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FROM: SIMON ROGERS
Police Division
2 August 1996

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CIVIL SERVICE

- cc PS/PUS (B&L) - B
- PS/Sir David Fell - B
- Mr Legge - B
- Mr Thomas - B
- Mr Steele - B
- Mr Wood (B&L) - B
- Mr Perry - B
- Mr Maccabe - B
- Mr Burnett - B
- Mrs Collins - B
- Mr Strain - B

20/1/96
C

1. PS/Sir John Wheeler (B&L) [Considered and agreed. JW 2/8/96]
2. PS/Secretary of State (B&L) - B

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INJURY TO MARTIN CONNOLLY IN ARMAGH ON 11 JULY

Ministers will be aware, from the media and from the concerns expressed by the Irish, of the incident in which Martin Connolly was struck by an RUC Hotspur in Armagh on the evening of 11 July. This submission considers whether the Secretary of State should use his power under Article 8(2) of the Police (Northern Ireland) Order 1987 (see Annex A) to refer the matter to the ICPC; and concludes that he should not do so.

The incident

The precise circumstances are subject to RUC investigation, but it appears that Martin Connolly was injured when he was struck by an RUC landrover during rioting in Armagh on Thursday 11 July. Connolly is currently on a life support machine in the Royal Victoria Hospital having suffered extensive injuries.

The Irish reported that Connolly had been hit on the jaw by a PBR before being knocked over and driven over by the Hotspur and that efforts to rescue him by his brother led to his brother receiving leg injuries from baton rounds (PBRs) in the process.

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An RUC spokesman at the time of the incident said that the landrover which knocked Mr Connolly down was one of three on their way to investigate a report that a hostile crowd was attempting to set fire to premises and that a full investigation into the incident would be carried out. ACC Hayes has told me that their investigation has established that the incident was a traffic accident with Mr Connolly "appearing from nowhere" in front of the third vehicle. Although there was rioting and PBRs were fired, the police have not found any evidence of Mr Connolly being struck by a PBR - all his injuries are internal. The family did not co-operate with the investigation and no witnesses have come forward.

The Legislation

The 1987 Order empowers the Secretary of State to refer to the ICPC any matter which appears to him to indicate that a police officer may have committed a criminal or disciplinary offence, if it appears that it is desirable in the public interest that the Commission should supervise the investigation, provided there has not been a complaint. There has been no complaint to date.

In addition, legal advice on the legislation is that the Chief Constable should have already have had a chance of referring the case to the ICPC under Article 8(1) before the Secretary of State considers exercising his power (the Chief Constable may refer a case under Article 8(1) where there may have been an offence and there are grave or exceptional circumstances). The Secretary of State's power is more flexible than that for the Chief Constable.

In light of the apparent seriousness of the incident I spoke to the ICPC and the police on several occasions. The ICPC said that they were concerned about the case and they hoped that they would be called in. The police were also concerned and a Superintendent in Complaints and Discipline had travelled to Armagh to talk to the officers there about the circumstances. In the light of this a submission had been

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prepared for Headquarters on whether or not to use Article 8(1). It took the police until Wednesday this week to decide that the case should not be referred (DCC Flanagan made the decision). The decision was taken after considering the information gleaned from their investigation. In effect, the police decided that it was not appropriate to refer a traffic accident to the ICPC because it was not "grave or exceptional".

Should the Secretary of State exercise his power under Article 8(2)?

The test is in two parts. The first is whether or not a police officer may have committed a criminal or disciplinary offence. Given the different accounts it seems that an offence, either criminal or disciplinary, may possibly have been committed. The other test, is whether it is in the public interest to bring the ICPC in. There are a number of things to consider here:-

- i. This is a serious case, not least because Martin Connolly is on a life-support machine, but also because of the allegations that the landrover hit and then drove over him and that no one was able to assist him.
- ii. The ICPC believe they should be called in to investigate the incident, even now, and feel strongly enough to have publicly voiced their concern that they have not been called in. Mr Mallon has also been critical of the fact that they are not involved.
- iii. Sinn Fein has set up an "independent inquiry" to investigate the incident and has appealed for eye-witnesses to come forward. At a rally attended by 350 people a spokesperson spoke of concern in the Nationalist community that any investigation by the RUC would be a total waste of time.

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- iv. Against this, nearly 3 weeks have lapsed since the incident and the investigation into the incident is at an advanced stage, severely limiting the ability of the ICPC to supervise (in other words to direct and control) it.
- v. In addition, the RUC have referred three cases to the ICPC post-Drumcree under Article 8(1) and, having considered this one at a very senior level, have concluded that it is not appropriate for referral.

Conclusion and Recommendation

This is a difficult and very serious case, which has attracted widespread and ongoing interest and concern. It obviously raises issues which are of concern to the public. However, realistically, after 3 weeks the investigation has all but been completed and the value of ICPC involvement has been significantly diminished. On balance, therefore, I recommend that the Secretary of State should not invoke Article 8(2) on this occasion.

Other Action

This leaves two issues. First, there has been press interest in the case. The ICPC's Chairman gave an interview to Ulster Television in which he criticises the fact that the Commission had not been called in. Two draft press lines are attached. The first (at Annex B) is a holding line until Ministers have had an opportunity to consider the merits of using Article 8(2) and could be supplemented by that at Annex C if Ministers decide not to call in the Commission.

Finally, I believe that Ministers have been placed in a more difficult position in this case because of the delay in the RUC's decision-making process. The fact is that it took them two and a half weeks to decide whether or not to use Article 8(1). If Ministers are

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content, therefore, it is proposed that Mrs Collins should write to RUC Headquarters to register concern about the delay and to seek to ensure that such cases, no matter how difficult, are dealt with more expeditiously in future.

Summary

Ministers are asked to agree:

- (a) that the Article 8(2) "call-in" power should not be used;
- (b) the press lines; and
- (c) that officials should write to RUC Headquarters.

Signed by

SIMON ROGERS

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ANNEX A

EXTRACT FROM THE POLICE (NORTHERN IRELAND) ORDER 1987

Reference of other matters to Commission

8.-(1) The appropriate authority may refer to the Commission any matter which -

(a) appears to the appropriate authority to indicate that a member of the police force may have committed a criminal offence or an offence against discipline; and

(b) is not the subject of a complaint, if it appears to the appropriate authority that it ought to be referred by reason -

(i) of its gravity; or

(ii) of exceptional circumstances.

(2) The Secretary of State or the Police Authority may refer to the Commission any matter which -

(a) appears to the Secretary of State or the Authority to indicate that a member of the police force may have committed a criminal offence or an offence against discipline; and

(b) is not the subject of a complaint

if it appears to the Secretary of State or the Authority that it is desirable in the public interest that the Commission should supervise the investigation of the matter.

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ANNEX B

PRESS LINE TO TAKE

Why have the ICPC not been called in on this case?

"The ICPC are already investigating a number of incidents arising from the recent disturbances at the request of the Chief Constable. In this particular case, the RUC launched an immediate investigation into all the elements of the incident, but have decided not to call the ICPC in to supervise."

Why not?

"This is a matter for the RUC."

Has the Secretary of State considered calling in the ICPC under Article 8(2)?

"The Secretary of State has a reserve power to call in the ICPC to supervise any case once the RUC have made their decision. He considers all cases against the criteria set out in the legislation." (Criteria: it appears a criminal offence or offence against discipline may have been committed; there is no complaint; and it appears to be desirable in the public interest that ICPC should supervise.)

[If pressed: No decision has yet been taken on this particular case.]

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ANNEX C

DRAFT PRESS LINE TO ANSWER CRITICISM WERE MINISTERS TO DECIDE NOT TO USE ARTICLE 8(2)

"Having sought the views of the ICPC and police and having then considered this case against the criteria set out in the legislation, the Secretary of State has decided not to ask the ICPC to supervise the investigation into this case, which is already well under way.

In face of ICPC criticism:- "The ICPC are already investigating a number of incidents arising from the recent disturbances, including three referred to it by the Chief Constable. They perform a very valuable role, in providing independent oversight of such police investigations, and have the power to veto the appointment of the investigating officer and to direct and control investigations.

However, after considering the circumstances the Secretary of State decided that it was not appropriate to call in the ICPC to supervise the case.

[Why? - it would not be appropriate to go into the detail]

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