

Statutory Report

Public Statement by the Police Ombudsman in accordance with Section 62 of the Police (Northern Ireland) Act 1998.

Relating to a complaint by the victims and survivors of

**THE MURDERS AT THE
HEIGHTS BAR, LOUGHINISLAND,
18 JUNE 1994**

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EXECUTIVE SUMMARY

On 18 June 1994, six people were brutally murdered and five people were injured by the UVF in the Heights Bar, Loughinisland. They were watching a World Cup football match when gunmen entered the small bar and indiscriminately opened fire with a VZ58 automatic rifle. The killings received widespread condemnation in Northern Ireland, nationally and internationally.

Within a relatively short period of time the police had reliable intelligence on who committed the murders. They recovered the getaway car, the murder weapons and the clothing believed to have been used by the killers. Despite the high profile nature of the killings, the continued demands by families of the deceased for justice, and the many thousands of hours of investigative action by the police not one person has been prosecuted for the killings.

The families of the deceased and injured came to the Office of the Police Ombudsman with significant concerns. In summary these were:-

- that the police failed to conduct an effective investigation of the murders, including failing to keep bereaved families updated as to the progress of the inquiry;
- that the police failed to discharge the State's duties as required by Article 2 of the European Convention of Human Rights
- that there was collusion between the RUC and those responsible for the murders

Central to their complaints was a fundamental question – why has no one been held accountable for the murder of their loved ones? The investigation by my Office has sought to answer this and other important questions raised by the families of those who were killed and injured.

Let there be no doubt, the persons responsible for the atrocity at Loughinisland were those who entered the bar on that Saturday evening and indiscriminately opened fire. It is also important to recognise that despite the failings identified in this report there have been many within the RUC (Royal Ulster Constabulary GC) and the PSNI (Police Service of Northern Ireland) who have worked tirelessly to bring those responsible to justice.

I am grateful to those members of the public and retired police officers who assisted my enquiries. However, my investigation into this area was constrained by a refusal of a number of key people to speak to my investigators.

Background to the attack

Intelligence suggests that the attack at Loughinisland was carried out by a UVF (Ulster Volunteer Force) unit in reprisal for the killings on the Shankill Road of senior UVF figures on 16 June 1994. An order came from the top of the UVF for there to be “blood on the streets” as a response to the killings. A UVF unit, under the command of a senior UVF figure reporting to the top echelons of the UVF, was dispatched to undertake the murders. I have not been able to determine with any certainty why the Heights Bar at Loughinisland was chosen. We do know that the claim made by the UVF at the time that it was an attack on active republicans, was completely false. The attack on Loughinisland was sectarian as the targets were members of the Catholic community.

Importation of weapons in 1988

However, an understanding of what happened at Loughinisland begins with the importation of arms by loyalist paramilitaries in late 1987/early 1988. My investigation has found that the VZ58 rifle which was used in the Loughinisland attack was part of the shipment which entered Northern Ireland at that time. I examined intelligence which showed the passage of a VZ58 into the hands of those, who were suspected of undertaking the murders.

Events leading up to the Loughinisland attack

My investigation into the Loughinisland killings examined the events leading up to the murders. It found that Special Branch had reliable intelligence that there was to be an arms importation in 1987/1988. Moreover, reliable intelligence indicates that police informants were involved in the procurement, importation and distribution of these arms. The failure to stop or retrieve all the weapons, despite the involvement of informants in the arms importation was a significant intelligence failure.

This is particularly the case in relation to the failure to retrieve imported weapons from a farm owned by James Mitchell. The outcome of this failure was that not all the weapons were recovered by the police and many, including the VZ58 rifle used in Loughinisland, were subsequently used in a wide range of murders.

Incidents prior to Loughinisland murders

Prior to the Loughinisland murders there were a number of terrorist incidents, going back a number of years, which I believe are of relevance to the events at the Heights Bar on 18 June 1994. Available intelligence on these murders reflected the existence of an active UVF unit in the South Down area. There exists a clear linkage between those incidents in terms of suspects and method of operation. Intelligence suggests that this unit was involved in a number of murders and attempted murders prior to the Loughinisland attack, one of which was of a very similar nature involving the indiscriminate use of a weapon in a public bar. This UVF unit reported to an individual with connections to some of the men killed on the Shankill Road. The key individuals in the unit were suspects in the Loughinisland investigation.

A limited amount of this intelligence was passed to the investigators of the individual incidents. The UVF unit was not the subject of a policing response sufficient to disrupt their attacks. The failure to disseminate information to investigators was, in my view, an attempt to protect the sources of that information. This clearly undermined the investigations.

I recognise the operating environment of policing at the time, which included a considerable volume of terrorist activity across Northern Ireland, stretched resources and a fragmented and extremely busy intelligence environment. However, it is a matter of significant concern that Special Branch failed to pass on intelligence into the activities of loyalist paramilitaries thereby protecting these individuals, who continued to commit serious criminal acts, from effective investigation.

I specifically considered the issue of whether the attack at Loughinisland could have been prevented. My investigation found that after the killings on the Shankill Road there was a general threat message issued to RUC 'South Region' on 17 June 1994 – a RUC Region with a wide catchment area which included Newtownards, Saintfield, Newry and Armagh. The threat message was no more specific than that an attack on the Catholic community was likely. I did not find any evidence that there was specific intelligence about an intended attack on the Heights Bar. My investigation has also concluded that the police focus in that area at that time was on the IRA rather than loyalist paramilitaries.

The failure by the police to recognise the risks posed by the UVF unit in South Down gives cause for concern. Had this unit been subject to sustained and robust investigation for the previous murders they may have been arrested and brought to justice and may not have been involved in the Loughinisland attack, for which they were suspected. Whether the attack would then have been carried out by another group of individuals will never be known.

A failed police investigation

The families have complained that the police failed to conduct an adequate investigation into the murders. My conclusion is that the initial investigation into the murders at Loughinisland was characterised in too many instances by incompetence, indifference and neglect. This despite the assertions by the police that no stone would be left unturned to find the killers. My review of the police investigation has revealed significant failures in relation to the handling of suspects, exhibits, forensic strategy, crime scene management, house to house enquiries and investigative maintenance. The failure to conduct early intelligence-led arrests was particularly significant and seriously undermined the investigation into those responsible for the murders.

It is of concern to me (whilst acknowledging the competing demands on the police at that time) that within months of the commencement of the murder investigation resources were scaled down due to other investigative commitments.

Whilst it is important to note that the investigation, over time, took several courses, some with more substantive results than others, the conclusion is inevitable that failings, particularly in the critical early stages of the investigation, significantly undermined attempts to bring those responsible for the attack to justice.

Throughout my investigation I have identified evidence of the destruction of important police documents such as records relating to the arms importation in late 1987/early 1988 and case-specific material such as forensic exhibits seized as part of the pre-cursor incidents and the Loughinisland murders. In addition, an important evidential opportunity was lost by the handling of the car used in the killings.

In 2011 my predecessor recommended that the PSNI undertake a review of the murder investigation. Police concluded this review in 2012 making numerous recommendations for further investigative steps, which have since been undertaken by a PSNI Major Investigation Team. Whilst I am satisfied that no enquiries, which might be regarded as being of a critical nature, remain outstanding, not all investigative actions arising from the review have been finalised. I understand that the PSNI now intend to re-allocate investigation of the Loughinisland murders to their Legacy Investigations Branch, thereby introducing uncertainty as to the timescales and manner in which the inquiry will be progressed. Such is the position of these and numerous other unresolved murders, which occurred during the 'Troubles', arising from the absence of an effective mechanism for dealing with the 'Past'.

Collusion

The failures to bring the killers to justice cannot be explained solely by a failure or otherwise of investigative actions. It was a central complaint of the families that there was 'collusion' between elements within the police and loyalist paramilitaries. It is clear that discussion around the issue of collusion in Northern Ireland is extremely controversial and politically sensitive.

There has been considerable debate in academic publications, reports by non-governmental agencies and in the various inquiries into allegations of State related killings in Northern Ireland. No consensus has emerged as to what it actually means. I am of the view that individual examples of neglect, incompetence and/or investigative failure are not (de facto) evidence of collusion.

However, a consistent pattern of investigative failures may be considered as evidence of collusion depending on the context and specifics of each case. This is particularly the case when dealing with police informants, who were participating in crime.

Having considered the numerous definitions of collusion that have emerged over the years, I have decided the most compelling approach is that provided by Judge Smithwick's definition in his inquiry into collusion between members of An Garda Síochána and the Provisional IRA: *"... The issue of collusion will be examined in the broadest sense of the word. While it generally means the commission of an act, I am of the view that it should also be considered in terms of an omission or failure to act. In the active sense, collusion has amongst its meanings to conspire, connive or collaborate. In addition I intend to examine whether anybody deliberately ignored a matter or turned a blind eye to it or have pretended ignorance or unawareness of something one ought morally, legally or officially to oppose"*.

A critical element of my investigation has been the police use of informants within loyalist paramilitaries. The investigation considered the extent to which the Covert Human Intelligence Source (CHIS) / police relationship undermined policing prior to the Loughinisland murders and the investigation into that attack. It is my view that the nature of the relationship between the police and informants undermined the investigative process in a number of ways.

There were many examples of failures to pass on intelligence to investigators. This meant that investigative lines of inquiry were not followed and individuals, who might have been subject to detailed and robust investigation, were effectively excluded from consideration. In the case of the incidents prior to the Loughinisland murders, limited action was taken against the UVF unit suspected of a series of serious crimes.

In addition, investigative opportunities were undermined by the way in which information relating to those involved in the ownership chain of the car used in the Loughinisland attack was handled.

The police also had intelligence that in August 1994 the murder suspects were warned – by a police officer – that they were going to be arrested.

It is unacceptable that if such actions occurred, police failed to act on the information received and did not investigate this allegation further.

The investigation also identified the existence of intelligence sources within loyalist paramilitaries, who were not tasked effectively to obtain information on who committed the attack and to provide information that could further shape investigative action by the Murder Investigation Team. This was a ‘hear no evil, see no evil, speak no evil’ approach to the use of informants, which potentially frustrated the police investigation into the attack and restricted investigation opportunities and lines of inquiry.

I have found that Special Branch held intelligence that paramilitary informants were involved in a range of activities, including command and control of loyalist paramilitaries; the procurement, importation and distribution of weapons; murder; and conspiracy to murder. They have not been subject to any meaningful criminal investigation.

It is of particular concern that Special Branch continued to engage in a relationship with sources they identified in intelligence reporting as likely to have been involved at some level in the Loughinisland atrocity. If these individuals were culpable in the murders they took every opportunity to distance themselves by attributing various roles in the attack to other members of the UVF. The continued use of some informants who themselves were implicated in serious and ongoing criminality is extremely concerning.

Many of the issues I have identified in this report, including the protection of informants through both wilful acts and the passive ‘turning a blind eye’ are in themselves evidence of collusion as defined by Judge Smithwick. When viewed collectively I have no hesitation in unambiguously determining that collusion is a significant feature of the Loughinisland murders.

1.0

INTRODUCTION

- 1.1 On 16 June 1994 the INLA (Irish National Liberation Army) shot dead Colin Craig on the Shankill Road, Belfast. Three other men were wounded in the attack. Two of them, David Hamilton and Trevor King, later died from their injuries. All three of the deceased were allegedly senior members of the UVF (Ulster Volunteer Force).
- 1.2 The next day, 17 June 1994, the UVF retaliated by shooting dead a Catholic taxi driver, Gerald Brady. He had picked up two men in Antrim who instructed him to drive to Carrickfergus where they murdered him. The same day the UVF shot dead a Protestant builder, Cecil Dougherty, on a building site near Rathcoole. Another man wounded in the attack, William Corrigan, died from his injuries the following month. Both of the deceased were Protestants who were apparently mistaken for Catholic workmen. The police suspected the motives for these murders were revenge for the killings on the Shankill Road on 16 June 1994. I concur with this view.
- 1.3 At approximately 10.10pm on Saturday, 18 June 1994, two masked men entered the Heights Bar at Loughinisland (known locally as O'Toole's), where customers were watching the televised World Cup football match between the Republic of Ireland and Italy.
- 1.4 One of the masked men crouched down, shouted 'Fenian Bastards' and opened fire indiscriminately with an automatic assault rifle. Both men then fled the scene in a waiting Triumph Acclaim car driven by an accomplice. The car was driven in the direction of Annacloy and found the next morning abandoned in a field on the Listoder Road between Crossgar and Ballynahinch.

- 1.5 Six men, Adrian Rogan, Daniel McCreanor, Eamon Byrne, Patrick O'Hare, Barney Green and Malcolm Jenkinson were killed in the attack. Five other men were injured, some seriously. The attack was roundly condemned, receiving international media coverage. The victims and survivors of the attack received messages of condolence from Heads of State.
- 1.6 At 10.40pm the same night, an unidentified male caller phoned Downtown Radio using a recognised codeword. He stated that the UVF had carried out the Loughinisland attack as a republican meeting had been taking place in the Heights Bar at the time. The caller added that as long as the INLA continued to attack loyalists (interpreted as a reference to the earlier Shankill Road attack) they would '*pay the price.*' A second call was made to the same radio station at 0:39am on Sunday, 19 June 1994, claiming that the UVF had attacked a republican function in South Down.
- 1.7 The claim that a republican meeting was taking place in the Heights Bar was contested by the bereaved families and survivors and there is no evidence of such an event. None of the dead had any links with paramilitaries and the police investigation gathered no evidence to support the suggestion that a republican meeting was taking place at the time. Rather, those gathered in the pub were local men watching a World Cup football match and having a social drink.
- 1.8 Inquests were held at Downpatrick on 24 January 1995.
- 1.9 No person has ever been charged in respect of the Loughinisland murders and the case remains unsolved. Since the attack the investigation has been periodically re-visited by the RUC and PSNI. In 2009 the inquiry was passed to the PSNI's Historical Enquiries Team (HET) and subsequently re-allocated to a PSNI Major Investigation Team. I understand it is now the intention of the PSNI to transfer the case to their Legacy Investigation Branch (LIB).

- 1.10 Investigation of the complaints made by the victims and survivors of Loughinisland by this Office has involved more than 700 investigative actions, leading to some 200 witness accounts from members of the public and both serving and retired police officers, and ballistics tests on firearms recovered by the police in connection with the murders. These enquiries have enabled me to compile a detailed and wide ranging report in respect of the matter.
- 1.11 Whilst the focus of my investigation has been on the immediate police response and enquiries relating to the murders at Loughinisland, it has also included related pre-cursor events and subsequent investigative maintenance by the police, relating primarily to suspect and forensic enquiries. The latter area is worthy of specific attention given developments in forensic science since 1994, which have allowed detectives to avail of new techniques, which were not available to the original RUC investigation team.
- 1.12 The principal objective of my Office is to ensure that the police complaints system is efficient, effective and independent and that it secures the confidence of the public and members of the police service. In placing my determinations and supporting evidence into the public domain in respect of the complaints made by the victims and survivors of the attack at Loughinisland, I have been required to consider competing interests relating to national security, human rights and the public interest. Within these constraints and while ensuring that I do not disclose information that could result in any person's life being placed in jeopardy, due to the gravity of the issues involved and the specific context and history of the events discussed, I have chosen to provide as comprehensive a narrative as possible. I have, however, seen some information which I am constrained from articulating in this public statement but which has, nevertheless, informed my conclusions.

Paragraphs 4.200, 9.9 and 9.40 of this Public Statement must be read in the light of the judgment of the Northern Irish Court of Appeal in [Hawthorne's and White's Application](#) [2020] NICA 33, which is now included with this report as Appendix 6. As such, these three specific paragraphs should not be construed or understood to amount to, or include, any findings by the former Police Ombudsman of any criminal offences by members of the police force.

2.0

BACKGROUND OF COMPLAINT

- 2.1 Representatives of the bereaved Loughinisland families first contacted the Office of the Police Ombudsman for Northern Ireland in late 2001 to raise concerns about the circumstances of the attack and subsequent police investigations. Discussions with the Office continued until March 2006, when a formal complaint was made by the families.
- 2.2 Investigations by my predecessors ensued, resulting in the preparation of a draft public statement in September 2009, which was forwarded to the Police Service of Northern Ireland (PSNI) for a factual accuracy audit. The PSNI raised a number of issues about the content of the draft report, which necessitated further enquiries by my Office.
- 2.3 During that process, in November 2009, a witness made a number of allegations against a serving police officer in respect of the car believed to have been used by those responsible for the murders at Loughinisland. This led to further enquiries, including submission of a file to the Public Prosecution Service (PPS) who, in November 2010, directed no prosecution in respect of the matter on the basis that the available evidence did not provide a reasonable prospect of conviction.
- 2.4 A public statement in respect of the investigation of the complaints was published by my immediate predecessor in June 2011. In September of the same year the bereaved families applied to the High Court for the report to be quashed.

- 2.5 Following my appointment to the post of Police Ombudsman in July 2012, I directed a review of the investigation conducted by my predecessors. This process identified a number of important areas, which had not previously been subject of investigation. Consequently, in December 2012 and further to legal proceedings, I consented to the quashing of my predecessor's public statement and commissioned new enquiries, which commenced in 2013.
- 2.6 This report details the scope of my investigation, the evidence gathered and my findings.

3.0

THE PUBLIC COMPLAINTS & TERMS OF REFERENCE

3.1 The initial complaint made by the bereaved families of Loughinisland in 2006 related to three broad themes.

- Alleged failure by police to conduct an effective investigation of the murders, including failing to keep the bereaved families updated as to progress in the inquiry.
- Alleged failure of the police investigation to discharge the State's duties as required by Article 2 of the European Convention of Human Rights (ECHR), as incorporated by Schedule 1 of the Human Rights Act (1998).
- Alleged collusion between the RUC and those responsible for the murders.

3.2 Within these themes were the following specific allegations:

- Despite advances in forensic science, primarily DNA, exhibits seized during the initial police investigation were not re-examined until 2005. The families believe that even these delayed examinations would never have happened had they not made a complaint - an issue they raised with a senior police officer on 26 July 2005. The officer allegedly told the families that due to the number of detectives taking early retirement since 2001 it had been a difficult time for the PSNI - a remark the families considered was insensitive.

- At the same meeting the families were told by the PSNI officer, then responsible for the investigation, that a hair had been found on a balaclava recovered during the 1994 investigation. The families wanted to know the evidential value of this hair and whether it merited grounds for an arrest. They further alleged that police failed to make timely arrests in 2005 despite having ‘repeatedly hinted’ that arrests were imminent.
- The families wanted to know how police allowed the Triumph Acclaim car, believed to have been used by those responsible for the murders, to be destroyed in 1995. They believed that the vehicle should have been retained for potential future examination, especially in light of advances in forensic science. They state that police ‘wilfully destroyed’ this exhibit, which they viewed as ‘wholly unsatisfactory and unreasonable.’
- Clarification was sought by the families as to how many weapons were used in the attack. At the Inquest on 24 January 1995 confusion arose when the Coroner stated that two weapons had been used. The families stated that they were informed by police in October 1995 that the rifle in question was imported into Northern Ireland from South Africa in the late 1980s as part of a loyalist arms importation orchestrated by a military informant, Brian Nelson.
- The families wished to know how many other attacks the assault rifle had been used in prior to the Loughinisland attack as they had received conflicting information from police, including whether there had been any convictions in relation to the attacks, all of which were attributed to the UVF. Their overriding concern was that police failed to identify links between a number of those suspected of involvement in the murders at Loughinisland with weapons and terrorist incidents which preceded the attack.

- The families were concerned at the initial crime scene management, stating that police failed to locate a cartridge case, which was found some years later by a member of the public.
- They alleged that Vehicle Check Points (VCP) established by the security forces following the attack, were strategically placed to allow the murderers access to and from the Heights Bar.
- The families alleged that police failed to properly investigate an anonymous letter that was forwarded to a local councillor, including the failure to make a timely arrest of the alleged author of the letter after identification.
- The families alleged that between the murders taking place and 2004, police provided 'little or no' information regarding the progress of the investigation.
- The families wished to know if any of the suspects in respect of the Loughinisland attack and linked UVF attacks were at any time police informants.

3.3

Following publication of my immediate predecessor's report in 2011, the victims and bereaved families identified the following matters as being supportive of their complaint of collusion:

- That an RUC Detective Sergeant had sought to 'protect' a named individual, implicated in the chain of ownership of the Triumph Acclaim, from the murder investigation.
- That another named individual, who was subsequently granted a 'Royal Prerogative of Mercy', was not charged despite police possessing information that he had been the driver of the 'getaway car' used by the Loughinisland killers.
- That the destruction of the Triumph Acclaim by police in 1995 was a 'corrupt' and 'collusive' act, involving a RUC Superintendent, who may be related to individuals implicated in the Loughinisland attack and that the failings identified in my predecessor's public statement 'lead to an absolute and irresistible conclusion of collusion'.
- Individuals arrested on suspicion of involvement in the Loughinisland attack did not have forensic samples taken.
- Mismanagement by police, of witness evidence regarding a sighting of the Triumph Acclaim immediately following the attack at Loughinisland.
- Concerns regarding the role performed by a named Reserve Constable, who lived in the area where the Triumph Acclaim was found by a farmer on the morning following the attack.
- A delay in the deployment of a military helicopter, tasked with searching the area shortly after the attack at Loughinisland.
- The failure of police to make prompt arrests despite the early availability of related intelligence.

3.4

I incorporated the allegations and associated concerns of the victims and bereaved families into the following terms of reference for my investigation:

- a. To establish if a member of the RUC or agent of the RUC was directly culpable in the attack and/or any other dimension of the matter such as provision of alibis, disposal of evidence, coaching of witnesses/suspects.
- b. To establish if the RUC was in possession of intelligence from any sources, including casual contacts, registered informants, other agencies and/or other covert sources which, if acted on, might have prevented the attack. This should extend to knowledge of the activities of the group or individuals suspected of involvement in the preparation, planning or execution of the attack and include the supply or handling of articles used in connection with the incident such as firearms and vehicles.
- c. To identify those structures and individuals within the UVF suspected of having performed roles relevant to the sanctioning, planning, preparation, execution and post incident acts connected to the attack and whether any of these groups/individuals presented the RUC with intelligence and/or evidence gathering opportunities, which were not acted on by police.
- d. To establish if the police murder investigation was adversely impacted by the non-dissemination of intelligence or otherwise obstructed.
- e. To identify all pre-cursor events, which may be linked to the attack with a view to establishing whether police were presented with intelligence or evidential opportunities which, if properly exploited, might have resulted in law enforcement intervention and prevented escalation of activities, which culminated in the murders at Loughinisland.

- f. To identify missed investigative opportunities by police, which may have resulted in the continued involvement in serious crime of those loyalist paramilitaries responsible for sanctioning, planning, preparation, participating in, or post incident acts relating to the attack at Loughinisland.
- g. To establish if police senior command allocated sufficient levels of resourcing to the murder investigation and implemented oversight mechanisms so as to enable an effective investigation to take place.
- h. To identify the investigation strategy of the police investigation(s) and establish if all reasonable lines of enquiry were pursued in an effective manner, including those relating to forensic opportunities (incorporating ballistics and crime scene examination), telecommunications, passive generators (such as CCTV), intelligence (including tasking of assets known to police, whether under the control of police or other agencies), witnesses and suspects.
- i. If serious, repeated or widespread criminality, misconduct or other failings by police are indicated, identify individual and/or corporate accountability, extending to police senior command.

3.5

I have outlined my findings in respect of the core complaints of the victims and survivors of Loughinisland at Appendix 1 of this public statement.

4.0

ARMS IMPORTATION AND THE FIREARM USED AT LOUGHINISLAND

- 4.1 The principal firearm attributed by the RUC to the murders at the Heights Bar was a VZ58 assault rifle¹.
- 4.2 PSNI ballistic records indicate that VZ58 assault rifles were used by loyalist paramilitaries in the murder or attempted murder of at least 70 people in Northern Ireland between 7 March 1988 and 3 May 2005. Many of the weapons are believed to have arrived in Northern Ireland in late 1987 and to have been distributed among various loyalist paramilitary groups. Considerable controversy has surrounded the origin of these firearms.
- 4.3 More recently there has been public concern at revelations, which have emerged during investigations by both the Coroner and my Office, about inaccuracies in historic reporting by the RUC's 'Weapons & Explosives Research Centre' (WERC)² in relation to the attribution of VZ58 rifles to a number of murders, leading to some inaccurate intelligence reporting of related ballistic histories.

¹ VZ58 assault rifles were designed for military use and manufactured in the former Czechoslovakia. They are externally similar to the better known AK47 and capable of discharging 800 rounds per minute.

² In a report to the Coroner dated 5 December 2013, the PSNI explained that WERC was established in 1981 'under the 'E' Department Management Structure within the RUC (Special Branch)...The primary function of WERC was to examine all exhibits from crimes involving the use of firearms, including bullets and cartridge cases, recovered firearms and other ancillary items. The purpose was to build an intelligence picture around which particular firearms were being used in various incidents.....The work was done to evidential standards, but reported as intelligence. The said intelligence provided investigative leads for CID in respect of individuals or small groups suspected of being involved in the said crimes'.

4.4 Consequently my investigation has undertaken enquiries to assist determinations in relation to the following matters:

1. The accuracy of the police assessment that a VZ58 assault rifle recovered shortly after the murders at Loughinisland was used in the attack;
2. The RUC's knowledge of the circumstances associated with the importation of VZ58 assault rifles, and other weapons, to Northern Ireland in late 1987 and their associated policing response;
3. Whether the VZ58 assault rifle used in the murders at the Heights Bar, was part of the 1987 arms importation;
4. Whether the RUC had knowledge of, or involvement in, the circumstances, in which those responsible for the murders at Loughinisland acquired the VZ58 assault rifle used in the attack.

4.5 **The VZ58 assault rifle find & subsequent examination**

4.6 On 4 August 1994 a holdall containing a .38 calibre Rossi revolver loaded with five bullets, a .38 Smith & Wesson calibre revolver also loaded with five bullets, a 9mm Browning type semi-automatic pistol and a magazine for a VZ58 rifle was found in a field close to Carsonstown Road, Crossgar, by workmen carrying out repairs to a bridge. The RUC attended the scene and recovered the items. My investigation established that these firearms remain in the custody of the PSNI. A VZ58 assault rifle was also found nearby.

4.7 The location at which the holdall was found was approximately 14km (8½ miles) from the Heights Bar and 4km (2½ miles) from the Listooder Road location where a Triumph Acclaim car, believed to have been used by the perpetrators of the murders at Loughinisland, was abandoned. These locations are identified in a map attached at Appendix 3.

- 4.8 The holdall also contained three boiler suits, three balaclavas, three pairs of surgical gloves and a single pair of woollen gloves. All of the recovered items were photographed and examined in situ by Scenes of Crime Officers before being preserved for forensic examination at the Northern Ireland Forensic Science Laboratory (NIFSL). The available records indicate that this scene was properly managed by police.
- 4.9 Police did not identify a history of previous use in respect of the Rossi and Smith & Wesson revolvers found in the holdall. The 9mm Browning type pistol was accompanied by a magazine containing 11 rounds of 9mm ammunition. It was in good condition and although it showed no signs of recent usage, ballistics tests by WERC linked the firearm to three previous shootings attributed to the UVF.
- 4.10 A short distance from the holdall police found a VZ58 assault rifle concealed in undergrowth, less its wooden stock. This firearm was attributed by the RUC to the attack at the Heights Bar.
- 4.11 The forensic examination of the rifle produced a partial DNA profile which was only suitable for comparison with particular individuals, which have not, to date, been identified. Fibres recovered from the rifle matched fibres recovered from the Triumph Acclaim. Human hair was recovered, which was to provide a weak forensic link through DNA to the family of Persons A & B.
- 4.12 The magazine relating to the VZ58 rifle was examined for fingerprints and none was found. There were no fibres or hairs recovered from the magazine. A partial DNA profile was recovered but this was unsuitable for comparison with the profiles held on the national database.
- 4.13 Further forensic tests revealed that the ammunition discharged from this rifle during the attack at the Heights Bar was manufactured in China and was not of a type used by the British Army or the RUC.

- 4.14 Based on the examination of spent bullet casings recovered from the Loughinisland crime scene, on 19 June 1994 WERC reported links between the assault rifle used in the murders (which had not been recovered at that point) and a number of other shootings. This reporting initially advised the murder investigation team that two VZ58 assault rifles had been discharged at the Heights Bar.
- 4.15 The incidents to which the links were made were identified as the murder of Mr Joseph Reynolds on 12 October 1993, attempted murders at McCabe's Butchers, Cromac Street on 22 March 1994 and two other incidents. All of the locations, at which these incidents occurred were in Belfast.
- 4.16 Following examination of the VZ58 assault rifle recovered from the field close to Carsonstown Road, WERC amended their report to conclude that this was the weapon used at the Heights Bar and that only one weapon had been used. This conclusion is supported by ballistic examinations conducted as part of my investigation. After further examinations by police they also concluded that the rifle was, in fact, only linked to the murder of Mr Reynolds and attempted murders at McCabe's Butchers.
- 4.17 **Incidents linked by police to the VZ58 Assault Rifle used at Loughinisland**
- 4.18 *Murder of Mr Joseph Reynolds on 12 October 1993*
- 4.19 On 11 October 1993, a blue Vauxhall Astra was stolen from the Avoneil Leisure Centre, East Belfast after which it was fitted with false registration plates. At 8.25am on 12 October 1993 the Vauxhall Astra was used by an unidentified male to follow a van conveying Mr Joseph Reynolds and colleagues to their work at Shorts Aerospace along the Sydenham Road.

- 4.20 As the van containing Mr Reynolds approached traffic lights two men in boiler suits activated a pedestrian crossing causing the van to stop. The two men then discharged firearms, including a VZ58 assault rifle, at the van. Meanwhile the driver of the stolen car had brought it to a halt behind the van and having alighted fired shots into the rear of the van. Mr Reynolds sustained fatal gunshot wounds.
- 4.21 The two men at the traffic lights and the driver of the stolen Vauxhall Astra fled the scene on foot before boarding a second stolen car fitted with false number plates, which had similarly been stolen in East Belfast on 11 October 1993.
- 4.22 Intelligence received by police linked the East Belfast UVF to the murder of Joseph Reynolds. At the time of the Loughinisland murders, the 'Brigadier' of East Belfast UVF was Person Y, who police intelligence indicated had a position on the UVF's most senior command.
- 4.23 *Attempted Murder at McCabe's Butchers on 22 March 1994*
- 4.24 On the morning of 22 March 1994 two men boarded a taxi at Dee Street, East Belfast and instructed the driver to take them to Pansy Street, where they hijacked the taxi, telling the driver they were East Belfast UVF.
- 4.25 At 12.20pm the same day the stolen taxi stopped outside McCabe's Butchers, Cromac Street, Belfast. A lone gunman alighted, entered the premises and discharged 11 rounds from a VZ58 assault rifle.
- 4.26 A member of the shop staff was injured by shrapnel but fortunately there were no fatalities and the gunman returned to the taxi and fled the scene. The car was later found burnt out near Dee Street, East Belfast. The UVF claimed the attack was carried out by a joint unit from East Belfast and Mid-Ulster.

4.27 **Incidents linked by ballistics evidence to the Browning type handgun recovered near the VZ58 Assault Rifle used at Loughinisland**

4.28 *Attempted Murder of Samuel Madine on 13 January 1992*

4.29 The 9mm Browning type pistol was forensically linked by police ballistic tests to an incident at Mountview Street, North Belfast on 13 January 1992. Five shots were discharged through the front window of a residential property as a result of which the occupant, Mr Samuel Madine, suffered an injury to his arm. The RUC investigated the attack and it was ascertained that the victim had been subject to a 'punishment shooting'. There was no claim of responsibility for the attack. Five spent cartridges, three bullets and four bullet casings were recovered from the scene of this shooting.

4.30 *Murder of Martin Lavery on 20 December 1992*

4.31 On the evening of Sunday, 20 December 1992 three men, two of whom were masked, forced their way into a house at Ottawa Street, West Belfast and demanded the householder's car. The unmasked man took the keys of a blue Ford Escort and left the house. The two masked men remained in the house for fifteen minutes before disconnecting the house phone and leaving. The householder followed them outside and saw that his car had gone.

4.32 At 7.35pm the same evening, Mr Martin Lavery, a Catholic maintenance worker, was in the living room of his home at Crumlin Road, Belfast. Also in the house were his wife and three of his children. Two masked gunmen entered the house through an unsecured rear door and one of them opened fire on Mr Lavery, fatally injuring him. They also shot at his wife as they left the premises through the rear door. They were then seen to run along the side of the house towards a blue car that was waiting for them.

- 4.33 A short time after the shooting a witness saw the blue Ford Escort being abandoned on the Woodvale Road, three men alight and run down an alley towards Rathlin Street. The car was recovered by police at 7.51pm and removed to Tennent Street Police Station for forensic examination.
- 4.34 A forensic examination of the murder scene recovered spent bullet cases, which identified the weapon as a 9mm Browning type pistol. This weapon was matched to the 9mm pistol recovered by police following the murders at Loughinisland.
- 4.35 Later the same evening police entered premises at Disraeli Street, Belfast in order to search the premises for suspects. Police believed this location was frequented by members of the UVF and was easily accessible from the location at which the blue Ford Escort had been abandoned. There were no arrests made but a surgical glove was recovered from a toilet bowl in the male toilets. There had been witness accounts that the gunmen had been wearing such gloves. The glove was forensically examined for fingerprints on 29 January 1993 but none was identified and it was returned to CID at Tennent Street. Along with a number of other exhibits the glove is no longer available for further forensic examination.
- 4.36 *Attempted Murder of James Rice on 17 February 1993*
- 4.37 On 17 February 1993 Mr James Rice was shot three times at Boucher Crescent, South Belfast by a lone gunman. Mr Rice sustained gunshot wounds to his right leg and right hand prior to the gunman making away from the scene in a stolen car. The car, a Fiat Uno, had been hijacked the previous evening in North Belfast, the victims of the hijacking having been held hostage overnight by offenders, who informed them that they were from the UVF, who later claimed responsibility for the attempted murder of Mr Rice.

4.38 Forensic examination of the six spent cartridge cases and bullet heads recovered from the crime scene at Boucher Crescent confirmed that they were discharged from the Browning type pistol later recovered at Carsonstown Road. I believe this incident may be linked to the attacks at the Thierafurth Inn at Kilcoo, discussed later in this statement.

4.39 **Independent examination of the firearms**

4.40 I commissioned independent examinations of both the VZ58 rifle linked by police to the Loughinisland attack and the handguns recovered at the same time by a forensic ballistics expert. The expert compared the VZ58 rifle with exhibits recovered from the Heights Bar crime scene and verified that the rifle was indeed the murder weapon. He did not observe any indications of previous interference with the rifle or any of the handguns.

4.41 On the basis of my independent examination I concur with the police assessment that the VZ58 rifle used at the Heights Bar was also used in the murder of Mr Joseph Reynolds and the attempted murder at McCabe's Butchers.

4.42 I am not able to state whether this VZ58 rifle was discharged during other incidents in Northern Ireland. The PSNI have undertaken to review their ballistic forensic evidence relating to the use of VZ58 assault rifles in Northern Ireland during the 'Troubles', to ensure the accuracy of their historic weapons intelligence. This piece of work is ongoing.

4.43 The RUC's knowledge of the importation of VZ58 assault rifles into Northern Ireland in 1987

4.44 I have sought to establish whether any member of the RUC were involved in, or had knowledge of, the circumstances in which loyalist paramilitaries acquired VZ58 assault rifles, semi-automatic Browning type pistols and other weapons in 1987. In addition, I have investigated the policing response to the arrival of the weaponry into Northern Ireland. This has proven challenging due to incomplete police intelligence records and a decision by the only Special Branch Officer identified (in the limited relevant RUC intelligence records examined by my investigation) not to assist my investigation. The Ministry of Defence and Security Service also provided access to intelligence records relating to relevant events.

4.45 My investigation has examined police intelligence records, which led me to conclude that the importation of these weapons to Northern Ireland had origins a number of years earlier in 1985 when the Ulster Defence Association (UDA) despatched Brian Nelson³ to South Africa with the intention of purchasing firearms.

4.46 I am also satisfied that in 1985 a senior member of the UDA, who provided information for the RUC's Special Branch, also performed a central role in the direction of Brian Nelson in this venture with security force oversight.

³ In the Executive Summary of his report on the murder of Belfast Solicitor Patrick Finucane, Sir Desmond de Silva states that Brian Nelson became an agent for FRU, 'a covert section of the Army which ran agents in Northern Ireland', reporting on the activities of the UDA, between 1984 and 1985 and that following a period living in West Germany he was 're-recruited' by the FRU in 1987 and persuaded to move back to Northern Ireland where he was tasked with re-infiltrating the UDA with a view to becoming their intelligence officer'.

4.47 **Attempts by Brian Nelson to Procure Firearms from South Africa in 1985**

4.48 Brian Nelson was arrested as part of the Stevens Inquiry⁴ into alleged collusion between the Security Forces in Northern Ireland and Loyalist Paramilitaries.

4.49 On 14 February 1990 Brian Nelson provided a statement to the Stevens Inquiry concerning his involvement in attempts by the UDA to procure firearms from South Africa in 1985.

4.50 Brian Nelson stated that in May 1985, whilst a member of the UDA, he had received instructions from the leadership of that organisation in relation to purchasing firearms in South Africa. He added that he had informed his military handlers of the proposal and was allegedly told that he had clearance from a high level of government to participate in the conspiracy.

4.51 The plan that was devised involved an arms dealer agreeing to ship the weapons to Europe, where an international forwarding service would be contacted to move the consignment on to Belfast. A bogus company was to be used as a cover to receive the weapons.

4.52 Brian Nelson alleged that the plan required him to travel to South Africa, rendezvous with a named contact who was originally from Northern Ireland, and to place a substantial order with an arms dealer.

⁴ In 1989, John Stevens, then the Deputy Chief Constable of Cambridgeshire Constabulary, was appointed to lead the first of three inquiries he conducted into allegations of collusion between the security forces and loyalist paramilitaries in Northern Ireland. His investigation led to the arrest of Brian Nelson in 1990 and his subsequent conviction in 1992.

- 4.53 In early June 1985, and allegedly with the knowledge of his Army handlers, Brian Nelson departed for South Africa, where he was introduced by his contact to an arms dealer in Durban. During the following days Brian Nelson discussed a range of firearms with the dealer, reaching a provisional agreement for the purchase of £100,000 worth of weapons, including assault rifles, 9mm calibre pistols and other firearms and ammunition. Arrangements for finalisation of the purchase and shipping of the firearms was to be negotiated with the dealer's agent in Europe.
- 4.54 According to Brian Nelson, towards the end of his stay in Durban, he was told by his contact that the organisation, who would be supplying the firearms, Armsco⁵, was interested in obtaining 'stuff' from Shorts Aerospace, Belfast. He then returned to the UK where, upon his arrival in London, he met his military handler, who debriefed him about the events in South Africa.
- 4.55 Brian Nelson alleged that when he returned to Northern Ireland he met with the same UDA Commanders, who had directed him in his venture to South Africa. He briefed them on his trip, including the alleged South African interest in Shorts Aerospace. He alleged that he had been told that arrangements for receiving and storing the firearms in Northern Ireland had already been organised and that they would progress the deal from that point.
- 4.56 Nelson alleged that a month later he was told by one of these commanders that there had been problems with financing the purchase of the firearms as a result of which he understood the UDA did not complete the deal.
- 4.57 According to notes attributed to Brian Nelson by the Stevens Inquiry he re-located to West Germany in October 1985, returning to Northern Ireland, allegedly at the behest of his military handlers, in 1987 where he resumed his involvement with the UDA as their Intelligence Officer.

⁵ I understand Armsco to be a reference to the South African State Arms Procurement Agency - Armscorp

- 4.58 At paragraphs 6.59 to 6.93 of his report on the murder of Patrick Finucane, Sir Desmond de Silva attributes the following statement to an official involved in decision making associated with FRU's re-recruitment of Brian Nelson as an informant following his return to Belfast in 1987; *'...we carefully developed Nelson's case in conjunction with (the RUC SB) with the aim of making him the Chief Intelligence Officer for the UDA.....on 30 April (1987) Nelson reported that Tucker Lyttle had informed him that he would be "Chief Intelligence Officer UDA for the entire Province".'*
- 4.59 My investigation identified Army intelligence held by the police dated 16 May 1985, which supports aspects of Brian Nelson's account. The intelligence states: *'UDA South Africa. A proposed arms deal between the UDA and Armsco South Africa for the procurement of weapons is to take place during the month of June 1985. The plan is for Armsco to ship the weapons from South Africa to a port in either Europe or England using the name of a legitimate firm as cover, or the UDA will open up a business and use this bogus firm as cover'.*
- 4.60 At paragraphs 6.38 to 6.48 of his report Sir Desmond de Silva discusses 'UDA attempts to obtain arms in 1985'. He states:
'There is no doubt that Brian Nelson visited South Africa in 1985 to discuss a putative shipment of arms to the UDA. The FRU CFs⁶ and Security Service documents show that both the FRU and the Service were fully aware of Nelson's visit to South Africa and his discussions with an arms dealer in that country.
If, as has been alleged, the intelligence agencies intended to supply loyalist paramilitaries with arms, then it would follow that the FRU and the Security Service would have intended Nelson's visit to South Africa to result in the transportation of arms to Northern Ireland for use by the UDA. The evidence in fact demonstrates the opposite. As Justice Cory noted in his report, the FRU and the Security Service intended the arms shipment to be intercepted whilst it was en route to Northern Ireland.

⁶ CFs were Contact Forms completed by source handlers as records of meetings with their informants

The FRU CFs noted the handlers' concerns that Nelson could be exposed in the event that the arms were intercepted by the security forces. The CF dated 23 June 1985, for example, noted that "great care" would need to be exercised to ensure that exploiting Nelson's intelligence did not lead to the UDA unmasking him as an agent. However, although the handlers were concerned at this point, the CFs demonstrate that the FRU nevertheless intended for the weapons to be intercepted en route to Northern Ireland. The Officer Commanding (OC) of the FRU's East Detachment (East Det FRU) noted on one CF that:

"I do not believe that recovery of the weapons consignment en route would necessarily lead to a security problem. The ultimate circle of knowledge will be much greater than the four names. Additionally, random customs inspection, at say Dover, is a real possibility. The source will be reassured on these points".

The OC also envisaged that details of the plan would be circulated to naval intelligence at the time. The handlers themselves also refer to the intention to "have these weapons intercepted at some stage en route".

The Security Service documents demonstrate a similar desire to intercept the weapons. The Service tasked Nelson via the FRU to answer a series of detailed questions regarding the proposed arrangements for the shipment. One memo in June 1985 recorded that:

"We fully appreciate the delicacy of source's position but we are naturally most anxious to intercept the goods before they reach Northern Ireland."

A further question, however, arises as to whether, despite the intention of the intelligence agencies, Nelson's activity did ultimately result in arms being imported into Northern Ireland. Had the FRU and the Security Service aimed to intercept the shipments using Nelson's intelligence, but failed to do so, then they could be justifiably criticised for permitting Nelson to take part in a criminal conspiracy that ultimately led to the successful importation of arms.

The evidential basis for the proposition that arms were ultimately imported into Northern Ireland as a consequence of Brian Nelson's actions appears to rest on a single passage in Nelson's 'journal', in which he stated: "In 1987 I was discussing with my Handler...the South African operation when he told me that because of the deep suspicion the seizure (would) have aroused to protect me it had been decided to let the first shipment into the country..."

Nelson's 'journal' is an important source of evidence for my Review but, as with all such accounts, it must be tested against all the other available evidence. In this case, Nelson's 'journal' directly contradicts the accounts he himself had previously given in relation to the arms shipments.

The CFs suggest that the arms deal mooted in 1985 ultimately fell through because the UDA had failed to raise the necessary funds. The CF dated 28 June 1985 recorded that 'Tucker' Lyttle had told Nelson that the UDA were unable to raise the money to purchase the arms. A later CF, dated 7 April 1989, recorded Nelson telling his handlers that no arms had ever been imported as a result of his trip to South Africa. He is reported to have said that, "when I went the deal did not materialise because the UDA could not fund the purchase".

In his statement to the Stevens 1 Investigation on 14 February 1990, Nelson said:

"As far as I am concerned no arms were purchased from South Africa through me at any time or any other person in the UDA."

Other FRU and Security Service documents show that they believed that the putative arms deal in 1985 had fallen through because of the UDA's shortage of funds. I have not seen any other RUC or Security Service Intelligence report to indicate that the UDA received arms from South Africa in 1985. Given the intelligence coverage of the UDA, it seems highly unlikely that they would have been able to import arms without the intelligence agencies at least picking up some signals that this had happened'.

4.61 **Conspiracy to rob the Northern Bank, Portadown in 1985**

4.62 My investigators interviewed a former Detective Chief Inspector (Police Officer 1) who was attached to the RUC's Special Branch (South Region) during the 1980s.

4.63 In or around the summer of 1984 he received intelligence that the Ulster Volunteer Force (UVF) and UDA intended to co-operate in the robbery of the Northern Bank at Portadown. Their plan, which had involved senior members of the UDA and UVF leadership, was to enter the premises at closing time and lock staff and customers in the bank's strong room. In response local police mounted an operation with the objective of arresting the would-be thieves at or near the bank.

4.64 Shortly before the robbery was to take place Police Officer 1 was contacted by his counterparts at (RUC) Castlereagh and advised that they had received information that the bank was to be robbed. Police Officer 1 advised his Belfast colleagues that he was already aware of the conspiracy and had an operation in place to arrest those involved.

4.65 Police Officer 1 believes that when he revealed his plan, the Special Branch Officers in Belfast engineered events to ensure that those involved cancelled the robbery and that this was done to protect the source of their information from arrest.

4.66 Police Officer 1 believes from intelligence that Person C, whom police intelligence linked to both the UVF and later to 'Ulster Resistance'⁷, and other senior members of the UDA and UVF leadership had performed central roles in the conspiracy to rob the bank.

⁷ Ulster Resistance was a loyalist movement opposed to the 1985 Anglo Irish Agreement. Police intelligence records indicate that the organisation was formally created at a rally at the Ulster Hall, Belfast, on 10 November 1986, attended by at least 2000 people including the UDA leadership and Persons C & D.

- 4.67 My investigation sought sight of intelligence held by the police, which was relevant to the alleged conspiracy to rob the Northern Bank but none was found. I have not identified any corroborating evidence to support the suggestion that having ascertained that Special Branch in South Region were aware of the loyalist plan to rob the bank, their counterparts in Belfast caused the conspiracy to be abandoned in order to protect an informant from arrest.
- 4.68 **Continued attempts by loyalist paramilitaries to acquire firearms from South Africa**
- 4.69 My investigators identified various intelligence reporting by police between November 1985 and September 1986 in relation to continued planning by loyalist paramilitaries to acquire firearms from South Africa.
- 4.70 By the Autumn of 1986 the themes of this reporting became increasingly focused on efforts by Person C to raise funds for the purchase of weapons.
- 4.71 The intelligence picture which emerged pointed to a conspiracy between the Ulster Resistance, UVF and UDA to raise considerable finance for the purchase of firearms in South Africa.
- 4.72 My investigators have seen police intelligence that in December 1986 senior members of the UDA, UVF and Ulster Resistance met to discuss the purchase and importation of arms with funds jointly raised by the three organisations.
- 4.73 Further intelligence seen by my investigators indicates that by June 1987 police were aware that the coalition of Ulster Resistance, UVF and UDA had finalised plans for the supply of £100,000 worth of firearms, principally AK47 rifles and copies of Browning 9mm semi-automatic pistols but that some difficulties had been encountered in raising the necessary funds.

4.74 **Robbery of Northern Bank, Portadown in 1987**

4.75 On 8 July 1987 the Northern Bank in Portadown was robbed of over £325,000. The police assessment was that the robbery was carried out by and on behalf of the UDA. A number of individuals were arrested, three of whom were charged with robbery whilst a fourth was charged with handling stolen goods. The stolen money was not recovered.

4.76 I did not identify any records indicating police had intelligence which, if acted on, might have enabled them to prevent the robbery but did find that police received a stream of information during the weeks after the robbery that Person C had been involved in its planning.

4.77 In August 1987 police had intelligence that the purchase of weapons was being undertaken by Person C (Ulster Resistance and UVF), Person D (Ulster Resistance), and Person CC (UVF) with other senior members of the UVF and UDA.

4.78 By early September 1987, police were receiving information that Person D's arms deal was progressing and that the leadership of the UDA was also involved in seeking to procure arms from abroad.

4.79 Continuing intelligence in respect of the robbery implicated a number of individuals associated with the leadership of the UDA, including Person E

4.80 **Acquisition of firearms by loyalist paramilitaries in 1987**

4.81 It is a matter of record that the UDA, UVF and Ulster Resistance coalition imported a large consignment of firearms consisting of VZ58 assault rifles, Browning type 9mm semi-automatic pistols, tens of thousands of rounds of ammunition, hand grenades and RPG rocket launchers to the UK from Beirut in late 1987/early 1988.

- 4.82 The intelligence which dates from 19 January 1988, reported that on or about 2 January 1988 a container purporting to contain floor tiles but actually containing the weapons had arrived at Belfast Docks from Liverpool. The container was destined for Portadown. Other intelligence held by police suggested that the arms may have entered Northern Ireland at Warrenpoint.
- 4.83 My investigation liaised with the Intelligence and Security Bureau of Merseyside Police, who advised that they had no records relating to these events.
- 4.84 Although police recovered a substantial proportion of these weapons and made a number of arrests, a significant amount of the weaponry from the shipment, including the VZ58 rifle used in the murders at Loughinisland and the 9mm semi-automatic pistol later found with the rifle, found their way into the hands of paramilitaries.
- 4.85 In relation to the arms importation in 1987, at paragraphs 6.49 to 6.51 of his report Sir Desmond de Silva states; *'It is undoubtedly true that loyalist paramilitaries imported arms into Northern Ireland in late 1987. The evidence I have seen, however, suggests that this importation of arms was a separate operation in which Nelson had no involvement. The importation of arms in late 1987 appears to have been a joint project between the UDA, the Ulster Volunteer Force and Ulster Resistance. Members of Ulster Resistance played perhaps the most critical part in the operation. The limited evidence available suggests that the 1987 loyalist shipment came via Lebanon.....I have not conducted a detailed examination of the intelligence coverage in relation to these shipments, though I have had sight of a Security Service internal memo which records that the Service were unable to intercept the shipment because of a lack of prior intelligence....I have examined the evidence to see whether Nelson and the FRU were in any way involved with the shipment. The CFs in fact indicate that Nelson had very little awareness of this operation.'*

He reported on the reaction to the seizure of much of the UDA's share of the weapons in January 1988 but it was not until August 1988 that he reported to his handlers the comment of another member of the UDA that the arms had come from South Africa...'

4.86 The RUC's knowledge of the acquisition of firearms by loyalist paramilitaries in 1987/88

4.87 At the time of the importation of the firearms and subsequent receipt of intelligence in 1990, the RUC had informants in senior positions of some of the Loyalist Paramilitary Organisations involved. One of those sources was named in the intelligence as being involved in the importation.

4.88 In September 1987 the RUC had intelligence that during 1986/1987, Ulster Resistance negotiated a deal with the UDA and UVF to share in the acquisition of a large consignment of arms. The cost of the weapons, estimated at £120,000, was to be shared between the organisations with delivery expected approximately six weeks after payment. The weapons were believed to be from Israel and South Africa. One person from each of the aforementioned organisations was to be appointed to negotiate the deal, with Person C representing the Ulster Resistance. A leading member of the UDA was also named as being party to the negotiations.

4.89 By early October 1987, information had been received by the police that most of the funding, which had recently been acquired from the robbery of the Portadown Northern Bank had been deposited in a foreign bank account. International arms dealers were to deliver the weapons to a location in England or Scotland. The purchases were to include hand grenades, rocket launchers with rockets/missiles, handguns (number/calibre not specified), AK47 assault rifles (number not specified) and UZI sub- machine guns. The rocket launchers were to be used against police/military landrovers.

- 4.90 During the course of October 1987, police continued to receive information that the arrival of the weapons was imminent.
- 4.91 In a document dated 21 October 1987, written by a Detective Chief Inspector attached to Special Branch who declined to assist my investigation, it was reported that '*support for the Ulster Resistance (is) likely to be rejuvenated upon procurement of the firearms*'.
- 4.92 The officer continued that the Northern Bank robbery had improved the funding situation (for Ulster Resistance) albeit that the UDA had received the largest share because it had carried out the robbery. A portion of the proceeds were to be used to finance a large arms deal exploiting a South African connection.
- 4.93 The report reflected information from more than one source that the weapons were to be shipped into the province via a British port in a sealed container onboard a cargo ship. The deal was believed to be at an advanced stage but there were reportedly no details available at that stage about the actual mechanics of the operation as the information stated this was being kept a close secret amongst a very few persons for security reasons. Further reporting indicated that only the UDA/UVF were involved.
- 4.94 The report also stated that there was no other intelligence from Special Branch sources to suggest that any other arms acquisition arrangements were being undertaken by or on behalf of the Ulster Clubs (Ulster Resistance) in the Portadown area. The report confirmed that there was ongoing monitoring by both Special Branch and the Security Service and that this would continue. The report also stated that no source material could provide more detailed information regarding routes, methods and personalities involved and it was unlikely that such information would become available at that time.

- 4.95 In late October 1987 Persons C & D were reported to have told associates that they would not have to wait much longer for the weapons.
- 4.96 In November 1987 police had information that the large consignment of 'kit' purchased by the UDA, UVF & Ulster Resistance had arrived in Northern Ireland. I have not found any evidence that police had additional intelligence, at that stage, relating to this arms importation.
- 4.97 A reliable intelligence document on Thursday, 7 January 1988 reported that Person E had instructed two of his men, Persons F and G, to hire two cars for use over the weekend 8/9 January 1988. Person E had specified that the cars were to be of the Ford Granada type but it was not known why he wanted this particular type of large saloon car, which was considered unusual. This is consistent with other reliable intelligence received by police.
- 4.98 **Seizure of firearms at Mahon Road, Portadown**
- 4.99 In seeking to understand the sequence of events my investigation requested assistance from the PSNI in identifying from their records the nature of an operation, which led to arrests and recovery of numerous firearms and ammunition at Mahon Road on 8 January 1988.
- 4.100 My investigation ascertained that the operation was directed by the RUC's Tactical Co-Ordination Group (TCG)⁸. The PSNI have advised my Office that *'pre 1990 there were no computerised records maintained (and that) any records which were maintained would have been in written format, however given the weeding and destruction of paper records these may no longer be available'*. My investigation has not located these records.

⁸ In his report on the murder of Belfast Solicitor, Patrick Finucane, Sir Desmond de Silva states: 'The Tasking and Co-Ordinating Group (TCG) was a permanent unit under SB command and formed part of the SB regional structure. The focus of the TCG was the exploitation of intelligence to frustrate terrorist groups. They brought together the RUC SB intelligence and operational resources from the RUC and the Army to mount counter-terrorism operations. This included, for example, exploiting intelligence by means of covert surveillance or the use of overt Army or police units. The TCG received information from all three organisations involved in intelligence gathering in Northern Ireland and from a variety of technical sources. They made decisions on the prioritisation of covert resources to exploit intelligence and the manner in which such resources would be deployed. Unlike the other relevant bodies, which kept minutes of meetings and deliberations, statements to the Stevens investigation by officers working in the TCG suggested that their records were generally destroyed after a short time'. This description of the role of TCGs is consistent with evidence gathered by my Office.

4.101 At noon on Friday, 8 January 1988, the RUC's Headquarters Mobile Support Unit (HMSU), attached to Special Branch, set up a Vehicle Checkpoint (VCP) at Mahon Road, Portadown some 300 yards from Mahon Road RUC/Army base. As a result of the VCP, two Ford Granada cars and a third vehicle were stopped and a large cache of weapons recovered.

4.102 The HMSU was a specialist unit at the disposal of the RUC's Tactical Co-ordinating Group (TCG), indicating that the VCP was directed as part of an overarching security operation. This is supported by accounts from a number of the HMSU officers, who told my investigation that they had been aware that a surveillance operation was in place although they had not been provided with any information other than that their objective was to stop and search three cars travelling from Tandragee towards Portadown. The officers said that they had been surprised to find weapons in the cars and arrested the three drivers of the vehicles.

4.103 One of the officers who had resourced the VCP wrote in a statement at the time;

'The check point was manned for approximately 5 minutes... From where I was standing I saw a build up of 3 vehicles. I noted the front car.....I knew this vehicle was owned and being driven by (Person E)I believed him to be a UDA leader from Belfast. The three vehicles appeared to be in convoy. The other two vehicles were identical maroon Ford Granadas with similar registration numbers.....the driver of the rear car.....was (Person F)

I opened the boot of this vehicle and immediately saw that the boot was filled to capacity with rifles... I went to the driver of the 2nd Granada and found.....him between the two Granadas immediately behind the boot of the car he was driving. I now know this driver to be (Person G) I noticed that the boot of his car.....was opened and it was also laden to capacity with rifles and boxes.'

- 4.104 The first Ford Granada was found to contain 36 VZ58 rifles and 150 grenades and fuses while the second Ford Granada contained 25 VZ58 rifles, 31 leather pouches containing 124 rifle magazines, 16 tin ammunition boxes containing 11,520 rounds of 7.62 x 39mm calibre rifle ammunition with Chinese markings and 30 Browning type pistols with magazines fitted.
- 4.105 Persons E, F & G, all believed to be members of the UDA, were arrested under the Prevention of Terrorism Act and taken to Gough Barracks at Armagh.
- 4.106 The HMSU officers told my investigators that a local police officer from Mahon Road RUC Station attended at 12.05pm to take over the crime scene. At 1.25pm the scene was handed over to a local CID Detective Inspector (Police Officer 2) who was assigned responsibility for conducting enquiries with Persons E, F & G and preparing a prosecution file.
- 4.107 During the course of the following seven days Persons E, F & G were interviewed by police officers but of the three, only Person G made admissions in relation to possession of firearms.
- 4.108 My investigation has examined interview records, which reveal that by Monday 11 January 1988 the detectives investigating the arms seizure had challenged the persons arrested in possession of the firearms with evidence that traces of manure, mud and straw had been found on their shoes.
- 4.109 The following day the detectives investigating the matter received information that the weapons had been stored in a barn at a farm near a blue coloured house within four to five miles of Tandragee, in the direction of Markethill. It was suggested that between six and eight men had been present with the weapons when they were being moved.

- 4.110 On 12 January 1988, police officers, including Police Officer 16 (deceased), who was the Detective Superintendent responsible for CID in the Portadown/Armagh area and Police Officer 17 (deceased), the Detective Chief Superintendent in charge of CID in the RUC's South Region, joined detectives in the Markethill area with a view to locating the farm, at which the firearms were believed to have been stored. Further attempts to find the farm were again made on 13 January 1988, also without success.
- 4.111 On Friday, 15 January 1988, Persons E, F & G were charged with offences relating to their possession of the firearms, ammunition and grenades. They were each convicted at Belfast Crown Court on 19 October 1988 and sentenced to between 14 and 19 years imprisonment.
- 4.112 During the following weeks, Persons C & D were arrested but denied all knowledge of the arms importation and were released without charge. The arrest of Person D appears to have been linked to his telephone number being found on Person G. The arrest of Person C arose from a search of the home of Person D, where documents implicating Person C were recovered. I have found no evidence that any of the other senior members of the loyalist organisations implicated, through intelligence, as being involved in the conspiracy to import these weapons, were subject of police investigations.
- 4.113 My assessment is that the majority of officers, who were involved in the police operation which led to the arrests of Persons E, F & G and the subsequent enquiries, acted as professionally as could have been expected. I will make further comment on this later in this public statement.
- 4.114 By 12 January 1988 the RUC had been aware from intelligence that the Mahon Road seizure was only a third of a larger consignment, which was in the hands of the UVF and Ulster Resistance. The intelligence indicated that the arms seized at Mahon Road were the UDA's share of the weapons.

- 4.115 My investigation obtained evidence that Person E directed the UDA operation to collect the firearms using his own car and two Ford Granada hire cars. On the morning of 8 January 1988 Persons E, F & G had driven the three cars from Belfast to a small carpark at Tandragee from where they were led to a farm by a fourth individual driving an orange coloured Horizon car. At the farm Persons E, F & G loaded the firearms, with which they were later arrested, into the Ford Granada cars from a barn, in which was being stored a much larger quantity of weaponry.
- 4.116 The evidence gathered by my investigation also included an allegation that the owner of the farm, at which these events took place, who was present during the loading of the firearms was James Mitchell (deceased). This information is supported by other intelligence received by police following the arms seizure.
- 4.117 Police Officer 2, the officer responsible for the investigation, told my investigators that he had not been provided with notice of the police surveillance operation but had received a telephone call instructing him to report to Mahon Road where there had been a large seizure of firearms following three cars having been stopped.
- 4.118 On arrival, Police Officer 2 found that a large quantity of VZ58 rifles had been found in the rear of two hired Ford Granada cars driven by Persons F & G with a third car driven by Person E, *'a top UDA man from Belfast'*. He told my investigators that it was obvious to him that it was an intelligence-led operation by Special Branch but he did not know who in Special Branch was involved and he never asked.
- 4.119 Police Officer 2 told my investigators that he connected Person E to Persons F & G, the Ford Granada cars and the weapons through telephone billing, the hiring of the cars and recovery of straw from the car he was driving that matched material found on the weapons and in the hired cars.

- 4.120 When my investigators explained to Police Officer 2 that evidence had been obtained identifying James Mitchell's farm at Markethill as the location, at which the firearms had been stored, the officer said it was not until he retired from the police that he had become aware of the significance of James Mitchell and his farm. He added that if he had been aware of the allegations of James Mitchell's involvement in 1988, his farm would have been 'taken apart'.
- 4.121 Another CID Detective who had assisted Police Officer 2 and had been involved in the unsuccessful efforts to identify the farm from where the firearms had been collected, told my investigation that at the time he was also unaware of James Mitchell and his farm.
- 4.122 My investigators visited the area, where these events occurred and timed the journey times between James Mitchell's farm and Tandragee and Mahon Road. I am grateful to a police officer based at Tandragee Police Station, who had worked in this area for many years, in assisting my staff in their understanding of the geography and roads of this rural part of County Armagh. The likely route between Tandragee and James Mitchell's farm requires a 15 minute drive.
- 4.123 **The police surveillance operation**
- 4.124 My investigation also sought to clarify the extent of the surveillance operation, which was clearly in place around Persons E, F & G from at least 7 January 1988. In this respect the wording of the Special Branch report that surveillance '*observed the vehicles proceeding to Tandragee*' (from Belfast) was noteworthy, raising the prospect that surveillance was in a position to identify the location, at which the weapons were being stored.

4.125 At my request, the PSNI identified four police officers, who participated in this surveillance operation, from whom I was able to establish that Person E had been under surveillance by E4A⁹ from at least 7 January 1988. At that time these officers had been briefed that the operation was concerned with the movement of firearms.

4.126 The following day, the surveillance had followed Person E and the two Ford Granada cars from North Down to Tandragee, where they temporarily became unsighted on the targets before later picking them up again in the Tandragee area. At this point the cars were observed to be heavily laden, as apparent from their lowered suspension. Arrangements had then been put in place for the HMSU to intercept the vehicles at Mahon Road, as I have earlier described

4.127 **Evidence of a wider surveillance operation**

4.128 Records made available to my investigation by the Ministry of Defence confirmed that the police surveillance operation was a component of a wider intelligence-led operation directed by RUC TCG, which also involved the Army.

4.129 These records document that on 7 January 1988 the military, in support of police, received information from the TCG that loyalist paramilitaries had received a range of weaponry including:

1. AK47 assault rifles
2. 9mm pistols
3. grenades
4. RPG7s (Rocket propelled Grenade Launchers)
5. warheads for the RPG7s

⁹ E4A was a specialist surveillance unit of the RUC

- 4.130 The weapons were reported to have formed part of a consignment, which had previously arrived at Southampton before being split into three batches for delivery to Northern Ireland, Scotland and Liverpool.
- 4.131 The military were tasked with conducting surveillance on Person C who was believed to be involved in the distribution of the firearms while police (E4A) mounted surveillance on Persons E and DD, senior members of the UDA. Intelligence reporting indicated that Persons E and DD were intending to collect the weapons from Person D, who had control of the firearms in the Tandragee area.
- 4.132 According to the records held by the military, on the evening of 7 January 1988 police followed Persons E and DD from the UDA Headquarters at Belfast to Portadown, where they were joined by Person D. The party then met at a named location after which Persons E and DD returned to Belfast and Person D to Markethill, where he visited Person FF before returning home.
- 4.133 On the morning of 8 January 1988 the TCG reported that Persons E and DD were intending to meet Person D at Tandragee, from where they would travel to retrieve the firearms. The RUC's E4A continued to conduct surveillance on Persons E and DD while the military retained responsibility for surveillance of Person D.
- 4.134 The intelligence provided by the TCG indicated that the UVF would recover their share of the firearms later the same week.
- 4.135 The military records examined by my investigation reflect that at 9.00am on 8 January 1988 E4A reported that they had Person E under surveillance at Portadown in a convoy of three cars, two of which were Ford Granada vehicles. The cars were driven towards Armagh but returned to Portadown, where the occupants appeared to ask a passerby for directions. The three vehicles were then driven to Tandragee where they were parked in a car park.

- 4.136 Shortly before 10.30am on 8 January 1988, Person E and his associates travelling in the Ford Granada cars moved south west on the B3 road from the Tandragee carpark. The records indicate that at this juncture E4A became 'unsighted' on the three cars. I recognise the challenges of conducting surveillance in this rural area of County Armagh.
- 4.137 Shortly before 12.00 noon E4A sighted the three cars travelling north on the A27 road towards Portadown.
- 4.138 The military records reflected intelligence that Person C had met with Person E and his associates (subsequently identified as Persons F & G) and escorted them to a weapons hide, from where they had obtained the firearms with which they were arrested.
- 4.139 The records indicate that having been advised by the TCG that additional firearms were still being held in the weapons hide within the Portadown/Tandragee area, the military continued periodic surveillance of Persons C & D with a view to locating the other firearms until their arrests later the same month.
- 4.140 The information provided by the Ministry of Defence in relation to the movements of Persons E, F & G and involvement of Person C broadly supports the accounts provided by the E4A officers spoken to by my investigation. Whilst not definitive, the direction of travel and timings described in the material are also consistent with the proposition that Persons E, F & G travelled from Tandragee to James Mitchell's farm and loaded the firearms into their cars before being arrested at 12.00 noon the same day in possession of the firearms.
- 4.141 These records also provide confirmation that by 7 January 1988 police were aware that a large consignment of firearms intended for loyalist paramilitaries had arrived in Northern Ireland. Police had also identified many of the senior paramilitary figures involved and witnessed a number of them meet at Portadown on the evening of 7 January 1988 to discuss the distribution of the firearms.

- 4.142 According to the 1990 intelligence, at the time of the meeting on 7 January 1988 Person D had already taken the Ulster Resistance share of the weapons while the UDA were to move their share later the same evening using hired Granada cars. At the last minute Person C had decided not to move the UDA's share until the following morning. The weapons were seized at Mahon Road the following day.
- 4.143 **James Mitchell and his farm**
- 4.144 Mr James Mitchell was an RUC Reserve Constable between 1974 and 1977. He is now deceased.
- 4.145 It has been alleged that Mr Mitchell performed a central role in what has become known as the 'Glenanne Gang', a group allegedly composed of members of the UVF and security forces, including police officers. They are alleged to have been responsible for numerous murders, both in this jurisdiction and the Republic of Ireland, during the 1970s. A leading member of the gang was allegedly Robin 'the Jackal' Jackson, who is also deceased. Mr Mitchell's farm is alleged to have been used for the storage of weapons and construction of explosive devices.
- 4.146 I have received numerous complaints in relation to 'collusion' and other serious matters involving members of the RUC and their involvement with the 'Glenanne Gang' and have commenced an investigation, which due to its complexity is likely to be of a prolonged nature.
- 4.147 I have, however, established from police records that James Mitchell's farm was, for a period of time, under surveillance during the 1970s and that during this period he was alleged to have assisted the 'Glenanne Gang' insofar as he allowed his farm to be used for related preparatory acts.
- 4.148 Mr Mitchell was directly implicated in terrorism by police officers, who were themselves accused of serious crime. He was arrested in 1978.

- 4.149 At interview Mr Mitchell described his farm as one of the main UVF arms dumps for mid-Ulster. Police Officer 16, who at the time was a Detective Inspector attached to Armagh CID, participated in the interview of Mr Mitchell. On 30 June 1980 Mr Mitchell was convicted of possessing two sub-machine guns, ammunition and explosives and sentenced to three one year prison sentences, each suspended for two years.
- 4.150 In late 1983 James Mitchell was connected, by police intelligence, to the storage of firearms on behalf of the UVF.
- 4.151 Within a week of the arrests at Mahon Road, police were aware that a number of men, including James Mitchell, had met at a house in Markethill to discuss the arms seizure at Mahon Road. It is noteworthy that Person D resided at Markethill.
- 4.152 In 1990 police received reliable information about James Mitchell's previous activities in concealing weapons for the UVF. This information described arrangements between the UVF, UDA and Ulster Resistance immediately before the intended distribution of the firearms from his farm. The reporting included details of the meeting on 7 January 1988 at a named location attended by senior commanders of the various organisations' leadership. This is corroborated by other intelligence seen (previously referred to at para. 4.140).
- 4.153 Intelligence records indicate that the RUC searched Mitchell's farm on 21 January 1991 and recovered 173 rounds of .303 ammunition and 49 rounds of .455 ammunition from the grounds of the property. This ammunition is not of the type previously recovered at Mahon Road, or subsequently at Flush Road, North Belfast. No person was charged in relation to this seizure.

- 4.154 My investigation has found no evidence that James Mitchell was subject of enquiries by police in relation to his alleged role in the importation and/or handling of the firearms, which are believed to have arrived in Northern Ireland in late 1987.
- 4.155 Information was received by police in 1988 that within two hours of Person E's arrest at Mahon Road, the remaining firearms were removed in a farming vehicle from Mitchell's farm to another location. The 1990 information reported that James Mitchell had been warned that police intended to search his farm, as a result of which the individuals involved loaded the remaining weapons into the farming vehicle, which Mr Mitchell drove to a safe location at Markethill.
- 4.156 The 1990 intelligence concluded by reporting that Robin Jackson had possession of some of the weapons from Mitchell's farm, including ten 'AK' assault rifles (likely to have been a reference to VZ58 rifles), ammunition and an RPG launcher, and subsequently distributed two of the rifles and the RPG launcher to Person Y, the 'Brigadier' of East Belfast UVF.
- 4.157 This supports intelligence from February 1989 that Lurgan UVF had a large number of weapons from the 1987 loyalist shipment in a deep hide under the control of Robin Jackson.
- 4.158 **Alleged leaks by members of the RUC to loyalist paramilitaries**
- 4.159 I have seen intelligence that, shortly after the arrests at Mahon Road, individuals at James Mitchell's farm were warned to remove the remaining weapons. The source of the warning is unidentified. I am, however, mindful of Sir Desmond de Silva's commentary at paragraphs 11.37 to 11.42 of his report in respect of 'Alleged high-level leaks' from members of the RUC to loyalist paramilitaries:
'In the mid-1980's, the Security Service received intelligence that an unnamed and potentially very senior RUC officer might be assisting loyalist paramilitaries to procure arms. I should note that this arms procurement

appears to have been unsuccessful and was unrelated to the separate partially successful importation of arms by loyalists in late 1987/early 1988. The Security Service discussed the intelligence they had received with the then Deputy Head of Special Branch (DHSB).

Security Service telegrams record the DHSB as having said that “the possibility of a high level RUC contact was a real one”.

The DHSB privately mentioned a specific high-level RUC officer who might have been responsible for providing assistance to the loyalist paramilitaries. The reports were sufficiently serious to prompt a Security Service investigation and a series of discussions and memo between the DCI, the Director of the Counter Terrorism FX Branch, Patrick Walker, and the then Director General, Sir John Jones.

The intelligence was insufficiently specific to establish the source of the leak and the investigation appears to have ultimately petered out. However, the flow and analysis of intelligence did tend to support the theory that a high-level RUC ‘contact’ was assisting loyalists. More than seven months after the initial intelligence, further discussions took place about the loyalist grouping that the RUC contact may have been associated with. The DHSB was recorded as continuing to believe that the reports of a high-level RUC connection were “quite credible”.

Whilst the potential link to a specific officer could not be proven, Security Service officers evidently still believed that the high-level RUC connection was of a serious concern. A Service officer noted in an internal memo that: “...we must resist widening the circle of knowledge (over loyalist arms procurement) throughout the RUC as (the Security Service’s Head of the Assessments Group) wishes to do. The story of (a very senior officer) in the RUC being involved is still so consistent that (a Security Service asset) could end up in real trouble.”

Whilst I acknowledge that the intelligence did not enable the individual officer concerned to be confidently identified, I consider that the documentary record as a whole does suggest that it is likely that a high-level RUC contact assisted loyalist paramilitaries to an extent in their efforts to procure arms in the mid-1980s.

The FRU and Security Service reports from the period 1987-89 also suggest that a small number of senior police and Army officers may have been providing assistance to loyalist paramilitaries.

Reliable and repeated reports covered comparatively senior officers in the RUC through to senior officers in the UDR, though such individuals were not always identifiable on the basis of the intelligence that had been received.

Several Security Service reports in the summer of 1988 suggested that an individual centrally involved in the loyalist arms procurement in the late 1980s received assistance from contacts in the RUC and the UDR. The loyalist concerned received a tip-off alerting him to the fact that RUC surveillance was in place against an arms movement operation. However, whilst the operation was certainly compromised, the intelligence appears to have been too generalised to enable the source of the leak to be identified, though the Security Service noted that they were “confident” that the leak had not come from the RUC SB. A later report in July 1988 was cited as providing a “further indication of some RUC protection of his (the loyalist involved in arms procurement) activities”.

Again caution is required when interpreting these reports given the possibility that loyalist paramilitaries might seek to exaggerate the seniority and importance of their security force ‘contacts’, or indeed that security force personnel might exaggerate their own importance when providing information to loyalists. As the Security Service noted in their September 1989 assessment: “we must aim off in relation to some of these reports against the possibility that they stem from unfounded ‘big talk’ or exaggeration on the part of paramilitaries about having police contacts in high places.”

Nevertheless, the intelligence reports pointing to assistance being provided by a small number of comparatively senior figures are sufficiently compelling and consistent to lead me to believe that at least some of the reports are likely to be founded in truth.

It is important to note that some of the more serious leaks of 'high level' information may have emanated from comparatively junior officers working on particularly sensitive areas of RUC operations. Officers working in such sensitive posts, including the Headquarters Mobile Support Unit (HMSU) and the surveillance section, E4A, were linked to loyalist paramilitaries in a series of reliable FRU and Security Service intelligence reports in the period 1988-89....'

4.160 In May 2016 the PSNI provided my investigation with information detailing police officers at both a junior and senior level of the RUC who had been subject of allegations of relationships with loyalist paramilitaries and related criminality, including disclosure of information. This material, which will be central to investigation of a referral made to my office by the Chief Constable in relation to certain findings of Sir Desmond de Silva, also, on the face of it provides corroboration of issues I have discussed in respect of the 1987 arms importation.

4.161 **Additional intelligence relevant to the police response to the firearms seizure at Mahon Road**

4.162 My investigators identified an entry in the RUC C6 (Occurrences, Reports and Complaints Book) from Markethill Police Station dated 9 January 1988, the day after the firearms seizure and arrests at Mahon Road, which states: *'4pm Derelict House Search. Between 2.10pm and 3.55pm on this date a 'search team' from the 'Royal Engineers' carried out a house search at Lough Road, Glenanne. These premises are owned by James Mitchell. House searched by authority of Section 15(3) NIEP Act. Mr John Mitchell supplied key for rear door. No damage caused during search and nothing found. Key returned to John Mitchell on completion of search.'*

4.163 The Ministry of Defence has been unable to provide my investigation with information relating to this search record, which may or may not have been related to the arms seizures at Mahon Road and/or the related surveillance operation.

4.164 In relation to the weapons seizures at Mahon Road, the Special Branch Detective Chief Inspector who declined to assist my investigation wrote on 11 February 1988: *'The arrests and seizures related above were brought about as the result of a covert operation mounted from Special Branch HQ over a period of months and culminating with the above arrests on 8 January.'*

Over a protracted period a secret, reliable and well placed source within the higher echelons of the UDA had been reporting the existence of a major arms acquisition operation being conducted by the UDA on behalf of that organisation, the UVF and Ulster Clubs (Ulster Resistance).....

'On Thursday 7 January, E4(A) who had been deployed on (Person E) noted an unusual build up when two vehicles were hired by (Person F) and (Person G) (those arrested). On the following morning E4(A) observed the vehicles proceeding to Tandragee, Co Armagh where they eventually were apprehended with the arms on board.'

4.165 I have attempted to establish the identity of the *'well placed source within the higher echelons of the UDA'* in order to assess the nature of the RUC's knowledge of that person's involvement, if any, in these events and related policing response to such activity. However, as a consequence of the decision by the author of the intelligence report not to engage with my investigation and as the PSNI are unable to identify the informant, these efforts have been unsuccessful.

4.166 I am, however, mindful that in 1987 an individual, who I believe performed a central role in the UDA attempts in 1985 to acquire firearms from South Africa whilst in the employ of the RUC's Special Branch as an informant, remained in a senior position within the UDA. I have identified the status of this individual from Stevens Inquiry records. I have therefore concluded that *'The well placed source within the higher echelons of the UDA'* may be any one of a number of individuals.

4.167 **Seizure of Firearms at Flush Road, Belfast**

4.168 Following the seizure of weapons and arrests at Mahon Road on 4 February 1988, a police operation at Flush Road, North Belfast led to the recovery of firearms similar in type and description to those seized at Mahon Road.

4.169 The only intelligence record relating to this firearms recovery identified by my investigators was internal Special Branch correspondence which stated; *'As a result of a CID operation (SB unaware prior to event) a search of (house number) Flush Road, Belfast – home of (named person - UVF) – the following person was arrested, (named person)'*.

4.170 The person named as being the occupier of the address was also later arrested with a number of other persons. No-one was charged in connection with the arms seizure at Flush Road. On the basis of the information, albeit limited, available to me, I have concluded that either CID from Tennent Street Police Station intruded on a continuing surveillance operation in respect of the arms importation or, more likely, the covert activities that led to the arrests and seizures at Mahon Road were not in place around the batch of weapons found at Flush Road.

4.171 In addition to 38 VZ58 rifles, the following items were found at Flush Road:

- 10,780 rounds of 7.63 x 39mm calibre rifle ammunition with Chinese markings
- 62 magazines designed for use with VZ58 rifles
- 30,030 rounds of 9mm ammunition
- 15 x 9mm Browning type pistols with magazines
- 100 grenades
- 25 boost motors
- 1 RPG7 rocket launcher
- 26 RPG7 rockets

4.172 In a continuation of the search operation police returned to Flush Road the following day and recovered a further two Browning type 9mm pistols and 250 rounds of 9mm ammunition.

4.173 Subsequent intelligence generated by police indicated that the firearms and ammunition seized at Flush Road were part of the UVF's share of the consignment.

4.174 **Confirmation that the VZ58 rifle and Browning type 9mm pistol were from the 1987 firearms shipment**

4.175 Neither the VZ58 rifle attributed to the murders at the Heights Bar nor the Browning type handgun recovered near it at Carsonstown Road, were documented by police as having been seized at Mahon Road or Flush Road.

4.176 In numerical order, the nearest serial numbers of VZ58 rifles recovered at Mahon Road and Flush Road to the VZ58 rifle used at Loughinisland and recovered at Carsonstown Road were as follows:

18598 (Flush Rd), 18737 (Mahon Rd), (18817) (Carsonstown Rd), 18833 (Mahon Rd), 34657 (Flush Rd)

4.177 It is important to note that the VZ58 rifles recovered at both Mahon Road and Flush Road had a wide range of often non-consecutive serial numbers and that the use of VZ58 rifles in shootings during the 'Troubles' did not commence until after this shipment of weapons arrived into Northern Ireland.

4.178 The closest serial numbers of Browning type handguns recovered at Mahon Road and Flush Road to the Browning type pistol recovered at Carsonstown Road were as follows:

46968 (Mahon Rd), 46974 (Flush Rd), 46975 (Carsonstown Rd), 46976 (Flush Rd), 46982 (Mahon Rd)

4.179 It is evident that the Browning type pistol found at Carsonstown Road fits sequentially by serial number into the cache of weapons found at Flush Road and is therefore consistent with being part of the UVF's portion of the weapons.

4.180 The rounds discharged at the Heights Bar were of 7.62 x 39mm calibre and of Chinese origin, identical ammunition to that recovered at Mahon Road and Flush Road.

4.181 **Summary**

4.182 In 1985 a RUC Special Branch Informant performed a central role in an unsuccessful attempt by Brian Nelson, himself a military informant, and the UDA to procure a large consignment of firearms from South Africa.

4.183 It is equally clear that there was some debate within FRU as to the interception of the arms should Brian Nelson successfully organise a shipment to Northern Ireland, with his handlers expressing concern at the prospect of compromising his status. Sir Desmond de Silva was, however, satisfied that the Security Forces intended to secure the weapons if even by doing so Nelson's role as an informant would be exposed as a consequence. I have not seen evidence of similar discussions in respect of the 1987 firearms importation and therefore have found no suggestion that weapons would be deliberately allowed into Northern Ireland to protect a police informant.

- 4.184 Whilst I have not identified a documented intelligence link between the 1985 efforts of the UDA and the procurement of firearms by the same organisation in a conspiracy with the UVF and Ulster Resistance in late 1987, I find it improbable that planning undertaken around the former exercise would not have assisted the latter successful importation. In short, there is evidence that the same organisations, some of the same personalities and a similar modus operandi were present in attempts by loyalist paramilitary organisations to procure large quantities of firearms from abroad between 1985 and 1987. Indeed these conspiracies continued until at least 1989 when a number of loyalists were arrested and subsequently convicted for attempting to procure firearms, again allegedly from Armscorp.
- 4.185 Similar plans were employed to fund the arms deals in 1985 and 1987 and the same UDA regime was involved on both occasions. The informant in the *'higher echelons of the UDA'*, who reported on the 1987 shipment may also be the senior UDA member and informant, who directed the attempted procurement of arms in 1985 by Brian Nelson. Armscorp feature in intelligence reporting relating to loyalist attempts to procure arms during 1985 and 1989, on both occasions allegedly seeking to procure technology from Shorts Aerospace. Person D is suspected of having performed a significant role in this activity during both 1987/88 and 1989.
- 4.186 I have been unable to establish if the RUC was aware of the specific arrangements for the landing of the weapons in Northern Ireland in late 1987 and interim arrangements for storage. The available police intelligence does not reflect any such specific knowledge albeit that it is clear that by 7 January 1988 at the latest, police had received confirmation that the consignment of arms had arrived in Northern Ireland.

- 4.187 I am satisfied that the arms imported to Northern Ireland in late 1987 were, at least for a temporary period, stored at James Mitchell's farm. This is due to evidence obtained by my investigation, which reflects the physical similarities of the area to those contained in information, which was available to police; the proximity of the farm to Mahon Road; the repeated intelligence references to James Mitchell's farm; James Mitchell's history, before and after 1988, of involvement in storage of weapons for the UVF; the Markethill links to Person D; and the nature of the surveillance operation conducted by the RUC and military between 7 and 8 January 1988.
- 4.188 In addition, Special Branch should have briefed the detectives, handed responsibility for investigating the arrests and arms seizure at Mahon Road on the available intelligence on the farm, particularly in the context of additional information available to them. The detectives were not briefed as to the extent of the surveillance or provided with background intelligence available to Special Branch in respect of the farm.
- 4.189 Police Officer 16, who joined colleagues in searching for the location, from where the firearms had been collected, had participated in previous investigations, in which James Mitchell's farm had been identified as a location, where the UVF stored firearms. Assisted by the information concerning 'the farm' and its approximate location, this background knowledge and his familiarity with the area should have led him to propose a search of James Mitchell's farm.
- 4.190 The failure to share relevant intelligence with the police investigators and the unexplained failure of Police Officer 16 to consider James Mitchell's farm as a potential location, at which the arms had been stored, resulted in the prevention of prompt searches and potential seizures of firearms. This is particularly significant as it is likely that firearms, including the VZ58 rifle used in the murders at Loughinisland, were removed from the farm after Persons E, F & G had removed the weapons, with which they were arrested.

The unavailability of related police records and/or definitive accounts from police personnel involved prevents clarity on this matter.

- 4.191 A building, similar to that described in the information which police had received, on the same road as James Mitchell's farm and owned by him was searched by the Royal Engineers on 9 January 1988, the day following the arrests of Persons E, F & G at Mahon Road. The search may or may not have been a coincidence but if it were not, it could only have arisen from intelligence and/or surveillance, which was also not shared promptly with the Detectives investigating the seizure at Mahon Road, who made repeated attempts to locate the 'farm'. The MOD have no record of the search.
- 4.192 In the absence of evidence that the men arrested at Mahon Road had collected the weapons, with which they were arrested, from James Mitchell's farm, the existing history of that location should have enabled Special Branch and Police Officer 16 to promptly identify the farm as a location which could have been involved.
- 4.193 I have also concluded that the seizure of a significant part of the arms shipment at Flush Road on 4 February 1988 was as a result of policing efforts by local officers from Tennent Street Police Station and not the intelligence operation associated with the 1987 importation.
- 4.194 It is a matter of record, largely established from the identifiable Chinese ammunition used with VZ58 rifles, that rifles from this shipment were subsequently used in at least 70 murders and numerous other attempted murders.
- 4.195 I am satisfied that the VZ58 rifle and ammunition used at the Heights Bar, and the Browning type pistol recovered with it, were imported into Northern Ireland in the same loyalist arms shipment as the firearms and explosives recovered at Mahon Road on 8 January 1988 and Flush Road on 4 February 1988.

- 4.196 Analysis of police intelligence identifies the path by which the weapons are likely to have travelled from James Mitchell's farm, via mid Ulster and east Belfast UVF, to those responsible for the murders at Loughinisland. I will return to this later in this report.
- 4.197 Establishing how many murders and other shootings in Northern Ireland are attributable to the 9mm Browning type pistols, and indeed other weapons, which the UDA, UVF & Ulster Resistance imported into Northern Ireland in late 1987, is difficult to accurately assess due to the widespread availability of the 9mm ammunition used with these handguns. Whilst I have concluded that it is likely to have been significant, I am also mindful that the recovery of numerous firearms by police at Mahon Road and Flush Road undoubtedly prevented other deaths and serious injury to the citizens of Northern Ireland.
- 4.198 Given the matters, which I have identified in this section, I have serious concerns regarding the events which immediately followed the arrests at Mahon Road. These concerns are fuelled by the fact that a substantial amount of weapons was not retrieved, despite a number of indicators as to where those weapons could be found, and by Sir Desmond de Silva's finding that the related surveillance operation was compromised. In particular, I have been unable to ascertain the extent of knowledge in the appropriate police circles regarding the activities in and around James Mitchell's farm at this time. What the police knew (and should have known) regarding James Mitchell's farm is subject to further investigation, which is currently ongoing by my Office in relation to a number of murders in this area over a sustained period of the 'Troubles'. It is hoped that the evidence revealed in that matter will assist in providing a more complete picture with regards to the extent to which police could have retrieved all of these weapons.

- 4.199 I have found no explanation as to why Police Officer 16, who had previously interviewed James Mitchell and who had accompanied detectives in the search for the location where the firearms recovered by police at Mahon Road had been stored, did not attend James Mitchell's farm. The failure to go to James Mitchell's farm permitted the prompt undetected removal of the remaining weapons.
- 4.200 Despite being implicated by intelligence in the importation of these weapons, senior members of the UVF, UDA and Ulster Resistance were not subject of police investigation. This can be attributed to a decision by Special Branch not to disseminate the intelligence implicating these individuals, amongst whom, as I have observed, there were informants. Given the gravity of the conspiracy and the impact that the importation of these firearms has had on the lives of numerous citizens, this decision was in my view, indefensible.

5.0

EVENTS PRECEDING THE ATTACK AT LOUGHINISLAND

5.1 **Overview**

5.2 During the 1990s the RUC was divided into three operational 'Regions'; Urban (Greater Belfast), North Region and South Region. Each Region was further divided into 'Divisions', which in turn were composed of 'Sub-Divisions'. The RUC's 'G' Division in South Region was composed of the Newcastle, Downpatrick and Newtownards Sub-Divisions. A map of 'G' Division is attached at Appendix 2.

5.3 Locations central to events described in this statement, including Newcastle, Kilcoo/Castlewellan, Clough, and the Mourne/Tollymore Forest were within Newcastle and Downpatrick Sub-Divisions. Although within Downpatrick Sub-Division, Loughinisland was located on the boundary with Newcastle Sub-Division.

5.4 During the years preceding the murders at Loughinisland, a series of incidents occurred which police should have recognised as the escalating activities of a small but ruthless unit of the UVF operating from within the RUC's Newcastle Sub-Division.

5.5 Police investigations and intelligence relating to these incidents should have not only alerted police to the existence of this small group of loyalist terrorists but also informed concerted policing efforts aimed at disrupting activities, which presented a significant risk to the local community.

5.6 Whilst my investigation has identified evidence that by mid-1993 a small team of Special Branch officers based at Newcastle Police Station did come to recognise the threat presented by these individuals, it is equally clear that there was little by way of a sustained policing response to their activities. Instead, the focus of police investigations and intelligence gathering within the Newcastle and Downpatrick Sub-Divisions was almost entirely directed towards the IRA.

5.7 [REDACTED]

5.8 In addition, intelligence gathering, which was undertaken was to some extent reliant on sources, who were themselves implicated in the serious crime being pursued by this group. This is likely to have been self serving and in any event was not exploited by police in order to bring those subject of the reporting to justice.

5.9 In gathering intelligence the police will also form a view on the provenance of that material and also whether to disseminate it to those responsible for investigating crime. It is a matter of public record that intelligence gathered by the RUC Special Branch was not always disseminated to investigators. One rationale for this was that to do so might expose the source of the intelligence and in doing so put their lives at risk.

5.10 In deciding to disseminate intelligence or not, the potential compromise of the source of the material is clearly important. However, it is also important that investigations are not fundamentally undermined and that opportunities to prosecute criminals are not missed.

5.11 My investigation has identified intelligence that was not disseminated in respect of incidents prior to Loughinisland. That material would have been of value to investigators. The intelligence was marked as 'NDD' and/or 'Slow Waltz'¹⁰. I believe that was wrong and the failure to disseminate the intelligence was sometimes designed to protect informants and meant that valuable intelligence was not provided to those charged with investigating the attacks.

5.12 **Intelligence and other factors linking serious pre-cursor crimes to the Loughinisland attack**

5.13 *Murder of Mr Jack Kielty on 25 January 1988*

5.14 The police investigation into the murder of Mr Jack Kielty in 1988 was successful in identifying personalities and associations, including those within and associated with the security forces, within a small, embryonic loyalist paramilitary unit operating mainly in the Newcastle Sub-Division of the RUC's 'G' Division. It also identified their developing relationship with elements of the UVF in Belfast. Police did not, however, fully exploit this information by maintaining an interest in the gang as a result of which it re-emerged a number of years later as a fully functional UVF unit, embarking on a campaign of murder that would ultimately escalate to the Loughinisland atrocity.

5.15 On Monday 18 January 1988 a blue Vauxhall Cavalier car was hijacked from the owner, a taxi driver, at Dee Street, East Belfast. The car was fitted with false vehicle registration plates, relating to a car from Newcastle.

¹⁰ Documents detailing sensitive intelligence, often relating to the identities of persons suspected to have been responsible for murders or other serious crime, were often marked 'NDD' (No Downward Dissemination) by RUC Special Branch (SB). Intelligence marked as NDD was normally only seen by senior officers of at least the level of Detective Chief Superintendent. The material was not forwarded to Divisional CID for further action. This discipline was designed to protect the source of the information by ensuring a process of consultation was undertaken at a senior level between SB and CID before arrests informed by the intelligence were made. Sensitive intelligence could also be marked as 'Slow Waltz'. This was to ensure an appropriate period passed between police obtaining the intelligence and related overt police action. This was designed to distance the source of the intelligence from any arrests arising with the aim of protecting the source.

- 5.16 On the morning of 25 January 1988 Mr KIELTY was at his office in DUNDRUM when a masked gunman entered the premises and shot him six times. The killer and an accomplice fled the crime scene in the Vauxhall Cavalier, which was recovered later the same day at Loughinisland.
- 5.17 A murder investigation commenced with Police Officer 3, a Detective Inspector based at Newcastle Police Station, appointed as the Senior Investigating Officer (SIO). The investigation had a breakthrough when police received a report from a member of the public concerning the involvement of one of the individuals involved.
- 5.18 When arrested, this person admitted having been the driver of the Vauxhall Cavalier and explained that Mr KIELTY had been identified to him by an associate, who was from DUNDRUM and also a loyalist paramilitary.
- 5.19 The individual arrested further explained that on 25 January 1988 he collected two Belfast men (who were linked to the Ulster Defence Association - UDA) from a 'safe house' at Clough and drove them in the stolen Vauxhall Cavalier to DUNDRUM, where they murdered Mr KIELTY. He also stated that while driving back to Clough they stopped at a laneway to a farm owned by the family of Persons K & L and handed the firearms used in the killing to Person L.
- 5.20 The two gunmen were then returned to the 'safe house' at Clough before he drove the Vauxhall Cavalier to Loughinisland, where it was abandoned and his associate from DUNDRUM was waiting to drive him away.
- 5.21 Although two gunmen were identified by the person arrested, leading to their arrest and interview, the case relied solely upon the evidence of their co-accused and they were not prosecuted.

- 5.22 Person L was arrested and admitted his knowledge of the murder plan and receiving and hiding the weapons after the shooting. He explained that he had been sworn into the UVF by Person A. His sister-in-law was also arrested and admitted allowing the two gunmen to use her house at Clough both prior to and after the murder with the full knowledge of their intentions. She also admitted driving the two gunmen back to Belfast later the same day. Person L and his sister-in-law were subsequently convicted.
- 5.23 Person M who was also linked to the UVF was also arrested on suspicion of the murder of Mr Kielty but was released due to insufficient evidence.
- 5.24 During the police investigation of Mr Kielty's murder Person L admitted conspiring with Person A and another man, also members of the UVF, to murder Mr John O'Rourke at Dundrum on 11 January 1986 and another potential victim in the South Down area on the first anniversary of the murder of a relative of one of the gang by the IRA.
- 5.25 My investigators interviewed Police Officer 3, who was the Senior Investigating Officer. He stated that during the murder investigation he searched Clough Orange Hall on 19 May 1988 and recovered a rifle, a sub-machine gun, a semi-automatic pistol, a revolver, assorted magazines and ammunition, a 2-way radio, battery packs, gloves, a balaclava, a jumper, Army maps and an album containing montages of IRA suspects.
- 5.26 Police Officer 3 described his efforts in ensuring the security of his plans to search Clough Orange Hall as he was conscious it could be compromised by leaks from within the local security forces. He also recalled that as well as the seizure of a large quantity of firearms and ammunition, the operation recovered a number of montages of suspected IRA members amongst which were photographs of Peter McCarthy from Kilcoo.

- 5.27 The fingerprints of both Persons A and L were found on the photograph album. As the album was UDR material, of which Person A was a member, and in the absence of evidence that he had stolen them, Person A was able to explain the presence of his fingerprints.
- 5.28 Police Officer 3 stated that he had submitted a report making representations that Person A be discharged from the UDR citing his alleged use of material originating from the regiment to assist his terrorist activity. Police Officer 3 stated that whilst Person A was discharged from the UDR, it was a considerable number of months later and during the intervening period he continued to attend RUC/UDR briefings.
- 5.29 The firearm used to murder Mr KIELTY was identified as a .357 Magnum revolver in relation to which, at that time, police did not identify a history of previous terrorist use. It was, however, subsequently used in a murder in the East Belfast area in 1992, which was attributed to the UVF.
- 5.30 Police Officer 3 told my investigators that at the time of the murder of Mr KIELTY he believed that there had been little perceived threat from loyalist paramilitaries with the main focus of policing being on the IRA.
- 5.31 My investigators located a report authored by Police Officer 3 in 1988 in which he described Person A as a *'main organiser, planner and probably responsible for others now made amenable. It is suspected that (Person A) is still an active loyalist terrorist'*. Police Officer 3 remembered writing the report and stated that as a result of his investigation of the murder of Jack KIELTY it became apparent that Person A had also been the driver on the attempted murder of Mr O'Rourke in 1986.
- 5.32 Person A was arrested in relation to the attempted murder of Mr O'Rourke and a report was forwarded to the Director of Public Prosecutions, who determined there was insufficient evidence to charge him.

- 5.33 The success of Police Officer 3 in confronting this loyalist paramilitary activity in the RUC's 'G' Division (composed of elements from both the UDA and UVF) can be measured in both the convictions he secured and the disruption caused to them in the area. They were largely inactive, certainly in this Division for a number of years. By 1992, however, individuals connected to the UVF, who had come to the attention of Police during the investigation of Mr Kielty's murder had organised themselves into an operational unit of the UVF at the disposal of a Belfast Commander. Having lost sight of the personalities involved due to their focus on the activities of republican paramilitaries in South Down, police in 'G' Division were unaware of this development.
- 5.34 *Conspiracy to Murder Peter McCarthy on 6 November 1992*
- 5.35 On the evening of 6 November 1992 an Austin Montego car was stolen from its owner at gunpoint by two men at Ballymaccairett Leisure Centre, East Belfast with the occupants held at a nearby location for some time after the hijacking.
- 5.36 The stolen vehicle was recovered the following day from the Donard Demesne close to Newcastle and the Tollymore Forest. The recovery of the vehicle and investigative actions in respect of the hijacking were completed satisfactorily. Although at the time the RUC had no reason to link it to any known terrorist attack, my investigators have established that in June 1993 police received intelligence that Persons A, M & K had used the car to travel to Kilcoo, intending to murder Mr Peter McCarthy at the Thierafurth Inn but had abandoned their plans due to security force activity in the area.
- 5.37 The source of the information also reported that Person I had directed the operation from premises at Dee Street, East Belfast.

- 5.38 *Murder of Peter McCormack on 19 November 1992*
- 5.39 On the evening of Thursday 19 November 1992, two armed men entered the home of a member of the public in East Belfast and demanded the keys to his grey Ford Orion car. The keys were passed to a third man who took away the car, while the two gunmen remained with the victim until 6.50pm. Before leaving they told the victim not to report the matter to police until 7.30pm.
- 5.40 At 9.08pm the same night two gunmen entered the Thierafurth Inn and indiscriminately opened fire at four men sitting at the bar, one of whom was Peter McCormack, who sustained gunshot wounds and later died from his injuries.
- 5.41 In a telephone call to Downtown Radio later the same evening, the UVF claimed responsibility for the murder; *'The UVF claim responsibility for the attack on the Thierafurth Inn. The IRA commander in South Down was in the pub at the time and he was our intended victim. A more detailed statement will be made in the future'*.
- 5.42 At 8.10am on Friday 20 November 1992, the Ford Orion was found abandoned at the Barbican entrance of Tollymore Forest Park outside Newcastle. Although not positively identified as being at the scene of the Thierafurth shooting, police believed it had been used in the murder of Mr McCormack.
- 5.43 Examination of the murder investigation documentation revealed that at 5.15pm on 19 November 1992, Persons A & K were stopped at a VCP at Ballynahinch in the car of Person A, the same time as the Ford Orion was being stolen in East Belfast.
- 5.44 The murder investigation was led by Police Officer 4, who was initially the Deputy SIO and subsequently the SIO on the investigation of the murders at Loughinisland.

- 5.45 Police Officer 4 told my investigators that the Thierafurth Inn had been frequented by 'bad people' and queried why Mr McCormack was in the public house that night. Police Officer 4 was not alone in this view of the pub, which was regarded by some police as being associated with republican paramilitaries. Police Officer 4 did acknowledge that the UVF had claimed responsibility for the attack. This commentary by a senior police officer charged with the investigation is considered to be poor practice and suggests a lack of objectivity.
- 5.46 Examination of the Peter McCormack murder file by my investigators confirmed that Police Officer 4 had identified a link between the two cars hijacked in East Belfast and abandoned in the Newcastle/Tollymore Forest area and directed that the forensic strategy for the murder should encompass the work done in respect of the recovery of the car found at that location on 7 November 1992, albeit no forensic evidence was identified.
- 5.47 My investigation established that in mid-1993 police received intelligence implicating Persons A, M, K and I in the conspiracy to murder Peter McCarthy. This source also provided an account of the murder of Mr McCormack. It was reported that Persons A & M were the gunmen and Person K was their driver. Prior to the murder they had been summoned to a meeting at Dee Street by Person I, provided with the stolen Orion and boiler suits and directed to collect two firearms (a shotgun and a handgun) from a location outside Newcastle en route to the murder. It was further reported that a Thursday night was chosen because it was 'darts night' at the Thierafurth Inn. That intelligence was marked 'NDD/Slow Waltz'.

- 5.48 The Special Branch Officers responsible for obtaining this information, Police Officers 5 and 6, told my investigators that their routine procedure was to forward such intelligence to their Special Branch Headquarters, where decisions were made as to whether it should be disseminated to CID. On occasions they also informally briefed detectives investigating the crime to which the intelligence related but could not recall if this was done in respect of the information concerning Messrs McCarthy and McCormack. Police Officer 4 states that he did not receive such intelligence and my investigation has seen no evidence that it was shared with him.
- 5.49 There are similarities in the ‘modus operandi’ between this murder and other attacks, including the Heights Bar, Loughinisland some twenty months later. These include the supply of a car and boiler suits from Belfast and the indiscriminate discharge of firearms into a public house frequented by members of the local community.
- 5.50 *Murder of Martin Lavery on 20 December 1992*
- 5.51 I have described the circumstances of the murder of Mr Lavery at paragraphs 4.30 – 4.35 of this public statement.
- 5.52 The intelligence Special Branch received in relation to the murder of Peter McCormack also stated that having been placed on 48-hour standby by the UVF for an attack, Persons A, M & K were told to report to a social club in the Shankill Road area, where they were directed by Person I in relation to the attack on Mr Lavery. Intelligence indicated that Persons A & M committed the attack whilst Persons K & I awaited their return to the club.
- 5.53 My investigation found no evidence that Persons A, M, K or I were arrested in relation to the murder of Mr Lavery.

- 5.54 Whilst Police Officer 4 was not the SIO in respect of Mr Lavery's murder, my investigators asked him about his knowledge of the incident and utilisation of the intelligence and firearms linkages, which were relevant to the serious crime in South Down, for which he had investigative responsibility. The officer stated he had no knowledge of the Martin Lavery murder enquiry or of any link to the murders at Loughinisland.
- 5.55 *Attempted Murder of John Henry Smyth on 7 June 1993*
- 5.56 At 10.30pm on Monday 7 June 1993 two masked gunmen entered a house at East Belfast and demanded the keys to the householders blue Volvo 440 car. The keys were handed to one of three unarmed men, who accompanied the raiders. The gunmen remained with the householder while the other men made off with the car.
- 5.57 At 11.53pm the same night, the car arrived outside the Castlewella home of John Henry Smyth. The offenders tried, unsuccessfully, to smash down the front door to access the premises and upon failing discharged shots through a front window but there were no casualties.
- 5.58 The gunmen fled the scene in the Volvo which was subsequently found abandoned 1½ miles north of Newcastle. This attack was subsequently linked, by intelligence, to the UVF unit believed to have been responsible for the attack at Loughinisland.
- 5.59 Person K was arrested on 10 November 1993 as police suspected he may have been the driver of the Volvo. Police Officer 5, a Special Branch officer based at Newcastle police station, told my investigators that he understood that CID had established that an unidentified witness had recognised Person K at the crime scene. My investigators were able to establish the identity of this witness, who is now deceased but who had told his family about seeing Person K. I understand that the witness told police that he had recognised Person K but declined to make a formal witness statement in relation to his identification.

- 5.60 Police Officer 4 was also the SIO for this investigation. On being interviewed by my investigators he stated that he had no idea who was responsible for the incident and was not aware that Person K might have been the driver of the car or that he had been arrested in connection with the offence.
- 5.61 In 1993 police received intelligence that Persons A, M & K had been responsible for this attack. Neither Persons A nor M were ever arrested and interviewed about this incident. In the context that the detectives investigating the attempted murder of Mr Smyth generated the grounds for the arrest of Person K through their own enquiries, I have found no evidence that the intelligence held by Special Branch concerning the involvement of Persons A, M & K was disseminated to the investigating officers.
- 5.62 **Police intelligence coverage**
- 5.63 Police Officers 5 & 6 were part of a small team of Special Branch Officers based at Newcastle Police Station during the early 1990s. Their principal responsibilities were to gather intelligence in relation to paramilitary activities in the Newcastle Sub-Division.
- 5.64 They were managed by a Detective Inspector (Police Officer 7) who had been posted to Downpatrick Police Station in the early 1990s with responsibility for the Special Branch presence in police stations in 'G' Division.
- 5.65 Police Officer 7 told my investigators that each of his teams, including Police Officers 5 & 6, 'ran the show' while he concentrated on the management and administration of their intelligence. This included conveying intelligence generated by his officers to the Head of Special Branch, South Region, a Detective Chief Superintendent (now deceased) based at RUC Mahon Road, Portadown.

- 5.66 Police Officer 5 was posted to Newcastle Special Branch as a Detective Constable in 1990. Upon his arrival he realised there was little intelligence coverage of loyalist paramilitaries in the area and therefore set about cultivating sources of intelligence in respect of such activities.
- 5.67 During efforts to gather intelligence in respect of the activities of the UDA in Newcastle Sub-Division Police Officers 5 & 6 established an intelligence asset that revealed that Persons A, M & K were leading UVF members in the area, with connections to the security forces. In addition, the intelligence identified a relationship between Persons A, M, K and Person I, who was a senior member of the UVF with links to East Belfast, but who reported directly to the UVF leadership on the Shankill Road, West Belfast.
- 5.68 This account is consistent with intelligence dating from 1993, generated by Police Officer 6, to which my investigators have had access and which records that Person I was believed to be a high level UVF activist.
- 5.69 Police Officer 5 told my investigators that in 1993 he also obtained information that Persons A, M, K & I had been responsible for the murder of Peter McCormack at the Thierafurth Inn, Kilcoo, Castlewellan on 19 November 1992. Police Officer 5 said that he may have verbally disclosed this information to Police Officer 4, the SIO responsible for the related murder investigation. Police Officer 4, however, told my investigators that this intelligence had not been shared with him either informally or through the established intelligence structures.
- 5.70 At around the same time Police Officer 5 also became aware that Person K was suspected of involvement in the Attempted Murder of John Henry Smyth at Castlewellan on 7 June 1993, in which a hijacked car used in the attack was stolen from East Belfast and abandoned 1½ miles outside Newcastle.

- 5.71 In the context of Police Officer 5's understanding of the UVF in his operational area, and their suspected involvement in both the murder of Peter McCormack and attempted murder of John Smyth, he consulted with his senior managers in relation to how best to '*manage the risks posed by this UVF Unit*'. This led to his development of a further intelligence asset and engagement with Special Branch in Belfast who advised that they were unsighted on Person I. My investigation has established that Special Branch in Belfast did in fact hold intelligence, albeit limited, in relation to Person I and his suspected terrorist activity.
- 5.72 Police Officer 6 corroborated the position of his former colleague, Police Officer 5, in stating that he unsuccessfully sought information from their Special Branch counterparts in Belfast about Person I in order to explore the apparent relationship between the UVF in Belfast and those in the Newcastle Sub-Division.
- 5.73 Police Officer 6, who was a supervisor at the Newcastle Special Branch Office, told my investigators that he was posted to the Sub-Division in the late 1980s, at which time he did not believe that there was a threat from the UVF in the area, unlike the Provisional IRA, which was the main focus of their intelligence gathering.
- 5.74 Police Officer 6 said that in or around 1993 he became aware of the establishment of a UVF unit in the Newcastle Sub-Division which intelligence indicated was composed of Persons A, B, M, K & N, commanded by Person I. At that time he also recognised a trend in which cars used by loyalists in serious crime occurring in South Down, were stolen from Belfast and subsequently abandoned in the Tollymore Forest area.

- 5.75 My investigation identified reliable police intelligence dating from the summer of 1993, that Person I had been hi-jacking cars in East Belfast for use in UVF operations in the South Down Area. The intelligence went on to say that Person I was not, however, under the command of the East Belfast UVF leadership but reported to a unit within the Shankill UVF composed of approximately twelve persons.
- 5.76 Police Officer 7 stated that prior to the Loughinisland attack he could not recall having been aware of a UVF Cell, involving Persons A, M, K, I, N & B being operational in the Newcastle Sub-Division; that some of these individuals had links to the security forces; or that there was intelligence linking them to the murder of Peter McCormack at the Thierafurth Inn, Kilcoo, Castlewellan. This demonstrates a lack of intelligence awareness of UVF activity in the Greater Newcastle area by Special Branch Officers other than those actually posted to that Sub-Division.
- 5.77 It is clear to me that there was a lack of intelligence relating to loyalist terrorists operating in the Newcastle Sub-Division area until mid 1993. Police Officers 5 & 6 identified this intelligence shortfall and proactively established intelligence assets. Those officers further established an intelligence picture relating to an active loyalist terrorist unit. However, I am satisfied, that most of this information (obtained from mid-1993 onwards) was not passed to detectives investigating these attacks in order to protect the source of that information.
- 5.78 **Summary**
- 5.79 The evidence of Police Officer 3 suggests that security forces in the Newcastle Sub-Division had been compromised, principally from the UDR but also from within the local RUC, through either direct involvement with loyalist paramilitaries, associations or sympathies.

5.80 My investigation has established that at least three individuals and their families, directly associated with the UVF unit active in South Down, were members of the UDR. They also had close family members working locally at RUC establishments and within the Police Force itself. This does not of itself suggest that those police staff had done anything wrong. Quite often family members will have diametrically opposed views on matters. It can, however, lead to suspicion in the eyes of others and every criminal justice organisation needs to be aware of such issues.

5.81 The limited knowledge about the UVF unit in Newcastle supports the assertion that RUC attention was focused on the IRA and that there was little or no intelligence regarding the local threat presented by the UVF until mid to late 1993, which was not acted on except for the arrest of Person K. This intelligence was largely not passed to investigators and was marked NDD or Slow Waltz. Little investigative action was carried out as a result.

5.82 [REDACTED]

5.83 The striking similarities in the modus operandi (including the geographic location of the vehicle hijackings), the commonality of named suspects and links to the UVF, made this series of offences pertinent to the attack, which was to take place at Loughinisland on 18 June 1994. Even in the absence of trained analysts and comparative case analysis, it is clear that by 1993 Police Officer 4 had linked a number of these offences but was apparently not sighted on the identities of most of those involved.

- 5.84 Police Officers 5 & 6 may have been unsighted on intelligence held by Belfast Special Branch in respect of Person I, and consequently their efforts were hampered in developing an intelligence picture of the UVF in the Newcastle area and initiating corresponding policing tactics to counter the threat they posed. As a result these individuals may well have been encouraged by the absence of a concerted and sustained effort against them.
- 5.85 Despite possessing intelligence in 1993 that Persons A, M, K and I were responsible for conspiring to murder Peter McCarthy on 6 November 1992; the murder of Peter McCormack on 19 November 1992; the murder of Martin Lavery on 20 December 1992; and the attempted murder of John Henry Smyth on 7 June 1993, only Person K was arrested in connection with the latter offence. Whilst I have no reason to disbelieve that on occasions Police Officers 5 and 6 passed intelligence directly to detectives investigating serious crime, the absence of documentary evidence that the intelligence relating to these specific incidents was shared; the denial of Police Officer 4 that he had received it; and the absence of investigative activity, which could have arisen from the intelligence, leads me to conclude that it was not disseminated to CID. As a consequence the individuals were not subject to robust investigation.
- 5.86 While I have identified failures on the part of the RUC approach to loyalist terrorism in the South Down area that compromised policing duties in regard to the prevention of crime and to some degree the investigation into the Loughinisland murders, I have found no evidence that such failures are attributable to any identifiable police officer. On the evidence that I have considered, the officer in charge of the subdivision in which this atrocity occurred cannot be held responsible for any failings in the investigation nor have I found any evidence that he was involved in any collusion.

6.0

INTELLIGENCE AVAILABLE IMMEDIATELY PRIOR TO THE ATTACK AT LOUGHINISLAND & THE RUC'S RESPONSE

- 6.1 Police intelligence received prior to the murders at Loughinisland indicated that Person H had been appointed Military Commander for UVF Operations throughout Northern Ireland by a senior figure within the UVF, with permission to mount 'operations' without clearance from local UVF Commanders.
- 6.2 Intelligence received by police shortly before the Loughinisland attack reported that Person H, who was strongly associated with East Belfast UVF, had provided the VZ58 rifle to those responsible for the shooting at McCabe's Butchers on 22 March 1994.
- 6.3 This is significant because further intelligence, received three months after Loughinisland, would indicate that Person H had also supplied the VZ58 rifle to those responsible for the atrocity at Loughinisland, thereby implicating elements of the UVF's hierarchy in the attack.
- 6.4 On Thursday 16 June 1994 four men with alleged links to the UVF, Colin Craig, David Hamilton, Trevor King and Tommy Rowntree, were shot as they stood talking on the Shankill Road, West Belfast. Messrs Craig, Hamilton and King died from their injuries. The shootings were attributed to the INLA.

- 6.5 Intelligence and open source reporting has suggested that at or around the time of these shootings, senior members of the UVF had been meeting at nearby premises and that the murders at Loughinisland were a response to the attack.
- 6.6 Intelligence held by the police indicated that Person I, an individual who was significant in the intelligence picture relating to the activities of the South Down UVF Unit (which police suspected was responsible for the murders at Loughinisland) was responsible, through the UVF's organisational structure, to Trevor King. Mr King was allegedly the commander of the UVF in the Shankill Road area and apparently had a personal friendship with both Person I and David Hamilton. Mr Hamilton and Mr King died as a result of the shooting incident on the Shankill Road on 16 June 1994.
- 6.7 My investigation has had access to information supplied by a former senior UVF figure in North Belfast (Person J) whereby he confirms that in the immediate aftermath of the Shankill Road murders, plans were made within the UVF to 'make sure there was blood on the streets.....that we should kill any Catholic we could'. He went on to provide more detail regarding the extent of these attacks. If he is to be believed, this included the deaths, on Friday 17 June 1994, of Gerald Brady, a taxi driver shot after picking up two men at Antrim as well as Cecil Dougherty and William Corrigan, shot at a building site in Rush Park, Rathcoole (when four others were injured). It is clear that elements of the UVF's senior command directed retaliation for the shootings of their associates through attacks on the Catholic community.

- 6.8 Intelligence reporting following the murders at Loughinisland sought to distance the hierarchy of the UVF from the attack by stating that they had neither directed nor sanctioned the 'operation', which they considered had been 'unhelpful'. It is, however, clear that intelligence held by police points to Person H having supplied the assault rifle used to commit the murders at Loughinisland. This was in his role as the UVF's Military Commander with authority to conduct whatever 'operations' he considered appropriate.
- 6.9 In view of the profile of the attack on the Shankill Road, involving the targeting of senior members of the UVF by republican paramilitaries, there would be a reasonable expectation that Special Branch would seek to establish from their intelligence assets the likely or specific nature of any retaliation. I have not found any evidence that such tasking took place regarding the Newcastle area.
- 6.10 Such intelligence would have informed policing measures to counter any emerging threat to the Catholic community. The evidence gathered by my investigation, however, indicates that Special Branch did not proactively seek intelligence from sources at a strategic or local South Down level of the UVF who would, or may have been, in a position to provide information of assistance in seeking to mitigate the threat to the Catholic community.
- 6.11 In addition, my investigators have established from a police informant handler that in the case of one senior informant within the UVF, the individual was routinely not asked about specific incidents or activities for which his organisation was responsible. This was on the basis that he sought to distance himself from knowledge of such matters in order that he would not be in a position to report on the events, thereby protecting his position within the UVF from compromise.

- 6.12 The extension of this argument is that, by not reporting on specific criminal acts by the UVF, such informants avoided implicating themselves in criminality.
- 6.13 In addition, the RUC had made the operational decision that the only other offence for which they may have been culpable, that of membership of a proscribed organisation, did not, of itself, require the usual authorisation from an Assistant Chief Constable for informant participation in crime.
- 6.14 I do not accept that such individuals could remain in positions at senior levels of the UVF without having any knowledge of, or being culpable for, criminal acts committed by that organisation.
- 6.15 Certainly it had the effect of ensuring that some informants in such positions rarely supplied information, which could have assisted in the prevention or detection of crime such as the murders at Loughinisland despite sitting within the hierarchy of the organisation.
- 6.16 That sources were not asked for information, which could have prevented attacks such as the murders at Loughinisland or about specific incidents involving the UVF, points to relationships, characterised by ‘hear no evil, see no evil, speak no evil’, between police and senior paramilitary figures for the protection of the latter from the criminal justice system. The rationale for this, provided by the handler, was to ensure a flow of intelligence to the police and other agencies. There could be no more obvious example of police dealing with impropriety by turning a blind eye.

- 6.17 Despite the lack of specific informant tasking, the RUC quickly identified the risk of an attack on the Catholic community as evidenced by a '*UVF General Threat*'. My investigators established that this was forwarded to Special Branch Offices in the RUC's South Region on the afternoon of Friday 17 June 1994 and read as follows: '*As a result of recent shootings in Belfast coupled with intelligence reports and sightings it is anticipated there will be a sharp increase in loyalist terrorist activity throughout South Region. It should be borne in mind that these groupings recently have acquired commercial explosives to compliment other weaponry known to be in their possession. All places throughout the Region used solely by the Catholic community should be regarded as being at risk*'. The reference to commercial explosives links to other intelligence held by the police in relation to Person H.
- 6.18 My investigation was unable to identify from police the origins of this intelligence. It may, therefore, represent a general assessment though this would not explain the specific reference to 'South Region'. In any event, police graded this intelligence as being reliable and the information as 'probably true' albeit, based on the content of the notice alone, I recognise the challenges faced by the RUC in implementing a policing response throughout such a large geographical area, which included much of Counties Down, Armagh and Tyrone.
- 6.19 When shown the threat notice purportedly issued by Special Branch to their Offices in South Region on 17 June 1994, the Special Branch Officer at Newcastle Police Station, to whom it had been personally addressed, accepted that he may well have received the notice.
- 6.20 At the time of recognising this threat to the community in South Down, principally arising from the shooting of senior UVF members on the Shankill Road on 16 June 1994, the RUC had at their disposal sources of intelligence close to the paramilitary unit operating from the Newcastle area and at a more senior level of the UVF.

7.0

THE RUC INVESTIGATION OF THE ATTACK AT LOUGHINISLAND

7.1 **The Initial Police Response to the Murders at Loughinisland**

7.2 My investigators have established that police were first made aware of the attack at 10.20pm on 18 June 1994 when the Station Duty Officer (SDO) at Newcastle RUC Station received a '999' call from a witness reporting a shooting at the Heights Bar.

7.3 The SDO was told that four to five people had been seriously injured and the witness could hear shouting and screaming in the background. A further '999' call was received at 10.28pm from a second witness, informing police that he had seen a red Triumph Acclaim leave the Heights Bar at speed heading towards Crossgar. He was unable to provide a vehicle registration number.

7.4 My investigators reviewed RUC records, which show that by 10.25pm a major incident contingency plan, Operation Aristocrat, had been initiated and a number of police and military VCPs directed. Upon the arrival of emergency services, including police, quite correctly, the preservation of life was prioritised over scene preservation.

7.5 Upon learning of the attack many local people, including relatives and friends of the victims, arrived to help. Police records reviewed by my investigation indicate that the crime scene had been secured within 20 minutes of police arriving at the Heights Bar.

- 7.6 An Incident Control Point (ICP) was established at the junction of the Heights Bar and Loughinisland Road, supervised by an Inspector. A Crime Scene Log was opened at 10.40pm, which detailed all persons entering and leaving the scene.
- 7.7 The log shows that the scene was held until 20 June 1994. During this period a number of people entered and left including doctors, paramedics, Scenes of Crime Officers, forensic scientists, mappers, fingerprint specialists, photographers and videographers. Police officers up to the rank of Assistant Chief Constable (ACC) visited the scene.
- 7.8 Witness enquiries in the Heights Bar area located several possible witnesses to the killers fleeing the scene. A witness, who had been in the bar, provided an account that he saw a masked man enter, kneel and open fire. He chased the gunman out of the bar and saw him getting into the back of a dark coloured car, which was driven to the junction and turned left onto the Loughinisland Road, towards Annacloy. He was unable to describe the occupants of the car, other than that they were laughing as they drove away.
- 7.9 A nearby resident told police that he had heard gunfire and on looking out of his living room window saw a red car drive off at speed from the front of the pub before turning left onto the Loughinisland Road. He could not describe who was in the car or provide its vehicle registration mark (VRM) but stated that it *'was a red coloured car which I think was either a Triumph Acclaim or a Honda Accord. It was a four door saloon with a boot.'*

- 7.10 Another local resident heard shots and looking out of her house ‘....saw a red car with three men in it. I saw it swerving round the corner from the direction of the pub and along the Loughinisland Road past my house. There were two men in the front seats and one in the back....All three men were smiling. The one in the front passenger seat had a white tee-shirt on. He had ginger hair, quite short. The one in the back had a black top on and he had short hair. I think he was clean shaven. I couldn’t really see the driver. The car sped on up towards the Buck’s Head.’
- 7.11 Other witnesses heard gunshots and the sound of ‘screeching’ tyres around the same time.
- 7.12 A witness, who had dropped her husband off at the Heights Bar at 10.10pm, described a red car pulling out in front of her onto the Loughinisland Road at the junction with the Old Newcastle Road, describing the car as an ‘old square box shape type’. The witness was unable to describe the occupants of the car, other than that they were three men.
- 7.13 Although enquiries by my investigation have been unable to obtain a copy of the relevant Operational Order or establish the mechanics by which it operated, I have been able to establish that VCPs were positioned at the following locations:
- Junction of the Ballynahinch, Kilmore and Saintfield Roads (10.25pm – 2.10am)
 - Junction of the Belfast and Annacloy Roads (10.25pm – 11.00pm)
 - Junction of the Loughinisland and Annacloy Roads (10.25pm – 11.00pm)
 - Downpatrick Street, Crossgar (10.25pm – 2.10am)
 - Junction of Belfast Road and Lisburn Street, Saintfield (10.25pm - 1:20am)
 - Junction of Ballynahinch Road/ Saintfield Road, Crossgar (10.25pm – 1:20am)

- Junction of the Belfast and Ballynahinch Roads (10.29pm onwards)
- Rowallane Crossroads (10.35pm onwards)
- Junction of the Annacloy, Tullynacree and Loughinisland Roads (10.35pm – 11.00pm)
- Junction of the Annacloy and Tullynacree Roads (10.50pm – 2.30am)
- Loughinisland and Annacloy Roads (11.00pm - 1:15am)

The positions of these VCPs are indicated in a map at Appendix 4.

- 7.14 My investigation has established that the VCPs were resourced by police officers attached to Downpatrick, Crossgar, Saintfield and Donegall Pass RUC Stations. A review of available documentation was able to identify some, but not all, of the police officers, who conducted the VCPs.
- 7.15 Records from the VCPs indicate that nothing suspicious or out of the ordinary was noted. Whilst some car registration details were noted it is unlikely that the details of every vehicle, which passed through the VCPs were recorded on the night in question.
- 7.16 The locations of the VCPs would have covered the potential main routes, which those responsible for the murders at Loughinisland could have taken in fleeing the scene although reconstructions of several viable 'getaway routes' by my investigators would suggest that by the time the VCPs had been established the killers would probably have made good their escape.
- 7.17 Upon hearing of the attack via radio transmissions, the military proactively set up VCPs on the Newcastle Road, north of Dunnew Road, and the Loughinisland Road, north of Tareesh Lane.

- 7.18 A military helicopter was tasked at 10.50pm in an attempt to locate the car used by the attackers to flee the murder scene. It returned to its base at 1:13am. Although documentation relating to this flight is no longer available, my investigators established that either a Lynx or Gazelle helicopter from Bessbrook or Aldergrove would have been deployed by the military at the time, both of which had an optimum flight time of around 2½ hours, which would be consistent with the aforementioned timing. My investigation recorded a statement from a witness, who recalled seeing a helicopter using a searchlight in the Church Road area of Crossgar following the attack.
- 7.19 Police Officer 8, a Detective Superintendent, was appointed SIO to investigate the murders with a Detective Chief Inspector initially his Deputy (DSIO), but who was soon replaced by Police Officer 4. An Incident Room was established at Downpatrick RUC Station with thirty staff. The investigation was managed on the Home Office Large Major Enquiry System (HOLMES) with effect from 19 June 1994. (The inquiry was transferred to an updated version of the HOLMES system – HOLMES 2 – on 6 June 2005) .
- 7.20 My investigation has concluded that at the outset the police investigation was properly resourced but that the inquiry was quickly scaled down due to other investigative commitments. A senior police officer (Police Officer 18), who assumed responsibility for the Loughinisland Murder Investigation in 2005 expressed the view to my investigators that under-resourcing of the inquiry by South Region Command during 1994 had an adverse impact on the investigation.
- 7.21 My investigators sought to engage with Police Officer 8 on several occasions as a witness in respect of this and other investigations but he has declined to assist. My investigators were unable to locate any relevant journals or logs relating to the decision making by Police Officer 8 during the course of the Loughinisland investigation.

- 7.22 As reflected earlier in this statement, Police Officer 4, who is also retired, did agree to meet with my investigators.
- 7.23 The absence of records relating to investigative policy and decision making coupled with the decision of Police Officer 8 not to assist, hindered my investigation's efforts in establishing the rationale behind a number of key policing decisions and strategies.
- 7.24 Other inquiries by my Office have established that such 'Policy/Decision Logs' were being routinely used by senior detectives in the RUC during 1994.
- 7.25 **The Heights Bar Crime Scene**
- 7.26 Forensic examination of the Heights Bar crime scene lasted two days and forty exhibits were recovered by police. The scene was photographed and video recorded prior to being released at 7.50pm on 20 June 1994.
- 7.27 Twenty eight discharged cartridge cases were recovered from the bar and another was found behind a hall door. Some twenty-three bullet fragments were also recovered. In February 1996 a further bullet head was recovered from a wall during a refurbishment of the bar. This was handed to police, however, no statements were taken in respect of the continuity and integrity of this exhibit. There were no CCTV opportunities at this location.
- 7.28 Three fragmentary palm prints and a fingerprint were recovered from the area of the entrance to the bar. These marks were of significant interest given witness evidence that this was where the gunmen stood during the attack. Fourteen additional marks were obtained from other items seized and exhibited from within the bar.

- 7.29 In addition to ballistic exhibits, a number of other items were recovered from the bar, all of which were submitted for forensic examination except for a number of cigarette butts and curtains. My investigation was unable to establish why these items were not submitted for examination. The police can no longer locate the cigarette butts, which is unfortunate in view of the forensic evidence opportunities now presented by advances in DNA analysis. However, there was no suggestion that those responsible for the attacks were smoking or had been in the bar previously and left cigarette butts.
- 7.30 An additional fifty-one exhibits were recovered from the injured and deceased, including bullet heads.
- 7.31 Nine fingerprints were eliminated against persons who were legitimately in the bar on 18 June 1994. The five remaining fingerprint marks were found on an ashtray, an empty crisps packet, a bottle and a jug.
- 7.32 In 1994 the outstanding fingerprint marks were compared with those of a number of individuals including Persons K, I, B, S & T but the comparison proved negative. In 2005 the outstanding fingerprints were compared against further suspects including Persons A & W, again with negative results.
- 7.33 Two fingerprint marks recovered from a jug were subsequently found to belong to a Special Branch officer, whose fingerprints were obtained when he was arrested for an unrelated matter on 25 June 2009. The remaining three fingerprint marks remain unidentified.

- 7.34 This officer was at the time attached to Special Branch at Donegall Pass Police Station. When interviewed by my investigators he stated that he had not been in the Heights Bar on the night of the murders but had previously drunk in the bar with a relative, who was a 'local'. He stated that he was acquainted with the owners of the bar and normally drank whiskey and water or Guinness. He added that he played no role in the subsequent murder investigation. He could not recall when he was last in the bar prior to 18 June 1994. The officer's relative corroborated the reason for his presence at the bar.
- 7.35 A review by my investigators of the intelligence handled by the Special Branch Officer did not indicate any relevance to Loughinisland or any linked murders or incidents.
- 7.36 Whilst en route to the Heights Bar, following the attack on 18 June 1994, a police patrol recovered *'what looked like a rag discarded from a vehicle.'* The item was actually a blanket and was submitted for CDR (Cartridge Discharge Residue) examination. There is no record of this examination having taken place.
- 7.37 The exhibit was eventually submitted to Birmingham Forensic Science Service (FSS) for CDR, DNA and fibre examination in December 2007. It was noted to be still in its original paper bag as opposed to the preferred nylon exhibit packaging. Sixteen tape lifts were taken from the exhibit. An initial DNA assessment was conducted, which concluded that the blanket was suitable for a targeted examination of its corners on the basis that these were the areas which persons lifting the article were most likely to hold. To date, this examination has not taken place. The exhibit is currently retained at the PSNI's Serious Crime Exhibits Store.

7.38 My investigation has concluded that the initial police response to the Loughinisland murders was appropriate and timely. A scene was identified and held at the Heights Bar and relevant agencies tasked. Cordons were established, a Crime Scene Log commenced and the scene forensically examined. A number of exhibits were recovered from this scene, during post mortems of the deceased and at other locations. It is unfortunate that a bullet head was not recovered until February 1996 but this was of little evidential value and did not undermine the murder investigation.

7.39 **The Triumph Acclaim (VRM HJI 807)**

7.40 At 9.40am on 19 June 1994 a local farmer visited one of his fields at Listooder Road, Crossgar to attend to his sheep. He noted that the gate to his property was open and saw that a red Triumph Acclaim with the VRM, HJI 807 had been left close to a hedgerow inside the field.

7.41 The farmer, who was unaccompanied at the time, states that he had no physical contact with the car and, having confirmed there were no occupants in the vehicle, returned the short distance to his home and telephoned the police.

7.42 In my view the vehicle provided one of the best opportunities for recovery of forensic evidence presented to the Loughinisland murder investigation and the absolute evidential integrity of the car should have been paramount to police officers attending the scene.

7.43 The first police officers to arrive at the scene did so at 10.20am and without entering the field secured it with tape, ensuring that both ends of Listooder Road were blocked to public access.

- 7.44 Following examination of the car by an Ammunition Technical Officer (ATO) for explosive devices, which was correct practice in such circumstances, the Triumph Acclaim was removed on a trailer to the NIFSL.
- 7.45 While awaiting removal of the car detectives in attendance entered the vehicle to establish if the lights were functioning and if there was any petrol in the car. This was unnecessary and threatened to compromise the evidential integrity of the vehicle.
- 7.46 My investigation found no evidence that an examination of the field itself was conducted for footprints or soil samples, which might have been compared with the footwear of suspects subsequently identified. Consequently, I have concluded that there were missed forensic opportunities at this scene due to some poor and undisciplined scene management.
- 7.47 Shortly thereafter, police made enquiries with the licensing authorities and the last registered keeper of the Triumph Acclaim was identified as Person O who lived at an address in North Belfast.
- 7.48 My investigators found no record of the considerations of Police Officer 8 as to the strategy, if any, he intended to pursue in dealing with Person O. This is particularly surprising in view of the early police suspicions that the car had not been reported stolen but had broken down and had been abandoned . Indeed it is difficult to comprehend why Person O was not, at that stage, considered a suspect and why appropriate, properly supervised resources were not invested in this line of enquiry.

- 7.49 Instead, the Murder Investigation Team telephoned Tennent Street Police Station and requested that local police visit Person O. This was the beginning of a sequence of events, which due to poor decision making, if not malpractice, is likely to have undermined significant evidential opportunities and contributed to a loss of confidence in the police investigation by the bereaved families of Loughinisland.
- 7.50 In a 1994 statement, Police Officer 9, a uniformed Inspector, stated that he visited the address at 9.30am as a result of a request from police at Downpatrick. He spoke to a woman claiming to be Person O's wife, who told him that Person O still owned the car but had taken it to a garage to be fixed as the camshaft was broken.
- 7.51 When seen by my investigators, Police Officer 9 said that he had not been told about the significance of the enquiry but understood the request from Downpatrick to be a 'simple owner's check' and at the time he did not make any notes. The decision by the Loughinisland Murder Investigation Team not to deploy their own detectives to locate the last registered owner of the car or to provide Police Officer 9 with a comprehensive briefing, not only risked compromising his safety but also served to undermine this crucial line of enquiry.
- 7.52 As the first report police received in relation to the Triumph Acclaim being found in a field at Listooder Road was not until shortly after 10.00am, Police Officer 9's note that he called at the address at 9.30am is incorrect. He also failed to establish the correct identity of the woman with whom he had spoken, the whereabouts of Person O or the garage to which the car had allegedly been taken for repair. If the account given by the female had been truthful, the Triumph Acclaim might have been taken from the point of repair for use in the murders at Loughinisland. I acknowledge, however, that there is no evidence that Police Officer 9 was provided with sufficient information to enable him to understand the critical nature of these enquiries, a failing for which the murder investigation was entirely responsible.

- 7.53 My investigators established that the woman to whom Police Officer 9 had spoken was not the wife of Person O but a female with whom he had engaged in an on/off relationship. She also told my investigation that Person O ran a stall for Person P at Nutts Corner Sunday market and consequently that it was likely that the latter would have been the first person to see Person O on his return to Belfast. After Police Officer 9 had left her home the woman had telephoned Person P and told him of police interest in the car.
- 7.54 My investigators established that the background to Person P's involvement with the Triumph Acclaim was a car 'ringing' scam involving selling distinctive VRMs. Person P had purchased the car intending to sell the registration number but in the interim had allowed Person O to use the vehicle for his market business. Also involved in the scam was a contact in England and Person Q, the latter of whom is now known due to associations with the UVF in Belfast.
- 7.55 Person P later told my investigators that as soon as he was informed of the police interest in the car he contacted Person Q who had already purchased the car from Person O. Person P was first spoken to by police in 2011.
- 7.56 The police investigation established that on the same day, Sunday 19 June 1994, Person Q attended Tennent Street Police Station, where he was seen by local CID officers, Police Officer 10, a Detective Sergeant, who was known to him, and Police Officer 11. Police Officer 10 recorded a witness statement from Person Q.
- 7.57 There has been some dispute as to whether Person Q telephoned Police Officer 10 or the officer telephoned him. I believe it is more likely that having been contacted by Person P and alerted to the gravity of the situation, Person Q sought to immediately distance himself from events at Loughinisland by contacting police officers he knew in order to provide an early account to them of his involvement with the car.

- 7.58 Police Officers 10 & 11 were not part of the Loughinisland murder investigation but when interviewed by my investigators stated that they had pursued these enquiries with the knowledge of the SIO, Police Officer 8.
- 7.59 At approximately 5.30pm later the same day when Person O returned from Nutts Corner Market he was told by Person P that the police at Tennent Street wished to speak to him. Person O then telephoned Tennent Street Police Station. My investigators saw a log maintained at the station recording that Person O telephoned the CID office at 6.30pm and was told to phone back in thirty minutes.
- 7.60 Person O later attended Tennent Street Police Station, where he provided a witness statement to Police Officer 10. Later the same evening the statement was passed to Police Officer 12, a Detective Constable attached to the Loughinisland Murder Investigation Team, together with the statement Police Officer 10 had recorded from Person Q.
- 7.61 Appended to Person Q's statement was a note written by Police Officer 12, a Detective Constable, directing that any further contact with the witness should be through Police Officer 10.
- 7.62 The bereaved families of Loughinisland are, quite understandably, concerned that in the context of the relationship, which existed between Police Officer 10 and Person Q, the conduct of these enquiries was designed to afford the latter 'protection' from culpability in the supply of the Triumph Acclaim to those responsible for the murders or more direct involvement in the attack.
- 7.63 Persons O and Q provided corroboration of each others' accounts with Person Q explaining that he had sold the car to Person R, from whom Police Officer 12 recorded a witness statement.

- 7.64 Person R agreed that he had purchased the car from Person Q but had sold it on to Person S in late May 1994.
- 7.65 In a statement provided by Person S to Police Officer 12 on 19 June 1994, he claimed to have bought the Triumph Acclaim approximately three weeks earlier from Person R for £100 as he was in the business of buying and selling cars and had previously bought other cars from Person R.
- 7.66 Person S stated that having advertised the car for sale in the Belfast Telegraph published on 17 June 1994, he had received a number of calls enquiring about the car and had told the callers that the car would be available for viewing at his home after 7pm that evening.
- 7.67 My investigators recovered an advertisement from the Belfast Telegraph on 17 June 1994, which shows a Triumph Acclaim advertised for £170 with the telephone number of Person S.
- 7.68 Person S told police that at about 7.30pm on 17 June 1994 a man called at his house and after taking the car for a test drive offered him £150 for the vehicle which he accepted. Person S was paid with seven £20 notes and one £10 note.
- 7.69 Person S stated that he had completed formalities with the man, including documentation, in his kitchen and that when he had asked the man for his name and address he was provided with the name of Person T and an address at Ballysillan Park, Belfast.
- 7.70 Person S would not, however, have been in possession of any documentation for HJI 807 as it had all been sent to DVLNI at Coleraine, thus raising doubts as to the circumstances of the sale.

- 7.71 The witness statement recorded from Person S lacked thoroughness and detail. There is no mention of what documentation he claimed to have given to Person T. Although Police Officer 12 recovered two of the £20 notes and a receipt book from Person S the statement does not account for the outstanding money.
- 7.72 There was no forensic examination conducted at the home of Person S, no interrogation of records relating to the phone calls he had received during 17 June 1994 and no house to house enquiries undertaken in the vicinity of his home.
- 7.73 Although a written statement was recorded from the partner of Person S, it was not recorded for a further month and it was never established by police if this witness was present when the transaction took place or if she saw the alleged purchaser of the car or knew anything about his identity.
- 7.74 Police Officer 12 visited the address provided by Person S but no-one living there knew of anyone of that name.
- 7.75 My investigators have established that police held intelligence at that time relating to a prominent member of the UDA living in the Ballysillan area with the same name as that provided by Person S but no enquiries were conducted to eliminate him from the police murder investigation.
- 7.76 It is clear that the enquiries conducted by Police Officers 10 & 11 accelerated the process of identifying parties involved in the ownership of the Triumph Acclaim. It is also important to note that my investigation has not seen evidence or intelligence linking Person Q to the Loughinisland attack. However, on the morning following the murders police could not have known who was involved in supplying the Triumph Acclaim used by the perpetrators of the attack at Loughinisland. Consequently police enquiries with Persons O, P, Q, R & S should have been subject of greater investigative rigour.

The superficial approach adopted for the investigation of the car's ownership, which resulted in potential evidential opportunities being missed, can be attributed to the SIO's failure to resource and implement enquiries commensurate with the importance of this crucial aspect of his inquiry. I am also of the view, however, that the nature of the relationship between Person Q and Police Officers 10 & 11 and their interaction on the morning of 19 June 1994 was a contributory factor in the flawed approach to these enquiries. Subsequent revelations associated with this relationship have, understandably, provided grounds for suspicions to foment for the victims and survivors of the Loughinisland attack as to the circumstances, in which Police Officer 10 came to record the statement from Person Q.

7.77 In speaking to my investigators, Police Officer 12 expressed disquiet at the relationship, which he perceived to exist between Police Officer 10 and Person Q and whether this had at some level obstructed his enquiries. Indeed this former officer was generally critical of the quality of the RUC murder investigation. My investigators established from a woman, with whom he was engaged in a relationship at the time that he had expressed similar sentiments to her at the time of the inquiry.

7.78 Of particular concern is the recollection of Police Officer 12 of a conversation, which he had in a pub in 1994 with another Detective Constable, Police Officer 20, who was also attached to the Loughinisland murder investigation. Police Officer 12 stated that this officer had told him that there was a 'tout involved' and that on 18 June 1994 the UVF attack on the Heights Bar had initially been called off as the car to be used had broken down. However, when the vehicle was repaired, the attack proceeded later the same day as planned. On the basis of such contemporaneous reporting by an informant, Police Officer 12 had assumed that there would have been a security operation mounted, which must have been stood down on receipt of the information that the gang involved had cancelled their planned attack.

7.79 My investigators have spoken to Police Officer 20, and a third officer, Police Officer 21 who Police Officer 12 stated was in their company on the evening of the conversation though, according to Police Officer 12, not present during the exchange about Loughinisland. Police Officer 20 denied the conversation took place, as described by Police Officer 12, adding that for security reasons members of the RUC did not frequent the pub, at which this conversation allegedly took place. While she was not privy to the conversation, the woman with whom Police Officer 12 was engaged in a relationship has told my investigation that she was acquainted with Police Officers 20 and 21 and that she had seen them at the pub in question at or around the time described by Police Officer 12.

7.80 It is important to note that Police Officer 12 was unaware of the 'tout', to whom Police Officer 20 had allegedly alluded and that my investigation has seen no evidence or intelligence that the Security Forces were aware that the UVF were planning to mount an attack at the Heights Bar and/or had at any stage mounted an operation to deter the activity.

7.81 **Sightings of HJI 807**

7.82 Following recovery of the Triumph Acclaim, the RUC issued an appeal, which featured details of the atrocity and a photograph of the recovered Triumph Acclaim, showing the registration number.

7.83 The appeal was focussed on anyone, who might have seen the vehicle, particularly on Friday 17 or Saturday 18 June 1994.

7.84 Detectives recorded a total of 33 statements from members of the public, who believed that they had seen the car or a similar vehicle in the County Down area.

- 7.85 My investigators have considered reports of these sightings and where possible have re-visited the witnesses again. I have detailed a selection of the accounts from these witnesses but should emphasise that a degree of caution should be exercised in view of the fact that the registration number had been placed into the public domain prior to these sightings being reported.
- 7.86 *Friday 17 June 1994*
- 7.87 Witness 1 stated that between 11.00am and 12.00 noon she saw a red Triumph Acclaim with a partial VRM of HJI outside the graveyard at Church Road, Kilmore, Crossgar in which she thought there were three people. The witness was later shown HJI 807 by detectives and identified it as the vehicle she had seen outside the graveyard.
- 7.88 Witness 2 stated that at about 1.45pm she saw a red car VRM HJI 807 at Dromore Street, Ballynahinch.
- 7.89 Witness 3 stated that at 10.15pm he followed a red Triumph Acclaim along the Clough Road to Castlewellan Road. He provided the registration number as HJI 707. Although in his original account to police he stated that he thought the occupants were elderly, he told my investigators that there were three young men in the car. He was never asked by detectives investigating the murders at Loughinisland to view the actual vehicle. (My investigators established that the registration mark HJI 707 was first issued by DVLNI in 2007)

7.90 *Saturday 18 June 1994*

7.91 Witness 4 was identified by police, who stated that she saw a red square car with a Tyrone registration JI at 3.30pm on the Ballygowan Road, Saintfield. She noted that the three men in the vehicle were young one of whom had a shaven head. When she saw the vehicle HJI 807 on television news she recognised it instantly as the vehicle she had seen and called the police.

7.92 Witness 5 stated that he returned to his home at Drumaness at 6.10pm, having been to Ballynahinch to buy drinks for the World Cup football match. As he unloaded his car he saw a maroon coloured Triumph Acclaim pull across his driveway. The witness had noted the car contained three young men. He entered his house and looked out of the window but the Triumph Acclaim had driven off. He was later shown HJI 807 by detectives and identified it as the vehicle parked across his driveway at 6.10pm on Saturday 18 June 1994.

7.93 Witness 6 stated that she was driving along Bucks Head Road passing Noel Cochrane's scrap yard at 6.50pm when she saw a red Triumph Acclaim parked on the right hand side of the road facing towards her. She noted that the vehicle had a part registration HJI and contained four males. The witness was later shown a poster of HJI 807 by detectives and identified it as the same car she had seen at Bucks Head Road.

7.94 Witness 7 stated she saw a dirty red square shaped car containing three persons parked on a grass verge at Annacloy Road opposite PF Tyres at 8.15pm. She was later taken to Saintfield RUC station by detectives and shown HJI 807 and confirmed it was the vehicle she had seen at Annacloy Road.

- 7.95 Witness 8 told police that he was travelling from Ballynahinch along the Crossgar Road at 10.50pm when at a point between the Raleagh Crossroads and Drumaghlis Road he was overtaken by a Triumph Acclaim with the three digit number 807.
- 7.96 These potential sightings of the Triumph Acclaim raise doubts as to the truthfulness of the account provided to police by Person S which emphasises the inadequacy of enquiries undertaken by the Loughinisland Murder Investigation Team in respect of this significant area of their inquiry.
- 7.97 **Forensic examination of the Triumph Acclaim**
- 7.98 Having been removed from the field at Listooder Road, the Triumph Acclaim was taken by means of a low loader to NIFSL, where it underwent a thorough examination for fingerprints but none was found.
- 7.99 Sweet papers, tiger tokens (petrol stations coupons) and a Triumph Acclaim handbook recovered from within the vehicle were chemically treated for fingerprints but again none was identified. It was later established that the sweet papers had been left in the car by the children of Person S prior to its alleged sale.
- 7.100 Seat covers fitted to the vehicle were removed and later examined against boiler suits recovered from a holdall at Carsonstown Road. Scientists found strong supportive evidence of fibre transfers between the boiler suits and the seat covers fitted to the front passenger seat and the rear seat.
- 7.101 The vehicle was taken after examination to Saintfield RUC Station, where it was stored in a yard exposed to the elements.

- 7.102 The vehicle was subsequently returned to NIFSL, where it was examined by a Senior Scientific Officer for the purpose of establishing if the vehicle was driveable and to examine why the horn continually sounded when the battery was in a fully charged state. It was established that the engine had seized and was not driveable.
- 7.103 The continuous sounding of the horn was attributed to a wiring fault in the steering column, around which a piece of yellow twine had been positioned.
- 7.104 There is no recorded information as to whether or not the twine was removed or forensically examined. Its origin is not known and would appear to have been applied to the car after Person O had possession of the vehicle.
- 7.105 The Triumph Acclaim was returned to Saintfield RUC Station, where it remained until its destruction.
- 7.106 **Destruction of the Triumph Acclaim HJI 807**
- 7.107 The bereaved families of Loughinisland are concerned about the circumstances, in which the Triumph Acclaim was destroyed in April 1995, less than a year after the murders.
- 7.108 My investigators established that following initial examinations at NIFSL the car was delivered to Saintfield Police Station on 23 June 1994. It was returned to NIFSL on 28 June 1994 for further examination after which, on 8 December 1994 it was again moved to Saintfield Police Station.

7.109 On 7 April 1995 Down District Council's Environmental Health Department tasked a local scrap metal company to collect the car from Saintfield RUC Station for disposal. My investigators conducted enquiries with the company, who confirmed that the car had been crushed and baled at their premises.

7.110 Police Officer 13, the Station Sergeant responsible for maintaining the yard at Saintfield Police Station, told my investigators that he had submitted a report to Police Officer 14 requesting authorisation for disposal of the vehicle due to its poor condition. Following approval of his request, Police Officer 13 arranged for the vehicle to be removed. DVLNI records also provide a record that the vehicle was scrapped at this time.

7.111 The written authority for disposal of the car cannot be located. Police Officer 14 advised my investigators that he was not responsible for authorising its disposal, making the observation that it would only have taken place on the 'instructions of a higher authority'. The bereaved families speculated that Police Officer 14 could be connected to one or more of those responsible for the murders at Loughinisland, however, I am satisfied that there is no basis for such concerns.

7.112 Both Police Officers 13 & 14 told my investigators that they believed the SIO of the Loughinisland murder investigation, Police Officer 8, had given his permission for disposal of the car. As Police Officer 8 has not engaged with my investigation I have been unable to verify this with him. I have not identified any documentary record to confirm the murder investigation team were consulted and agreed with disposal of the car.

7.113 [REDACTED]

7.114

[REDACTED]

7.115

Witness U

7.116

A resident of Taresh Lane, Witness U, provided a statement to police stating that between 10.15pm and 10.25pm on the night of the murders at Loughinisland she saw, from her bedroom window, a red coloured car travelling at speed past her home towards the Loughinisland Road.

7.117

Witness U's statement contained little detail apart from the colour of the vehicle and did not provide descriptions of the driver or other occupants of the car. In a further statement at the time, the witness stated that she had provided police with details of a white Ford Sierra car parked at McMullan's Bar at 11.00pm on the night of the murders.

7.118

In late 2009, a solicitor representing the Loughinisland families informed my Office that Witness U had provided him with a further account containing additional details of the vehicle and naming the driver as Person V. This information was not in Witness U's original statement, although she maintained that these details had been provided to police at the time.

7.119

My investigators interviewed the police officer who recorded the original statement from Witness U. The officer was adamant that she did not provide the additional information now in dispute.

- 7.120 In addition, Witness U alleged that a Reserve Constable serving in the PSNI during 2009, Police Officer 15, had told her that he had been in possession of the Triumph Acclaim used in the murders. The witness said that some time in 2003 she had been at his yard, which he used for storing cars he had available for sale. Police Officer 15 had lifted a tarpaulin sheet to reveal a red Triumph Acclaim, which Witness U recognised as the vehicle she had seen driving past her house on 18 June 1994.
- 7.121 My investigators interviewed Witness U in 2010 and she reiterated the account provided to the solicitor, adding that she had also been approached by Person V's uncle, who had told her that his nephew had admitted being the driver of the Triumph Acclaim and wanted to show her photographs of his nephew so she could identify him. My investigators established there had been a longstanding dispute between Person V and his uncle.
- 7.122 The bereaved families of Loughinisland raised an additional concern in respect of Person V in that they are concerned that he was awarded a 'Royal Prerogative of Mercy' which had the effect of shortening a prison sentence he was serving. They are concerned that this may be associated with his alleged involvement in the murders at Loughinisland.
- 7.123 My investigation communicated with the Ministry of Justice on this matter and I am aware of the basis on which Person V received a 'Royal Prerogative of Mercy', which is unrelated to the murders at Loughinisland.
- 7.124 The investigation of the allegations made by Person U led investigators from my Office to arrest and interview Police Officer 15. He denied ever having been in possession of the Triumph Acclaim. A file of evidence was submitted to the Public Prosecution Service, who directed 'No Prosecution' of the officer on the basis that the available evidence did not provide a reasonable prospect of conviction.

- 7.125 More recently my investigators revisited the allegations made by Witness U, particularly in relation to her account that she could identify the driver of the red car, which passed her house at speed on the night of the murders. As part of these enquiries a reconstruction was carried out on the 20th anniversary of the Loughinisland attack at the same time of day that the incident occurred.
- 7.126 The view, which would have been available to Witness U, was photographed and videoed. These enquiries suggest that Witness U could not have identified the driver of the car, which she stated passed her home on the night of the murders.
- 7.127 It is also noteworthy that the direction in which the car, described by Person U, was travelling is inconsistent with both other sightings of the vehicle and the deposition site of the Triumph Acclaim at Listooder Road.
- 7.128 In summary, Witness U's evidence does not assist me in reaching any substantive determinations in respect of this investigation.
- 7.129 **House to House Enquiries**
- 7.130 Whilst the lack of related records has made it difficult to ascertain the parameters of house to house (H2H) enquiries, they appear to have focused on three main areas; (1) primary scenes at the Heights Bar, Listooder Road and Carsonstown Road; (2) possible routes that the killers may have driven between the Heights Bar and Listooder Road; (3) areas where other vehicles were sighted in suspicious circumstances.
- 7.131 These enquiries were carried out between 19 June 1994 and 12 September 1994 by uniform police and detectives. The HOLMES database was used to manage both these enquiries and others arising.

House to house enquiries were conducted in the following areas:

1. Annacloy Road, Downpatrick between 19 and 28 June 1994. These were initiated after a witness reported seeing a white Ford Sierra with 'R' plates parked at a local pub on the evening of 18 June 1994. The same car was later seen 'speeding' along the Loughinisland Road towards Crossgar between 10.00pm and 10.10pm on the same night. A number of H2H forms were not completed in respect of these enquiries.
2. Annadorn Road, Downpatrick. These were carried out after a witness informed police she saw a red Triumph Acclaim parked there on 18 June 1994 at around 7.00pm. This sighting was near Cochrane's Scrap yard.
3. Ballyagherty Road, Saintfield. These enquiries appear to have originated from information forwarded to the investigation team suggesting that a named individual was involved in the murders. Enquiries were conducted at an address at Ballyagherty Road, an address with which the individual was associated, with negative result. Although the person subject of the information was not spoken to during the original police investigation he was interviewed in 2006.
4. Ballynahinch Road, Downpatrick. These were conducted after a witness stated that they had seen a car 'similar' to the Triumph Acclaim linked to the murders travelling at speed along the Ballynahinch Road towards Crossgar. This route would have led to Listooder Road, where the car was eventually recovered. H2H enquiries along the road proved negative.
5. Buckshead Road, Downpatrick. H2H enquiries were conducted after a witness told police that she had seen a red car travelling at speed towards Buckshead Road after the murders. These proved negative.
6. Carsonstown Road, Saintfield, and surrounding areas. These were commenced following the arms find on the same road on 4 August 1994. They proved negative.

7. Church Road, Kilmore, Crossgar. This was a possible route taken by the killers to the Listooder Road scene. This theory was fuelled by a sighting of a red or maroon Triumph Acclaim parked near the graveyard on the morning of 16 or 17 June 1994. The car had the VRM 'HJI'.
8. Cushowen Place and Linnhurst Park, Drumaness. These were conducted after a witness reported seeing a car 'very similar' to the one linked to the murders leaving the latter location on the evening of the murders. Around two minutes later the witness saw two Army landrovers drive out of the same park. Police enquiries established that a Royal Irish Regiment (RIR) mobile patrol had been in the area at around 9.20pm that evening. They were accompanied by an RUC officer, who provided a statement to the investigation team making no reference to any such vehicle.
9. Listooder Road, Crossgar, and surrounding area. This area was where the Triumph Acclaim linked to the murders was found in a field on the morning of 19 June 1994. The family home of Persons A & B was in the vicinity of the location at which the Triumph Acclaim was discovered, as was the address of Police Officer 15, to whom reference will be made later in this statement.
10. Tareesh Lane, Crossgar. This area was visited following an account provided by a member of the public, Person U, which is also detailed elsewhere in this statement. H2H enquiries were conducted on 19 June 1994 but a review of completed forms would indicate that not all the addresses on the road were visited.
11. Todds Hill, Saintfield, and surrounding areas. These enquiries originated from information provided by a witness that three men had entered the Rowallane Inn, Saintfield at around 11.45pm on 18 June 1994 and left again a short time later without buying a drink. A police VCP was in place outside the bar until 1:15am on 19 June 1994. When spoken to by detectives, the officers who resourced the VCP stated that they had not noticed three men but added that there had been a lot of pedestrians in the area at the time.

- 7.133 A review of the HOLMES account by my investigators established that on occasions street indices were marked as complete when a number of addresses had still not been visited and residents interviewed. There is nothing to suggest that follow-up enquiries were conducted at these addresses. This was most noticeable on the Carsonstown Road. House to house enquiries do not appear to have been considered in and around the addresses of those suspects identified during the early stages of the investigation.
- 7.134 Witness enquiries in the Listooder Road area commenced following the discovery of the Triumph Acclaim on 19 June 1994. The car had been abandoned near the family home of Persons A and B, who quickly emerged as suspects in the police investigation, but the occupants were not seen by police until 4 July 1994. There is no documented rationale for the delay in this enquiry especially as other houses on the road were visited on 19 June 1994.
- 7.135 Given the proximity of the vehicle deposition site to this address the delay in these enquiries is a matter for concern. I consider this amounts to evidence of a reluctance by police to conduct enquiries in the areas of suspects' addresses. Indeed no enquiries were conducted in the Clough area where both Person A and Person K resided.
- 7.136 Concerted police activity should have been expected in respect of the searching of key suspects homes and premises controlled by them in an attempt to recover evidence. Documentation reviewed by my investigators revealed inconsistencies between records of which house occupants were spoken to and the RUC HOLMES Account.
- 7.137 The consequence of this was that potential witnesses may have been missed. There was no record of follow-up visits or letter drops to addresses, where no-one had been at home during initial police visits, indicating a lack of thoroughness on the part of police completing and recording these enquiries.

- 7.138 There is evidence of a more thorough approach to house to house enquiries in respect of routes those responsible for the murders may have taken in travelling between the scene of the murders and Listooder Road, the location at which the Triumph Acclaim was abandoned. There is evidence that follow-up enquiries were conducted by police at those addresses, where there was no initial response. Letters were also left at addresses asking occupants to contact the Incident Room.
- 7.139 Enquiries were also conducted in areas, where there had been sightings of suspicious vehicles.
- 7.140 **Potential Routes taken by those responsible for the murders at Loughinisland**
- 7.141 The theme from witness accounts obtained in 1994 was that the killers approached The Heights Bar from the general direction of the Newcastle Road and fled along the same road in the direction of Annacloy.
- 7.142 My investigators identified a number of possible 'getaway routes' in the context of witness sightings of the Triumph Acclaim following the attack at the Heights Bar and the deposition sites of the car at Listooder Road and firearms at Carsonstown Road. This was in order to test if the VCPs, which are recorded as having been established should, in the context of the timings when they were set up, have intercepted those responsible for the attack at the Heights Bar.
- 7.143 The assessment of my investigation is that with local knowledge of the road network in the area, there is a variety of minor roads, which the killers could have taken in order to avoid VCPs, passing the locations of the VCPs before they were established. As an example, adhering to speed limits, my investigators travelled from the Heights Bar to the location of the VCP at the Annacloy Road/Loughinisland Road junction within eight minutes.

7.144 **Intelligence Reporting on the Loughinisland Murders**

7.145 Police Officer 7, the Detective Inspector with responsibility for Special Branch Offices in the RUC's 'G' Division, told my investigators that on the morning of 19 June 1994, the day after the murders at Loughinisland, he was tasked by the Detective Chief Superintendent in charge of Criminal Investigations in South Region, (now deceased) to provide intelligence held by Special Branch in respect of Persons A, M, K, I & B. Police Officer 7 obtained the relevant intelligence from the Detective Chief Superintendent in charge of South Region Special Branch and on his instructions shared it with the Loughinisland murder incident room on the same day.

7.146 Police Officer 7 said that the same suspects were later identified in written form (with additional intelligence) to the Loughinisland Murder Investigation Team. My investigators identified this document, dated 5 July 1994, which I have paraphrased and anonymised, from within the police investigation papers:

1. A UVF unit which is directed from the Shankill Road is composed of members from Belfast and South Down. The person in charge of the unit is Person I.
2. Person I directed the murder of Peter McCormack at the Thierafurth Inn, Kilcoo on 19 November 1992 from (named premises) at Dee Street in East Belfast. The vehicle used in the attack was stolen from Belfast and delivered to those responsible for the murder. The three persons involved at the Thierafurth Inn were Persons A, M & K.
3. Person I also directed the operation, which led to the attempted murder of John Henry Smyth from (the named premises) at Dee Street. The vehicle was delivered to Persons A, M, K & B. Person K was seen by a local person driving the car from the scene.

4. On the day of the Loughinisland murders Person I was seen in Newcastle talking to Persons A & M in Main Street. It is known that Persons A, M, K & B are aware that there was a mechanical problem with the vehicle.
5. At 'tea time' on 18 June 1994 a phone call was made to 'Frenchies Bar' by either Person A or Person M asking to speak to Person B urgently.
6. Persons A, M, K & B are aware of the fact the getaway car broke down and was pushed into a field at Listooder Road. It was not the intention of the UVF to leave the vehicle at that location after the shooting.

7.147 Police Officer 7 told my investigators that he had not been aware of this information prior to the murders at Loughinisland, including the intelligence that a UVF Cell, involving Persons A, M, K, I & B, was operational in the area, for which he had responsibility for intelligence gathering. He was also unaware that some of these individuals had links to the security forces or that there was intelligence linking them to the murder of Peter McCormack at the Thierafurth Inn, Kilcoo.

7.148 Other than the aforesaid intelligence, Police Officer 7 told my investigators that little other intelligence was received by Special Branch in relation to the murders at Loughinisland.

7.149 Police Officer 6 stated that on the day following the murders at Loughinisland he attended the Murder Incident Room at Downpatrick with Police Officers 5 & 7 and briefed the investigating officers that Persons A, M, K & I may have been responsible. The Special Branch Officers were then requested to provide intelligence on the named suspects.

- 7.150 Police Officer 5 told my investigators that on the morning following the murders at Loughinisland he accompanied Police Officer 6 to the Murder Incident Room at Downpatrick Police Station, where they met with Police Officers 4 & 8 to whom they provided a verbal briefing on the identities of likely suspects.
- 7.151 He understood that Police Officer 7 later identified the same individuals to the Murder Investigation Team by way of a written message.
- 7.152 Police Officer 5 stated that he pursued intelligence gathering efforts in respect of the murders at Loughinisland but 'very little information' became available.
- 7.153 My investigation has identified evidence from within the RUC murder inquiry that by Monday 20 June 1994 police had requested research of Persons A, M, K & B, tending to support the accounts of Police Officers 5, 6 & 7 that on 19 June 1994 they identified these individuals as potential suspects to police investigating the Loughinisland attack.
- 7.154 Reliable intelligence was also available to police within a few days of the murders at Loughinisland that individuals involved in the murders, including Person I (who was described as a close friend of David Hamilton, shot on the Shankill Road two days earlier) had made their way to a bar on the Newtownards Road, East Belfast after the attack. By early July 1994 police had further information that Person I had been involved in car hijackings for use by the UVF throughout Northern Ireland. This information concerning Person I should be seen in the context of repeated intelligence reporting on his involvement, including planning, in the Loughinisland attack and leadership of a Shankill Road Unit of the UVF, a contingent of which operated in the South Down area.

- 7.155 On 24 August 1994 police received information that members of the gang, which police suspected had been responsible for the murders at Loughinisland, were informed on 21 August 1994 that they were liable to be arrested the next morning. Intelligence the following month stated that the source of this warning was a policeman. I have found no evidence that efforts were made by police to investigate this information.
- 7.156 The intelligence being received by police in respect of the murders at Loughinisland was characterised by an absence of reporting by sources at a more senior position of the UVF. As I have observed earlier in this statement, my assessment of the manner in which such sources were handled is that they were almost certainly not asked for specific information, which could have assisted the investigation of the attack. I have found no evidence that such sources were tasked with gathering information, which could assist the murder investigation.
- 7.157 Of equal concern was the willingness of Special Branch to continue engaging with sources, who they had identified in documented intelligence reporting as likely to have been involved at some level in the Loughinisland murders. If these individuals were culpable in the murders, then they took every opportunity in their intelligence reporting to distance and exculpate themselves by attributing various roles in the attack to other members of the UVF.
- 7.158 The police investigation of the Loughinisland murders categorised in excess of one hundred people as suspects. One of the suspects identified by police, who was a legitimate suspect, was not only an informant for the RUC at the time but continued in this role for a number of years after the Loughinisland attack.

7.159 **The Loughinisland Murders Police Suspect Strategy**

7.160 On 20 June 1994 the Loughinisland Murder Investigation Team reported to the Deputy Chief Constable that despite liaison with Special Branch there was no 'firm' intelligence in respect of the attack. The report continued; *'taking regard of the initial history of the weapons used that it is Belfast orientated with the probability of a local input. Historically in this general area of County Down murderous attacks have been sourced from Belfast, Lisburn and Mid Ulster. Local Loyalist suspects are being researched'*.

7.161 This provides an insight into the view of Police Officer 8 of the intelligence with which he had been provided and his ignorance of the plethora of information relating to the pre-cursor incidents previously outlined in this statement.

7.162 Both my investigation and subsequent police reviews of the 1994 RUC Murder Investigation have determined there to be an absence of documented coherent suspect or arrest strategies.

7.163 In the absence of records relating to such decision making and investigative policy, which were routinely maintained by police officers leading murder investigations in 1994, and the assistance of Police Officer 8, my investigation has been presented with significant challenges in understanding delays in the arrest of certain persons and why some individuals were arrested and others were not.

7.164 I am satisfied that on the basis of a sound intelligence case, Special Branch identified Persons A, M, K, I & B to the Loughinisland Murder Investigation Team as suspects on Sunday 19 June 1994.

- 7.165 This presented the investigation with a compelling case for early arrests, enabling the exploitation of a range of forensic and other evidential opportunities, including securing evidence through questioning. The failure of Police Officer 8 to seize this opportunity was catastrophic for his investigation.
- 7.166 Instead arrests were delayed and evidential opportunities were probably lost. Ironically when arrests were made they appear to have been informed by intelligence.
- 7.167 On 18 July 1994 Persons M, K, I, B, S & Z were arrested under Terrorist Legislation in force at the time and questioned about the Loughinisland attack.
- 7.168 Person M was interviewed on numerous occasions whilst in custody but failed to answer any questions put to him. A sample of hair was obtained from him and he was subsequently released from custody.
- 7.169 Person K was interviewed several times whilst in custody. He provided an alibi for his whereabouts at the time of the Loughinisland attack and denied any knowledge of, or participation in, the attack. A sample of hair was obtained from him prior to his release from custody, which a scientist observed to be a 'microscopic match' with a hair recovered from the holdall found at Carsonstown Road on 4 August 1994.
- 7.170 In the context of the similarity between a hair found in the holdall and the known association of Person K with the UVF gang, which the RUC suspected had been responsible for the Loughinisland murders, I am concerned at the failure of police to examine fully his alibi that he was with his girlfriend at the Clough Inn between 7.00pm and 11.00pm on the evening of 18 June 1994.

- 7.171 Person I was interviewed at length by investigating officers. Although the interview records relating to this individual are no longer available, apparently having been destroyed as a result of asbestos contamination, the circumstances of which I have detailed at Appendix 5, police records indicate that he denied knowledge of, or involvement in, the Heights Bar attack. A sample of hair was also obtained from him. I note that the custody record for Person I indicates that authority to take his fingerprints whilst in custody was refused by a Superintendent. However, I also note that the fingerprints of Person I were already on file with the RUC.
- 7.172 Person B was also arrested on 18 July 1994. He was interviewed on numerous occasions but no evidence against him was forthcoming. Whilst in custody, hair and DNA samples, fingerprints and a photograph were obtained from him before he was released from custody.
- 7.173 Person S was arrested and detained. Although arrested under Terrorist Legislation, I am satisfied that Person S was investigated due to his possession of the vehicle used in the Loughinisland attack. Person S repeated his earlier account to police and denied involvement in the Loughinisland attack. Whilst in custody his fingerprints and a photograph were taken by police. No other forensic samples were obtained from him and he was subsequently released from custody.
- 7.174 The final arrest made on 18 July 1994, was of Person Z. My investigation has established that this was as the result of confidential public reporting regarding his alleged involvement in the attack. Person Z was interviewed numerous times but denied knowledge of or participation in the Heights Bar attack. His fingerprints and a photograph were obtained prior to his release from custody.

- 7.175 On 18 July 1994 police searched the homes of Person A and Person AA but neither was arrested at that time. I have not identified any records, which inform me as to why these premises were searched on this day.
- 7.176 Although the Loughinisland Murder Investigation Team was in receipt of intelligence on 19 June 1994 that Person A might have been involved in the attack, he was not arrested until 22 August 1994. In the absence of records relating to associated decision making, my investigation has not established the rationale for this delay.
- 7.177 In addition to Person A, Persons B, K and M were also arrested on 22 August 1994 under Terrorist Legislation in respect of the Heights Bar attack. These arrests followed the discovery, on 4th August 1994, of the holdall containing weapons, boiler suits, balaclavas and gloves at Carsonstown Road near Saintfield. A VZ58 rifle was also found at this time, close to the above mentioned holdall. On 8 August 1994 police had also received further information that Persons M and N were the gunmen responsible for the murders at Loughinisland and that the getaway car had been driven by another UVF man from Belfast, identified the following year as Person W.
- 7.178 Person A was interviewed at length by police investigators and although related interview records are no longer available I am aware that he denied involvement in the Heights Bar attack. Whilst in custody he provided hair and DNA samples and was photographed before being released from custody.
- 7.179 Having been arrested for the second time, Person B was subject of further interviews but no evidence was forthcoming. No additional samples were obtained from Person B and he was likewise released from custody.

- 7.180 This was the second occasion on which Person K was arrested but refused to answer any questions put to him by investigators. A DNA sample was obtained from him prior to his release from custody. Person M was similarly arrested for a second time on 22 August 1994 but he did not provide any evidence of his involvement in the attack. A DNA sample was obtained from him prior to his release from custody.
- 7.181 On 15 September 1994 Person H was arrested under Terrorist Legislation in respect of the Loughinisland murders. He did not make any admissions about his involvement in any aspect of the attack. Samples of hair and DNA were obtained from him. Other than intelligence linking Person H to the supply of the firearm used at Loughinisland to the UVF unit believed to be responsible, my investigation has not identified any other intelligence directly linking Person H to the Heights Bar attack. In the absence of any SIO policy or recorded decision making, I am therefore unable to properly establish the rationale for this person's arrest.
- 7.182 On 26 April 1995 Person BB was arrested in relation to the Loughinisland attack. An action raised by the police investigation directed officers to arrest, interview and obtain forensic samples from this person. The action was raised on 27 April 1995, the day following the arrest. My investigation has not been able to establish any recorded rationale for this arrest. Person BB was interviewed on numerous occasions and hair and DNA samples were recovered from him before he was released.

- 7.183 In early 1995 police received intelligence that Person W had been the driver of the Triumph Acclaim. He was not, however, arrested until 19 February 1996, when he denied involvement in the Loughinisland murders. I am aware of intelligence that Person W was associated with Persons A, I and M and that he was believed to be linked to membership of the UVF unit thought to be responsible for the attack. Police also received further intelligence on 15 February 1995, which implicated him directly in the Heights Bar attack. Person W was interviewed on several occasions and denied any involvement in the attack. Prior to his release, Person W provided a sample of hair for comparison purposes. He was subsequently released.
- 7.184 Person X was arrested under Terrorist Legislation on the same day as Person W and also denied involvement in the Heights Bar attack. My investigation has not found any recorded rationale for these arrests.
- 7.185 In March 1999 Persons A and B were again arrested by the Loughinisland investigation team. I am satisfied that these arrests followed specialist forensic reporting on exhibits recovered earlier in the investigation. Person A and B made little response to questions put to them at interview and were released from custody.
- 7.186 Although police had intelligence as early as 5 July 1994 implicating Person AA directly in the Heights Bar attack and despite his home having been searched on 18 July 1994, he was not arrested under Terrorist Legislation until August 1999. My investigation has not been able to clarify the reason for the delay in the arrest and interview of Person AA. He was, subject of repeated interviews but denied any involvement in the attack. No forensic samples were recovered from Person AA prior to his release from custody. I am, however, aware that hair samples had previously been recovered from him, when he was in police custody on unrelated matters.

- 7.187 Person Y was arrested and his home searched in June 2006. He had entered into the investigation in September 1994, when the investigation team received intelligence that he was connected to the unit of the UVF, thought to be responsible for the Heights Bar attack. No investigative action was taken in respect of this intelligence until a new SIO, Police Officer 18, directed that he be arrested, based upon the same intelligence. Whilst Person Y was in custody, he provided all required forensic samples including DNA and was subject of an identification process. He was interviewed on numerous occasions but denied any knowledge or involvement in the Heights Bar attack and was subsequently released from custody.
- 7.188 The murder investigation was also passed information that on 18 June 1994 a prison inmate had been heard to tell other prisoners, *'watch the news this weekend, there will be something big'*. This individual was never spoken to by police.
- 7.189 **Identification of suspects from fingerprint and DNA evidence**
- 7.190 During the course of the investigation into the Loughinisland murders, police secured numerous exhibits from identified scenes associated with the attack.
- 7.191 I am satisfied that all fingerprint marks suitable for examination, recovered during the Loughinisland investigation have been compared against identified suspects and against the relevant fingerprint database. Any unidentified fingerprint marks are held on the relevant database and are subject to comparison against new fingerprints entering the database.
- 7.192 Exhibits recovered during the Loughinisland investigation have also undergone DNA examination and in some cases have yielded partial or mixed DNA profiles of varying degrees.

- 7.193 Since 1994 there have been significant advances in DNA retrieval and analysis. I am aware that successive Senior Investigating Officers have explored these techniques through the subsequent years of the investigation.
- 7.194 In 1999 exhibits underwent specialist Mitochondrial DNA examination by the Forensic Science Service at Birmingham. This produced 'limited support' that the DNA of either Person A or Person B or a person maternally related to them was present within the holdall recovered at Carsonstown Road on 4 August 1994. As I have previously indicated, Person A & B were arrested and interviewed in 1999 following this finding, however, there remained insufficient evidence to prefer charges against them.
- 7.195 Between 2001 and 2004 there was a period of forensic consultation, whereby exhibits were reviewed by a number of specialists and further testing, incorporating new and emerging techniques, was utilised. None of this further testing proved positive in identifying an offender for the Loughinisland attack.
- 7.196 Following further DNA examination of items recovered from exhibits, a mixed DNA profile was recovered from an exhibit contained within the holdall found at Carsonstown Road on 4 August 1994. This was reported to the police investigation in 2005. An analysis of the mixed DNA profile indicated a match with an identified individual. This person was arrested and a further DNA sample was taken from him. At interview this person was able to provide a strong alibi for his whereabouts at the time of the Loughinisland attack. He was released and having received a file of evidence from the police the Director of Public Prosecutions decided not to prosecute him on the basis that the available evidence did not provide a reasonable prospect of conviction.

- 7.197 I am satisfied that all of the DNA profiles, including those mixed and partial profiles, recovered from exhibits have been subject to database and individual comparisons, where possible.
- 7.198 I am also aware that the forensic aspects of the case remain under review by a major crime forensic adviser. Their role is to review and report on the potential to secure the identity of offenders in the Loughinisland attack through developing forensic techniques.
- 7.199 **Anonymous Information**
- 7.200 On 28 January 1995 an anonymous message was received on the police confidential telephone line stating that Persons A and M were the Loughinisland gunmen and Person I had driven the getaway car, a red Triumph Acclaim HJI 807.
- 7.201 The information continued that the car had been provided by Person X but had broken down and was abandoned at Listooder Road. The killers then travelled to Carsonstown Road where they dumped the guns and ammunition before making their way to the Braniel Estate, East Belfast.
- 7.202 On 14 February 1995 an anonymous letter was received by a local SDLP Councillor, which included information identifying those individuals allegedly responsible for the attack at Loughinisland.
- 7.203 Although the original anonymous letter was examined for fingerprints at the time it was surrendered to police, the exhibit cannot now be located.
- 7.204 I am satisfied that police involved in the Loughinisland murder investigation failed to exploit the evidential opportunities presented by this information and as a result may well have lost another significant opportunity to bring those responsible for the attack before the courts.

7.205

The RUC investigation of the Loughinisland murders is punctuated by unexplained delays in arrests; the loss of potential forensic opportunities; and what might be described as inconsistencies or anomalies. These issues are indicative to me of poor professional judgement and practice, if not negligence, by the police officers responsible for the investigation.

8.0

RESOURCING AND SUBSEQUENT DEVELOPMENTS IN THE LOUGHINISLAND MURDER INVESTIGATION

- 8.1 In this section of my public statement I examine the endeavours of police in continuing to pursue investigation of the Loughinisland attack since 1994, as reflected in the resourcing of the inquiry, investigative activity and engagement with the victims and survivors.
- 8.2 In his only documented reference to resourcing of the investigation, Police Officer 8 made an early record that he was satisfied with the staffing of the inquiry. In the context of the finite resources available to the RUC this was not an unreasonable assessment. However, the murder of Mr Trelford Withers, a part time member of the Royal Irish Regiment, by the IRA at Crossgar on 8 August 1994 resulted in the re-deployment of resources from the Loughinisland investigation and marked the beginning of a gradual depletion in the pool of investigators available to the inquiry. In speaking to my investigators, Police Officer 4 stated that this loss of staff had an adverse impact on the investigation. In addition, Police Officer 18, a senior PSNI detective, who assumed responsibility for the investigation in 2005, echoed concerns at the resourcing of the original police investigation of the Loughinisland murders.

- 8.3 The related police HOLMES Account similarly reflects an abrupt interruption in investigative activity in early August 1994 from which, in my assessment, the inquiry did not recover its initial impetus. This is reflected in the flow of documentation into the inquiry and the numbers of new investigative actions being identified from this material.
- 8.4 There is no evidence that Police Officer 8 raised the issue of diminishing resources for his Loughinisland investigation with South Region's Head of Crime and/or the Regional Commander, both of whom are now deceased. It would have been apparent, however, to these senior officers that the pool of detectives and support staff deployed to the Loughinisland investigation had also been tasked with the investigation of the Withers murder, and subsequently other serious crime. Inevitably where resourcing is stretched, enquiries are either not undertaken or delayed, which is clearly evident from the Loughinisland investigation.
- 8.5 With the exception of periodic forensic consultation, which resulted in further examination and testing of exhibits for DNA, there was little investigative activity undertaken in respect of the Loughinisland murders between June 1996 and 2003. During this period only two investigative actions, corresponding to the arrests of Persons A & B in 1999 following DNA findings, were raised.
- 8.6 By 2003, prompted I believe by concerns of the victims and survivors of the Loughinisland attack at the lack of investigative activity, the PSNI began to return a degree of focus to the investigation. This was particularly the case by 2005, when a significant number of new investigative actions were identified.
- 8.7 During the period 2005 – 2007, the PSNI implemented an effective strategy to identify evidential opportunities from the review of those areas, which they considered most likely to yield a breakthrough in the investigation, principally forensics and intelligence.

8.8 Prompted by a recommendation made by my predecessor in his 2011 public statement on Loughinisland, the PSNI commissioned a serious crime review, which was completed in 2012. My Investigators viewed the review document, which is a substantial, thorough and well researched document. It lays the foundation for the continued investigation of the attack at the Heights Bar.

8.9 The review made 222 recommendations, which were translated into the same number of corresponding 'Actions' by the PSNI Major Investigation Team then responsible for the Loughinisland investigation. These Actions can be grouped into specific areas with the majority concerned with witnesses (32), forensics (63), suspects (84) and Intelligence (17).

8.10 Assessment of these 'Actions' has led me to conclude that 50% were of an administrative or procedural nature. Enquiries to be pursued in relation to a proportion of the remaining 'Actions' have the potential, however, to assist the inquiry.

8.11 Although I am acutely aware that finalisation of 'Actions' can be interdependent; that some will have been 'part resulted'; and that others are likely to be subsequently closed without requiring additional enquiries, full implementation of the PSNI's serious crime review of Loughinisland remains incomplete. I have no doubt that prioritisation by the PSNI's senior management of investigations relating to current events has impacted on further investigative efforts in respect of Loughinisland.

8.12 Whilst I am satisfied that during the period 2012 – 2014 the PSNI did seek to progress their investigation of the Loughinisland murders, the inquiry has since returned to a largely inactive state, awaiting transfer to

their Legacy Investigation Branch (LIB), and uncertainty as to the manner in which the inquiry will be taken forward.

8.13 It is the view of the Chief Constable that the focus of policing should have its basis in the crime and disorder that continues to affect the community today. Investigative maintenance is, however, a basic requirement for the victims and survivors of serious crime. Appropriate resources and focus must be provided to ensure that such crimes are thoroughly investigated in a timely fashion and that they continue to engage the bereaved families and survivors in the process. That this is not happening is indicative of failures to properly investigate unresolved murders from Northern Ireland's 'Past'.

8.14 **Police Communication with the Victims & Survivors**

8.15 As covered earlier in this report the liaison between the murder investigation and the survivors and families of the deceased was less than adequate. However, following the Stephen Lawrence murder review the concept of Family Liaison Officers (FLO) was adopted by the police in Northern Ireland in 2001.

8.16 In 2003 the SIO for the Loughinisland murders appointed two FLOs to support the interested parties and in May 2004 those officers were succeeded by a third FLO.

8.17 The SIO in 2003 made a policy decision to withhold certain aspects of the investigation from the families to maintain the integrity of his investigation. He justified this to my investigators by explaining his concern that disclosing the information could have compromised aspects of his enquiries had it been placed, either deliberately or inadvertently, into the public domain.

8.18 Whilst I accept that such case-sensitive judgements are matters for senior police officers and understand the rationale for this decision, it

impacted on the relationship between the victims and survivors of Loughinisland and police.

- 8.19 Upon Police Officer 18 taking over the investigation he made an immediate policy decision stating *'family liaison to remain the responsibility of the previous FLO'*, he provided rationale: *'this officer has already had some contact with the families in previous meetings and should remain given the other significant personnel changes in the investigation'*.
- 8.20 Police Officer 18 acknowledged the need for police senior command and himself to meet with the families and survivors and provide them with an update on the police investigation. As a result I am aware that together with Police Officer 19 a meeting was held on 26 July 2005. During this meeting it was disclosed that there were ongoing DNA forensic tests but that these and other enquiries had been delayed due to the loss of trained and experienced detectives arising from the Patten recommendations. The victims and survivors did not accept this position and considered the remarks of Police Officer 19 to be insensitive.
- 8.21 My investigators interviewed Police Officer 19, who was clear in his view that he had not meant to be insensitive but needed to inform the interested parties that he had personal concerns in respect of the resourcing of murder enquiries at that particular time. He supported his position by referring to the fact that the Policing Board was also concerned and had questioned the Chief Constable in relation to his resourcing of all murder enquiries. I understand why the victims and survivors considered Police Officer 19's comments to be insensitive.
- 8.22 At the meeting with the families Police Officer 18 was aware that there was a positive DNA link in respect of a suspect, who had not previously been identified in the investigation. The arrest of this individual did not take place until 2008 due to the itinerant lifestyle of the suspect and he was subsequently eliminated from the enquiry as a suspect. Whilst the

delay was for an extended period, I accept that locating suspects can be a painstaking and lengthy procedure.

8.23 Once again I am aware that Police Officer 18 did keep issues from the family to ensure that he was able to utilise covert methodology and I do know that my predecessor's Director of Investigations did reassure families at the time that the PSNI were pursuing new lines of enquiry.

8.24 I am aware that Police Officer 18 made a policy decision to develop a communication strategy, which would include a confidential update to the families and to that end he met the families again on 5 June 2006 to inform them that there would be arrests the following day. At that time he accepted the decision of the families that all future communication should be through their nominated solicitor.

9.0

CONCLUSIONS

- 9.1 The persons responsible for the atrocity at Loughinisland were those who entered the bar on that Saturday evening and indiscriminately opened fire. It is also important to recognise that despite the failings identified in this report there have been many within the RUC and PSNI, who have worked tirelessly to bring those responsible to justice.
- 9.2 On the basis of the information available to me, I have concluded that police were aware of plans by the UVF, UDA and Ulster Resistance to import a significant consignment of weaponry to Northern Ireland in mid to late 1987 and knew about the arrival of the assault rifles, semi-automatic handguns, grenades and other weapons forming the shipment shortly after it was landed in Northern Ireland.
- 9.3 There were significant failures associated with this intelligence-led operation, which resulted in a significant proportion of the imported weapons falling into the hands of loyalist paramilitaries, notably the UVF. A military grade automatic assault rifle from the shipment was used to murder the victims at Loughinisland.
- 9.4 I also believe that there were informants involved in the procurement and distribution of the weapons, including individuals at the most senior levels of the organisation(s) responsible for the importation. Intelligence relating to the roles performed by these paramilitary commanders was not disseminated to Detectives investigating the arms importation and consequently many were not subject of investigation.

9.5 I have also concluded that there was a strategic failure by police to identify and implement robust measures to counter the escalating activities of a small unit of the UVF within South Down. I attribute this to:

1. Failures in the policing response to Loyalist Paramilitary activities due to a focus on the IRA as a result of which the activities of the UVF unit in South Down escalated;
2. A failure to disseminate all relevant intelligence to Detectives investigating the serious crime attributed to the UVF in this area in order to 'protect' the positions of informants;
3. Indications of an unwillingness by Special Branch in Belfast to provide intelligence and other support to the Special Branch Offices in South Region;
4. A lack of sustained vigour in the investigation of pre-cursor murders and attempted murders which, I believe in the case of one officer involved, was influenced by what he believed to be the republican background of victims.

9.6 There was an inadequate proactive policing response to the threat, which emerged to the local community in 'South Region', as identified by police following the murders of alleged UVF leaders on the Shankill Road on 16 June 1994. There is no evidence that intelligence assets that might have been in a position to inform such a policing response in South Down were tasked at either a 'strategic' or 'local' level of the UVF.

9.7 Despite having intelligence sources at all levels of the UVF, little intelligence apparently emerged, which could have assisted in preventing the murders at Loughinisland. This was in my view, at least in part due to the value some Special Branch officers placed on gathering 'strategic' intelligence and the protection of the sources of such information rather than the prevention and detection of crime.

- 9.8 Information was available to police from a senior level of the UVF which, contrary to assessments by the intelligence community in Northern Ireland, I believe not only anticipated a 'military response' to the Shankill murders but share culpability in the Loughinisland murders. In my view, police were content not to ask difficult questions of their sources at a senior level in order to avoid the individuals exposing their knowledge of criminal conspiracies by their own organisation.
- 9.9 I have seen sufficient information to be satisfied that corrupt relationships existed between members of the Security Forces in South Down and the UVF Unit, to whom police attributed the murders at Loughinisland. The failure by police to investigate the veracity of intelligence that those responsible had been 'warned' by a police officer of their imminent arrest is inexcusable.
- 9.10 The Loughinisland investigation was characterised by a number of fundamental failings:
1. A catastrophic failure in the suspect strategy. Significant evidential opportunities were lost due to the delay in the arrest of individuals police believed to have been involved in the murders. This was in the face of a compelling intelligence picture identifying the suspects, provided to investigators within 24 hours and which proper consideration by the SIO would have identified was supported by strong circumstantial evidence;
 2. When suspects were belatedly arrested there was a failure to properly examine one person's alibi and there was an inconsistent approach to the collection of forensic samples;
 3. Inadequate investigation of the ownership history of the Triumph Acclaim used by those responsible for the murders which, had it been recognised as an important evidential opportunity, could have proven significant for the investigation;

4. An unco-ordinated response to the anonymous telephone call and letter which presented another excellent opportunity to advance the murder investigation.
5. A willingness to accept intelligence reporting, which was almost certainly designed to exculpate individuals, who may have been involved, and other information designed to distance individuals from the murders.

9.11 Throughout my investigation I have been unable to obtain key documents, including records relating to the policing response to the importation of firearms in 1987 and case-specific material, such as exhibits, from which advances in forensic evidence may have been able to extract substantive evidence, seized as part of both the pre-cursor murders to which I have referred and the Loughinisland murders. The absence of SIO policy/decision logs has also hindered my investigation.

9.12 The failure to investigate adequately the role of state agents in a range of criminal activities at a strategic and operational level effectively meant that they were protected from serious investigation and continued in their criminal activities.

9.13 I can only conclude that the desire to protect informants may have influenced policing activity and undermined the police investigation into those who ordered and carried out the attack. When combined with a flawed investigation of the Loughinisland murders this has undermined the investigation into those responsible for these crimes and ultimately justice for the victims and survivors.

9.14 The failures to bring the killers to justice cannot be explained solely, therefore, by a failure or otherwise of investigative actions. It was a central complaint of the families that there was ‘collusion’ between elements within the police and loyalist paramilitaries. It is clear that discussion around the issue of “collusion” in Northern Ireland is extremely controversial and politically sensitive. There has been considerable debate in academic publications, reports by non governmental agencies and in the various inquiries into allegations of State-related killings in Northern Ireland. No consensus has emerged as to what it actually means.

9.15 I have considered numerous definitions and proposals as to how the term should be defined, including, but not limited to;

1. Sir John Stevens.
2. Judge Cory Inquiry into Patrick Finucane’s death.
3. Former Police Ombudsman, Baroness O’Loan – Operation Ballast.
4. Northern Ireland Retired Police Officers Response to Operation Ballast.
5. The Report into the Billy Wright Inquiry.
6. Former Police Ombudsman Al Hutchinson – Report into the Claudy Bombing.
7. Former Police Ombudsman Al Hutchinson – Report into McGurk’s Bar Bombing.
8. Judge Smithwick Inquiry into the murders of RUC Chief Superintendent Harry Breen and Superintendent Robert Buchanan.
9. Sir Desmond de Silva – Report into Patrick Finucane’s death.

- 9.16 Taking account of the above, but mindful of my own discretion, I am of the view that individual examples of neglect, incompetence and/or investigative failure are not automatically evidence of collusion. However, a consistent pattern of investigative failures may be considered as evidence of collusion depending on the context and specifics of each case. This is particularly the case when dealing with agents of the State who were participating in crime.
- 9.17 The most compelling and appropriate approach to collusion, I believe, is Judge Smithwick's definition (based seemingly on Cory's), in his inquiry into collusion between members of An Garda Síochána and the Provisional IRA:¹¹ *"... The issue of collusion will be examined in the broadest sense of the word. While it generally means the commission of an act, I am of the view that it should also be considered in terms of an omission or failure to act. In the active sense, collusion has amongst its meanings to conspire, connive or collaborate. In addition I intend to examine whether anybody deliberately ignored a matter or turned a blind eye to it or have pretended ignorance or unawareness of something one ought morally, legally or officially to oppose"*.
- 9.18 The PSNI are in agreement with this approach commenting on the definition adopted by Judge Smithwick to collusion as a 'comprehensive definition, properly framed and considered'¹²
- 9.19 The issue requires, however, deeper consideration as it gets to the core of the relationship between police and their informants within the context of the 'Troubles' in Northern Ireland.

¹¹ Report of the tribunal of inquiry into suggestions that members of An Garda Síochána or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on 20 March 1989 (Smithwick Tribunal).

¹² Written submissions on behalf of the PSNI to Smithwick Tribunal, cited in Committee on the Administration of Justice report, 'The Apparatus of Impunity?' Human Rights violations and the Northern Ireland conflict: a narrative of official limitations on post-Agreement investigative mechanisms. January 2015.

9.20 Some insight into the modus operandi of the intelligence community can be obtained from an ‘open letter’ written by a former Assistant Chief Constable (ACC), and representative of the Northern Ireland Retired Police Officers Association, in response to the Sir John Steven’s investigation. In particular, he states that in the consideration of legacy cases, an appreciation of the substantial differentials that existed in the operational perspective of the intelligence agencies, and those of their counterparts in the criminal investigation, is ‘a factor often missed’. This is particularly important in relation to questions raised with regard to the management of informants and the disclosure of information to investigators.

9.21 In his letter the former ACC stated; *‘.....to label such matters as are identifiable as being collusive acts is strongly debatable for they may fall into that class of situations which arise in the world of intelligence, which, if viewed solely from a criminal investigation perspective can be regarded as irregular or suspicious behaviour, but which are in fact eminently sensible and acceptable when viewed from an intelligence perspective. This is particularly so where it involves an examination of events where there has been a balancing on the one hand, of the duty of care owed to covert intelligence sources and on the other, the disclosure of the intelligence they provide’*.¹³

¹³ An open letter from former ACC White to colleagues regarding the call by Lord Stevens for publication of his Stevens 3 Report made to the Director of the Public Prosecution Service in 2003

9.22

He further stated:

'In such instances, the occasion invariably arose whereby some information had to be held back or not fully exploited in order to preserve the life of a source, i.e. the withholding of intelligence, or it is the necessary and prudent action required to protect the life of a valuable agent.

How you interpret such matters is strongly influenced by the breadth of the perspective adopted.

As the intelligence world never viewed its existence as being solely a vehicle by which to serve the needs of crime investigation, it therefore, on specific occasions, quite justifiably adopted, in its opinion, the position that the priority to preserve life and secondly property, came at the expense of solving crime'.¹⁴

9.23

Thus, in this context, the protection of police informants is not a sinister act but one which is entirely reasonable in order to protect the life of an informant. The Northern Ireland Retired Police Officers Association has also raised the issue in relation to the failure of government to provide clear and meaningful guidance on the participation of informants in criminal acts.

9.24

This debate is covered at some length in Sir Desmond de Silva's Report into the murder of solicitor Patrick Finucane. In essence, he says that despite successive attempts by police officers to obtain guidance the government failed to provide any.

¹⁴ Ibid

- 9.25 The absence of specific guidance, until the introduction of The Regulation of Investigatory Powers Act (RIPA) in 2000, meant that there was a lack of clarity and control with regard to the monitoring and supervision of informants and the activities in which they were involved.
- 9.26 Finally, the activities of the police cannot be considered in isolation. As is mentioned at length in the de Silva report, the police worked closely with the Military and Security Service. Therefore, the operation of an intelligence model based on multiple agency involvement and the absence of sound guidance and control mechanisms within the context of a highly volatile security situation was a challenging operational environment. Such an environment, it has been argued, makes the use of the term ‘Collusion’ meaningless and unnecessary. As the former ACC stated; *‘If we accept that the task of combating terrorism over the past three decades was predicated on an intelligence led effort and that decisions were taken from that perspective any attempt now to conduct a reappraisal of past events from a perspective that ignores that reality or gives it little or no credence, is bound to produce results that are at odds with accepted operational environment and priorities of that era’*.¹⁵
- 9.27 A critical element of this investigation has been the police use of informants. I accept that the use of police informers is an integral part of policing and that their involvement during the ‘Troubles’ saved many lives. Police, particularly in the heightened circumstances of the ‘Troubles’ in Northern Ireland could not have undertaken their duties effectively unless they had informants providing information to them.

¹⁵ Ibid

- 9.28 Notwithstanding my criticism at paragraphs 9.3 and 9.4 of this statement, the police who were responsible for the retrieval of a large number of weapons, which were imported into Northern Ireland, are to be commended. It is unlikely that these weapons would have been discovered if there had not been informers within the ranks of loyalist paramilitaries reporting to the police.
- 9.29 However, the involvement of informers poses many risks from a policing perspective, not least of which is the engagement with someone who is involved in serious criminal acts and may not always tell the truth. The engagement with an informer also poses an ethical dilemma for the police; to be effective the informer must have access to information and to have access to information they may, by necessity, be immersed in criminality. However, to be effective they must remain at large, otherwise they have no access to information.
- 9.30 Informant handling requires the balancing of the potential value of the informant (which may save lives) and the nature and scope of activities, in which they are likely to be involved. Modern policing practice attempt to resolve these difficulties through application of the law and specifically RIPA, intensive frontline supervision of officers, clear internal guidelines and authorisation procedures, performance management and integrity testing of individuals. Some of these 'checks and balances' did not appear to exist in Northern Ireland at the time. Indeed I have seen evidence from a senior informant handler (interviewed as part of a different investigation by my Office), that he had so many registered informants that it was difficult to "manage" them effectively and consistently in relation to their criminality.

- 9.31 The policing context in Northern Ireland at the time of the ‘Troubles’ brought such ethical, legal and operational dilemmas into sharp focus. It is a matter of record that the police requested guidance from Government on how best to handle some of the challenges and asked whether new legislation might help frame operational practice. Neither guidance nor legislation was forthcoming. I do not underestimate the challenges this presented to policy makers or indeed operational officers in the police.
- 9.32 However, a lack of suitable guidance does not excuse the actions of the “intelligence world” if it meant that individuals were protected from investigation into serious crimes as a consequence of their participation as informers.
- 9.33 When the police turn a ‘blind eye’ to criminality for the “greater good”, it can lead to a corruption of the criminal justice process. It also exposes the police to significant organisational risks – not only of allegations of collusion, but also to their manipulation by informers giving partial information in order to seek protection from their criminality.
- 9.34 In the aftermath of serious crime police should not be complicit in concealing information which could assist related investigations; should not, as in the case of murders which preceded the Loughinisland attack, shield the identity of possible suspects who should have been subject to investigation; and should not fail to disseminate intelligence in order to protect the source of the information.
- 9.35 In addition, some informants were protected by not asking them about certain crimes and hence not exploring their knowledge and potential culpability and also not proactively seeking intelligence on their potential involvement in those crimes. This meant that some informants were not investigated for serious matters. That is indefensible.

9.36 The fact that an informer was operating at the higher echelons of the UDA poses further significant issues. If the informant was actively involved in the importation of weapons with the knowledge of the police (as appears to be the case) and the police actively decided not to intercept the weapons in order to protect the informant and/or assist in the provision of weaponry to loyalists, the police could justifiably be criticised for permitting the individual to take part in a criminal conspiracy, which ultimately led to the successful importation of arms. Sir Desmond de Silva makes a similar point in relation to an earlier attempt to import weapons by the Military Agent Brian Nelson in the context of the potential for allowing firearms into Northern Ireland in order to protect Nelson - something which de Silva is satisfied the security forces did not do in 1985.

9.37 In this matter, I have concerns about the information held by Special Branch in respect of James Mitchell's Farm and the investigation of James Mitchell in the 1970's by a senior officer who was subsequently 'on the ground' following the recovery of arms at Mahon Road and the loss of surveillance at a crucial time. I can find no logical explanation for the failure to identify James Mitchell's Farm as the possible location for the imported weapons given the information known to the police in general and the Officer in particular. This failure to act meant that the farm was not searched at the earliest opportunity quickly and the remaining weapons were moved. The fact that James Mitchell himself was not subject to investigation, given the intelligence held by the police, is also cause for concern. I cannot, however, come to any broader conclusion given the overall lack of information on the police role in the arms importation.

- 9.38 There were many examples of failures to pass on intelligence to investigators engaged in the investigation of the serious crime discussed in this statement. This meant that investigative lines of inquiry were not followed and individuals, who might have been subject to detailed and robust investigation, were effectively excluded from consideration. In the case of the incidents prior to the Loughinisland murders, limited action was taken against the UVF unit suspected of a series of serious crimes.
- 9.39 These failings represent more than 'intelligence failures'. At best they are indicative of an 'intelligence mindset', which placed the collection of information before the prevention and detection of crime. At worst they indicate a disregard by some for the suffering of the families involved at the hands of loyalist paramilitary gangs and a corrupting involvement, tacitly or otherwise, in serious criminal acts.
- 9.40 Many of the issues I have identified in this report, including the protection of informants through both wilful acts and the passive 'turning a blind eye' are in themselves evidence of collusion as defined by Judge Smithwick. When viewed collectively I have no hesitation in unambiguously determining that collusion is a significant feature of the Loughinisland murders.

MICHAEL MAGUIRE
POLICE OMBUDSMAN FOR NORTHERN IRELAND

Summary of findings in relation to core complaints made by the bereaved families of those murdered at Loughinisland on 18 June 1994

Allegation 1: Police failed to conduct an effective investigation of the Loughinisland murders.

I have articulated within the body of this public statement that police failed to pursue efficiently relevant lines of enquiry; failed to make timely arrests of suspects; failed to consider linked incidents; and failed to develop and implement a coherent forensic strategy.

Allegation 2: Police failed to keep the bereaved families updated as to progress in the investigation of the Loughinisland murders.

Whilst I accept that in 1994 there was no national police policy in place in respect of family liaison, it was widespread policing practice at the time of the Loughinisland murders to keep bereaved families informed as to developments in such an inquiry. This did not happen with the Loughinisland families until some years following the murders.

Allegation 3: Police failed to make an earnest effort to identify the persons responsible for the Loughinisland murders.

This complaint was primarily directed at the initial police investigative response to the attack at Loughinisland. Within this public statement I have described a catastrophic failure in the early stages of the police suspect strategy.

Allegation 4: Police failed to discharge the State's duties as required by Article 2 of the European Convention of Human Rights (ECHR), as incorporated by Schedule 1 of the Human Rights Act (1998).

I have expressed my opinion on a potential breach of Article 2 ECHR in a previous public statement concerning 'The events surrounding the bombing and murders at 38 Kildrum Gardens on 21 August 1988' where the evidence available persuaded me to do so. In that case I concluded that....*'police were very aware of the threat of the bomb, its location and their own duty to protect the public and maximise the safety of the police and security staff involved in any response. It is apparent that there was no contingency put in place to protect the public from the bomb, and whilst the responsibility for the murders remains with the bombers, there was a failure by the police to protect the lives of the local community who were in such a real and immediate danger....it is my opinion that police failed in their responsibilities to uphold Mr Dalton's right to life'*. That was an exceptional course to take and one which I may take again in the future. In relation to this matter, I am not convinced that the evidence available allows me to form such an opinion.

Allegation 5: Police colluded with those responsible for the Loughinisland murders.

The bereaved families of those murdered at Loughinisland have articulated a range of issues, which they consider support their complaint of collusion. As articulated in my public statement, *'many of the issues I have identified in this report, including the protection of informants through both wilful acts and the passive 'turning a blind eye' are in themselves evidence of collusion as defined by Judge Smithwick. When viewed collectively I have no hesitation in unambiguously determining that collusion is a significant feature of the Loughinisland murders'*.

Allegation 6: Forensic exhibits seized during the initial police investigation were not re-examined until mid 2005 following complaints by the families to the Police Ombudsman.

Although it is evident that the campaign for justice driven by the bereaved families of those murdered at Loughinisland has often been the catalyst for progress in the related police investigation, my investigation revealed that a number of exhibits were re-submitted for specialist forensic examination during 1999. Between 2001 and 2004 a period of forensic consultation took place where specialist advisors provided guidance on the best potential to secure forensic evidence in light of new and emerging techniques. A number of exhibits were submitted for re-examination utilising specialist techniques. I am satisfied that this was not as a result of complaints made by the families to my Office.

Allegation 7: A major exhibit in the Loughinisland murder inquiry, the Triumph Acclaim car used by the offenders was 'wilfully destroyed' some ten months after the attack and the destruction was authorised by a senior police officer, who may be related to individuals implicated in the attack.

My public statement outlines the investigation undertaken by my Office to establish the circumstances in which the car was disposed of by police some ten months after the murders at Loughinisland occurred. I have established that the officer responsible for the station yard at Saintfield Police Station sought authority to have the vehicle removed and scrapped. This authority was granted by a senior police officer in charge of the police station and who I am satisfied is not related to individuals suspected of having been responsible for the attack. Both of these officers stated that they believed that the SIO had authorised the destruction. There is no evidence, however, to corroborate these decisions, which I have determined to have been an act of negligence.

Whether or not subsequent examination of the car might have yielded further forensic opportunities which, given the conditions in which it had been retained, appears unlikely, the car should not have been destroyed without proper consideration by the SIO in consultation with his forensic advisers. Whilst I have not found evidence of a sinister motive behind the destruction of the vehicle, I have identified negligence associated with its disposal.

Allegation 8: On 26 July 2005 the bereaved families met with a senior police officer of the PSNI who in addressing resourcing pressures for the police investigation of the Loughinisland murders referred to the loss of numerous experienced detectives due to early retirements under the Patten policing reforms. The families considered these comments to be insensitive.

My investigation spoke with the senior officer concerned who stated that in attempting to explain his difficulties in resourcing major crime inquiries in an open and transparent manner, he had made reference to the loss of experienced detectives but not intended his remarks to be insensitive. There is, however, no doubt that many of the bereaved families were affronted by the suggestion that the PSNI's investigation of the Loughinisland murders was being adversely impacted by early retirements.

Allegation 9: In July 2005 the PSNI's SIO of the Loughinisland murders investigation indicated to bereaved families that forensic evidence had been obtained and that an arrest was imminent. However, the arrest of the individual concerned was not made for some three years.

My investigation has established that police encountered difficulties in locating the suspect involved due to his itinerant lifestyle and that ultimately he was arrested outside Northern Ireland. He was interviewed at length and a file of evidence considered by the Director of Public Prosecutions but no prosecution was directed. I am satisfied that the police have accounted for the three year delay in this arrest.

Allegation 10: Vehicle Checkpoints (VCPs) established by police shortly after the attack at Loughinisland were strategically placed to allow those responsible for the murders access to and from the Heights Bar.

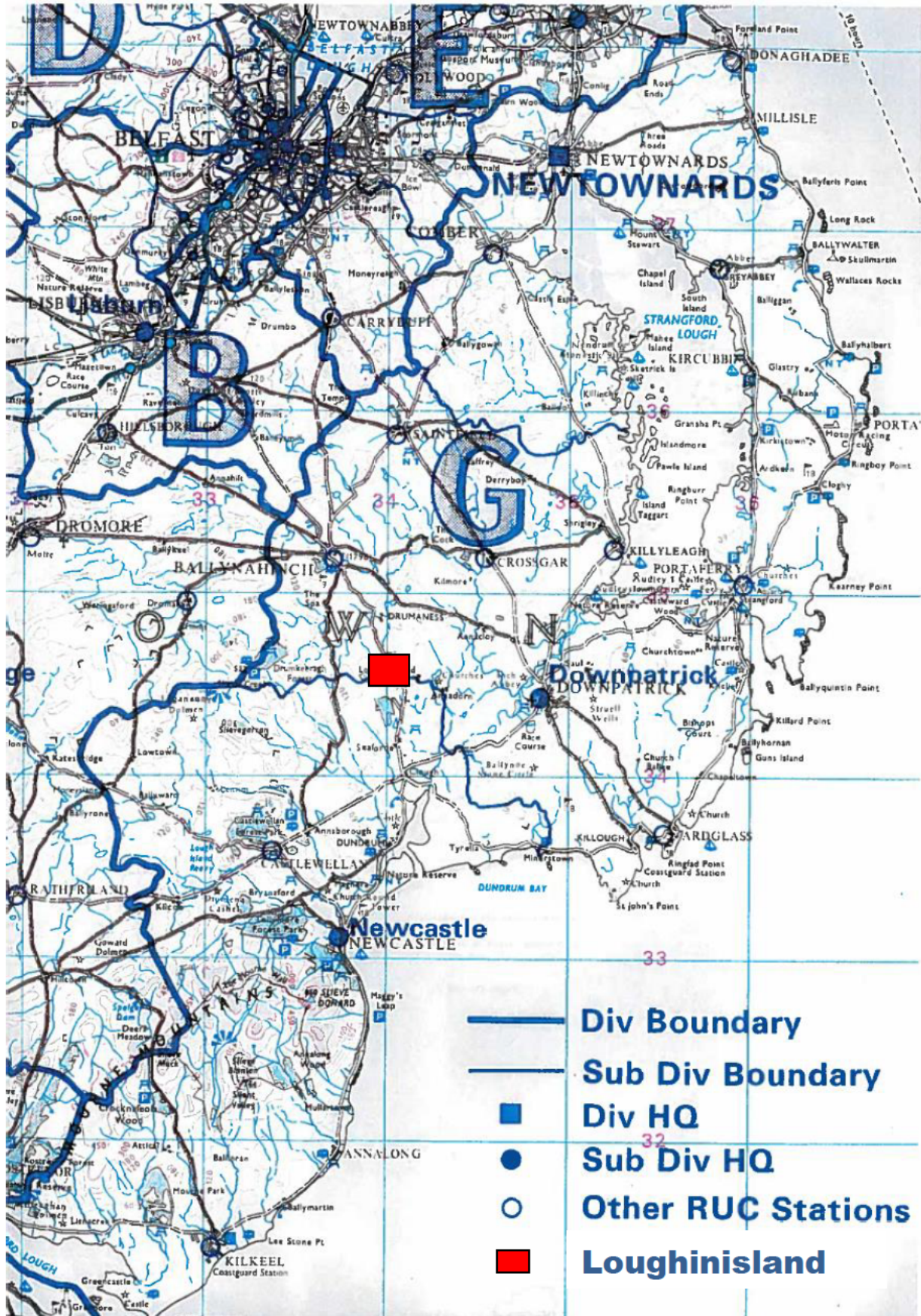
Security Forces responded promptly to the initial report of the Heights Bar attack, establishing VCPs in accordance with an established operational contingency plan. Both RUC and military units were involved, the latter self deploying to VCPs and patrols. Having considered the timings, potential routes and distances involved, I believe it entirely plausible that those responsible for the murders could have travelled beyond the position of VCPs by the time they were established.

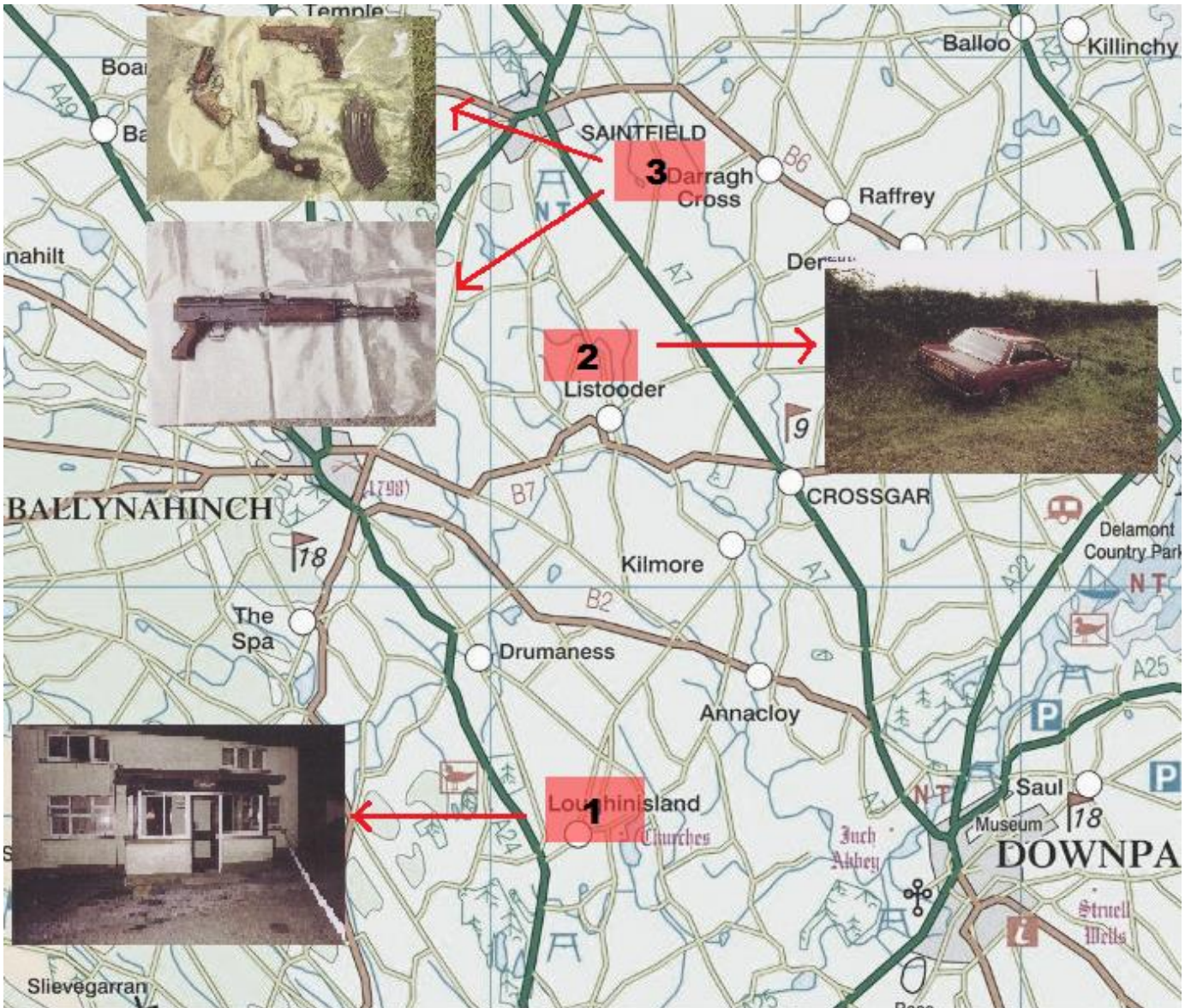
Allegation 11: Police delayed tasking deployment of a military helicopter to search for those responsible for the Loughinisland attack and the vehicle they used to flee the murder scene and once deployed the helicopter only remained in the area for one hour and eighteen minutes.

My investigation has not examined the conduct of any parties other than members of the RUC and PSNI. I have, however, established that a helicopter was requested, tasked and deployed by the military, who on the night of the Loughinisland murders had access to police communications which was not unusual. Whilst there is no existing record of the flight plan undertaken by the military helicopter my enquiries have not identified any anomalies or irregularities in the timings of either the deployment or flying time of the helicopter involved.

Allegation 12: Police failed to properly investigate an anonymous letter that was forwarded to a local councillor concerning the Loughinisland murders and failed to make a timely arrest of the alleged author of the letter following their identification.

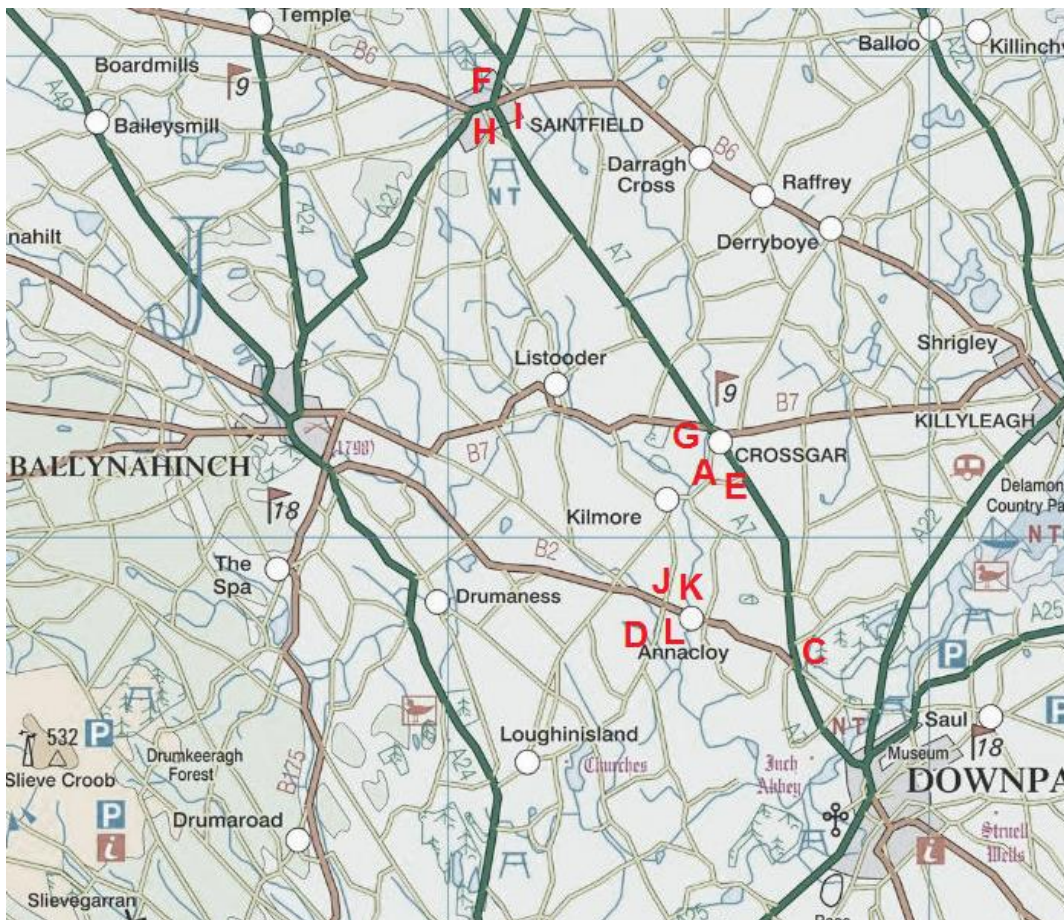
I am satisfied that police involved in the Loughinisland investigation failed to exploit the evidential opportunities presented by the anonymous information they received and as a result may well have lost another significant opportunity to bring those responsible for the attack before the courts.





Loughinisland Scenes

- 1. O'Tooles Bar, Loughinisland
- 2. Listooder Road (Vehicle Deposition Site)
- 3. Carsonstown Bridge, Saintfield (Weapons Recovery)



Locations of Vehicle Check Points

- A.** 22:20 – 01:20 Hrs
- B.** 22:25 – End time and location unknown
- C.** 22:25 – 23:00 Hrs
- D.** 22:25 – 23:00 Hrs
- E.** 22:25 – 01:20 Hrs
- F.** 22:25 – 01:20 Hrs
- G.** 22:25 – 01:20 Hrs
- H.** 22:29 – End time unknown
- I.** 22:35 – End time unknown
- J.** 22:35 – 23:00 Hrs
- K.** 22:50 – 02:30 Hrs
- L.** 23:00 – 01:15 Hrs

The Asbestos Situation at Gough Police Station in 1998

The loss of investigative material following the identification of asbestos contamination at the Police Gough Barracks, Armagh has proved to be detrimental to both the continuing police investigation and the work of my own investigators.

On 25 June 1998 a survey, by the Construction Services of the RUC, discovered damaged and unstable material that was believed to be asbestos within the basement of the building known as 'B' Block. The age of the damaged area exacerbated by contact, moisture and wear resulted in cracking and exfoliation of asbestos sheeting within the whole of the storage area.

In line with health and safety guidelines the affected area was sealed and no personnel were allowed into the area. Scientific tests confirmed that the material that had escaped was indeed asbestos.

Asbestos is a naturally occurring mineral that was used in a range of building materials to make them more rigid and fire resistant. Asbestos was used extensively as a building material from the 1950s through to the mid-1980s before being banned in 1999. Working on or near damaged asbestos containing materials can increase the potential of workers getting asbestos related diseases such as mesothelioma, asbestosis and lung cancer.

The affected basement was used as a document storage facility for the RUC Press Office and Regional Crime Squad and as such the material, which was stored within it was sensitive and crime investigation related.

The RUC had failed to keep an inventory of what was actually stored in that basement but meetings were held between senior police and police support staff at the time to discuss whether there was a possibility of saving this sensitive material. These meetings discussed the cost of professional cleansing of each separate document and it was decided that the cost was prohibitive and the idea was dismissed.

On 3 July 1998 the RUC Police Authority Buildings Department directed Construction Services to undertake the removal of asbestos material from the basement and the decontamination of the area. This direction involved the destruction of the files within the basement by shredding before removal to an approved asbestos dump site which was approved for sensitive material. This work commenced on 28 July 1998 and was completed on 30 September 1998.

My investigators were not able to find any documentation which identified exactly who authorised the destruction of the documents but a report from a police support staff member confirmed on 25 August 1998 that the Police Authority of Northern Ireland had directed the destruction of the documents. All surviving documentation in relation to the decontamination has been seen and copied by my investigation team.

My investigators were not able to find any written risk assessments in respect of the contaminated area or in relation to the destruction of the files. However, it is clear that upon the area being identified as contaminated no persons, other than the asbestos decontamination contractor personnel, were allowed back into the area until the decontamination operation was completed. This decontamination operation was overseen by the RUC Health and Safety Department.

My investigators made enquiries with the Building Services Department of the PSNI and discovered that, to their knowledge, there are no other document storage locations within the police estate, which are considered at risk in respect of asbestos contamination. My investigators spoke to the Premises Officer at Gough Barracks in July 1998. This police support staff worker stated that she recalled the block being sealed and the decontamination operation being done but was unable to identify any of the documents destroyed or any specific documentation audit.

A civilian member of staff has had responsibility for the sensitive documents within Block B since 2000. When interviewed by my investigators, she was unable to provide any information about the destruction of documents.

My investigators have seen documents, which make it clear that RUC senior management were aware that sensitive documents were in Block B when the contamination was discovered. A direction was issued that police officers should enter the contaminated premises and mark the boxes to be saved with 'RETAIN' and 'DESTROY' notices. The same documentation confirmed that a new shredder was commissioned for the process. The contractors offered to provide police officers with protective clothing in relation to the exercise but also requested that police staff sign a disclaimer in case of future illness as a result of exposure to asbestos and the fact that they were untrained in the removal of toxic substances. The RUC Police Federation raised issues in respect of this planned intervention by untrained staff and as such no such action took place.

I have identified a police officer, who had the primary role in facilitating communication between the RUC and interested parties during the decontamination. He was unable to recall fine detail but does recall the intention to retain some of the documents but could not recall if this retention actually took place. He does recall receiving an instruction that documents in sealed boxes should be retained as only the boxes were contaminated. The former police officer agreed he had a liaison role but did not take part in any supervision of the decontamination operation and believed that was the responsibility of his supervisor. He does believe some documentation was returned after decontamination but could offer no detail and was unable to assist in respect of Loughinisland documentation. A civilian attached to the PSNI confirmed that she has maintained an audit of documents received since 2000 but has never back-catalogued any documentation.

My investigators have spoken to the file manager at Seapark and he has been able to provide documentation appertaining to incidents prior to and subsequent to the Loughinisland murders, which have been retrieved from Block B Basement. This documentation and exercise would suggest that the interview notes in respect of suspects for the murders were among those contaminated and subsequently destroyed at Gough.

The police position remains that they are unable to verify what was actually lost at Gough but they do not believe that any prosecutions were dropped due to the destruction.

Neutral Citation No: [2020] NICA 33	<i>Ref:</i> MOR11275
<i>Judgment: approved by the Court for handing down (subject to editorial corrections)*</i>	<i>Delivered:</i> 18/06/2020

IN HER MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN’S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY
THOMAS RONALD HAWTHORNE AND RAYMOND WHITE
FOR JUDICIAL REVIEW

Appellants

AND IN THE MATTER OF A DECISION BY OF THE POLICE OMBUDSMAN
FOR NORTHERN IRELAND

Respondent

AIDAN O’TOOLE

Notice Party

Before: Morgan LCJ, Stephens LJ and Sir Donnell Deeny

MORGAN LCJ (delivering the judgment of the court)

[1] This is an appeal from a decision of Keegan J dismissing the appellants’ application to quash a Public Statement (“PS”) made by the Police Ombudsman for Northern Ireland (“the Ombudsman”) pursuant to section 62 of the Police (Northern Ireland) Act 1998 (“the 1998 Act”) relating to a complaint by victims and survivors of an attack by Ulster Volunteer Force (“UVF”) gunmen in which six people were killed and five people injured at the Heights Bar, Loughinisland, on the evening of 18 June 1994. Mr McMillen QC appeared for the appellants with Mr Brown, Mr McGrory QC with Mr McQuitty for the Ombudsman and Ms Doherty QC with Mr Devine for the Notice Party, Mr O’Toole. We are grateful to all counsel for their helpful oral and written submissions.

The Ombudsman

[2] In November 1995 Dr Maurice Hayes, a senior Northern Ireland civil servant, was asked to prepare a report on the adequacy of the police complaints system in Northern Ireland. He considered

that the existing system was inadequate and in a report published in January 1997 recommended the appointment of a police ombudsman. That recommendation was accepted and implemented by Part VII of the 1998 Act.

[3] The establishment of the office through the 1998 Act was discussed by the Patten Commission on Policing in Northern Ireland, of which Dr Hayes was a member, at paragraph 6.39-6.42. Although the Commission expressed some surprise that the 1998 Act have been approved by Parliament some weeks after the Commission had been established to examine the role of policing in Northern Ireland the Commission generally approved the establishment of the office of the Ombudsman which accorded with principles set out by Professor Philip Stenning in his review of the complaints process in British Columbia.

[4] The Patten Commission made the following recommendations:

- “• The Police Ombudsman should be, and be seen to be, an important institution in the governance of Northern Ireland, and should be staffed and resourced accordingly. Budgets should be negotiated with, and finance provided through, the Northern Ireland Office (or its successor department), both for the core staff of the office and to provide for exceptional demands created by large-scale investigations.
- The Ombudsman should take initiatives, not merely react to specific complaints received. He/she should exercise the power to initiate inquiries or investigations even if no specific complaint has been received.
- The Ombudsman should be responsible for compiling data on trends and patterns in complaints against the police, or accumulations of complaints against individual officers (and appropriate systems for managing such data will be needed – see also Chapter 10 on Management and Chapter 11 on Information Technology), and should work with the police to address issues emerging from this data. It is important that management at all levels should use information from the complaints system as a tool of management and to identify training needs. The Policing Board should utilise such data in developing or reviewing policies or practices. There should be no doubt of the Ombudsman’s power to investigate and draw conclusions from clustering in patterns of complaints and to make recommendations for change to police management and the Policing Board.
- The Ombudsman should have a dynamic cooperative relationship with both the police and the Policing Board, as well as other bodies involved in community safety issues.
- The Ombudsman should exercise the right to investigate and comment on police policies and practices, where these are perceived to give rise to difficulties, even if the conduct of individual officers

may not itself be culpable, and should draw any such observations to the attention of the Chief Constable and the Policing Board.

- The Ombudsman should have access to all past reports on the RUC”

[5] The Office of Police Ombudsman for Northern Ireland was established by section 51 of the 1998 Act. Section 51(4) provided that the Ombudsman should exercise his powers in such manner and to such extent as appears to him to be best calculated to secure the efficiency, effectiveness and independence of the police complaints system and the confidence of the public and the members of the police force in that system.

[6] Section 52 provides that all complaints about the police force should either be made to the Ombudsman or if made to a member of the police force or other identified criminal justice institutions be referred immediately to the Ombudsman. His first task is to determine whether it is a complaint about the conduct of a member of the police force which is made by, or on behalf of, a member of the public (a qualifying complaint). If he determines that it is not a qualifying complaint he must refer it to the Chief Constable, the Policing Board, the Director of Public Prosecutions or the Department of Justice as appropriate. A complaint relating to the direction and control of the police force by the Chief Constable is not a qualifying complaint. The time limit for the presentation of a complaint is fixed by the RUC (Complaints etc) Regulations 2001 at 12 months and could only be extended where there were exceptional circumstances or the matter is grave.

[7] Section 53 requires the Ombudsman to consider whether the qualifying complaint is suitable for informal resolution. That requires that the complainant gives consent and that the Ombudsman does not consider it a serious complaint. A serious complaint is defined as a complaint alleging that the conduct complained of resulted in the death of, or serious injury to, some person. If the Ombudsman considers that the complaint is suitable for informal resolution he must refer it to the appropriate disciplinary authority who will seek to resolve it informally. If informal resolution turns out not to be possible the disciplinary authority must refer the complaint back to the Ombudsman for investigation pursuant to section 56.

[8] Section 54 requires that the Ombudsman formally investigate all serious complaints but may refer other qualifying complaints to the Chief Constable for formal investigation by a police officer. Section 55 requires the Chief Constable to refer to the Ombudsman for formal investigation any matter which appears to the Chief Constable to indicate that conduct of a member of the police force may have resulted in the death of some other person and certain criminal justice organisations are given power to refer matters which are not the subject of a complaint for investigation where it appears that a member of the police force may have committed a criminal offence or behaved in a manner which would justify criminal proceedings.

[9] Section 55(6) provides that the Ombudsman may of his own motion formally investigate any matter which appears to him to indicate that a member of the police force who is not the subject of a complaint may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings if it appears to the Ombudsman that it is desirable in the public interest that he should do so.

[10] Section 56 provides that where a complaint or matter is to be formally investigated the Ombudsman must appoint an officer of the Ombudsman to conduct the investigation. Officers of the Ombudsman have all the powers and privileges of a constable throughout Northern Ireland and are

subject to the Codes of Practice under the Police and Criminal Evidence (Northern Ireland) Order 1989 (“PACE”) in the conduct of interviews. At the end of the investigation the officer appointed to conduct the investigation must submit a report to the Ombudsman. Similarly, where a police officer is tasked with conducting the investigation the officer must submit a report on the investigation to the Ombudsman under Section 57(8).

[11] Where the Ombudsman determines that the report indicates that a criminal offence may have been committed by a member of the police force he must send a copy of the report to the Director of Public Prosecutions together with such recommendations as appear to the Ombudsman to be appropriate. Where he determines that the report does not indicate that a criminal offence may have been committed by a member of the police force and that the complaint is not a serious one he may determine that the complaint is suitable for resolution through mediation and act as a mediator if the parties agree.

[12] Section 59 describes the circumstances in which the Ombudsman must consider the question of disciplinary proceedings. That arises if he determines:

- (i) that the report received does not indicate that a criminal offence may have been committed by a member of the police force and the complaint was not suitable for resolution through mediation or the mediation has failed, or
- (ii) that the DPP has decided not to initiate criminal proceedings in relation to a report sent to him or those proceedings have concluded.

[13] In those circumstances the Ombudsman must send the appropriate disciplinary authority a memorandum containing:

- “(a) his recommendation as to whether or not disciplinary proceedings should be brought in respect of the conduct which is the subject of the investigation;
- (b) a written statement of his reasons for making that recommendation; and
- (c) where he recommends that disciplinary proceedings should be brought, such particulars in relation to the disciplinary proceedings which he recommends as he thinks appropriate.”

This section has provisions to enable the Ombudsman to ensure that any recommended disciplinary proceedings are pursued.

[14] Section 60A was added in April 2003. It provides that the Ombudsman may investigate a current practice or policy of the police if the practice or policy comes to his attention under Part VII and he has reason to believe that it would be in the public interest to investigate the practice or policy. There are exclusions in relation to matters concerned with conduct within the remit of the tribunal established under the Regulation of Investigatory Powers Act 2000. If he decides to exercise this power the Ombudsman must immediately inform the Chief Constable, the Policing Board and the Department of Justice of his decision to conduct such an investigation, his reasons for making that decision and the practice or policy into which the investigation is to be conducted. This section imposes a requirement on the Ombudsman to report on the investigation to the Chief Constable and

the Policing Board and in certain circumstances to the Secretary of State and the Department of Justice.

[15] Section 62 is the provision at the centre of the dispute in this appeal and provides:

“The Ombudsman may, in relation to any exercise of his functions under this Part, publish a statement as to his actions, his decisions and determinations and the reasons for his decisions and determinations.”

[16] Section 63 relates to restriction on disclosure of information but enables the Ombudsman to disclose information in connection with the exercise of any of his functions in the form of a summary or general statement where the Ombudsman thinks it necessary in the public interest to identify a person to whom the information received relates.

[17] Section 64 provides for regulations and in particular subsection (n) provides for regulations enabling the Ombudsman, in such cases as may be prescribed, to make a recommendation to the Chief Constable for the payment by the Chief Constable to the complainant of compensation of such amount as the Ombudsman considers appropriate but not exceeding certain limits. On foot of that power paragraph 27 of the Royal Ulster Constabulary (Complaints etc) Regulations 2000 (“the 2000 Regulations”) provides:

“Recommendations on compensation for complainants

27.-(1) Where the Ombudsman is satisfied that a complaint has been substantiated, the Ombudsman may recommend to the Chief Constable that he should pay compensation to the complainant where:

- (a) the complainant has suffered measurable financial loss resulting from the action complained of, or
 - (b) the complainant suffered physical injury, or
 - (c) the complainant has suffered considerable distress or inconvenience.
- (2) The sum recommended for compensation shall not exceed that payable in the small claims court.
- (3) It shall not be disclosed in any criminal or disciplinary proceedings that compensation has been recommended or paid.”

[18] What this review of the legislation establishes, therefore, is that there are a number of gateways leading to the conduct of an investigation by the Ombudsman. The first is through section 52(4) where there is a complaint about the conduct of a member of the police force made by or on behalf of a member of the public. The conduct of which complaint is made need not include a criminal offence or a disciplinary matter. The 2000 Regulations recognise this by reference to provisions dealing with unsatisfactory performance but the determination of whether the complaint is a qualifying complaint is for the Ombudsman to determine by virtue of section 52(4). It is not necessary that the person making the complaint identifies any particular member of the police force. It was this power which the Ombudsman exercised in this case.

[19] The other gateways are through section 55. That can be as a result of a referral by the Policing Board, the Department of Justice or the Secretary of State where it appears to any of them that a member of the police force may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings. Section 55 also requires that the Chief Constable refer to the Ombudsman any matter which appears to the Chief Constable to indicate that the conduct of a member of the police force may have resulted in the death of some other person. The Chief Constable may also refer to the Ombudsman any matter which appears to the Chief Constable to indicate that a member of the police force may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings.

[20] The Director of Public Prosecutions (“DPP”) must also refer to the Ombudsman any matter which appears to him to indicate that a police officer has committed a criminal offence or may, in the course of a criminal investigation, have behaved in a manner which would justify disciplinary proceedings. Finally, section 55(6) gives the Ombudsman power of his own motion to formally investigate any matter which appears to him to indicate that a member of the police force may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings in the absence of a complaint if it appears to the Ombudsman that it is desirable in the public interest that he should do so. The routes under section 55 are qualified largely by reference to the possibility of the commission of a criminal offence or disciplinary misconduct and that may suggest that the discretion of the Ombudsman to determine the extent of the investigation is wider where the section 52(4) route is engaged.

[21] The scheme of the legislation requires the Ombudsman to make determinations on whether a member of the police force may have committed a criminal offence or whether disciplinary proceedings are appropriate. The Ombudsman has no adjudicative role in respect of the outcome thereafter. Part VII of the 1998 Act does not impose any express duty on the Ombudsman to substantiate or dismiss any complaint.

[22] The only reference to the substantiation of a complaint is found in Regulation 27 of the 2000 Regulations. There are, however, obvious instances where a complaint may be well founded although no recourse to the DPP or the disciplinary authority would be appropriate. A criminal offence may appear to have been committed but it may not be possible to identify the offender. Disciplinary proceedings may not be possible because the officer has resigned in the interim. The complaint may relate to unsatisfactory performance. This is not a comprehensive list of the circumstances in which such cases could arise.

[23] There are few references to the involvement of the complainant after the complaint has been lodged. The 2000 Regulations provide for a copy of the complaint to be given to the complainant once it is accepted by the Ombudsman. Those Regulations also provide that the complainant must be informed if the Ombudsman refers the complaint to a disciplinary committee and must also be informed if he agrees that the complaint should be withdrawn before that committee. The only references in Part VII of the 1998 Act to the involvement of the complainant is where an informal resolution or mediation is suggested and the complainant agrees to either course. If there is no express duty on the Ombudsman to determine whether to substantiate the complaint and inform the complainant of the outcome what decision making power or duty does the Ombudsman have and if the Ombudsman has such a power or duty how is he to exercise it? The answer to those questions are to be found by examining the Act and its context as a whole. Those are the crucial issues in this appeal.

The complaint

[24] The shooting was reported to police within 10 minutes of its occurrence and vehicle checkpoints were set up expeditiously in the area. The offenders were not intercepted. The police investigation thereafter has continued and the latest information available to the court is that the matter was transferred to the Legacy Investigation Branch of the PSNI in 2014. The investigations have not led to the apprehension of those responsible.

[25] In late 2001 the Loughinisland families first contacted the Ombudsman's office to raise concern about the circumstances of the attack and subsequent police investigations. Discussions continued until March 2006 when a formal complaint was made by the families. That complaint concerned:

- (i) Alleged failure by police to conduct an effective investigation of the murders, including failing to keep the bereaved families updated as to progress in the enquiry.
- (ii) (ii) Alleged failure of the police investigation to discharge the state's duties as required by Article 2 of the European Convention on Human Rights as incorporated by Schedule 1 of the Human Rights Act 1998.
- (iii) Alleged collusion between the RUC and those responsible for the murders.

That resulted in the publication of a formal statement in June 2011 by the predecessor of the Ombudsman who made the impugned statement. The bereaved families were dissatisfied with the 2011 statement and issued judicial review proceedings to quash it. By consent that public statement was quashed in December 2012.

[26] Thereafter the families engaged in further discussions with the newly appointed Ombudsman and sought to support the allegation of collusion by reference to issues around the Triumph Acclaim motor vehicle in which the attackers made their escape. That vehicle was destroyed by police in 1995. It was also contended that there was a failure to make prompt arrests despite the early availability of related intelligence.

[27] In January 2014 terms of reference for the proposed investigation by the Ombudsman were established dealing with the resourcing and conduct of the investigation, the manner in which intelligence was available and used to assist the investigation, the extent to which the UVF gang might have been disrupted as a result of investigations into pre-cursor events and the extent to which there was any involvement directly or indirectly in connection with the attack by a member of the RUC or agent of the RUC. An officer was appointed pursuant to section 56 of the 1998 Act to conduct the investigation.

[28] The weapon used in the murders at the Heights Bar was a VZ58 assault rifle. It is common case that there was a loyalist arms importation of such weapons during 1987/88 and that the murder weapon was part of that importation. It was alleged that the RUC were aware of the planned importation and colluded with loyalists by either facilitating the purchase and importation or failing to take appropriate and effective steps to disrupt the importation. Such weapons were used by loyalist paramilitaries in the murder or attempted murder of at least 70 people in Northern Ireland between 7

March 1988 and 3 May 2005. The terms of reference of the investigation were amended in August 2014 to include the investigation of issues related to the importation of these arms in 1987/88.

[29] The investigation was concluded by September 2015 and the Ombudsman submitted an investigation report to the PPS indicating that it was not believed that the evidence would support submission of a file for direction to the PPS in relation to a specific, identifiable officer but that the enquiries revealed what would be better described as significant concerns in respect of disciplinary and/or corporate matters for the RUC. It was intended that these would be detailed in a subsequent public statement. The Ombudsman's Director of Investigations (Historic) met with the PPS on 14 April 2016 and the PPS confirmed that they had not identified sufficient evidence to charge or report any police officer for any offence in connection with the investigation.

[30] At first instance before Keegan J it was contended that the Ombudsman had conducted his investigation for the purpose of preparing a PS rather than for the purpose of investigating the complaint. We consider that the steps set out above plainly demonstrate that the investigation was one directed at the complaint. The Ombudsman indicated expressly in his affidavit that the investigation of the complaint was his purpose and we consider that there was no basis for going behind that statement. The matter was not pursued on appeal.

The public statement

[31] The Ombudsman issued the PS on 9 June 2016. It consists of an executive summary followed by nine chapters and an appendix which includes a summary of findings in relation to the core complaints. In respect of those core complaints in some cases the Ombudsman sets out a narrative explaining why the complaint is made out and in others a narrative explaining why the complaint is not made out. Although he does not use the terminology of substantiated or dismissed the narrative amounts to the same thing.

[32] Keegan J set out briefly the broad elements of the PS from [8]-[13] of her judgment:

“[8] The Executive Summary refers to the fact that the investigation has sought to answer this and other important questions raised by the families of those who were killed and injured. The Ombudsman then states as follows:

“Let there be no doubt, the persons responsible for the atrocity at Loughinisland were those who entered the bar on that Saturday evening and indiscriminately opened fire. It is also important to recognise that despite the findings identified in this report there have been many within the RUC (Royal Ulster Constabulary GC) and the PSNI (Police Service of Northern Ireland) who have worked tirelessly to bring those responsible to justice. I am grateful to those members of the public and retired police officers who assisted my enquiries. However my investigation into this area was constrained by a refusal of a number of key people to speak to my investigators.”

[9] This public statement then sets out various matters in relation to the background to the attack which I reference in summary only. The Executive Summary refers to intelligence suggesting that the attack at Loughinisland was carried out by a UVF (Ulster Volunteer Force) unit in reprisal for the killings on the Shankill Road of senior UVF figures on 16 June 1994. The second sub-section refers to importation of weapons in 1988 and refers to this fact and states:

“However, an understanding of what happened in Loughinisland begins with the importation of arms by Loyalist paramilitaries in late 1987/early 1988. My investigation has found that the VZ58 rifle which was used in the Loughinisland attack was part of the shipment which entered Northern Ireland at that time. “

[10] In dealing with the events leading up to the Loughinisland attack the Ombudsman states as follows:

“My investigation into the Loughinisland killings examined the events leading up to the murders. It found that Special Branch had reliable intelligence that there was to be an arms importation in 1987/1988. Moreover, reliable intelligence indicates that police informants were involved in the procurement, importation and distribution of these arms. To fail to stop or retrieve all the weapons, despite the involvement of informants in the arms importation was a significant intelligence failure.”

[11] Reference is then made to incidents prior to the Loughinisland murders as part of the analysis of the police investigation. The Executive Summary reads:

“The families have complained that the police failed to conduct an adequate investigation into the murders. My conclusion is that the initial investigation into the murders at Loughinisland was characterised in too many instances by incompetence, indifference and neglect. This despite the assertions by the police that no stone would be left unturned to find the killers. My review of the police investigation has revealed significant failures in relation to the handling of suspects, exhibits, forensic strategy, crime scene management, house to house enquiries and investigative maintenance. The failure to conduct early intelligence led arrests was particularly significant and seriously undermined the investigation into those responsible to the murders.”

[12] The Ombudsman then states that failures to bring the killers to justice cannot be explained solely by a failure or otherwise of investigative actions. It is at this point the Ombudsman turns to the

complaint of the families that there was collusion between elements within the police and Loyalist paramilitaries. He states *inter alia* that:

“It is clear that discussion around the issue of collusion in Northern Ireland is extremely controversial and politically sensitive. There has been considerable debate in academic publications, reports by non-Governmental agencies and in the various enquiries into alleged allegations of State related killings in Northern Ireland. No consensus has emerged as to what it actually means. I am of the view that individual examples of neglect, incompetence and/or investigative failure are not (de facto) evidence of collusion.

However, a consistent pattern of investigative failures may be considered as evidence of collusion depending on the context and specifics of each case. This is particularly the case when dealing with police informants, who were participating in crime.

Having considered the numerous definitions of collusion that have emerged over the years, I have decided the most compelling approach is that provided by Judge Smithwick’s definition in his inquiry into collusion between members of An Garda Síochána and the Provisional IRA.

‘The issue of collusion will be examined in the broadest sense of the word. While it generally means the commission of an act, I am of the view that it should also be considered in terms of an omission or failure to act. In the active sense, collusion has amongst its meanings to conspire, connive or collaborate. In addition I intend to examine whether anybody deliberately ignored a matter or turned a blind eye to it or have pretended ignorance or unawareness of something morally, legally or officially to oppose.’”

[13] Having examined the complaint of collusion the Ombudsman concludes as follows:

“Many of the issues I have identified in this report including the protection of informants through both wilful acts and the passive turning a blind eye are in themselves evidence of collusion as defined by Judge Smithwick. When viewed collectively I have no hesitation in unambiguously determining that collusion is a significant feature of the Loughinisland murders.’”

The proceedings

[33] An application for judicial review to quash the PS was initiated in August 2016 on the basis first that the report exceeded the Ombudsman’s statutory powers and secondly that the first named appellant was denied the procedural fairness protections guaranteed to him by the common law.

[34] Leave was granted and the application came on for hearing before McCloskey J. He gave judgment on 21 December 2017. He reviewed the PS and considered that it contained a determination of negligence in relation to the first named appellant and did not expressly exclude him from the allegation of collusion. The first named appellant was given the opportunity to comment in advance of publication on only a single, isolated element of the PS concerning the storage and disposal of the suspected murder vehicle and the simultaneous loss of a significant exhibit. There was no reference to the first appellant's representations that there should be a focused search for further relevant documentary evidence. There was an inadequate and inaccurate portrayal of his defence in the report and no evidence that his defence was believed. In those circumstances the PS was vitiated by procedural unfairness. There is no appeal from that finding.

[35] In light of that finding the PS was amended to exclude certain references in relation to the first named appellant and a statement was issued on 9 March 2018 making it clear that the Ombudsman's determination of collusion in the report did not apply to the first named appellant. McCloskey J also addressed the *vires* issue and found in favour of the appellants. An application for recusal was then made after the liability judgment on 12 January 2018 prior to a remedies hearing. For the reasons set out in this judgment McCloskey J recused himself on the *vires* issue and directed that it should be heard before a different judge.

[36] It was in those circumstances that the matter then came on for hearing before Keegan J. For the purposes of this appeal there were two grounds to be addressed by her:

“(b) The respondent acted ultra vires in coming to conclusions, decisions or determinations as to whether criminal offences, or disciplinary offences had been committed by police officers as opposed to making recommendations to the appropriate authorities in relation to the same. Accordingly, the respondent had no power to issue a report on matters that did not relate to the exercise of his powers or as to decisions or determinations that he was lawfully permitted to arrive at.

(d) The respondent has wrongfully employed the making of a statement provisions, permitting the making of a statement as per section 62 of the Police (Northern Ireland) Act 1998, for the purposes of making a comment upon the Royal Ulster Constabulary George Cross as a body corporate.”

[37] At [66] of her judgment Keegan J identified the appellants' argument as contending that the Ombudsman should really only issue a public statement when a statutory outcome was reached such as a recommendation for criminal or disciplinary proceedings. The argument being advanced was that the most the Ombudsman could report on was that he did not believe that any criminal or disciplinary charges were merited. To go further was to step outside the statutory role. In the appeal the thrust of the argument was that the error of the Ombudsman was in making adjudications on the commission of criminal offences and disciplinary contraventions by police officers and it was those determinations that were outside his lawful powers.

[38] Keegan J accepted that the PS as revised to accommodate the finding in relation to Mr Hawthorne did not constitute a finding of a criminal or disciplinary offences against any individual.

She considered that the investigative duty on the Ombudsman involved a need to bring some resolution to families in an incident of this kind arising from the Troubles where no prosecutions have been brought. It was contrary to the legislative intention to limit the role of the Ombudsman in the manner contended for and such a limitation would have constituted a breach of the investigative obligation placed upon the state by virtue of Article 2 of the ECHR. Accordingly, she dismissed the application.

The Principles Governing a PS

[39] Part VII of the 1998 Act is replete with actions, decisions and determinations in respect of which the Ombudsman is either under a duty or can exercise a power. Under section 52(3) the Ombudsman is under a duty to record and consider each complaint and to determine whether it is a complaint to which subsection (4) applies. Section 54 requires that where a complaint is a serious complaint the Ombudsman must investigate in accordance with section 56. Section 55(6) empowers the Ombudsman to decide to investigate a possible criminal offence or disciplinary misconduct without complaint. Section 58 provides for the action the Ombudsman must take on receipt of an investigative report and section 59 requires the Ombudsman to consider disciplinary proceedings in certain circumstances. Where he has not determined that a criminal offence may have been committed he has to decide what recommendation to make to the disciplinary authority providing reasons and particulars. Section 62 is carefully crafted so that it is in respect of those actions, decisions and determinations required under the 1998 Act that a PS can be made. It follows that there is an expectation that any PS will disclose what statutory steps were taken and the reasons for those steps.

[40] It is clear that the principal role of the Ombudsman is investigatory. The complaint defines the contours of the investigation and in this case informed the terms of reference about which no complaint has been made. There is no power or duty created by the statute for the Ombudsman to assert a conclusion in respect of criminal offences or disciplinary misconduct by police officers. The Ombudsman is required to provide recommendations to the DPP if he considers that a criminal offence may have been committed. Such a recommendation is a decision which could form part of a PS. Once he makes such a recommendation he has no role thereafter apart from supplying information on request.

[41] When making a report to the disciplinary authority he is again required to make a recommendation as to whether proceedings should be brought and a statement of his reasons for making the recommendation. When he recommends proceedings he must provide particulars. Thereafter, his only role is in communicating the outcome to the complainant. In respect of complaints about criminal proceedings and disciplinary misconduct he is not, therefore, given power to make any determination about the complaint.

[42] We agree with the learned trial judge that the requirement in section 51(4)(b) that the Ombudsman shall exercise the powers in such manner and to such extent as appear to be best calculated to secure the confidence of the public and the members of the police force in the system is a significant material consideration in deciding to issue a PS and the terms in which it should be crafted. It is important to recognise, however, that the statute itself has sought to set out a framework within which the confidence of both the public and the police force should be secured.

[43] That framework specifically excluded any adjudicative power for the Ombudsman in the determination of criminal matters or disciplinary matters. The confidence of the public and police force was to be secured by way of the independence, efficiency and effectiveness of the investigation

coupled with an adherence to the requirements of the criminal law before any finding of a criminal offence could be made against a police officer and the conduct of a disciplinary hearing with all the protections afforded within that system before disciplinary misconduct could be established. The thrust of the appellants' case is that the statutory scheme would be undermined if the Ombudsman was entitled to use section 62 as a vehicle for the making of such findings. We agree that the legislative steer is firmly away from the Ombudsman having power to make determinations of the commission of criminal offences or disciplinary misconduct but will address later how this affects the content of a PS.

[44] The learned trial judge was directed to case law supporting competing contentions about the extent of the discretion available to the Ombudsman. She correctly analysed R(Chief Constable of West Yorkshire) v IPCC [2015] PTSR 72 which was advanced by the appellants as demonstrating a narrow approach to the discretion. The judge recognised, however, that the statutory scheme in play made clear what was permitted. The court was not concerned with a provision such as section 62.

[45] The respondent relied on R v Parliamentary Commissioner ex p Dyer [1994] 1 All ER 375. It is correct that Simon Brown LJ referred to the width of the discretion available to the Commissioner in that case as being strikingly clear. That, however, was because section 5(5) of the Parliamentary Commissioner Act 1967 provided that in determining whether to initiate, continue or discontinue an investigation under the Act, the Commissioner "shall act in accordance with his own discretion". It is difficult to conceive of a provision granting a wider discretion to any public body. In addition the Commissioner was given express power where it appeared to the Commissioner that injustice had been caused in consequence of maladministration to so find. In our view these provisions bear no relationship to the carefully crafted allocation of responsibility set out in Part VII of the 1998 Act and we do not find that case of assistance in determining the extent of the Ombudsman's powers under this legislation.

[46] Although the incident in question happened in June 1994 there has been considerable investigative work carried out subsequent to the coming into force of the Human Rights Act 1998 and indeed the case is still the subject of investigation. We did not detect any disagreement that the investigative obligation under Article 2 of the ECHR was engaged in domestic law as a result of the Supreme Court decision in McCaughey [2012] 1 AC 725.

[47] The investigative role of the Ombudsman was expressly relied upon by the United Kingdom Government and referred to in the Joint Committee on Human Rights Seventh Report of Session 2014/15. The relevant passage is set out by the judge at [60]. The procedural obligation under Article 2 requires that an effective and independent investigation is conducted and that there is a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. As the papers show the Ombudsman has published a PS on a significant number of occasions, some of which have demonstrated by investigation that concerns about the commission of offences or misconduct were misplaced. In other cases recommendations about future conduct have been highlighted. Many of these are examples of contribution to the satisfaction of the Article 2 obligation.

[48] What Article 2 required in domestic law was addressed by the House of Lords in Regina (Middleton) v West Somerset Coroner and Another [2004] 2 AC 182. The issue in that case was similar. The Coroner was prohibited from making a finding of criminal liability but Lord Bingham concluded:

“Where, in such a case, an inquest is the instrument by which the state seeks to discharge its investigative obligation, it seems that an explicit statement, however brief, of the jury's conclusion on the central issue is required.”

[49] How that was to be achieved was addressed by Lord Bingham in a further passage:

“36. This will not require a change of approach in some cases, where a traditional short form verdict will be quite satisfactory, but it will call for a change of approach in others: paras 30-31 above. In the latter class of case it must be for the coroner, in the exercise of his discretion, to decide how best, in the particular case, to elicit the jury's conclusion on the central issue or issues. This may be done by inviting a form of verdict expanded beyond those suggested in form 22 of Schedule 4 to the Rules. It may be done, and has (even if very rarely) been done, by inviting a narrative form of verdict in which the jury's factual conclusions are briefly summarised. It may be done by inviting the jury's answer to factual questions put by the coroner. If the coroner invites either a narrative verdict or answers to questions, he may find it helpful to direct the jury with reference to some of the matters to which a sheriff will have regard in making his determination under section 6 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 : where and when the death took place; the cause or causes of such death; the defects in the system which contributed to the death; and any other factors which are relevant to the circumstances of the death. It would be open to parties appearing or represented at the inquest to make submissions to the coroner on the means of eliciting the jury's factual conclusions and on any questions to be put, but the choice must be that of the coroner and his decision should not be disturbed by the courts unless strong grounds are shown.

37. The prohibition in rule 36(2) of the expression of opinion on matters not comprised within sub-rule (1) must continue to be respected. But it must be read with reference to the broader interpretation of "how" in section 11(5)(b)(ii) and rule 36(1) and does not preclude conclusions of fact as opposed to expressions of opinion. However the jury's factual conclusion is conveyed, rule 42 should not be infringed. Thus, there must be no finding of criminal liability on the part of a named person.”

The Ombudsman's role is not the same as the role of a jury in a coroner's investigation as the jury is required to address the questions posed under the Coroners Act (Northern Ireland) 1959 but this passage is of some assistance in informing the Ombudsman's contribution to the satisfaction of Article 2.

[50] The Patten Commission expressly recognised the importance of the Ombudsman in securing accountability and public trust in the police. We recognise, however, that the Ombudsman is not the only vehicle for the delivery of this obligation and in Rosaleen Dalton's Application [2020] NICA 27 at [139] this court noted the jurisprudence of the ECtHR giving the state a margin of appreciation

as to how the obligation should be delivered. We agree, however, that the Ombudsman should consider carefully his role in securing accountability in an Article 2 case when considering whether to make a PS.

[51] Article 60A provides for the Ombudsman to investigate current police practices and policies. In order to exercise this power the practice or policy has to come to attention under Part VII and the Ombudsman has to have reason to believe that it would be in the public interest to investigate the practice or policy. There are precise arrangements as to notification and reporting in relation to the practice or policy. There is no such provision in respect of historic practices or policies which are no longer current.

[52] We consider that the express reference to the practice or policy being current was designed to exclude investigations into historic practices or policies. That does not mean, however, that the impact that a practice or policy may have had on the conduct of a particular investigation is outside the scope of the Ombudsman's remit. There is a distinction between the investigation of a practice or policy which would involve its application in relation to the range of cases to which the practice or policy applied and considering the impact that a particular practice or policy may have had on the manner in which a particular investigation was carried out. The latter is plainly within the remit of the Ombudsman insofar as it impacts upon that investigation.

[53] The earlier decision of McCloskey J has discussed the need for procedural fairness as an intrinsic part of the exercise of publication of a PS. It must also be borne in mind that matters bearing on personal honour and reputation fall within the scope of Article 8 and where they attain a certain level of gravity and are made in a manner causing prejudice to personal enjoyment of the right to respect for private life they are entitled to protection (see Pfeifer v Austria 48 EHRR 175).

[54] Finally, there is the issue of whether the Ombudsman can substantiate or dismiss a complaint. Where the complaint relates to the commission of a criminal offence or disciplinary misconduct by a member of the police force we consider that the scheme of the 1998 Act does not provide a role for the Ombudsman in the adjudication of the complaint. Where, however, the complaint is in respect of other matters such as incivility or unsatisfactory performance we consider that the intention of the Act as disclosed in section 64(2)(n) was to enable the Ombudsman to provide limited compensation and that such an award could only be made in circumstances where the complaint was satisfied. That is effectively recognised in the 2000 Regulations.

[55] There may well be circumstances, of which this appeal may be an example, where a police officer will have resigned as a result of which the officer would no longer be subject to any disciplinary process. By virtue of section 63(1)(e) of the 1998 Act the Ombudsman has limited powers in a PS to identify a person to whom information relates if it is necessary in the public interest. That is a strict test. We accept that a person can be identified by inference, a so-called jigsaw identification. We do not consider that the power to make a PS provides the Ombudsman with the power to make determinations in respect of retired officers. We accept, however, that the statutory scheme does enable the Ombudsman in respect of such officers to indicate what recommendations might have been made, what reasons there were for the making of such recommendations and whether disciplinary proceedings would have been appropriate.

[56] All of that must, however, be circumscribed by the requirement for procedural fairness and the need to ensure that the Article 8 interests of the retired officers are respected.

Conclusion

[57] The complaints by the families were largely focused upon failures in the investigative process disclosing criminal conduct as a result of attempts to protect those responsible for the murders. In a letter from Mr Holmes, the Ombudsman's Director of Investigations (History), to the Public Prosecution Service on 17 September 2015 enclosing the investigation report he stated that he did not believe that the investigation had identified evidence that would support submission of a file for direction to the PPS in relation to a specific, identifiable officer. What was revealed he described as significant concerns in respect of disciplinary and/or corporate matters for the RUC which would be detailed in the PS.

[58] It is striking that nowhere in the PS did the Ombudsman state that he had determined that the report under section 56 did not indicate that a criminal offence may have been committed by a member of the police force. In light of his comments about the approach to the sharing of intelligence and the effect it may have had on the outcome of the investigation one would also have expected the PS to set out the reasons for that decision.

[59] The debate in this case principally revolved around the comments of the Ombudsman in his summary conclusions in Chapter 9 of the PS. In that chapter at paragraph 9.9 he concluded that corrupt relationships existed between members of the security forces in South Down and the UVF. He set out the interpretation of "collusion" which he considered appropriate in this context. From paragraphs 9.19 to 9.27 he set out the position of the Northern Ireland Retired Police Officers Association. Those comments identified the critical part that intelligence had to play in the fight against terrorism and asserted that the intelligence world quite justifiably adopted on specific occasions the position that the priority to preserve life and secondly property came at the expense of solving crime.

[60] On that basis the argument was that any interference with the investigation of serious crimes was not with the intention of disrupting that investigation but for the purpose of preserving life. That included both the life of the informant and the life of others who would be saved as a result of the informant's information. It was submitted that such an approach was perfectly lawful.

[61] Between paragraphs 9.28 to 9.38 he set out the competing argument that informant handling requires the balancing of the potential value of the informant which may save lives and the nature and scope of activities in which they are likely to be involved. He acknowledged that the intelligence community in Northern Ireland sought political guidance as to how these matters might be resolved but that was not forthcoming. He concluded in 9.40 that the protection of informers through both wilful and passive acts constituted collusion as defined by Judge Smithwick. At paragraph 4.200 he also expressed his view that it was indefensible for the Special Branch not to disseminate intelligence implicating those involved in the importation of weapons in 1987/88.

[62] The essence of his conclusion was set out at paragraph 9.34:

"In the aftermath of serious crime police should not be complicit in concealing information which could assist related investigations; should not, as in the case of murders which preceded the Loughinisland attack, shield the identity of possible suspects who should have been subject to investigation; and should not fail to

disseminate intelligence in order to protect the source of the information.”

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

[64] We do not dissent from the view of Keegan J that she was not minded “to step into the territory of critiquing modes of expression” in exercising her supervisory jurisdiction but we consider that the emphatic conclusions reached by the Ombudsman in the three offending paragraphs go beyond mere modes of expression and exceed his powers. We do, nevertheless, uphold the decision of the judge at first instance not to strike down the PS because of what was written therein. In light of our conclusions regarding the offending paragraphs the parties may wish to have an opportunity to consider the issue of remedy, although the appellants may be content with the expression of this court’s view as sufficient remedy for them.

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