'2" to 5'4" tall, with sandy-coloured hair and a pale complexion. The second male was approximately 35 years old, 6' tall, well built, with black hair, and a sallow complexion. When Witness R spoke to them, the second male mentioned the Tates Avenue area of South Belfast, leading her to believe that he came from there. They agreed a price of £170 for the car which the second male paid for in cash. The first male then drove the car away.
- 16.25. Witness R later recalled that one of the men told her that they had looked at a similar car prior to calling at her address. Witness Q stated that he believed a similar make and model of car was advertised for sale at around the same time.
- 16.26. This resulted in police conducting further enquiries where they established that a second Austin Princess car had been advertised for sale in the Belfast Telegraph at around the same time. They traced its owner, Witness S, who stated that he had placed an advertisement in the newspaper on 7 May 1992. Two men called to view it at 6:30pm that evening but did not buy the car due to it having a faulty clutch mechanism.
- 16.27. Witness S stated that the man who had telephoned to arrange the viewing mentioned being from the Rathcoole area of Belfast. When the two men called to view the car, one of them took it for a test drive. Witness S could not describe this man other than he was younger than the second man who remained with him. He described

the second man as aged around 35 years old, 5'8" tall, with short, thick black hair, and possibly a moustache. He had an English accent and said that he was employed as a lorry driver for a nearby building company. The men had arrived at the address in a blue Mini car. Police subsequently contacted the relevant building company but my investigators have been unable to establish the outcome of this enquiry.

- 16.28. On 3 September 1992, police showed Witness R a photo album of 80 suspected loyalist paramilitaries from the Greater Belfast area. She was unable to identify either of the men who had purchased the car from her. On 15 September 1992, she was shown a further photo album of suspected loyalist paramilitaries from the Rathcoole area but again was unable to identify any individual.
- 16.29. On 17 September 1992, Witness S was shown the same photo album of Rathcoole suspects but was unable to identify any individual. Police conducted enquiries at Donegall Pass RUC Station to determine if the Austin Princess car had been sighted in the Tates Avenue area. Despite the vehicle having been sold more than three months before the attempted murder of Mr McErlain, there were no records of any sightings.
- 16.30. Police conducted enquiries with the Central Vehicle Index (CVI) to identify Ford Sierra cars with vehicle registration numbers similar to those on the car Mr McErlain claimed followed him three days before the attack. Police identified 15 vehicles of interest and enquiries were made as to whether any of them were linked to loyalist paramilitaries. This line of enquiry led to the arrest of Person B in October 1992.



## **Ballistics**

- 16.31. Mr McErlain's Renault car was forensically examined and four bullet strike marks were located. Two of these were on the driver's side, one on the passenger side, and one on the boot lid. Several small copper bullet fragments were also recovered from the driver's seat and the interior of the boot.
- 16.32. All 18 7.62mm discharged cartridge cases recovered from the scene were of Chinese manufacture and had been fired from a VZ58 assault rifle.
- 16.33. In late September 1992, the security forces conducted a search of derelict farm buildings at Carnelis Road, near Mosside, County Antrim. Two VZ58 assault rifles were recovered, in addition to a sawn-off shotgun, homemade sub-machine gun, magazines, and a substantial quantity of ammunition.
- 16.34. The recovered weapons were forensically examined. It was established that one of the VZ58 assault rifles had been used in the murder of Patrick Shanaghan and attempted murder of Mr McErlain. The second rifle had no history of previous use.

## **Intelligence**

- 16.35. This investigation has identified no intelligence that could have prevented, or forewarned of, the attack on Mr McErlain.
- 16.36. Intelligence was received following the attack that Person Q was involved. Information was also received that Mr McErlain informed family and friends that he recognised Person Q as the gunman. Later intelligence indicated that South Derry PIRA intended to take retaliatory action against Person Q. He was warned by police about

this threat on 31 August 1992. Person Q was shot dead by PIRA in April 1994.

- 16.37. In late 1992, police received intelligence that Persons B and S may have been involved in the attack. This intelligence was forwarded to detectives investigating the shooting.

### **Suspects and Arrests**

- 16.38. Police made enquiries to identify potential suspects from the Tates Avenue area of South Belfast, based on the information provided by Witness R. Two men from the Tates Avenue area, with links to loyalist paramilitaries, were identified.
- 16.39. My investigators established that a photograph of one of these men was included in the suspect photo album shown to Witnesses R and S. Police did not have a photograph of the second man to include in the album. My investigation has been unable to establish if police made any further enquiries in respect of either man.
- 16.40. As stated previously, enquiries conducted with the CVI identified 15 Ford Sierra cars with vehicle registration numbers similar to the one Mr McErlain believed followed him three days before the attack. One of these vehicles was owned by Person B, a suspected member of North West UDA/UFF. On 6 September 1992, police stopped Person B in this car. Upon inspection, there was no light fitted in the rear window of the type described by Mr McErlain.
- 16.41. In late October 1992, Person B was arrested on suspicion of the attempted murder of Mr McErlain. He denied being involved and was subsequently released without charge. Police arrested Person A, a close associate of Person B, on the same date but he was also later released without charge.

16.42. Two other men in police custody at the same time were also interviewed about the attack, but both denied being involved. They were later released without charge. This investigation has been unable to establish why these men were arrested. My investigators has been unable to establish if Person Q was ever arrested on suspicion of the attempted murder of Mr McErlain. This investigation has established that Person S was arrested after a period of being 'on the run'.

### **Summary**

16.43. The shooting of Mr McErlain had a similar '*modus operandi*' to the murder of Patrick Shanaghan on 12 August 1991. Both men were driving to work along a route they regularly took. They were both targeted by a lone gunman with a VZ58 assault rifle. The same weapon was used in both attacks. It was recovered during a search at Carnelis Road, Mosside, in late September 1992. It was forensically examined but nothing of an evidential value was found.

16.44. I am of the view, given the available evidence, that all three scenes were managed in a professional and thorough manner. This resulted in all the available forensic evidence being recovered. The available intelligence was shared with detectives investigating the attack. There was limited witness and forensic evidence. Police arrested four individuals but they all denied being involved and were subsequently released without charge. I have been unable to establish if Person Q was ever arrested and interviewed about the attempted murder of Mr McErlain. I have also been unable to establish if police conducted enquiries regarding the sighting of a brown Austin Princess car in the Ballymena area on the morning of the attack.

## 17.0

# The Murder of Malachy Carey – The RUC Investigation

- 17.1. Mr Carey was 36 years old when he was murdered. He was single and lived in Loughguile, County Antrim. He was shot at approximately 5:40pm on 12 December 1992 as he was walking along Victoria Street, Ballymoney. He was on his way to meet his girlfriend who worked nearby when a lone gunman stepped out of a doorway. Mr Carey struggled with the gunman who fired five shots, striking Mr Carey once in the stomach.
- 17.2. The gunman ran towards John Street where a witness saw him get into a black Ford Granada car. This car, driven by a second man, then drove away.
- 17.3. Mr Carey was taken by ambulance to Coleraine Hospital where he underwent emergency surgery. His condition deteriorated during the night and he died at 4:40am the following morning.
- 17.4. The State Pathologist for Northern Ireland carried out a post-mortem examination at Coleraine Hospital on 13 December 1992. He concluded that the cause of death was *'intra-abdominal haemorrhage due to a bullet wound of abdomen.'*
- 17.5. At 9:20am on 13 December 1992, a male caller, using a recognised codeword, telephoned the BBC newsroom to claim that the Ulster Freedom Fighters (UFF) were responsible for Mr Carey's murder.
- 17.6. My investigators have viewed intelligence held by police at the time which indicated that Mr Carey was a senior PIRA member. In November

1977, he was convicted of PIRA membership, robbery, and a number of firearms and explosives offences. He was sentenced to 15 years imprisonment and was released in October 1986.

- 17.7. In early December 1989, police warned Mr Carey about a possible threat to his personal safety. This related to his personal details having been found in a loyalist intelligence 'cache' discovered in the Derry/Londonderry area in early November 1989. I have referred to this matter earlier in this public statement. The warning was delivered to his brother as Mr Carey was living in Dublin at the time.
- 17.8. My Office has not received a public complaint relating to the murder of Mr Carey.

#### **Initial Police Reponse**

- 17.9. At 5:44pm on 12 December 1992, police were notified of the shooting. Police and an ambulance crew attended the scene within minutes. Mr Carey was taken to Coleraine Hospital where he underwent emergency surgery.
- 17.10. The scene was secured and an Incident Control Point was established. A Serious Incident Log was commenced and Police Officer 2, a Detective Chief Inspector, attended and took responsibility for the investigation. He made a decision to hold the scene overnight so that a full forensic examination could be carried out the following day.
- 17.11. Witness T was a passenger in a car on John Street when she observed the gunman, wearing a hood, running from the direction of Victoria Street. She stated that the gunman got into the front passenger seat of a black Ford Granada car which then drove off. She recognised the driver, who she identified as Person R. She was unable to describe the gunman.

- 17.12. Police arrested Person R at an address in the Ballymoney area later on 12 December 1992. The black Ford Granada car was parked outside and was recovered for forensic examination. I will address the arrest of Person R later in this public statement.
- 17.13. The Victoria Street scene was photographed, mapped, and forensically examined on 13 December 1992. Military weapons experts and a police dog handler also attended to provide assistance. The SOCO examining the scene found five discharged .22 cartridge cases. He also recovered two damaged bullet heads and a bullet fragment from the hallway and porch of a house adjacent to the scene. The scene was examined for fingerprints but none were identified.

### **RUC Investigation Team**

- 17.14. A Major Incident Room was set up at Ballymoney RUC Station and the enquiry was managed using the paper-based MIRIAM card index system. It was later transferred onto the HOLMES computer system. My investigators reviewed a substantial amount of RUC documentation. This included two Policy Logs used by senior police officers to document key investigative decisions. Police recorded 37 witness statements and completed 66 investigative actions during the RUC investigation.

### **Witnesses**

- 17.15. Police carried out house-to-house enquiries in Victoria Street and at addresses in the surrounding area, including where the gunman was seen getting into a car on John Street.
- 17.16. In addition to Witness T, several other individuals saw the gunman but none of them could provide a facial description. One witness saw two men acting suspiciously in the area prior to the attack. He was shown a photograph of Person R but did not recognise him and declined to take

part in an Identification Parade. Another witness observed the same two men but my investigators have been unable to establish if she was asked to attend an Identification Parade.

- 17.17. Police Officer 1 made a Policy Log entry indicating that, when Person S was in police custody, police contacted five witnesses who had observed the gunman. They all declined to take part in an Identification Parade. My investigators have been unable to establish their reasons for not wishing to participate.
- 17.18. Following their arrests, police seized the clothing of Persons R and S, which were forensically examined for transfer fibres from Mr Carey's clothing. These examinations proved negative.

### **Ballistics**

- 17.19. The weapon used to murder Mr Carey was a Star .22 pistol which had previously been used in the murder of Bernard O'Hagan and attempted murder of James McCorrison. It had been a PPW which was stolen from a former UDR member during an armed robbery near Dungiven in 1975. It has never been recovered.

### **Intelligence**

- 17.20. I am of the view, given the available intelligence, that police could not have prevented, or forewarned of, Mr Carey's murder. Police received limited intelligence following the attack. Person R told police during after caution interviews that Person S was the gunman. He added that Person B sanctioned and organised the attack, and he purchased the car used in it from Person K. This information led to police arresting Persons B and S. My investigators have been unable to establish why Person K was not arrested.

17.21. Police received intelligence in September 1989 indicating that the North West UDA/UFF had been targeting Mr Carey and another individual. My investigators have been unable to establish whether or not Mr Carey was informed of this specific threat. Mr Carey was informed of a threat on 9 December 1989, after information relating to him was found in a loyalist intelligence 'cache' in the Derry/Londonderry area.

### **Suspects and Arrests**

17.22. Following his arrest, Person R implicated Persons B and S in Mr Carey's murder. Person R stated he joined the UDA/UFF in 1987. He was initially involved in collecting money for loyalist prisoner welfare but later became acquainted with Person B.

17.23. Person R informed police that Person B asked would he take part in a 'wee run' for him on 12 December 1992. He agreed, adding that he knew he was being asked to assist in a 'hit.' On 11 December 1992, Person B instructed him to pick up Person S the next day and drive to Ballymoney. The following lunchtime he purchased the black Ford Granada car to be used in the attack from Person K for £550.

17.24. He stated that, on 12 December 1992, he dropped off Person R in Ballymoney and waited for him. Shortly after 5:30pm, Person S returned to the car, his face concealed by a hooded jacket. He then drove Person S home. On the journey, Person S informed him that the attack had been 'successful.' He later received a telephone call from Person B, enquiring about the attack.

17.25. On 15 December 1992, Person R was charged with the murder of Mr Carey and membership of the UDA/UFF.

17.26. Person S evaded police until they received information as to his whereabouts and arrested him at an address in the Waterside area of



Derry/Londonderry in early February 1993. Person H was arrested at the same time. The information provided by Person R was evidentially inadmissible because it was made during a criminal interview about a co-accused individual.

- 17.27. During their respective police interviews, Persons S and H both denied any knowledge of the murder. They were subsequently released without charge as was Person B who was arrested on a later date in February 1993.
- 17.28. This investigation has established that Person K was arrested in March 1993 following the Castlerock murders, however it is not clear whether he was questioned about the murder of Mr Carey. The black Ford Granada car used in the attack was registered in his name.
- 17.29. In June 1993, Person R was convicted of the murder of Mr Carey, in addition to UDA/UFF membership. He was sentenced to life imprisonment.

### **Summary**

- 17.30. The RUC investigation of Mr Carey's murder centred around the evidence of Witness T, who identified Person R as the driver of the black Ford Granada 'getaway' car. During subsequent police interviews, Person R implicated Persons B, K, and S as having been involved in either the planning or commission of the murder.
- 17.31. Persons B and S were both arrested but denied being involved in the murder. Police did not charge either of them due to lack of evidence. The reluctance of a number of witnesses to participate in Identification Parades did not assist the RUC investigation.

17.32. My investigators have been unable to establish why police did not arrest Person K about the sale of the black Ford Granada car on the day of the murder. Person K was regarded by police as a member of the North West UDA/UFF and was arrested on suspicion of a number of other attacks referred to in this public statement.

## 18.0

# The Castlerock Murders – The RUC Investigation

- 18.1. At approximately 9:00am on 25 March 1993, James Kelly, James McKenna, Robert Dalrymple, and Noel O’Kane were shot dead as they arrived for work at Gortree Park, Castlerock. A fifth man, Gerard McEldowney, was also shot but survived the attack.
- 18.2. The five men were employed by Maghera Fireplaces, a company which had been completing sub-contract work on behalf of the Northern Ireland Housing Executive (NIHE) in the Castlerock area.
- 18.3. At approximately 7:30am, they left their employer’s yard in Maghera in a red Ford Transit works van. They had been working at the Gortree Park site since late November 1992. They collected some building supplies en route and arrived at Gortree Park just before 9:00am. James McKenna was driving the van, James Kelly and Gerard McEldowney sat alongside him in the front passenger seat. Noel O’Kane and Robert Dalrymple were in the rear of the van.
- 18.4. As the van parked in front of a builders’ skip outside 7 Gortree Park, a blue Ford Transit van pulled up alongside it. Two masked gunmen got out of the blue Ford Transit van and opened fire on the five men. One of them stood in front of the red van and opened fire from close range, while the second gunman opened the side door of the van, firing into the rear of it. Witnesses later stated that one of the gunmen was firing two handguns simultaneously.
- 18.5. Gerard McEldowney climbed over the front seat into the rear of the van but was shot in the thigh. He wedged himself between two metal tool

boxes, protecting himself from further injury. James McKenna and James Kelly were both shot a number of times and died at the scene. Robert Dalrymple and Noel O’Kane were also shot multiple times. They were taken to Coleraine Hospital but later died as a result of their injuries.

- 18.6. Following the shooting, the two gunmen got back into the blue Ford Transit van, which was being driven by a third man. It drove further into Gortree Park where it turned, before driving back past the scene of the attack and out of the development. Witnesses stated that the driver leaned out of the window and shouted ‘*Up the UFF,*’ as he drove past.
- 18.7. The UDA/UFF later claimed responsibility for the attack stating, ‘*This morning our volunteers executed James Kelly and two accomplices at Castlerock. Kelly was OC of PIRA in the Maghera area. The UFF wish to state, that so long as the SDLP continues to exercise a political veto on political progress in Ulster, courtesy of PIRA violence, and so long as Sinn Fein/PIRA continue to act as the military wing of Irish nationalism, then so long will our war against them continue and intensify.*’
- 18.8. PIRA later confirmed that James Kelly was one of its members. None of the other victims had any paramilitary connections.
- 18.9. James Kelly was 25 years old at the time of his murder. He was single and lived in Maghera. He was a plasterer by trade and employed by Maghera Fireplaces. At the time, police were in possession of intelligence indicating that he was a senior PIRA member. He had been arrested a number of times under terrorist legislation on suspicion of involvement in serious paramilitary activities. He was the subject of regular sighting reports by the security forces. One of these, submitted shortly before the attack, stated that he was working at the Gortree Park site.

- 18.10. In September 1992, police notified Mr Kelly of a threat against him after a regional newspaper reported that a security forces photo montage was in the hands of loyalist paramilitaries. The montage contained the details of suspected PIRA members, including those of Mr Kelly. This incident is referred to in Chapter 5 of this public statement.
- 18.11. James McKenna was 52 years old at the time of his murder. He was married with four children. He lived in Maghera and was employed as a labourer with Maghera Fireplaces. He had no paramilitary connections.
- 18.12. Robert Dalrymple was 58 years old at the time of his murder. He was married with five children. He lived in Rasharkin and was employed as a joiner with Maghera Fireplaces. He had no paramilitary connections.
- 18.13. Noel O’Kane was 21 years old at the time of his murder. He was single and lived at home with his parents in Upperlands, outside Maghera. He was one of nine children and was employed as a labourer with Maghera Fireplaces. He had no paramilitary connections.
- 18.14. Gerard McEldowney was 36 years old at the time of the attack. He was married and lived in Maghera. He was employed as a foreman/joiner with Maghera Fireplaces. He had no paramilitary connections.

### **Initial Police Response**

- 18.15. The first police officer to attend the scene arrived at 9:05am. He immediately requested further assistance before establishing from witnesses that a blue van had been involved in the attack. He was provided with a partial vehicle registration number for it, which he circulated via a radio transmission. Other police attended and provided first aid to Mr McEldowney, who had sustained a gunshot wound to his left leg. The first ambulance arrived at 9:10am.

- 18.16. A local doctor attended at 9:20am and examined Messrs Kelly and McKenna, confirming that they were both dead. Noel O’Kane and Robert Dalrymple were both alive, but seriously wounded, so were taken by ambulance to Coleraine Hospital, where they later died from their injuries.
- 18.17. The scene was secured and a Serious Incident Log opened. By 9:30am, VCPs had been set up at the Mountsandel Roundabout and at Windyhall Road, outside Coleraine. Police Officer 1, a Detective Superintendent, attended and took responsibility for the investigation, assisted by Police Officer 16, a Detective Inspector. The scene was forensically examined by a SOCO, assisted by a Forensic Scientist. The red Ford Transit works van was removed to NIFSL for further examination.
- 18.18. At 9:22am a witness contacted police, having observed a vehicle on fire at Springbank Road, Coleraine. When police attended they discovered a blue Ford Transit van on fire. This was later confirmed as the one used in the attack. This scene was secured and later examined by a SOCO and a Forensic Scientist.

### **RUC Investigation Team**

- 18.19. A Major Incident Room was set up at Garvagh RUC Station and the investigation managed on the HOLMES computer system. A total of 56 police and civilian staff worked on the RUC investigation. The enquiry generated 298 investigative actions, 137 messages, 128 documents and 135 witness statements. The final investigative action was issued on 20 July 1994.

## **Post-Mortem Examinations**

- 18.20. All four post-mortem examinations were conducted at Coleraine Hospital by the Deputy State Pathologist for Northern Ireland. He concluded that James Kelly died from multiple gunshot wounds to the head and chest. James McKenna died from multiple gunshot wounds to the chest. Noel O’Kane died from gunshot wounds to the head, and Robert Dalrymple died as a result of a single gunshot wound to the chest.
- 18.21. Several bullet heads and fragments were recovered from the victims and their clothing during the post-mortem examinations. These were submitted to NIFSL for examination along with a bullet head recovered from Gerard McEldowney’s hip. Forensic examinations established that three weapons were used in the attack. They were all later recovered during a police search at Bishops Road, Downhill, on 8 April 1993.

## **Witnesses**

- 18.22. The attack received widespread local, national, and international media coverage. Police appealed for information via local newspapers, radio, and television. On 1 April 1993, a reconstruction was staged. Vans similar to those driven by both the victims and their attackers were used to re-create the known movements of each vehicle prior to the attack.
- 18.23. Police stopped and interviewed motorists at Freehall Road, Mussenden Road, Ballymadigan Road, Ballywoodcock Road, Springbank Road, and Sea Road. A number of witnesses were identified who later provided statements, primarily concerning the movements of the blue van prior to the attack. Police identified 24

witnesses during the reconstruction who held information relevant to the murder investigation.

- 18.24. House-to-house enquiries were conducted in Gortree Park and the surrounding area. Enquiries were also conducted in and around Springbank Road where the blue van was abandoned and set alight. Further witnesses were identified, as a result of these enquiries, who provided statements to police.
- 18.25. Gerard McEldowney stated that he and his work colleagues arrived at Gortree Park at approximately 8:55am. Their van parked behind a skip on the road outside the houses where they were working. James McKenna, who was driving the van, turned the engine off as a blue Ford Transit van pulled up alongside them. A masked man got out of the blue van holding a revolver. Mr McEldowney described the gunman as approximately 6' tall, of heavy build, and wearing a combat jacket and black balaclava. The gunman walked in front of their van, adopted a two handed firing stance, and opened fire.
- 18.26. Mr McEldowney stated that he looked to his left and saw that James Kelly had been shot in the head. He appeared to be dead. Mr McEldowney squeezed through a gap between the driver and passenger seats into the back of the van, at which point he was shot in the thigh. Once in the back, he crawled past Noel O'Kane and Robert Dalrymple and wedged himself between two metal tool boxes in the rear of the van.
- 18.27. Mr McEldowney stated that, as he lay there, the sliding side door of the van opened and he heard more shots being fired into the rear. He heard the gunman shouting, which he described as a roar. Mr McEldowney was struck on the back of the head by a bullet which he believed was a ricochet. The firing stopped and he heard the other van



driving away. After a few minutes he was helped from the van and saw Robert Dalrymple receiving treatment on the pavement.

- 18.28. Witness U worked for Maghera Fireplaces. He stated that he was sitting in his car waiting for his colleagues to arrive at Gortree Park. He observed the company's red Ford Transit van, driven by James McKenna, drive onto the development and park in front of him. Seconds later, a blue Ford Transit van stopped alongside the red van. He stated that a tall man, wearing a black balaclava, got out of the blue van. Witness U realised that something was wrong and lay down across the front seat of his own car. He heard approximately twelve shots and a lot of shouting. Once the gunfire stopped he heard the blue van revving loudly, before driving away at speed.
- 18.29. Witness U stated that he then got out of his car and ran towards his colleagues. He saw that Robert Dalrymple had been shot in the stomach and was lying on the road beside the red van. Witness U looked inside the van and saw that James Kelly and Noel O'Kane had also been shot. He went to their assistance as the gunmen's blue van drove back along the street past them.
- 18.30. Witness V was walking along Gortree Park when she observed a blue van drive past her and stop alongside the red Maghera Fireplaces van. She heard a shot and watched as a tall, heavily built man in a balaclava and boiler suit walked around to the front of the red van. He raised a handgun in both hands and began to fire at the front windscreen. She stated that the van's front passenger door opened and a man fell out onto the ground. The gunman continued to fire shots at this man.
- 18.31. Witness W saw a red van park outside 8 Gortree Park, followed by a blue van which pulled up alongside it. He heard gunfire and shouting and saw two men, wearing dark clothing and balaclavas, standing in front of the red van. Both men were holding handguns in two-handed

stances. They fired numerous shots at the van. When the gunmen stopped firing, they got into the blue van which drove off. Several other witnesses heard gunfire and saw the blue van driving away, but were unable to provide descriptions of the gunmen.

- 18.32. Witness X was driving along Glebe Road at approximately 8:30am, when he saw a blue van driving out of Ballywoodcock Road onto Ballymadigan Road. He drove past the van and had a clear view of the driver who had short to medium length black hair and a 'Mexican' style moustache. He was unable to describe a second male who he observed in the rear of the van. Witness X later assisted police with the production of a photo-fit image of the van driver.
- 18.33. Witness Y was driving out of Castlerock along Freehall Road when he observed a blue Ford Transit van parked at the side of the road, facing towards the town. He described the driver as thin-faced with fine, feminine features. He stated that he drove on towards the Mussenden/Ballymadigan Road crossroads, where he saw a maroon-coloured Austin Maestro turn into Freehall Road and park on a grass verge, facing towards Downhill. Seconds later, Witness Y saw the red Maghera Fireplaces van drive past heading towards Castlerock. He described the driver of the maroon-coloured Maestro as approximately 25-30 years old, 5'6" tall, unshaven with a black bushy moustache. He was stockily built with black, collar length hair.
- 18.34. Several other witnesses saw the blue Ford Transit van parked on the Freehall Road prior to the attack. Its driver was generally described as being aged in his early twenties and slightly built with a thin face. One witness described a front seat passenger in the van as broad shouldered and overweight, with a chubby face.

## **Searches**

- 18.35. Police searched the Gortree Park and Springbank Road scenes, in addition to a section of the Freehall Road where a number of witnesses saw a blue Ford Transit van parked shortly before the attack. Searches were also conducted along the Glebe Road, Drumaquilly Road, Bishops Road, Tircreven Road, Duncrun Road, and Seacoast Road. This included searches of adjacent farmland and derelict buildings. Nothing of evidential value was found during these searches.

## **Vehicles**

- 18.36. Witness Z was the previous owner of the blue Ford Transit van used in the attack. He informed police that he had advertised the van for sale in November 1992 and received several enquiries, including a telephone call from a man in early December 1992. The man told him that he was a plasterer from Dungiven and it was arranged that he would view the vehicle.
- 18.37. The man arrived at the home of Witness Z in a Renault 21 car, accompanied by a second male. After completing a test drive the first man bought the van, paying £450 in cash for it. Witness Z described the man as 5' 6" tall and slightly built. He had dark hair, a thin face, and a small moustache. He wore a chequered flat cap and glasses. Witness Z was unable to describe the second man.
- 18.38. Police attempted to trace the maroon-coloured Austin Maestro observed by Witness Y on the Freehall Road. These enquiries were unsuccessful and neither it nor its driver were ever traced. It is, therefore, not known whether this vehicle was involved in the attack.

## **Forensic Examinations**

### **The Gortree Park Scene**

- 18.39. The following items were recovered from the scene of the shooting:
- I. Four discharged cartridge cases and three bullet heads that had been fired from a .38 Smith & Wesson revolver;
  - II. Seven discharged cartridge cases and numerous bullet heads and bullet fragments that had been fired from a Radom 9mm pistol; and
  - III. Eight discharged cartridge cases and numerous bullet heads and bullet fragments that had been fired from a Walther P5 pistol.
- 18.40. There were six bullet holes in the front windscreen of the red Ford Transit van and bullet holes in its front driver and passenger door windows. It was established that all the shots had been fired at a distance of less than ten feet from the van. The Walther pistol was mostly fired from an area to the front and driver's side of the van. The Radom pistol was fired from the front of the van, but nearer the passenger side. The Smith & Wesson revolver was fired from the passenger side of the van.

### **The Springbank Road Scene**

- 18.41. A number of items were recovered from the burnt out blue Ford Transit van and submitted for forensic examination. These included the vehicle registration plates, samples of a fire damaged cloth, sections of seating, and the remnants of a burnt out carpet. Nothing of an evidential value was identified and no fingerprint marks were recovered. A plaster cast impression was made of a footwear mark found near the van. This was examined by a footwear specialist who

concluded that there was insufficient detail to compare it with footwear seized by police during the course of the investigation.

### **Ballistics**

18.42. On 8 April 1993, police searched an area at Bishops Road, Downhill, where they recovered the three weapons used in the Castlerock attack. These were as follows:

- I. A .38 Smith & Wesson revolver along with a single .38 bullet, and four discharged cartridge cases. Forensic examinations established that it had also been used in the murders of Eddie Fullerton and Thomas Donaghy, in addition to the attempted murder of James McCorriston. It had previously been a PPW that had been stolen from the Garvagh home of a former UDR member in February 1988;
- II. A Polish manufactured Radom 9mm calibre pistol that had previously been used in the murder of Daniel Cassidy. Its origin has never been established; and
- III. A German manufactured 9mm calibre Walther P5 9mm calibre pistol. This was stolen in early March 1993 from a UDR member in the Coleraine area.

All three weapons were examined for fingerprint marks but none were found. A polythene bag, cardboard ammunition box, and 14 rounds of ammunition recovered with the weapons were also tested for fingerprints but, again, none were found.

### **Arrests**

18.43. Police arrested a number of suspected loyalist paramilitaries following the attack. Person K was arrested on 25 March 1993, followed by

Persons H, DD, S, and EE the following day. Persons FF, B, and A were arrested on 28, 29, and 30 March 1993 respectively. Person R was interviewed while on remand for the murder of Malachy Carey.

- 18.44. My investigators were unable to locate police interview records for Person K. However, other RUC documentation indicated that he denied being involved and provided an alibi witness. He was subsequently released without charge.
- 18.45. Person H informed police during interview that he had been in the company of Persons B and K on the day of the attack. He denied being involved and was later released without charge.
- 18.46. Police searched an address in the Macosquin area linked to Person H. They found a piece of torn-up paper containing the name of a suspected PIRA member from the Ballymoney area. This piece of paper was examined for fingerprint marks but none were located. During police interview, Person H denied any knowledge of the piece of paper.
- 18.47. Persons S, DD, and EE all denied having been involved in the murders when arrested. They accounted for their whereabouts at the relevant time and were subsequently released without charge.
- 18.48. Person FF denied being involved in the attack and was released without charge. Person B informed police that he had picked up a friend on the morning of the attack and driven him to the house of Person K to carry out work at the address. He would not name the other person, but it was believed to have been Person H.
- 18.49. Person A denied being involved in the attack or the purchase of the blue Ford Transit van. He was subsequently released without charge. Person R, who was on remand for the murder of Malachy Carey at the

time of the attack, was interviewed by police about the purchase of the blue Ford Transit van. He denied having any knowledge of this matter.

### **Identification**

- 18.50. Identification Parades were held involving Persons A, B, H, S, and FF. Witness Z, the previous owner of the blue Ford Transit van, attended an Identification Parade containing Person G but was unable to identify the man who bought the van from him. Witness Z was also shown a suspect album containing a photograph of Person R, but he did not identify any individual. The same applied to other witnesses who attended Identification Parades containing Persons A, B, H, S, and FF.
- 18.51. Person H was arrested again in November 1993, on suspicion of the attack at the Rising Sun Bar, Greysteel. This time, during police interviews, he admitted his involvement in both the Castlerock and Greysteel attacks.
- 18.52. He stated that he drove the blue Ford Transit van used in the Castlerock murders but would not name any of the other individuals involved. He added that the attack took place because it was believed that James Kelly was a senior member of South Derry PIRA. He regarded the other men in the van as republican sympathisers and, therefore, "*legitimate targets*." Person H stated that his unit had been watching Mr Kelly for some time and knew his work routine.
- 18.53. He stated that, on the morning of the attack, his unit met on the outskirts of Castlerock where the van, weapons, and clothing to be used were distributed. Person H drove the van while the two gunmen, who he would not name, sat in the back. He parked in a layby on the Freehall Road until the Maghera Fireplaces van drove past. He then

followed it to Gortree Park. They were aware that James Kelly always sat in the front of the van.

- 18.54. He pulled up alongside the Maghera Fireplaces van and saw that James Kelly was sitting in the front with two other men. The two gunmen got out and opened fire at the front windscreen, before one of them moved around to the passenger side to *“make sure they got Kelly.”* When the gunmen got back into the van he performed a ‘u-turn’ and drove back past the scene. He raised a fist and shouted *“Up the UFF.”* He then drove, via back roads, to Springbank Road where the van was set on fire.
- 18.55. In February 1995, Person H was sentenced to life imprisonment for his role in the Castlerock and Greysteel murders.

### **Intelligence**

- 18.56. This investigation has established that there was no prior intelligence that could have prevented, or forewarned of, the Castlerock attack. Following it, police received intelligence indicating that PIRA held five individuals responsible for the murders. All five were subsequently arrested and interviewed, but were subsequently released without charge.
- 18.57. The Belfast Telegraph published an article on 27 March 1993, which stated, *‘James Kelly had been previously targeted at the same building site. His father, James Francis Ignatius Kelly, confirmed his son told him of a suspicious incident one week before the murders. A car containing two men drove slowly by the work site. James Kelly became suspicious and ran away when one of the men approached him with his hands in his pocket. No other threatening situations had been noticed at the site.’* My investigators could find no record of this incident having been reported to police.



- 18.58. On 2 March 1993, a police sighting report was submitted documenting that James Kelly had been stopped earlier that day in a Ford Transit van. He was with Noel O’Kane, Robert Dalrymple, and James McKenna. The report described him as a senior PIRA member. On 8 March 1993, two Special Branch officers reported that they had observed James Kelly in the Gortree Park area. Given the intelligence held by police on Mr Kelly, it is clear that they were interested in his movements and activities. This was confirmed by the number of sighting reports submitted in respect of him.
- 18.59. My investigators interviewed one of the Special Branch officers, now retired, who submitted the 8 March 1993 sighting report. He confirmed that Special Branch were aware that Mr Kelly was working in Castlerock in March 1993. They were unaware, however, that he was being targeted by loyalists and the attack came as a surprise to them. He stated that the sighting report would have been submitted as low grade intelligence and disseminated to uniformed officers via the local Intelligence Collator.

### **Allegations of Harassment**

- 18.60. Following the murders at Castlerock, Sinn Féin councillor Patsy Groogan claimed that all four of the victims had been regularly stopped and harassed by the security forces. He stated that he had *“no doubt that this behaviour played a part in targeting these men for assassination.”*
- 18.61. Mr McEldowney made a complaint to my Office, alleging that he and his workmates were stopped, searched, and questioned by police on a daily basis on their way to and from work in the weeks leading up to the attack. He also alleged that, prior to the attack, a prominent loyalist, Person Q, had been observed in the estate monitoring their

movements. He alleged that Person Q was involved in the attack. Mr McEldowney was later arrested on suspicion of the murder of Person Q in April 1994.

- 18.62. Mr McEldowney alleged that, while in police custody, he was told by a police officer that the problem with the Castlerock murders was that he “*didn’t go down the main street in Maghera in a box.*” Police added that they had a sketch of his house and were going to pass this on to loyalist paramilitaries.
- 18.63. The family of the late Noel O’Kane also made a complaint to my Office, detailing a number of allegations. They alleged that he had been regularly harassed by police and threatened that he would be targeted by loyalist paramilitaries if he did not become an informant.
- 18.64. My investigators were unable to locate any documentation detailing police interactions with the victims prior to 25 March 1993, other than the police sighting reports, dated 2 March 1993 and 8 March 1993.
- 18.65. I am unable to determine whether or not the actions of police amounted to harassment that is a matter for the Courts. I can however, form a view as to whether the complaints of Mr McEldowney and the families of Mr Kelly and Mr O’Kane are legitimate and justified based on the narrative established by an investigation into their complaints.
- 18.66. Due to the lack of available documentation, I am unable to conclude on this aspect of Mr McEldowney and the families of Mr Kelly and Mr O’Kane’s complaint.
- 18.67. My investigators established that Mr Kelly made a complaint against police on 8 June 1992, where he alleged that a police officer had threatened him at a VCP near Kilrea. He alleged that the police officer told him his days were numbered and that, *‘one of these days you’ll be*

*looking into the end of a chimpy.*'<sup>40</sup> He added that this was only one of a number of threats he had received from the security forces in the previous twelve months. On another occasion he received a threatening telephone call at home. He reported this incident to Maghera RUC Station but was not aware of any action being taken in respect of it. My investigators have been unable to locate any police records relating to this matter.

- 18.68. This investigation has been unable to locate the relevant file of evidence submitted by police to the DPP regarding the incident on 8 June 1992. The DPP subsequently directed that there was insufficient evidence to merit the prosecution of any police officer subject to investigation. Following the direction, no disciplinary action was initiated against any police officer subject to investigation. As this matter has previously been investigated, it is therefore outside my legislative remit to further re-consider.

### **Summary**

- 18.69. The admissions made by Person H indicated that the movements of Mr Kelly were being monitored by loyalist paramilitaries. This investigation has found no evidence to support the allegation that police assisted the UDA/UFF in the targeting of Mr Kelly.
- 18.70. Despite the limited intelligence following the attack, the timeliness of subsequent arrests indicated that police had, by March 1993, a sounder knowledge of loyalist paramilitaries in the area. Those responsible for the attack took steps to frustrate the police investigation by destroying evidence in the form of the Blue Ford Transit van.

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<sup>40</sup> A 'Chimpy' is military slang for a general purpose machine gun (GPMG).

18.71. I am of the view that police investigating the Castlerock attack utilised the available intelligence and evidence to progress the enquiry. The RUC investigation was frustrated by insufficient evidence with which to challenge those arrested. Given the lack of evidence and intelligence which could be developed, and in the absence of any admissions, police had no option but to release suspects without charge.

## 19.0

# The Greysteel Murders – The RUC Investigation

- 19.1. At approximately 9:55pm on 30 October 1993, two masked gunmen entered the lounge of the Rising Sun Bar in Greysteel, County Derry/Londonderry, and opened fire with an assault rifle and pistol. A third gunman, armed with a sawn-off shotgun, remained outside the bar. At that time there were approximately 60 people on the premises, half of whom were in the lounge area.
- 19.2. Witnesses stated that the gunman, armed with the assault rifle, shouted *“trick or treat, you bastards,”* before opening fire indiscriminately. When the magazine of the assault rifle was empty, he re-loaded and continued to fire with a second magazine. The second gunman fired one round at a female customer, before his weapon jammed. The two gunmen then left the bar and were driven away by the third gunman in a yellow-coloured Opel Kadett car. It was later found on fire at Craigback Road, Eglinton.
- 19.3. John Burns, Moira Duddy, Joseph McDermott, James Moore, John Moyne, Steven Mullan, and Karen Thompson all either died at the scene or shortly afterwards in hospital. Samuel Montgomery died the following year as a result of injuries sustained in the attack. Ten other customers were seriously wounded. None of the victims were PIRA or Sinn Féin members, or had strong political views. There were Catholic and Protestant customers in the bar at the time. The attack at the Rising Sun Bar provoked widespread public anger and is regarded as one of the worst terrorist incidents of the ‘Troubles.’

- 19.4. At 11:01pm the UDA/UFF claimed responsibility for the attack, stating that it was a continuation of their threat against the nationalist electorate who would pay a heavy price for the '*slaughter*' of nine Protestants. It was believed that the attack was in retaliation for the murder of nine Protestants by a PIRA bomb on 23 October 1993 at Frizzell's Fish Shop on the Shankill Road, Belfast. A PIRA member was also killed in the explosion.
- 19.5. Four members of the North West UDA/UFF were subsequently convicted of the Greysteel murders and sentenced to life imprisonment. Another individual was convicted of a related offence.
- 19.6. My Office has not received any public complaints in respect of the events surrounding the attack at the Rising Sun Bar. My investigators have, however, engaged with a number of the families and kept them updated as to the progress of the investigation.
- 19.7. Mary Patricia 'Moirá' Duddy was 59 years old and a Catholic. She was married and lived near Eglinton, County Derry/Londonderry.
- 19.8. Karen Thompson was 19 years old and a Catholic. She was single and lived with her parents and brother in Limavady, County Derry/Londonderry. She worked locally as a hairdresser.
- 19.9. John Moyne was 50 years old and a Catholic. He was employed as a supervisor and was married with two sons and two daughters. They lived in Greysteel.
- 19.10. Joseph McDermott was 59 years old and a Catholic. He was a single man and employed as a labourer. He had two brothers and a sister and lived in Greysteel.

- 19.11. John Burns was 54 years old and a Catholic. He was unemployed and lived in Eglinton. He was married with two sons and a daughter.
- 19.12. James Moore was 82 years old and a Catholic. He was a retired construction worker and was married with four sons and a daughter. He lived in Greysteel.
- 19.13. Steven Mullan was 20 years old and a Catholic. He was the boyfriend of Karen Thompson and employed as a joiner. He lived with his parents in Greysteel.
- 19.14. Samuel Montgomery was 76 years old and a Protestant. He was single and lived in Brackfield. He was a retired farmer and had a sister. He died on 14 April 1994, as a result of injuries he sustained in the attack.

#### **Initial Police Response**

- 19.15. At 10:02pm on Saturday 30 October 1993, police at Limavady RUC Station were notified of the attack. A Communications Log was commenced which recorded all radio transmissions and reports between 10:02pm and 1:20pm the following day. There were 67 entries made on the log including details of resources sent to the scene, the names of the victims, and actions taken by police.
- 19.16. By 10:04pm, police had established VCPs at Shanregh Cross, Seacoast Road, Murder Hole, Swann Bridge, and Baran Court, in an attempt to apprehend the gunmen. A VCP was also put in place at Toomebridge on the A6 main road to Belfast.
- 19.17. At 10:07pm, the first ambulance crew arrived at the Rising Sun Bar and assessed the scene. They immediately requested further assistance due to the large number of casualties. Further ambulance crews were deployed and first aid was administered to the injured, prior

to them being taken to Altnagelvin Hospital in Derry/Londonderry. Two priests attended the scene and comforted the victims and their families. Three doctors also arrived to assist with the injured. Moira Duddy, Karen Thompson, John Moyne, Joseph McDermott, and James Moore were all pronounced dead at the scene. John Burns and Steven Mullan died later in hospital.

- 19.18. Senior police officers attended, including the RUC Deputy Chief Constable and an Assistant Chief Constable. Police Officer 1, a Detective Superintendent, attended and took responsibility for the investigation, ensuring that all immediate lines of enquiry were identified and progressed.
- 19.19. Specialist resources deployed included SOCOs, mapping and photography officers, search teams, police and military dog handlers, and military weapons experts. A military helicopter was sent to the area to assist with the searches. House searches were conducted at 17 addresses in the Coleraine, Macosquin, and Ballymoney areas.
- 19.20. At 10:15pm, police officers responded to a telephone call from a member of the public regarding an abandoned car at Craigback Road, Eglinton. Upon attending, they found the Opel Kadett car used in the attack. An attempt had been made to set it on fire but an incendiary device left on the rear seat had only partially ignited. Police successfully extinguished the fire and prevented the car from being destroyed. It was later conveyed to NIFSL for forensic examination.

### **RUC Investigation Team**

- 19.21. Two SIO Policy Logs were completed by Police Officer 1, where he recorded all major investigative decisions and his rationale for them. My investigators reviewed these logs and all the other available police documentation in order to assess the quality of the RUC investigation.



## Witnesses

- 19.22. The previous owner of the Opel Kadett car, Witness AA, was traced and interviewed. He informed police that, having advertised the car for sale, a man called to his house in the Waterside area of Derry/Londonderry at approximately 9:50am on 30 October 1993 to view it. The man arrived in a grey Ford Capri, which was driven by another male. Witness AA was adamant that he did not know the identity of the men who bought the car. He stated that the Ford Capri had a partial vehicle registration number of 'VIA.'
- 19.23. At that time, Person K owned a car similar to the one driven by the man who bought the Opel Kadett from Witness AA.
- 19.24. Following the murders, several members of the public reported having observed a yellow Opel Kadett car in the Ballykelly area in the days prior to the attack. Police, believing that Witness AA may have been involved in the attack and was not telling the truth about the sale of the car, arrested him on 2 November 1993.
- 19.25. My investigators examined the police interview notes of Witness AA. Police repeatedly challenged him about knowing the men who purchased the car, and asked whether one of them was Person K. Witness AA maintained his original account and insisted that he did not know the identity of the men who bought the car. He insisted that he did not know Person K. He stated that he had allowed relatives to borrow the Opel Kadett which accounted for it having been seen in the Ballykelly area prior to the attack. Witness AA was subsequently released without charge.
- 19.26. Detectives carried out house-to-house enquiries around the address of Witness AA. Another resident stated that he had observed a light blue-coloured Ford Capri, with the same vehicle registration number

as the one owned by Person K, in the area between 9:30am and 10:00am on Saturday 30 October 1993. This resident provided a description of the two men in the car but declined to make a witness statement, meaning his account could not be used as evidence.

### **Forensic Examinations**

- 19.27. During the course of the investigation, all of the identified scenes were examined and 336 exhibits recovered and submitted to NIFSL for further examination.
- 19.28. Buccal swabs were taken from Persons F, H, I, and K during their detention in in custody. Buccal swabs and firearm residue swabs, head hair samples, and clothing were also taken from Persons A, S, DD, and GG. They were submitted for forensic examination and comparison against other items recovered during the course of the RUC investigation. During the arrests of the above individuals, searches were carried out at their respective homes. Items of clothing were recovered and submitted to NIFSL for comparison purposes.

### **The Rising Sun Bar**

- 19.29. Police recovered 44 x 7.62mm spent cartridge cases and one 9mm spent cartridge case, an indication of the number of shots fired at customers in the bar.
- 19.30. Forensic examinations concluded that the 7.62mm discharged cartridge cases had been fired from a VZ58 assault rifle and the 9mm cartridge case from a Browning 9mm pistol. Both weapons were later recovered by police at Ballygudden Road, Eglinton.

### **Plantation Road**

- 19.31. Police conducted a search at Plantation Road, Ballykelly, where they recovered two discharged 9mm cartridge cases. Forensic examinations established that they had been fired from the Browning pistol used in the attack at the Rising Sun Bar. This supported information police received, following the attack, that the weapons used had been test fired at this location.

### **Craigbrack Road**

- 19.32. The Opel Kadett car recovered at Craigbrack Road was searched and a number of items seized from it and submitted for forensic examination. They included the remains of the incendiary device, a plastic container containing liquid, a metal pin, vehicle documentation, and door release handles. The keys for the vehicle were also found at the Craigbrack Road scene.
- 19.33. Documentation examined by my investigators indicated that all of the recovered items were examined for fingerprints, but none were found. Fibres from the car were compared against fibres taken from the clothing of Person K, but there were no matches.

### **The Skoda Car**

- 19.34. A Skoda car owned by Person G was recovered by police and conveyed to NIFSL where it was examined for evidence of fibre and hair transfers between it and the Opel Kadett. Examinations were also conducted regarding the possible transfer of glass and firearm discharge residue. A fingerprint examination was conducted but nothing of an evidential value was identified.

## **Ballygudden Road**

- 19.35. On 3 November 1993, police searched an area of the Ballygudden Road near Eglinton. They recovered a holdall with a white bin bag inside. The holdall contained three boiler suits, eight shotgun cartridges, and a VZ58 assault rifle loaded with a single round of 7.62mm ammunition. They also recovered a sawn-off 12 bore shotgun loaded with two cartridges, a Browning 9mm pistol loaded with a 9mm round in the ejection port and six rounds in the magazine, three black woollen masks, three pairs of rubber gloves, a Guinness baseball cap, a pair of green gloves, and numerous magazines and assorted ammunition. The white bin bag contained a packet of rubber gloves.
- 19.36. The recovered weapons and ammunition were test fired and examined at NIFSL. These examinations established that they were all functioning and in good working order.
- 19.37. The boiler suits were examined for fibres and the balaclava masks examined for both hairs and fibres. None were located. However, two fingerprint marks were found on the white bin bag, one of which matched the fingerprints of Person K.

## **Ford Capri**

- 19.38. Police recovered the Ford Capri owned by Person K on 31 October 1993. It was examined by a SOCO and a number of samples were recovered and submitted to NIFSL. Forensic scientists sought to establish whether any links could be made between Person K and the yellow Opel Kadett, or with items recovered from the weapons hide at Ballygudden Road. These examinations identified no further evidence linking Person K to either the hide or the relevant vehicle.

## Witnesses

- 19.39. A total of 378 witness statements were recorded during the police investigation. Witness BB stated that he had been working in the Rising Sun Bar at 3:45pm on the afternoon of the attack, when two men entered and asked for two pies. Witness BB stated that he served the men who left shortly afterwards. He described them as both scruffily dressed, one being larger, around 5'8" tall, of medium build, with dark straight hair, and aged in his 20s. The second man was around 5'6" tall, with dark fair hair, and also aged in his 20s.
- 19.40. Police recorded 50 witness statements from individuals who were either in the lounge or public bar at the time of the attack. Witnesses stated that, shortly before 10:00pm, two masked men appeared in the doorway of the lounge bar carrying an assault rifle and a handgun. One of the men shouted "*Trick or treat you bastards,*" before indiscriminately opening fire. There was then a lull in the firing, before it resumed again.
- 19.41. Witness CC was in the kitchen at the rear of the Rising Sun Bar when he heard shots. He stated that he went outside and observed an Opel Kadett car. There was a male wearing a black balaclava sitting in the car. He stated that two other masked men then came out of the bar and got into the car, which then drove off at high speed along the Killylane Road towards Eglinton. He added that one of the masked men was carrying a rifle.

## Ballistics

- 19.42. The weapons used in the attack at Greysteel were recovered on 3 November 1993 following a search at Ballygudden Road, Eglinton. The following weapons were recovered:

- I. A VZ58 7.62mm assault rifle, which had previously been used in the murder of Gerard Casey;
  - II. A Browning 9mm self-loading pistol with no previous history of use; and
  - III. A Baikal 12 bore sawn-off shotgun, which was stolen from an Eglinton address in October 1988.
- 19.43. Police also recovered a .38 discharged cartridge case which a Forensic Scientist established had been fired from a Smith and Wesson revolver. It had previously been used in the murders of Eddie Fullerton and Thomas Donaghy, the Castlerock murders and the attempted murder of James McCorriston. The Smith and Wesson revolver was recovered at Bishop's Road, Downhill, on 8 April 1993, following the Castlerock attack.

### **Intelligence**

- 19.44. PIRA detonated a bomb at Frizzell's Fish Shop on the Shankill Road, Belfast, on 23 October 1993, killing nine people. On the same date the UDA/UFF responded by stating that, *'As and from 6pm, all brigade active service units of the UFF will be mobilised. John Hume, Gerry Adams and the nationalist electorate will pay a heavy, heavy price for today's atrocity.'*
- 19.45. My investigators examined all of the available intelligence relating to the attack at Greysteel. A number of days after the PIRA attack, police received intelligence indicating that UDA/UFF were discussing increased military activity. However, there was no specific intelligence received by police that the North West UDA/UFF were planning an attack.
- 19.46. Further intelligence was received that the UDA/UFF had decided that the response to the Shankill bombing would be province wide, and not

restricted to Belfast. No further details were provided. All Regional Assistant Chief Constables were appraised of this intelligence.

- 19.47. Following this, further intelligence was received indicating that UDA/UFF were continuing to consider retaliatory attacks, but no specific targets were disclosed.

### **Comments Made by Loyalist Prisoners in Castlereagh RUC Holding Centre - 30 October 1993**

- 19.48. On the morning of 30 October 1993, several suspected members of West Belfast UDA/UFF were in custody at Castlereagh RUC Holding Centre. They were being questioned about terrorist related matters, including the murder of a man in Belfast which was believed to have been in retaliation for the Shankill bombing.

- 19.49. One of the arrested individuals made comments during police interviews implying that he was aware of an imminent loyalist paramilitary attack in the Derry/Londonderry area. He described it as “*a massacre*” in retaliation for the Shankill bombing. He added that “*there were boys in Londonderry who would do it.*” It was also reported that another detained individual made similar comments.

- 19.50. At 2:20pm, Police Officer 19, who was the interview supervisor at Castlereagh verbally passed this information to Police Officer 20, the Duty Superintendent at Strand Road RUC Station in Derry/Londonderry.

- 19.51. My investigators interviewed Police Officer 19, who is now retired. He provided a witness statement after referring to the relevant RUC notebook entry he had made at the time. He stated that he was on duty at Castlereagh RUC Holding Centre on 30 October 1993. He held a conference at 2:00pm, where an Interviewing Officer informed him that some of the detained individuals were making comments inferring that

a loyalist paramilitary attack was going to take place in the Derry/Londonderry area in the near future. This was intended as retaliation for the Shankill bombing.

- 19.52. Despite further questioning, Interviewing Officers were unable to obtain additional information about the type of attack or where it would take place, other than it would be in the Derry/Londonderry area. Police Officer 19 stated that the information was coming from more than one prisoner and was therefore treated seriously. He remained in regular contact with Police Officer 20 to discuss the information. Police Officer 20 informed him that “*security in Derry*” was tight. He took this to mean that security was at a high level throughout the region.
- 19.53. Police Officer 19 stated that he also updated Police Officer 21, the CID Duty Officer, and Police Officer 22, the Special Branch Duty Officer, about the information. He liaised with TCG North who arranged for VCPs to be set up in the Derry/Londonderry area. Police Officer 19 informed my investigators that it was not unusual for loyalist terrorist suspects to brag and taunt police about planned attacks.
- 19.54. Police Officer 21 was also interviewed by my investigators. He was based at Castlereagh RUC Station at the time and confirmed that, if the relevant information was passed to Special Branch and North Region TCG, then he would not have been required to take any further action. He stated that he recalled certain loyalist paramilitary groups often boasted about terrorist attacks. However, they deliberately supplied vague information so as not to incriminate themselves. Police Officer 20 chose not to assist my investigation and Police Officer 22 is deceased. My investigators have been unable to locate their relevant police journals.
- 19.55. This investigation has not identified any RUC Special Branch intelligence reports documenting the receipt and dissemination of this



information. However, the intelligence relating to UDA Brigadier meetings was disseminated to Regional Assistant Chief Constables throughout Northern Ireland. Police Officer 19 provided my investigators with a detailed account as to how the relevant information was passed to senior police officers. Police were, therefore, in receipt of general information that a loyalist paramilitary attack was planned for the Derry/Londonderry area in retaliation for the Shankill bombing.

### **Post-Attack Intelligence**

- 19.56. During the early hours of 31 October 1993, police received a number of anonymous telephone calls naming various individuals as having been involved in the attack at the Rising Sun Bar. This information was passed to the RUC investigation team.
- 19.57. Police also received intelligence indicating that Person B sanctioned and organised the attack.

### **Arrests**

- 19.58. Police Officer 1 directed that eight suspected members of the North West UDA/UFF be arrested immediately. These were Persons A, B, G, K, S, DD, GG, and HH. All the arrests were carried out between 2:15am and 1:30pm on 31 October 1993.
- 19.59. Person G was the first to admit his involvement in the attack at the Rising Sun Bar. He informed police, during interview, that he had driven his own Skoda car and collected Persons F, H, and I from Plantation Road after they had abandoned the Opel Kadett.
- 19.60. He informed police that the motive for the attack was sectarian and in retaliation for the Shankill bombing a week earlier. He stated that on

26 October 1993, a UDA/UFF Commander informed him that an attack was planned and that he was required as the driver.

- 19.61. He continued that on 30 October 1993 he met with Person K in Ballykelly, before later meeting Persons F, H, and I. He stated that Person K briefed them on a proposed attack at the Rising Sun Bar later that day. Person K informed them that an Opel Kadett was going to be used in the attack.
- 19.62. Person K added that the weapons to be used in the attack were to be collected from a forested area on Plantation Road, near Ballykelly. Persons F and I planned to test-fire the weapons before the attack. Person K showed them the route to the Rising Sun Bar and the location of the forested area. He instructed Persons F and I to spend the night there following the attack. Person K also suggested that they go into the Rising Sun Bar that afternoon to carry out reconnaissance.
- 19.63. After receiving these instructions, Person G stated that he drove Person K to Limavady. Persons F, H, I and he then spent the remainder of the day planning for the attack. This involved memorising relevant routes around Greysteel, going into the Rising Sun Bar to carry out reconnaissance, test-firing the weapons to be used in the attack, and purchasing overalls, gloves, and petrol. The petrol was to be used to burn the Opel Kadett following the attack.
- 19.64. Person G informed police that he later met Persons F, H, and I at an address in the Waterside area of Derry/Londonderry to finalise their plans. It was agreed that Persons F and I would go into the Rising Sun Bar with the intention of shooting as many people as possible, while Person H would wait outside, providing cover. Accompanied by Person H, he drove the relevant routes a final time before they collected Persons F and I. He drove them to Ballykelly to collect the Opel Kadett and then on to Plantation Road to pick up the weapons.

- 19.65. Person G stated that he drove his own car to the agreed rendezvous point on the Killylane Road, Greysteel, where he was to meet up with the others following the attack. Within minutes Person H pulled up in the Opel Kadett, accompanied by Persons F and I. Person H attempted to set the Opel Kadett on fire before they all left the scene in Person G's car. Persons F and I were carrying the weapons in a holdall. Person G dropped them off at a rural location before driving Person H to a bar in the Waterside area of Derry/Londonderry.
- 19.66. Person G informed police that, prior to the attack, they also discussed throwing a hand grenade into another bar, but could not find the location where a hand grenade had previously been hidden.
- 19.67. Following the confession of Person G, Persons F, H, and I also admitted their roles in the attack, although none of them would name their accomplices. Person F stated that he had entered the bar with a VZ58 assault rifle and fired two full magazines at customers inside. Person I stated that he entered, armed with a Browning pistol, to provide 'cover' for Person F. He fired once at a female customer when Person F was changing magazines. However, the pistol then jammed so he was unable to fire any more rounds. Person H stated that he drove the Opel Kadett to and from the scene. When Persons F and I went into the bar, he waited outside with a sawn-off shotgun.
- 19.68. Before admitting his role in the murders, Person H initially informed police that he had been in the company of Person II in a Derry/Londonderry bar at the time of the attack. Person II supported this version of events, prior to being arrested himself and admitting it was false.

- 19.69. Person H also admitted having been involved in the Castlerock attack on 25 March 1993. He stated that he drove the blue Ford Transit van. He refused to name any of his accomplices.
- 19.70. On 8 November 1993, Persons F, G, H, and I were charged with various offences, including seven counts of murder, relating to the attack at the Rising Sun Bar. They were later charged with the murder of Samuel Montgomery, following his death the following year from injuries sustained in the attack. Person II was charged with withholding information.
- 19.71. Person G stated that Person K was instrumental in organising the attack. Following his arrest, Person K denied being involved and provided an alibi witness. He stated that other individuals in police custody were lying and that police were *“out to set me up by PIRA.”* He denied having purchased the Opel Kadett car used in the attack.
- 19.72. Person K was re-arrested on 12 November 1993, after his fingerprints were found on a white bin bag in the holdall. The holdall also contained other items, including the VZ58 assault rifle and other weapons recovered at Ballygudden Road, Eglinton. He continued to deny any involvement in the attack and provided an explanation as to how his fingerprints were on the white bin bag. He was released without charge the following day.

### **Criminal Proceedings**

- 19.73. Police forwarded a file of evidence to the DPP in respect of Persons F, G, H, I, and II. The file also included the evidence against Person K. The DPP subsequently directed ‘No Prosecution’ against Person K because there was insufficient evidence to afford a reasonable prospect of his conviction.

19.74. On 24 February 1995, Persons F, G, H, and I appeared before Belfast Crown Court and pleaded guilty to eight murders, five attempted murders, and possession of firearms and ammunition with the intent to endanger life. They were each sentenced to life imprisonment. In addition, Persons F, G, and H were convicted of membership of a proscribed organisation. Person I pleaded guilty to Withholding Information and Perverting the Course of Justice. He was sentenced to two years imprisonment, suspended for two years.

### **Summary**

19.75. I am of the view that the timely arrest of suspected UDA/UFF members following the Greysteel attack contributed towards a successful police investigation. There was little intelligence received following the attack. Police Officer 1 relied upon generic intelligence to arrest suspected North West UDA/UFF members. This led to the subsequent confessions of Persons F, G, H, and I.

19.76. I am of the view that police pursued all viable lines of investigation and secured the available evidence in respect of the Greysteel attack. Person G provided police with a detailed account, leading them to believe his version of events. Much of what Person G said was corroborated by other witnesses, forensic evidence, or the confessions of his co-accused.

19.77. Person G also provided police with his description of the role that Person K played in the attack. Police submitted a file of evidence regarding Person K but the DPP directed 'No Prosecution' against him, stating that there was no reasonable prospect of a conviction.

19.78. I am of the view that, given the available evidence and intelligence, Persons F, G, H, and I acted on the instructions of senior UDA/UFF members who sanctioned the attack at the Rising Sun Bar.

## 20.0

### The Relevant Law and Standards

- 20.1. The Association of Chief Police Officers (ACPO) first published a *'Murder Investigation Manual'* in September 1998. This set out a framework for murder investigations and is designed to aid and guide the SIO throughout the investigation process. However, this was not in place at the time of the murders and attempted murders that are the subject of this public statement.
- 20.2. The RUC implemented the *'Major Investigation Incident Room Standardised Administrative Procedures'* (MIRSAP) on 1 January 1984. This formalised management structures and processes within Major Incident Rooms, acknowledging that it was essential for major investigations to have a structure of management which was immediately recognisable and understood by all police officers.
- 20.3. MIRSAP was designed to provide the SIO with *'an accurate record of all relevant information relating to the investigation, together with the enquiries made and results obtained.'* The system was also responsible for *'recording and linking all information...so that it may be readily retrieved to aid the SIO and their team to establish priorities. This will ensure that all enquiries are made efficiently, and the results analysed.'*
- 20.4. The recording of information entering Major Incident Rooms was undertaken by a standardised manual procedure known as MIRIAM. In March 1988, the RUC introduced a computerised system known as HOLMES, for the investigation of serious crimes.
- 20.5. My investigators established that these procedures were implemented during the investigation into the murders and

attempted murders examined during this investigation. An SIO and DSIO were appointed and Major Incident Rooms were set up. Investigative actions were raised and allocated to individual officers.

20.6. The Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Regulations 1988 applied at the time of this investigation. These regulations detailed that Offence 4 – ‘Neglect of Duty’ was committed where a police officer without good and sufficient cause:

- I. Neglects or omits to attend to or carry out with due promptitude and diligence anything which it is his duty as a member to attend to or carry out;*
- II. Fails to work his beat in accordance with orders, or leaves the place of duty to which he has been ordered, or having left his place of duty for an authorised purpose fails to return thereto without undue delay;*
- III. Is absent without leave from, or is late for, any duty;*
- IV. Fails properly to account for, or to make a prompt and true return of, any money or property received by him in the course of his duty.*

20.7. At the time of the murders and attempted murders examined during this investigation there was no RUC Code of Ethics in place for police officers. However, the overarching duty of police was, and remains, to protect life and property. When considering matters of police conduct in this public statement, I have applied the relevant standards of the time.

20.8. The RUC Force Order at the time in respect of warning individuals at risk was set out in Force Order 33/86 entitled, ‘*Threats against the Lives of Members of the Security forces, VIPs or other Individuals*’. This stated that when a threat was received ‘*Local Special Branch (SB) concerned will inform the Sub-Divisional Commander (SDC) in*

*whose area the subject resides or works and the SDC will take whatever action he wishes necessary. If the information received indicates that an attack on any person is imminent, the member receiving the information will immediately take all necessary action to inform the person at risk.* On 3 July 1991, it was replaced by Force Order 60/91, which contained the same instructions as quoted above.

- 20.9. The Force Order placed clear responsibility on the local RUC Sub-Divisional Commander to assess whether threat warnings to identified individuals was necessary. If the threat against the individual was considered imminent, in accordance with the Force Order, a threat warning should then be issued. If the threat was not considered imminent, the Sub-Divisional Commander could take whatever action they considered appropriate.
- 20.10. As stated previously in this public statement, this investigation sought to establish what assessment was undertaken by police to determine whether it was necessary to notify identified individuals of the existence of threats against them. I am of the view that upon receipt of intelligence of an imminent threat to the life of an identifiable individual, the State's obligations under Article 2 of the ECHR were engaged, meaning that the police had a duty to take steps to protect the lives of those identified.
- 20.11. There was a responsibility on local police commanders, under the Force Order, to make informed and accountable decisions in respect of threat warnings. However, the police commanders were reliant on RUC Special Branch sharing the relevant threat intelligence with them. This investigation has identified failings in respect of the sharing of such information and intelligence, however the lack of relevant records has made it difficult to identify personal culpability for such failings.



## **Guidance & Legislation Determining the RUC Responsibility for Informant Handling**

- 20.12. When considering the use of police informants within this public statement, I have considered the relevant legislation and guidance available to the RUC at the time. It was not until 2000 that Covert Human Intelligence Source (CHIS) provisions within the Regulation of Investigatory Powers Act (RIPA) 2000 and the Human Rights Act 1998 came into force. These provided police officers with a statutory framework to work within when managing informants.
- 20.13. Prior to that, the guidance around the use of informants was largely unchanged from that provided by the Home Office Circulars of 1969 (*'Informants who take Part in Crime'*), and the later Home Office Circular 35/1986 (*'Consolidated Circular to the Police on Crime and Kindred Matters'*). It is now widely accepted that this guidance was never intended to, nor sufficiently adequate to, deal with the terrorist situation which existed in Northern Ireland between 1969 and 1998.
- 20.14. RUC Special Branch did not adopt the Home Office guidelines because they believed that they were inadequate to address the issues concerning the handling of informants within paramilitary organisations. This investigation has considered efforts from 1987-1993 to address the issue of informant management in Northern Ireland during the period subject to investigation.
- 20.15. Correspondence from the RUC to the Northern Ireland Office (NIO), dated 21 January 1987, stated that *'The [Home Office] Guidelines take no cognizance at all of the special problems relating to Northern Ireland. They were, of course, drawn up to deal with 'ordinary' criminals in a mainland context, rather than for coping with terrorists. Given our special situation the restrictions placed upon us by virtue*

*of the guidelines are unrealistic if we are to continue paramilitary penetration/CHIS protection.’<sup>41</sup>*

- 20.16. It is evident that most senior RUC officers, including the Chief Constable, knew that colleagues involved in the authorisation and management of informants felt exposed and vulnerable. This was why clarity, in the form of appropriate legislation and/or guidance, was sought from the British Government.
- 20.17. Senior Government figures, up to ministerial level, were aware of the issues, and the Right Honourable John Major, the then Prime Minister, was briefed on the matter in 1988. The RUC were becoming increasingly frustrated by the perceived lack of enthusiasm to progress these issues. These frustrations were shared by their colleagues in the military and Security Service. A note from the Prime Minister’s Office to the NIO, dated 13 May 1988, stated that the Director General of the Security Service had raised the need for agent-handling guidelines with the Prime Minister.<sup>42</sup>
- 20.18. An internal NIO minute to the Permanent Under Secretary, dated 18 May 1987, however, stated that *‘As we may well wish to see a rather different method for reviewing the guidance, it will suit us if the process set in train by the RUC makes fairly slow progress, but it would not be wise to take any steps at this juncture to halt it; we should simply desist from hastening it.’<sup>43</sup>*
- 20.19. In March 1992, following revelations concerning Brian Nelson’s role as a state informant, Sir John Blelloch carried out a review<sup>44</sup> which

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<sup>41</sup> Letter from the RUC to the NIO, 21 January 1987 Ch 4.16 p76 The late Sir Desmond de Silva QC Report.

<sup>42</sup> Cabinet Office file, Anglo-Irish relations, Prime Minister’s Office to Private Secretary NIO, 13 May 1988 as referred to in the late Sir Desmond de Silva QC report Para 4.48, p79.

<sup>43</sup> NIO submission, Deputy Under Secretary to Permanent Under Secretary, 18 May 1987 as referred to in de Silva paragraph 4.38, p76.

<sup>44</sup> The Blelloch Review, De Silva, P83-84.

looked at the recruitment and handling of military informants in Northern Ireland. This also took account of the practices and procedures adopted by RUC Special Branch and the Security Service.

- 20.20. His Terms of Reference indicated that, where appropriate, any recommendations should also apply to the RUC. The review's findings were summarised in an internal minute from the Security Service Legal Advisor, dated 25 March 1992. It stated that *'Blelloch has indicated that the Home Office Guidelines are unacceptable in a counter-terrorist context and that the NIO Working Group Guidelines (see below) are about as good as can be achieved. He has indicated that he would not wish to advocate different procedures if they entailed legislation as he believed legislation would be politically unobtainable. Blelloch has also indicated that he is not sure that Ministers (particularly the Home Secretary) will approve the Guidelines for fear that they may involve them in allegations of conspiratorial criminality. He is, however, prepared to endorse the Guidelines in his report.'*
- 20.21. Sir John Blelloch's report was circulated by the then NIO Permanent Secretary, Sir John Chilcott, on 15 July 1992. He issued a range of recommendations for the more effective management and handling of informants in Northern Ireland. However, he concluded that the issue regarding appropriate legislation and/or guidance was one he was not able to resolve.
- 20.22. He stated that *'Nothing has emerged in the context of this new review of agent handling [reference to NIO Working Group Guidance summarised below] to suggest that the content of the draft Guidelines...should be revised. The problem is one of the status of the document, and, specifically, the extent of Ministerial approval. The need to clarify this status seems to the review team to be a*

*matter of some urgency now, and, moreover, one that will not go away...'*<sup>45</sup>

20.23. A NIO Working Group devised a revised set of guidelines which by March 1992 had been adopted by the RUC. They stated at paragraph 4 that, *'The Informant must clearly be instructed that his employment or continued employment as an Informant does not carry with it immunity from criminal prosecution. In particular, he should be warned that he should not expect to avoid criminal proceedings if he is detected committing or having committed any physical assaults, or attacks on property causing serious damage, or acts of extortion. Moreover, no police officer will counsel, incite or procure the commission of such a criminal offence. However, subject to Paragraph 5 below, an officer may employ a person as an Informant whom he believes to be engaged in criminal activities, provided that at the time of employing him he is satisfied that;*

- *The Informant is likely to be able to provide information concerning offences involving risk of death or injury to persons, serious damage to property, extortion, or offences connected with financing terrorism;*
- *The required information cannot readily be obtained by any other means; and*
- *The need for the information that may be obtained by the employment of that person as an Informant justifies his employment notwithstanding the criminal activities on which he may be engaged.*

*The employment of an Informant believed to be engaged in criminal activity must be specifically authorised by an officer not below the rank of Assistant Chief Constable. It must be reviewed...'*<sup>46</sup>

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<sup>45</sup> The Blelloch Review, The late Sir Desmond de Silva QC Report, paragraph 4.63 – 4.65, p83 & 84.

<sup>46</sup> The late Sir Desmond de Silva QC report, paragraph 4.55, p81.

- 20.24. This guidance made reference to the responsibilities of both informants and those police officers tasked with their management. It outlined the circumstances in which an informant could be employed and that any participation in crime had to be authorised by an Assistant Chief Constable. Although this guidance did not contain the detail which the RUC sought and was not supported by legislation, it was adopted by police in Northern Ireland.
- 20.25. Over the next years, a number of high level reviews urged resolution of the issue. In 1992, Sir Nicholas Lyell QC, the then Attorney General, wrote a significant response regarding information and source liability. Sir John Chilcott chaired an Inter-Departmental Working Group (IWG) in late 1992. He summarised its conclusions to the Secretary of State on 14 July 1993. *'The present situation is not satisfactory. The existing law appears to leave the Agents, Handlers, and others involved in the intelligence process, including Ministers, unduly exposed. This has practical drawbacks (in terms of our ability to run agents, who are vital to our work against terrorism) as well as political and ethical ones. There is much that can be done, and should be done on a non-statutory basis to improve matters...the Blelloch recommendations will help...so will further elaboration of the existing schemes of guidance and regulation within agencies, based around a common core understanding both of the law and of best practice. Nonetheless, a stable and satisfactory way forward which is fair to Agents, Handlers and others could only be achieved by new legislation.'*<sup>47</sup>
- 20.26. The report of the late Sir Desmond de Silva QC stated that, *'It is absolutely clear that there was no adequate Agent handling guidance or direction whatsoever in the late 1980s. The 1969 Home Office Guidelines had not been designed for a counter-terrorist situation and had, rightly, been discarded...In such circumstances*

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<sup>47</sup> The late Sir Desmond de Silva QC Report paragraph 4.71, p86.

*the UK Government had a duty to provide an effective statutory framework and clear policy direction. The issue was considered at Cabinet level and Government Ministers were clearly aware that Agents were being handled in Northern Ireland without reference to any adequate guidelines because no such framework existed. Ministers nonetheless continued to place a high priority on pursuing an intelligence led approach to the terrorist threat. What was required was a clear statutory recognition that agents must be run at the heart of terrorist groups; some recognised limits as to the extent to which agents could become involved in criminal enterprises; and a rigorous regulatory framework to prevent abuse.*<sup>48</sup>

- 20.27. The problem became less of a priority following the 1994 republican and loyalist paramilitary ceasefires and was only resolved by the introduction of the Human Rights Act in 1998 and RIPA in 2000. The late Sir Desmond de Silva summed up the unique circumstances faced by security forces in Northern Ireland as having represented a *'...wilful and abject failure by the UK government to put in place adequate guidance and regulation for the running of agents.'*<sup>49</sup>

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<sup>48</sup> Ibid 4.86, Page 90

<sup>49</sup> The late Sir Desmond de Silva QC Report, paragraphs 4.86 to 4.89, p90 – 91.

## 21.0

### Procedural Fairness

21.1. In concluding this public statement, I am mindful of the need to ensure procedural fairness to those who may be affected by its content. Mr Justice McCloskey (as then) in the High Court in *Re Hawthorne & White*<sup>50</sup> provided guidance to this Office as to what was generally required. In particular I have considered relevant passages from that judgment which I outline here for ease of reference, highlighting the requirements of procedural fairness in this context:

*[113] In my judgment, it matters not that the police officers thus condemned are not identified. There is no suggestion that they would be incapable of being identified. Further, and in any event, as a matter of law it suffices that the officers condemned by the Police Ombudsman have identified themselves as the subjects of the various condemnations. Procedural fairness, in this kind of context, cannot in my view depend upon, or vary according to, the size of the readership audience. If there is any defect in this analysis it is of no consequence given that the overarching purpose of the conjoined challenge of the second Applicant, Mr White, belongs to the broader panorama of establishing that reports of the Police Ombudsman couched in the terms considered exhaustively in this judgment are unlawful as they lie outwith the Ombudsman's statutory powers.*

*[114] The somewhat different challenge brought by Mr White, imbued by corporate and broader ingredients, gives rise to the following conclusion, declaratory in nature. Where the Police Ombudsman, acting within the confines of his statutory powers, proposes to promulgate a "public statement" which is critical of or*

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<sup>50</sup> [2018] NIQB 5

*otherwise adverse to certain persons our fundamental requirements, rooted in common law fairness, must be observed. First, all passages of the draft report impinging directly or indirectly on the affected individuals must be disclosed to them, accompanied by an invitation to make representations. Second, a reasonable period for making such representations must be permitted. Third, any representations received must be the product of conscientious consideration on the part of the Police Ombudsman, entailing an open mind and a genuine willingness to alter and/or augment the draft report. Finally, the response of the individual concerned must be fairly and accurately portrayed in the report which enters the public domain.'*

21.2. This process, sometimes called 'Maxwellisation', involves four fundamental requirements as outlined by Mr Justice McCloskey:

- I. That all passages of the draft public statement impinging directly or indirectly on the affected individuals must be disclosed to them, accompanied by an invitation to make representations;
- II. A reasonable period for making such representations must be permitted;
- III. Any representations received must be conscientiously considered, entailing an open mind and a genuine willingness to alter and/or augment the draft report; and
- IV. The response of the individual concerned must be fairly and accurately portrayed in the statement that is published.

### **The 'Maxwellisation' Process**

21.3. In order to give all the officers concerned a fair opportunity to respond to any proposed criticisms, correspondence was forwarded on or about 10 November 2021 to a number of Police Officers along



with extracts from this public statement that impinged directly or indirectly on them, seeking their comments. As is standard practice in my Office, a period of 30 days from receipt of that correspondence was provided in order for the individuals to respond.

- 21.4. Legal representatives on behalf of Police Officer 1 forwarded correspondence to my Office, raising a number of issues and concerns. The contents of Police Officer 1's correspondence was the subject of careful and conscientious consideration by me. Following this response, my Office responded in writing to his issues and concerns. No responses were received from the other former police officers, who were the subject of criticism (either explicitly or implicitly), as referred to in the draft public statement.

#### **Police Officer 1**

#### ***Investigation relating to the Murder of Thomas Donaghy***

- 21.5. Police Officer 1 stated that although he was designated the title of Senior Investigating Officer initially, he was not the SIO throughout the course of the investigation into Mr Donaghy's murder. He stated his presence in the Major Incident Room on various dates was because he was present in a supervisory capacity, as the Deputy Regional Head of CID North.

#### ***Investigation relating to the Murder of Bernard O'Hagan***

- 21.6. Police Officer 1 stated that he was not the SIO for this investigation. Following his initial involvement on the 16 September 1991, he was diverted on 17 September 1991 to the investigation of a murder of a police officer in Swatragh. These facts have been recorded in this public statement.

21.7. Police Officer 1 further explains that from October 1990, he was Deputy Head of CID North, and this changed his role from direct investigation duties to support and supervisory duties within CID. Police Officer 1 stated that in all murder investigations, the SIO is person in charge of the investigation, and this was not Police Officer 1 for either of the murders, given his role as Deputy Regional Head of CID North.

### **Summary**

21.8. I have carefully considered the comments of Police Officer 1. I believe that the contents of this public statement accurately reflect the relevant police investigations. The views I have expressed in relation to the police investigations are based on evidence and other information, including intelligence, gathered during the course of this investigation.

21.9. I would like to thank Police Officer 1 for bringing these matters to my attention and for assisting in this investigation. At every stage I have sought to engage with former police officers in order to understand the environment within which they investigated serious crime. I accept that former RUC officers faced significant challenges and pressures. I have also sought to obtain and review the relevant legislation, standards, and guidance that existed in order to understand policing procedures and policies. I believe that this has resulted in a fair and impartial investigation, underpinned by evidence-based conclusions.

## 22.0

# Conclusions

### The Role of the Police Ombudsman

- 22.1. My role as Police Ombudsman is set out clearly in Part VII of the 1998 Act. In the Court of Appeal judgment in *Re Hawthorne and White's application*<sup>51</sup> the Court ruled that the Police Ombudsman had no role in adjudicating on a complaint of criminality or misconduct. The decisions and determinations of these issues are matters for the Public Prosecution Service (PPS) and criminal courts in relation to allegations of criminality. During the course of this investigation, files of evidence were forwarded to the PPS in respect of two former police officers. Having considered the evidence, the PPS directed that there was insufficient evidence to commence criminal proceedings against either of them. The main purpose of this public statement, therefore, is to address the matters raised by the families who have made complaints to my Office.
- 22.2. In accordance with my statutory functions, I am also obliged to consider the question of disciplinary proceedings. However, due to the relevant police officers being retired, a misconduct investigation was not possible. This would normally include a misconduct interview where the relevant officers would be asked to account for their decisions and actions after a misconduct caution. As stated by the Court of Appeal, it is not my role to determine whether or not police officers are guilty of misconduct. That is a matter for PSNI's Professional Standards Department (PSD) and the relevant police disciplinary panel in respect of serving police officers.

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45 *Re Hawthorne and White's Application for Judicial Review*. [2020] NICA 33.

- 22.3. The investigation of complaints about historical matters is challenging due to the passage of time and unavailability of relevant witnesses and documentation. In particular, the unavailability of some relevant RUC Special Branch records, in respect of informants and covert operations, has caused difficulties during this investigation. These relate to understanding the rationale for key decisions made, and actions taken, by RUC officers.
- 22.4. My investigators, however, gathered substantial evidence and other information during the course of this investigation. This included witness statements, police documentation, and other material within the public domain. I am unable to compel retired police officers to assist investigations in a witness capacity. However, a number of former police officers co-operated with this investigation. I am grateful for their assistance.
- 22.5. I am mindful of the context within which the original police investigations were conducted and the rules and standards that existed at the time, particularly relating to covert surveillance and the use of intelligence. There are now a range of legal instruments governing police actions and decisions including the Police Act 1997, Human Rights Act 1998, and Regulation of Investigatory Powers Act 2000 (which broadly codified existing practices in relation to use and conduct of informants) and more recently the Covert Human Intelligence Source (Criminal Conduct) Act 2021. Most significantly in terms of policing structures and practices, PSNI's Crime Operations Department was established in 2004. PSNI have stated that *'this department is led by a single Assistant Chief Constable thereby ensuring consistency, transparency, and accountability across all investigative and intelligence functions within PSNI.'* The PSNI Code of Ethics was introduced in 2003 and amended in 2008.

22.6. At the time of this series of attacks, there was a less developed regulatory framework governing policing practices, in particular the recruitment and management of informants. Since 1993, dramatic changes have taken place within the political environment, legal frameworks governing policing in Northern Ireland, and police accountability mechanisms. Those changes include:

- I. The Police Act 1997
- II. The Good Friday Agreement 1998;
- III. The Human Rights Act 1998;
- IV. The Patten Report 1999, which resulted in the creation of the PSNI;
- V. The Regulation of Investigatory Powers Act 2000 (repealed in part by the Investigatory Powers Act 2016);
- VI. The creation of the Office of the Police Ombudsman for Northern Ireland in 2000;
- VII. The creation of the Northern Ireland Policing Board (NIPB) in 2001;
- VIII. The formation of PSNI's Crime Operations Department in 2004; and
- IX. The PSNI's Code of Ethics, launched in 2003 and amended in 2008;
- X. Covert Human Intelligence Source (Criminal Conduct) Act 2021.

22.7. A number of public complaints made to my Office resulted in a thematic investigation that examined police conduct in respect of a series of sectarian attacks carried out by the North West UDA/UFF between 1989 and 1993. These resulted in 19 murders and multiple attempted murders, including the indiscriminate attack at the Rising Sun Bar, Greysteel, on 30 October 1993.

22.8. The relevant attacks were as follows:

- I. The murder of Gerard Casey at Rasharkin, County Antrim, on 4 April 1989;
- II. The murder of Eddie Fullerton at Bunrana, County Donegal, on 25 May 1991;
- III. The murder of Patrick Shanaghan at Castlederg, County Tyrone, on 12 August 1991;
- IV. The murder of Thomas Donaghy, at Kilrea, County Derry/Londonderry, on 16 August 1991;
- V. The murder of Bernard O'Hagan at Magherafelt, County Derry/Londonderry, on 16 September 1991;
- VI. The attempted murder of James McCorriston at Coleraine, County Derry/Londonderry, on 14 February 1992;
- VII. The murder of Daniel Cassidy at Kilrea, County Derry/Londonderry, on 2 April 1992;
- VIII. The attempted murder of Patrick McErlain at Dunloy, County Antrim, on 28 August 1992;
- IX. The murder of Malachy Carey at Ballymoney, County Antrim. Mr Carey was shot on 12 December 1992 and died the following day as a result of his injuries;
- X. The murders of Robert Dalrymple, James Kelly, James McKenna, and Noel O'Kane at Castlerock, County Derry/Londonderry, on 25 March 1993. A fifth man, Gerard McEldowney, was seriously injured in this attack; and,
- XI. The murders of John Burns, Moira Duddy, Joseph McDermott, James Moore, John Moyne, Steven Mullan, and Karen Thompson at the Rising Sun Bar, Greysteel, County Derry/Londonderry, on 30 October 1993. An eighth victim, Samuel Montgomery, died as a result of injuries sustained in the attack on 14 April 1994.

## **The Police Ombudsman's Powers**

22.9. I must act lawfully and fairly in the exercise of my functions as provided for under Part VII of the 1998 Act. The Court of Appeal in *re Hawthorne and White* has unanimously ruled on the powers of the Police Ombudsman under that legislation. This includes how the Ombudsman will address complaints generally and, more particularly, in complaints about the actions of retired RUC officers concerning allegations of collusion. As stated by the Court of Appeal, my role is limited to acknowledging whether the matters '*uncovered*' by an investigation are '*very largely*' what the families claimed constituted '*collusive behaviour*.'

22.10. In that context, I have considered the complaints, concerns, and questions raised by the families. I have also considered allegations of '*collusion*' raised by a number of the victims, in respect of police actions relating to a number of the attacks.

**That the RUC failed to recognise, and manage, the growing threat posed by the North West UDA/UFF against members of the nationalist and republican communities.**

## **The Loyalist Arms Importation**

22.11. Given the serial numbers of recovered weapons used in a number of the attacks, I am of the view that they originated from a consignment of weapons imported into Northern Ireland by loyalist paramilitaries in December 1987. As reported by my predecessor, Dr Maguire, those responsible for this arms importation included senior members of the UDA, UVF, and Ulster Resistance.

22.12. As a result of a multifaceted intelligence and surveillance operation, police were successful in recovering a large quantity of these

weapons at Mahon Road, Portadown, on 8 January 1988. Subsequent events, however, demonstrated that loyalist paramilitaries received a significant number of the imported weapons.

- 22.13. This included at least 63 VZ58 assault rifles, 34 Browning pistols, RGD-5 hand grenades, and an unknown quantity of ammunition. These weapons were used in at least 80 sectarian murders in Northern Ireland, including a number of attacks referred to in this public statement.
- 22.14. The inability of my Office to compel police or other witnesses to assist enquiries, together with the routine destruction of the majority of TCG records, has impeded my investigation. This made it more difficult to establish the circumstances whereby the North West UDA/UFF acquired weapons used in a number of attacks referred to in this public statement.
- 22.15. My investigators, however, viewed intelligence indicating that the North West UDA/UFF were actively seeking to acquire weapons from the arms importation for use in sectarian attacks. In February 1988, intelligence was received indicating that the North West UDA/UFF were finalising plans for the movement of weapons. Between March and April 1988, further intelligence was received stating that the North West UDA/UFF had received a consignment of weapons, including 9mm pistols.
- 22.16. In May and June 1988, intelligence was received that the North West UDA/UFF had received up to five 'AK47s.' I am of the view that this was a reference to VZ58 assault rifles. In early 1989, members of Ulster Resistance, including Person E, were reported as being in discussions with the North West UDA/UFF regarding the distribution of weapons.



- 22.17. In late February 1989, police arrested two men in the Portrush area with links to the North West UDA/UFF. Following their arrests, two Browning pistols were recovered. The serial numbers of the pistols fell within the parameters of those seized at Mahon Road and Flush Road. Both weapons were forensically examined by police but could not be linked to any attacks. Given their serial numbers, I am of the view that they formed part of the 1987 loyalist arms importation.
- 22.18. Gerard Casey was murdered by the North West UDA/UFF on 4 April 1989. Police later received intelligence that, on the night of their arrests in late February 1989, the two men had been planning to murder Gerard Casey. They were both subsequently convicted of Conspiracy to Murder another individual. A VZ58 rifle used in Mr Casey's murder, that was also later used at Greysteel, was recovered following the latter attack at Ballygudden Road, Eglinton, on 3 November 1993. Given its serial number, I am of the view that it formed part of the 1987 loyalist arms importation.
- 22.19. In late December 1989, children playing near a wooded area at Gortycavan Road, Articlave, found a VZ58 assault rifle and a Martini Henry .303 rifle<sup>52</sup> in undergrowth. Further police searches at the time led to the discovery of 53 rounds of Chinese manufactured 7.62mm calibre ammunition. Forensic examinations of the VZ58 rifle established that it had no history of previous use. I am of the view, however that, given its serial number, it formed part of the 1987 loyalist arms importation.
- 22.20. In late September 1992, police recovered two VZ58 assault rifles and other weapons and ammunition from a property at Carnelis Road, Mosside. Forensic examinations established that one of the assault rifles had been used in the murder of Patrick Shanaghan

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<sup>52</sup> The Martini-Henry was a single-shot breech rifle used by the British Army between 1871 and 1918.

and the attempted murder of Patrick McErlain. The other assault rifle had no history of previous use. I am of the view, however that given their serial numbers, both weapons formed part of the 1987 loyalist arms importation.

- 22.21. A Browning pistol was also used in the Greysteel attack and was recovered along with the VZ58 rifle and a Russian Baikal shotgun, at Ballygudden Road, Eglinton, on 3 November 1993. I am of the view that, given the serial number of the Browning pistol, it formed part of the loyalist arms importation. On 4 November 1989, a RGD-5 hand grenade was recovered from a location on the Ardrough Road, outside Derry/Londonderry. Given its make and model, I am of the view that it formed part of the 1987 loyalist arms importation.
- 22.22. A Browning pistol, used in the murders of Eddie Fullerton and Daniel Cassidy, has never been recovered.
- 22.23. Police recovered weapons at Mahon Road, Flush Road, and a number of locations in the North West. However, this investigation has identified seven weapons that, in my view, were linked to the 1987 arms importation, and subsequently reached the North West UDA/UFF. Three of these weapons were used in 10 murders and a number of attempted murders referred to in this public statement.
- 22.24. My predecessor, Dr Maguire, identified intelligence gaps and failings in the January 1988 police surveillance operation. Senior RUC officers responsible for directing this operation, who would have been in an informed position as to its conduct, are either deceased or declined to assist with his investigation. Dr Maguire faced challenges in accounting for the absence of a concerted investigative effort to bring those responsible for the weapons importation to justice.

22.25. I cannot conclude that the relevant attacks would not have occurred had police prevented the North West UDA/UFF from taking possession of these weapons. For the period between April 1989 and October 1993, my investigators viewed intelligence indicating that the North West UDA/UFF were seeking to acquire weapons from other sources. This included other planned arms importations and thefts of weapons from members of the security forces and general public. A number of the weapons used in the series of attacks referred to in this public statement did not originate from the 1987 loyalist arms importation.

22.26. Police were successful in recovering a number of weapons used in these attacks and others not subject to this public statement. However, as early as March 1988, they were aware that the North West UDA/UFF had taken possession of a number of VZ58 assault rifles. On 4 April 1989, a VZ58 rifle was used in the murder of Gerard Casey. I am of the view that weapons from the 1987 loyalist arms importation significantly enhanced the capability of the North West UDA/UFF to carry out attacks during the 1989-1993 period.

22.27. A number of the recovered weapons were subsequently destroyed by police. There are, therefore, no further evidential opportunities in respect of these weapons. I am of the view that the disposal of weapons linked to undetected murders and other serious crimes ought not to have occurred. I am critical of this blanket policy approach to the destruction of weapons used in unsolved crimes.

### **Intelligence ‘Caches’ and Threat Warnings**

22.28. This investigation examined the discovery of a number of loyalist intelligence ‘caches’ in the North West and other areas between 1989 and 1993. Some of the recovered documentation related to a number of the victims referred to in this public statement. I am of the

view that these ‘caches’ demonstrated the increased intelligence-gathering capabilities of the North-West UDA/UFF during the period in question. This contributed towards the growing threat that they posed to members of the nationalist and republican communities.

22.29. The late Sir Desmond de Silva QC, in the Executive Summary of his 2012 report, when discussing the approach that the RUC took towards threat intelligence, stated, *‘I am satisfied that there was a seriously disproportionate focus by the RUC on acting upon threat intelligence that related to individuals who were being targeted by republican paramilitary groups.’*

22.30. He believed that this was not driven by an inherently sectarian bias, but needed to be considered against a number of contextual considerations. *‘The first is that the RUC SB were adverse to providing warnings to those (from any community) who were considered to be ‘untrustworthy’ and who might therefore, have decided to publicise the fact that there was a threat to their life. If this happened, the RUC SB feared that their intelligence ‘source’ would be endangered. By contrast, if members of the security forces were, for example, being targeted by PIRA, the RUC SB may have trusted them to receive warnings without publicising them.’*

22.31. The RUC policy at the time in respect of warning individuals at risk was set out in Force Order 33/86 entitled, *‘Threats against the Lives of Members of the Security forces, VIPs or other Individuals’*. This stated that when a threat was received *‘Local Special Branch (SB) concerned will inform the Sub-Divisional Commander (SDC) in whose area the subject resides or works and the SDC will take whatever action he wishes necessary. If the information received indicates that an attack on any person is imminent, the member receiving the information will immediately take all necessary action to inform the person at risk.’* On 3 July 1991, it was replaced by

Force Order 60/91, which contained the same instructions as quoted above.

- 22.32. In early November 1989, the personal details of several hundred individuals were recovered from two loyalist intelligence ‘*caches*’ in the Derry/Londonderry area. This included personal information relating to Gerard Casey, Eddie Fullerton, Patrick McErlain, and Malachy Carey. Mr Casey had been shot dead by the UDA/UFF on 4 April 1989.
- 22.33. This investigation has established that police provided Mr. Carey with a threat warning. My investigators found no record, however, of an assessment by police as to whether a threat warning was necessary in respect of Messrs Fullerton and McErlain. This investigation found no record of threat warnings being provided to either individual. Mr Fullerton was subsequently murdered in May 1991, and an attempt was made on Mr McErlain’s life in August 1992.
- 22.34. In late November 1989, police obtained a list containing personal information relating to 31 individuals, including Gerard Casey, Patrick McErlain, and Malachy Carey. The list was believed to have originated from within the UVF. Intelligence indicated that none of the 31 individuals were under ‘*imminent threat*.’
- 22.35. This investigation has established that police provided Mr. Carey with a warning. However, in light of the inconsistent evidence in relation to threat warnings to Mr McErlain, I am unable to conclude whether he received a warning from police subsequent to the documentation finds in November 1991 and January 1992.

- 22.36. In February 1991, police arrested Person J following a sectarian attack on a Portrush address. When police searched his home they obtained personal information relating to over 250 individuals, including Thomas Donaghy and Bernard O'Hagan. Both men were murdered by the North West UDA/UFF in August 1991 and September 1991 respectively.
- 22.37. Person J was subsequently convicted of Possession of Documentation Likely to be of use to Terrorists and sentenced to 12 months imprisonment. He was a former member of the UDR and intelligence linked him to a number of North West UDA/UFF attacks, including the murder of Mr Donaghy.
- 22.38. I am of the view that Messrs McErlain and Fullerton (the latter being an elected official) ought to have been made aware of the heightened threat against them in November 1989. This investigation has found no evidence that, in relation to the threat to Eddie Fullerton, that RUC officers informed AGS, who then ought to have informed him of the threat. Mitigating measures in relation to Mr McErlain ought to have been put in place, or considered by police regarding the threat information, such as providing security advice to him.
- 22.39. In June 1991, a member of the public discovered a significant quantity of RUC documentation on a rubbish dump at Drumaduff, near Limavady. Media reporting at the time indicated that it contained personal information relating to 21 prominent republicans, including Eddie Fullerton. My investigation subsequently interviewed a number of police officers and a Sinn Féin representative who stated that Mr Fullerton's details were not contained within this documentation.

- 22.40. In early November 1991, police recovered documentation from an address at Snugville Street, Belfast. This included a list of individuals denoted as being connected to North Antrim PIRA. Patrick McErlain was one of the names on the list. My investigators found no record that he was notified of this threat. In February 1992, personal information relating to Mr McErlain and Daniel Cassidy was found following a number of arrests and searches in the Ballymoney area. My investigators found no record that either individual was warned of the threat, although Mr McErlain's wife later informed the media that her husband had been notified of this.
- 22.41. Intelligence 'caches' of this nature posed a potential threat to those named within the documentation. This placed a responsibility on the local RUC Sub-Divisional Commander to assess whether threat warnings to identified individuals were necessary. If the threat against the individual was considered imminent, in accordance with the relevant RUC Force Order, a threat warning should then have been issued. If the threat was not considered imminent, the Sub-Divisional Commander could take whatever action they considered appropriate.
- 22.42. This investigation has sought to establish what assessment was undertaken by police, as to whether it was necessary to warn identified individuals of the existence of threats against them. I am of the view that, on a number of occasions, the receipt of specific threat intelligence engaged the State's obligations to protect the lives of its citizens as provided for by Article 2 of the European Convention on Human Rights (ECHR).
- 22.43. The security situation in Northern Ireland at this time caused police to receive a large amount of threat intelligence. They were, therefore, familiar with their responsibilities as outlined in the relevant RUC Force Orders. I am of the view that, given the

available evidence and intelligence, the application of this Force Order was inconsistent in respect of a number of the victims referred to in this public statement. Some were provided with appropriate threat warnings, although others were not.

22.44. I am mindful, when taking this view, that not all of the relevant documentation could be located by my investigators. I am also aware that witnesses stated that threat warnings were given to Patrick McErlain and Malachy Carey, despite the lack of corroborative police documentation.

22.45. However, I am of the view that the RUC did not issue warnings to all those individuals whose personal details were discovered in the relevant loyalist intelligence 'caches.' The relevant Force Order placed a responsibility on local police commanders to make informed and accountable decisions in respect of threat warnings. They were also reliant on intelligence concerning such threats being shared by RUC Special Branch. The lack of police records made it difficult for this investigation to identify individual officer responsibility and consideration of the threats.

### **Relationships between the North West UDA/UFF and Members of the Security Forces**

22.46. This investigation has examined a number of instances where members of the security forces were suspected of passing information to members of the North West UDA/UFF.

22.47. Police received intelligence that a UDR member based in the North West, had assisted in the importation of weaponry and the supply of intelligence of use to loyalist paramilitaries. Police assessed this individual to be Person V, who was at that time a serving UDR member, based in the North West and who had access to sensitive



security force intelligence. Intelligence was also received indicating that he passed information to loyalist paramilitaries that was used in the targeting of Gerard Casey.

22.48. In late 1989, Person V was dismissed from the UDR. My investigators found no evidence that the intelligence held by Special Branch linking him to the murder of Gerard Casey was passed to police investigating that attack. My investigators found no evidence that he was subject to a criminal investigation in respect of the arms smuggling referred to in the previous paragraph.

22.49. During the 1989-1993 period, Persons A, J, K, and Q were either serving or former UDR members. They possessed weapons and tactical training skills that benefited the North West UDA/UFF, in addition to its improved access to weaponry and intelligence.

22.50. This investigation has also identified concerns regarding a number of police officers serving in the North West at the time. In 1989, police received information that Police Officer 12 was socialising with known loyalists. In 1991, intelligence was received indicating that he was passing information to loyalist paramilitaries. He was subsequently moved to another policing district. My investigators found no evidence that the RUC conducted a criminal investigation into alleged passing of information by this officer at the time.

22.51. Police Officer 12 was a member of custody staff at Strand Road RUC Station at the time of Eddie Fullerton's arrest in January 1990. My investigators initially interviewed him in a witness capacity but later, under criminal caution, for the offence of Misconduct in Public Office. During interview, he denied passing information to loyalist paramilitaries. My investigators submitted a file of evidence to the PPS, who subsequently directed 'No Prosecution' against Police Officer 12.

- 22.52. This investigation also identified issues regarding a number of other police officers serving in the North West at the time. Police Officer 23 was transferred to another police district in late 1988, following concerns regarding his links to a prominent loyalist, Person JJ. At that time Police Officers 23 and 24 were both interviewed under criminal caution by RUC investigators following allegations made against them by Person KK. A file of evidence was submitted to the DPP who directed 'No Prosecution' against either police officer.
- 22.53. Police Officer 25 was dismissed from the RUC in 1989 on suspicion of passing information to loyalist paramilitaries. My investigators found no evidence, however, that he was the subject of a criminal investigation at the time.
- 22.54. I am of the view that allegations of RUC officers passing information of use to terrorists was a serious matter that should have been investigated robustly and consistently. However, given the evidence and intelligence obtained by my investigators, I believe that police adopted an inconsistent and inadequate approach to this issue. Allegations involving UDR personnel passing information to loyalist paramilitaries were dealt with internally by military police. This was another indicator that, during the period in question, police failed to respond appropriately to the escalating threat posed by the North West UDA/UFF.

**That RUC Special Branch officers failed to disseminate all the available intelligence, thereby impeding the relevant police investigations.**

- 22.55. My investigators reviewed all of the intelligence held by police relating to the attacks featured in this public statement. I am of the view that there was no specific intelligence that could have

forewarned of any of the attacks, and allowed police to have taken preventative measures.

- 22.56. This investigation has established that RUC Special Branch shared most of the relevant intelligence to police investigating the attacks in a timely and appropriate manner. My investigators interviewed a number of CID officers who stated that a good working relationship existed with their Special Branch colleagues within RUC North Region. SIOs acted promptly on disseminated intelligence and arrested suspects following a number of the attacks.
- 22.57. An exception was the failure by Special Branch to share intelligence linking Person V, a UDR member, to the murder of Gerard Casey. I have been unable to establish why this information was not shared with police investigating Mr Casey's murder.
- 22.58. However, from 1989 onwards, RUC Special Branch were in receipt of intelligence indicating that the North West UDA/UFF intended to escalate sectarian attacks against the nationalist and republican communities. Suspected PIRA members and Sinn Féin representatives were to be specifically targeted. This was supported by other intelligence indicating that the North West UDA/UFF were seeking to acquire weapons and improve their intelligence-gathering capabilities.
- 22.59. Based on the above information, I am of the view that police were aware of the growing threat posed by the North West UDA/UFF from 1989 onwards. This increased threat, however, was not accompanied by a policing response proportionate to the increased risk to members of the nationalist and republican communities. There was initially a lack of intelligence coverage, reflected in the limited intelligence received by RUC Special Branch both prior to, and following, a number of the attacks. This led to increased efforts

by police, later in the relevant period, to infiltrate the North West UDA/UFF through the recruitment of informants.

**That RUC Special Branch officers acted in a manner designed to protect informants from arrest, prosecution, and conviction for serious criminality, including murder.**

**That RUC officers colluded in a number of attacks that resulted in 19 murders and a number of attempted murders.**

22.60. During 1991, the North West UDA/UFF intensified attacks on the nationalist and republican communities, murdering Eddie Fullerton, Patrick Shanaghan, Thomas Donaghy, and Bernard O'Hagan. Intelligence indicated that this was part of a wider strategy by the UDA/UFF leadership to weaken support for the republican movement. By this time, the North West UDA/UFF had evolved into an organised and well-equipped paramilitary unit, with a much improved intelligence-gathering network. Its senior members were also well-versed in respect of anti-interrogation and counter-surveillance tactics.

22.61. From 1992 onwards, RUC Special Branch increased their efforts to infiltrate the North West UDA/UFF. My investigators interviewed a number of RUC Special Branch officers who confirmed that they sought to identify and recruit informants from '*top to bottom.*' There were also an increased number of covert operations initiated, aimed at conducting surveillance on leading North-West UDA/UFF members. My investigators reviewed the limited TCG records available relating to these operations.

22.62. Through the use of informants, RUC Special Branch North Region sought to obtain a more complete picture of the plans and activities of the North West UDA/UFF. This was essential, given the increase

in loyalist paramilitary violence in the North West from 1991 onwards. Although some approaches to members were rebutted, others were successful in recruiting informants.

- 22.63. A number of these individuals were ideally placed to report on the activities of the North West UDA/UFF. It was hoped that the supply of good quality, actionable intelligence from these informants could allow RUC Special Branch to act in a concerted, targeted manner against loyalist paramilitaries. This would allow police to disrupt terrorist activities, make arrests, and secure convictions.
- 22.64. My investigators interviewed a number of former RUC Special Branch North Region officers. They stated that they told informants not to '*break the law*' but accepted that their recruitment and handling was a '*grey*' area. Although none admitted to it, a number of informants were suspected of having been involved in serious criminality, including murder. Handlers had no clear guidance and/or legislation, stating that the '*best*' informants were those most deeply embedded within paramilitary organisations.
- 22.65. My investigators were told that the involvement of an individual, as a member of a terrorist organisation, made them suitable for subsequent recruitment.
- 22.66. Recruiting an informant who played a central role within a paramilitary organisation carried high risks which any corresponding handling strategy had to consider, and attempt to minimise. Risks had to be regularly reviewed and balanced against the potential '*rewards*' to be gained from the recruitment of paramilitary informants.
- 22.67. This investigation has identified examples of intelligence obtained from informants that led to police recovering weapons and ammunition. These recoveries impacted upon the military

effectiveness of the North West UDA/UFF and may have saved lives. Intelligence was obtained about weapons smuggling, terrorist strategies and tactics, and members of the security forces suspected of passing information to loyalist paramilitaries. Intelligence also led to a number of arrests and convictions. These examples evidenced the 'rewards' to be gained through the effective recruitment and management of well-placed informants.

- 22.68. This investigation has not identified evidence that a police officer committed a criminal offence by protecting an informant from arrest and/or prosecution. My investigators identified a number of occasions where informants were arrested and files of evidence submitted to the DPP in respect of their criminal activities.
- 22.69. RUC Special Branch North Region achieved a degree of success in infiltrating the North West UDA/UFF with informants and gathering intelligence that frustrated the organisation's activities in some instances. This investigation has, however, identified concerns regarding the recruitment and management of a number of informants.
- 22.70. These informants were suspected of having been involved in serious and violent crime, including murder, when engaged by RUC Special Branch.
- 22.71. My investigators interviewed the RUC Special Branch handler of one of these informants. He stated that the recruitment of the relevant informant had been authorised by his senior officers in order to infiltrate the North West UDA/UFF and prevent further terrorist attacks.
- 22.72. However, another informant continued to be suspected of involvement in serious paramilitary crime. The risk attached to his

recruitment was not proportionate to the quality of information that he provided. Although a member of the North West UDA/UFF, he consistently failed to provide his handlers with high-quality intelligence that could be developed by police in order to prevent further attacks.

- 22.73. On 23 October 1993, a PIRA bomb exploded at Frizzell's Fish Shop, Shankill Road, Belfast, resulting in the deaths of nine members of the public. Following the bombing, police received intelligence that the UDA/UFF leadership had subsequently met to discuss a retaliatory attack. It was decided that any attacks would not be restricted solely to Belfast.
- 22.74. In the days following the explosion, information was passed to police in the North West from Belfast that a retaliatory attack could be imminent. This information was passed to senior police in the Derry/Londonderry area who stated that security in North Region was *'tight.'*
- 22.75. RUC Special Branch received no information from their North West UDA/UFF informants, in the week between the Shankill Road bombing and Greysteel, that an attack was being prepared.
- 22.76. This investigation also identified an informant who was allowed to continue in that role, despite RUC Special Branch possessing intelligence that he was involved in serious criminality, including murder. This was contrary to RUC policy at the time. Although this intelligence was received a number of years after the relevant attacks, it would have been reasonable to expect that police should have, in my view, recognised that this informant would have had knowledge of and possibly participated in serious criminality. He did not provide any intelligence relating to the attacks. However, he was

subsequently suspected of having been involved in, during the intervening period.

22.77. I am of the view that this illustrated a practice on the part of some RUC Special Branch officers to recruit, and continue to use, informants suspected of involvement in serious criminality, including murder, contrary to applicable RUC policy of the time. That policy was outlined in Northern Ireland Working Group Guidelines (1989) as follows:

*[4.] The informant must be clearly instructed that his employment or continued employment as an informant does not carry with it immunity from criminal prosecution. In particular, he should be warned that he should not expect to avoid criminal proceedings if he is detected committing or having committed any physical assaults, or attacks on property causing serious damage, or acts of extortion. Moreover, no police officer will counsel, incite or procure the commission of such criminal offences. However, subject to paragraph 5 below an officer may employ a person as an informant whom he believes to be engaged in criminal activities provided that, at the time of employing him he is satisfied that*

- a. the informant is likely to be able to provide information concerning offences involving a risk of death or injury to persons, serious damage to property extortion or offences connected with the financing of terrorism;*
- b. the required information cannot readily be obtained by any other means; and*
- c. the need for the information that may be obtained by the employment of that person as an informant justifies his employment notwithstanding the criminal activities on which he may be engaged;*



*[5.] The employment of an informant believed to be engaged in criminal activity must be specifically authorised by an officer now below the rank of Assistant Chief Constable. It must be regularly reviewed.'*

These guidelines were referred to in the Investigatory Powers Tribunal brought against the Secretary of State and others by Privacy International, Reprieve, CAJ and the Pat Finucane Solicitor.<sup>53</sup>

- 22.78. It is my view that handlers ought to have been equipped with information necessary to enable them to probe and question informants about their knowledge of terrorist activities. Handlers had a duty to probe and assess all relevant information relating to the activities of an informant. Based on the information then available to police, and this informant's failure to report on any of the attacks, I am of the view that his Special Branch handlers ought to have recognised that he was withholding information and was potentially involved in some of the attacks.
- 22.79. The matter was further aggravated by the RUC failing to notify the DPP of the status of one of these informants when a file of evidence was submitted by police regarding a terrorist attack.
- 22.80. My investigators interviewed a former RUC Special Branch officer under criminal caution regarding this matter. Following this, a file of evidence was submitted to the PPS who subsequently directed 'No Prosecution' against the relevant officer.

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<sup>53</sup> [2019] UKIPTrib 17/86/CH and 17/87/CH at para 32

22.81. My investigators obtained information that one of these informants chose not to share information with his handlers which could have prevented murders.

22.82. The RUC handlers for this informant believed that he was de-registered by RUC Special Branch following the attack. However, this investigation has established that he re-commenced provision of intelligence to police some years later. It is of concern that he remained an informant for a number of years, despite RUC Special Branch being aware of his previous actions.

### **Overall Conclusions**

22.83. In light of the above, I have carefully considered the evidence and other information gathered during this investigation. The evidence gathered by my investigators supports a number of the complaints and concerns made by the families. I will now detail these and also address complaints that there was '*collusion*' in respect of police actions relating to a number of the attacks referred to in this public statement.

22.84. The Court of Appeal in *Re Hawthorne and White* has ruled that the Police Ombudsman cannot make a determination of misconduct or criminality on the part of any police officer. Further, the Court indicated that in respect of a complaint about collusion, the Police Ombudsman may acknowledge whether the matters '*uncovered*' by an investigation are '*very largely*' what the families claimed constituted '*collusive behavior*.'

22.85. I am of the view that the majority of RUC investigative actions, in relation to the attacks outlined in this public statement, were progressed in a thorough and diligent manner. Evidence was gathered and my investigators established that attacks were linked and considered as a series, as opposed to isolated incidents. The majority of intelligence obtained by RUC Special Branch was shared

with murder investigation teams in a timely manner. I have found no evidence that RUC investigators sought to protect any individual from prosecution. Arrests were made and, where evidence existed, files submitted to the DPP. A number of individuals were prosecuted and convicted.

### **Emerging Threat in the North West**

- 22.86. However, RUC Special Branch North Region were aware, from early 1988 onwards, of the growing threat posed by the North West UDA/UFF against members of the nationalist and republican communities. Intelligence indicated that loyalist paramilitaries were seeking to escalate attacks as part of an overall strategy to weaken support for the republican movement and bring PIRA to a position where they would enter peace negotiations.
- 22.87. Intelligence indicated that the North West UDA/UFF were keen to acquire weapons that formed part of the 1987 loyalist arms importation. This investigation has established that three weapons, believed to have been part of this importation, were used in a number of attacks in this public statement, resulting in the murders of 10 individuals and serious injury of others. Although these weapons alone did not account for all of the attacks in the series, they significantly enhanced the capability of the North West UDA/UFF to escalate their campaign of sectarian violence during the 1989-1993 period.
- 22.88. This threat was enhanced by an intelligence-gathering network that collated information on individuals perceived to be connected to the republican movement by loyalist paramilitaries. This investigation has identified a number of instances where loyalist intelligence 'caches' were discovered by the security forces. These contained personal information relating to Gerard Casey, Eddie Fullerton,

Thomas Donaghy, Bernard O'Hagan, Daniel Cassidy, Patrick McErlain, and James Kelly. This investigation found no police records that Messrs Fullerton, Donaghy, O'Hagan, Cassidy, and McErlain were notified by the RUC of the increased threat to their safety, in accordance with existing Force Orders at the time. However, the wife of Mr. McErlain did inform the media that her husband was aware of his details having been found within a loyalist intelligence 'cache' in the Ballymoney area in January 1992.

22.89. Mr Casey had been murdered by the time his personal details were recovered. However, my investigators identified other occasions where threat warnings should have been, but were not provided. I cannot say whether the notification of threat warnings, in itself, would have been sufficient to protect these individuals from subsequent attack. However, a threat notification would have allowed the relevant individuals to review their personal safety measures in light of the heightened risk. I am of the view that the RUC did not adhere to the relevant Force Orders in a consistent manner.

22.90. This investigation has established that RUC Special Branch North Region recognised the growing threat caused by the North West UDA/UFF as described above, and took action to counter it. From 1992 onwards, they took more pro-active steps to increase their intelligence-gathering network through increased covert surveillance operations and the recruitment of informants.

22.91. **Security Forces Passing Information to Terrorists**

22.92. This investigation has also established that the security forces were concerned that a number of its members were passing sensitive information to loyalist paramilitaries. This has been a finding of other investigations and inquiries relating to the Northern Ireland

'Troubles.' I am of the view that, although some of these individuals were dealt with appropriately, others were not. This investigation has identified instances where members of the RUC and UDR were not subject to criminal investigations despite intelligence linking them to serious offences. Instead, they were dismissed or re-positioned. I am of the view that the RUC response to these matters was both inconsistent and inadequate.

22.93. **Police Response to the Emerging Threat**

22.94. This investigation has identified limited information relating to a number of covert surveillance operations conducted on members of the North West UDA/UFF during the relevant period. Although a feature of the investigation of historical matters, it is frustrating that more detailed records do not exist. The lack of relevant records has impeded my understanding of covert policing tactics and practices at the time. However, from the limited information available, I am of the view that a number of these operations proved successful in recovering weapons, securing arrests and convictions, and potentially saving lives.

22.95. My investigators also viewed documentation indicating that a number of covert operations, relating to senior members of the North West UDA/UFF, were conducted during September and October 1993, ending prior to the attack at Greysteel. I am aware of the circumstances surrounding the cessation of these operations. I am satisfied that they were not relevant to the issues I must consider in respect of the murders and attempted murders outlined in this public statement.

22.96. Intelligence indicated that the UDA/UFF leadership were planning a retaliatory attack in response to the Shankill Road bombing. Information obtained from loyalist prisoners detained at Castlereagh

RUC Holding Centre on 30 October 1993 indicated that an attack was imminent in the Derry/Londonderry area.

22.97. **RUC Recruitment and Handling of Informants**

22.98. In addition to covert surveillance, RUC Special Branch increased their efforts from 1992 onwards to recruit well-placed informants within the North West UDA/UFF. This was a '*high-risk*' strategy where RUC Special Branch hoped the '*rewards*' of high-quality, actionable intelligence would outweigh the '*risks*' of recruiting and managing violent and unreliable individuals linked to serious crime, including murder.

22.99. During the relevant period, informants within the North West UDA/UFF provided information that resulted in the recovery of weapons and ammunition, and arrests and convictions. However, this investigation has identified instances where RUC Special Branch recruited and handled informants who were known to have been involved in serious crime, including murder, both prior to, and following their recruitment. Despite this, RUC Special Branch chose to authorise and continue with their recruitment.

22.100. I am of the view that these informants would have had detailed knowledge of attacks that they were involved in, but chose not to share this information with their handlers.

22.101. My investigators obtained information that one of these informants chose not to share information with his handlers which could have prevented murders. Following events detailed in this public statement, no information was obtained from this informant for a number of years. However, Special Branch did subsequently resume their relationship with him. This investigation has found no

evidence of an assessment by Special Branch of the risks involved in resuming this relationship.

### **Complaints of Collusion**

22.102. The families alleged that there was '*collusion*' in respect of police actions relating to a number of the attacks. In Chapter 3 of this public statement I carefully considered the various definitions of '*collusion*' offered by the then Lady Justice Keegan, Lord Stevens, Judge Peter Cory, Judge Peter Smithwick, Sir Desmond de Silva, and a number of former Police Ombudsmen. While these definitions are informative, I acknowledge that there is no universally agreed definition of '*collusion*.' I have, however, identified a number of common features which I summarise as follows:

- 22.103.
- I. Collusion is context and fact specific;
  - II. It must be evidenced but is often difficult to establish;
  - III. Collusion can be a wilful act or omission;
  - IV. It can be active or passive (tacit). Active collusion involves deliberate acts and decisions. Passive or tacit collusion involves turning a blind eye, or letting things happen without interference;
  - V. Collusion by its nature involves an improper or ethical motive;
  - VI. Collusion, if proven, can constitute criminality or improper conduct (amounting to a breach of the ethical Code of the relevant profession); and
  - VII. Corrupt behaviour may constitute collusion.

22.104. I am mindful of the comments made by Judge Cory in his report into the murder of Robert Hamill. He stated that the public must have confidence in the police. Police must act judiciously and always strive to apply the law fairly, evenly, and without bias or

discrimination. Their role is to protect and serve the entire community.

22.105. I am also mindful of judgment of the then Lady Justice Keegan at paragraph 44 of *Re Hawthorne and White's Application*, she stated:

*“Collusion is another feature of the historical landscape. Whilst this term denotes sinister connections involving State actors it is not a criminal offence in itself. It has also been notoriously difficult to achieve a universal, accepted definition. In this case the definition adopted was that of Judge Smithwick which frames the concept in the broadest sense emphasising that it includes legal and moral responsibility.”*<sup>54</sup>

22.106. My investigators interviewed two former police officers under criminal caution and submitted files of evidence to the PPS. The PPS subsequently directed ‘No Prosecution’ against both of these former officers. Other police officers who performed significant roles in matters relating to the contents of this public statement are also now retired. I was, therefore, unable to conduct a misconduct investigation to further examine their actions.

22.107. I have taken into account the limitation on my powers to decide on a complaint of ‘*collusion*’ (as outlined in the Court of Appeal judgment). I am of the view that, having considered all the circumstances in this case, my investigation into these public complaints has identified the following collusive behaviours on the part of police.

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<sup>54</sup> [2018] NIQB 94, at para 44



**A number of weapons used in this series of attacks were part of a 1987 loyalist arms importation.**

- 22.108. I am of the view that that the weapons used in the murders of Gerard Casey, Patrick Shanaghan, and the Greysteel murders originated from a consignment of weapons imported into Northern Ireland by loyalist paramilitaries in December 1987. The VZ58 rifle used in the murder of Patrick Shanaghan was also used in the attempted murder of Patrick McErlain. A number of other weapons recovered by police from North West UDA/UFF 'hides' during the relevant period also, in my view, originated from the same importation.
- 22.109. Although police recovered a large number of the imported weapons, a significant number found their way to loyalist paramilitaries, including the North West UDA/UFF. Intelligence from February 1988 onwards indicated that the North West UDA/UFF were seeking to acquire weapons from the importation.
- 22.110. This distribution of weapons from the arms importation to loyalist paramilitaries occurred because of intelligence gaps and failings in the original police operation put in place at the time to intercept the importation and arrest those involved, as detailed in my predecessor, Dr Maguire's report into the attack at Loughinisland. I consider that this report is now a matter of public record.
- 22.111. Although intercepting all the weapons may not have prevented the relevant attacks, those that did elude seizure significantly enhanced the capability of the North West UDA/UFF to escalate its sectarian campaign against the nationalist and republican communities. The investigation by my predecessor, Dr Maguire, into the Loughinisland attack concluded that there was a lack of a concerted investigative effort to bring those responsible for the importation to justice. Detectives investigating seizures of weapons linked to the

importation were not provided with relevant intelligence. I refer to Dr Maguire's findings that the failure to do so directly impeded subsequent police investigations seeking to bring those responsible for the weapons importation to justice.

**The failure to issue threat warnings in a consistent manner in accordance with existing RUC Force Orders.**

- 22.112. This investigation established that the North West UDA/UFF and other loyalist paramilitary groupings increased their intelligence-gathering networks during the relevant period to enable an increased number of attacks on members of the nationalist and republican communities. During the 1989-1993 period, a number of loyalist intelligence 'caches' were discovered by police that contained the details of Gerard Casey, Eddie Fullerton, Thomas Donaghy, Bernard O'Hagan, Daniel Cassidy, Malachy Carey, and James Kelly.
- 22.113. My investigators established that some of them were warned of the increased threat to their personal security. However, they found no police records that Messrs Fullerton, Donaghy, O'Hagan, Cassidy, and McErlain were notified by the RUC when personal information relating to them was found in a number of loyalist intelligence 'caches' referred to earlier in this public statement. I am of the view that this inconsistent approach was not in accordance with RUC Force Orders at the time.
- 22.114. This investigation has been unable to establish why the relevant individuals referred to in this public statement were not warned of an increased risk to their personal security, in accordance with RUC Force Orders at the time.

**The failure to properly deal with members of the Security Force alleged to have passed information to loyalist paramilitaries.**

- 22.115. This investigation has established that a number of members of the security forces, based in the North West, were suspected by police of passing information to loyalist paramilitaries during the relevant period. Although, some of them were subject to criminal investigation by the RUC, others were not and were either dismissed from the RUC and UDR or re-positioned. Information received by police was assessed by Special Branch as indicating that Person V may have been passing sensitive information to the UDA/UFF, including information used in the targeting of Gerard Casey. My investigators sought an explanation for this and were advised that any criminality on the part of members of the UDR was a matter for military police. This information was passed to them. My investigators also viewed intelligence that a number of police officers, despite being warned to cease associating with suspected loyalist paramilitaries, continued to do so with no apparent further action being taken by their authorities.
- 22.116. I am of the view that the RUC failed to deal with these individuals in a consistent and appropriate manner. A number of previous investigations and inquiries have established that loyalist paramilitaries acquired most of their information from members of the security forces. This investigation has established that a number of intelligence 'caches' discovered in the North West during the 1989-1993 period contained documentation of military origin. Person V attended meetings where sensitive intelligence was regularly discussed by senior RUC and military officials. Despite being linked to the murder of Gerard Casey, my investigators found no record that this intelligence was shared with police investigating his murder.

## **The recruitment and management of informants by RUC Special Branch.**

- 22.117. This investigation has established that, by the early 1990s, RUC Special Branch were aware of the growing threat posed by the North West UDA/UFF and took steps to counter this, through increased covert surveillance operations and efforts to recruit informants from *'top to bottom'* within the North West UDA/UFF. These efforts were partially successful, leading to the recovery of weapons and the arrests and convictions of a number of loyalist paramilitaries.
- 22.118. However, this investigation has also identified occasions where the *'rewards'* associated with the recruitment of a number of loyalist paramilitary informants failed to outweigh the *'risks.'* My investigators identified a number of North West UDA/UFF informants who provided intelligence of questionable quality. However, they were retained and managed by RUC Special Branch as informants, despite other evidence and intelligence indicating that they were actively involved in serious crime, including murder.
- 22.119. As previously stated, it is my view that handlers ought to have been equipped with information necessary to enable them to probe and question informants about their knowledge of terrorist activities. Handlers had a duty to probe and assess all relevant information relating to the activities of an informant. Based on the information then available to police, and this informant's failure to report on any of the attacks, I am of the view that his Special Branch handlers ought to have recognised that he was withholding information and was potentially involved in some of the attacks.
- 22.120. This investigation established that, on one occasion, a file of evidence was submitted to the DPP regarding an informant but the DPP were not made aware of his status by RUC Special Branch.

My investigators interviewed a former police officer under criminal caution about this matter. A file of evidence was submitted to the PPS who directed 'No Prosecution' against this police officer.

- 22.121. Intelligence indicated that the UDA/UFF leadership were planning a retaliatory attack. Information obtained from loyalist prisoners detained at Castlereagh RUC Holding Centre on 30 October 1993 indicated that an attack was imminent in the Derry/Londonderry area.
- 22.122. The use of certain informants by RUC Special Branch in North Region during the relevant period causes me considerable concern.
- 22.123. RUC Special Branch were aware that the North West UDA/UFF had obtained a quantity of assault rifles and semi-automatic pistols from the 1987 loyalist arms importation. This led to them recruiting a number of informants from within the North West UDA/UFF. These were individuals that RUC Special Branch knew were linked to a number of the attacks referred to in this public statement.
- 22.124. Records relating to the recruitment and management of these informants were subsequently destroyed. I have been unable to establish the rationale for the destruction of these records. Given the roles of these individuals in those attacks and the obligation on police to retain those records for the purposes of their investigations, I am of the view that police were subject to an enhanced duty of retention in the circumstances.
- 22.125. A number of former RUC Special Branch officers assisted this investigation and provided a valuable insight as to the rationale for these individuals having been recruited. The rationale provided by these officers was to dissuade the individuals concerned from

participating in further terrorist acts and also to provide timely, quality information about North West UDA/UFF activities.

- 22.126. Based on all the available evidence and information, I am of the view that neither of these objectives were achieved. A number of informants referred to in this public statement continued their involvement in serious crime, including murder, following their recruitment. There is no evidence that RUC Special Branch implemented effective controls that would have assessed informant reliability and the risks associated with their continued use. I am of the view that RUC Special Branch failed to consider that the '*risks*' inherent in the recruitment and management of informants had to be proportionate to the intelligence '*rewards*' to be gained.
- 22.127. RUC Special Branch recognised the potential for a retaliatory attack by loyalist paramilitaries following the Shankill Road bombing on 23 October 1993. This was confirmed by a series of attacks in the days that followed and intelligence received in 1993 that the UDA/UFF were discussing further action.
- 22.128. Police were on a high state of alert and, in many areas, took proactive steps to counter this threat. This included arresting a number of individuals linked to the West Belfast UDA/UFF. Two of these individuals, while detained at Castlereagh RUC Holding Centre, indicated that there was going to be a '*massacre*' in the Derry/Londonderry area. This information was relayed to police at Strand Road RUC Station and TCG North Region, in addition to senior CID and Special Branch officers.
- 22.129. There is information that police responded by increasing VCPs in the Derry/Londonderry area. Although, my investigators have not located any documentation to evidence the existence or location of VCPs during the period 1989-1993, there are no police records in

the North West region of VCPs. However, I am of the view, based on other available evidence that the police response in the North West to the heightened threat at this time included VCPs.

22.130. In the context of the prevailing intelligence picture and attacks on the nationalist community in other parts of Northern Ireland following the Shankill Road bombing, I am of the view that police should have considered a number of disruption tactics to address the threat of a significant attack. These tactics included arresting potential suspects under Terrorism legislation. This tactic may have caused paramilitaries to abandon their immediate plans and would enable police to obtain additional information. This additional information would have enabled police to consider alternative policing strategies to deal with the potential threat.

22.131. It is my view that the failure to consider disruption tactics was a significant missed opportunity by RUC Special Branch. Within hours, the Greysteel attack took place, resulting in the deaths of eight members of the public.

### **Collusive Behaviours**

22.132. A number of the families of the victims and survivors of the attacks outlined in this statement have made specific complaints about *collusion* on the part of police. I am mindful of the limitations of my powers to make a determination of collusion as clarified in the Court of Appeal judgment in *Re Hawthorne and White* [2020] NICA 33. However, this investigation has identified actions and omissions of police, which in my view, constitute collusive behaviours.

22.133. I have earlier in this public statement referenced the broad definition of collusion which Sir John Stevens provided as including '*wilful failure to keep records, the absence of accountability , the*

*withholding of intelligence and evidence, through to the extreme of agents being involved in murder.'* This investigation has identified all of these elements the conduct of former RUC officers in relation to a number of attacks that are the subject of this public statement. In particular, I am of the view, in respect of following matters, that the families concerns about collusive activity are legitimate and justified:

1. Intelligence and surveillance failings identified by Dr Maguire in his report of the Loughinisland attacks;
2. The failure to adequately manage the risk to the lives of a number of victims outlined in this public statement, and in particular the failure to warn those individuals of the threats to their life;
3. The passing of information by members of the security forces to paramilitaries has been identified as collusion by Sir Desmond De Silva. The failure by police to adequately address the passing of UDR officers passing information is in my view a serious matter that can be described as collusive behaviour;
4. I have identified that the deliberate destruction of files, specifically those relating to informants that police suspected of serious criminality, including murder, is evidence of collusive behaviour. The absence of informant files and related documentation is particularly egregious, where there was suspicion on the part of handlers or others that informants may have engaged in the most serious criminal activity engaging Article 2 of the Convention;
5. Failures identified in this public statement by Special Branch to disseminate intelligence to the CID Teams investigating the murders;



6. Failures in the use and handling by Special Branch of an informant suspected of being involved in serious criminality, including murder;
7. Failures by Special Branch in the North West region to adequately manage those high risk informants, which they suspected of being involved in serious criminality, including murder;
8. The passive '*turning a blind eye*' to apparent criminal activity, or failing to interfere where there is evidence of wrongdoing on the part of an informant, in particular to the deliberate failure of informants to provide information on a specific attack, and the continued use of an informant suspected of involvement in serious criminality, including murder.

### **Police Ombudsman Recommendations**

22.134. In 2016, the SIO heading this investigation compiled a report identifying a number of evidential links connecting an individual to a several murders and attempted murders in this series. This was presented to the PSNI at that time and on a number of occasions since the dissemination of this report to police, my Office has enquired about the status of this report. PSNI have indicated that investigation of the matters is subject to their prioritisation and sequencing model for historic investigation.

22.135 This has been a protracted and complex investigation. I thank the families for their patience and co-operation over the lengthy period it has taken me to complete this public statement.

*Marie Anderson*

**Marie Anderson**  
**Police Ombudsman for Northern Ireland**

**13 January 2022**

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