



Statutory Report

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

Relating to:

INVESTIGATION INTO THE
CIRCUMSTANCES SURROUNDING THE
MURDER OF DENIS DONALDSON
ON 4 APRIL 2006

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Executive Summary

On 17 March 2002, sensitive information was stolen during an aggravated burglary at Castlereagh Police Station. Police subsequently received intelligence that the Provisional Irish Republican Army (PIRA) had been responsible.

In July 2002, the Police Service of Northern Ireland (PSNI) commenced an operation targeting PIRA's intelligence-gathering network in the Greater Belfast area.

This operation included investigation of thefts from the Northern Ireland Office at Castle Buildings, Belfast.

On 4 October 2002, linked to the PSNI operation, police carried out a number of searches which led to the seizure of information and the arrests of four people, including Denis Donaldson, a senior member of Sinn Féin.

All four individuals, including Mr Donaldson, were subsequently charged with possession of material that could be of use to terrorists. However, the charges against one of these individuals was later withdrawn in December 2003.

In November 2005, the PPS reviewed the case and directed that the test for prosecution was no longer met in respect of Mr Donaldson and his co-accused.

Following this decision, PSNI conducted a risk assessment and concluded that PIRA would be likely to conduct an internal inquiry to establish why the case was withdrawn against Mr Donaldson and his co-accused.

On 8 December 2005, the PPS announced that the case was to be discontinued.

On 16 December 2005, Mr Donaldson informed the media that he had worked as an informant for both the Security Service and the Police Service of Northern Ireland.

On the same date, the then President of Sinn Féin held a press conference in Dublin where he announced that Mr Donaldson had been dismissed from the party after admitting that he had been an informant.

In early January 2006, Mr Donaldson moved to a cottage belonging to his family in County Donegal.

On 19 March 2006, the 'Sunday World' newspaper published an article stating that a journalist had visited Mr Donaldson in County Donegal.

The article included a photograph of Mr Donaldson standing outside the cottage.

On 4 April 2006, Mr Donaldson was found dead inside the cottage. He had been shot a number of times. In April 2009, the Real IRA claimed responsibility for the murder.

In October 2007, the family of Mr Donaldson made a complaint to the former Police Ombudsman, Nuala O'Loan.

Mr Donaldson's family complained about the actions of police before and after the murder of Mr Donaldson.

In February 2010, Mrs O'Loan's successor, Al Hutchinson, wrote to Mr Donaldson's family to advise them that, following a lengthy investigation, he had identified no criminality or misconduct on the part of any police officer subject to investigation.

In January 2013, the then Police Ombudsman, Dr Michael Maguire stated that Mr Donaldson's family had brought to his attention new information of which he had not previously been aware, leading him to commence a re-investigation of their complaint.

Mr Donaldson's family provided this Office with additional information relating to the PSNI Special Branch officer who they believed 'handled' Mr Donaldson.

They also provided information regarding a journal that Mr Donaldson had kept which they believed contained details of his contacts with PSNI Special Branch during the period prior to his death. This journal was recovered from the cottage following his murder and was in the possession of AGS officers.

This investigation reviewed all the relevant documentation, including intelligence, held by PSNI relating to Mr Donaldson.

Family Concerns

The family of Mr Donaldson made a complaint to this Office which contained a number of allegations, questions and concerns in respect of police actions before and after Mr Donaldson's murder.

The family had concerns regarding the PM1 threat message delivered by police to Mr Donaldson on 10 December 2005. They alleged that:

- I. The threat message was '*bogus*' or artificially manufactured as it was untrue that the media were intending to expose Mr Donaldson as an informant;
- II. The threat message was maliciously released as a direct result of the court case involving Mr Donaldson, with foreknowledge of the likely implications; and
- III. The actions of police with regards the threat message were carried out without any prior risk assessment, thereby breaching Mr Donaldson's rights under Article 2 of the European Convention of Human Rights (ECHR).

The family expressed concerns about a telephone call police made to Mr Donaldson on 15 December 2005. They alleged that:

- I. The telephone call was directly linked to the PM1 threat message;
- II. The timing of the telephone call, five days after the delivery of the PM1 threat message to Mr Donaldson, was a concern;
- III. Police failed to provide Mr Donaldson and his family with any specific security advice; and
- IV. The telephone call was intended to '*spook*' Mr Donaldson and part of an exercise to '*burn*' him as an informant.

Mr Donaldson's family raised concerns about the level of knowledge police possessed, relating to the movements and whereabouts of Mr Donaldson and his immediate family, after he publicly stated that he had been an informant and moved to Donegal. They alleged that:

- I. Police maintained records of conversations and other communications between Mr Donaldson and his immediate family;
- II. Police made direct contact with Mr Donaldson during this period; and
- III. Another informant visited Mr Donaldson during this period.

They also raised concerns regarding police relations with the media, alleging that:

- I. Police leaked information regarding Mr Donaldson's whereabouts to a number of individuals, including journalists;
- II. Police did not take steps to protect Mr Donaldson after he had been contacted by a 'Sunday World' journalist; and
- III. Police did not conduct criminal investigations regarding the actions of a number of journalists.

The family further alleged that PSNI attempted to impede the subsequent AGS murder investigation. They alleged that:

- I. Police withheld, suppressed, or edited information relating to their contact with Mr Donaldson during the final months of his life;
- II. Police failed to make Mr Donaldson's handler available to the AGS investigation and;
- III. Police sought to implicate members of Mr Donaldson's family in having facilitated, or been involved in, his murder.

Conclusions

This investigation has established that a full Risk Assessment was conducted prior to the delivery of the Threat Message to Mr Donaldson on 10 December 2005.

For this reason, the Police Ombudsman is satisfied that police complied with the relevant requirements regarding how threats to life should be managed.

The Police Ombudsman has identified no concerns regarding the telephone calls from police to Mr Donaldson on 15 December 2005. There were two telephone calls made to Mr Donaldson on 15 December 2005. The purpose of these telephone calls was to identify, assess, and manage any identified risks, as well as address any welfare concerns relating to Mr Donaldson.

The Police Ombudsman is of the view that, following the publication of the 'Sunday World' article, it would have been reasonable for police to conclude that there was an increased risk to Mr Donaldson and members of his family who visited him at the cottage on a regular basis.

The Police Ombudsman is of the view that it would have been reasonable to conclude, following the publication of the article, that individuals who wished Mr Donaldson serious harm could have identified his whereabouts.

The Police Ombudsman is also of the view that this change in circumstances ought to have resulted in a new Risk Assessment by PSNI with a documented audit trail of the steps they took to assess any potential threats, to determine what, if any, further inquiries were reasonable, and to consider if there were any other appropriate preventative measures.

This investigation found no evidence that a further Risk Assessment took place, or was considered by PSNI, following the publication of the 'Sunday World' article.

Neither has it found evidence that PSNI were monitoring the movements or conversations of Mr Donaldson, during the relevant period, as alleged by the family.

This investigation has found no evidence that police leaked information regarding the whereabouts of Mr Donaldson to individuals, including journalists.

This investigation has established that PSNI did not conduct criminal investigations into the actions of a number of journalists. However, the Police Ombudsman is of the view that there was no evidence that would have justified initiating a criminal investigation against any member of the media.

There is no evidence that any member of the PSNI sought to withhold, suppress, or edit information in an attempt to impede the murder investigation conducted by An Garda Síochána (AGS).

There is also no evidence that PSNI sought to implicate members of Mr Donaldson's family in having facilitated, or been involved in, his murder.

Overall Conclusions

The Police Ombudsman acknowledges that, following the publication of the media article, PSNI shared information relating to the threat to Mr Donaldson's safety with AGS on the day that it was received. However, the Police Ombudsman is of the view that, in the absence of a

documented risk assessment following the ‘Sunday World’ article, and given PSNI previously documented Risk Assessments, that it is likely that this important measure to assess the threat to Mr Donaldson’s life was not undertaken.

The Police Ombudsman is of the view that the family’s concerns about the steps taken by PSNI in the management of this threat to Mr Donaldson are legitimate and justified.

However, the Police Ombudsman cannot conclude that, if such a risk assessment had been undertaken and shared with AGS, the murder of Mr Donaldson could have been prevented.

1.0

Introduction

- 1.1. On 4 April 2006, the body of Mr Denis Donaldson was found at his family cottage in County Donegal. He had been murdered. The Real Irish Republican Army (Real IRA) later claimed responsibility for his murder.
- 1.2. In December 2005, Mr Donaldson, a senior Sinn Féin member, informed the media that he had worked as an informant for both the Security Service and Police Service of Northern Ireland (PSNI). This followed the failed prosecution of Mr Donaldson and a number of other individuals, following their arrests for terrorist offences in October 2002.
- 1.3. In October 2007, the former Police Ombudsman, Nuala O'Loan, received a complaint from Mr Donaldson's family. The complaint included questions and concerns regarding the actions of police before and after Mr Donaldson's murder.
- 1.4. In February 2010, Al Hutchinson, Mrs O'Loan's successor as Police Ombudsman, wrote to Mr Donaldson's family to advise them that, following a lengthy investigation, he had identified no criminality or misconduct on the part of any police officer subject to investigation.
- 1.5. Mr Donaldson's family subsequently raised a number of issues regarding this investigation and met with my predecessor, Dr Michael Maguire, in November 2012, to discuss their concerns.
- 1.6. In January 2013, Dr Maguire stated that Mr Donaldson's family had brought to his attention new information of which he had not previously been aware, leading him to commence a re-investigation of their

complaint. This announcement was welcomed by the family. I will detail the new information later in this public statement.

- 1.7. The RUC (Complaints etc) Regulations 2001 (the 2001 Regulations) allow the Police Ombudsman to consider public complaints which are outside the normal time, namely made within 12 months of the alleged conduct, if they '*should be investigated because of the gravity of the matter or the exceptional circumstances.*' My predecessors were of the view that the complaint made by Mr Donaldson's family met this '*grave or exceptional*' definition. Therefore, their complaint was accepted for investigation.
- 1.8. This investigation generated more than 120 investigative actions, including interviews of serving and former police officers and eight other witnesses. All of the former and serving police officers contacted by my Office as witnesses, 14 in total, co-operated and provided accounts as to their roles, decisions, and actions. I thank those who took the time to assist this investigation.
- 1.9. My investigators reviewed relevant intelligence held by police, in addition to other PSNI documentation. Other material was obtained and reviewed from the Public Prosecution Service (PPS), An Garda Síochána (AGS), the Northern Ireland Court Service (NICS), and other open source material.
- 1.10. Police Officer 1 was interviewed under criminal caution as a result of issues identified during the course of this investigation. My predecessor, Dr Maguire, submitted a file of evidence to the PPS regarding this officer. The PPS subsequently directed that Police Officer 1 should not be prosecuted. Dr Maguire was unable to consider the question of disciplinary proceedings relating to any potential misconduct as Police Officer 1 had retired from the PSNI.

- 1.11. In this public statement, where I have criticised the actions of any police officer, or former police officer, explicitly or implicitly during the relevant period, I have provided an opportunity for them to respond. This has allowed me to consider these responses and incorporate them into the public statement, where I consider it appropriate.
- 1.12. This document is a public statement detailing my reasons for actions, decisions, and determinations in respect of this complaint. The investigation of the complaint conducted by my Office is also outlined in this public statement.
- 1.13. Prior to its release, an earlier draft of this public statement was forwarded to the PSNI, Security Service, and AGS. Where relevant responses were received from them, I have taken account of those responses, where I consider it appropriate, in this public statement.

2.0

Events Leading to the Murder of Mr Donaldson

- 2.1. On 17 March 2002, sensitive material was stolen from the Special Branch office at Castlereagh PSNI Station. Later that month, police investigating this aggravated burglary received intelligence indicating that it was carried out by the Provisional Irish Republican Army (PIRA), assisted by a member of catering staff at Castlereagh PSNI Station.
- 2.2. The burglary attracted significant media attention, and there was much speculation as to who was involved. Added to this, there were a number of leaks of sensitive information, relating to the subsequent police investigation, which would have only been known to a small number of police officers.
- 2.3. In July 2002, PSNI commenced an operation¹ targeting PIRA's intelligence-gathering network in the Greater Belfast area. This operation included investigation of thefts of sensitive material from the Northern Ireland Office (NIO) at Castle Buildings, Belfast.
- 2.4. On 4 October 2002, police carried out a number of searches which led to the seizure of large amounts of material, including sensitive documentation. Four people were arrested including Mr Donaldson, a senior Sinn Féin member. When police searched his home, they recovered a large quantity of documentation, including papers which had originated from the NIO at Castle Buildings, Stormont. Later that

¹ Operation Torsion.

day, police searched Mr Donaldson's work station at Sinn Féin's Stormont office.

- 2.5. All four individuals, including Mr Donaldson, were subsequently charged with possession of material that could be of use to terrorists, contrary to the Terrorism Act 2000 (the 2000 Act). The charges against one of these individuals was later withdrawn in December 2003.
- 2.6. The case against Mr Donaldson and the other two individuals continued and there were a number of court hearings relating to pre-trial disclosure issues. This concluded with the relevant judge directing that the disclosure of relevant material to the three defendants was necessary in order to ensure a fair trial.
- 2.7. In November 2005, the PPS reviewed the case and directed that the test for prosecution was no longer met in respect of Mr Donaldson and his co-accused.
- 2.8. Following this decision, PSNI conducted a risk assessment and concluded that PIRA would be likely to conduct an internal inquiry to establish why the case was withdrawn against Mr Donaldson and his co-accused.
- 2.9. On 8 December 2005, the PPS announced that the case was to be discontinued. On the same date, PSNI issued a statement announcing that a large amount of sensitive documentation had been seized during the investigation, which had resulted in a number of individuals having to be warned about possible threats to their personal security.

- 2.10. On 10 December 2005, uniformed police officers visited the home of Mr Donaldson to deliver a threat message (PM1)² which stated that, ‘members of the media believe that Denis Donaldson is an informant.’
- 2.11. Mr Donaldson was interviewed by Sinn Féin officials on 14 and 15 December 2005.
- 2.12. On 16 December 2005, the then President of Sinn Féin held a press conference in Dublin where he announced that Mr Donaldson had been dismissed from the party after admitting that he had been an informant.
- 2.13. On the same date, Mr Donaldson made the following statement to the media:

“My name is Denis Donaldson. I worked as a Sinn Féin Group Administrator in Parliament Buildings. At the time of the PSNI raid on the Sinn Féin offices in October 2002, the so called StormontGate Affair, I was a British agent at the time. I was recruited in the 1980s after compromising myself during a vulnerable time in my life. Since then I have worked for British Intelligence and RUC/PSNI Special Branch. Over that period I was paid money. My last two contacts with Special Branch were as follows, two days before my arrest in October 2002 and last night when a member of the Special Branch contacted me to arrange a meeting. I was not involved in any republican spy ring at Stormont. The so called StormontGate Affair was a scam and a fiction. It never existed, it was created by Special Branch. I deeply regret my activities with British Intelligence and RUC/PSNI Special Branch. I apologise to anyone who has suffered as a result of my activities as well as to my former comrades and especially to my family who have become victims in all of this.”

² A PM1 is a PSNI form that is personally delivered to an individual when police are in possession of information that there may be a threat against them.

- 2.14. In early January 2006, Mr Donaldson moved to a cottage belonging to his family in County Donegal. On 19 March 2006, the ‘Sunday World’ newspaper published an article stating that a journalist had visited Mr Donaldson in County Donegal and had a brief conversation with him. The article also included a photograph of Mr Donaldson standing outside the cottage.
- 2.15. On 4 April 2006, Mr Donaldson was found dead inside the cottage. He had been shot a number of times. In April 2009, the Real IRA claimed responsibility for his murder, stating that *‘No traitor will escape justice regardless of time, rank, or past actions. The republican movement has a long memory.’*

3.0

The Complaints and Scope of the Police Ombudsman Investigation

- 3.1. The complaint made by Mr Donaldson's family to my Office contained a number of allegations, questions, and concerns in respect of police actions before and after Mr Donaldson's murder. These were as follows:
- 3.2. The family had concerns regarding the PM1 threat message delivered by police to Mr Donaldson on 10 December 2005. They alleged that:
 - I. The threat message was 'bogus' or artificially manufactured as it was untrue that the media were intending to expose Mr Donaldson as an informant;
 - II. The threat message was maliciously released as a direct result of the court case involving Mr Donaldson, with foreknowledge of the likely implications; and
 - III. The actions of police with regards the threat message were carried out without any prior risk assessment, thereby breaching Mr Donaldson's rights under Article 2 of the European Convention of Human Rights (ECHR).
- 3.3. The family expressed concerns about a telephone call police made to Mr Donaldson on 15 December 2005. They alleged that:
 - I. The telephone call was directly linked to the PM1 threat message;

- II. The timing of the telephone call, five days after the delivery of the PM1 threat message to Mr Donaldson, was a concern;
- III. Police failed to provide Mr Donaldson and his family with any specific security advice; and
- IV. The telephone call was intended to ‘spook’ Mr Donaldson and part of an exercise to ‘burn’ him as an informant.

3.4. Mr Donaldson’s family raised concerns about the level of knowledge police possessed, relating to the movements and whereabouts of Mr Donaldson and his immediate family, after he publicly stated that he had been an informant and moved to Donegal. They alleged that:

- I. Police maintained records of conversations and other communications between Mr Donaldson and his immediate family;
- II. Police made direct contact with Mr Donaldson during this period; and
- III. Another informant visited Mr Donaldson during this period.

3.5. They also raised concerns regarding police relations with the media, alleging that:

- I. Police leaked information regarding Mr Donaldson’s whereabouts to a number of individuals, including journalists;
- II. Police did not take steps to protect Mr Donaldson after he had been contacted by a ‘Sunday World’ journalist; and
- III. Police did not conduct criminal investigations regarding the actions of a number of journalists.

3.6. The family further alleged that PSNI attempted to impede the subsequent AGS murder investigation. They alleged that:

- I. Police withheld, suppressed, or edited information relating to their contact with Mr Donaldson during the final months of his life;
 - II. Police failed to make Mr Donaldson's handler available to the AGS investigation and;
 - III. Police sought to implicate members of Mr Donaldson's family in having facilitated, or been involved in, his murder.
- 3.7. At their meeting with Dr Maguire in November 2012, Mr Donaldson's family provided my Office with additional information relating to the PSNI Special Branch officer who they believed 'handled' Mr Donaldson. They also provided information regarding a journal that Mr Donaldson had kept which they believed contained details of his contacts with PSNI Special Branch during the period prior to his death. This journal was recovered from the cottage following his murder and was in the possession of AGS officers.
- 3.8. This investigation has examined the above questions, allegations, and concerns. This has included the following lines of enquiry:
- I. An examination of intelligence held by PSNI relating to Mr Donaldson, especially in the period after 16 December 2005, when he publicly stated that he had been an informant;
 - II. An examination of all relevant police documentation covering this period, including details of all police contact with Mr Donaldson;
 - III. An examination of relevant police decision-making regarding Mr Donaldson, from the date when the PPS decided to discontinue criminal proceedings against him and his co-accused; and
 - IV. An examination of all information provided by PSNI to the AGS murder investigation.

- 3.9. This investigation sought to address the family's complaint. My investigators reviewed all original PSNI documentation that was made available to my Office.

Limitations of the Police Ombudsman's Role

- 3.10. In June 2016 my predecessor, Dr Michael Maguire, issued a public statement concerning the murders of six men at the Heights Bar, Loughinisland, on 18 June 1994. This public statement was challenged as being '*ultra vires*'³ by the Northern Ireland Retired Police Officers Association (NIRPOA).
- 3.11. Following prolonged legal proceedings, on 18 June 2020 the Northern Ireland Court of Appeal gave judgment on the Police Ombudsman's role as provided for in Part VII of the Police (Northern Ireland) Act 1998 (the 1998 Act). The Court ruled that the Ombudsman's role was investigatory and not adjudicatory in nature. Decisions as to whether a police officer's actions amounted to criminality or misconduct were for other forums such as a criminal court or disciplinary panel.
- 3.12. Paragraph 40 of the Court of Appeal judgment stated, *'It is clear that the principal role of the Ombudsman is investigatory. The complaint defines the contour 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 conduct by police officers. The Ombudsman is required to provide recommendations to the DPP if he considers that a criminal offence has been committed. Such a recommendation is a decision which could form part of a PS [Public*

³ A legal term meaning to act beyond the power or authority of the body.

Statement]. Once he makes such a recommendation he has no role thereafter apart from supplying information on request.⁴

- 3.13. The Court, in explaining the legal framework of the 1998 Act, outlined at Paragraph 43, '*That framework specifically excluded any adjudicative power for the Ombudsman in the determination of criminal 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 case could be undermined if the Ombudsman was entitled to use section 62 as a vehicle for the making of such findings. We agree that the legislative steer is firmly away from the Ombudsman having power to make determinations of the commission of criminal offences or disciplinary misconduct but will address later how this affects the content of a PS.*'
- 3.14. At Paragraph 55, the Court outlined the powers of the Police Ombudsman in respect of officers, where there was a question of criminality and/or misconduct, should a police officer have resigned or retired. '*There may well be circumstances, of which this appeal may be an example, where a police officer will have resigned as a result of which the officer would no longer be subject to any disciplinary process. By virtue of section 63(1) (e) of the 1998 Act the Ombudsman has limited powers in a PS to identify a person to whom information relates if it is necessary in the public interest. That is a strict test. We accept that a person can be identified by inference, a so-called jigsaw identification. We do not consider that the power to make a PS provides the*

⁴ 2020 [NICA] 33.

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 making such recommendations and whether disciplinary proceedings would have been appropriate.'

- 3.15. My interpretation of this judgment is that, in the absence of determinations of criminality or misconduct by the appropriate authority, my role is limited to commenting on the matters raised in a complaint. My conclusions in respect of the complaint made by Mr Donaldson's family are outlined later in this public statement.

4.0

Relevant Rules and Standards

- 4.1. Section 32 of the Police (Northern Ireland) Act 2000 (the 2000 Act) states that '*it shall be the general duty of police officers to protect life and property, preserve order, prevent the commission of offences and, where an offence has been committed, to take measures to bring the offender to justice.*'
- 4.2. This duty was reinforced in the PSNI Code of Ethics 2003⁵ that was in place at the time of Mr Donaldson's murder. This stated that:

'Police officers have a duty according to section 32 of the Police Act (Northern Ireland) 2000: -

- (a) *To protect life and property;*
- (b) *To preserve order;*
- (c) *To prevent the commission of offences; and*
- (d) *Where an offence has been committed, to take measures to bring the offender to justice.*

When carrying out these duties police officers shall protect human dignity and uphold the human rights of all persons as enshrined in the European Convention on Human Rights and other relevant international instruments.'

- 4.3. In October 2000, the Human Rights Act 1998 came into force in England, Wales, and Northern Ireland. This gave '*further effect*' to the European Convention of Human Rights (ECHR) in United Kingdom (UK)

⁵ Contained in the Schedule to the Police Service of Northern Ireland (Conduct) Regulations 2003

law. The Human Rights Act 1998 imposes a number of obligations on UK courts and public authorities, which includes the courts. These were as follows:

- I. It requires all UK public authorities, including the PSNI, to act in a way that was compatible with the European Convention of Human Rights (ECtHR) jurisprudence;
- II. This requirement to act compatibly with the ECHR does not apply where primary legislation requires a public authority to act in a way that was incompatible with the ECHR; and
- III. Where a decision by the UK Supreme Court conflicts with a decision of the ECtHR, that the decision of the former will be observed.

- 4.4. The Human Rights Act 1998 required police officers to be aware of the rights and obligations provided by the ECHR. Mr Donaldson's family alleged that PSNI failed to protect his right to life as detailed in Article 2 of the ECHR. This states that:

'1. Everyone's right to life shall be protected by law. No one shall be deprived of his/her life intentionally save in the execution of a sentence of the court following his/her conviction for a crime for which the penalty is protected by law.'

'2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary.'

- 4.5. Within the context of threats to life, there are seven key Human Rights principles that have evolved from European case law. These are as follows:

- I. The right to life requires the State to refrain from the intentional and unlawful taking of life and also take appropriate steps to safeguard the lives of those within its jurisdiction;⁶
- II. Appropriate steps extend, in certain cases, to a positive obligation on authorities to take preventative operational measures to protect an individual or individuals whose life or lives is, or are, at risk from the criminal acts of another individual;⁷
- III. The scope of this obligation must not impose an impossible or disproportionate burden on authorities;⁸
- IV. For this obligation to arise, it must be shown that the authorities knew, or ought to have known, of a real and imminent risk to the life of an identified individual from the criminal acts of a third party;⁹
- V. The extent of this obligation is to then take such measures within the authority's powers as are reasonable to avoid that risk;¹⁰
- VI. This can extend to an obligation to take reasonable steps to prevent self-inflicted deaths in custody;¹¹ and
- VII. Where an identifiable individual is at risk of paramilitary attack (or attack from an organised crime group or similar), there may be a duty to provide protection, but not for an indefinite period. Article 2 cannot be interpreted as imposing a duty on the State to give protection of this nature, at least not for an indefinite period.¹²

4.6. All of the above principles are significant. However, the relevant principle to this investigation is outlined at Point IV which sets out the criteria for when a threat to life arises in law. Article 2 is only engaged where an identifiable individual's life is at risk from a '*real and imminent*

⁶ Mahmut Kaya v Turkey (28 March 2000), ECtHR.

⁷ Osman v United Kingdom (1998) EHRR 245.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Keenan v United Kingdom (App No. 27229/95, 22 June 1998).

¹² X v Ireland (1973) 16 Yearbook 388, ECtHR, para 392.

*threat.*¹³¹⁴ A public authority will fail to fulfil its responsibilities under Article 2 if it fails to recognise, and respond to, the existence of a ‘*real and imminent threat*.’ This is based on what it knew about the threat at the material time or what it ought to have known.

- 4.7. PSNI General Order 26/2002 was the relevant ‘Threats to Life’ policy at the time. This instructed that the relevant Regional Assistant Chief Constable (ACC) was responsible for determining the appropriate means to assess and process information, which typically constituted the service of a PM1 notice. The PM1 notice was to include as much information as possible to allow the individual concerned to take appropriate steps to reduce the risk to themselves.
- 4.8. The police officer who delivered the PM1 notice was, at the same time, required to hand the individual concerned a copy of the ‘Personal Protective Measures’ leaflet. The General Order directed that the officer was not to elaborate beyond what is in the police message. The officer was to provide the individual concerned with the contact details of their local Crime Prevention Officer and advice on personal protection measures. This duty of care on the part of police did not extend to providing individual protection for an indefinite period of time, or preventing every possibility of violence.

¹³ ‘Real’ is defined as being objectively verifiable, that is to say supported by a range of sources of information.

¹⁴ ‘Imminent’ is defined as present and continuing.

5.0

The Police Ombudsman Investigation

5.1. Mr Donaldson's family raised a number of questions, allegations, and concerns with my Office that formed the basis for this investigation. These were as follows:

The family had concerns regarding the PM1 threat message delivered by police to Mr Donaldson on 10 December 2005. They alleged that:

- I. **The threat message was 'bogus' or artificially manufactured as it was untrue that the media were intending to expose Mr Donaldson as an informant;**
- II. **The threat message was maliciously released as a direct result of the court case involving Mr Donaldson, with foreknowledge of the likely implications; and**
- III. **The actions of police with regards the threat message were carried out without any prior risk assessment, thereby breaching Mr Donaldson's rights under Article 2 of the European Convention of Human Rights (ECHR).**

5.2. This investigation reviewed all the relevant documentation made available to my Office, including intelligence, held by PSNI relating to Mr Donaldson. Of particular interest was all material in the weeks prior to 16 December 2005, when Mr Donaldson publicly announced that he had been an informant. My investigators established that, once the PPS had decided to discontinue criminal proceedings against Mr Donaldson and his co-accused, PSNI conducted a Risk Assessment. This concluded that PIRA were more than likely to conduct an internal inquiry, scrutinising the actions

of Mr Donaldson and his co-accused, in an effort to ascertain why the criminal proceedings had been discontinued.

- 5.3. My investigators also located a police document, originating from early December 2005, which stated that a journalist had been informed that Mr Donaldson was an informant. It was this document that initiated the PM1 threat message that was delivered to him on 10 December 2005. My investigators established that a second threat message was also delivered by police to Mr Donaldson, via his legal representative, in January 2006. This information originated from an anonymous telephone call made to police.
- 5.4. A ‘threat message’ is a piece of information, in the possession of police, which indicates a threat to an individual’s life or personal safety. It is recorded on a document known as a PM1 which police then deliver to the individual who is at risk. The PM1 is usually hand-delivered to the individual under threat by a police officer who can also offer advice regarding additional security measures that the relevant individual may wish to take.
- 5.5. My investigators conducted a number of enquiries regarding the content and provenance of the information contained in the December 2005 document. This included interviewing, as witnesses, the police officer who recorded the relevant information and Police Officer 2, who subsequently delivered the PM1 threat message to Mr Donaldson.
- 5.6. Police Officer 2 stated that he was on duty on 10 December 2005. He was instructed to attend Mr Donaldson’s home with a colleague to deliver a PM1 threat message. He stated that Mr Donaldson was calm and did not appear upset or agitated when handed the threat message. Police Officer 2 added that he offered Mr Donaldson a copy of a PSNI booklet, ‘*Protect Yourself*,’ which provided advice on personal security measures. He also offered to

refer Mr Donaldson to PSNI's Crime Prevention Unit. Mr Donaldson declined this offer.

The family expressed concerns about a phone call made by police to Mr Donaldson on 15 December 2005. They alleged that:

- I. The telephone call was directly linked to the PM1 threat message;**
- II. The timing of the telephone call, five days after the delivery of the PM1 threat message to Mr Donaldson, was a concern;**
- III. Police failed to provide Mr Donaldson and his family with any specific security advice; and**
- IV. The telephone call was intended to 'spook' Mr Donaldson and part of an exercise to 'burn' him as an informant.**

- 5.7. My investigators examined all the PSNI documentation relating to this matter. They also analysed telephone records and interviewed a number of police officers involved in the decision-making process surrounding the relevant telephone call on 15 December 2005.
- 5.8. My investigators established that, following the PPS decision to discontinue criminal proceedings against Mr Donaldson and his co-accused, police conducted a Risk Assessment. This concluded that PIRA were likely to conduct an internal inquiry, which could involve interviewing Mr Donaldson.
- 5.9. PSNI also received information that Mr Donaldson may have informed Sinn Féin colleagues that he was an informant. Concerned that he was now at risk, PSNI held an urgent 'Gold Command'¹⁵ meeting on 14 December 2005. Resources were assigned so that police could respond quickly to developing events, if considered necessary.

¹⁵ 'Gold Command' is a meeting of senior police officers that 'sets the overarching strategy that all other plans must take account of.' College of Policing website.

- 5.10. My investigators interviewed, as witnesses, members of the PSNI ‘Gold Command’ team, in addition to other senior police officers involved in the relevant decision-making process.
- 5.11. The ongoing PSNI Risk Assessment concluded that there was no ‘imminent’ threat to Mr Donaldson’s life. However, a number of contingency plans were established. These included making contact with Mr Donaldson to identify and address any welfare concerns that he might have.
- 5.12. My investigators also analysed relevant telephone records. These revealed that police made a telephone call to Mr Donaldson’s home number at approximately 1:50pm on 15 December 2005, but there was no answer. At approximately 4:45pm on the same date police made a second telephone call and, this time, spoke to Mr Donaldson.
- 5.13. My investigators interviewed Police Officer 3, the police officer who made these two telephone calls. He stated that he was instructed to make contact with Mr Donaldson to ascertain if he had any concerns, given the information received by police that he had informed Sinn Féin colleagues that he was an informant. When Mr Donaldson answered the telephone on the second occasion, he informed Police Officer 3 that he could not talk as there were people with him. He suggested that Police Officer 3 call back at 7:00pm, whereupon Police Officer 3 provided him with a contact telephone number.
- 5.14. This investigation has established that, following the second telephone call, Mr Donaldson informed a Sinn Féin colleague that he had been contacted by police. He was told to attend a meeting with other Sinn Féin members where the relevant police contact was discussed. It was agreed that Mr Donaldson would contact Police Officer 3 to arrange a meeting. It was proposed that this meeting would be recorded, so that the relevant

recording could be played at a press conference planned for the following day.

- 5.15. This investigation established that, at approximately 9:20pm, a telephone call was made to the number that Police Officer 3 had supplied to Mr Donaldson. Police Officer 3 did not recognise the telephone number as belonging to Mr Donaldson, so did not answer the call. The unanswered telephone call was diverted to voicemail and a male voice left a message stating, "*Hello, give me a ring.*"
- 5.16. Police Officer 3 made subsequent enquiries and established that the relevant telephone number did not belong to Mr Donaldson. He informed my investigators that, given the caller was not known, he was instructed not to return the call. He was also advised that other options were being considered to ensure that PSNI were discharging their Article 2 obligations in respect of Mr Donaldson.
- 5.17. My investigators interviewed a number of other police officers regarding the decision not to make a further telephone call to Mr Donaldson. They all stated that a detailed Risk Assessment had been undertaken and it was concluded that Mr Donaldson was in no immediate danger. Their statements were supported by police documentation reviewed as part of this investigation.

Mr Donaldson's family raised concerns about the level of knowledge police held relating to the movements and whereabouts of Mr Donaldson and his immediate family, after he stated that he had been an informant and moved to Donegal. They alleged that:

- I. Police maintained records of conversations and other communications between Mr Donaldson and his immediate family;

- II. Police made direct contact with Mr Donaldson during this period; and**
- III. Another informant visited Mr Donaldson during this period.**

- 5.18. These allegations focused on whether Mr Donaldson's conversations and movements were being monitored after 16 December 2005 until his murder on 4 April 2006. Mr Donaldson's family informed my Office that they believed that both PSNI and AGS knew where he was residing prior to the 'Sunday World' article in March 2006.
- 5.19. Mr Donaldson's family also alleged that he was in contact with PSNI until his murder and that police knew he was alone in his County Donegal cottage the night before he was shot dead. They based this belief on Mr Donaldson receiving telephone calls and leaving the cottage so that he could speak in private.
- 5.20. My investigators obtained a number of telephone numbers that Mr Donaldson may have had access to during the relevant period. Attempts were made to retrieve incoming call data, but none was available due to the passage of time.
- 5.21. My investigators interviewed a number of police officers to establish what, if any, contact they had with Mr Donaldson during the relevant period. These enquiries also sought to establish whether they were aware of his whereabouts and movements, if there was any evidence to support the allegations that Mr Donaldson's movements and conversations were being monitored, and whether this information had been unlawfully disclosed to other parties. They all stated that they had no contact with Mr Donaldson during the relevant period and were unaware of his whereabouts and movements.

- 5.22. It is a matter of public record that AGS officers knew Mr Donaldson was living in the Glenties area of County Donegal from January 2006 onwards. AGS had spoken to him on a number of occasions and offered him advice regarding his personal security, in addition to any other assistance he required. During his time living in County Donegal, Mr Donaldson did not request AGS assistance. It is reasonable to conclude that other individuals, including some who lived in the Glenties area, would also have been aware that Mr Donaldson had moved there.
- 5.23. In March 2006, a journalist established Mr Donaldson's whereabouts, resulting in a 'Sunday World' article on 19 March 2006. The newspaper article described the cottage he was living in as '*run down*,' without running water and electricity, and adjacent to other cottages on a bend in the road. It did not reveal the location of the cottage, stating that it was in an Irish-speaking area of County Donegal. This investigation has established that, following the publication of the article, other journalists attempted to make contact with Mr Donaldson.
- 5.24. A number of days later, PSNI received information indicating that Mr Donaldson may be at increased risk as a result of the 'Sunday World' article. The intelligence was general and did not identify a specific or imminent threat. PSNI shared this information with their AGS counterparts on the date it was received.

The family raised concerns regarding police relations with the media, alleging that:

- I. Police leaked information regarding Mr Donaldson's whereabouts to a number of individuals, including journalists;**
 - II. Did not take steps to protect Mr Donaldson after he had been contacted by a 'Sunday World' journalist; and**
 - III. Did not conduct criminal investigations regarding the actions of a number of journalists.**
- 5.25. My investigators established that PSNI were made aware that a journalist believed that Mr Donaldson was an informant. This information was alleged to have been shared by Police Officer 1, who may have been informed by Person A.
- 5.26. This investigation reviewed PSNI documentation indicating that police already had concerns that Police Officer 1 was associating with members of the media and sharing information with them. My investigators were assisted in these enquiries by PSNI's Anti-Corruption Unit.
- 5.27. My Office conducted a criminal investigation concerning the alleged unlawful disclosure of information by Police Officer 1 to members of the media. My investigators interviewed a number of journalists who all denied receiving information alleging that Mr Donaldson was an informant.
- 5.28. My investigators also interviewed the journalist who visited Mr Donaldson's cottage in March 2006. He stated that he had met an acquaintance who had informed him that Mr Donaldson's family had a cottage in a particular area of County Donegal. The journalist stated that he decided to travel there and attempt to find Mr Donaldson.
- 5.29. He stated that initially his efforts proved unsuccessful until, one day, he saw Mr Donaldson crossing the street in the village of Glenties. He followed him to the cottage, but then returned to Belfast. He stated that he contacted Person B, who specialised in covert filming, and they both returned the next

day, with the intention of speaking to Mr Donaldson. My investigators wrote to Person B, asking that he assist this investigation, but received no reply.

- 5.30. My investigators interviewed Police Officer 1 under criminal caution. He confirmed that he knew Person A during the relevant period. He also stated that he associated with journalists, some of whom he regarded as friends. However, he denied that he had shared information about Mr Donaldson with a member of the media.
- 5.31. Investigations into the actions of members of the public are a matter for PSNI. Person A was interviewed under criminal caution by PSNI and stated that they knew Police Officer 1 during the relevant period, and was friends with several journalists. Person A denied sharing any information regarding Mr Donaldson with either Police Officer 1 or members of the media.
- 5.32. Following this interview and related enquiries, and as required by section 58(2) of the Police (Northern Ireland) Act 1998¹⁶, my Office forwarded a file for direction to the PPS about the conduct of Police Officer 1. In July 2017, the PPS directed ‘No Prosecution’ against Police Officer 1. My Office was unable to consider the question of disciplinary proceedings against Police Officer 1 as he had retired from the PSNI at the time of this investigation.

The family alleged that PSNI attempted to impede the subsequent An Garda Síochána (AGS) murder investigation. This included that:

¹⁶ **Section 58: Steps to be taken after investigation – criminal proceedings.**

“... (2) If the Ombudsman determines that the report indicates that a criminal offence may have been committed by a member of the police force, he shall send a copy of the report to the Director together with such recommendations as appear to the Ombudsman to be appropriate...”

- I. Police withheld, suppressed, or edited information relating to their contact with Mr Donaldson during the final months of his life;**
 - II. Failed to make Mr Donaldson's handler available to the AGS investigation and;**
 - III. Sought to implicate members of Mr Donaldson's family in having facilitated, or been involved in, his murder.**
- 5.33. This investigation examined a large amount of correspondence between AGS and PSNI. This included a significant number of investigative requests from AGS that were progressed by PSNI. PSNI also shared intelligence, and other information, with AGS regarding Mr Donaldson and threats made against him prior to his murder.
- 5.34. AGS were aware of Mr Donaldson's whereabouts prior to his murder and offered him security advice and other assistance, if required. A senior AGS officer stated, following Mr Donaldson's death, that "*The Garda here in Glenties are aware that Denis Donaldson was residing in the area since January 2006 and we made ourselves known to Mr Donaldson. We introduced ourselves. We offered him our facilities here in terms of whatever protection he needed and we have been in close communication with him.*"

Mr Donaldson's Journal

- 5.35. Mr Donaldson's family raised concerns with my predecessor, Dr Maguire, that the initial investigation conducted by former Police Ombudsman, Al Hutchinson, did not have access to a journal that Mr Donaldson kept. His family believed that this journal contained details of his alleged role as an informant and contacts with PSNI and the Security Service. A family member observed Mr Donaldson writing in the journal during a visit to the cottage but was not aware of its contents.

- 5.36. My investigators sought to interview the relevant member of Mr Donaldson's family but they declined to assist this investigation.
- 5.37. My Office liaised with AGS, who recovered the journal during the course of the murder investigation. Although my investigators were not allowed full access to the journal, they analysed extracts relevant to this investigation. These enquiries established that the journal did not contain any information indicating that Mr Donaldson had been in contact with members of PSNI after 15 December 2005.
- 5.38. My Office considered issuing an International Letter of Request (ILOR), requesting access to the full journal. However, following advice from the PPS, a decision was taken that this was not required. I am satisfied that the extracts viewed by my investigators addressed the matters subject to investigation, which were corroborated by other evidence and information gathered by my investigators.

6.0

Procedural Fairness

Introduction

- 6.1. In concluding this public statement, I am mindful of the need to ensure procedural fairness to those who may be affected by its content. Mr Justice McCloskey (as then) in the High Court in *Re Hawthorne & White* provided guidance to this Office as to what was generally required. In particular, I have considered relevant passages from that judgment which I outline here for ease of reference, highlighting the requirements of procedural fairness in this context:

[113] In my judgment, it matters not that the police officers thus condemned are not identified. There is no suggestion that they would be incapable of being identified. Further, and in any event, as a matter of law it suffices that the officers condemned by the Police Ombudsman have identified themselves as the subjects of the various condemnations. Procedural fairness, in this kind of context, cannot in my view depend upon, or vary according to, the size of the readership audience. If there is any defect in this analysis it is of no consequence given that the overarching purpose of the conjoined challenge of the second Applicant, Mr White, belongs to the broader panorama of establishing that reports of the Police Ombudsman couched in the terms considered exhaustively in this judgment are unlawful as they lie outwith the Ombudsman's statutory powers.

[114] The somewhat different challenge brought by Mr White, imbued by corporate and broader ingredients, gives rise to the following conclusion, declaratory in nature. Where the Police Ombudsman, acting within the confines of his statutory powers, proposes to promulgate a "public

statement" which is critical of or otherwise adverse to certain persons our fundamental requirements, rooted in common law fairness, must be observed. First, all passages of the draft report impinging directly or indirectly on the affected individuals must be disclosed to them, accompanied by an invitation to make representations. Second, a reasonable period for making such representations must be permitted. Third, any representations received must be the product of conscientious consideration on the part of the Police Ombudsman, entailing an open mind and a genuine willingness to alter and/or augment the draft report. Finally, the response of the individual concerned must be fairly and accurately portrayed in the report which enters the public domain.'

6.2. This process, sometimes called '*Maxwellisation*', involves four fundamental requirements as outlined by then Mr Justice McCloskey¹⁷:

- I. That all passages of the draft public statement impinging directly or indirectly on the affected individuals must be disclosed to them, accompanied by an invitation to make representations;
- II. A reasonable period for making such representations must be permitted;
- III. Any representations received must be conscientiously considered, entailing an open mind and a genuine willingness to alter and/or augment the draft report; and
- IV. The response of the individual concerned must be fairly and accurately portrayed in the statement that is published.

¹⁷ Now The Rt Hon Lord Justice McCloskey

The ‘Maxwellisation’ Process

- 6.3. In order to give Police Officer 1 a fair opportunity to respond to any proposed criticisms in this public statement, correspondence was forwarded to him on 18 October 2021 from this Office. This included extracts from an earlier draft of this public statement that impinged directly or indirectly on him, seeking his comments. A period of 30 days, from receipt of that correspondence, was provided in order for Police Officer 1 to respond. My Office did not receive a response from Police Officer 1.
- 6.4. I believe that the contents of this public statement accurately reflect the Police Ombudsman investigation of the complaint made by Mr Donaldson’s family. The views I have expressed in relation to the conduct of police officers within this public statement are based on evidence and other information, gathered during the course of this investigation.
- 6.5. At every stage of this investigation, I have sought to obtain and review the relevant legislation, standards, and guidance that existed in order to understand policing procedures and policies. I believe that this has resulted in a fair and impartial investigation, underpinned by evidence-based conclusions.
- 6.6. In response to the sharing of an earlier draft of this public statement, the PSNI informed me that the arrangements for transfer of ownership of threats to life and the related duty of care from PSNI to another police force, including AGS, are now formally administered by the PSNI Service Instruction SI2317 ‘Threats to Life’ (last updated 28 April 2021). This is a welcome development.

7.0

Conclusions

- 7.1. My role as Police Ombudsman is set out clearly in Part VII of the 1998 Act. In the Court of Appeal judgment in *Re Hawthorne and White's application*,¹⁸ the Court ruled that the Police Ombudsman has no role in adjudicating on a complaint of criminality or misconduct. The Court held that the decisions and determinations of these issues are a matter for the PPS and criminal courts in relation to allegations of criminality. During the course of this investigation, a file of evidence was forwarded to the PPS in respect of Police Officer 1. Having considered the evidence, the PPS directed that there was insufficient evidence to commence criminal proceedings against him. The main purpose of this public statement, therefore, is to address the matters raised by Mr Donaldson's family who made a complaint to my Office.
- 7.2. In accordance with my statutory functions under the 1998 Act, I am also obliged to consider the question of disciplinary proceedings. However, due to Police Officer 1 having retired, a misconduct investigation was not possible. This would normally have included a misconduct interview where Police Officer 1 would have been asked to account for his decisions and actions after a misconduct caution. As stated by the Court of Appeal, it is not my role to determine whether or not police officers are guilty of misconduct. That is a matter for PSNI's Professional Standards Department (PSD) and the relevant police disciplinary panel in respect of serving police officers.

¹⁸ *Re Hawthorne and White's Application for Judicial Review*. NICA [2020] 33.

7.3. My investigators gathered substantial evidence and other information during the course of this investigation. This included witness statements, telephone records, police documentation, and other material within the public domain. My Office also liaised extensively with AGS officers regarding access to Mr Donaldson's journal and other relevant information. A file for direction was submitted to the PPS concerning Police Officer 1.

The Police Ombudsman's Powers

7.4. I must act lawfully and fairly in the exercise of my functions as provided for under Part VII of the 1998 Act. The Court of Appeal in *re Hawthorne and White* has unanimously ruled on the powers of the Police Ombudsman under that legislation. This includes how the Police Ombudsman will address complaints. In that context, I have considered the questions, complaints, and concerns raised by Mr Donaldson's family. These are summarised below.

The Family's Complaints and Concerns

The family had concerns regarding the PM1 threat message delivered by police to Mr Donaldson on 10 December 2005. They alleged that:

- I. The threat message was 'bogus' or artificially manufactured as it was untrue that the media were intending to expose Mr Donaldson as an informant;**
- II. The threat message was maliciously released as a direct result of the court case involving Mr Donaldson, with foreknowledge of the likely implications; and**
- III. The actions of police with regards the threat message were carried out without any prior risk assessment, thereby**

breaching Mr Donaldson's rights under Article 2 of the European Convention of Human Rights (ECHR).

- 7.5. I am of the view, given the available evidence and intelligence, that the relevant information which resulted in the PM1 message being delivered to Mr Donaldson on 10 December 2005 was reliable and emanated from a credible source. I have found no evidence that this information was '*bogus*,' *artificially manufactured*,' or *maliciously released*' by police as a result of the discontinued criminal proceedings
- 7.6. My investigators identified a clear audit trail, including a documented Risk Assessment with contingency plans, which detailed police actions, and their rationale for these actions, after the PPS discontinued criminal proceedings against Mr Donaldson and his co-accused. I am of the view that police would have failed in their Article 2 obligations had they not informed him of the relevant information. This information was personally delivered to Mr Donaldson in accordance with relevant police practices at the time.
- 7.7. I am satisfied that police complied with the relevant requirements regarding how threats to life should be managed. A full Risk Assessment was conducted prior to the delivery of the PM1 threat message on 10 December 2005.

The family expressed concerns about a phone call to Mr Donaldson from police on 15 December 2005. They alleged that:

- I. **The telephone call was directly linked to the PM1 threat message;**
- II. **The timing of the telephone call, five days after the delivery of the PM1 threat message to Mr Donaldson, was a concern;**

III. Police failed to provide Mr Donaldson and his family with any specific security advice; and

IV. The telephone call was intended to ‘spook’ Mr Donaldson and part of an exercise to ‘burn’ him as an informant.

- 7.8. I am of the view that the decision by police to make contact with Mr Donaldson on 15 December 2005 was part of a carefully considered threat management plan in response to information that Mr Donaldson had informed Sinn Féin colleagues that he was an informant. There were two telephone calls made to Mr Donaldson on 15 December 2005. The purpose of these telephone calls was to identify, assess, and manage any identified risks, as well as address any welfare concerns relating to Mr Donaldson. I have identified no concerns regarding these telephone calls.
- 7.9. This investigation has found no evidence that police intended to ‘spook’ or ‘burn’ Mr Donaldson. However, there is evidence that police considered, and acted upon, their Article 2 obligations towards Mr Donaldson.
- 7.10. I am also of the view that the ‘unknown’ telephone call made to police at 9:20pm on 15 December 2005 could have been Mr Donaldson attempting to make contact. However, given the relevant telephone number was not recognised by Police Officer 3, he subsequently made enquiries about the telephone number and established that it did not belong to Mr Donaldson.
- 7.11. I am of the view that these calls may have been perceived as a genuine attempt to seek assistance and the refusal to answer them may have increased any vulnerability felt by Mr Donaldson. However, this investigation has established that police had cause for concern given the fact that these telephone calls did not come from Mr Donaldson’s phone.

PSNI were keeping under review its Article 2 obligations to Mr Donaldson at this time, and in particular the issue of the telephone call and appropriate response was considered as part of that review. In light of the evidence obtained by my investigators, I am of the view that declining to take this call was a reasonable and prudent course of action by police at that time.

Mr Donaldson's family raised concerns about the level of knowledge police held relating to the movements and whereabouts of Mr Donaldson and his immediate family after he publicly stated that he had been an informant and moved to Donegal. They alleged that:

- I. Police maintained records of conversations and other communications between Mr Donaldson and his immediate family;**
- II. Police made direct contact with Mr Donaldson during this period; and**
- III. Another informant visited Mr Donaldson during this period.**

- 7.12. I am of the view that, following the publication of the 'Sunday World' article, it would have been reasonable for police to conclude that there was an increased risk to Mr Donaldson and members of his family who visited him at the cottage on a regular basis. During his conversation with the journalist, Mr Donaldson had indicated that he would now have to move from the cottage.
- 7.13. I am of the view that it would have been reasonable to conclude, following the publication of the article, that individuals who wished Mr Donaldson serious harm could have identified his whereabouts. The article also increased the risk of further media exposure that, again, could have increased the risk to Mr Donaldson's safety. To a lesser degree that risk

may also have extended to members of Mr Donaldson's family who visited him at the remote cottage on a regular basis.

- 7.14. If a journalist was able to locate Mr Donaldson, any police officer properly assessing the situation would conclude that it was likely that those individuals who intended him serious harm because of his alleged role as an informant would have been able, in time, to identify his location. In addition, appearing to the media, even unwittingly, ought to have caused police to have cause for concern from further media exposure and subsequent damaging revelations about his status.
- 7.15. This change in circumstances ought to have resulted in a threat assessment by PSNI with a documented audit trail of the steps they took to assess any potential threats to determine what, if any, further enquiries were reasonable and to consider what, if any, preventative measures would have been appropriate.
- 7.16. I have acknowledged at paragraph 5.24, that PSNI advised AGS of the potential increased risk to Mr Donaldson as a result of the media article. However, my investigators found no evidence that a further Risk Assessment took place, or was considered by PSNI, following the publication of the 'Sunday World' article and receipt of further information that Mr Donaldson may be at increased risk. I am of the view that these events ought to have led police to conduct a further Risk Assessment. This would have better informed PSNI and, if shared, AGS would have better informed them as to the potential risks to Mr Donaldson and his family at that time. If passed, it would then be a matter for AGS to assess the risks and implement appropriate measures to address these risks.
- 7.17. My investigators found no evidence that PSNI were monitoring the movements or conversations of Mr Donaldson, during the relevant period, as alleged by the family. This investigation also found no evidence that

there was any contact between Mr Donaldson and PSNI after the telephone calls on 15 December 2005.

- 7.18. I cannot confirm or deny whether an informant visited Mr Donaldson. However, it would be routine in any murder investigation for the authorities investigating to identify any person or persons who had visited Mr Donaldson prior to the murder and ascertain their relevance to the investigation. AGS is outside the remit of my Office.

The family raised concerns regarding police relations with the media, alleging that:

- I. Police leaked information regarding Mr Donaldson's whereabouts to a number of individuals, including journalists;
- II. Did not take steps to protect Mr Donaldson after he had been contacted by a 'Sunday World' journalist; and
- III. Did not conduct criminal investigations regarding the actions of a number of journalists.

- 7.19. This investigation has established no evidence that police leaked information regarding the whereabouts of Mr Donaldson to individuals, including journalists. The protection of journalistic sources is a fundamental principle that underpins the '*freedom of the press*.' I am aware that a number of journalists had been reporting on Mr Donaldson and other security-related matters, so could have obtained the relevant information from a non-policing source.

- 7.20. The steps that ought to have been taken by police after Mr Donaldson had been contacted by a Sunday World journalist are outlined at paragraphs 7.12. to 7.16. above. This change in circumstances ought to have resulted in a threat assessment by PSNI with a documented audit

trail of the steps they took to assess any potential threats to determine what, if any, further enquiries were reasonable and to consider what, if any, preventative measures would have been appropriate.

- 7.21. During the course of this investigation information was identified which indicated that Police Officer 1 may have disclosed sensitive information, relating to Mr Donaldson, to elements of the media. As part of my investigation, Police Officer 1 was interviewed under criminal caution and denied the allegation. A file for direction was sent to the PPS, who directed ‘No Prosecution’. An associate of Police Officer 1, Person A, was interviewed by the PSNI on suspicion of similar conduct.
- 7.22. The family are correct that PSNI did not conduct criminal investigations into the actions of a number of journalists. However, I am of the view that there was no evidence that would have justified initiating a criminal investigation against any member of the media.
- 7.23. This investigation also examined the PSNI response when it received information suggesting that police officers were unlawfully disclosing information to members of the media. I am of the view that the PSNI response was reasonable and proportionate, given the circumstances.

The family alleged that PSNI attempted to impede the subsequent An Garda Síochána (AGS) murder investigation. This included that:

- I. **Police withheld, suppressed, or edited information relating to their contact with Mr Donaldson during the final months of his life;**
- II. **Failed to make Mr Donaldson’s handler available to the AGS investigation and;**
- III. **Sought to implicate members of Mr Donaldson’s family in having facilitated, or been involved in, his murder.**

- 7.24. I have found no evidence that any member of the PSNI sought to withhold, suppress, or edit information in an attempt to impede the murder investigation conducted by AGS. I am of the view, given the available evidence, that there was a high level of co-operation and assistance provided by PSNI to the AGS investigation.
- 7.25. I have found no evidence that PSNI sought to implicate members of Mr Donaldson's family in having facilitated, or been involved in, his murder.

Overall Conclusions

- 7.26. I have sought to address the family's concerns and questions in this public statement. The PSNI were under a legal and ethical obligation to protect life, pursuant to section 32 of the 2000 Act. Individual officers were also subject to the PSNI Code of Ethics (2003), particularly Article 1 *Professional Duty* which states that police officers have a duty to protect life and property. When carrying out these duties, they must protect human dignity and the rights of all individuals as enshrined in the European Convention of Human Rights. Article 2 of the ECHR places a positive obligation on police, and other state actors, to protect life. An important measure in addressing threats to the lives of individuals is the completion of a risk assessment.
- 7.27. This investigation has established that there are no records of a risk assessment having been undertaken by PSNI after the Sunday World article revealed Mr Donaldson's location in Donegal. The PSNI did undertake a documented risk assessment when criminal proceedings were discontinued, in addition to keeping under review their Article 2 obligations in December 2005. At that time, the risk assessments were being recorded and actively reviewed by PSNI.

- 7.28. I am of the view that, in the absence of a documented risk assessment following the Sunday World article, and given PSNI previously documented risk assessments, that it is likely that this important measure to assess the threat to Mr Donaldson's life was not undertaken. In conclusion, I am of the view that the family's concerns about the steps taken by PSNI in the management of this threat to Mr Donaldson are legitimate and justified. However, I cannot conclude that, if such a risk assessment had been undertaken and shared with AGS, that the murder of Mr Donaldson could have been prevented.
- 7.29. Finally, I acknowledge that there has been delay in reporting on this sensitive investigation of the family's complaints into the murder of Mr Donaldson.

Marie Anderson
Police Ombudsman for Northern Ireland
11 March 2022

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