police Ombudsman FOR NORTHERN IRELAND

Statutory Report

Public Statement by the Police Ombudsman under Section 62 of the Police (Northern Ireland) Act 1998

PUBLIC STATEMENT ON PSNI OPERATION RAPID, MATTERS ARISING FROM THE RULING IN R V JOHN ANTHONY DOWNEY

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1.0
EXECUTIVE SUMMARY

1.1 On the 26 February 2014 I commenced my investigation to examine the conduct of serving and retired PSNI officers in respect of matters arising from the ruling in *R v John Anthony Downey* on 21 February 2014.

1.2 The trial Judge found it would be an abuse of process of the court to try John Downey on four counts of murder and causing an explosion in connection with the Hyde Park bombing in London on 20 July 1982. Central to the abuse of process argument was the reliance placed by the defendant on a letter issued by the Northern Ireland Office on 20 July 2007 which stated he was not wanted by police. However, at the time of receiving this letter John Downey was wanted by the Metropolitan Police Service in connection with the Hyde Park bombing.

1.3 Arising from the judgment, significant concerns were raised in the public domain about the role and action of the PSNI in providing information about John Downey in what has been referred to as the 'On the Runs Administrative Scheme'.

1.4 On 26 February 2014, in the interests of public confidence, the Chief Constable of the Police Service of Northern Ireland (PSNI) made a referral, requesting that I consider investigating the related actions of any former or serving officers. I have also received a number of public complaints from bereaved families. My investigation has examined the conduct of serving and retired PSNI officers, focusing on the years 2007 to 2009.

1.5 In 2007 the PSNI renewed their role in the administrative scheme and established Operation Rapid, a police initiative to review persons referred to as 'On the Runs'. My investigation has examined the suitability of the Terms of Reference of Operation Rapid for the policing role undertaken. I have examined the decision making of PSNI officers in reporting that John Downey was to be considered as no longer wanted in connection with a number of offences in Northern Ireland and why it was not communicated that he was wanted by police in connection with the Hyde Park bombing. I have also considered the conduct of the PSNI officers in 2008 and 2009 when developments pertaining to John Downey were raised internally within the PSNI.

1.6 A theme which emerged early in my investigation is the absence of clarity from those who were responsible with ensuring the adequacy of Operation Rapid about its role and function in the 'On the Runs Administrative Scheme'. There are significant differences in the accounts provided by the retired officers interviewed in respect of the 'corporate knowledge' of the long standing role of the PSNI in the scheme. This is striking given the critical nature of the role undertaken by the PSNI.

1.7 I have found Operation Rapid was marked by a lack of clarity, structure and senior leadership. My investigation found the Senior Officers responsible for Operation Rapid were not equipped appropriately with the relevant information to fulfil their role effectively in 2007. Furthermore no satisfactory explanation has been provided as to why the PSNI in 2007 re -commenced a review of all the names submitted to the scheme, despite substantive work previously carried out in the years 2000 to 2006.

1.8 The Operation Rapid Terms of Reference in 2007 allowed for different interpretations on the meaning, intent and overall aims of the operation. I consider the most significant flaw to be a wrongly articulated threshold for arrest which created the potential within the delivery of Operation Rapid to apply a higher threshold for arrest than that which is normally applied.

1.9 I have found the decision making by the PSNI in respect of John Downey in 2007 and subsequent communication to the Public Prosecution Service and the Northern Ireland Office to be flawed. Furthermore the PSNI should have communicated with the Public Prosecution Service in 2008 when more complete information was known.

1.10 The significant failings of the PSNI in the implementation and delivery of Operation Rapid has resulted in adverse consequences. Given the gravity of the errors and flawed decision making of the PSNI in their assessment and reporting on John Downey in 2007, I welcome the decision by the Chief Constable PSNI to conduct a review of all persons considered by Operation Rapid.

2.0
INTRODUCTION

2:1 On 21 February 2014, the Central Criminal Court of England and Wales delivered a judgment in the case of *R v John Anthony Downey*. Mr Justice Sweeney granted a stay of proceedings, on the grounds it would be an abuse of process to continue the prosecution of John Downey in respect of four counts of murder and one count of doing an act with intent to cause an explosion, in connection with the bombing carried out by the Irish Republican Army (IRA) in Hyde Park, London on 20 July 1982.

2:2 On 25 February 2014 reporting restrictions were lifted on the judgment and details about an 'On the Runs Administrative Scheme' were revealed. It was made known that through this scheme John Downey had received a letter from an official in the Northern Ireland Office (NIO) on 20 July 2007 that read:

'The Secretary of State for Northern Ireland has been informed by the Attorney General that on the basis of the information currently available, there is no outstanding direction for prosecution in Northern Ireland, there are no warrants in existence nor are you wanted in Northern Ireland for arrest, questioning or charge by the police. The Police Service of Northern Ireland are not aware of any interest in you from any other police force in the United Kingdom. If any other outstanding offence or offences came to light, or if any request for extradition were to be received, these would have to be dealt within the usual way.'

2:3 However, at the time of receiving this letter, John Downey was wanted by the Metropolitan Police Service in connection with the 1982 Hyde Park bombing. On 19 May 2013 John Downey was arrested at Gatwick Airport, London, subsequently charged and prosecution pursued.

2:4 At trial, an application was made on the defendant's behalf to the trial Judge to stay the prosecution. Central to the abuse of process argument was the letter issued by the NIO to John Downey and the information contained within, including the statement:

'The Police Service of Northern Ireland are not aware of any interest in you from any other police force in the United Kingdom.'

2:5 This statement, attributed to the PSNI, was inaccurate. The judgment disclosed that it was in fact known to the PSNI's Operation Rapid team that John Downey was circulated as 'Wanted' by the Metropolitan Police Service on the Police National Computer (PNC). Operation Rapid was established in 2007 by the PSNI to review persons circulated as 'wanted' by the PSNI in connection with terrorist related offences up to the 10 April 1998.

2:6 Arising from the judgment, significant concerns were raised in the public domain about the role and action of the PSNI in respect of the information they provided and the apparent failure to act on subsequent opportunities to correct the error.

2:7 The Office of the Police Ombudsman for Northern Ireland was established by the Police (Northern Ireland) Act 1998, for the purpose of independently investigating complaints and matters of public interest relating to the conduct of police officers.

2:8 On 26 February 2014, in the interests of public confidence, the Chief Constable of the PSNI made a referral to the Police Ombudsman for Northern Ireland under Section 55(4) of the Police (Northern Ireland) Act 1998 in respect of the concerns arising about the action of PSNI officers. The referral requested that the Police Ombudsman consider investigating the related actions of any former or serving police officer in 2007. In addition, under Section 55(6) of the Police (Northern Ireland) Act 1998, the Police Ombudsman further directed that the investigation would also consider the actions of police in 2008 and 2009, also highlighted in the

judgment.

2:9 The Police Ombudsman recognises the direct and wider impact this case has had on many victims and survivors. Public complaints in respect of police conduct have been received from the bereaved families of Lieutenant Anthony Daly, Trooper Simon Tipper, Lance Corporal Jeffrey Young and Squadron Quartermaster Corporal Roy Bright, who were killed as a result of the Hyde Park Bombing on 20 July 1982. A public complaint has also been received from the bereaved family of Alfred Joseph Johnston, a Lance Corporal in the Ulster Defence Regiment killed alongside his colleague Private James Edward Eames as a result of a bombing in Enniskillen on 25 August 1972.

2:10 The Police Ombudsman's investigation of these matters has now concluded and is addressed in this Public Statement.

3.0

SCOPE OF POLICE OMBUDSMAN'S INVESTIGATION

3:1 On 26 February 2014 I commenced my investigation into the related areas of police conduct, focusing on the years 2007 to 2009.

3:2 My investigation set out to examine the conduct of serving and retired PSNI officers in respect of:

- The suitability, application and compliance of the Terms of Reference set for the PSNI Operation Rapid;

- The decision making by the PSNI Operation Rapid team in May 2007, which assessed that John Downey was no longer wanted in connection with offences in Northern Ireland, including murder and attempted murder. This decision was in contrast to previous PSNI assessments and reporting at various specified dates between 2002 and 2007;

- The circumstances surrounding the letter sent by the PSNI on 6 June 2007 to the Director of Public Prosecutions for Northern Ireland which stated, *'Enquiries indicate that John Anthony Downey is not currently wanted by the PSNI'*. The letter made no reference to John Downey being wanted by the Metropolitan Police Service in connection with the Hyde Park bombing on 20 July 1982, which was known to the PSNI Operation Rapid team;

- The information provided in June and July 2007 by the PSNI to the NIO, in response to the queries raised in respect of the checks being conducted by the Operation Rapid team;

- The action by PSNI officers in 2008 and 2009 in response to matters arising in respect of the HET review of two murders which occurred in 1972 and the apparent lack of action when it was identified internally within the PSNI that the letter of 6 June 2007 had not referred to John Downey as being wanted by police in connection to the Hyde Park bombing in 1982.

3:3 My investigation has retrieved and examined documentary material from a number of sources including the PSNI, the PSNI Historical Enquiry Team (HET) and the Public Prosecution Service (PPS) for Northern Ireland, which, prior to June 2005 was referred to as the Department for Public Prosecutions (DPP). My investigation has also examined the intelligence available to the Operation Rapid Team in their review of John Downey. Material relating to relevant communication between the PSNI and the NIO has been reviewed.

3:4 All serving and retired PSNI officers and personnel, recorded in the Operation Rapid reporting structure in 2007, have been interviewed by my Investigation Team. With the exception of two of the police officers referred to, all are now retired. Enquiries have also been conducted with other retired and serving police officers, identified as relevant to my investigation.

3:5 This report examines the available evidence in respect of the concerns raised about police conduct and details the Police Ombudsman's findings and conclusions.

4.0

PSNI OPERATION RAPID 2007

4:1 The role of the RUC/PSNI in the 'Administrative Scheme' prior to Operation Rapid

4:2 My investigation team has examined material originating from 2000 which documents that the Royal Ulster Constabulary (RUC), and latterly the PSNI, were engaged in conducting enquiries to inform an integrated process involving the NIO, the DPP/PPS and the Attorney General's Office for England, Wales (and Northern Ireland - prior to devolution of policing and justice powers to the Northern Ireland Executive in May 2010).

4:3 This process has been referred to as the 'On the Runs Administrative Scheme'. My investigation is duly cognisant of the Independent Review into the scheme carried out by the Right Honourable Dame Heather Hallett DBE and which was reported upon in July 2014.

4:4 It is understood the administrative scheme emerged at the request of the United Kingdom Government, following negotiations with Sinn Féin, and sought to ascertain if various categories of persons considered as 'On the Runs' would face extradition, arrest, questioning or prosecution for offences committed prior to 10 April 1998. Through this scheme individuals could ask, via Sinn Féin, if they were at risk of arrest should they return to the United Kingdom. It is recorded that by 2013, a total of 228 names were put forward, including four by the Irish Government and 14 by the Northern Ireland Prison Service.

4:5 My investigation team has conducted an extensive review of the available material to identify what 'agreed' role or function the RUC/PSNI had in this process. It should be recognised that during this time period the RUC/PSNI

had been requested to carry out enquiries on named individuals to inform the DPP's and Attorney General's considerations of individual cases. The RUC/PSNI communicated the outcome of their enquiries directly with the DPP and not with the individuals who were subject of the enquiries. The outcome of the DPP and the Attorney General's considerations were subsequently communicated to Sinn Féin and the individuals concerned. Letters were initially issued by the Prime Minister's Chief of Staff at 10 Downing Street but by early 2001 the NIO took ownership of this communication. There is no evidence to support that during this process the letters from the NIO to Sinn Féin were shared with the RUC/PSNI. It is understood that the normal text used in the letters was first shared with a member of PSNI staff in December 2011.

4:6 There is an absence of police records at a senior strategic level which clearly documents any 'agreed' role or function of police in the scheme. It can however be established from material originating after November 2000 and from the consistency in the correspondence between the RUC and the DPP (later the PSNI and PPS) that in practice police viewed their role as one of establishing whether the names, provided by the DPP, belonged to individuals who were wanted by police. This included any police service within the United Kingdom or any known extradition requests from other countries. A memo dated March 2001 compiled by a Senior Prosecutor at the DPP records:

'Police have also been asked to establish whether any of the persons named on the lists are wanted by any other police force in the UK or wanted by any other country. This task is both time consuming and onerous, in that it involved research of the police National Database and contact with Interpol.'

4:7 It is clear that discussions took place between the different agencies as to the extent of the enquiries required by the RUC/PSNI to adequately inform the process. An internal PSNI report dated 19 March 2002, compiled by a Detective Inspector of the Extradition and Disclosure Unit, detailed the

'standard of research required and what is expected from the reviewing officer.' The report outlines the detailed nature and complexities of the research required to confirm the identity of the person under consideration and to establish if the person remained wanted by the police.

4:8 My investigators did not have the benefit of speaking with the Detective Inspector of the Extradition Unit. This officer, now retired did not co-operate with my investigation. The Detective Inspector was clearly instrumental in the PSNI enquiries conducted prior to 2007 and is understood to have been involved in handing over relevant procedural material for the Op Rapid team set up in 2007. My Investigation Team has spoken with a number of other retired police officers who were involved in conducting these enquiries prior to Operation Rapid.

4:9 In respect of the extent of the enquiries to be conducted by police, the use of the PSNI Integrated Criminal Information System (ICIS) was considered. ICIS was the database used at that time for recording intelligence, criminal records, alerts and warnings. In determining the status of an individual the Detective Inspector's report of 19 March 2002 clearly states that to check only the ICIS is *'not acceptable'*: The NIO also reported on the dangers of over reliance on the PSNI's ICIS computer at this time.

4:10 The enquiries conducted by the PSNI were therefore protracted in nature. Suggestions previously made by the NIO and the Attorney General's Office for a *'speedier process'* were rejected on 4 April 2002 by the DPP specifically because the police considered ICIS was not '*wholly reliable for these purposes'* and that police enquiries were required to be conducted at a regional level.

4:11 On 24 April 2002 PSNI advised the NIO in writing that *'the present review process, albeit slow, is necessary as the Chief Constable, PSNI, is under an obligation to ensure that all intelligence and factual information in respect of each investigation is thoroughly examined and assessed before a final decision is reached as to whether or not an individual is wanted for arrest*

and prosecution.'

4:12 It has been established that during the years 2000 to 2006 the allocation of resources to the PSNI team varied, with the progress of the 'On the Runs' assessments stalling at different times during this period. It can be concluded however that this comprehensive approach, as outlined by the Detective Inspector in his report of 19 March 2002, appears to be maintained by the PSNI through to 2006.

4:13 ## PSNI Assessments concluded prior to 2007

4:14 With specific reference to John Downey my investigation has examined the assessment carried out by the PSNI review team prior to 2007. Under the 'administrative scheme' John Downey's name was submitted by Sinn Féin to the United Kingdom Government in January 2002. John Downey is a citizen of the Republic of Ireland. His name was submitted to ascertain if he would be liable for arrest should he enter the jurisdiction of the United Kingdom.

4:15 Through the administrative scheme John Downey's name was subsequently sent to the PSNI by the DPP to conduct enquiries. On the 17 September 2002, having reviewed their own records in respect of Mr Downey, the DPP further wrote to the PSNI to request an update in respect of a file submitted by the RUC in 1985. This file related to a bombing carried out in Enniskillen on 25 August 1972 in which Alfred Joseph Johnston and James Edward Eames, a Lance Corporal and a Private (respectively) in the UDR were murdered. The PSNI wrote to the DPP on 7 November 2002 advising their review in respect of John Downey was ongoing.

4:16 The PSNI conducted assessments of six incidents in respect of the potential involvement of John Downey. The assessment files are referred to as 'Templates'. Templates one to five refer to incidents which occurred in Northern Ireland and included the Enniskillen bombing in 1972. The sixth template referred to the Hyde Park bombing in 1982. Progress on the PSNI assessments during this time had stalled however by July 2004 the PSNI

assessment on John Downey had concluded. The PSNI recorded on the basis of the evidence available at that time, that grounds existed for John Downey to remain as wanted for arrest and questioning in respect of the murders of Private Eames and Lance Corporal Johnston. Furthermore, it was recorded should John Downey be arrested he could then be questioned in respect of the remaining offences considered in Templates one to five.

4:17 In respect of template six, relating to the Hyde Park bombing in 1982, it is recorded that no attempt had been made by the Metropolitan Police Service to extradite Mr Downey and that it was their intention *'to arrest should he come within their jurisdiction.'*

4:18 Subsequently, in September 2004, a Detective Superintendent wrote to the DPP. This letter referred to the 1985 file submitted to the DPP concerning the Enniskillen bombing in 1972 and highlighted *'it should be noted that Downey was not interviewed concerning this incident. It may be that further evidence will become available when such an interview takes place*.' The letter continued, *'In addition I can also advise you that John Anthony Downey is currently wanted by the PSNI. Enquiries confirm that this person is sought for arrest and interview in relation to a number of serious terrorist offences.'*

4:19 On 27 January 2006, following the withdrawal of the Northern Ireland (Offences) Bill, the NIO wrote to the PSNI asking if it was now confirmed that John Downey was wanted. This was subsequently confirmed by the PSNI and on 22 March 2006 a letter was sent by the NIO to Sinn Féin, in which it was advised that John Downey would face arrest and questioning if he were to return to Northern Ireland.

4:20 In a wider context, by January 2007, there is evidence that the RUC and latterly the PSNI had conducted extensive enquiries in respect of the administrative scheme and in doing had applied significant resources from 2000 onwards to inform this process. Records shared in January 2007

between the NIO and the PSNI, record that the administrative scheme had by that date informed Sinn Féin of the status outcome of 132 individuals.

4:21 It is therefore significant that when the PSNI Operation Rapid commenced in February 2007 it carried out a review of all names again, not merely a continuation of outstanding checks or a processing of additional names. Furthermore the reviews conducted through Operation Rapid resulted in a change of status in a considerable number of those who had already been reviewed in recent years. In comparing the recorded status of the individuals, 36 of those who were assessed prior to January 2007 as 'wanted', for arrest and interview in relation to serious terrorist offences, were subsequently re-assessed in 2007 and 2008 as 'not wanted' by Operation Rapid.

4:22 ## Origins of the PSNI Operation Rapid 2007

4:23 My investigation has found no records at a strategic level within the PSNI that clearly documents why Operation Rapid in 2007, recommenced a review of the names previously considered and reported on by PSNI in the earlier 'OTR project'. John Downey is one of the individuals reviewed by both the earlier PSNI 'OTR Project' and the 2007 Operation Rapid.

4:24 Operation Rapid, as a police initiative, emerged as a result of a number of meetings held in 2006 at which the issue of 'On the Runs' was discussed. It is understood that in May 2006 the Detective Inspector who had led the PSNI 'OTR project' and the Assistant Chief Constable of Crime Operations, appointed to post in February 2006, attended a meeting with the Director of Public Prosecutions, an Adviser to the Attorney General and others to discuss the matter.

4:25 The Detective Inspector attended a further meeting on 9 June 2006, with the Director of Public Prosecutions, an Adviser to the Attorney General and officials from the Home Office and the NIO. At this meeting individual cases were discussed giving rise to recorded comments as to who was best

placed to make enquiries with the Metropolitan Police Service.

4:26 Interpretation of the recorded comments in respect of where responsibility lay to conduct enquiries with the Metropolitan Police Service is now contested by a number of the agencies and individuals involved. The recorded comments from this meeting, examined in my investigation, do not assist in clarifying what was agreed at a strategic, non case specific level.

4:27 Analysis of the individual case examples discussed in the meeting of 9 June 2006 highlights the complexities of the scope of the exercise undertaken to determine if an individual was 'wanted' by police. There is a clear risk associated with reliance on circulation data and system integration to establish if a person is wanted by another police service in the United Kingdom and elsewhere. It is also clear that the PSNI could not account for any evidential assessments by another police service.

4:28 On 17 October 2006, following the St Andrews Agreement, the Chief Constable and the Assistant Chief Constable participated in a further meeting with the Secretary of State, the Attorney General and others to discuss the issue of 'On the Runs'.

4:29 Discussions were also held toward the latter part of 2006 between PSNI and representatives of Sinn Féin and the NIO with respect to the issue of 'On the Runs'. Correspondence sent between a solicitor and the PSNI Legal Adviser demonstrates that discussions took place to explore a process by which the clients would present themselves to police for interview. It is understood that an associated process was not subsequently agreed between the solicitor and the PSNI at that time.

4:30 Other than electronic notes of the June 2006 meeting my investigation has not had access to minutes from the other meetings. The Assistant Chief Constable of Crime Operations who attended the series of meetings in 2006 and who subsequently commissioned Operation Rapid is now retired. The Assistant Chief Constable was interviewed during my investigation and

advised that the discussions taking place at that time did not focus solely on the issue of 'On the Runs' and included discussions about a number of policing and security matters, such as the transfer of National Security and the use of Attenuating Energy Projectiles (AEPs) in public order situations.

4:31 Most significantly, the Assistant Chief Constable advised my Investigation Team that he had not been aware of earlier work conducted by the RUC and latterly the PSNI from 2000 onwards with regard to 'On the Runs'. He stated the first time he became aware of the 'administrative scheme' was from reading it in the judgment. The Assistant Chief Constable stated it was his belief that the discussions in which he took part, around the police addressing the 'On the Runs,' were occurring for the first time in 2006.

4:32 The Assistant Chief Constable recalled it was clear to him that the Government had an interest in dealing with 'On the Runs', however from a policing perspective there was also an obligation on police to respond to a request from an individual, *'We were absolutely clear, the Chief Constable and myself that it was legitimate and right for us to look at On The Runs purely from a policing perspective'.* Advising that both he and the Chief Constable were conscious of lists of people who were considered as wanted by the PSNI, the Assistant Chief Constable stated they took the view that the cases should be reviewed against the Police (NI) Act 2000 and Human Rights considerations, as to whether there were reasonable grounds for arrest based on 2007 standards. He explained it was agreed that the PSNI were to communicate the outcome of the reviews by writing to the Director of Public Prosecutions, stating that early conversations he had with the DPP around the legislation and the role and responsibility of police helped frame the Terms of Reference for Operation Rapid.

4:33 In respect of the relationship with the NIO, the Assistant Chief Constable in charge of Operation Rapid stated, '*I knew there was a political context behind it but I have to say I never was pressurised by anybody in the NIO.'* During interview he stated that he understood the NIO to be the conduit in terms of communicating the names from Sinn Féin on to other agencies

involved in the process but that he was not aware (in 2007) that the NIO were sending or intended to send letters to individuals or that there was already an ongoing process, an 'administrative scheme'.

4:34 The Assistant Chief Constable did not recollect the process being *'clear and defined'* or there being a *'joined up system around it'*, emphasising that his focus was from a policing perspective. During interview it was confirmed with the Assistant Chief Constable that he understood individuals would be told of the outcome of the process, however he relayed it was his understanding it would be communicated only to those who were 'not wanted'. He expressed his view that to tell those who were 'Wanted' of their status would be akin to *'tipping them off'.*

4:35 An email of 8 January 2007 is therefore significant in that it would support the NIO position that there was an understanding that the Assistant Chief Constable had a shared knowledge of the ongoing process of the 'administrative scheme'. The email sent to the Assistant Chief Constable by the NIO, and forwarded by his Deputy Staff Officer to the Detective Inspector of Extradition Unit read:

'[NIO official] asked me to send you a copy of the NIO's record of which of the OTR names provided to us have been informed, c/o Sinn Fein, of their status (as either "wanted' or "not wanted").

The attached spreadsheet, which is obviously based largely on PSNI and AG's office contributions, is our current understanding of the position.

The final column shows where SF were informed of various individuals' status by the NIO. The spreadsheet should be accurate in terms of the dates on which individuals were informed of their status, since that's the bit of the process the NIO run. But you may want to cross-check with [Detective Inspector of Extradition Unit] that the information elsewhere in the table is still up to date.'

4:36 The spreadsheets attached to the email record each of the individuals' names considered by the scheme by that date. Significantly it includes a heading *'Date NIO informed Sinn Fein/Individual of Status'.* As previously highlighted it is recorded that the administrative scheme had by that date resulted in Sinn Féin having been informed of 132 individuals' status. The spreadsheets were subsequently shared by the Detective Inspector to the incoming Operation Rapid Research Team Manager.

4:37 The content of this email was explored with the Assistant Chief Constable in interview, who has informed my investigation that he has no recollection of the email. During interview the Assistant Chief Constable stated *'one of the difficulties throughout all this was there was no government policy'.* He stated that he would not have agreed to the NIO informing individuals that they were still wanted.

4:38 When questioned further on the conflicting evidence about what was known to him about the scheme, the Assistant Chief Constable reaffirmed his position that at no point was he told of a process that had been running from the early 2000s and was not clearly aware of the role the Detective Inspector of Extradition Unit and his team had in that process.

4:39 Setting up of the PSNI Operation Rapid 2007

4:40 An internal PSNI business case dated September 2007, believed to be drafted by the Operation Rapid Research Team Manager, is one of the few documents identified which refers to a chronology of the work conducted at a functional level by the RUC and latterly the PSNI with respect to 'On the Runs'. The Research Team Manager, a retired Detective Inspector was re-employed by the PSNI in a civilian capacity. In contrast to the account of the Assistant Chief Constable, this document indicates that the Research Team Manager was fully aware of the continuation of the review process from the year 2000. This was confirmed with the Research Team Manager during interview.

4:41 It is understood that the transfer of the 'OTR review work' between departments, from the Criminal Justice Unit to Crime Operations, originated in January 2007 due to restructuring and resourcing issues that were taking place within the PSNI at that time.

4:42 On 8 January 2007, the Assistant Chief Constable met with his Head of Branch of Crime Operations, a Detective Chief Superintendent, to advise of the intention for the work to move to their department.

4:43 The Detective Chief Superintendent, now retired was interviewed by my Investigation Team. He advised that the issue of 'Wanted' persons would not normally be dealt with by his department but recalled due to restructuring and resourcing challenges that he was asked to take on some of the work. The Detective Chief Superintendent stated that on 8 January 2007 he had a working lunch meeting with the Assistant Chief Constable, at which the capacity to take on this work was discussed.

4:44 In interview, the Detective Chief Superintendent stated his understanding of the work he had been asked to inherit was, *'a formal review of people who had voluntarily exiled themselves from Northern Ireland and because a solicitor had written to request the status of his clients and nothing had been actioned for some time'.* He stated that he understood the request from the solicitor had been with the PSNI for some months, *'That in itself exposed to PSNI as a corporate risk because obviously if the solicitor took a complaint to the Ombudsman or took litigation against the police for not addressing his clients rights'.* The Detective Chief Superintendent advised that he had not encountered such a scenario previously but again highlighted this type of work would normally sit with a different department, *'they dealt with Serious and Organised Crime, extraditions, warrants, that was their role and this was a piece of work they hadn't the resources to do.'*

4:45 The Detective Chief Superintendent stated that he understood from his briefing that the work required by the PSNI was a relatively new issue arising after the legislation drafted to address 'On the Runs' had failed in

Westminster in 2006. The Detective Chief Superintendent stated it did become apparent from the case material that there had been some work previously completed in reviewing the circulation of the individuals but he had understood that was in the context of regular reviews conducted by police. He described the revelation through the judgment of an 'administrative scheme' dating back to 1999 as *'quite shocking'*.

4:46 The Detective Chief Superintendent referred to a further meeting with the Assistant Chief Constable on 4 February 2007. He stated that he had raised his concern about writing back to a solicitor about a person who was 'wanted' and the Assistant Chief Constable had *'agreed that notifying a person that they were wanted may alert them and prevent them from entering the jurisdiction and face possible arrest…. but I was told there was a requirement that we had to respond to the solicitor in some way…and he was getting advice from somewhere and for some reason it's recorded as Article 3 which is to do with torture and degrading behaviour and that is correct but it was also a breach of Article 8… So what I'm being told at this stage is that they have a human right to know if the state wants them.'*

4:47 The Detective Chief Superintendent stated the process, as he understood it, was that police would make a recommendation based on a Terms of Reference. The recommendation would go to the DPP, who would review their reasoning, and forward to the Attorney General. He advised from a policing perspective the process appeared to him to be rational and legal as police would liaise with the prosecuting authorities only.

4:48 The Detective Chief Superintendent further stated that both he and the Assistant Chief Constable were clear that it was a review of cases in Northern Ireland, '*Yes we were very clear, and you'll see in the Terms of Reference there was nothing about reporting on anyone wanted in England and that's really for two reasons. One, we have no legal jurisdiction and the second is this issue about notifying somebody who is wanted by another police force'.*

4:49 The Detective Chief Superintendent stated, based on what is now known to him, that the PSNI Operation Rapid should have been declared a 'Critical Incident' by the Chief Constable which would have prompted an agreed police service response at ACPO (Association of Chief Police Officers) level.

4:50 The Detective Chief Superintendent relayed that to ensure the review would be conducted within Human Rights legislation, he spent a number of days constructing a document around the 'Law and Jurisprudence'. This research was subsequently submitted to the Assistant Chief Constable in a report entitled *'Operation Rapid (Report Number 1)'* dated 9 March 2007, in which recommendations were made in respect of a number of individuals.

4:51 The introduction to a report dated 9 March 2007 refers to the Detective Chief Superintendent's understanding of the origin and remit of the process at that time,

'As part of the ongoing political process in Northern Ireland, Sinn Fein representatives have passed details to the British Government of a number of individuals who they assert are 'on the runs.' In addition a solicitor has been engaged to act on behalf of those named to the British Government.

The purpose of this review is to examine what basis, if any, the Police Service of Northern Ireland has to seek the arrest of those individuals identified by Sinn Fein to the British Government and passed to the Chief Constable. Operation Rapid is a review conducted within the statutory parameters of the Police Service of Northern Ireland and is not the subject of any political intervention or influence. As Head of Serious Crime Branch it is my delegated responsibility to review those wanted for serious crime and to ensure that persons circulated as 'wanted persons' are indeed persons against whom the police have intelligence of a sufficient grading, evidence of a significant standard or both to justify arrest without warrant of an individual.'

4:52 There is no reference in this document of the previous work conducted by the PSNI from 2000s onward or an indication that this is a continuation of such a process. Again it is relevant to note the absence of a documented rationale as to why Operation Rapid had commenced a review of all names again. It would appear that the Detective Chief Superintendent who had been placed in charge of Operation Rapid had not been equipped with the relevant knowledge of what had taken place previously. There are however a number of documents in which the Detective Chief Superintendent makes reference to the NIO, therefore at a minimum he was aware of their interest in the process.

4:53 In the absence of any recorded rationale that satisfactorily explains why Operation Rapid commenced a review of all names again, my investigation located an email, dated 9 January 2007 which is of significance. The email sent by a senior police officer to a number of other police officers in the parent Criminal Justice Department details that the 'OTR work' had become a priority issue. The email reads:

'*Due to the renewed progress on the political front the NIO are pushing strongly to:*

a. *Have the outstanding reviews completed as soon as possible.*
b. *To resolve the instances of approx 54 OTR's who, following review, are listed as wanted by PSNI for arrest and question in relation to serious terrorist offences.'*

4:54 The email refers to the Assistant Chief Constable having held a meeting with colleagues from a number of different departments on 5 January 2007 and that he had asked '*for all the files in category b above to be referred to him for further consideration and action'.* The email considers that discussions are required to consider how '*best to carry the OTR task forward.'* My investigation has not located any records of the meeting on 5 January 2007.

4:55 The content of this email was explored with the Assistant Chief Constable during interview, with particular attention to the comments that the NIO were pushing strongly to '*resolve'* the 54 cases which fell into *'category b'*. The Assistant Chief Constable advised it was correct that as a result of the discussions in 2006 and into 2007 that both he and the Chief Constable had agreed to review the individuals circulated as wanted by the PSNI to a '2007' standard, but again he highlighted that he understood the names had been presented to the PSNI within recent times. He also advised that it was his understanding that there had been a change in the powers of arrest between the early 2000s and 2007, from *'reasonable suspicion'* to *'reasonable grounds'* which could have an impacted on the cases reviewed within those recent years. My investigation has received opinion from an independent legal expert, who has confirmed there was no change in law during that period in relation to the standards required for arrest.

4:56 Following the meeting on 8 January 2007 between the Assistant Chief Constable and the Head of Branch of Crime Operations, a further meeting was held on 12 January 2007 to discuss the proposed work by Crime Operations. The meeting was attended by the Assistant Chief Constable, his Deputy Staff Officer, the Detective Inspector of the Extradition Unit, two of the agency Assistant Investigators (who subsequently worked on Operation Rapid), a PSNI solicitor and two other senior police officers.

4:57 Handwritten notes from that meeting have been examined and provide a sense of the issues discussed. References are made to lists provided by the NIO and the need to agree a 'universal list'. Comments recorded as attributed to the Assistant Chief Constable refer to his decision to undertake some further work. The notes read *'Decisions we're making will not be political, policing decisions, want clarity WANTED, NOT, PENDING.'* From the notes it can be deduced that the standard of evidence and intelligence available in the cases to be reviewed was discussed due to the potential challenges in court proceedings. The role of the NIO in the process also appears to have been questioned, *'Real danger in this – why NIO involved? Policing issue.'*

4:58 The notes indicate that the Detective Inspector of the Extradition Unit provided an overview of the work completed, '29 *names outstanding, 6 with PSNI'* and discussion around what previous considerations had been given in this work to the integrity of exhibit process. Notably there is a recorded comment referring to the potential scrutiny from the Police Ombudsman in the decision making, *'There are few or none of them we could say the evidence exists to prosecute….If PONI* [Police Ombudsman] *came in can we say do we justify arrest and interview.'*

4:59 In respect of HET the following comments are recorded as attributed to the Assistant Chief Constable:

'Whatever we do on murder sits with the HET. Will take as long as it takes for the rest. No reason why need to rush them. Won't deal with them out of sync. Deal with murder in 1972 before someone closer will not be progressed to political agenda.'

4:60 The notes record a question, *'What do we do with those wanted e.g. by MET'*, to which it is recorded the Assistant Chief Constable commented *'MET do that - what standards have they used.'* The notes also record that resourcing is discussed with the Assistant Chief Constable advising he would take the lead and the process would go to the Head of Branch, the Detective Chief Superintendent. It is not known if any minutes from this meeting or if the information highlighted and discussed was shared with the appointed Chief Superintendent or Senior Investigating Officer to Operation Rapid, who were not present during this meeting.

4:61 It is understood that on 24 January 2007 the Chief Constable and the Assistant Chief Constable attended a meeting with Sinn Féin in which the issue of 'On the Runs' was discussed.

4:62 Subsequently a *'Gold Meeting'* was convened on 7 February 2007 to discuss the purpose and resourcing of Operation Rapid. An email containing draft minutes reads:

'The purpose of the meeting was to instigate a review of cases to establish the current legal status of certain persons considered to be 'On the Run'. The enquiry is to be called 'Operation Rapid'……..

...The HoB provided a brief background as to why a review would be taking place into those persons termed as being 'On the Run'. He stated [solicitor], who acts on behalf of the OTR's, had requested information about the current legal status of his clients. Under Article 3 of the ECHR and Human Rights Act all person have a legal right to request to be informed if Police require them for questioning. He stated that Police were therefore obliged to review all those cases and determine the current status of these persons……

…. It was agreed that the terms of reference for the enquiry should be two fold. Firstly, to establish the legitimate basis why a person 'On the Run' was wanted. Secondly, to establish the status and integrity of the evidence. Formal terms of reference would be drafted by ACC Crime Operations and forwarded to D/C/Inspector [named] for guidance. Where it was established that no current legitimate basis existed to have a person arrested, this information would be passed to ACC Crime for onward transmission to their Solicitor. Alternatively, if reasonable grounds still existed to suspect a person of committing a specific terrorist offence when balanced against Human Rights considerations, a firm recommendation would be made to have these persons remain circulated as wanted for interview and records updated appropriately.'

4:63 The minutes detail a prepared press statement which would be released upon publicity reaching the press and cited the *'Articles under the ECHR'* which were engaged by the proposed process.

4:64 The e-mail references a *'Gold Policy file*'. In interview with my Investigation Team the Detective Chief Superintendent relayed that he ran a 'Gold policy book'. This was also supported by the Operation Rapid Senior Investigating Officer when interviewed. Neither a Gold Policy file nor book have been identified or located by the PSNI during the course of my investigation.

4:65 Following the first Gold Group meeting, the Operation Rapid Research Team manager compiled a 'universal list' of the names to be considered. On 28 February 2007 the Research Team manager emailed the compiled list to the Deputy Staff Officer:

'..These are all the names submitted by SF requesting clarification on their 'wanted' status. Those on the SF1 List were dealt with some time ago, most receiving the Royal Prerogative or being granted release on licence pending review by the Commission. Many on the SF2 list have also been dealt with. I cannot give a definitive answer as to who is or is not 'wanted' at this time as ICIS does not always accurately reflect their status and often contradicts intelligence documents. Additionally we have been instructed by Head C2 to begin again at no.1 and review every individual.'

This email further supports that in 2007 Operation Rapid commenced a review of all names again.

4:66 Operation Rapid Terms of Reference

4:67 A report dated 6 February 2007 from the Assistant Chief Constable, to the Detective Chief Superintendent set out Operation Rapid and the Terms of Reference:

'Op Rapid is the operational name for the review of persons circulated as 'wanted' by the PSNI in connection with terrorist related offences up to the 10 April 1998.

Head of Branch C2 will have the responsibility to undertake this review with the purpose of identifying those individuals for whom a legal basis to seek their arrest based upon:-

- *existing evidence, the integrity of which would withstand a legal challenge within a judicial process in Northern Ireland; or*
- *Reasonable suspicion of committing serious crime in Northern Ireland, such suspicion being based upon a standard which meets current Human Rights standards; or*
- *Being unlawfully at large having escaped from custody or failed to return to prison from parole or having failed to surrender to a court as a condition of the granting of bail.'*

4:68 Within the Terms of Reference it is recorded *'The review will be conducted under terms of confidential reporting in order to prevent a misinterpretation of the purpose of the review.'*

4:69 The report then set out the criteria by which the Head of Branch would recommend if the individual is wanted for arrest or no longer wanted for arrest. This would be based on a collective assessment of intelligence, forensic and any other available evidence.

4:70 There is no indication in the Terms of Reference of the origins of this review, any previous connected process or any of the parties involved in what is now referred to as the 'administrative scheme'. Without the contextual knowledge of the Operation, the reader would interpret that the PSNI were reviewing all *'persons circulated as 'wanted' by the PSNI in connection with terrorist related offences up to the 10 April 1998'* and not only those who had requested this information through the 'administrative scheme'.

4:71 My investigation has received opinion from an independent legal expert who was asked to consider the threshold for arrest articulated in the Terms of Reference. The threshold test which should have been articulated and applied was whether or not there were reasonable grounds for suspecting

that the person under consideration had committed an offence. Nowhere in the Terms of Reference is this clearly or accurately stated. On the contrary, the threshold articulated refers to the need for *'evidence'* before arrest which would *'withstand a legal challenge within a judicial process in Northern Ireland'*. The purpose of an arrest, however, is to allow evidence to be obtained. Whether such evidence is admissible and whether it would withstand legal challenge are matters to be considered by prosecutors in deciding whether the threshold for charging an individual has been met.

4:72 When interviewed in respect of the Terms of Reference the Assistant Chief Constable stated that he had input from the Review team, from Detectives and from the PSNI Human Rights Legal Adviser. The Detective Chief Superintendent in charge of Operation Rapid confirmed to my investigation that he drafted the Terms of Reference with the Assistant Chief Constable, as the Commissioning Officer, approving of and signing off the draft with some small amendments. He also understood that the Terms of Reference were shared by the Assistant Chief Constable with the PSNI Human Rights Legal Adviser and that at no point were objections raised. My investigation has not had the opportunity to view any PSNI legal advices given in respect of Operation Rapid.

4:73 My investigation has also received legal opinion on the 'Law and Jurisprudence' considerations by the Detective Chief Superintendent in the Operation Rapid (Report Number 1) dated 9 March 2007. It is clear that the wrongly articulated threshold test for arrest as set out in the Terms of Reference was further misunderstood by the Detective Chief Superintendent. Having referenced case law and Article 6 of the European Convention on Human Rights, the report reads *'In considering reasonable grounds for arrest, the constable must be satisfied that a person is guilty of an offence'*. This is wrong, setting the threshold for arrest even higher than the threshold for charge.

4:74 In respect of sharing the Terms of Reference outside of the PSNI, the Assistant Chief Constable did not recollect sharing it with any other

agencies but emphasised there would have been no reason not to, having classified it as 'Confidential' only, and refuting any suggestion that it was intended to be kept secret.

4:75 It has been established that the Operation Rapid Terms of Reference were shared with an NIO official in a letter dated 15 February 2007, and when explored with the Assistant Chief Constable he explained the rationale for this was to ensure the NIO understood what the PSNI Operation Rapid involved.

4:76 During my investigation the Assistant Chief Constable was questioned as to whether the Terms of Reference impacted upon the accepted standards when considering powers of arrest. The Assistant Chief Constable advised there was no intention to place a higher standard for arrest than what would be expected but the intention was to *'put 2007 standard in, there had been a series of cases that had collapsed and criticisms of the Police about poor handling of forensic evidence…….I wanted to be sure that particularly those older cases, that there was sufficient robustness in what we were doing. That it could stand that test.'*

4:77 The Assistant Chief Constable confirmed the review was to concentrate on offences which occurred in Northern Ireland. He stated however had a person been identified as 'wanted' elsewhere in the United Kingdom he would have expected for this to have been flagged up given there may be a power of arrest in Northern Ireland. He did however highlight *'whatever information is on that system needs to be sufficiently strong enough that there are grounds for arrest on it'.*

4:78 During interview, the Detective Chief Superintendent and the Operation Rapid Senior Investigation Officer (an Acting Detective Chief Inspector who is now retired), strongly contended there was to be a strict focus on offences occurring within Northern Ireland for which the PSNI were seeking the arrest of the individual.

4:79 Op Rapid Reporting Structure in 2007

4:80 The Terms of Reference state that responsibility for completion of the review rested with the Head of Branch, the Detective Chief Superintendent. The team structure of Operation Rapid, was to consist of *'a small team of investigators of 1 D/C/Inspector, 2 D/Sergeants and 3 civilian assistant investigators'.*

4:81 All of the personnel assigned to Operation Rapid have been interviewed and detailed accounts of their duties were provided. In real terms the three Assistant Investigators (all retired police officers), who were based in Belfast conducted the research on each individual and collated the results of their enquiries into what has been referred to as the 'Templates' to the SIO. The templates detailed the information or material held by the PSNI connecting the individual with the incident(s). One of the Assistant Investigators had an enhanced 'Research Team Manager' role and maintained records from the perspective of the Operation Rapid team. The other two Assistant Investigators had carried out work, to varying degrees, in the earlier 'OTR project' prior to 2007. Enquiries have established the two Detective Sergeants, initially appointed, had no long term or significant involvement in Operation Rapid.

4:82 The templates compiled by the Research Team were then provided to the Senior Investigating Officer, the Acting Detective Chief Inspector who was based in County Tyrone and travelled between the two locations. Using the template material, the Acting Detective Chief Inspector would then make a 'policy decision' on each template as to whether the individual should remain 'wanted' in connection with each offence and an overall recommendation on the individual was submitted in a report to the Detective Chief Superintendent.

4:83 The Acting Detective Chief Inspector would also meet with the Detective Chief Superintendent to discuss his policy decision recommendations. It is understood that the Detective Chief Superintendent also worked between

the two locations. On the basis of the reports from the Acting Detective Chief Inspector and the associated meetings, the Detective Chief Superintendent would then formulate further reports outlining the outcomes of the reviews in respect of each individual.

4:84 The Detective Chief Superintendent's reports were then forwarded to the Assistant Chief Constable and reported on a number of individuals at any one time. It is understood that a small number of cases entailed further discussion between the Detective Chief Superintendent and the Assistant Chief Constable. Using the reports the Deputy Staff Officer to the Assistant Chief Constable drafted the letters outlining the position of the PSNI in respect of the individual. The letters were signed by the Assistant Chief Constable and forwarded to the PPS.

4:85 In understanding how the Operation Rapid team worked in practice, it is important to note the Acting Detective Chief Inspector was also the Senior Investigating Officer for a number of significant ongoing investigations. Operation Rapid was one aspect of the extensive duties of the Assistant Chief Constable and the Detective Chief Superintendent.

5.0

OPERATION RAPID REPORTING ON SF2 102

5:1 Op Rapid Assessment of John Anthony Downey, SF2 102

5:2 When researching John Downey in 2007 the Operation Rapid Research Team utilised the six templates compiled in 2003 as a basis for their enquiries. These templates had informed the assessment by the PSNI in 2004 that Downey remained wanted for arrest and interview. In addition to the templates the Operation Rapid team provided an update on each template in an 'update report' dated 14 April 2007.

5:3 There are no significant changes in the information provided in this update when compared with the templates compiled in 2003 with the exception of the template two, relating to the Enniskillen bombing in 1972. My investigation has established that in 2007 the Operation Rapid Team was incorrectly advised on 11 April 2007 that a relevant exhibit in this case file had not been located. The existence and retention of the exhibit was however clearly communicated to the PSNI Historical Enquiries Team in February 2008 during their review of the murders. My investigation has also established there had been no loss of this exhibit between these times; the inaccurate reporting to the Operation Rapid Team was as a result of an error in the checks carried out in 2007.

5:4 The 2007 update report on John Downey in respect of the Enniskillen bombing in 1972, details the challenges presented by what was understood at that time to be a loss of an exhibit. The report however also presents how these challenges may be addressed should Downey be arrested. The report also highlights the 1985 DPP direction of *'No Prosecution unless further evidence comes to light'* and that Downey was alerted on ICIS as wanted for interview for this incident.

5:5 Referring to the Hyde Park bombing, the report reads *'No case papers are available in Northern Ireland. Downey is alerted on the PNC as "Wanted for murder, if arrested inform SO13 [Metropolitan Police Service]. Evidence is by way of fingerprint." The alert is current and was last updated/confirmed by this team on 13/4/2007. There is no further information to add to this template.'* There is no indication from the papers examined during my investigation that circulation on the PNC was reflected in the PSNI ICIS printouts. It is however clear that the Operation Rapid Research Team did highlight the PNC circulation in their report to Acting Detective Chief Inspector, having confirmed on 13 April 2007 directly with the Metropolitan Police Service that John Downey was shown as wanted.

5:6 On 2 May 2007 the Acting Detective Chief Inspector made a number of entries in his decision log book, which is referred to as his policy log. In respect of the five templates which relate to offences which occurred within Northern Ireland he recorded in separate entries the decision *'That this file be marked "Not Wanted"',* detailing his rationale underneath each decision.

5:7 In respect of template two, referring to the Enniskillen bombing in 1972, within his documented rationale the Acting Detective Chief Inspector details challenges around the material held in the case and the DPP direction in May 1985 *'No prosecution" against Downey, based on the fact that there were difficulties with the integrity and continuity of evidence. No further evidence has come to light since.'*

5:8 As previously highlighted, however it is recorded in earlier PSNI documentation John Downey had not been interviewed. As a citizen of the Republic of Ireland, a direction to prosecute John Downey in 1985 would have required the evidence to meet the standards to commence extradition proceedings. The fact that this direction was made by the DPP in the absence of an arrest and interview of the subject was not referred to by Acting Detective Chief Inspector in his policy log. Instead he concludes *'In view of the current guidelines as indicated in the Terms of Reference, I do not consider that there is a reasonable prospect of a conviction based on*

the continuity and exhibit difficulties. I am aware that subject is currently circulated for this offence on ICIS. I am satisfied that to take any action at this stage could lead to difficulties within the judicial framework. I therefore recommend that this file be marked accordingly and circulation in respect of this particular matter be cancelled.'

5:9 Whilst recognising the challenges surrounding the material believed to be available at time of making the decision in 2007 and the context of previous direction not to prosecute by DPP (in the absence of further evidence), the decision making of the Acting Detective Chief Inspector was explored in interview with my Investigation Team. The Acting Detective Chief Inspector was firm in his professional judgment that as there was *'no reasonable prospect of a conviction'* there were no grounds to circulate Mr Downey as wanted by the PSNI. He stated that his judgement strictly applied on the Terms of Reference of Operation Rapid.

5:10 The decision making described by the Acting Detective Chief Inspector in respect of template two, referring to the Enniskillen bombing in 1972 supports that the Terms of Reference did impact upon standard considerations around grounds for arrest. The flawed criteria for arrest outlined in the Operation Rapid Terms of Reference requiring *'existing evidence, the integrity of which would withstand a legal challenge within a judicial process in Northern Ireland'*, is directly relevant to the flawed decision making by the Acting Detective Chief Inspector. In considering if grounds for arrest exist police should not apply the prosecutorial standard of 'a reasonable prospect of a conviction' to their decision making.

5:11 In respect of his decision making based on the information presented in template six, *'Conspiracy to murder at Hyde Park London'*, the Acting Detective Chief Inspector recorded:

'That subject is "Not Wanted" by PSNI however there is information to suggest that he is wanted by Metropolitan police. I will request an up to date report from Metropolitan Police on the current status of their circulation'.

He detailed his rationale as follows:

1. *'Conspiracy to Murder allegation relates to incident that occurred in London in 1982. It is not known where the Conspiracy was carried out.*
2. *There is no evidence on file that would give me grounds to consider circulation by or on behalf of PSNI for any offence within this jurisdiction.*
3. *The evidence i.e. fingerprint does not specify that the fingerprint belongs to subject. He is however circulated on the PNC as being wanted by the Metropolitan Police.*
4. *I consider that the present circulation by/on behalf of Met Police should remain subject to further clarification from the English authorities.'*

5:12 During interview the Acting Detective Chief Inspector explained his perspective that there was insufficient clarity on the PNC circulation to determine evidence in the case and therefore he concluded John Downey was not wanted by the PSNI for this incident.

5:13 Subsequently on 7 May 2007, the Acting Detective Chief Inspector prepared a report for the Detective Chief Superintendent. The report referenced the six templates and related incidents, and his associated review of the evidence.

5:14 In respect of template six, the Hyde Park bombing in 1982, under the heading 'Review of Evidence' it is recorded:

'I have reviewed the papers and can find no evidence that would indicate that the Subject is wanted by the PSNI for this offence. He is still wanted by the Metropolitan Police subject to any further new evidence.'

5:15 The overall 'Recommendation' of the 'OTR assessment review of John Downey' reads:

'1. That Subject is listed as "Not Wanted" by the PSNI at this time.
2. That clarification be sought from Metropolitan Police as to the current

position with their circulation of Subject.'

5:16 The Acting Detective Chief Inspector did not appear to take cognisance of the information provided on the update report of 14 April 2007 that the research team had confirmed on 13 April 2007 the alert was current with the Metropolitan Police Service. His decision making in respect of Hyde Park is however consistent with his interpretation that the review was to have a strict focus on offences which had occurred within Northern Ireland and for which the person was circulated by the PSNI as 'wanted'.

5:17 It is understood that on 9 May 2007 the Acting Detective Chief Inspector met with the Detective Chief Superintendent to discuss the assessment of John Downey and eight others. The Detective Chief Superintendent advised my Investigators the entry he has recorded in his journal between 9.10am and 12am relates to this meeting. The result of the meeting was that the Detective Chief Superintendent concurred with the recommendations made by the Acting Detective Chief Inspector in respect of John Downey.

5:18 During interview, the Detective Chief Superintendent reaffirmed his professional judgment that the information available did not meet the documented Operation Rapid Terms of Reference criteria of '*reasonable suspicion of committing serious crime in Northern Ireland'.*

5:19 The Detective Chief Superintendent also referred to his experience at that time of an ongoing trial which influenced his thoughts around the criteria to be met when considering grounds for arrest. It is notable from interviews with a number of serving and retired police officers that the particular court case referred to and related criticisms directed at police handling of exhibits were highlighted as influential in the policing world at that time.

5:20 In terms of the recommendation made in respect Template 6, the Hyde Park bombing, *'That clarification be sought from Metropolitan Police as to the current position with their circulation of Subject',* the Detective Chief Superintendent relayed this was an action to be carried out by the Operation

Rapid team in order to update the relevant circulation systems. He stated it had no bearing on his Operation Rapid review recommendation which was to report on the circulation of individuals wanted by the PSNI for offences which occurred in Northern Ireland.

5:21 Report to Assistant Chief Constable

5:22 In a report dated 10 May 2007 forwarded for the attention of the Assistant Chief Constable, the Detective Chief Superintendent detailed his recommendations in respect of eleven individuals. With reference to John Downey the report records:

'The above person is a native of the Republic of Ireland and is a citizen of the Irish Republic. He has not resided in Northern Ireland and remains resident in his native district. He is not currently "on the run" from his home. I have reviewed the case and there is no basis in my professional opinion to seek his arrest currently for any offence prior to the signing of the Good Friday Agreement.

The above person should be informed that he is not currently wanted by the PSNI for offences prior to the Good Friday Agreement 1998, but it should be borne in mind that should new properly assessed and reliable intelligence, or new evidence which has been judged to retain it's integrity, emerge, which creates reasonable grounds to suspect his involvement in offences then he will be liable to arrest for any such offence which may have been committed during this period.

Full details of the basis for this decision are recorded on the individual assessment files for offences connected with each of the above individuals.'

5:23 There are differing accounts from the serving and retired police officers as to exactly what material was forwarded by the Detective Chief Superintendent to the Assistant Chief Constable. In interview, the Detective Chief Superintendent relayed that the full template material including the report by

the Acting Detective Chief Inspector dated 7 May 2007 was forwarded along with his report of 10 May 2007 to the Assistant Chief Constable's office. During interview, the Acting Detective Chief Inspector relayed this was also his understanding of the process.

5:24 This is disputed by the Assistant Chief Constable who stated he received the report of 10 May 2007 only. Furthermore the Assistant Chief Constable stated he would not have expected to have received the template material given the seniority and experience of the Detective Chief Superintendent who reported on the review outcomes. He stated the fact that John Downey was listed as 'wanted' on the PNC by the Metropolitan Police Service should have been brought to his attention in the report of 10 May 2007.

5:25 My investigation has retrieved an email dated 10 May 2007 in which this report compiled by the Detective Chief Superintendent was forwarded as an attachment to the Assistant Chief Constable, copying in the Deputy Staff Officer and the Acting Detective Chief Inspector. There is no other material attached to the email. The Deputy Staff Officer to the Assistant Chief Constable, who compiled the subsequent letter sent to the PPS, also advised my investigation that the full template material was not forwarded to the Assistant Chief Constable's office.

5:26 In interview the Deputy Staff Officer did not recall preparing the letter but stated she was assigned to these duties. The Deputy Staff Officer explained that the letter would have been prepared from the Detective Chief Superintendent's report dated 10 May 2007. In not recalling drafting the letter the Deputy Staff Officer could therefore not account as to why the letter did not include the final paragraph by the Detective Chief Superintendent in his report which read:

'*The above person should be informed that he is not currently wanted by the PSNI for offences prior to the Good Friday Agreement 1998, but it should be borne in mind that should new properly assessed and reliable intelligence, or new evidence which has been judged to retain it's integrity, emerge, which creates reasonable grounds to suspect his involvement in offences then he will be liable to arrest for any such offence which may have been committed during this period.'*

5:27 As such a letter dated 6 June 2007 forwarded by the Assistant Chief Constable to the PPS, in respect of John Downey did not reference that the enquiries related to pre April 1998 offences only. It read:

'The above person is a native of the Republic of Ireland and is a citizen of the Irish Republic. He has not resided in Northern Ireland and remains resident in his native district. He is not currently "on the run" from his home.

Enquiries indicate that John Anthony Downey is not currently wanted by PSNI.'

5:28 When interviewed the Assistant Chief Constable stated his understanding at the time that the PPS would write to the Attorney General in respect of the information provided by the PSNI. He stated however that he did not have knowledge that the NIO would send out a letter containing the wording *'The Police Service of Northern Ireland are not aware of any interest in you from any other police force in the United Kingdom.'*

5:29 It is now known that following this letter the PPS wrote to the Attorney General's Office, who subsequently forwarded the following information to the NIO in a letter dated 11 July 2007:

'I have been provided with the following information in respect of the named individuals by the Public Prosecution Service.

…..

No. 102, Downey, John Anthony, [Date of birth, Address]

Police have written in the following terms –

"It is believed these details refer to John Anthony Downey, [Date of birth]

The above person is not a resident of Northern Ireland and is a citizen of the Republic of Ireland. He has not resided in Northern Ireland and remains resident in the Republic. He is not therefore currently 'on the Run' from his home.

Enquiries indicate that John Anthony Downey is not currently wanted by the PSNI.'

The one file held by the PPS in respect of John Anthony Downey is closed.'

5:30 This letter is significant in that it supports the NIO are the first agency to introduce, in their letter to John Downey on 20 July 2007, the text:

'The Police Service of Northern Ireland are not aware of any interest in you from any other police force in the United Kingdom.'

5:31 Communication between the PSNI and the NIO

5:32 Whilst it has been established that at no time did the PSNI record in writing that the PSNI was not aware John Downey was wanted by any other police service within the United Kingdom, ongoing and subsequent enquiries from the NIO and responses from the PSNI clearly gave rise to that assertion.

5:33 An email thread initiated by the Deputy Staff Officer on 13 June 2007 details a request from a senior NIO official. The email is sent by the Deputy Staff Officer to the Detective Chief Superintendent and Acting Detective Chief Inspector records:

'Further to our meeting on Monday, could you please advise in writing that all checks with outside forces have been carried out in relation to the subjects under review by your team prior to them being sent to PPS. [NIO official] has requested this in writing.'

5:34 When explored in interview with the Deputy Staff Officer she did not recall any further detail about the circumstances of this email. It is understood the meeting referred to in the email took place on Monday 11 June 2007 with representatives of the PSNI, PPS and NIO. Minutes of the meeting have not been located.

5:35 Within the subsequent email thread it is recorded that on 14 June 2007 the Acting Detective Chief Inspector requested the Operation Rapid Research Team Manager to, *'please clarify what if any steps are/have been taken in respect of the query raised by [the Deputy Staff Officer] as below.'*

5:36 Having knowledge of the work conducted by the earlier 'On the Runs' PSNI review team, the Operation Rapid Research Team Manager responded:

'The original version of the review template did not specifically ask for an individual's Police National Computer (PNC) and/or Interpol numbers, or if such had been checked. Subsequent letters, however, from Head of Branch C2 made reference to enquiries indicating if the person was wanted by other UK Forces or by any other country through Interpol. The letter stipulated that no enquiries had been made with An Garda Siochana. It seems that it was practice for the review team to check for PNC entries and to check via Interpol liaison for international alerts but there seems to have been no formal means of recording, or apprising the Head of Branch of, the result of such enquiries (although in some of the older files there is a checklist that includes Gazette/PNC/Interpol).

The current review team has examined whether individuals are wanted by the PSNI in connection with terrorist related offences up to 10 April 1998 (as per terms of reference). It has been practice, however, for the current team to examine ICIS for indications of PNC entries. Sample checks carried out today have revealed that ICIS cannot be relied upon in this respect. Ten people on our list of those recently reviewed have been scrutinised. None of the ten have entries in the PNC id field but five are recorded when PNC itself is checked. Three of the individuals are alerted as wanted in Northern Ireland and two simply have PNC nominal entries. None of the ten were recorded as wanted by any other agency. (As discussed we did recently check one individual who was recorded on the PNC as wanted in England and carried out further enquiries with the Met). It is now clear that we cannot rely on the ICIS 'view person' screen and must carry out specific PNC checks on every individual.

In response to the question below this office cannot state that 'all checks with outside forces' have been carried out as Interpol has not been consulted and earlier reliance on 'PNC id' fields is clearly flawed. The review team can now recheck the PNC itself via ICIS in respect of those nominals already reviewed and can submit those names to Interpol liaison, which has not been the practice of this team. It appears that request to Interpol will require provision to them of significant information, including reason or justification for the check and details of any offences of which suspected.

The original review template was amended to answer questions of continuity/intelligence origins etc and will now be amended to state that PNC/Interpol checks have been done. All individuals will be specifically searched on ICIS for PNC entries and Interpol liaison at PSNI Criminal Justice Department will be asked to conduct enquiries at Interpol. (Subject to your confirmation that this must be done.)'

5:37 This email, which was explored with the author during interview, clearly highlighted that the Operation Rapid Team was not in a position to state that all checks with outside forces had been carried out. The Research Team

Manager was suggesting in his email the means by which Operation Rapid could move to that position and firmly highlighting that reliance '*on 'PNC id' fields is clearly flawed'* if using the PSNI ICIS to ascertain if an individual is recorded on the PNC. Furthermore he clearly states that *'this office cannot state 'all checks with outside forces' have been carried out'.'*

5:38 The email was subsequently forwarded from the Acting Detective Chief Inspector to the Detective Chief Superintendent with the recommendation that the PSNI should ensure that Interpol checks are carried out. The Acting Detective Chief Inspector also commented, *'This will also put additional work on the Team and take away from the thrust of the Terms of Reference which only related to persons wanted in Northern Ireland.'* This comment is significant as again it reflects the Acting Detective Chief Inspector's stated understanding of the Terms of Reference.

5:39 In response the Detective Chief Superintendent replied to the Acting Detective Chief Inspector:

'*The issue is probably resolved. As I understand it – if a person with a domicile address in Northern Ireland is wanted by police on mainland UK then the PSNI are formally notified and an entry is made against their nominal on ICIS. Similarly, if an individual is wanted outside of the UK e.g. a European country then a current European Arrest Warrant is the formal and legal means of notifying the PSNI. Once again such an arrest warrant is logged against the nominal of an individual ICIS.*

If ICIS checks are not flagging an individual as wanted by a GB police force or under a European Arrest Warrant then it is correct to report that individual is not wanted by the PSNI on behalf of either a GB force or an European country. It would be impossible to check 100% as to whether or not an individual suspected of offences which have not reached a level of evidence to formally seek arrest and to do so throughout Europe.

I hope this guidance is helpful. What we need to establish is the following 'Is X wanted for arrest by the police service of Northern Ireland for an offences pre the Good Friday agreement or circulated as wanted for arrest by an external force and the existence of reasonable grounds (within the UK) or a European Arrest warrant. This can be established by an ICIS check and I do not believe that investigations beyond this are necessary as the 10 examined have shown.'

5:40 This email was then forwarded on by the Acting Detective Chief Inspector to the Research Team Manager. The Detective Chief Superintendent appears not to grasp the issue raised by the Research Team Manger in respect of the system inadequacies. When explored with the Detective Chief Superintendent in interview, he advised that to rely on ICIS was in keeping with his understanding of the Terms of Reference, ICIS being sufficient to identify if a person is circulated as 'wanted' by the PSNI. The text of the last paragraph of the email however clearly conflicts with the stated position of the Detective Chief Superintendent.

5:41 My investigation has found no record of a specific response by the Operation Rapid team to the query raised by the Deputy Staff Officer in her email of 13 June 2007. The email thread was however forwarded to the Deputy Staff Officer on 18 June 2007 by the Acting Chief Inspector. A further email on 20 June 2007 between the Research Team Manager, the Acting Detective Inspector, the Detective Chief Superintendent and the Deputy Staff Officer outlines clearly that checks with Interpol were not being conducted.

5:42 A series of emails have been located which supports that between 21 June and 27 June 2007 NIO officials made firm attempts to establish with the Deputy Staff Officer the precise nature of the checks being carried out by the PSNI. Most significantly on 27 June 2007 an NIO official in continuing her correspondence on this matter emails the Deputy Staff Officer:

'Provided this is the same level of checks carried out by the police in the past then we're content.'

5:43 The Deputy Staff Officer responds:

'I have forwarded a letter to [NIO official]. I have been assured that they are the same checks as were done before and the letter reflects this.'

5:44 A letter dated 27 June 2007 sent from the Assistant Chief Constable to the NIO official reads:

'In relation to your query in respect of checks carried out as part of the PSNI's review of persons currently listed as wanted, I can confirm the following:

Our review set out to establish if X is wanted for arrest by the PSNI for any offences pre the Good Friday agreement or circulated as wanted for arrest by an external force and the existence of reasonable grounds (within the UK) or a European Arrest warrant.

This can be established by an ICIS check (PSNI's computer system), checks with An Garda Siochana and the Police National Computer (PNC).

These checks have all been carried out in relation to the letters forwarded to the Director of Public Prosecutions from the PSNI and they are the same that have been carried out during previous reviews.'

5:45 The information forwarded in this letter to the NIO was not accurate. It is notable the second paragraph mirrors the Detective Chief Superintendent's comments on what the review set out to do in his email of 14 June 2007, forwarded to the Deputy Staff Officer on 18 June 2007 by the Acting Detective Chief Inspector. The information in the letter is however significantly at odds with the information communicated within the remaining email thread. Although a PNC check had been carried out by the Operation

Rapid team in respect of John Downey, the email from the Research Team Manager highlighted earlier reliance on the ICIS 'PNC id field' to trigger separate PNC checks. Separate interpol checks had not been routinely conducted. Furthermore the Operation Rapid Research Team during interview confirmed that rarely, if at all, were checks carried out with An Garda Siochána.

5:46 When interviewed, the Deputy Staff Officer could not recall the exact circumstances of this correspondence. The Deputy Staff Officer accepted she was most likely to have drafted it but stated she would have been advised by either the Assistant Chief Constable or a member of the Operation Rapid team as to the information contained within the letter. A direct response email to her initial query of 13 June 2007 has not been retrieved. When this was explored with the Deputy Staff Officer she advised it was possible the information may have been dictated to her, relaying that the information would not have been within her knowledge otherwise.

5:47 None of the serving or retired police officers interviewed in my investigation accept dictating or actively providing the information in the letter of 27 June 2007.

5:48 As the signatory to the letter, the Assistant Chief Constable advised in interview that the letter was reflective of his understanding of the checks being carried out. The Assistant Chief Constable stated he was not aware of the issues raised by the Research Team Manager around the adequacy of the system checks and that he had understood the Deputy Staff Officer drafted the letter as a result of having made enquiries with the Operation Rapid Team. In respect of the reference to *'previous reviews'* he understood this referred to previous reviews conducted by Operation Rapid and was not meant in the context of previous PSNI 'OTR project'.

5:49 During interview neither the Detective Chief Superintendent nor the Acting Detective Chief Inspector claimed to have known about the NIO enquiries. Both officers stated they were not familiar with the NIO official's name

referred to in the email and when shown the responding letter from the Assistant Chief Constable to the NIO, both officers stated they had not been aware of this letter and had they seen it would have been in a position to have identified it as factually incorrect.

5:50 The error in communicating exactly what checks were being conducted by Operation Rapid was further compounded when on 20 July 2007 the Deputy Staff Officer responded to a second query from an NIO official. The query originated in an email from the NIO official dated 18 July 2007 to the Deputy Staff Officer. The email reads:

'We spoke. I mentioned to you that we had received a further letter from the Attorney General's office (copy attached) dated 11 July in respect of a 10 further individuals. This prompted me to call you to clarify a couple of points.

(a) If I was correct in understanding [the Assistant Chief Constable's] letter of 27 June to [NIO Official] should be taken as confirming that the PSNI has checked whether any of the individuals in the Attorney's June letter to SOSNI – which contained 25 names – were wanted by an external force so far as the PSNI could ascertain, and had established that they were not. (This was on foot of a question raised by the AGO.) You confirmed that that was correct;

(b) I asked whether those checks had been undertaken in respect of the 10 names in the 11 July letter. You said they had been.

We agreed that I would email you, and you would check that my understanding of all this was correct and reply confirming that the relevant checks had been carried out in relation to all 35, or putting me straight.'

5:51 The email is forwarded again on the 20 July 2007 as the earlier email had been sent in error to the wrong email address. On receipt of the email the Deputy Staff Officer responds:

'In response to your queries -

The letter from [Assistant Chief Constable] dated 27th June confirms that prior to forwarding all details to the Director of Public Prosecution our review team conduct all searches through our own computer system ICIS, the Police National Computer (PNC) and checks with An Gardai Siochana. This is the process conducted for all individuals reviewed prior to any letters being sent from this office and this will continue to be the case.

To confirm, these checks have been carried out on the 10 names in the 11 July letter.'

5:52 Again the information forwarded by the PSNI is inaccurate as it relied upon the information within the letter of 27 June 2007. It is notable this email correspondence is on the same date of the letter sent by the NIO to John Downey.

5:53 The Deputy Staff Officer stated that she could not recall the circumstances around this second contact from the NIO but that she had no reason to doubt the information contained within the letter of 27 June 2007. Telephone records demonstrate that the Deputy Staff Officer spoke with the Assistant Chief Constable shortly before her return email to the NIO. It is probable the telephone call was in respect of the NIO query.

5:54 In interview the Detective Chief Superintendent and Acting Detective Chief Inspector again advised they had not been aware of this follow up enquiry from the NIO in July 2007. The Detective Chief Superintendent referred to his records which confirm he had been working out of the country on that date along with the Acting Detective Chief Inspector.

5:55 The Assistant Chief Constable also stated he had not been aware of the clarification emails from the NIO to the Deputy Staff Officer. He stated had the NIO shared the wording of the intended letter to John Downey, the PSNI could have been in a position to highlight the inaccuracy of information in the NIO letter and prevent the error. The Assistant Chief Constable stated

that to the best of his knowledge neither he nor any of his team were asked the direct question as to whether John Downey was wanted by any other police force in the United Kingdom. Furthermore the Assistant Chief Constable suggests not having been aware of the content of the letter from the NIO to John Downey *'did not allow any rectifying of the error'*.

5:56 Comparative approach in other Operation Rapid cases

5:57 Further documentation retrieved and examined by my Investigation Team supports the Acting Detective Chief Inspector and Detective Chief Superintendent were consistent in their contention that it was their role to report to the Assistant Chief Constable if persons were wanted in connection with offences in the Northern Ireland only, even where it was known the individual was wanted in England.

5:58 A report from the Acting Detective Chief Inspector dated 28 February 2008 records in respect of the individual reviewed:

'Having reviewed all the available evidence in this matter, I am satisfied that there is currently no grounds to have Subject circulated for any offence in Northern Ireland. He does however remain wanted in the United Kingdom.

I therefore recommend that the file be marked as "NOT Wanted"'.

5:59 My investigation has examined an email dated 1 May 2008 from the Operation Rapid Research Team Manager who attempts to raise the apparent contradiction in the reporting. The email which is sent to the Acting Detective Chief Inspector and the Deputy Staff Officer in respect of the review decision on the individual reviewed in the report of 28 February 2008 and a second similar review reads:

'Further to our telephone conversations I believe there is potential for serious confusion arising from these cases. The two persons are NOT circulated as wanted in Northern Ireland and the reviews confirm this as appropriate. They ARE wanted in England and are alerted as such on the PNC.

I propose that we DO NOT request ICIS entries describing them as not wanted as they have never been alerted on ICIS and such a 'negative entry' would cause confusion in relation to the PNC alert.

Careful consideration must be given to the letters issued in relation to these persons. Although they are not wanted for offences specifically in NI they are liable to arrest in NI on the strength of the English PNC alert. Is it appropriate to send them letters describing them as 'not wanted' in NI without indicating that they are wanted in GB?'

5:60 The matter is clearly not addressed as subsequently a letter dated 10 June 2008 is sent from the Assistant Chief Constable, which referred to the individual as 'not currently wanted by the PSNI' but makes no reference to the PNC alert. The PPS however returned the letter to the PSNI. There is a handwritten note on the letter that the *'AG's office to check England case'*

5:61 Further consideration of John Anthony Downey in 2008 and 2009

5:62 A series of emails reveal that John Downey came to the attention of the Operation Rapid team again in 2008. An email from the Research Team Manager to the Acting Detective Chief Inspector and the Deputy Staff Officer on 23 July 2008 advised of contact received from HET in respect of their review of the evidence in the Enniskillen bombing in 1972. The Research Manager relayed it was probable HET would create a new wanted alert in respect of John Downey. He also highlighted the letter sent to the PPS in June 2007 had no caveat to the effect that he could become liable to arrest if further evidence came to light.

5:63 The Deputy Staff Officer responded on 25 July 2008 to both the Research Team Manager and the Acting Detective Chief Inspector, *'Since the letter in relation to this individual went out some time ago stating he was not to be deemed as wanted I will need a report detailing what action should/can be taken now to present to [Assistant Chief Constable] as soon as possible.* '

5:64 In an email dated 28 July 2008 the Research Team Manger provides further detail on the HET review of the evidence to the Acting Detective Chief. The email then continues:

'It has always been the case that new evidence could potentially be uncovered by HET or others investigating cases previously reviewed (under specific criteria) by Op Rapid. It is my understanding that it has been made known to concerned parties that the assessment of a person as 'not currently wanted' was always subject to the condition that new evidence could result in that person becoming liable to arrest if located in this jurisdiction, Although the letter relating to Downey did not specifically carry this caveat all interested parties are apparently aware that this condition applies.

HET have indicated that they will now seek to have a new alert created in respect of John Anthony Downey. Consequently he is likely to be described as wanted for murder upon creation by the HET of an appropriate alert.

This office has not examined the murder investigation conducted by the HET and has no remit to do so. There could however be value in a Senior Investigating Officer appointed by [Detective Chief Superintendent] liaising with HET on this matter in order to clarify the grounds to overturn the decision of the Op Rapid review. Despite the understanding that new evidence would overturn an Op Rapid assessment there is the potential that PSNI could be accused of abuse of process or acting in bad faith, particularly since the letter specific to Downey did not contain the appropriate caveat.'

5:65 An email dated 29 July 2008 from the Acting Detective Chief Inspector to the Detective Chief Superintendent (copying in the Research Team Manager and the Deputy Staff Officer) highlights the information provided by the Research Team Manager and details what he has termed as 'new evidence'. The Acting Detective Chief Inspector highlights the potential in this development and recommends that a Senior Investigating Officer is appointed to review the material and liaise with the PPS, further stating *'I believe that this should take place BEFORE circulation is considered.'*

5:66 A further email is sent on this date from the Research Team Manager to the Acting Detective Chief Inspector (copying in the Deputy Staff Officer) reads:

'I have advised HET of the existence of the DPP direction dated May 1985. I will also confirm that they are aware of the Met's interest. I have checked the PNC and the Met wanted alert for murder is still on the system (it does not specify Hyde Park bomb). The report from the Head C2 to ACC Crime Ops and the subsequent letter to the DPP do not state that Downey is wanted by the Met.'

5:67 The email is responded to by the Acting Detective Chief Inspector on the same day (copying in the Detective Chief Superintendent) and reads, *'Noted. Thank you.'*

5:68 The Detective Chief Superintendent, Acting Detective Chief Inspector and Deputy Staff Officer were all asked during interview why no action was taken in respect of the email highlighting the '*letter to the DPP does not state that Downey is wanted by the Met.'* Both the Detective Chief Superintendent and the Acting Detective Chief Inspector maintained their position that there was no need to act, as the Operation Rapid Terms of Reference were to review those who were circulated by the PSNI as wanted. The Deputy Staff Officer stated she would have required a report or action from a member of the Operation Rapid Team of the Assistant Chief Constable to have acted upon the letter to the PPS.

5:69 At the time of these developments the Detective Chief Superintendent, in preparation for retirement in November 2008 had moved from his position of Head of Branch, Crime Operations to another role. In the run up to the change of posts he included in the incoming Head of Branch, also a Detective Chief Superintendent, in a number of his emails and on 4 August 2008 he forwarded to the incoming Head of Branch the email about the HET review of the Enniskillen bombing in 1972 and wrote:

'The discovery of new evidence in this case may provide an opportunity to recommence an investigation which may lead to a potential prosecution.

This is a matter which I feel should be discussed with HET to determine if they are prepared to conduct a full investigation. The issues of integrity highlighted in the PPS direction of 1985 would also need to be reviewed to determine what impact this would have on the rediscovered evidence.'

5:70 This email is also copied to the Assistant Chief Constable, the Deputy Staff Officer and the Acting Detective Chief Inspector. The email was in reference to the developments in respect of the HET review of Enniskillen bombing only.

5:71 A series of emails supports that the incoming Head of Branch liaised with the HET on the case. The incoming Head of Branch was not aware of the PNC alert in respect of the Hyde Park bombing in 1982 however given the developments in the case of the Enniskillen bombing he did give further consideration to the letter which had been sent to the PPS in June 2007. In an email 6 August 2008 to the Acting Detective Chief Inspector and the Research Team Manager he wrote:

'I will discuss in more detail with HET in due course and advise at that point...Is there anything else we need to do in the meantime with regard to the letter on Downey?'

5:72 My investigation has established that no further information was provided by the PSNI to the PPS at that time. My Investigation Team has spoken with the then incoming Head of Branch, now retired, who explained it was likely that no further action was taken on the letter to the PPS as considerations around a new alert was at an exploratory stage. He explained that the responsibility in 2008 to bring forward the review of the murder investigation rested with the HET. The HET did not subsequently create a new 'wanted' alert in respect of Mr Downey.

5:73 It was also revealed that sometime after the appointment of the new Head of Branch, the responsibility to send the letters to the PPS was devolved to this officer. His understanding of the process was that once the PSNI wrote to the PPS on an individual, the PPS would then check for linked files, a letter would then be sent from the PPS to the Attorney General who would then issue a letter to the 'On The Run'. Once more another Senior Officer given charge of Operation Rapid had not been equipped with full knowledge of the 'administrative scheme'. It was however the practice of this Head of Branch to notify the PPS if an individual was known to be wanted for offences that occurred elsewhere in the United Kingdom.

5:74 Significantly, after taking up post the Head of Branch questioned the Operation Rapid Terms of Reference and made a number of changes after seeking legal advice. The PSNI have not located the revised Terms of Reference referred to by this retired officer. A handwritten document by the Head of Branch has however been retrieved, and reads,

'Please see attached "Terms of Reference" in respect of Operation Rapid which is the review of 'on the runs' currently the responsibility of Head of Branch Serious Crime.

On assuming responsibility for this Operation I sought to clarify a number of matters with [named] Legal Advisor (see attached appendix A). On foot of that advice and as a result of other concerns I have now revised the original terms of reference. A revised 'terms of reference' are attached for your information and approval.

I have had a recent meeting with the Director of the Public Prosecution Service and he affirms that "standard tests" are being applied and should be applied to the review of material by both the PSNI and by the PPS. I have also met with the Northern Ireland Office and neither those meetings nor any material made available to me detract from my views that the attached revised terms of reference are necessary.'

5:75 It is unclear from the material retrieved as to what extent the Terms of Reference were revised. A further handwritten note demonstrates consideration is given to the powers of arrest and what constitutes reasonable suspicion.

5:76 Further significant changes under this command are evidenced by a memo dated 11 June 2009 circulated:

'The following represents how the review of 'on the runs' (Op Rapid) will be dealt with in future.

1. *Any cases relevant to murder (s) will be referred to and dealt with by HET.*
2. *Cases involving offences other than murder will be dealt with by C2 Branch. However, where there is prima facie evidence to suggest the linking of weapons, individuals or intelligence suggesting the case may be associated with or linked to murders, then the matter should pass to HET.'*

5:77 Post 2008, the Operation Rapid review of John Downey in 2007 and the subsequent attention by HET remained on the Operation Rapid data spreadsheets maintained by the Research Team Manager. The Research Team Manager confirmed to my investigation he had clearly raised for the

attention of his Senior Officers, the issue of the letter to the PPS having no reference to John Downey being wanted by the Metropolitan Police Service. It is notable in the material examined the Research Team Manager persistently raised quality assurance concerns which were not adequately explored by the Senior Officers.

5:78 Two further documents referring specifically to John Downey have been retrieved and are believed to have been memos compiled by the Research Team Manager in 2009. One memo undated and entitled *'Op Rapid checks re SO15 Port Circulation Sheets', 'Draft'.* The second document is believed to be the finalised version and is dated 21 October 2009. The memos refer to receiving seventeen names to check. These names were provided by police officers from the Metropolitan Police Service's Counter Terrorism Command on attachment to PSNI. The memos state the names have been cross referenced with Operation Rapid records. Operation Rapid's assessment of John Downey as *'not currently wanted',* along with the alert on the PNC for the Hyde Park bombing in 1982 is recorded.

5:79 My investigation has conducted enquires with the recipient of the memo who confirmed at the time he was a Metropolitan Police Officer seconded to the PSNI. The memo was likely to have been generated as a result of a request from the Port Liaison, to establish if warrants remained in respect of the Port circulations. The recipient has confirmed the memo was received by the Counter Terrorism Command department of the Metropolitan Police Service.

5:80 Having already raised with Senior Officers the omission in the letter to the PPS in respect of John Downey, the Research Team Manager did not act any further on the contradiction between Operation Rapid's assessment and the circulation on the PNC. The information had already been made available to those in a position to act and rectify the communication to the PPS. This did not take place.

5:81 The HET review of the murders of Lance Corporal Alfred Joseph Johnston and Private James Edward Eames, 25 August 1972

5:82 My investigation has examined the communication between Operation Rapid and the HET, including associated material relating to the issues raised by the HET officers in 2008 in respect of their review of the murders of Lance Corporal Alfred Joseph Johnston and Private James Edward Eames, 25 August 1972.

5:83 It is unclear why in the subsequent review of the murders of Mr Johnston and Mr Eames the HET did not take the action proposed in 2008 in respect of creating a new wanted alert, or liaise with the PPS in respect of the evidence available to explore this option. There is also a clear discrepancy between what is known to the HET in 2008 about the existence of evidential material and what is subsequently communicated to the bereaved families in a report in 2010. The PSNI have since met with the bereaved families and advised them of this inaccuracy.

5:84 The conduct of HET officers does not fall within the remit of my Office. As such my Office has written to the PSNI Service Improvement Branch to consider these matters.

6.0
FINDINGS

6:1 Finding One

6:2 **Given the critical nature of the work undertaken, it is a significant failing of the PSNI that Operation Rapid was marked by a lack of clarity, structure and senior leadership.**

6:3 The PSNI in 2006 and 2007 renewed their role in what is referred to as the *'On the Runs Administrative Scheme'* and established Operation Rapid.

6:4 The Assistant Chief Constable with overall responsibility for Operation Rapid states that he was unaware of the work previously carried out by the RUC/PSNI, and the 'corporate knowledge' within the PSNI regarding the history of the various arrangements. The Assistant Chief Constable should have been aware of the pervious work given the information available to him. As a consequence of this lack of knowledge, the Senior Officers who were responsible for Operation Rapid were not equipped appropriately to fulfil their role effectively.

6:5 The Chief Constable and Assistant Chief Constable decided to commence in 2007 a review of individuals circulated as wanted under previous schemes. It is not clear from the available evidence and from what I have been told whether that decision was made in the knowledge that the status of many of the individuals had been considered by PSNI only a short time previously. The Assistant Chief Constable stated that the decision was made without the knowledge of the prior work carried out by the PSNI through the 'administrative scheme'.

6:6 My investigation has found no satisfactory rationale as to why the PSNI recommenced a review of a large number of individuals previously reported upon within recent years, as oppose to completing only outstanding PSNI enquiries.

6:7 It is not improper for a police service to review the circulation of persons wanted, and although the Operation Rapid Terms of Reference refer to a review of 'On the Runs', it is silent on how the individuals were selected to be reviewed or the procedure by which the information from the review was to be communicated onward to other parties.

6:8 ## Finding Two

6:9 **Poor communication at a strategic and functional level of Operation Rapid led to adverse consequences.**

6:10 The PSNI at senior level failed to comprehensively establish the objectives and parameters of Operation Rapid in comparison with the earlier role of the PSNI and ensure that the PSNI understanding of the operation was in accord with that of other interested parties.

6.11 There was a failure to mutually agree and understand with key partners, the strategic and operational parameters of the work.

6:12 Further, within the PSNI, the processes around Operation Rapid were not fully documented or risk assessed and ownership of procedural aspects of Operation Rapid was not clear. Communication between PSNI officers in key functional roles was disjointed and undermined the coherency of the operational delivery.

6:13 The Operation Rapid Research Team Manager persistently raised quality assurance issues with Senior Officers but they did not respond adequately to the issues raised.

6:14 ## Finding Three

6:15 **The 2007 Operation Rapid Terms of Reference were not suitable for the function undertaken by the PSNI.**

6:16 The Operation Rapid Terms of Reference in 2007 imposed different interpretations on the meaning, intent and overall aims of the operation.

6:17 The most serious flaw is the wrongly articulated threshold for arrest creating the potential to impose a different standard when considering the grounds for arrest than that which is normally applied.

6:18 The processes inherent in Operation Rapid as a means of reviewing historic murders failed to meet 2007 standards for effective investigation. In order to maximise investigative opportunities and minimise the risk of flawed decision making, a review of persons circulated as wanted in connection with murder and other serious offences should be carried out by a Senior Investigation Officer within the context of a full evidential review of the case. This practice was in fact later recommended by the subsequent Head of Branch in 2009 when he directed that any reviews of individuals circulated as wanted for murder would be referred and dealt with by the HET.

6:19 ## Finding Four

6:20 **The Operation Rapid decision-making in 2007 in respect of John Downey and subsequent communication to other agencies was flawed.**

6:21 The 2007 Operation Rapid Terms of Reference were a significant factor in what was flawed decision making in respect of the review of John Downey.

6:22 The rationale provided by the Acting Detective Chief Inspector and the Detective Chief Superintendent as to why John Downey was no longer wanted for arrest by the PSNI in 2007, is not satisfactory. In this case the

criteria set within the Terms of Reference imposed a different standard than that which is normally applied in considering grounds for arrest.

6:23 The Operation Rapid assessment of John Downey's status also failed to consider developments in legislation and common law, which would have afforded police and prosecutors the means to adduce evidence that was not available in 1985, when John Downey's prosecution was last considered.

6:24 The fact that John Downey was circulated on the PNC as wanted by the Metropolitan Police Service should have been highlighted by the PSNI to the PPS in June 2007.

6:25 Notwithstanding the Detective Chief Superintendant's position that the Terms of Reference were to focus on offences which occurred in Northern Ireland, the assessment communicated in his report of 10 May 2007 that John Downey was not wanted by the PSNI at that time, whilst technically correct, was incomplete.

6.26 Although John Downey was not circulated as wanted on the PSNI ICIS for the Hyde Park bombing in 1982, the information that had been made available from the PNC check and subsequent checks would have established the power of arrest by the PSNI.

6:27 The decision by the Detective Chief Superintendent not to highlight that it was known to the Operation Rapid team that John Downey was wanted by the Metropolitan Police Service has clearly had significant consequences. It could be contended that the inaccurate information provided by the Assistant Chief Constable's Office to the NIO concerning what checks were being conducted by Operation Rapid was equally as harmful. The clarification sought by the NIO at that time provided an opportunity to ensure that all parties were of the same understanding. This did not occur.

6:28 The flawed communication from the PSNI to the NIO compounded the error made in the original correspondence to the PPS. It is noted that the wording

and the existence of the letter subsequently received by John Downey was not made known to the PSNI by the NIO at that time.

6:29 ## Finding Five

6:30 **The PSNI failed to advise the PPS of subsequent developments in 2008.**

6:31 The PSNI should have provided an updated position to the PPS when queries were first raised in 2008 by the HET in respect of the murders of Mr Johnston and Mr Eames in 1972. Certainly it should have occurred when it was raised by the Research Team Manager at this time that the PNC alert for the Hyde Park bombing in 1982 had not been communicated to the PPS.

6:32 The failure to act by the PSNI in response to these developments further supports that inadequate communication and a lack of process guidelines undermined the effective delivery of Operation Rapid. The degree of knowledge of the 'administrative scheme' is disputed by the police officers concerned, however this was clearly a missed opportunity to provide accurate information to the PPS, both in respect the alert relating to the Hyde Park bombing in 1982 and that the PSNI were revisiting their evidential review of the Enniskillen bombing in 1972.

6:33 It is unclear what subsequent action the HET took upon the developments in 2008 and the PSNI have been asked to consider this matter.

7.0
CONCLUSION

7.1 PSNI Senior Command in 2007 failed to provide clear direction on the role undertaken by the PSNI in the 'On the Run Administrative Scheme'. The Senior Officers in charge of Operation Rapid were not equipped with the relevant knowledge to ensure the adequacy of Operation Rapid in this process.

7.2 No satisfactory explanation has been provided as to why the PSNI in 2007 commenced a review of all the names submitted to the scheme, to include those individuals who had already reviewed and reported upon within the years 2000 to 2006.

7.3 Notwithstanding the varying awareness of the overall process, the decision making by Operation Rapid Senior Officers in both the assessment and reporting on John Downey in 2007 fell below what would be expected, and is in contrast to the previous work conducted by the PSNI in the administrative scheme prior to 2007. The police officers concerned are now retired.

7.4 All of the police officers involved in Operation Rapid were aware there was some form of communication to the individuals concerned, and that accurate enquiries were required to inform that process.

7.5 Opportunities arose post 2007 for the PSNI to correct the flawed decision making and reporting to the PPS in respect of John Downey. These opportunities were not acted upon by the PSNI.

7.6 The poor communication and flawed decision making has had severe consequences, in particular for the bereaved families concerned.

7.7 Given the far reaching implications of the issues identified in the PSNI assessment and reporting on John Downey in 2007, I welcome the decision already taken by the Chief Constable to conduct a review of all 228 persons considered with a view to *'any missed or further evidential opportunities'*.

Michael Maguire
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