

Statutory Report

Public statement by the Police Ombudsman in accordance with
Section 62 of the Police (Northern Ireland) Act 1988.

Relating to a referral from the Chief Constable of the
PSNI concerning:

**POLICE CONTACT WITH MR SEAN
HEGARTY IN RELATION TO THE
MURDERS OF MS CARON SMYTH
AND MR FINBAR McGRILLEN**

1.0

EXECUTIVE SUMMARY

- 1.1 This Police Ombudsman investigation followed the discovery of the bodies of Ms Caron Smyth (aged 40) and Mr Finbar McGrillen (aged 42) at a property in Ravenhill Court in Belfast on 13 December 2013.
- 1.2 A murder investigation was launched by the police. A previous partner of Ms Smyth, Mr Sean Hegarty (aged 33), was identified as a suspect and was arrested on 14 December 2013. His friend, Mr Ciaran Nugent, was also arrested.
- 1.3 Mr Hegarty was later sentenced at Belfast Crown Court to a minimum of 18 years in prison for his part in the murders. Mr Nugent was sentenced to a minimum of 14 years in prison.
- 1.4 On the 8 December 2013 Mr Hegarty was arrested for common assault, assault occasioning actual bodily harm and the false imprisonment of Ms Smyth. He was also arrested for criminal damage, possession of an offensive weapon and the breach of court bail. He was taken to police custody in Bangor PSNI station. Mr Hegarty was granted bail by the police on the 9 December 2013 to appear in court at a later date. The murders took place on the 12 December 2013.

- 1.5 On 16 December 2013 PSNI made a referral to the Police Ombudsman regarding how the detention of Mr Hegarty and the granting of his bail had been handled by the police. The referral was made in accordance with Section 55(4) of the Police (Northern Ireland) Act 1998.
- 1.6 The Police Ombudsman investigated the management of Mr Hegarty under the Public Protection Arrangements in Northern Ireland and the police involvement with him from the period of his release from prison on 28 May 2013 (see below) to the date of the murders and in particular their decision making in relation to his release from police custody on 9 December 2013.
- 1.7 In April 2013 Mr Hegarty was sentenced to three months in custody for an assault on a former partner. By that stage he had already amassed a substantial criminal record, including convictions for offences of violence. He had been categorised as a ‘violent offender’ and had a ‘warning flag’ against his name on police systems.
- 1.8 During the summer of 2013 Mr Hegarty began a relationship with Ms Smyth, who lived at Drumnaness in County Down.
- 1.9 In October 2013 Mr Hegarty was arrested for his alleged involvement in offences in Londonderry. He was released on bail on the condition that he lived at Ms Smyth’s address, be fitted with an electronic tag and be subject to a curfew with bail checks by police. At this point, Ms Smyth had confirmed that she was willing to provide her address as a bail address for Mr Hegarty.
- 1.10 Shortly after midnight on Saturday 7 December 2013 police called at Ms Smyth’s home to conduct a ‘bail check’ on Mr Hegarty. They were unable to get anyone to answer the door. They left the premises and

filed a report which confirmed that Mr Hegarty was then in breach of his bail conditions in failing to present himself to police on request.

- 1.11 The following evening, Sunday 8 December 2013, Ms Smyth contacted police to say that she was at her mother's property and no longer wanted her home used as Mr Hegarty's bail address.
- 1.12 When police visited her she told them that Mr Hegarty had locked her in her own house since the previous Friday and had assaulted her with a metal bar.
- 1.13 A police report detailing this conversation said that Ms Smyth was upset and frightened and that she thought Mr Hegarty was going to kill her. She said that he had made similar threats twice before. The report concluded that the police considered Ms Smyth to be at 'risk of serious harm'.
- 1.14 Police arrested Mr Hegarty that evening for the offences which had been reported and for breach of court bail, given that Ms Smyth had withdrawn the use of her home as his bail address.
- 1.15 Mr Hegarty was taken to Bangor custody suite where he was detained and interviewed. The next day, Monday 9 December 2013, Mr Hegarty, who police knew was electronically tagged, was released on police bail on the condition that he did not contact Ms Smyth and did not enter Drumaness. Mr Hegarty provided a new address for the purpose of securing police bail.
- 1.16 However, police did not carry out adequate checks regarding the suitability of the new bail address and in particular failed to establish that in fact it had no viable electricity supply. The electronic device which monitored the 'tag', which would provide information on whether or not

he was honouring his curfew, could not have been installed on the premises due to the lack of a viable electricity supply.

- 1.17 Additionally, police were not in a position to grant a change of bail conditions which had been previously determined by a court. Mr Hegarty should have appeared in the next available court for any alteration to the court imposed bail conditions to be made by the court.
- 1.18 An application for the 'authorisation' of this new address by a court was not made by Mr Hegarty's legal representative until the morning of 12 December 2013, when it was granted by the court. By that stage Mr Hegarty and Mr Nugent had murdered Ms Smyth and Mr McGrillen, whose bodies were discovered the following day.
- 1.19 The Police Ombudsman investigation identified a series of failures and concerns in the chain of events and decision making which led to the release of Mr Hegarty on bail.
- 1.20 The investigation concluded that police failed to adequately protect Ms Smyth despite the high risk posed to her by Mr. Hegarty. It is also considered that police failed to properly manage the risk posed to the public by Mr. Hegarty. These failures contributed to the circumstances which allowed for the murders of Ms Smyth and Mr McGrillen.
- 1.21 The investigation found that there was a lack of effective communication and continuity among some police officers in the management of Mr Hegarty and the decision to release him from police custody.
- 1.22 The Police Ombudsman recommended that eight police officers be disciplined for the failures identified in the investigation. Six officers have now been disciplined. One had been required to resign in connection with an unrelated matter.

- 1.23 A disciplinary hearing was convened in relation to the remaining officer following the recommendation of the Ombudsman. This officer had made the decision to release Mr Hegarty from police custody on 9 December 2013.
- 1.24 The disciplinary hearing panel heard legal argument following which the charge against the officer was dismissed prior to any evidence being presented in relation to the alleged breach of the code of ethics.
- 1.25 Ms Smyth was a woman who police had recorded as being at 'risk of serious harm' from Mr Hegarty.
- 1.26 Mr Hegarty was someone police had categorised as a 'violent offender' and had recognised as being capable of causing serious harm.
- 1.27 Despite these assessments, police did not effectively coordinate the management of the risks created by the release of Mr Hegarty from police custody on 9 December 2013.
- 1.28 The Police Ombudsman also identified a wider concern in that police did not (at the time) have powers which would have helped manage violent offenders better in situations of domestic violence.
- 1.29 A Violent Offender Protection Order was already under development at the time this case was under consideration by the Ombudsman and has since been introduced. It is hoped that the new arrangements will improve the management of the significant risk in some cases of domestic violence.

1.30

This public statement is made in accordance with Section 62 of the Police (Northern Ireland) Act 1998.

2.0

CIRCUMSTANCES

- 2.1 At the time of Mr Hegarty's arrest on 8 December 2013 he had a substantial criminal record consisting of 74 previous convictions from as far back as 1996. These included eight convictions for common assault, three for serious assaults, one conviction for aggravated burglary, two convictions for hijacking, one conviction for kidnapping, one conviction for threats to kill and three convictions for possession of an offensive weapon.
- 2.2 Police records include various other domestic abuse reports from at least three of Mr Hegarty's previous partners. However, these reports were not progressed either due to the victims being unwilling to provide statements to police or their statements being withdrawn.
- 2.3 During 2013 there were other police investigations and reports involving Mr Hegarty:
- aggravated burglary on 28 January 2013 at an address in Strabane. Mr Hegarty was alleged to have armed himself with a claw hammer and assaulted the home owner.
 - burglary on 28 January 2013 at an address in Strabane.
 - burglary on 2 April 2013 at the Ulster Hall, Belfast with Mr Nugent.
 - burglary on 2 April 2013 at a cafe in Belfast with Mr Nugent.
 - assault on a man on 7 April 2013 at an address in Strabane.

- 2.4 On 11 April 2013 Mr Hegarty was sentenced to three months in prison for an assault on a previous partner in September 2012. The police officer who investigated this offence referred Mr Hegarty to the Public Protection Arrangements Northern Ireland (PPANI) due to his previous offending history and the violent circumstances of the assault on a previous partner in September 2012.
- 2.5 PPANI was established in October 2008 to make the work done by agencies (including the police) more effective in managing the risk posed by certain sexual and violent offenders when they are released from prison into the community.
- 2.6 PPANI is a structure which assists agencies in undertaking their statutory duties and coordinating their functions to enhance public protection.
- 2.7 As part of the PPANI process, at least three months prior to an offenders release from prison a Local Area Public Protection Panel (LAPPP) meeting is held to assess the risk posed by the offender and to agree a risk management plan which begins as soon as the offender is released from prison.
- 2.8 A LAPPP meeting was held prior to Mr Hegarty's release from prison. As a result of that meeting he was assessed as suitable for a Category 2 level of risk management. He was released from prison on the 28 May 2013.
- 2.9 According to the PPANI Manual of Practice 2012, the definition of a Category 2 Offender is:
- "Someone whose previous offending/and or current behaviour and/or current circumstances present clear and identifiable evidence that they*

could cause serious harm through carrying out a contact sexual or violent offence”.

The identified risk in respect of Mr Hegarty was:

“Risk upon release of a physical assault against adult females he is in or has been in relationships with and the potential for harm on any child present at the time of conflict”.

- 2.10 Ms Smyth and Mr Hegarty had been in a relationship since the Summer of 2013. Mr Hegarty was arrested on 19 October 2013 for driving Ms Smyth’s car into a stationary vehicle in Belfast.
- 2.11 Mr Hegarty was also detained in custody in relation to an outstanding bench warrant regarding his non attendance at court on 31 July 2013 in relation to an aggravated burglary on 28 January 2013 in Strabane. In relation to the driving offences on 19 October 2013, Mr Hegarty was released on unconditional police bail.
- 2.12 Mr Hegarty was detained in custody in Belfast and taken to Enniskillen Court on 21 October 2013 in relation to the bench warrant. At court he was granted bail to reside at Ms Smyth’s address in Drumaness.
- 2.13 On 31 October 2013 Mr Hegarty attended Strabane Court and was arrested for further offences (including aggravated burglary and false imprisonment) alleged to have occurred in Londonderry between 29 June 2013 and 1 July 2013.
- 2.14 On 1 November 2013 Mr Hegarty was released on police bail for some of the offences in Londonderry and an unrelated report of harassment from an ex partner. He was charged with other offences which he had allegedly committed in Londonderry on 29 June 2013.

- 2.15 On 1 November 2013 Mr Hegarty appeared at Londonderry Magistrates Court for charges of aggravated burglary and wounding on 29 June 2013. He was granted bail in respect of those offences. The court bail conditions included a requirement to reside at Ms Smyth's address in Drumaness. An electronic tag, for the purposes of monitoring Mr Hegarty's compliance with bail conditions, was also fitted as part of his curfew.
- 2.16 On 8 December 2013 Mr Hegarty was arrested at Ms Smyth's address in Drumaness for numerous alleged offences against Ms Smyth (including assault and false imprisonment), criminal damage and breach of court bail. Ms Smyth provided police with a statement withdrawing her address as Mr Hegarty's bail address.
- 2.17 At approximately 3.00pm on Monday 9 December 2013, Mr Hegarty was released on police bail to his address in Belfast with a requirement to surrender to Bangor custody suite on 23 December 2013.
- 2.18 On Tuesday 10 December 2013 Ms Smyth went to stay with her friend, Mr McGrillen, at his address in Ravenhill Court, Belfast. The PSNI murder investigation established that Ms Smyth and Mr McGrillen were murdered at that address between 4.30am and 6.44am on Thursday 12 December 2013.

3.0

INVESTIGATION

3.1 The Police Ombudsman investigation examined:

- police management of Mr Hegarty under PPANI.
- the police involvement with Mr Hegarty from his release from prison on 28 May 2013 to the date of the murders of Ms Smyth and Mr McGrillen on 12 December 2013.
- the decision-making that led to Mr Hegarty's release from police custody on 9 December 2013.

In accordance with Section 55(4) of the Police (Northern Ireland) Act 1998 the Police Ombudsman investigation sought to establish if a member of the PSNI had committed a criminal offence or behaved in a manner, which would justify disciplinary proceedings.

Police Management of Mr Hegarty under PPANI

Background to Public Protection Arrangements in Northern Ireland (PPANI)

3.2 The PPANI Manual of Practice 2012 states:

“The strength of the public protection arrangements lies in co-ordinating how each agency fulfils its respective responsibilities and thereby makes the co-ordinated outcome greater than the sum of its parts. For the purposes of facilitating these procedures, LAPPPs have been established by the agencies involved in the arrangements”.

The manual states that the PSNI, through the PPANI Links Team, are responsible for the administration of the LAPPP meetings.

- 3.3 Mr Hegarty was discussed at LAPPP meetings on 13 May 2013 and 20 May 2013, prior to his release from prison. The LAPPP meeting scheduled for 13 May 2013 took place but was rescheduled for 20 May 2013 due to lack of information on Mr Hegarty.
- 3.4 At the LAPPP meeting on 20 May 2013, Mr Hegarty was assessed as a Category 2 Violent Offender. The LAPPP minutes recorded that Mr Hegarty had outstanding matters before the courts relating to an incident in Strabane on 28 January 2013 involving allegations of burglary and common assault.
- 3.5 At the meeting the PPANI Links Team said that Mr Hegarty had provided an address in Belfast for release, stating that he had owned the property for a couple of years. Mr Hegarty had said that he would not have the finances to furnish the property immediately and might stay with friends.
- 3.6 The LAPPP minutes recorded that Mr Hegarty's Probation Officer advised that Mr Hegarty could not provide details of the address on release and he would not know an exact address until he returned to the North Belfast area. He indicated that all his friends were from the North Belfast area. It was also recorded that Mr Hegarty was not very positive regarding engagement in the PPANI process and stated that his friends would not be happy about police calling at their addresses. However, he did state that he would fully engage with social services upon release.

3.7 Mr Hegarty was released from prison on 28 May 2013 and his details were passed to 'A' District Public Protection Unit (PPU) as his last known address was within that area.

Steps taken following Mr Hegarty's release from prison

3.8 According to the PPANI Manual of Practice, Mr Hegarty should have been subject to a LAPPP meeting no later than 12 weeks from the date of the preview LAPPP meeting on 20 May 2013.

3.9 Mr Hegarty was not subject to a LAPPP meeting prior to his arrest on 14 December 2013 for the murders of Ms Smyth and Mr McGrillen.

3.10 The PPANI Links Team is responsible for the administration of the LAPPP meetings.

3.11 Following Mr Hegarty's release from prison the PPANI Links Team did not allocate him to a LAPPP meeting.

3.12 This was due to a PSNI internal directive that offenders, who did not provide a definite address upon release, would not be reviewed at a LAPPP meeting. This resulted in Mr Hegarty not being scheduled to be discussed at a LAPPP meeting prior to the murders of Ms Smyth and Mr McGrillen.

3.13 However, PPU in A District were contacted by the PPANI Links Team by email on 7 June 2013 advising them of the PPANI referral of Mr Hegarty.

- 3.14 PPU A District did attempt to engage with Mr Hegarty and the other agencies involved with him in an effort to obtain his engagement in the PPANI process.
- 3.15 A warning marker was added to Mr Hegarty's personal record on the police computer system categorising him as a violent offender.
- 3.16 PPU A District became aware of a report which Mr Hegarty made to police on 4 June 2013. He reported that he had been out of his flat in Belfast for a year and upon his return he had found the front door kicked in, sockets pulled out and cables destroyed. He informed police that the Northern Ireland Housing Executive (NIHE) was attending to repair the damage.
- 3.17 PPU A District requested further information on this report in respect of Mr Hegarty's whereabouts. However, Mr Hegarty did not say where he would be staying.

Incident on 26 June 2013 and police follow-up

- 3.18 On 26 June 2013 Mr Hegarty had a planned meeting with social workers at the National Society for the Prevention of Cruelty to Children (NSPCC) in Belfast. Social workers made a report to police regarding the behaviour of Mr Hegarty on that date.
- 3.19 Mr Hegarty initially phoned to say that he was lost. He then attended the premises late and smelling strongly of alcohol. Social Services staff reported that during conversation Mr Hegarty made strong threats regarding killing one of his ex-partners. Social Services contacted police to update them and request assistance as Mr Hegarty was still in the area of the NSPCC building. Social Services also contacted Mr Hegarty's ex-partner's social worker

regarding the potential risk to her.

- 3.20 Police attended and checked the surrounding area but by this time Mr Hegarty had left.
- 3.21 Police accompanied Mr Hegarty's ex-partner from Women's Aid to her home address to collect some belongings. Mr Hegarty's ex-partner did not make a statement to police regarding the threats from Mr Hegarty.
- 3.22 Police did not come into contact with Mr Hegarty on this occasion.
- 3.23 PPU A District was aware of this incident and was at that stage trying to engage with Mr Hegarty.
- 3.24 PPU A District made contact with Mr Hegarty by phone on 28 June 2013 and arranged to meet with him on 1 July 2013. However, Mr Hegarty failed to keep the appointment. He was contacted on 1 July 2013 and apologised for not attending the meeting. The meeting was rescheduled for 3 July 2013.

Police involvement with Mr Hegarty between 28 May 2013 and 12 December 2013

- 3.25 There were several reports to police in early July 2013 regarding Mr Hegarty's actions:
1. At approximately 10.08am on 1 July 2013 a report was made via the 999 system that Mr Hegarty had assaulted a relative in his home in Londonderry on 29 June 2013 and put a knife to his face causing injury.
 2. At approximately 12.36pm on 1 July 2013 another of

Mr Hegarty's ex-partners reported to police that she had received a threatening phone call from Mr Hegarty.

3. At approximately 4.34pm on 4 July 2013 another relative of Mr Hegarty reported to police that Mr Hegarty had posted obscene posts on Facebook.
4. At approximately 2.34pm on 5 July 2013 a female reported that in the early hours of 1 July 2013 two men had entered her home in Londonderry and had threatened her partner with a knife. The men left saying that it was mistaken identity. This is suspected to have been Mr Hegarty and another man.

3.26 Mr Hegarty did not keep the appointment with PPU A District on 3 July 2013. They attempted to contact him by phone but there was no answer. At this time PPU A District were aware that Mr Hegarty was wanted for arrest in relation to the incidents in Londonderry on 29 June 2013 and in early July 2013.

3.27 Police did not arrest Mr Hegarty for the offences in Londonderry until 31 October 2013, when he attended Court for an unrelated matter.

3.28 The Police Ombudsman's Office examined the delay in arresting Mr Hegarty for the offences in Londonderry and concluded that appropriate and sufficient attempts were made to locate Mr Hegarty between 1 July 2013 and 19 October 2013.

Further offences committed by Mr Hegarty on 19 October 2013 and the police response

3.29 At approximately 1.05am on Saturday 19 October 2013 police on patrol in Belfast followed a vehicle which they had observed travelling at high speed. Police came across a two vehicle road

traffic collision, one of which was the vehicle they had observed moments earlier. Police established this was Ms Smyth's car. Mr Hegarty was arrested in relation to aggravated vehicle taking of Ms Smyth's car, dangerous driving, using a motor vehicle without insurance and driving whilst unfit to drive through drink/drugs.

3.30 Mr Hegarty was also arrested for the outstanding bench warrant issued on 31 July 2013 in relation to offences in Strabane on 28 January 2013. He was taken to Grosvenor Road Police Station for processing.

3.31 The custody record for Mr Hegarty detailed that at 2.44pm on 19 October 2013 the custody sergeant at Grosvenor Road PSNI contacted Strand Road CID in Londonderry regarding Mr Hegarty being in police custody. Strand Road CID requested that Mr Hegarty be held in custody until the following day, when they had more resources to arrest him for the offences in Londonderry.

3.32 A further entry on the custody record timed at 3.33pm detailed that a Detective Sergeant at Strand Road CID, Police Officer 1, said that they did not have the resources to deal with Mr Hegarty and that they would get him produced from prison if necessary. Mr Hegarty was in fact produced at Enniskillen court on 21 October 2013 when he was released on bail.

3.33 A report completed by the investigating officer for the offences in Londonderry, Police Officer 2, detailed that Police Officer 1 had not sent CID officers to Belfast to question Mr Hegarty on 19 October 2013 in the belief that he would be remanded in custody on the strength of a bench warrant and that he could be interviewed by way of a Prison Production Order from the court.

- 3.34 Police Officer 1 was not involved in the investigations relating to the reports made about Mr Hegarty between 29 June 2013 and 5 July 2013. He explained to Ombudsman Investigators that he did not send detectives to arrest Mr Hegarty on 19 October 2013 for the offences in Londonderry as there were only three detectives on duty and that they were located two hours away from where Mr Hegarty was being held in custody. This left him very little time to get someone briefed on the arrest. They were also dealing with other incidents, including armed robberies, a serious assault and several burglaries.
- 3.35 Police Officer 1 said that the custody sergeant at Grosvenor Road was adamant that Mr Hegarty was going to be remanded in custody as there was a bench warrant outstanding. Police Officer 1 made the decision not to send two detectives, who did not know the case when he could subsequently get Mr Hegarty produced either from prison (if he were remanded) or arrest him at court.
- 3.36 Police Officer 1 was asked if he considered the risks in not arresting Mr Hegarty given that police had been trying to track him down for nearly four months. Police Officer 1 stated that he was not aware of this. However, it would not have changed his decision because he was told that Mr Hegarty was going to court where he expected him to be remanded in custody.
- 3.38 Following Mr Hegarty's release on bail from Enniskillen Court on 21 October 2013 his next court appearance was scheduled for Strabane court on 31 October 2013.
- 3.39 Additionally, Mr Hegarty was released on unconditional police bail in relation to the driving offences on 19 October 2013.

- 3.40 Court bail restrictions were imposed in relation to the outstanding offences to be dealt with in Strabane including that he should not speak to any of the injured parties or witnesses and that he should be subject to a curfew. Mr Hegarty was also required to provide an address for the purposes of both police and court bail. Mr Hegarty provided Ms Smyth's address in Drumaness as his home address for the purposes of police and court bail.
- 3.41 This was the first time that Mr Hegarty had provided an address to police following his release from prison on 28 May 2013. Now that Mr Hegarty was living in a different District, PPU A District transferred responsibility to PPU C District.
- 3.42 Mr Hegarty was then scheduled to be discussed at the next available LAPP meeting in C District on 7 January 2014.

Strabane Court on 31 October 2013

- 3.43 Mr Hegarty attended Strabane court on 31 October 2013 and was arrested for the offences in Londonderry. The Police Ombudsman investigation examined the delay in Strand Road CID arresting Mr Hegarty from his time of release from Enniskillen Court on 21 October 2013 to his date of arrest at Strabane Court on 31 October 2013.
- 3.44 On 21 October 2013 Police Officer 2 was appointed as the investigating officer for the offences in Londonderry. Police Officer 2 told Ombudsman Investigators that he had contacted a Sergeant at Downpatrick PSNI, Police Officer 3, on 21 October 2013 to ask police to arrest Mr Hegarty. He believed that Mr Hegarty would be arrested.

- 3.45 The following day he was told by an officer at Downpatrick that they did not have the resources to arrest Mr Hegarty. On 28 October 2013 he contacted Downpatrick PSNI again to ask for assistance in arresting Mr Hegarty. They stated that they did not have sufficient resources to assist at that time.
- 3.46 Police Officer 2 stated that he then considered travelling to Belfast to conduct the arrest. However, he became aware that Mr Hegarty was due to attend Strabane court on an unrelated matter on 31 October 2013.
- 3.47 Police Officer 2 stated that it was decided that police would attend Strabane Court in an effort to arrest Mr Hegarty.
- 3.48 Mr Hegarty was arrested for the offences in Londonderry when he attended Strabane Court on 31 October 2013 and was subject to an overnight remand.
- 3.49 Police Officer 2 attended the court bail hearing on 1 November 2013 and made objections to Mr Hegarty being granted bail as follows:
1. Mr Hegarty had 72 previous offences including aggravated burglary, burglary, kidnap and serious assaults.
 2. Mr Hegarty might fail to surrender to bail – Mr Hegarty had previously had a bench warrant issued for failing to appear on 29 August 2013 which was executed when he was arrested for aggravated taking and driving away on 19 October 2013.
 3. Mr Hegarty might interfere with witnesses – Mr Hegarty was now aware that his relative had made a statement against him and police feared that he might try to intimidate him.
 4. Mr Hegarty was also arrested for two other offences around the same time.

3.50 Police Officer 2 stated that Mr Hegarty's solicitor, Person A, made representations that police had a period of ten days to arrest Mr Hegarty (between 21 October and 31 October 2013) and argued an abuse of process by police.

3.51 The Magistrate granted bail with conditions, which police deemed appropriate, including electronic monitoring, restrictions from speaking to the injured party, restrictions on entering licensed premises and the consumption of alcohol and prohibition on entering Londonderry. Other significant bail conditions are quoted in their entirety as follows:

1. *"He resides at Ms Smyth's address and no other address".*
2. *"He returns home each evening on or before 10pm and does not go outside the walls of the building at his curfew address (or designated curfew area within a hostel as agreed on arrival) in which the electronic monitoring unit is installed before 7am in the morning and during these hours is subject to electronic monitoring and must present himself at the door during those hours if required to do so by police or electronic monitoring service supplier to ensure compliance with their electronic monitoring agreement and other conditions".*

3.52 Mr Hegarty was released on court bail on 1 November 2013.

Events following Mr Hegarty's release on court bail

3.53 Enquiries were made with Group 4 Security (G4S) in respect of the electronic monitoring of Mr Hegarty as part of his court bail conditions, which were set on 1 November 2013.

3.54 G4S confirmed that Mr Hegarty's electronic tag was fitted to him at 10.43pm on 2 November 2013. This took place at Ms Smyth's address in Drumaness. A Home Monitoring Unit was installed within the address at that time to monitor Mr Hegarty's movements from the address.

3.55 On 5 November 2013 police officers from PPU C District attended Ms Smyth's address and spoke to Mr Hegarty. They recorded that there was a male and a female person also present at the address but that Mr Hegarty would not provide their details to police.

3.56 The PPANI process was explained to Mr Hegarty and police sought his co-operation in the process. Mr Hegarty told police that his legal advice was that he did not have to co-operate with police under PPANI. Mr Hegarty became un co-operative and asked police to leave the property.

Bail check on 7 December 2013

3.57 Downpatrick PSNI was tasked to conduct a bail check on Mr Hegarty at Ms Smyth's address in relation to his curfew. Mr Hegarty was required, as a condition of his court bail, to present himself to police officers upon their request during the hours of his curfew.

3.58 Police Officer 4 conducted the bail check at Ms Smyth's address at 00.10am on 7 December 2013. There was no answer to the door and therefore Mr Hegarty was in breach of court bail by not presenting himself to police officers when requested.

3.59 Had Mr Hegarty left the Drumaness address during the hours of his curfew his electronic monitoring tag would have triggered an alert with G4S.

- 3.60 G4S records indicated that no alert was registered by their monitoring equipment. This would indicate that unless there had been an electronic tagging system failure Mr Hegarty was at Ms Smyth's address at the time the PSNI conducted the bail check.
- 3.61 There is no further police documentation to indicate that police tried to arrest Mr Hegarty for this breach of bail prior to his arrest on 8 December 2013. Further, it was established that Mr Hegarty was in fact never arrested for this breach despite being in police custody between 8 and 9 December 2013.
- 3.62 Police Officer 4 was interviewed by Ombudsman Investigators and confirmed that other than knocking loudly on the front door and front window for approximately five minutes no further attempts were made to locate Mr Hegarty.
- 3.63 Police Ombudsman Investigators attended Ms Smyth's address. It was established that there was rear access to the property, which would have provided a view into the kitchen area and rear of the property.
- 3.64 Police Officer 4 confirmed that he had not considered going to the rear of the property. He stated that he had made his sergeant aware that there was no answer at the door and also communicated this via the police radio. Police Officer 4 completed a statement which he emailed to the Investigating Officer for the offence, for which Mr Hegarty had been bailed. Police officer 4 stated that he had placed a hard copy of his statement in the handover tray at Downpatrick police station.

- 3.65 It was established that Police Officer 4 accessed Mr Hegarty's bail conditions on the police computer system at 1.32am, which was after the bail check. Police Officer 4's sergeant, Police Officer 3, accessed Mr Hegarty's record at 1.54am on 7 December 2013. This included Mr Hegarty's bail conditions.
- 3.66 Police Officer 4 sent an email to a police officer in Strabane PSNI at 2.03am on 7 December 2013. This informed the officer that Mr Hegarty was in breach of bail. This officer was not the investigating officer for the offence for which Mr Hegarty was on court bail. This officer was dealing with another incident involving Mr Hegarty on 28 January 2013.
- 3.67 The Police Ombudsman has found that both Police Officers 3 and 4 should have noted that Mr Hegarty was subject to electronic monitoring by G4S. Given that there was no reported breach of bail by G4S, Mr Hegarty must have been in the property when Police Officer 4 conducted the bail check. The actions of both officers reflected a lack of due diligence given the information recorded on the police system.
- 3.68 This bail check was a significant event. It is documented by police that Ms Smyth later reported to them that Mr Hegarty had imprisoned her in her own home from 6 December 2013 until 8 December 2013. Therefore, Mr Hegarty may have been holding Ms Smyth against her will in her own home during the time the bail check was conducted by Police Officer 4 on 7 December 2013.
- 3.69 The Police Ombudsman has found that there were no police policies or guidelines in respect of how a bail check should be conducted or whether any checks should be made with G4S if a person is being electronically monitored.

- 3.70 Police Officer 3 told Ombudsman investigators that she was night duty sergeant at Downpatrick station between 6 December 2013 and 7 December 2013. She could not remember anything about the bail check on Mr Hegarty at his bail address in Drumaness.
- 3.71 Police Officer 3 stated that she would have been informed of the bail checks, which were required for her area. She said that she finished duty at 7am and the breach of bail statement would be put in the handover tray for the early crew and the Reducing Offenders Unit would be notified of the breach via the police computer system.
- 3.72 Police Officer 5 was the duty sergeant in Downpatrick on 7 December 2013. Police officer 5 stated that Police Officer 3 would have briefed her but she could not remember anything of significance from this briefing.
- 3.73 Police Officer 5 was referred to Police Officer 4's investigation log which recorded that his breach of bail statement was left in the handover tray. Police Officer 5 was asked how this was not then picked up the following day. She stated that she did not know anything about Mr Hegarty as he was not from her area. She stated that she would not have checked on this individual as she was not aware of the bail check. Police Officer 5 was asked whether she should have got this information from the handover tray. Police Officer 5 stated that she did not remember being told that this statement and the breach of bail needed to be acted upon that morning.
- 3.74 Police Officer 5 stated that she did not dispute that Police Officer 4 had put his statement in the handover tray, however, it was not brought to her attention in the briefing and that is why there was no action taken.

- 3.75 Police Officer 5 stated that she was concerned that the arrest for breach of bail was missed and welcomed the opportunity for the system to be reviewed and improved.
- 3.76 Police Officer 5 did not access the police log or Mr Hegarty's record on police systems during the relevant time. Police Officer 5 was not made aware of the breach of bail.
- 3.77 Enquiries with PSNI revealed that there were no specific instructions regarding the purpose of handover trays or associated responsibilities specific to any individual officer.
- 3.78 The police investigation log regarding the offences against Ms Smyth on 8 December 2013 records that at 3.18am on 9 December 2013 Police Officer 6 (the investigating officer for the offences between 6 and 8 December 2013) became aware of the bail check conducted by Police Officer 4.
- 3.79 The police investigation log by Police Officer 6 detailed that Police Officer 4's breach of bail statement would be attached to the handover and the breach could be followed up in the morning. Police Officer 6 stated that he put Police Officer 4's statement with the handover pack so that Mr Hegarty could be arrested for this breach of bail.
- 3.80 The Police Ombudsman believes that the breach of bail statement was still in the handover tray when Police Officer 5 came on duty. However, Police Officer 5 stated that she would only follow this up if she had been briefed about the breach of bail by Police Officer 3.

Decision making around Mr Hegarty's release from police custody on 9 December 2013

- 3.81 At approximately 7.04pm on Sunday 8 December 2013, Ms Smyth contacted Police via the non emergency number reporting that Mr Hegarty had assaulted her earlier that day at her home in Drumanness. She stated that whilst she had previously agreed that her address could be used by Mr Hegarty as a bail address, she no longer wished for him to stay with her. At the time of the report Ms Smyth was at her mother's address, also in Drumanness.
- 3.82 At approximately 8.50pm that night, Police Officer 6 and Police Officer 7, from Downpatrick PSNI, attended the home of Ms Smyth's mother and spoke with Ms Smyth regarding the alleged incident. A statement was recorded from Ms Smyth that evening in which she withdrew her address as Mr Hegarty's bail address.
- 3.83 In accordance with the PSNI Service Procedure entitled 'Electronic Monitoring (EM) of Persons on Court Bail', the withdrawal of the consent by the house owner amounts to a breach of the electronic monitoring requirement and the tagged person is liable for arrest due to breach of bail conditions.
- 3.84 Police Officer 6 recorded in his notebook that Ms Smyth said that Mr Hegarty had locked her in her house from 6 December 2013 and had taken her phone and keys from her and that she could not leave the house. Over the weekend he threw a drop bar, which would be used to lock the front door, towards her causing damage to the door and it also hit her on the legs. He also slapped her around the face causing swelling to her left eye. During Sunday 8 December she got out of the house when a relative came around. She went back to get the dog and could not get in. Mr Hegarty was screaming at her

out of the window and later attempted to push her over a wall.

- 3.85 Police Officer 6 recorded in the police investigation log that it was difficult to get accurate details of what had happened to Ms Smyth as she was very upset and frightened. Ms Smyth decided not to make a formal statement in relation to the assault until she had spoken with her solicitor. Police Officer 7 took photographs of Ms Smyth's injuries on his police issue camera phone.
- 3.86 A Domestic Abuse, Stalking and Harassment and Honour Based Violence (DASH) form was completed by Police Officer 7 dated Sunday 8 December 2015 at 9.50pm.
- 3.87 It was recorded that the incident was not the first time that Mr Hegarty had hit Ms Smyth. It outlined that as a result of the incident she received bruising and swelling to her left eye, bruising to her left forearm and bruising and hardness to her left calf. It also detailed that Ms Smyth was frightened and thought that Mr Hegarty was going to kill her and that she had tried to leave him two days previously and six weeks before the incident. He had threatened to kill her twice before and had also gripped her by the throat.
- 3.88 It is also recorded that Ms Smyth knew of two ex partners of Mr Hegarty's, who had Non Molestation Orders (NMO) against him. Police Officer 7 categorised Ms Smyth as 'high risk'.
- 3.89 Within the DASH form 'high risk' is defined as – *“there are identifiable indicators of risk of serious harm. The potential event could happen at any time and the impact would be serious”*.
- 3.90 Police Officer 7 recorded that Ms Smyth gave consent to be referred to a Multi Agency Risk Assessment Conference (MARAC), Women's

Aid and Victim Support. He also recorded that he provided Ms Smyth with advice regarding Women's Aid, NMO's, domestic violence and police contact details.

3.91 On 9 December 2013 Police Officer 5 (Police Officer 7's sergeant) agreed that Ms Smyth was at high risk of harm from Mr Hegarty.

Arrest of Mr Hegarty for offences against Ms Smyth and breach of bail conditions

3.92 At 10.18pm on 8 December 2013 Police Officer 6 attended Ms Smyth's address and arrested Mr Hegarty for breach of court bail given the withdrawal of Ms Smyth's address for the purposes of bail. Mr Hegarty was also arrested for offences in respect of Ms Smyth; common assault, assault occasioning actual bodily harm, false imprisonment, criminal damage and possession of an offensive weapon.

3.93 A search was carried out at Ms Smyth's address and a four foot long metal bar was located behind the door in the main bedroom. Police seized the bar as evidence of the allegation of assault on Ms Smyth. Police Officer 6 also took photographs of the damage to the property on his police issue camera phone.

3.94 The relevant custody record shows that Mr Hegarty arrived at Bangor custody suite at 11.30pm on 8 December 2013. There was no CCTV available from Bangor custody suite during the time that Mr Hegarty was in custody due to a technical fault in the system.

3.95 Police Officer 8 was the custody sergeant. Detention was authorised by the custody sergeant in respect of the allegations of assault against Ms Smyth. However, Mr Hegarty's detention was

not authorised for the breach of bail relating to the withdrawal of bail address.

3.96 Police Officer 6 told Ombudsman investigators that he had outlined the circumstances of Mr Hegarty's arrest to Police Officer 8. When he outlined that he had arrested Mr Hegarty for breach of bail conditions, Police Officer 8 raised concerns that Mr Hegarty's bail address had been withdrawn while he was living there through 'no fault of his own'.

3.97 Police Officer 6 stated that he disagreed with Police Officer 8 as he believed that it was still a breach of bail. Police Officer 6 stated that he had asked Police Officer 8 for Mr Hegarty to be brought to court the next day in order that the issue of the bail address could be resolved. Police Officer 6 stated that Police Officer 8 said that Mr Hegarty was going to have to go to court or get a new bail address 'sorted out'.

3.98 There was no record on the custody record of Mr Hegarty being searched when he was brought into custody or that he was wearing an electronic tag. Police Officer 6's notebook and police investigation log also do not refer to Mr Hegarty wearing an electronic tag.

3.99 A review of the Police and Criminal Evidence (PACE) Codes of Practice, (in force at the time of Mr Hegarty's custody) and the Association of Chief Police Officers (ACPO) Guidance on the Safer Detention and Handling of Persons in Police Custody confirmed that the search of the detained person must be recorded on the custody record. However, there is no reference within these documents in respect of whether or not there should be a specific record in relation to a detained person wearing an electronic tag.

3.100 The PSNI Service Procedure 36/2009 entitled Electronic Monitoring (EM) of Persons on Court Bail states:

“When police for any reason take a person into custody and that person has an electronic tag fitted to them, the custody officer is responsible for ensuring that G4S are contacted and given the name, address and Date of Birth (DOB) of the tagged person (if known) and also the serial number on the tag”.

“G4S must be contacted when a tagged person is brought into custody and when the person is either charged to appear in court or released”.

“This will ensure that if the person is held in custody during a time when EM would indicate a breach of the EM requirement, G4S will not alert police. Failure to notify G4S means that police could be tasked to carry out an arrest of a person who is already in police custody”.

3.101 G4S records show that Mr Hegarty left his bail address at Drumaness at 10.50pm on 8 December 2013. This would have been as a consequence of his arrest. Mr Hegarty leaving the property during the hours of his curfew triggered the electronic monitoring system and alerted G4S that a breach of the electronic monitoring requirement had occurred. G4S then activated their enforcement procedures.

3.102 At 12.15am on 9 December 2013, G4S reported this breach of the electronic monitoring requirement to the police control room, who confirmed that Mr Hegarty was in Bangor custody.

- 3.103 At 12.17am G4S made a phone call to Bangor custody suite and confirmed that Mr Hegarty had been arrested at 10.18pm.
- 3.104 Neither G4S nor PSNI has a recording of this phone call. However, phone records confirmed that a call was made from G4S to Bangor custody suite on one extension and was picked up on another extension. The call lasted two minutes.
- 3.105 Interviews were conducted with Police Officer 6 and Civilian Detention Officers (CDOs) 1 & 2 in relation to contact with G4S staff and the search of Mr Hegarty upon arrest and in custody.
- 3.106 The Police Ombudsman believes that, whilst there was no record of Mr Hegarty wearing an electronic tag, police would have been aware of this whilst he was in custody given the phone call from G4S and the fact that police officers had checked Mr Hegarty's bail conditions on the police computer system, which would have included information that he was tagged.
- 3.107 Ombudsman Investigators were unable to interview the custody sergeant, Police Officer 8 as during the investigation he was on a long term leave of absence. Police Officer 8 was given an opportunity to attend for interview, however, this was declined. In August 2015 Police Officer 8 was required to resign from the PSNI in relation to an unrelated matter.
- 3.108 According to the custody record, Police Officer 9 took over duty as custody sergeant from Police Officer 8 at 6.24am on 9 December 2013.

- 3.109 At 10.39am that day, Police Officer 9 recorded:
- “There are limited resources to obtain a statement from the IP. I have spoken to [the custody Inspector] who has asked that I contact duty Sgt Downpatrick to expedite the matter. Spoke and informed them of the need for SOE and they will try and get police down from somewhere to oblige”.*
- 3.110 At 11.21am on 9 December 2013 the Domestic Abuse Officer (DAO) within PPU Newtownards (Police Officer 10) acknowledged receipt of the DASH relating to Ms Smyth. Police Officer 10 recorded that she agreed with the high risk assessment and referred Ms Smyth to a Multi Agency Risk Assessment Conference (MARAC) on 18 December 2013.
- 3.111 It is noted on the custody record that at 11.58am, Police Officer 5 tasked a female police officer (Police Officer 11) to attend and obtain a statement from Ms Smyth.
- 3.112 The custody record detailed that at 12.47pm Police Officer 11 had attended Ms Smyth’s address at approximately 12.10pm. Police Officer 11 was told by Ms Smyth that she would not be making a statement until she had spoken to her solicitor and that she was still waiting for him to phone back. Despite continuing efforts by the police, a witness statement was not recorded from Ms Smyth regarding the assault.
- 3.113 The custody record detailed that Police Officer 9 was satisfied that police had made extensive efforts to obtain a statement and that a first account needed to be taken from the detained person and then consideration needed to be given to a disposal pending a statement being obtained.

- 3.114 The custody record detailed that Mr Hegarty was interviewed by Police Officers 12 and 13 between 1.24pm and 1.35pm on 9 December 2013. Mr Hegarty was represented at the interview by his solicitor, Person A, and the interview lasted 11 minutes.
- 3.115 The gatekeeper, Police Officer 14, made an entry on the police investigation log at 1.39pm on 9 December 2013 (prior to Mr Hegarty's release):
- 3.116 *"Case Review: IP has withdrawn address as suitable bail address for DP. DP has made further allegations but has yet not formalised these allegations. IO has highlighted significant risk to IP. I advise overnight charge to best manage this risk. Although investigation is not case ready DP is unsuitable in the circumstances for bail".*
- 3.117 The interview of Mr Hegarty was examined by the Police Ombudsman's Office. Police Officers 12 and 13 were the interviewing officers.
- 3.118 Following the introductions, Mr Hegarty's solicitor, Person A, made mention that there had been no statement of complaint and that he had instructed Mr Hegarty to make no comment throughout the duration of the interview.
- 3.119 Mr Hegarty was questioned, in the presence of his solicitor, Person A, about the allegations made by Ms Smyth, including offences against her and the rescinding of her address for the purpose of bail. Mr Hegarty made no reply to any questions.

3.120 At 2.41pm that day Police Officer 9 recorded the following on the custody record:

“The bail address has been withdrawn and the DP was originally arrested on it but detention not authorised. As such he would have to have been brought in front of the court today and we have missed the court sitting. Normally this withdrawal of address would have meant that an overnight charge should be considered, however other standard procedures would have meant that the DP would have been bailed pending a written statement from the IP. The IP has been elusive in providing a statement despite police being present at her house and available to record one. The court bail he is on relates to a L’Derry case and it is to reside at an agreed address away from the area of offence. I have agreed with the GK and solicitor that it would be fair to the DP to allow an application to court to change the court bail address and this is being progressed by the solicitor. If no change can be facilitated by 1700 this date police will treat the removal of the court bail address as a breach and he will be liable for arrest”.

3.121 Mr Hegarty had already been arrested for the breach of bail relating to the withdrawal of the address. However, Police Officer 8 had not authorised his detention for this breach. There was no mention of the breach of bail relating to the bail check on 7 December 2013 within the custody record despite the fact that the interviewing officers should have been aware of this from the handover from Police Officer 6.

3.122 From the interviews of Police Officers 12 and 13 the Ombudsman has concluded that they failed to appropriately fulfil their roles in respect of processing Mr Hegarty. Had they properly considered the evidence then they would have identified the breach of bail regarding

the bail check on 7 December 2013 and would have informed the custody sergeant of this important information.

3.123 At the time Mr Hegarty was in custody, the court bail conditions granted on 1 November 2013 remained in force as did the ‘tagging’ order. Despite the fact that Ms Smyth’s address in Drumaness had been withdrawn by her, only a court could authorise a change of bail address.

3.124 Mr Hegarty was released on police bail at 2.47pm on 9 December 2013 from Bangor custody suite. Bail conditions were imposed on him to have no contact by any means with the injured party, Ms Smyth, and not to enter Drumaness.

3.125 Following the arrest of Mr Hegarty for the murders of Ms Smyth and Mr McGrillen, Police Officer 13 made an entry on the police investigation log in relation to Mr Hegarty’s release from police custody on the 9 December 2013:

“Hegarty was interviewed with his solicitor and gave a “no comment” interview. The Gatekeeper was consulted and he advised that Hegarty should be charged via an overnight charge file on the common assault aspect of the complaint as police had been given a verbal complaint by the IP and police had observed her injuries although the IP whilst having given a statement withdrawing her address as a bail address, had failed to furnish police with a written statement of complaint even though police had called with again her in an attempt to record one”.

“When Hegarty and his solicitor were informed of this, his solicitor made representations to [Police Officer 9] – the custody sergeant. I was told to inform the gatekeeper of these representations and ask his advice once more. I spoke to the gatekeeper a second time but

he was still of the opinion that Hegarty should be charged overnight. Following further representations from Hegarty's solicitor, I spoke to the gatekeeper for a third time and [Police Officer 9] also consulted with him. It was decided that if Hegarty's solicitor could get a bail address variation by 5pm Hegarty would be bailed on the alleged offences and released".

- 3.126 An application to the court to vary Mr Hegarty's bail address from Ms Smyth's address in Drumaness to Mr Hegarty's address in Belfast was not made and granted until the morning of 12 December 2013, four days after his release from police custody by which time the murders had already occurred.

The role of the "Gatekeeper" in decisions to grant bail

- 3.127 The term "Gatekeeper" refers to a team of dedicated Inspectors within Criminal Justice Branch, whose role is described as:

To review all criminal investigations, where a suspect has been detained at a police station after arrest or has attended voluntarily and provided the IO with guidance on the most appropriate method of disposal, including bail considerations.

When providing disposal advice, the role of a Gatekeeper is to advise and not direct.

- 3.128 Police Officer 14 was the Gatekeeper with regard to these matters. Police Officer 14 stated that following his conversations with the investigating officer and custody sergeant he recommended that Mr Hegarty be held and taken to court due to the risk to the safety of the injured party if he were to be released.

- 3.129 Police Officer 12 told Ombudsman investigators that he had spoken with the Gatekeeper in relation to advice on how to proceed with Mr Hegarty. The advice given to him by the Gatekeeper was that Mr Hegarty be charged with assault on the injured party and held to be taken to the next available court. He informed the custody sergeant of this advice in the presence of Mr Hegarty and his solicitor. The solicitor made representations as to why his client should not be held overnight.
- 3.130 Police Officer 12 stated that the custody sergeant asked him to relay this to the gatekeeper which he did. His advice remained the same. Police Officer 12 stated that after this discussion the custody sergeant spoke with the solicitor and agreed that if a new bail address could be agreed by close of business, which he took to be 5pm, Mr Hegarty would be released on bail.
- 3.131 Police Officer 12's evidence showed that Police Officer 14 had concerns regarding the risk to Ms Smyth. The timed entry by the Gatekeeper on the police investigation log evidences that the Investigating Officer informed him about the risk to Ms Smyth, which informed his decision making regarding the advice given.

Interview of Police Officer 9

- 3.132 Police Officer 9 explained that he commenced duty at about 6.30am and took over from Police Officer 8 as custody officer. There were five other prisoners in custody. Police Officer 8's verbal briefing was that Mr Hegarty was in custody in respect of a 'standard domestic'.

- 3.133 Police Officer 9 stated that he asked Police Officer 8 what he meant by 'standard domestic' and he said that there was an allegation that Mr Hegarty assaulted his girlfriend and that they were waiting for a statement from her. Police Officer 9 stated that Police Officer 8 went on to explain that Mr Hegarty had also been arrested for breach of bail in relation to the bail address being withdrawn. Police Officer 9 stated that Police Officer 8 told him that he had refused this breach of bail as it was unfair and not Mr Hegarty's fault.
- 3.134 Police Officer 8 informed him that Mr Hegarty would be fit for interview at 8.00am. Police Officer 9 stated that he was not briefed by Police Officer 8 regarding any other offences or risk. Police Officer 9 stated that he had read the custody record and, although there were various offences detailed, the circumstances of arrest related only to the offence of assault. There were also no risks highlighted on the custody record. Police Officer 9 stated that he contacted the duty Inspector regarding obtaining a statement from the injured party.
- 3.135 An officer was sent out to speak to Ms Smyth and she stated that she wanted to speak to her solicitor. Police Officer 9 explained that he had spoken to Ms Smyth's solicitor, Witness B, in an attempt to get a statement. However, Witness B told him that Ms Smyth was not answering her phone. He then contacted Police Officer 11, who was the female police officer at Ms Smyth's address, but Ms Smyth would not come to the door. Police Officer 9 stated that at that stage there had been extensive attempts to obtain a statement from Ms Smyth but that these efforts had failed.

- 3.136 Police Officer 9 stated that the Prisoner Processing Team (PPT), which consisted of Police Officer 12 and Police Officer 13, had some paperwork in their possession, which he believed was a 'handover pack'.
- 3.137 After interview with the suspect, Police Officer 9 spoke with Police Officer 12 who stated that the offence was assault, that Mr Hegarty had made no comment and that he had no address suitable for granting bail. Police Officer 9 then told Police Officer 12 to consult with the Gatekeeper. Police Officer 9 stated that throughout his discussions with Police Officer 12 and the Gatekeeper the only concern regarding Mr Hegarty's release was that he had no bail address and that therefore there would be a risk that he would fail to return or would abscond.
- 3.138 Police Officer 9 stated that there was not enough evidence to charge Mr Hegarty with offences against Ms Smyth as there was still outstanding evidence in relation to her statement and potential medical evidence. He stated that the only factor identified to him at the time was that there was no suitable bail address and therefore he considered that he had no option but to release Mr Hegarty on bail if a bail address could be provided.
- 3.139 Police Officer 9 stated that when it came to the timing of Mr Hegarty's release, it was outside the curfew imposed by his existing bail conditions. However, Mr Hegarty's solicitor had assured him that he was phoning the court in Londonderry to have the bail address changed to Mr Hegarty's address in Belfast. Police Officer 9 stated that he was confident that the solicitor was doing this and that he had no reason to doubt the solicitor.

- 3.140 Police Officer 9 stated that the breach of bail (withdrawal of the bail address) offence had been declined by Police Officer 8, that he (Police Officer 9) had asked the PPT if they were happy with the new (Belfast) address and that they had confirmed that they were.
- 3.141 Police Officer 9 stated that when the issue of the address was resolved, he was required to release Mr Hegarty. Police Officer 9 stated that he advised Mr Hegarty's solicitor that there was a potential for Mr Hegarty to be in breach of bail conditions should the times of the curfew be breached or if the change of address had not been authorised through Court.
- 3.142 Police Officer 9 accepted that he had seen the warning flag regarding Mr Hegarty being subject to the PPANI process. He stated that the solicitor made objections to the effect that Mr Hegarty should be released as he had an address in Belfast. Police Officer 9 stated that he then asked Police Officer 12 to consult with the Gatekeeper again and was subsequently told that the Gatekeeper was in agreement that if an address was provided he could be released.
- 3.143 Police Officer 9 was unaware that a statement had been recorded from Ms Smyth regarding the withdrawal of Mr Hegarty's bail address, that a metal bar had been seized by police and that there had been another breach of bail on 7 December 2013. Police Officer 9 stated that he had not been told this information and that at no time had Police Officer 12 asked for an extension for detention so that further enquiries could be made.
- 3.144 Police Officer 9 stated that Police Officer 12 was told to consult with Londonderry CID regarding the change of address. Police Officer 9 stated that he was not told that police had any objections to

Mr Hegarty's address in Belfast. Police Officer 9 stated that he was not made aware of any significant risk to Ms Smyth. There was an agreement with the solicitor and he heard the solicitor on the phone to his office regarding an application to the court to have the bail address varied. He understood that the bail address would be varied before 10pm (the time of the bail curfew) and he then made the decision to release Mr Hegarty. Police Officer 9 stated that he was unaware that the bail had not actually been varied until the morning of 12 December 2013.

3.145 Police Officer 9 accepted that he did not record his rationale for release on the custody record. He stated that he could not recall if Mr Hegarty was electronically tagged as it was not recorded on the custody record. However, he accepted that he did look at Mr Hegarty's bail conditions so should have been aware of this.

Interview of Police Officer 2

3.146 Police Officer 2 stated that on 9 December 2013 he received a phone call from Bangor custody suite and was informed that Mr Hegarty had been arrested for a domestic incident at Ms Smyth's address in Drumaness.

3.147 He was informed that the bail address had been withdrawn by Ms Smyth on the 8 December 2013 and that Mr Hegarty had been arrested for breach of bail. He was told that there had been a breach of court bail on 7 December 2013 when Mr Hegarty failed to answer the door at Ms Smyth's address. He stated that prior to this he had not received any notification of this breach and that there were no attempts made to effect an arrest for it.

- 3.148 Later that afternoon, he received a call from Police Officer 12 informing him that Mr Hegarty was to be bailed for the domestic matters. Police Officer 12 also informed him that the custody sergeant was not going to accept the arrest for the breach of bail relating to the withdrawal of the bail address. Police Officer 2 stated that it was his understanding from his conversations with Police Officer 12 that Mr Hegarty had been arrested for the breach of bail regarding the bail check on 7 December 2013.
- 3.149 Police Officer 2 stated that it was his understanding that Mr Hegarty would have to go to court for the bail address to be varied at court to his new address in Belfast. He stated that he checked Mr Hegarty's custody record on the afternoon of 9 December 2013 and realised that Mr Hegarty was released from custody despite the fact that a change of bail address had not been accepted by court at that stage.
- 3.150 Police Officer 2 stated that he had consulted with his supervisor about arresting Mr Hegarty for having no court bail address from his time of release on 9 December 2013. However, he was advised that as Mr Hegarty had already been in custody for this breach of bail and released there would be no justification for a further arrest.
- 3.151 Police Officer 2 said that at some time between 9 December 2013 and 12 December 2013 he made contact with Mr Hegarty's solicitor, Person A, who advised him that he was making an application to have Mr Hegarty's bail address changed to his address in Belfast at court on 12 December 2013.
- 3.152 Police Officer 2 stated that he was aware that Mr Hegarty was not therefore being electronically monitored by G4S with regard to the new bail address and that he had presumed the new address was

suitable. Mr Hegarty was in fact being monitored by G4S from Ms Smyth's address because G4S did not consider his bail address to have been changed.

3.153 Police Officer 2 was asked if he had checked whether Mr Hegarty's address in Belfast was a suitable bail address. He stated that he had researched this address and had established that Mr Hegarty had previously resided there and that it was approximately 70 miles away from where the offences in Londonderry had been committed.

3.154 Police Officer 2 was asked if he had given consideration to the suitability of the bail address for the purpose of electronic tagging. He stated that this would not have been something he would normally do as it is not usual for an address not to have electricity.

3.155 Police Officer 2 accepted that he was the investigating officer for the offences, for which the court bail address was being varied and that it would have been his responsibility to check the suitability of the bail address.

PPANI and MARAC activity following Mr Hegarty's release on police bail on 9 December 2013

3.156 On 12 December 2013 at 4.50pm the PPU Offender Management Supervisor, Police Officer 15, brought to Police Officer 10's attention that Mr Hegarty was a Category 2 offender and requested that she link in with Police Officer 16 (Offender Management Unit) so that they could co-ordinate risk management from both MARAC and PPANI.

3.157 The PPANI responsibility for Mr Hegarty should have been transferred back to PPU A District. However, given that the next

available A District LAPPP meeting had not been due to take place until 23 January 2014, the PPANI Links Team decided that to avoid any further delay, the C District LAPPP meeting on 7 January 2014 would go ahead with A District PPU in attendance.

- 3.158 The Police Ombudsman's Office interviewed Police Officer 17, the Inspector in the PPANI Links Team. Police Officer 17 indicated that there had been a written PSNI internal directive, which confirmed that offenders, who had not provided an address and who could not be located by police, would not be reviewed at a LAPPP meeting. The PPANI Links Team classed these offenders as 'missing'.
- 3.159 The Police Ombudsman's Office requested sight of this written directive, however, this could not be produced.
- 3.160 At 1.18pm on 13 December 2013 the investigating officer, Police Officer 6 attempted to contact Ms Smyth on her mobile phone and there was no answer. The number rang out and there was no facility to leave a voicemail. This would have been a number of hours prior to Ms Smyth and Mr McGrillen being found murdered.
- 3.161 Ms Smyth was not contacted by police following her interaction with Police Officer 11 at approximately 12.10pm on 9 December 2013 and Police Officer 6 attempting to contact her at approximately 1.18pm on 13 December 2013.
- 3.162 There were no records on the police investigation log relating to the outcome of Police Officer 15's request regarding co-ordinating risk management.
- 3.163 Ombudsman Investigators spoke with the Domestic Abuse Officer (DAO) within PPU C District, Police Officer 10, to establish if there

were any other records regarding contact with Ms Smyth or the risk management of Ms Smyth. Police Officer 10 told Ombudsman investigators that there was no further documentation regarding this case other than the MARAC referral form, DASH form and police investigation log.

3.164 Police confirmed that there was no further documentation held by PPU relating to the risk management of Ms Smyth.

3.165 Police Officer 16, Offender Management, told Ombudsman investigators that there had been no liaison as such with Police Officer 10 regarding Ms Smyth other than possibly a brief conversation regarding the upcoming MARAC for 18 December 2013. He stated that he recalled that at that stage he would have been proposing another visit with Mr Hegarty, however, this did not take place due to the murders.

3.166 The PSNI Service Procedure – Risk Identification Assessment and Management in Relation to Domestic Abuse, Stalking and Harassment and Honour Based Violence HBV (DASH) specifically outlines the role of the DAO, which includes contacting the victim, informing the victim of referral to MARAC and reviewing and managing the risk.

3.167 The PSNI Service Procedure – Police Response to Domestic Incidents refers to risk assessment and safety planning. It gives guidelines in respect of having in place measures to protect the victim. There are certain measures outlined which investigating officers and DAO's should use to reduce risk.

3.168 Following a review of this document it is clear that the attending officers, Police Officers 6 and 7, complied with this policy. However, there are no records relating to the actions of the PPU in managing the risk to Ms Smyth and co-ordinating risk management with PPANI.

Electronic Monitoring of Mr Hegarty by G4S following his arrest/release on 8/9 December 2013

3.169 Mr Hegarty's court bail address was not varied at court until 12 December 2013. Consequently Mr Hegarty was actually in breach of his bail conditions by not residing at Ms Smyth's address between 2.57pm on 9 December 2013 and the morning of 12 December 2013, when the court granted a new bail address in Belfast.

3.170 During this time, G4S quite properly considered his bail address to be unchanged (Ms Smyth's address) and monitored him through the electronic monitoring system accordingly.

3.171 Mr Hegarty and Mr Nugent committed the murders of Ms Smyth and Mr McGrillen in the early hours of 12 December 2013, when Mr Hegarty's movements should have been restricted by way of a curfew and the subject of monitoring by G4S.

3.172 However, by this time the police had (incorrectly) changed the bail address for their purposes and did not consider Mr Hegarty to be in breach of bail by not residing at Ms Smyth's address. Therefore, they did not respond to alerts from G4S.

- 3.173 When G4S initiated their enforcement procedures and made contact with police they were informed that Mr Hegarty had recently been arrested and was not to enter the area, from where his curfew address had been withdrawn.
- 3.174 Further, G4S were informed that the police had withdrawn Mr Hegarty's bail address in Drumaness. However, G4S only act on notification from court of a change in court bail conditions regarding electronic monitoring. Therefore they continued to monitor Mr Hegarty's movements from Ms Smyth's address in Drumaness. Consequently G4S notified police of the following breaches:
- 10 December 2013 – 12.36am
 - 11 December 2013 – 1.05 am
 - 12 December 2013 – 10.27pm
- 3.175 The reported breaches to police by G4S on 10 December and 11 December were not progressed as police linked these to the domestic incident on 8 December 2013, involving Ms Smyth withdrawing her address as Mr Hegarty's bail address.
- 3.176 At the time of these notifications the police considered (incorrectly) that Mr Hegarty was not in breach of the requirement to reside at Ms Smyth's address because she had rescinded the address for the purpose of Mr Hegarty's bail, albeit that this still required to be confirmed by order of the court.
- 3.177 On the afternoon of 12 December 2013 G4S were notified by the court of the variation of bail address for Mr Hegarty. At 7.30pm that day an officer from G4S attended the new bail address in Belfast with the Northern Ireland Housing Executive.

- 3.178 There was no electricity at the address and consequently G4S considered the premises unsuitable for the installation of the electronic monitoring equipment. At 9.33pm the G4S officer forwarded a message to the G4S control system in order that they would advise police that the address was not suitable. At 10.27pm the message from G4S was forwarded to police via email at their incident control room.
- 3.179 Police did not respond to this report. Whilst this report was after the murders of Ms Smyth and Mr McGrillen this should have been acted upon by police.
- 3.180 Police Officer 18 could not explain to Ombudsman Investigators why this breach of bail was not acted upon but stated that had he opened the relevant email then he would have created a log.
- 3.181 Ombudsman Investigators could not establish if the email from G4S had been opened or identify if an individual had opened the email due to the distribution lists linked to the email address.

4.0

FINDINGS AND RECOMMENDATIONS

Finding One

- 4.1 **The practice of not reviewing at a LAPPP meeting offenders who had not provided an address and who could not be located by police and classifying such offenders as ‘missing’ adopted by the PPANI Links Team was not in accordance with the PPANI Manual of Practice.**
- 4.2 This practice resulted in missed opportunities for information sharing and any co-ordinated multi agency approach to the risk presented by Mr Hegarty. Had Mr Hegarty been subject to a LAPPP meeting earlier, his risk would have been assessed with access to all the other information regarding his behaviour since his release from prison. This might have allowed a more informed decision to have been made, which might have increased Mr Hegarty’s risk category resulting in a requirement for a more intense/focused multi agency intervention than that required for a Category 2 management of risk.
- 4.3 At that time there was a legislative framework around the management of Violent Offenders. However, there was no requirement in law for offenders to engage with the process. This made it difficult to manage offenders who do not co-operate with the process.
- 4.4 As a result of a Multi Agency Serious Case Review regarding Mr Hegarty, this approach regarding offenders who cannot be located has been rectified.

4.5 All eligible offenders must be reviewed at a LAPPP meeting. This will include cases, where the offenders cannot be located. Where this is the case, the LAPPP meeting will proceed and the attendant risk management plan will include actions to locate the offender.

Recommendation One

4.6 Given concerns the Ombudsman had in respect of the powers available to the PSNI for dealing with such offenders, the Police Ombudsman recommended to the PSNI that they should consider the proposition of legislation to introduce a Domestic Violence Prevention Order similar to the Sexual Offences Prevention Order.

4.7 It was established that the Department of Justice had provided for the introduction of Violent Offender Protection Orders (VOPO's) in Part VIII of the Justice Act (Northern Ireland) 2015 which provide police with powers to assist in the management of violent offenders.

4.8 The Police Ombudsman liaised with both the PSNI and the Department of Justice for clarity as to when the relevant provisions would be brought into operation. This occurred on 1 December 2016. The PSNI have informed the Police Ombudsman that they have prioritised the application of VOPOs for Category 3 offenders.

Finding Two

4.9 **Whilst police made sufficient attempts to arrest Mr Hegarty between 21 October and 31 October 2013, police failed to arrest Mr Hegarty for offences which he was alleged to have committed in Londonderry when he was in police custody between 19 October and 21 October 2013.**

- 4.10 Mr Hegarty was arrested in Belfast at approximately 1.35am on Saturday 19 October 2013 and taken to Grosvenor Road PSNI station. The custody sergeant telephoned Strand Road CID around 2.40pm hours that day. The decision taken by Police Officer 1 not to effect Mr Hegarty's arrest was on the assumption that Mr Hegarty would be remanded in custody when he was taken to court. Police Officer 1 would have known that Mr Hegarty could not have attended court until the Monday, leaving him in police custody all day Saturday 19 October and Sunday 20 October 2013. This would have given Strand Road CID enough time to be ready to deal with the offences in Londonderry by Monday 21 October 2013.
- 4.11 Further consideration should have been given to the implications of not arresting Mr Hegarty during this time and at the very least officers from Strand Road CID should have attended court on Monday 21 October 2013.
- 4.12 Police knew where Mr Hegarty was located between 21 October 2013 and 31 October 2013 as he was bailed to Ms Smyth's address in Drumaness.
- 4.13 Police Officer 2 did attempt to have Mr Hegarty arrested between 21 October 2013 and 31 October 2013. Unfortunately due to resources Downpatrick PSNI were unable to assist in the arrest of Mr Hegarty. A decision was made by Police Officer 2 to plan an arrest of Mr Hegarty when he attended court on 31 October 2013. This was an operational decision taken by police, which resulted in the arrest of Mr Hegarty. No police misconduct has been recommended against Police Officer 2 regarding this aspect of the Police Ombudsman investigation.

Recommendation Two

- 4.14 The Police Ombudsman recommended that Police Officer 1 be disciplined for failing to ensure that the offences in Londonderry were dealt with by Strand Road CID between Saturday 19 October and Monday 21 October 2013.

Finding Three

- 4.15 **Police failed to conduct a proper bail check on Mr Hegarty on 7 December 2013 and failed to arrest him for this breach of bail.**

- 4.16 Had a more robust bail check been conducted by Police Officer 4, Ms Smyth may have had police assistance sooner. Had police initially followed up on the breach of bail between 7 and 8 December 2013 and engaged with G4S, the events which unfolded relating to Ms Smyth over this weekend may have afforded police the opportunity to engage with Ms Smyth earlier.

Recommendation Three

- 4.17 The Police Ombudsman recommended that Police Officer 4 be disciplined for failing to conduct a proper bail check on 7 December 2013 and informing the wrong investigating officer of this breach of bail. The Police Ombudsman also recommended discipline in respect of Police Officer 3. As a supervisor, she should have taken ownership of the bail task or ensured that relevant information was passed onto Police Officer 5 so that Mr Hegarty could have been arrested the following day for this breach of bail.

- 4.18 The Police Ombudsman made a policy recommendation to PSNI that clear instructions be issued to police officers that when bail checks are to be conducted clear auditable records are kept,

proposed further actions to be taken are documented and contact must be made with G4S in respect of tagged persons.

- 4.19 Consideration was also given to the issues regarding the use of handover trays in police stations. A further policy recommendation was made to the PSNI that clear guidelines be issued to police officers and supervisors in respect of the purpose of handover trays and that they be checked regularly by supervisors to ensure that relevant information is not lost. Ownership rests with the respective outgoing and incoming supervisors.

Finding Four

- 4.20 **Police failed to consider properly the breach of bail regarding Ms Smyth withdrawing her address as Mr Hegarty's address for bail purposes.**

- 4.21 Mr Hegarty's detention for the breach of bail regarding the withdrawal of his bail address should have been accepted by Police Officer 8. This failure had a significant impact on the decision-making by the oncoming custody sergeant, Police Officer 9, in respect of Mr Hegarty's disposal.

Recommendation Four

- 4.22 The importance of the sharing of information regarding Mr Hegarty's bail conditions was the subject of a disciplinary recommendation regarding Police Officer 8's conduct.

Finding Five

4.23 **Whilst Mr Hegarty was in police custody on 8/9 December 2013 police failed to recognise the importance of Mr Hegarty being electronically tagged.**

4.24 Whilst there was no reference in the custody records to Mr Hegarty wearing an electronic tag, police would have been aware of this whilst he was in custody due to the phone call from G4S and the fact that police officers had checked Mr Hegarty's bail conditions on the police computer system, which would have shown that he was tagged.

4.25 The PACE Codes of Practice, the ACPO Guidance on the Safer Detention and Handling of Persons in Police Custody and the PSNI Service Procedure 36/2009 entitled "Electronic Monitoring (EM) of Persons on Court Bail" do not refer to the fact that an entry must be made on the custody record that a detained person is electronically tagged. Best practice should have been that this important fact was officially recorded.

Recommendation Five

4.26 As CDO 2 is a civilian employee of the PSNI, the Police Ombudsman has limited powers in respect of his disciplinary recommendations. Therefore, it was recommended that CDO 2 be reminded of the importance of ensuring that he records on the custody record that he has searched detained persons.

Finding Six

- 4.27 **Police failed to arrest Mr Hegarty for the breach of bail on 7 December 2013 when he was in police custody on 8/9 December 2013. Prior to his release they failed to check the suitability of his new bail address.**
- 4.28 The evidence gathered shows a lack of communication and continuity in information handling, which resulted in the failure to access thoroughly the totality of all the available information by the police officers involved in processing Mr Hegarty for the offences between 6 December 2013 and 8 December 2013.
- 4.29 The Police documentation and Police Ombudsman's contact with Police Officer 6 reflects that he was a very competent police officer and that he did the best he could within the time he was on duty in relation to the reports made by Ms Smyth.
- 4.30 He correctly identified the importance of the breaches of bail and linked these to the other offences with which he was dealing. Unfortunately, he was unable to attach Police Officer 4's breach of bail statement to the electronic version of his handover to the Prisoner Process Team (PPT) as the only copy of the statement was in hard copy format. The Police Ombudsman's Office believes that this was attached to the hard copy handover, left in Downpatrick handover tray. However, the PPT did not obtain the hard copy handover pack, instead using the electronic version.
- 4.31 Nevertheless, Police Officer 2's evidence would support that Police Officer 12 knew about the breach of bail on 7 December 2013. Therefore, prior to his interview, Mr Hegarty should have been arrested for this breach. It is not clear whether Police Officer 12

omitted to arrest for this breach of bail or if he was confused and believed that this was the breach of bail (withdrawal of bail address), which had not been accepted by the custody sergeant, Police Officer 8.

4.32 It is clear that there was a breakdown in communication, which caused Police Officer 2 to believe that Mr Hegarty had been arrested for the breach of bail on 7 December 2013 and that his detention had not been authorised for this breach. However, Police Officer 6's email was clear in respect of police action regarding both breaches of bail. Police Officer 2 should have been clear about these breaches of bail before informing Police Officer 12 that he was satisfied with the bail address. He should also have checked that the bail address could fulfil the conditions imposed by the court on 1 November 2013.

4.33 There was confusion and misunderstanding by these police officers regarding the two breaches of bail. The failure to arrest Mr Hegarty for the breach of bail on 7 December 2013, whilst he was in police custody on 9 December 2013 lies with Police Officers 12 and 13. Their failure to access the police investigation log or hard copy handover pack resulted in the opportunity to arrest Mr Hegarty for this breach being missed.

Recommendation Six

4.34 The Police Ombudsman recommended that Police Officer 2, Police Officer 12 and Police Officer 13 be disciplined in relation to the failure to arrest Mr Hegarty for the breach of bail on 7 December 2013, whilst he was in police custody on 8/9 December 2013. The Police Ombudsman also recommended disciplinary sanctions in respect of the quality of the interview of Mr Hegarty; for not checking

the suitability of his bail address in Belfast which did not have electricity; and for not attending court on 12 December 2013 to object to Mr Hegarty being granted bail.

4.35 Mr Hegarty and Mr Nugent committed the murders of Ms Smyth and Mr McGrillen prior to Mr Hegarty's court bail address being varied at court on 12 December 2013 and during the time that he should have been being monitored by G4S.

4.36 The Police Ombudsman investigation established that there was no PSNI policy or guidance in respect of the responsibilities of the PPT. The Police Ombudsman made a policy recommendation to the PSNI that clear guidance on what is expected of these officers when dealing with disposal would improve the custody process and place direct ownership and responsibility on the PPT.

Finding Seven

4.37 **Police should not have varied Mr Hegarty's bail address without reference to the courts and should not have released Mr Hegarty from police custody on 9 December 2013.**

4.38 The police failure to arrest Mr Hegarty for the breach of bail on 7 December 2013 and the failure of Police Officer 8 to authorise Mr Hegarty's detention for the withdrawal of the bail address had a significant impact on the decision-making regarding Mr Hegarty's release.

4.39 Police Officer 8's decision-making and his apparent poor handover to Police Officer 9 were major causes for concern.

- 4.40 The Police Ombudsman investigation has been unable to establish if Police Officer 9 was aware of the breach of bail on 7 December 2013. Police Officer 9 denied that he was aware of this and no evidence has been found to contradict this assertion. Police Officer 12 should have informed Police Officer 9 of the breach of bail that occurred on 7 December 2013.
- 4.41 Police Officer 9 could not amend the court bail – such a decision could only be made on the authority of a court. Police officer 9 had to decide whether or not Mr Hegarty should be held in custody until a new address would be accepted by the court.
- 4.42 Police Officer 9 stated that he had no reason to doubt that Mr Hegarty’s solicitor had already or was in the process of amending the court bail address with Londonderry court. He was not aware that the address would not actually be varied until 12 December 2013 (at court), meaning that Mr Hegarty would be in breach of court bail from 9 December to 12 December 2013.
- 4.43 Whilst the withdrawal of the bail address was both a present and future breach of bail, Police Officer 8 did not authorise detention for this breach. Despite this, Police Officer 9 did consider that if another address was not agreed by the time Mr Hegarty’s curfew commenced at 10 pm, Mr Hegarty would be liable for arrest for this breach of bail.
- 4.44 Police Officer 9’s account is undermined by the Gatekeeper’s statement, which would indicate that the risk to Ms Smyth was brought to Police Officer 9’s attention. Police Officer 9’s assumption that Mr Hegarty’s solicitor had obtained a variation of Mr Hegarty’s bail address is not sustainable or in keeping with his responsibilities as a custody sergeant.

4.45 Police Officer 9's failure allowed for further breaches of bail in respect of breach of curfew, tagging and residence. All of these breaches were ongoing. In effect, Police Officer 9's decision to change the bail address and release Mr Hegarty resulted in Mr Hegarty breaching bail every day from 9 December 2013 to 12 December 2013.

Recommendation Seven

4.46 The Police Ombudsman recommended that Police Officer 8 be disciplined in relation to his decision not to authorise Mr Hegarty's detention for the breach of bail (withdrawal of address) and his poor handover to Police Officer 9.

4.47 The Police Ombudsman recommended that Police Officer 9 be disciplined in relation to his decision to release Mr Hegarty from police custody on 9 December 2103.

Finding Eight

4.48 **Police did not co-ordinate risk management information from MARAC and PPANI.**

4.49 The police management of the risks pertaining to Mr Hegarty and Ms. Smyth were examined by the Ombudsman.

4.50 The Ombudsman is of the view that a number of officers failed to co-ordinate the risk management in respect of Mr Hegarty.

4.51 The Ombudsman was unable to make disciplinary recommendations in relation these officers as they have subsequently retired from the PSNI.

Recommendation Eight

4.52 The Police Ombudsman made a policy recommendation that PSNI review the circumstances of this case in line with the current MARAC Protocol to satisfy themselves that should similar events occur in the future, there is an appropriate response to the risk presented to the victim and the public. A review by the MARAC Coordinator and PSNI Offender Management took place in 2016.

Summary of Police Ombudsman Recommendations and Outcome

4.53 The Police Ombudsman made five policy recommendations in seeking to help prevent such events happening again. These recommendations have all been accepted by the PSNI.

4.54 The Police Ombudsman also recommended disciplinary sanctions of Advice and Guidance in relation to six police officers. The PSNI considered the recommendations and issued Advice and Guidance to five police officers and administered a higher level of disciplinary sanction of Superintendent's Written Warning to one of the officers.

4.55 The Police Ombudsman recommended that the two custody sergeants (Police Officer 8 and 9) be subject to disciplinary hearings. Police Officer 8 was required to resign in relation to an unrelated matter prior to this matter being addressed.

4.56 PSNI agreed with the Police Ombudsman's recommendation of a disciplinary hearing in respect of Police Officer 9.

4.57 PSNI scheduled a disciplinary hearing for 23 March 2016; however this was adjourned due to the unavailability of the PSNI Barrister.

- 4.58 The disciplinary hearing was rescheduled for 11 April 2016; however this did not go ahead due to the unavailability of a witness.
- 4.59 On 11 May 2016 the disciplinary hearing process commenced. However, the matter was adjourned due to a legal argument regarding the wording of the disciplinary charge and the disclosure of disciplinary sanctions in relation to Police Officers 12 and 13.
- 4.60 The disciplinary hearing was rescheduled for 19 December 2016 to enable time for PSNI in consultation with PONI to respond to the issues raised regarding the charge and disclosure issues and to accommodate the availability of the relevant persons required for the disciplinary hearing. The disciplinary hearing did not go ahead on this date due to the late unavailability of the Assistant Chief Constable, who was to chair the panel.
- 4.61 On 31 January 2017, a disciplinary hearing was convened in respect of Police Officer 9. Following a detailed submission by Police Officer 9's legal representatives the panel members granted an application for a Stay of Proceedings in respect of:
- PSNI Discipline Branch's non disclosure of information which disadvantaged the defence, and
 - The lack of specificity of the misconduct charge.
- 4.62 The panel did not think it was possible for Police Officer 9 to receive a fair hearing in these circumstances and as such the misconduct charge in relation to Police Officer 9 was dismissed.

5.0

CONCLUSION

- 5.1 Following the murders of Ms Smyth and Mr McGrillen, the Police Service of Northern Ireland launched an investigation. Sean Hegarty and Ciaran Nugent were arrested and charged with the murders. Due to the weight of evidence gathered by the PSNI in their investigation both males subsequently pleaded guilty. Sean Hegarty was sentenced to serve a minimum of 18 years imprisonment and Ciaran Nugent was sentenced to serve a minimum of 14 years imprisonment for the murders, which were described by the sentencing judge as ‘truly shocking’.
- 5.2 The Police Ombudsman investigation has evidenced a series of failures and concerns about the processes and decisions, which led to the release of Mr Hegarty on bail.
- 5.3 The investigation has shown how police officers failed in their ‘bail check’ visit to Ms Smyth’s home on the night of Saturday 7 December 2013. Unable to get anyone to answer the door, they left and filed a report, which recorded that Mr Hegarty was in breach of his bail conditions.
- 5.4 Police knew that Mr Hegarty was tagged and should have been on the premises. The officers did not consider going to the rear door of the property. This is particularly significant as, according to a report which Ms Smyth later made to police, at that stage Mr Hegarty was inside the property and holding her against her will. The officers also failed to carry out any checks with the security firm, which was monitoring his whereabouts through the tagging system.

- 5.5 Further, it is the view of the Police Ombudsman that the decision to release Mr Hegarty on 9 December 2013 was flawed. He was released despite the fact that police did not carry out adequate checks on the suitability of his new bail address, and the change of address had not been officially authorised by the courts.
- 5.6 There was a lack of communication and continuity in information handling among the police officers involved in this flawed decision.
- 5.7 The Ombudsman concluded that police failed to adequately protect Ms Smyth and Mr McGrillen. Had a more appropriate course of action been taken it might have reduced the likelihood of the tragic events, which took place on 12 December 2013.

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