



**Public Statement by the Police Ombudsman pursuant  
to Section 62 of the Police (Northern Ireland) Act 1998**

Relating to a public complaint:

**INVESTIGATION INTO POLICE CONDUCT  
RELATING TO THE CIRCUMSTANCES OF  
THE MURDER OF PATRICK KELLY ON  
24 JULY 1974**



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# Executive Summary

On 10 August 1974, the body of Patrick Joseph Kelly, known to his friends and family as Patsy, was recovered from Lough Eyes, near Lisbellaw, County Fermanagh. He was last seen alive at approximately 00:20am on 24 July 1974, driving away from the Corner Bar in Trillick, County Tyrone, where he worked. When he did not return home, Mr Kelly's wife contacted the local priest who then reported the matter to Ballinamallard RUC Station at 8:10am. A large scale search operation commenced and Mr Kelly's burnt out car was discovered at 8:55am on 25 July 1974 at Greenhill Quarry, approximately 11 miles outside Trillick.

Mr Kelly's body was discovered on 10 August 1974 by two fishermen, floating in shallow water. A green nylon rope, attached to a 56-pound weight, had been tied around his waist. A post mortem examination established that he had been shot six times. Cause of death was recorded as *'bullet wounds to the trunk.'*

Subsequent ballistic tests established that a .455 calibre revolver was used in the murder. The Ulster Freedom Fighters (UFF) later claimed responsibility for the murder in an anonymous telephone call, stating that Mr Kelly was a republican sympathiser. However, this claim was subsequently denied in a further UFF statement. Police later received information that the Ulster Volunteer Force (UVF) carried out the murder.

Shortly after Mr Kelly's abduction, rumours began to circulate within the local nationalist community that members of the Ulster Defence Regiment (UDR) had been involved in his disappearance. Intelligence subsequently linked a number of UDR members to Mr Kelly's murder. A series of arrests were made in 2004 during a PSNI re-investigation. However, to date, no individual has been charged or prosecuted for the murder.

In January 2018, a member of Mr Kelly's family made a statement of complaint to the Police Ombudsman's Office. This raised a number of questions and concerns about the actions of police before, and after, Mr Kelly's murder. These were as follows:

- I. That the Police Ombudsman investigate the conduct of the original RUC investigation, to ensure that all lines of enquiry were properly pursued. This included the suspect strategy and enquiries relating to the origins of the weapon used to murder Mr Kelly;
- II. That the Police Ombudsman establish if police were in possession of evidence or intelligence that, if it had been acted upon, could have prevented Mr Kelly's murder;
- III. Police withheld evidence from the Coroner's Inquest into Mr Kelly's murder. They failed to disclose the presence of footprints found at a scene and a fingerprint mark that was recovered during the investigation;
- IV. Police failed to retain items recovered from various scenes, including a rug found in the burnt-out Mazda and a handkerchief recovered from the Lough Eyes scene. The family also wanted to know what happened to a 'butcher's hook' that was found in the Mazda;
- V. At least one of two buttons found at a scene on the Badoney Road did not come from Mr Kelly's shirt. The family believe that this type of button would have come from the inside of an outer coat;
- VI. Police did not make enquiries regarding the green nylon rope and 56-pound weight found attached to Mr Kelly's body. An identified suspect had access to such ropes and weights but this matter was not investigated by police;
- VII. Alibis for a number of suspects were provided by RUC officers;
- VIII. The car of a UDR member was found burnt-out on the morning of 25 July 1974 on a road between Badoney Road and the UDR member's house. Did police assist this individual with a subsequent insurance claim for the burnt-out vehicle;
- IX. Police failed to investigate a number of individuals who were linked to Mr Kelly's murder, because they were UDR members. The family specifically

referred to UDR Members 20 and 24. If this was the case, then it would amount to collusion;

- X. Police informed Mrs Kelly that they needed to examine her husband's body as this would help them discover who murdered him. This turned out to be untrue, as Mr Kelly's murderers have never been brought to justice;
- XI. Following the murder, Mrs Kelly was verbally abused by members of the security forces at UDR vehicle checkpoints;
- XII. In August 1974, two members of Mr Kelly's family were arrested on suspicion of the murder of Detective Inspector Peter Flanagan. The family wished to know the grounds for their arrests as it felt like a deliberate smear or vendetta, on the part of police, to justify Mr Kelly's murder;
- XIII. A former UDR member alleged that another individual was present during Mr Kelly's murder. This individual was interviewed by police but it is unclear if this was under criminal caution about the murder; and
- XIV. Mr Kelly's family believe that the former UDR member was murdered. No toxicology tests were carried out. The pathologist who conducted the relevant post mortem examination later informed their solicitor that he would have carried out a full examination had he known the full circumstances of the death.

The complaint was accepted by the former Police Ombudsman, Dr Michael Maguire, and an investigation commenced.

The original RUC investigation papers, where available, were secured and reviewed. Documentation that formed part of the 2003-2005 PSNI re-investigation was also reviewed. As part of the Police Ombudsman investigation, material was obtained from the Ministry of Defence (MOD), Forensic Service Northern Ireland (FSNI), Coroners Service for Northern Ireland (CSNI), Public Prosecution Service (PPS), and open sources.

## **The Police Ombudsman Investigation**

In the months prior to Mr Kelly's murder, a number of other paramilitary attacks took place in Counties Tyrone and Fermanagh. This investigation considered them as they provided important context to the security situation at the time, in addition to offering a potential motive for Mr Kelly's murder. This included a gun attack at the Corner Bar, Trillick, on 18 January 1974.

The 1974 RUC investigation was based at Ballinamallard RUC Station in County Fermanagh. Police Officer 1 was appointed as the Senior Investigating Officer (SIO) and led the police investigation. In 2018, Police Ombudsman investigators interviewed Police Officer 1 in a witness capacity. They also located and reviewed a hardback diary, where he recorded investigative action and key decisions during the course of the 1974 RUC investigation.

The legislative remit of this investigation was limited to investigating the conduct of serving and former police officers. However, the Police Ombudsman is of the view that she cannot explain the rationale for her actions, decisions, and determinations in this public statement, without referring to the role of the military, primarily a number of UDR members. The manner in which these matters were investigated by police was central to the issues arising from the family's complaint.

This investigation also identified a number of RUC officers who had links to loyalist paramilitaries in the County Fermanagh area during the period in question. Police Ombudsman investigators sought to establish what police knew of these links and what, if any, action was taken in respect of them.

Police Ombudsman investigators reviewed intelligence indicating that a serving RUC officer, Police Officer 6, was associating with, and supplying information to, loyalist paramilitaries. This investigation sought to establish what action police took in respect of this individual.



Police Ombudsman investigators interviewed Police Officer 6 under criminal caution in May 2022 for the offence of Misconduct in Public Office. During interview, Police Officer 6 denied the allegations, stating that he was *'totally against terrorism from any angle.'* At the conclusion of this investigation, a file of evidence was submitted to the PPS regarding Police Officer 6. The PPS subsequently directed that Police Officer 6 should not be prosecuted because of insufficient evidence.

## **Conclusions**

### **Failure to adequately verify UDR Alibi Witness Accounts**

From an early stage of the RUC investigation, there were rumours within the local nationalist community that UDR members had been involved in Mr Kelly's abduction and murder. The 1974 RUC investigation interviewed 20 UDR members who may have been on duty on the night of 23/24 July 1974. Police recorded witness statements from 18 of these UDR members. These statements were brief and lacked evidential content. Police did not keep detailed records of individuals who may have verified the accounts of UDR members.

Only alibis provided by a number of UDR members, who had been on patrol in the Dromore area of County Tyrone that night, were checked. No effort was made by police to authenticate alibis provided by the majority of other UDR members who were interviewed in connection with the investigation. There is no record that police interviewed military police personnel who interviewed a number of UDR members on the evening of 23 July 1974. Police also did not interview relatives of UDR members and other members of the public, who may have corroborated their accounts. As the SIO in charge of the murder investigation, Police Officer 1 ought to have kept an open mind as to the potential involvement of UDR members.

These failures impacted negatively on the ability of the murder investigation to lead to the prosecution of the perpetrators of this crime. Police Officer 1 had a responsibility to ensure that every effort was made to gather evidence to support or disprove the theory that UDR members were involved in Mr Kelly's murder. He had

a duty to maintain an open mind and pursue all reasonable lines of enquiry. These lines of enquiry, if pursued, may have led to the identification of, and potential arrest of, suspects.

Police Officer 1 has consistently asserted that he did not receive any intelligence from RUC Special Branch relating to Mr Kelly's murder.

### **Failure to Link Cases**

The Police Ombudsman is of the view that a number of earlier paramilitary attacks should have been considered by police as precursor events linked to Mr Kelly's abduction and murder. These included the murder of a UDR member, Robert Noel Jameson on 17 January 1974, a gun attack at the Corner Bar, Trillick, on 18 January 1974, and the murder of James Murphy, whose body was found on 21 April 1974.

Forensic tests established that the same .455 calibre Colt type revolver was used in Mr Murphy's murder and the attack at the Corner Bar. A different .455 calibre Colt type revolver was used in Mr Kelly's murder. Police Ombudsman investigators found no evidence that the 1974 RUC investigation considered linking these attacks.

### **Failure to make Enquiries about Footwear Marks**

Police identified two footwear marks at Badoney Road, where it was believed that Mr Kelly was abducted. A plaster cast impression of one of the marks was taken and forensically examined. This established that it was a type normally associated with rubber Wellington-type boots worn by the security forces. Police Ombudsman investigators found no record that the 1974 RUC investigation team carried out any further enquiries regarding these footwear marks.

The Police Ombudsman is of the view that this was a failed investigative opportunity. A small number of UDR members were suspected at an early stage of having been involved in Mr Kelly's murder. Further enquiries ought to have been made in respect of the two footwear marks against this limited pool of UDR members. Additional

evidence could have been gathered that may have identified suspects and advanced the police investigation.

### **Failure to recover the Boat at Lough Eyes**

A search of the Lough Eyes scene located a piece of material attached to the underside of a boat. It was forensically examined and found to have originated from the shirt Mr Kelly had been wearing on the night of 23 July 1974. Despite this, the boat was not recovered for forensic examination or photographed at the scene, as part of the RUC investigation.

Police identified 18 boat owners and fishermen who used Lough Eyes, and interviewed 14 of them. There is no indication, within the available RUC investigation papers, that the individual who owned the boat, from where the piece of material attached to its hull was recovered, was identified and interviewed by police.

Given that a piece of Mr Kelly's shirt was found on its underside, the boat may have been used when disposing of his body. The Police Ombudsman is of the view that the boat ought to have been recovered and forensically examined. This may have identified evidence which could have opened other lines of enquiry and advanced the police investigation.

### **No Record of Fingerprint Enquiries**

Police Ombudsman investigators reviewed a RUC fingerprint file that referred to six '*very fragmentary*' fingerprint marks being recovered from a burnt-out vehicle outside Brookeborough, County Fermanagh. The file indicated that the vehicle was Mr Kelly's Mazda car. The 1974 RUC investigation papers contained correspondence, dated 10 September 1974, from RUC Fingerprints Branch to Enniskillen CID stating that the recovered fingerprint marks from Mr Kelly's car were available for comparison. It asked that fingerprint marks be obtained from Mr Kelly and other individuals who had legitimate access to the vehicle. Police Ombudsman investigators found no record that these enquiries were carried out by police.

The Police Ombudsman is of the view that this was an investigative failing as these enquiries, had they been conducted, would have eliminated individuals from the police investigation. In 1974, as it is today, this is standard investigative practice.

### **Failure to make Enquiries about an Anonymous Letter**

On 7 August 1974, an anonymous letter was forwarded to the Commanding Officer of a military establishment in Omagh, County Tyrone. It named four UDR members as having been involved in Mr Kelly's murder. Two of them, UDR Members 1 and 16, were interviewed as witnesses during the 1974 RUC investigation.

Police Ombudsman investigators found no evidence that police made efforts to secure and forensically examine this letter. The Police Ombudsman is of the view that this was an investigative failing as these enquiries may have identified further investigative opportunities.

### **Failure by Special Branch and Senior RUC Officers to Disseminate Intelligence**

Police Ombudsman investigators found no intelligence that could have directly forewarned of, or prevented, Mr Kelly's murder. However, they also identified intelligence linking UDR members and other individuals to Mr Kelly's abduction and murder. Police Ombudsman investigators found no record that this intelligence was shared with the officer leading the murder investigation, Police Officer 1.

RUC records indicated that some, but not all, of this intelligence was shared with Police Officer 2, the Divisional Commander for 'L' Division, where the murder occurred. This dissemination would have been consistent with the arrangements for the sharing of intelligence at that time. Although this investigation found no corroborating evidence to confirm that he received the relevant intelligence, the Police Ombudsman has concluded that it is most likely that Police Officer 2 received this intelligence.

The Police Ombudsman has also concluded, given the available evidence and other information, that it is most likely that no intelligence relating to Mr Kelly's murder was shared with Police Officer 1. The 1974 RUC investigation team relied on the timely dissemination of relevant intelligence to pursue lines of enquiry. This could have identified suspects, leading to arrests and the gathering of important evidence.

The Police Ombudsman investigation has been unable to establish why this intelligence was not shared with Police Officer 1. The Police Ombudsman is critical of RUC Special Branch's approach of not sharing intelligence that could have assisted a murder investigation.

### **Failure by Senior RUC Officers to act on Intelligence**

RUC officers, at a senior level, including Police Officer 2, were aware of intelligence that a UVF unit was active in County Fermanagh around the time of Mr Kelly's murder. A number of this UVF unit's members were either directly, or indirectly, linked to the murder and other terrorist attacks. A number of members of the security forces, including Police Officers 3, 4, 5, 6, and 8, were also linked to this unit and its activities.

Police Ombudsman investigators found no evidence that the relevant senior RUC officers took any action in respect of this intelligence. Police Officer 1 stated that he received no intelligence relating to Mr Kelly's murder or the activities of this UVF unit.

### **Investigative Bias**

In a 1979 report, Police Officer 1 stated that *'The suggestion of UDR involvement appears to be an attempt to blame someone and add fuel to a smear campaign in operation around Trillick at that time.'* The Police Ombudsman found no evidence to support this conclusion. The Police Ombudsman is of the view that this statement is evidence of Police Officer 1 displaying an investigative bias. This 'latent' bias precluded him from adequately addressing the potential involvement of members of the security forces in Mr Kelly's abduction and murder.

This 'latent' bias was evident in other aspects of the investigation. The Police Ombudsman refers, in particular, to the failure to test the accounts of UDR members by speaking to military police personnel and other individuals who they had named as corroborating their alibis.

The Police Ombudsman is of the view that the bias displayed by Police Officer 1 was 'latent,' as there were other systemic and contextual factors that influenced his investigative decision making at the time. These factors were as follows:

- I. A failure by RUC Special Branch to disseminate relevant intelligence to him;
- II. A failure by senior RUC officers, including Police Officer 2, to take action in respect of the activities of a UVF unit operating in the Fermanagh area and RUC and UDR members associated with this unit;
- III. The absence of oversight of the murder investigation by a senior RUC officer in command; and
- IV. The operational context of stretched resources to properly investigate multiple murders and mounting paramilitary activity in the Tyrone and Fermanagh areas.

### **Failures in Senior Officer Oversight**

From an analysis of the original case papers, there is no reference as to whether Police Officer 1 received any supervision or oversight from a more senior officer, for example a Detective Chief Inspector or above. He has asserted that the investigation was under resourced and he was inexperienced and received no guidance and support. This would have been good policing practice and may have assisted Police Officer 1 and his team in making the necessary linkages between Mr Kelly's murder and the precursor attacks. The Police Ombudsman is of the view that, Police Officer 1's supervising officers also had a responsibility to ensure that the investigation was being carried out effectively and professionally and to provide adequate resources for this investigation. There is no evidence that this occurred.

## Complaint of Collusion

The Kelly family also complained that police failed to investigate a number of individuals who were linked to Mr Kelly's murder, because they were UDR members. The family specifically referred to UDR Members 20 and 24. They allege that if this was the case, *'it would amount to collusion.'*

The Police Ombudsman is unable to conclude that the failures in investigation amount to *'collusion'* in this case. She is mindful that the Court of Appeal has clarified that the Ombudsman has no power to *'determine'* whether or not *'collusion'* has occurred. The Court has ruled that, where the family complains of *'collusion'*, the Police Ombudsman can opine whether or not the matters uncovered by an investigation are largely what the family claim to constitute *'collusive behaviours.'*

The Police Ombudsman is of the view that the deliberate withholding of intelligence and other information by unidentified members of RUC Special Branch, and Police Officer 2, from the murder investigation team was indicative of a *'collusive behaviour.'* This removed the possibility of further lines of enquiry being developed and progressed, which may have led to the arrest and prosecution of offenders. This non-dissemination, and the restrictions placed on the sharing of intelligence with the 1974 RUC investigation, team resulted in Police Officer 1 not being provided with relevant information. The Police Ombudsman is of the view that this information would have changed the direction of the RUC investigation and opened new lines of enquiry.

As an elected independent councillor, Mr Patrick Kelly represented the rural community in which he lived during a tumultuous and particularly violent period of the 'Troubles' in Northern Ireland. In the early hours of 24 July 1974, having closed his place of work at Trillick, County Tyrone, Mr Kelly was travelling home to his pregnant wife and four children when he was abducted and murdered.

It is well established that during the early 1970s the RUC faced unprecedented policing challenges throughout Northern Ireland. However, in the view of the Police Ombudsman, the police response to Mr Kelly's murder was affected by bias and was adversely impacted by an investigative mind-set that discounted local concerns about potential involvement of the security forces. In a report to his authorities, the officer leading the murder investigation later described these concerns as '*an attempt to blame someone and add fuel to a smear campaign.*' This '*latent*' investigative bias manifested in a failure to robustly pursue a number of key lines of enquiry, notably verification of accounts provided by certain UDR personnel of their whereabouts at the time of Mr Kelly's abduction and murder.

The inexperience of the officer leading the murder investigation, the inadequacy of the resources made available to him and the extent of his caseload of serious crime, including the murder of Mr Kelly, demanded he receive practical support and supervision. This was not provided by Police Officer 2 who was responsible for oversight of these investigations. Instead a construct of strategic decision making and intelligence sharing frameworks, actively served to undermine the policing response to Mr Kelly's murder. This construct undermined police efforts to combat a UVF unit operating in County Fermanagh at the time and is concerning in view of the unit's reported intelligence links to members of the UDR and RUC. A series of intelligence reports implicating members of the UDR in the murder of Mr Kelly was not addressed until the murder was re-examined by PSNI almost 30 years later. By this time potential evidential opportunities are likely to have been lost. This non-dissemination of intelligence by RUC Special Branch and Police Officer 2 to the murder investigation team was extensive and remains unexplained.

This investigation has uncovered conduct on the part of RUC Special Branch and Police Officer 2 which the Police Ombudsman considers constitutes '*collusive behaviour*', in particular the deliberate withholding of intelligence from the murder investigation team and the failure to act on intelligence about an active UVF unit in the Fermanagh area.



In view of the investigative failings identified and the Police Ombudsman's findings in relation to collusive behaviour, the Police Ombudsman has concluded that Mr Kelly's family was failed by police.

In light of the above, the Police Ombudsman is of the view that the family's complaints about investigative failings are legitimate and justified in a number of respects. The Police Ombudsman is grateful to the family for their patience in awaiting the outcome of this protracted and complex investigation.



# 1.0

## Introduction

- 1.1. In 1974, there were 304 deaths attributed to the ‘Troubles’ in Northern Ireland. On 10 August 1974, the body of Patrick Joseph Kelly, known to his friends and family as Patsy, was recovered from Lough Eyes, near Lisbellaw, County Fermanagh. He was last seen alive at approximately 00:20am on 24 July 1974, driving away from the Corner Bar,<sup>1</sup> in Trillick, County Tyrone, where he worked. A post mortem examination established that he had been shot six times.
- 1.2. Mr Kelly was 35 years old at the time of his murder. He was married with four children and lived at Golan, near Trillick. His wife, Teresa, was expecting their fifth child. Mr Kelly was employed as a bar manager at the Corner Bar, Main Street, Trillick. He was also an independent nationalist councillor on Omagh District Council and was heavily involved in local community affairs.
- 1.3. The former Police Ombudsman, Nuala O’Loan, received a complaint from Mr Kelly’s family in January 2002. This consisted of questions and concerns regarding the circumstances of Mr Kelly’s murder and the subsequent Royal Ulster Constabulary (RUC) investigation. It included an allegation that members of the security forces may have ‘*colluded*’ with loyalist paramilitaries in Mr Kelly’s murder.
- 1.4. The RUC (Complaints etc) Regulations (the 2001 Regulations) allow the Police Ombudsman to consider public complaints which are outside the normal time, namely made within 12 months of the alleged conduct, if they ‘*should be investigated because of the gravity of the matter or the exceptional circumstances.*’ Mrs O’Loan was of the view that the

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<sup>1</sup> The Corner Bar was also known locally as McCourt’s Bar. Witnesses interviewed during the 1974 RUC investigation referred to it by both names. I will refer to it throughout this public statement as ‘the Corner Bar.’

complaint made by Mr Kelly's family met this '*grave or exceptional*' definition. Therefore, their complaint was accepted for investigation in 2003. Due to constraints on investigative resources in the Office this investigation was not commenced until 2016.

- 1.5. This investigation generated investigative actions, including interviews of former police officers and other witnesses. All the former police officers who were approached provided accounts as to their roles, decisions, and actions during the relevant police investigations. I thank them for the time taken to assist this investigation.
- 1.6. In January 1999, a national newspaper featured an article that a former Ulster Defence Regiment (UDR)<sup>2</sup> member, Person 11, had confessed to having been present at Mr Kelly's murder. Police were not informed of Person 11's identity until August 2001. In November 2001, a senior police officer commissioned a review of Mr Kelly's murder. The review identified a number of outstanding lines of enquiry and investigative opportunities.
- 1.7. This resulted in a decision being taken by senior police to re-investigate Mr Kelly's murder. The re-investigation was led by Police Officer 9, a Detective Superintendent on secondment from an English police force. The re-investigation commenced in June 2003 and resulted in a number of arrests, but no convictions.
- 1.8. As part of this investigation, my investigators reviewed over 60 pieces of intelligence held by the Police Service of Northern Ireland (PSNI), in addition to the original RUC investigation papers. They also reviewed documentation that formed part of a PSNI re-investigation of Mr Kelly's murder, conducted between 2003 and 2005. Other material was reviewed from the Ministry of Defence (MOD), Forensic Service Northern Ireland

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<sup>2</sup> The Ulster Defence Regiment (UDR) was an infantry regiment of the British Army, established in 1970. By 1974, it comprised 11 battalions and was the largest infantry regiment in the British Army, with over 9000 members.

(FSNI), Coroners Service for Northern Ireland (CSNI), and Public Prosecution Service (PPS).

- 1.9. A former police officer, Police Officer 6, was interviewed by my investigators under criminal caution for the offence of Misconduct in Public Office as a result of issues identified during the course of this investigation. My investigators submitted a file of evidence to the PPS regarding this former officer. The PPS subsequently directed that Police Officer 6 should not be prosecuted. I am unable to consider the question of disciplinary proceedings relating to any potential misconduct as all of the relevant police officers are now retired.
- 1.10. In this public statement, I have criticised the actions of a number of RUC officers serving during the relevant period. However, given the passage of time, it has not been possible to identify all those responsible for actions or omissions criticised by me. Where this arises, I use the term 'police' to refer to those officers concerned. I have provided an opportunity for any identifiable officer, subject to criticism, to respond. I have considered these responses and incorporated them into this public statement, where I consider it appropriate.
- 1.11. This document is a public statement detailing my reasons for actions, decisions, and determinations in respect of this complaint and related matters. The investigation conducted by my Office into the allegations made by Mr Kelly's family is also detailed in this public statement.
- 1.12. Prior to its release, an earlier draft of this public statement was forwarded to PSNI for fact checking and an Article 2 risk assessment. A copy of the draft public statement was also sent to the PPS. Relevant extracts were also forwarded to the MOD and Police Officers 1 and 6. Responses were received from them which I have again reflected, where I consider it appropriate, in this public statement.



## 2.0

# The Circumstances of Patrick Kelly's Murder

- 2.1. At approximately 00:20am on Wednesday 24 July 1974, Mr Kelly locked the premises of the Corner Bar, Main Street, Trillick, County Tyrone, where he worked as a bar manager. He got into his white Mazda car and was last seen driving off towards his home at Golan, a few miles away. When he did not arrive home, Mr Kelly's wife contacted the local priest at 6:30am. He reported the matter to Ballinamallard RUC Station at 8:10am.
- 2.2. Police circulated a description of Mr Kelly and his car to local RUC stations. At 10:10am, they were informed that a quantity of blood had been found on the Badoney Road, a route that Mr Kelly travelled between his workplace and home. Police attended this scene and, in addition to the blood, discovered a small quantity of hair, two shirt buttons, and two footprint marks.
- 2.3. House-to-house enquiries in the Badoney Road area identified a number of witnesses who heard gunshots between midnight and 00:20am on 24 July 1974. A large-scale search operation was initiated, involving police and members of the public.
- 2.4. At approximately 8:55am on 25 July 1974, police were informed that a burnt-out car had been located at Greenhill Quarry, 11 miles from Trillick. Police attended the scene and established that the vehicle was Mr Kelly's Mazda car. It had been parked at the end of a laneway, approximately 100 yards off the main road between Tempo and Maguiresbridge.
- 2.5. On 10 August 1974, two fishermen located a body floating in shallow water at Lough Eyes, near Lisbellaw, County Fermanagh. The body was

recovered and subsequently identified as Mr Kelly. A green nylon rope, attached to a 56-pound weight, had been tied around his waist. He was declared dead at the scene. A post mortem examination established that he had been shot six times with a .455 calibre revolver. The cause of death was recorded as *'bullet wounds to the trunk.'*

- 2.6. The Ulster Freedom Fighters (UFF)<sup>3</sup> later claimed responsibility for the murder in a telephone call to the British Broadcasting Corporation (BBC). The caller stated that Mr Kelly was a republican sympathiser who allowed the *'IRA'*<sup>4</sup> to use the Corner Bar as a meeting place. The caller also alleged that he was *'paying into IRA funds.'* Mr Kelly's family have always refuted this claim, stating that he had no links to any paramilitary organisation.
- 2.7. A later telephone caller denied that the UDA/UFF were responsible. However, from an early stage of the investigation, police believed that loyalist extremists were responsible for Mr Kelly's murder. Police subsequently received intelligence indicating that the Ulster Volunteer Force (UVF) carried out the murder.
- 2.8. Shortly after Mr Kelly's abduction, rumours began to circulate within the local nationalist community that UDR members had been involved in his disappearance. A number of UDR members were subsequently linked, by intelligence, to his murder. A series of arrests were made in 2004 during the PSNI re-investigation. However, to date, no individual has been charged with, or prosecuted for, Mr Kelly's murder.

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<sup>3</sup> Whenever it carried out a terrorist attack, the Ulster Defence Association (UDA) used the cover name of the UFF when claiming responsibility. The UFF were proscribed in November 1973, but the UDA itself was not proscribed as a terrorist organisation until August 1992. I consider that the UDA and UFF were the same organisation. For the purposes of this public statement, it shall be referred to as the UDA/UFF.

<sup>4</sup> Irish Republican Army.



2.9. Prior to Mr Kelly's murder, a number of other paramilitary attacks occurred in Counties Tyrone and Fermanagh. These included the following:

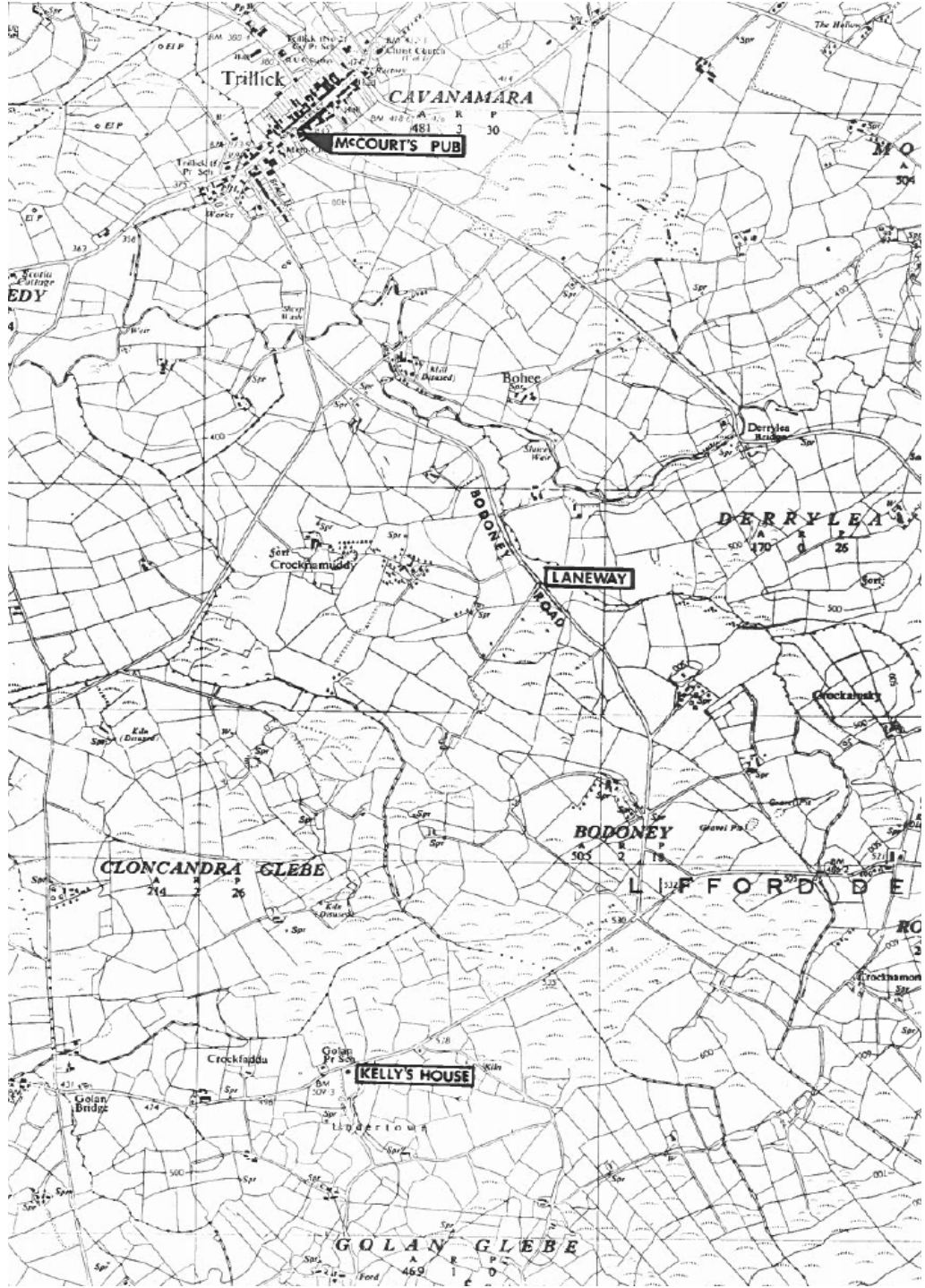
- I. In November and December 1973, the IRA carried out bomb attacks at Omagh RUC Station and Campsie Avenue, Omagh, respectively;
- II. On 17 January 1974, UDR Private Robert Jameson was murdered by the IRA outside Trillick, County Tyrone;
- III. On 18 January 1974, loyalist paramilitaries carried out a gun attack at the Corner Bar, Trillick, followed by two further gun attacks in the Enniskillen area;
- IV. On 20 January 1974, the body of UDR Captain Cormac McCabe was found in a field outside Clogher, County Tyrone. The IRA had abducted him from a hotel in Monaghan Town the previous day;
- V. On 5 February 1974, UDR Private Eva Martin was murdered in an IRA attack on a UDR base in Clogher, County Tyrone; and
- VI. On 21 April 1974, the body of Sinn Fein member James Murphy was found on the forecourt of his garage, situated in Kinawley, County Fermanagh. He had been murdered by loyalist paramilitaries.

2.10. The below map<sup>5</sup> shows the local area and notes the Corner Bar (McCourt's), the laneway where it is believed Mr Kelly was murdered, and his home address.

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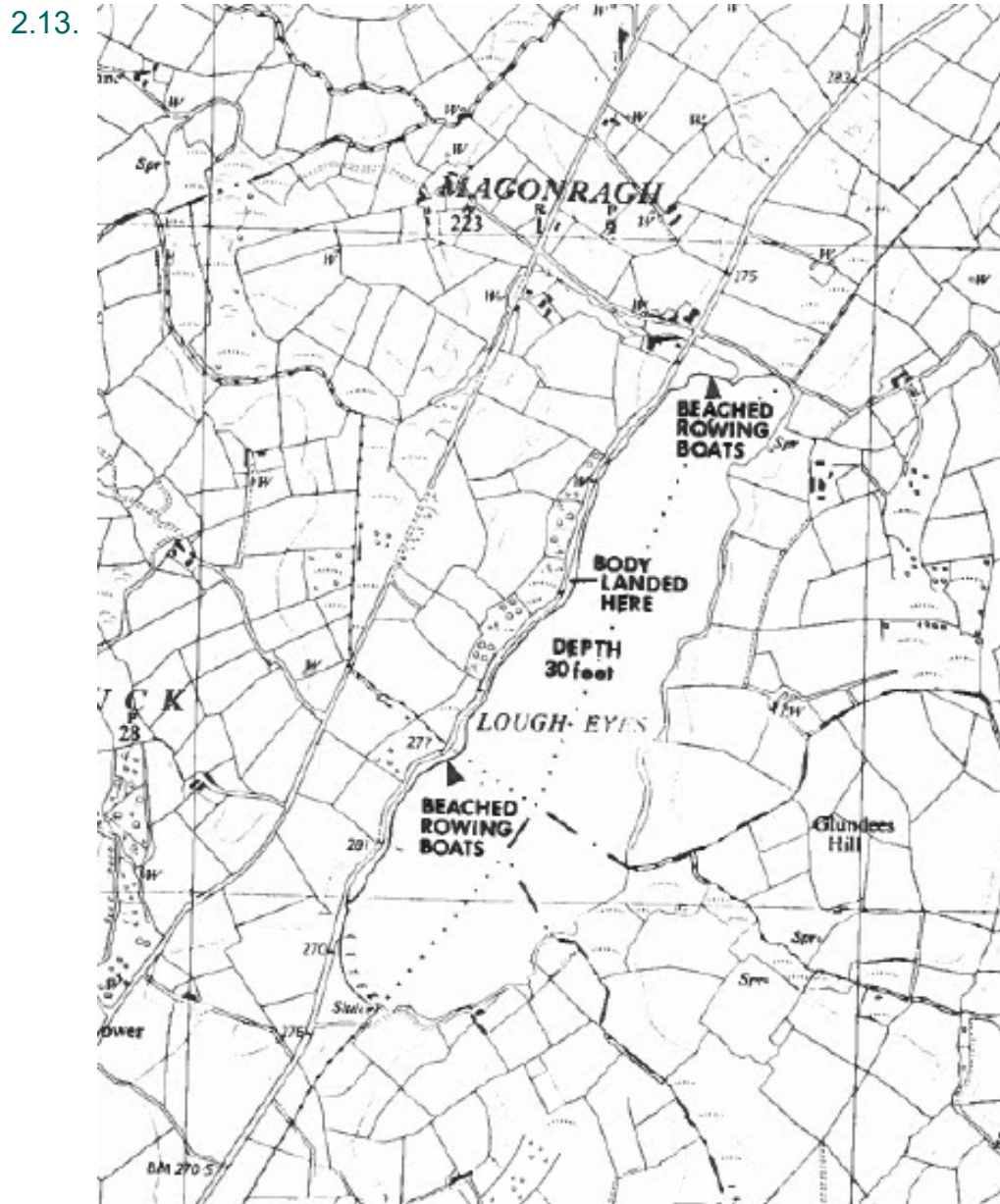
<sup>5</sup> This map is re-produced from the original RUC investigation file.

2.11.



## Map of Lough Eyes

2.12. The below map<sup>6</sup> shows Lough Eyes, where Mr Kelly's body was found.



2.14. Police Officer 1 was appointed to investigate Mr Kelly's murder. In 1974, the term 'Senior Investigating Officer' (SIO) was not in use as it is today. However, Police Officer 1 was the senior officer investigating the murder, so I shall refer to him throughout this report as the SIO.

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<sup>6</sup> This map is re-produced from the original RUC investigation file.



## 3.0

# The Complaint and Scope of the Police Ombudsman Investigation

- 3.1. Mr Kelly's family first contacted my Office in January 2002. My investigators subsequently recorded a statement of complaint from a family member in January 2018. There has been a significant delay in concluding this investigation and issuing the relevant public statement. This has been mainly due to the lack of resources available to my Office to investigate historic cases. It is a matter of public record that successive Police Ombudsmen have raised the issue of chronic underfunding for legacy investigations during their time in office.
  
- 3.2. Further, in 2017, the former Police Ombudsman, Dr Michael Maguire, was challenged by the Northern Ireland Retired Police Officers Association (NIRPOA) in relation to his report into police conduct relating to the murders of six men in Loughinisland on 18 June 1994 and, in particular, the extent of his powers to issue public statements pursuant to section 62 of the Police (Northern Ireland) Act 1998. There followed protracted legal proceedings, during which period no public statements were issued by this Office. In June 2020, the Northern Ireland Court of Appeal gave judgment in that case and clarified the extent of the Police Ombudsman's powers under section 62. In particular, the extent of the power to issue public statements and comment on a complaint made by the family of '*collusion.*'

3.3. The family raised a number of questions and concerns about the actions of police before, and after, Mr Kelly's murder. These were as follows:

- I. That the Police Ombudsman investigate the conduct of the original RUC investigation, to ensure that all lines of enquiry were properly pursued. This included the suspect strategy and enquiries relating to the origins of the weapon used to murder Mr Kelly;
- II. That the Police Ombudsman establish if police were in possession of evidence or intelligence that, if it had been acted upon, could have prevented Mr Kelly's murder;
- III. Police withheld evidence from the Coroner's Inquest into Mr Kelly's murder. They failed to disclose the presence of footprints found at the Badoney Road scene and a fingerprint mark that was recovered during the investigation;
- IV. Police failed to retain items recovered from various scenes, including a rug found in the burnt-out Mazda and a handkerchief recovered from the Lough Eyes scene. The family also wanted to know what happened to a '*butcher's hook*' that was found in the Mazda;
- V. At least one of the two buttons found at Badoney Road did not come from Mr Kelly's shirt. The Kelly family believe that this type of button would have come from the inside of an outer coat;
- VI. Police did not make enquiries regarding the green nylon rope and 56-pound weight found attached to Mr Kelly's body. An identified suspect had access to such ropes and weights but this matter was not investigated by police;
- VII. Alibis for a number of suspects were provided by RUC officers;
- VIII. The car of an UDR member was found burnt-out on the morning of 25 July 1974 on a road between Badoney Road and the UDR member's house. Did police assist this individual with a subsequent insurance claim for the burnt-out vehicle;

- IX. Police failed to investigate a number of individuals who were linked to Mr Kelly's murder, because they were UDR members. The family specifically referred to UDR Members 20 and 24. If this was the case, then it would amount to collusion;
- X. Police informed Mrs Kelly that they needed to examine her husband's body as this would help them discover who murdered him. This turned out to be untrue, as Mr Kelly's murderers have never been brought to justice;
- XI. Following the murder, Mrs Kelly was verbally abused by members of the security forces at UDR vehicle checkpoints (VCPs);
- XII. In August 1974, two members of the Kelly family were arrested on suspicion of the murder of Detective Inspector Peter Flanagan. The family wished to know the grounds for their arrests as it felt like a deliberate smear or vendetta, on the part of police, to justify Mr Kelly's murder;
- XIII. A former UDR member alleged that another individual was present during Mr Kelly's murder. This individual was interviewed by police, but it is unclear if this was under criminal caution. Mr Kelly's family wished to know if any UDR members were interviewed under criminal caution about his murder; and
- XIV. Mr Kelly's family believed that the former UDR member was murdered. No toxicology tests were carried out. The pathologist who conducted the relevant post mortem examination later informed their solicitor that he would have carried out a full examination had he known the full circumstances of the death.

3.4. This investigation sought to address the complaint made by Mr Kelly's family. The original RUC investigation papers were secured during this investigation and retained by my Office. The 2003-2005 PSNI re-investigation did not form part of this investigation as it was not included in the family's complaint. However, my investigators reviewed the

contents of the PSNI re-investigation and it is referred to throughout this public statement.

- 3.5. An allegation of ‘*collusion*’ was part of this public complaint; specifically that police failed to investigate a number of individuals who were linked to Mr Kelly’s murder, because they were UDR members. The family specifically referred to UDR Members 20 and 24. In order to properly address this issue, I have considered the various definitions of ‘*collusion*’ provided by the court, judges overseeing tribunals and inquiries, and former Police Ombudsmen. There is no definitive definition of ‘*collusion*’. ‘*Collusion*’ has been described as ‘*having many faces*.’<sup>7</sup> The term has been described as being anything from deliberate actions to a more passive ‘*wait and see*’ attitude or looking the other way and keeping a discrete, if not malicious, silence.<sup>8</sup>
- 3.6. A number of independent inquiries and investigations have sought to define or describe what constitutes ‘*collusion*’ in this context. In his first inquiry report into alleged ‘*collusion*’ with paramilitaries and state security forces, Lord Stevens stated that ‘*collusion*’ can be evidenced in many ways and ‘*ranges from the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, through to the extreme of agents being involved in murder.*’
- 3.7. He further stated that: ‘*The failure to keep records or the existence of contradictory accounts can often be perceived as evidence of concealment or malpractice. It limits the opportunity to rebut serious allegations. The absence of accountability allows the acts or omissions to go undetected. The withholding of information impedes the prevention of crime and the arrest of suspects. The unlawful involvement of agents in murder implies that the security forces sanction killings.*’<sup>9</sup>

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<sup>7</sup> Dr Hannah Russell, *The Use of Force and Article 2 of the ECHR in Light of European Conflicts*, Hart Publishing, Oxford & Portland Oregon, 2017.

<sup>8</sup> Alf Lüdtke, *Everyday Life in Mass Dictatorship: Collusion and Evasions*, Palgrave Macmillan, 2015.

<sup>9</sup> Stevens Enquiry 3: Overview and Recommendations, Metropolitan Police Service, 2003.



- 3.8. *'The co-ordination, dissemination, and sharing of intelligence were poor. Informants and agents were allowed to operate without effective control and to participate in terrorist crimes.'*<sup>10</sup>
- 3.9. *'Nationalists were known to be targeted but were not properly warned or protected. Crucial information was withheld from Senior Investigating Officers. Important evidence was neither exploited nor preserved.'*<sup>11</sup>
- 3.10. Canadian Judge Peter Cory was asked to investigate allegations of collusion by members of the British and Irish security forces in Northern Ireland, and to report on his recommendations for any further action, such as whether a public inquiry was required. Judge Cory's investigation was carried out in the context of six particular cases, one of which related to the murders of two RUC officers, Chief Superintendent Harry Breen and Superintendent Bob Buchanan in March 1989. In his report, published in October 2003, he stated *'How should collusion be defined? Synonyms that are frequently given for the verb to collude include: to conspire; to connive; to collaborate; to plot; to scheme; The verb connive is defined as to deliberately ignore; to overlook; to disregard; to pass over; to take notice of; to turn a blind eye; to wink; to excuse; to condone; to look the other way to let something ride...'*<sup>12</sup>
- 3.11. Judge Cory investigated allegations of collusion in the context of a number of other murders, to determine if there was sufficient evidence to warrant public inquiries into the deaths. In his 2004<sup>13</sup> report into the murder of Patrick Finucane, Judge Cory reprised his earlier definition of *'collusion,'* adding that there must be public confidence in government agencies and that there can be no such confidence when those agencies are *'guilty of collusion or connivance.'*<sup>14</sup> For these reasons, he

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<sup>10</sup> Stevens Enquiry 3: Overview and Recommendations, Metropolitan Police Service, 2003.

<sup>11</sup> Stevens Enquiry 3: Overview and Recommendations, Metropolitan Police Service, 2003.

<sup>12</sup> Cory Collusion Inquiry Report: Chief Superintendent Breen and Superintendent Buchanan, The Stationery Office, 2003.

<sup>13</sup> Cory Collusion Inquiry Report: Patrick Finucane, The Stationery Office, 2004.

<sup>14</sup> Cory Collusion Inquiry Report: Patrick Finucane, The Stationery Office, 2004.

was of the view that any definition of 'collusion' must be 'reasonably broad.' He stated that 'army and police forces must not act collusively by ignoring or turning a blind eye to the wrongful acts of their servants or agents. Supplying information to assist them in their wrongful acts or encouraging them to commit wrongful acts. Any lesser definition would have the effect of condoning or even encouraging state involvement in crimes, thereby shattering all public confidence in these important agencies.'

3.12. In his report into the murder of Robert Hamill, also published in 2004, Judge Cory defined collusion as '*...substantially the same as that set out in the Finucane case. The only difference is that in the Finucane case more than one Government agency was involved while in this case only one agency, the police force, was involved.*'<sup>15</sup>

3.13. He further stated '*In the narrower case how should collusion be defined for the purposes of the Robert Hamill case? At the outset it should be recognised that members of the public must have confidence in the actions of Government agencies, particularly those of the police force. There cannot be public confidence in a Government agency that is guilty of collusion or connivance in serious crimes. Because of the necessity of public confidence in the police, the definition of collusion must be reasonably broad when it is applied to police actions. That is to say police forces must not act collusively by ignoring or turning a blind eye to the wrongful acts of their officers or of their servants or agents. Nor can the police act collusively by supplying information to assist those committing wrongful acts or by encouraging them to commit wrongful acts. Any lesser definition would have the effect of condoning, or even encouraging, state involvement in crimes, thereby shattering all public confidence in important Government agencies.*'

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<sup>15</sup> Cory Collusion Inquiry Report: Robert Hamill, The Stationery Office, 2004.

3.14. Judge Cory then turned to consider whether the action or inaction of police either directly or indirectly contributed to the death of Mr Hamill. He stated that *'In this regard it is necessary to examine collusive acts which may have directly contributed to the killing by generally facilitating or encouraging or turning a blind eye...That is evidence may reveal a pattern or behaviour by a Government agency that comes within the definition of collusion. This evidence may add or form part of the cumulative effect which emerges from a reading of the documents. Both perspectives will be considered in determining whether the evidence indicates that there may have been acts of collusion by the police. However the aspect of a direct contribution by the police will have a greater significance of my consideration of what may constitute collusive acts in this case.'*

3.15. *'The vital importance of the police force in the community as a whole and to the administration of justice cannot be over emphasised. The first contact members of a community have with the justice system is through police officers. As members of the justice system, police officers must act judiciously. They must also strive to enforce and apply the law fairly, evenly, without bias or discrimination. It can never be forgotten that the role of the police is to serve and protect the entire community not just one segment of it.'*<sup>16</sup>

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<sup>16</sup> Ibid, Paras 2.226-2.228.

3.16. The Smithwick Tribunal into the murders of Chief Superintendent Breen and Superintendent Buchanan was headed by Judge Peter Smithwick and was prompted by the recommendations of Judge Cory in his 2003 report on the murders. At the first public sitting of the Tribunal, on 16 March 2006, Judge Smithwick offered the following definition of collusion: *‘The issue of collusion will be considered in the broadest sense of the word. While it generally means the commission of an act, I am of the view that it should also be considered in terms of an omission or failure to act. In the active sense, collusion has amongst its meanings to conspire, connive or collaborate. In addition I intend to examine whether anybody deliberately ignored a matter, turned a blind eye to it, or to have pretended ignorance or unawareness of something that one ought morally, legally or officially to oppose.’*<sup>17</sup>

3.17. In her book, *‘The Use of Force and Article 2 of the ECHR in Light of European Conflicts and Suspicious Deaths,’*<sup>18</sup> Dr Hannah Russell offered Sir Desmond de Silva’s definition of ‘*collusion*’ from his report into the murder of Patrick Finucane as the preferred definition:

- I. *‘Agreements, arrangements or actions, intended to achieve improper, fraudulent or underhand objectives’; and*
- II. *Deliberately turning a blind eye or deliberately ignoring improper unlawful activity.’*

3.18. Previous Police Ombudsmen have relied on the Judge Cory and Judge Smithwick definitions of ‘*collusion*’ when applying them to the facts of particular murders of the ‘Troubles.’ Former Police Ombudsman, Al Hutchinson, described ‘*collusion*’ as something which may or may not involve a criminal act. I broadly concur with their views. I am also mindful

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<sup>17</sup> Report of the Tribunal of Inquiry into Suggestions that Members of An Garda Síochána or other Members of the State Colluded in the Fatal Shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on 20th March 1989, The Stationery Office, 2013.

<sup>18</sup> Dr Hannah Russell, *The Use of Force and Article 2 of the ECHR in Light of European Conflicts*, Hart Publishing, Oxford & Portland Oregon, 2017.

of the judgment of the then Lady Justice Keegan<sup>19</sup> at paragraph 44 of *Re Hawthorne and White's Application*. She stated: '*Collusion is another feature of the historical landscape. Whilst this term denotes sinister connections involving State actors it is not a criminal offence in itself. It has also been notoriously difficult to achieve a universal, accepted definition. In this case the definition adopted was that of Judge Smithwick which frames the concept in the broadest sense emphasising that it includes legal and moral responsibility.*'<sup>20</sup>

3.19. I have carefully considered each of the definitions and am aware that there are areas of overlap and also different emphasis. While these definitions are useful, I recognise that there is no definitive definition of '*collusion.*' I have identified a number of common features, as follows:

- I. '*Collusion*' is context and fact specific;
- II. It must be evidenced but is often difficult to establish;
- III. '*Collusion*' can be a wilful act or omission;
- IV. It can be active or passive (tacit). Active '*collusion*' involves deliberate acts and decisions. Passive or tacit '*collusion*' involves turning a blind eye or letting things happen without interference;
- V. '*Collusion*' by its nature involves an improper motive;
- VI. '*Collusion,*' if proven, can constitute criminality or improper conduct (amounting to a breach of the ethical Code of the relevant profession); and
- VII. Corrupt behaviour may constitute '*collusion.*'

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<sup>19</sup> Appointed as The Right Honourable Dame Siobhan Keegan, Lady Chief Justice of Northern Ireland (September 2021).

<sup>20</sup> [2018] NIQB 94, at para 44.

- 3.20. In the context of my role as Police Ombudsman, I am mindful that different Ombudsmen have applied varying definitions of ‘*collusion*’ to the facts of each complaint or case. I do not intend to rehearse all of these definitions, but I am in favour of broad definitions encompassing collusive behaviours, by which I mean behaviours indicative, but not determinative, of collusion as reflected in the views of Lord Stevens and Judge Cory. This applies to acts and omissions which can encompass collaboration, agreements, or connivances. It can also include the more passive ‘*turning a blind eye.*’
- 3.21. In June 2016, my predecessor, Dr Michael Maguire, applying the Smithwick definition, found that ‘*collusion*’ played a significant role in respect of police actions concerning the murders of six men at the Heights Bar, Loughinisland, on 18 June 1994.
- 3.22. His public statement was challenged as being ‘*ultra vires*’<sup>21</sup> by the Northern Ireland Retired Police Officers Association (NIRPOA). Following prolonged legal proceedings, the Northern Ireland Court of Appeal delivered its judgment on 18 June 2020. It was determined that the role of the Police Ombudsman, as provided for in Part VII of the 1998 Act, was investigatory, and not adjudicatory, in nature. Decisions as to whether a police officer’s actions amounted to criminality or misconduct were decisions for other forums such as the criminal courts or a disciplinary panel.
- 3.23. Paragraph 40 of the judgment stated, ‘*It is clear that the principal role of the Ombudsman is investigatory. The complaint defines the contours of the investigation and in this case informed the terms of reference about which no complaint has been made. There is no power or duty created by the statute for the Ombudsman to assert a conclusion in respect of criminal offences or disciplinary misconduct by police officers. The Ombudsman is required to provide recommendations to the DPP if he considers that a criminal offence may have been committed. Such a*

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<sup>21</sup> A legal term meaning to act beyond the power or authority of the body.

*recommendation is a decision which could form part of a PS. Once he makes such a recommendation he has no role thereafter apart from supplying information on request.'*

3.24. The Court, in explaining the legal framework in the 1998 Act outlined at Paragraph 43, stated: *'That framework specifically excluded any adjudicative power for the Ombudsman in the determination of criminal matters or disciplinary matters. The confidence of the public and police force was to be secured by way of the independence, efficiency and effectiveness of the investigation coupled with an adherence to the requirements of the criminal law before any finding of a criminal offence could be made against a police officer and the conduct of a disciplinary hearing with all the protections afforded within that system before disciplinary misconduct could be established. The thrust of the appellants' case is that the statutory scheme would be undermined if the Ombudsman was entitled to use section 62 as a vehicle for the making of such findings. We agree that the legislative steer is firmly away from the Ombudsman having power to make determinations of the commission of criminal offences or disciplinary misconduct but will address later how this affects the content of a PS.'*

3.25. At paragraph 55, the Court outlined the powers of the Police Ombudsman in respect of officers, where there was a question of criminality and/or misconduct, should a police officer have resigned or retired. *'There may well be circumstances, of which this appeal may be an example, where a police officer will have resigned as a result of which the officer would no longer be subject to any disciplinary process. By virtue of section 63(1)(e) of the 1998 Act the Ombudsman has limited powers in a PS to identify a person to whom information relates if it is necessary in the public interest. That is a strict test. We accept that a person can be identified by inference, a so-called jigsaw identification. We do not consider that the power to make a PS provides the Ombudsman with the power to make determinations in respect of retired officers. We accept, however, that the*

*statutory scheme does enable the Ombudsman in respect of such officers to indicate what recommendations might have been made, what reasons there were for the making of such recommendations and whether disciplinary proceedings would have been appropriate.'*

3.26. In relation to the Police Ombudsman's role in deciding on a case where there was a complaint by the family of 'collusion,' the Court clarified at paragraph 63 as follows: *'Apart from the passages set out at paragraph 4.200, 9.9 and 9.40 the nine chapters of the substantive PS provide what the Ombudsman stated at paragraph 1.12, namely as comprehensive a narrative as possible. The determinations he made in the three offending paragraphs were not in our view decisions or determinations to which section 62 applied and overstepped the mark by amounting to findings of criminal offences by members of the police force. The remaining paragraphs were part of the narrative. We do, however, accept that in light of the families' complaint in the context of Article 2 it would have been appropriate for the Ombudsman to acknowledge the matters uncovered by him were very largely what families claimed constituted collusive behaviour.'*

3.27. It is my view that 'collusion' is conduct between at least two individuals and, in cases of state 'collusion,' one of the individuals must be a representative or agent of government. The conduct, either by its nature or circumstances, is of a type demanding, requiring, or deserving of inquiry. Where the conduct forms part of a criminal or disciplinary offence it is, on its face, capable of amounting to proof of this. In such circumstances, I can recommend prosecution and/or disciplinary proceedings are brought.



- 3.28. My interpretation of the Loughinisland judgment is that, in the absence of determinations of criminality or misconduct by the appropriate authority, my role is limited to commenting on the matters raised in a complaint. This investigation, having established the detailed narrative based on the complaint, can conclude whether the evidence identifies '*collusive behaviours*' on the part of police, as alleged. Findings are not determinations of conduct amounting to either the commission of a criminal offence or professional misconduct (I have made appropriate recommendations where I am satisfied that there is evidence to support this) but that there was some evidence of '*collusive behaviour*' or behaviours, falling short of substantive '*collusion*' to justify criminal or disciplinary proceedings.
- 3.29. These discrete behaviours may be indicative of '*collusion*' but do not, individually or cumulatively, amount to collusion. In such circumstances, where the evidence falls short of enabling such a recommendation, I consider my role, as one of the public authorities responsible for discharging the state's article 2 obligations, having given any persons who might be adversely affected the right to provide their comments, is to set out my findings, on whether the actions of police (including inaction) were indicative of '*collusive behaviour*.' This will not include findings of criminal or disciplinary behaviour. By doing so, this provides some remedy to the complainant, state accountability, and the opportunity for lessons to be learned or past mistakes to be acknowledged.
- 3.30. My views, in respect of the complaints made by Mr Kelly's family, are outlined later in this public statement.



## 4.0

# Intelligence Prior to and Post

## Mr Kelly's Murder

- 4.1. My investigators examined intelligence, received by police, relating to Mr Kelly's murder. This was to establish whether information existed which, if acted upon, could have prevented the murder and/or assisted the subsequent police investigation. This investigation also sought to establish whether relevant intelligence was shared by RUC Special Branch with detectives investigating Mr Kelly's murder.
- 4.2. It is important to clarify that, in general, intelligence is not initially treated as evidence by the police even if it would be presumptively admissible in legal proceedings. Intelligence is information that has been assessed and graded as to its relevance and quality, before a decision is taken as to how it can best be utilised. It can allow the Senior Investigating Officer (SIO) to initiate and develop lines of enquiry which are capable of progressing the overall investigative strategy. These lines of enquiry may, in turn, generate further evidential opportunities outside the intelligence gathering processes.

### **Pre-Incident Intelligence**

- 4.3. This investigation identified no intelligence that could have directly forewarned of, or prevented, Mr Kelly's murder.

### **Post-Incident Intelligence**

- 4.4. Police Officer 1, the Detective Inspector who was in charge of the 1974 RUC investigation until 1980, informed my investigators that he received no intelligence relating to Mr Kelly's murder. He stated that RUC Special

Branch's attitude was to protect sensitive information. They were reluctant to disseminate intelligence and, if he had challenged this, he would have been '*shown the door.*' He stated that, had he been supplied with relevant intelligence, he would have made arrests.

- 4.5. On 25 July 1974, RUC Special Branch at Enniskillen reported that CID counterparts were '*enquiring into the possibility of a UDR involvement in Mr Kelly's disappearance.*' It added that an identified individual, UDR Member 20, was a possible suspect, and that relevant military documentation for 23 July 1974, relating to him, was missing. The report was forwarded to an Assistant Chief Constable (ACC) at RUC Special Branch Headquarters.
- 4.6. On 1 August 1974, RUC Special Branch received an intelligence report that Mr Kelly had an argument with a UDR patrol a number of days before his abduction. The intelligence report indicated that members of the local nationalist community believed that UDR members were involved in the abduction. My investigators were unable to establish if this intelligence was shared with the RUC investigation team.
- 4.7. In June 1975, a Special Branch intelligence report stated that UDR Member 7 was in possession of an illegal sub-machine gun and was constructing explosive devices, assisted by UDR Member 15. It added that UDR Member 7 was involved in a murder in May 1975. The report noted that the intelligence was shared with Police Officer 2 and '*CID<sup>22</sup> and SB murder enquiries.*' It did not specify which CID officers received the information.
- 4.8. In mid-June 1975, police received intelligence stating that a Loyalist Defence Volunteers<sup>23</sup> (LDV) unit were holding meetings at an identified

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<sup>22</sup> The Criminal Investigation Department (CID) was a section of the RUC responsible for investigating serious and complex crimes, including murder. It was distinct from Special Branch, relying on the latter department to share intelligence relating to criminal offences that were being investigated.

<sup>23</sup> The Loyalist Defence Volunteers (LDV) were a loyalist group, linked by intelligence to the UVF.

location in County Fermanagh. RUC Officers 3 and 4 attended these meetings, in addition to UDR Members 1, 7, 15, and 18. The meetings were chaired by a former RUC officer, Person 8.

- 4.9. The intelligence report added that an Ulster Volunteer Force (UVF) unit, consisting of ten named individuals, was active in County Fermanagh. Persons 2, 4, and 9 were members of this unit. RUC Special Branch records indicated that this intelligence was disseminated to Police Officer 2, a Chief Superintendent and the 'L' Division Commander at that time. My investigators were unable to establish if this intelligence was shared with the RUC investigation team.
- 4.10. In early August 1975, RUC Special Branch received further intelligence, marked 'No Downward Dissemination' (NDD).<sup>24</sup> The intelligence referred to a number of incidents, including Mr Kelly's murder. It stated that UDR Members 7 and 15 carried out the murder. Both were interviewed as witnesses as part of the 1974 RUC investigation.
- 4.11. The intelligence stated that Mr Kelly's murder was later discussed at a LDV meeting attended by UDR Members 1, 7, and 15. A number of other individuals, including Police Officers 3 and 5, were also present at the meeting. All five individuals were part of a LDV unit, led by Person 8.
- 4.12. The intelligence continued that Police Officer 6 was an associate of UDR Member 7. The intelligence also indicated that Police Officer 6 had been seen in the area a number of days prior to a murder which had occurred in May 1975. The report stated that parts of this intelligence were shared with CID, but did not indicate which parts and with which police officers.

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<sup>24</sup> NDD stands for No Downward Dissemination. However, this does not mean that intelligence was not disseminated. Documents from the time indicated that intelligence marked NDD could only be viewed by senior officers, including the Chief Superintendents and their deputies, in the appropriate region where the offence had taken place. Intelligence marked NDD was not circulated to local CID officers to act upon, without prior consultation with senior officers. This was to ensure that the source of the intelligence was protected, and not put in danger, prior to any arrests or other action taking place.

- 4.13. In late September 1975, RUC Special Branch received intelligence that Person 2, Person 9, and four other named individuals murdered Mr Kelly. The intelligence added that his body was later disposed of in *'the lake'* by two members of Portadown UVF, Person 10, and another unidentified individual. Further, that Person 10 stole a weight from an identified location in County Fermanagh to weigh down Mr Kelly's body. This intelligence was marked 'NDD'. Special Branch records indicated that it was disseminated to the 'L' Division Commander, Police Officer 2. My investigators were unable to establish if this intelligence was shared with the RUC investigation team.
- 4.14. Police Officer 1 stated, in a report to his authorities in 1979, that *'in the field of intelligence there has been no response in an area where I feel information should have been gained.'* It is noteworthy that documentation viewed by my investigators stated that intelligence relating to Mr Kelly's murder was shared with Police Officer 2 and Enniskillen CID. Police Officer 2 is now deceased.
- 4.15. In 1987, police received intelligence that UDR Members 1, 7, and 15 were involved in Mr Kelly's murder. At that time, a senior RUC officer, Police Officer 12, reviewed their alibi evidence and concluded that it withstood scrutiny. The individual who provided this information later retracted it.

## 5.0

# The 1974 RUC Investigation

### Attacks Prior to Mr Kelly's murder

- 5.1. In the months prior to Mr Kelly's murder, a number of other paramilitary attacks took place in Counties Fermanagh and Tyrone. These are detailed in Chapter 2 of this public statement. This investigation considered them as they provided important context to the security situation at the time. My investigators linked a number of these to Mr Kelly's murder.
- 5.2. On 17 January 1974, UDR Private Robert Jameson was murdered near his home outside Trillick, County Tyrone, as he got off a bus. The IRA later claimed responsibility for the murder, warning other UDR members in the area to resign.
- 5.3. On the night of 18 January 1974, loyalist gunmen opened fire on the Corner Bar, Main Street, Trillick, before driving off in a grey Austin Cambridge car. Three customers were injured, but survived the attack. A .45 bullet was recovered from the scene, along with a number of cartridge cases. Mr Kelly did not begin working at the Corner Bar until after this attack, so was unlikely to have been the intended target.
- 5.4. Later that evening, there were two further loyalist gun attacks at addresses in the Enniskillen area. The weapon used in the Corner Bar attack was also used in these attacks. Police later received intelligence indicating that the attacks were in retaliation for Robert Jameson's murder.
- 5.5. On 21 April 1974, the body of James Murphy was discovered on the forecourt of his garage, situated in Kinawley, County Fermanagh, outside Enniskillen. Mr Murphy, a Sinn Féin member and owner of a nearby petrol

station, had been shot four times. Ballistic tests established that a .455 calibre Colt-type revolver was used to murder him. The same weapon had been used in the attack at the Corner Bar on 18 January 1974.

- 5.6. In late September 1975, police received intelligence that Persons 2, 9, and three other individuals were involved in the gun attack at the Corner Bar on 18 January 1974. It added that Persons 2, 9, 10, and two other individuals were involved in Mr Murphy's murder. Persons 2, 9, and 10 were all subsequently connected to Mr Kelly's murder. This intelligence was marked as 'NDD' but Special Branch records indicated that it was shared with Police Officer 2, the 'L' Division Commander. My investigators found no evidence that this intelligence was shared with the RUC murder investigation team.

### **The Murder of Patrick Kelly**

#### **RUC Investigation Team**

- 5.7. The RUC investigation was based at Ballinamallard RUC Station in County Fermanagh. Police Officer 1 was appointed as the SIO by Police Officer 2, the most senior police officer in the area. My investigators reviewed the available RUC documentation and established that Police Officer 1 was assisted, at various times, by a team of ten police officers, a mixture of detectives and uniformed officers. In 2018, my investigators interviewed Police Officer 1, who stated that he had to utilise whatever policing resources were available at the time. This involved him receiving assistance, during the course of the investigation, from local police stations and a RUC Regional Crime Squad. However, for the majority of the police investigation, Police Officer 1 had three detectives assigned to the investigation.
- 5.8. Police Officer 1 recorded investigative actions and key decisions in a hardback diary. My investigators located and reviewed this diary. It



contained 108 entries documenting actions, messages, and enquiries generated during the course of the RUC investigation. Police Officer 1 was tasked with the investigation into the murder of Patrick McElhone on 7 August 1974. He was also tasked with the investigation into the murder of Detective Inspector Peter Flanagan, in Omagh, on 23 August 1974.

## **Initial Police Response**

### **Badoney Road**

- 5.9. At 10:10am on 24 July 1974, police were informed that a quantity of blood had been found on the Badoney Road, a route that Mr Kelly drove between his workplace and home. The scene was secured, searched, and forensically examined. Grass verges were cut back on either side of the road as part of the search process.
- 5.10. A Scenes of Crime Officer (SOCO) examined the scene and recovered the following items:
- I. A plaster cast of a footprint;
  - II. Two buttons found on the road;
  - III. A quantity of hair found on the road;
  - IV. A sample of tarmac from the road; and
  - V. A sample of blood from the road.

The PSNI re-investigation team located photographs of two footwear impressions, left and right, found at the Badoney Road scene. Police Officer 1 confirmed to the PSNI re-investigation team that two footwear impressions were found at the scene. However, there is a record of only one plaster cast impression having been taken by the SOCO. During the subsequent Maxwellisation process, Police Officer 1 stated that it was possible that the second footwear impression may not have been stable enough for a plaster cast impression to have been taken.

## Greenhill Quarry

- 5.11. At approximately 9:30am on 25 July 1974, police attended a laneway near Greenhill Quarry, Brookeborough, where they found a burnt-out Mazda car, having been notified of it by a UDR patrol. Enquiries established that this was Mr Kelly's vehicle. The SOCO who attended the scene recorded that nothing of a forensic value was recovered.
- 5.12. My investigators reviewed a file currently held at PSNI Fingerprints Branch which referred to six fingerprint marks having been recovered from a burnt out vehicle at Tullyreagh Crossroads, Brookeborough. The relevant vehicle registration mark (VRM) matched that of Mr Kelly's Mazda car. The file referred to '*very fragmentary*' fingerprint marks on metal strips and door handles.
- 5.13. Police Officer 1 informed the PSNI re-investigation team that he could not recall if fingerprint marks were recovered from the Mazda car. If there had been, he would have compared them against elimination prints from Mr Kelly and his family. He added that fingerprint marks were not taken from UDR members because none of them were '*firm suspects*.' The PSNI re-investigation team interviewed the SOCO who attended the scene. However, he could not recall whether he recovered fingerprint marks from the car. Enquiries with RUC Fingerprint Branch officers, who were referenced in the relevant 1974 documentation, also proved negative.
- 5.14. Police transported the burnt-out Mazda car to Enniskillen RUC Station, shortly after it was found, for further examination. Nothing of an evidential value was recovered. The Greenhill Quarry area was searched but nothing was found. Police Officer 1, when interviewed by my investigators in 2018, stated that military personnel had made '*a mess*' of the scene by walking through it prior to the arrival of police. As part of the Maxwellisation process, he informed my Office that the military would

have had primacy at the time and, therefore, would have initially attended the scene. Police Officer 1 also stated that military personnel would not have had the same knowledge and awareness regarding crime scene preservation.

### **RUC Searches**

- 5.15. Following Mr Kelly's abduction, police co-ordinated daily searches at Police Officer 1's direction that covered approximately 200 square miles, working outwards from Trillick. Over 200 members of the public assisted in these searches on week days, with upwards of 2000 volunteering in the evenings and at weekends. Boats dredged sections of Lower and Upper Lough Erne and military helicopters conducted aerial searches of the area. On 30 July 1974, a police dog, specially trained to find a deceased person, arrived from an English police force to assist. On 4 August 1974, a decision was taken by police, in consultation with the Kelly family, to stop the searches.

### **Lough Eyes**

- 5.16. At approximately 7:15am on 10 August 1974, two anglers were fishing on Lough Eyes when they observed a body floating in shallow water near the lough shore. They telephoned police from a nearby public payphone, who attended the scene and recovered the body.
- 5.17. A local doctor attended the scene and pronounced life extinct. Mr Kelly was formally identified by a parish priest who also attended. A green nylon rope was tied around Mr Kelly's waist, with a weight attached to its loose end.
- 5.18. A SOCO attended the scene and recovered the following items:

- I. A piece of material found attached to the underside of a boat;
- II. Two handkerchiefs; and
- III. A beer mat.

5.19. Later that day, Royal Navy divers recovered a quantity of ammunition from the lough. The ammunition had been wrapped in a polythene bag and nylon stocking.

### **Post Mortem Examination**

5.20. A post mortem examination established that Mr Kelly died as a result of *'bullet wounds to the trunk.'* He had been shot six times. Four copper-jacketed bullets were recovered during the post mortem examination. A forensic scientist later established that these were .455 calibre bullets. Most of the *'superficial epithelium<sup>25</sup> had detached or was detaching'* from Mr Kelly's body and the *'palmar skin had completely detached.'* This information is relevant to one of the family's complaints and is dealt with later in this public statement. The examining pathologist concluded that Mr Kelly probably died shortly after he was last seen on 24 July 1974.

### **Witnesses**

5.21. Police traced and interviewed customers and staff who had been in the Corner Bar on the evening of 23 July 1974. No evidence was obtained that advanced the investigation. Police also conducted house-to-house enquiries in the Trillick area and along routes that Mr Kelly may have taken to travel home. Witnesses were identified at four addresses who provided information relevant to the RUC investigation.

5.22. Witness A lived at an address outside Trillick. He stated that he went to bed at around midnight on 23 July 1974, but was awakened five minutes later by the sound of gunfire. He stated that he heard five shots, around

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<sup>25</sup> The epithelium is the thin tissue covering the outer layer of the human body.

two to three seconds apart. He believed that the gunfire came from the direction of Golan and they were low-velocity shots, fired from either a sub-machine gun or a revolver.

- 5.23. Witness A stated that, approximately five minutes later, he heard a car travelling along the Mill Road towards Trillick from the Badoney Road direction. The car sounded like a Mini 1100. Witness B, a relative of Witness A, was in the house at the same time and also heard five gunshots, which came from the Badoney Road direction.
- 5.24. Witness C lived at an address overlooking the area of the Badoney Road where a quantity of blood was later found. He stated that, at approximately 00:20am, he heard six shots that were approximately two seconds apart. He believed that they came from the direction of the Badoney Road. He did not see or hear any vehicles on the road at the time.
- 5.25. Witness D had travelled to Trillick on 23 July 1974, to purchase oil at a local garage. At 11:00pm, he was informed that two men had been observed acting suspiciously in the area. He went to the relevant location and saw two men walking behind a hedge. He then went to a nearby bar and had a drink, before leaving again at approximately 11:30pm.
- 5.26. At approximately 11:45pm on 23 July 1974, Witness E was driving from Dromore to Trillick when he was stopped by a UDR patrol at Patterson's Cross. He was only detained for a short time before the patrol allowed him to continue his journey. He thought that he recognised UDR Member 4 as one of the patrol.
- 5.27. At approximately 00:30am on 24 July 1974, Witness F was leaving his sister's house outside Trillick when two cars passed at speed, heading towards Tempo. Witness G, who was with Witness F at the time, provided police with a similar account. They both stated that the second car was a light blue-coloured Ford Cortina.

- 5.28. At approximately 1:00am on 24 July 1974, Witness H heard the sound of cars travelling from the direction of Trillick. She looked out of a window and observed two cars travelling fast and close together, from Trillick towards Tempo. One of the cars was light-coloured, the other dark-coloured.
- 5.29. Witness I lived outside Tempo, County Fermanagh. At approximately 2:30am on 24 July 1974, she looked out of her bedroom window towards Brookeborough and saw '*a large ball of clear flame*' in the sky. This would have been in the general area of Greenhill Quarry, where Mr Kelly's burnt-out car was subsequently found. Police later tasked a military helicopter to fly over Witness I's house in the direction of the quarry. This confirmed that the area where she saw the flames was in line with where the burnt-out Mazda car was discovered.
- 5.30. Witness J also lived on the Badoney Road. At approximately 10:00am on 24 July 1974, he was herding cattle when he reported finding a button on the road and a quantity of blood. He also observed footprints further along the road. He went to a local Post Office and asked that police be contacted. Two buttons were recovered when the scene was later forensically examined.

## **Forensic Evidence**

### **The Footwear Marks**

- 5.31. A plaster cast impression of a footwear mark was forensically examined. This established that the impressions were made by a heavy duty rubber-soled shoe or boot. The pattern was of a type normally associated with rubber Wellington-type boots worn by members of the security forces.

- 5.32. My investigators found no record that police conducted any further enquiries in respect of these footwear marks. When interviewed by my investigators, Police Officer 1 stated that this type of boot was very common and was worn by farmers as well as members of the security forces.
- 5.33. Police Officer 1 informed my investigators that he would have required additional evidence and/or intelligence to justify searching the addresses of UDR personnel and seizing footwear. He added that, while he could have seized UDR equipment, he would not act on rumour and speculation alone.
- 5.34. Police Officer 1's hardback diary contained an entry stating that it was believed the footwear marks had been made by an identified individual who lived in the Badoney Road area. This was followed by a further entry, dated 26 July 1974, stating that this had been checked and the marks had definitely not been made by this individual. My investigators could find no other documentation relating to this line of enquiry.

### **The Tyre Mark**

- 5.35. My investigators found no record that enquiries were conducted regarding the tyre mark during the 1974 RUC investigation. The PSNI re-investigation team arranged for a black and white photograph of the relevant tyre mark, taken in 1974, to be examined by a tyre specialist. He concluded that the mark had been made by a Michelin ZX tyre, which would have been fitted to a range of different cars in 1974.
- 5.36. The PSNI re-investigation team conducted enquiries in respect of a number of cars identified during the 1974 enquiry, but were unable to identify the vehicle that left the tyre mark. My investigators were unable to locate the relevant black and white photograph of the tyre mark in the RUC investigation papers.

### **The Hair Sample**

- 5.37. The hair found in the quantity of blood at Badoney Road was examined as part of the 1974 RUC investigation. It was found to be microscopically similar to a sample of Mr Kelly's hair obtained from a hairbrush. Following his abduction, enquiries with local hospitals were unable to secure a sample of Mr Kelly's blood for comparison with the blood found at Badoney Road. However, a blood sample was subsequently recovered during Mr Kelly's post mortem examination. When forensically examined, this blood sample was found to be the same blood group as the sample recovered from the Badoney Road scene.

### **The 56-Pound Weight**

- 5.38. The weight had been exposed to the weather and was extensively rusted and pitted. The lifting/handling bar was worn at both corners, suggesting that there had been friction at these points between the bar and another object. Police considered that this could possibly have been caused by a rope over a lengthy period of time. The forensic scientist who examined the weight concluded that it was possible the weight may have been used as an anchor/mooring for a boat, or for securing an outhouse roof or haystack.
- 5.39. Police Officer 1 informed the PSNI re-investigation team that such weights were common in that locality and he had been unable to establish its origins. In 2018, when interviewed by my investigators, he stated that he did not regard the weight as a viable line of enquiry, given that every household had one in 1974. My investigators found no record of any RUC enquiries to establish the origins of the weight.



## **The Green Nylon Rope**

- 5.40. The rope recovered from Mr Kelly's body was forensically examined. It was six millimetres (mm) in diameter and consisted of three strands of green-coloured polypropylene fibre. It was approximately 45 feet long but had been cut into two pieces, measuring 25 and 20 feet long.
- 5.41. The RUC investigation established that the rope was similar to a type manufactured by Belfast Rope Works. An investigative action was raised for Police Officer 1 to visit Belfast Rope Works. Enquiries were also to be made with local boat owners on Lough Eyes to ascertain whether any rope, matching this description, was missing from their vessels.
- 5.42. The RUC investigation identified a number of businesses in Northern Ireland who sold the relevant type of rope. Police spoke to these retailers who stated that the rope was sold generally but they did not keep sales records. The origins of the rope have never been established.

## **The Piece of Material**

- 5.43. The piece of material recovered from the underside of a boat at Lough Eyes was forensically examined. It was established that it matched a piece of material missing from the bottom of Mr Kelly's shirt. The boat had been moored near to where Mr Kelly's body was found.
- 5.44. My investigators reviewed the available RUC investigation papers and found a list of 18 individuals who either owned boats, or fished, on Lough Eyes. A review of the available RUC investigation records indicated that police spoke to 14 of these individuals. However, there is no indication that the owner of the relevant boat was identified by the original RUC investigation.

## **The Handkerchiefs**

- 5.45. My investigators reviewed the available RUC investigation papers and found references to three handkerchiefs that were recovered by police during the 1974 investigation. Police Officer 1 documented in his hardback diary that he recovered a handkerchief at Geary Bridge on 30 July 1974. His relevant entry stated that it was forensically examined with '*negative result.*' Other records indicated that police delivered this item to the Forensic Science Service (FSS) on 1 August 1974.
- 5.46. The SOCO who examined the Lough Eyes scene documented that he recovered two handkerchiefs which he submitted to FSS two days later. There is only one record of the three handkerchiefs being forensically examined. This record is an entry in Police Officer 1's diary.

## **The Buttons**

- 5.47. A forensic examination of the shirt Mr Kelly was wearing at the time of his murder established that there were six button positions on its front, but only three buttons attached to it. The three remaining buttons consisted of one at the neck opening and the two bottom buttons. The sleeves of the shirt were rolled up but the fastening buttons remained attached to each cuff.
- 5.48. The two detached buttons recovered from the Badoney Road scene were forensically examined and compared against the three buttons attached to Mr Kelly's shirt. The first button recovered from the Badoney Road scene was identical to the button at the neck opening and the bottom button. The second recovered button was identical to those still attached to the cuffs. The examining scientist concluded that both of the recovered buttons originated from Mr Kelly's shirt.

## Ballistic Evidence

5.49. There were four .455 calibre bullets recovered during Mr Kelly's post mortem examination. Forensic examinations established that they had all been discharged from a Smith and Wesson .45 calibre revolver. This investigation has established that these type of weapons were not issued to UDR. It had no history of previous, or subsequent, use and has never been recovered. There was only one weapon used in Mr Kelly's murder. The RUC's Data Reference Centre (DRC)<sup>26</sup> informed Police Officer 1 that the four recovered bullets were not linked to any legally held weapons in the area.

5.50. The ammunition recovered from Lough Eyes by Royal Navy divers was submitted for forensic examination. An Ammunition Technical Officer (ATO) informed the RUC investigation team that he believed the ammunition had been in the water for 11-14 days, and this was noted in Police Officer 1's hardback diary. DRC later confirmed the ammunition to be:

- I. 58 or 59 rounds of 9mm ammunition;
- II. 5 rounds of .45 ammunition;
- III. 33 rounds of .455 ammunition and;
- IV. A single round of .38 ammunition.

5.51. Police Officer 1 later made an entry in his 1974 hardback diary that '*due to the condition of the ammunition they are not connected to the murder.*' The PSNI re-investigation team explored the possibility of whether the military may have historically deposited unwanted ammunition in Lough

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<sup>26</sup> The Data Reference Centre (DRC) was established in 1971 and was based in Belfast. In 1981, the unit was re-established as the Weapons & Explosive Research Centre (WERC) and was located at Newtownbreda in Belfast. WERC then relocated to Seapark following a bomb attack by the IRA in 1992. In 2009, the unit was renamed the Centre for Information on Firearms and Explosives (CIFEX). A key function of the DRC was to establish and collate all available intelligence and information linked to terrorist incidents in respect of firearms, ammunition, and other items related to firearms. DRC had additional responsibility for retention of test firings obtained from all legally held firearms in Northern Ireland, in addition to conducting ballistic testing of body armour, armour plating, and bullet resistant glazing.

Eyes. That investigation team was informed by the MOD that ammunition was not at any time deposited in inland loughs in Northern Ireland.

5.52. My investigators found no record that the above ammunition was forensically examined to establish if it was connected to Mr Kelly's murder. When interviewed by the PSNI re-investigation team in 2003, Police Officer 1 stated that the ammunition was not forensically examined due to its corroded condition.

5.53. The PSNI re-investigation team established that the relevant ammunition was disposed of by the RUC on 20 August 1975 as part of the routine disposal of weapons.

### **Fingerprints**

5.54. The 1974 RUC investigation papers included correspondence, dated 10 September 1974, from RUC Fingerprint Branch to Enniskillen CID stating that the fingerprint marks recovered from Mr Kelly's car were available for comparison. It asked that fingerprint marks be obtained from Mrs Kelly and other individuals who had legitimate access to the vehicle. My investigators found no record that these enquiries were completed by police.

5.55. My investigators reviewed a RUC fingerprint file that referred to six fingerprint marks being recovered from a burnt-out vehicle at Tullyreagh Crossroads, Brookeborough, County Fermanagh. '*Very fragmentary*' fingerprint marks were recovered from the vehicle's metal strips and door handles. The file indicated that the vehicle was Mr Kelly's Mazda car.

### **Vehicles**

5.56. Police compiled a list of cars that were observed acting suspiciously in the Trillick area, prior to Mr Kelly's murder. My investigators reviewed this list

but were unable to establish what action police took at the time in respect of these vehicles.

### **RUC Enquiries with UDR Members**

5.57. A review of the relevant RUC investigation papers established that a key line of enquiry was that UDR members may have been involved in Mr Kelly's abduction and murder. From an early stage of the investigation, there were rumours within the local community that UDR members were involved. Police subsequently interviewed a number of UDR members, seeking to establish their movements on 23 and 24 July 1974. UDR Member 1 was interviewed on 1 August 1974.<sup>27</sup> Twelve UDR members were interviewed on 6 August 1974 and the remaining interviews were undated.

#### **UDR Member 1**

5.58. My investigators established that Police Officer 1 interviewed UDR Member 1 on 1 August 1974, recording the contents of the interview in his hardback diary. UDR Member 1 stated that he was at a military establishment in Omagh, County Tyrone, on the evening of 23 July 1974, where he was interviewed by military police regarding an unrelated allegation that he, along with other UDR members, had assaulted two members of the public on an earlier date. He added that, following the interview, he went to the Camp bar before driving home with a colleague, UDR Member 9. He stated that, when he arrived home, all his family were in bed.

5.59. My investigators found no record that police recorded witness statements from military police personnel or family members to corroborate UDR Member 1's account. Police Officer 1 documented in his hardback diary

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<sup>27</sup> Police Officer 1 noted in his hardback diary that he interviewed UDR Member 1 on 1 August 1974. However, in his 1979 report, he noted that the interview was on 6 August 1974.

that military police conducted interviews with a number of UDR members, on the evening of 23 July 1974, in respect of assaults on two members of the public. However, my investigators found no military documentation confirming this within the available police material.

- 5.60. Police Officer 1 submitted a report to his authorities in January 1979 outlining UDR Member 1's movements on the night of Mr Kelly's abduction. He noted that *'on the night in question UDR Member 1 was interviewed at Lisanelly Army Camp by members of SIB in relation to assaults on civilians. This was corroborated by the SIB and his later movements were corroborated by other men in the Army Camp.'* He later informed the PSNI re-investigation team that no military police personnel were interviewed regarding this matter. However, Police Officer 1 informed my investigators, as part of the Maxwellisation process that he was confident that a military officer at Lisanelly Army Camp was spoken to by police, who confirmed UDR Member 1's presence there on the night of Mr Kelly's murder. He added that a lack of policing resources was the main reason witness statements were not recorded, and that a record may have been made on the relevant action sheet. Police Officer 1, in his response to the PSNI re-investigation team, confirmed that a number of folders containing the RUC investigation records (including action sheets) were missing.

#### **UDR Members 2, 3, 4, 5 and 6**

- 5.61. UDR Member 2 provided a witness statement to police stating that, on the evening of 23 July 1974, he was on patrol in the Trillick area with UDR Members 3, 4, and 5. They left Trillick at 10:00pm and conducted a VCP outside the village, before stopping for a refreshment break. At this point, UDR Member 6 joined the patrol.
- 5.62. UDR Member 2 stated that they then conducted another VCP before continuing on to Dromore, County Tyrone. At midnight, they visited a shop

to buy sweets before conducting a further VCP outside the village. He arrived home between 1:50 – 2:00am and did not recall anything unusual during the patrol. UDR Members 3, 4, and 6 provided police with similar accounts. None stated that they had dealings with Mr Kelly on the night in question. My investigators found no record that UDR Member 5 was interviewed by the 1974 RUC investigation team.

- 5.63. Police recorded a witness statement from the owner of the shop where UDR Member 2 and his colleagues stated that they stopped for sweets. He stated that, at approximately midnight, four UDR soldiers came into the shop and made some purchases. When he was closing the shop, a short time later, the soldiers were sitting outside in a blue Vauxhall Cavalier car. He knew UDR Member 2's name and where he lived. Police also recorded a witness statement from the shop owner's brother who was in the shop at the relevant time. He provided a similar account.

#### **UDR Member 7**

- 5.64. UDR Member 7 provided a witness statement to police stating that he left his home, in the Trillick area, at approximately 7:30pm on 23 July 1974 to attend a training lecture at a military establishment in Omagh, which lasted until 10:00pm. He then went for a drink in the Camp bar, before leaving with UDR Member 8 at 10:30pm. He arrived home at 11:30pm and helped a neighbour working on a car until approximately 1:00am. He then returned home, where he remained until 7:00am. My investigators found no record that police spoke to the neighbour to confirm this account.

#### **UDR Member 8**

- 5.65. UDR Member 8 provided a witness statement to police, stating that he attended the same training lecture as UDR Member 7, before they went for a drink in the Camp bar. They then travelled home together. He arrived home at approximately 11:00pm and did not leave his house until 9:30am

the following morning. My investigators found no record that police spoke to UDR Member 8's family members to confirm when he arrived home.

### **UDR Member 9**

- 5.66. UDR Member 9 provided a witness statement to police, stating that he journeyed from Trillick to the military establishment in Omagh, accompanied by UDR Members 1, 8, and 10. He attended the training lecture, before going for a drink in the Camp bar. He left at 11:30pm and UDR Member 1 gave him a lift back to Trillick, where he picked up his wife. He and his wife then travelled on to their home in the Enniskillen area. He stated that UDR Members 8 and 10 were still in the Camp Bar at 11:30pm, when he left with UDR Member 1. My investigators found no record that police spoke to UDR Member 9's wife to confirm this account.

### **UDR Member 10**

- 5.67. UDR Member 10 provided a witness statement to police, stating that he travelled to the military establishment in Omagh with UDR Members 1, 8, and 9. He attended the training lecture and then went to the Camp bar where he was joined by UDR Members 7, 11, and 12. He left at approximately 11:45pm, and was given a lift back to Trillick by UDR Member 11. He then got into his own car and drove home, arriving at approximately 00:15am. My investigators found no record that police spoke to UDR Member 10's family members to confirm when he arrived home.

### **UDR Member 11**

- 5.68. UDR Member 11 provided a witness statement to police, stating that he was interviewed by military personnel from 8:00pm to approximately 10:30pm at the relevant military establishment, before going to the Camp bar with UDR Member 10, where he saw UDR Member 1. He then gave



UDR Member 10 a lift back to Trillick, arriving home at approximately 00:30am. My investigators found no record that police made efforts to verify this account with family members.

#### **UDR Member 12**

- 5.69. UDR Member 12 provided a witness statement to police, stating that he was interviewed by military police until 11:00pm on 23 July 1974 at the military establishment in Omagh. He stated that he then went to the Camp bar for a drink, where he was in the company of UDR Members 1 and 7. He left the bar at approximately midnight and drove home on his own, arriving back between 00:15 – 00:30am. My investigators found no record that police made efforts to verify this account with members of his family.

#### **UDR Member 13**

- 5.70. UDR Member 13 provided a witness statement to police, stating he was not on duty on 23 July 1974. He stated that he left his house at approximately 9:30pm and went to a local bar for a drink with his wife, where they remained until 11:30pm. They then returned home where he remained until approximately 9:00am the following morning. My investigators found no record that police made efforts to verify this account with UDR Member 13's wife or staff and customers at the relevant bar.

#### **UDR Member 14**

- 5.71. UDR Member 14 provided a witness statement to police, stating that he was not on duty on 23 July 1974. He stated that he arrived home at approximately 8:30pm where he remained until 7:30am the following day. My investigators found no record that police sought to verify his account.

### **UDR Member 15**

- 5.72. UDR Member 15 provided a witness statement to police, stating that he left his house at 9:00pm on 23 July 1974 and called at a friend's house before going to a bar in Maguiresbridge for a few drinks. He remained there until 11:00pm, before returning to the same friend's house where he stayed until 00:30am. He then drove home, arriving at his house at 01:05am. My investigators found no record that police sought to verify his account.

### **UDR Member 16**

- 5.73. UDR Member 16 provided a witness statement to police, stating that he attended a band practice at an Orange Hall with his sister on the evening of 23 July 1974. Afterwards they drove home, arriving at approximately 11:30pm. My investigators found no record that police interviewed UDR Member 16's sister or other band members to verify this account.

### **UDR Member 17**

- 5.74. UDR Member 17 provided a witness statement to police, stating that he left his house at 7:00pm on 23 July 1974 and had a drink in a local bar, before returning home at approximately 8:30pm. He remained there until 6:00am the following morning. My investigators found no record that police sought to verify his account.

### **UDR Member 18**

- 5.75. UDR Member 18 provided a witness statement to police, stating that he was not on duty on 23 July 1974 and was at home all evening. He could not recall if anyone else was in the house with him. My investigators found no record that police made enquiries to verify this account.

### **UDR Member 19**

- 5.76. UDR Member 19 provided a witness statement to police, stating that he left home at approximately 8:30pm on 23 July 1974 to visit a neighbour's house. He returned home at 10:30pm, before driving to another address to collect his mother. He returned home again at approximately 00:30 – 00:45am. My investigators found no record that police made enquiries to verify his account.

### **UDR Member 20**

- 5.77. In a 1979 report to his authorities, Police Officer 1 stated that UDR Member 20 had been interviewed by police and provided an alibi witness, Police Officer 11. This witness confirmed that UDR Member 20 had been socialising with him in a bar at the time of the murder, which was almost a one hour car journey from the Badoney Road scene. UDR Member 20 was also confirmed as having been interviewed by military police on the evening of 23 July 1974 at the military establishment in Omagh. No witness statement was recorded from either UDR Member 20 or Police Officer 11.

### **Anonymous Information**

- 5.78. On 31 July 1974, UDR Member 1's wife received an anonymous telephone call. The caller stated that he represented Enniskillen IRA. He threatened UDR Member 1 if he did not disclose Mr Kelly's whereabouts. UDR Member 1 was interviewed as a witness by Police Officer 1, following this telephone call, as part of the 1974 RUC investigation.
- 5.79. On 1 August 1974, a list of names was anonymously sent to the Northern Ireland Civil Rights Association (NICRA). The document stated that the 11 individuals named on the list were involved in various criminal offences, including Mr Kelly's abduction. UDR Member 20 and a serving

RUC officer, Police Officer 13, were named on the list. The list of names was purportedly written on the reverse of an RUC T6 form.<sup>28</sup> This fuelled speculation that the document had been sent by a RUC officer. The recipient of the document made a verbatim handwritten copy of the names listed on the document as the original was in poor condition. Copies were then made by the recipient of the verbatim handwritten copy and forwarded to other individuals, including Mr Kelly's family.

- 5.80. My investigators found no record of any enquiries having been conducted in respect of this anonymous document. NICRA did not forward the document to police so there was no opportunity for it to be forensically examined. My investigators were unable to locate the original document in the RUC files and were unable to confirm if Police Officer 1 had the original document. When interviewed by my investigators, Police Officer 1 had no recollection of this document. The PSNI re-investigation team stated that there was no corroborative evidence that the document ever existed.
- 5.81. On 7 August 1974, an anonymous letter was forwarded to the Commanding Officer of a military establishment in Omagh. It named four UDR members as having been involved in Mr Kelly's abduction. Two of them, UDR Members 1 and 16, had been interviewed as witnesses during the 1974 RUC investigation. These interviews occurred prior to the receipt of the anonymous letter.
- 5.82. Police Officer 1 was aware of this information as, on 17 August 1974, he made an entry regarding it in his hardback diary. However, there is no record of any enquiries having been conducted in respect of the information. There is also no record that the relevant letter was submitted for forensic examination.

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<sup>28</sup> An RUC T6 form was used to document traffic offences.

## **The 1974 Report**

- 5.83. In August 1974, Police Officer 1 submitted a report, addressed to the then Chief Constable James Flanagan's office, in respect of Mr Kelly's murder. This detailed the results of the post mortem examination and forensic examinations at the relevant scenes. The report was a brief update and could not be described as a detailed investigation report.
- 5.84. Police Officer 1 also referred to media reports that Mr Kelly had been murdered by UDR members with legally-held weapons. He stated that the bullets recovered during the post mortem examination did not support these claims. They were checked against legally-held weapons in the area but no matches were made.
- 5.85. In December 1974, Police Officer 1 submitted a further report to his authorities, regarding anonymous information that UDR Member 20 had been involved in Mr Kelly's murder. He stated that *'The possibilities of these allegations were foreseen at the time of the investigation so the movements of all UDR personnel in that area were verified.'* He added that UDR Member 20 was not involved in the murder.
- 5.86. Police Officer 1's report was endorsed by the 'M' Division Commander, based at Omagh RUC Station, County Tyrone. He stated that there was no concrete evidence linking UDR Member 20 to Mr Kelly's murder, *'but the rumours were rife in the Trillick area.'*

## **The 1979 Report**

- 5.87. In late January 1979, Police Officer 1 submitted a further report to Police Officer 2 regarding Mr Kelly's murder. This was a more detailed account of the circumstances surrounding the murder and the subsequent RUC investigation.

- 5.88. This report was examined by my investigators and was comprehensive. It could be described as a 'situation report' of the murder investigation. This report outlined the circumstances of Mr Kelly's abduction and murder, identified the various crime scenes, including Lough Eyes, and listed the initial investigative actions that had been pursued. The report then detailed the major lines of investigation that were followed and the outcome of these enquiries.
- 5.89. Within the report Police Officer 1 stated that, during the police investigation, suggestions were made that a number of UDR members, including UDR Member 1, had carried out the abduction and murder of Mr Kelly. Police Officer 1 stated that this led to a number of UDR members, including UDR Member 1, being interviewed at a military establishment in Omagh, County Tyrone.
- 5.90. UDR Member 1 had informed police that, on the night of Mr Kelly's abduction, he had been interviewed by military police personnel regarding allegations that he had assaulted two members of the public on an earlier date. Police Officer 1 stated that this account had been later corroborated by military police personnel and other UDR members. The remaining UDR members had provided accounts of their movements on the night of Mr Kelly's abduction, which were confirmed by subsequent police enquiries. He stated that UDR Member 20 had been interviewed by police and had provided an alibi witness, Police Officer 11.
- 5.91. Police Officer 1 stated that, in the field of intelligence relating to the murder, there had been no response. He did not mention that fingerprints had been recovered from Mr Kelly's car. He stated that it had been difficult to establish a motive for Mr Kelly's murder, as no organisation had admitted responsibility for the crime. He recorded his opinion that the motive for Mr Kelly's murder was unclear as there were a number of possibilities, namely that:

- I. *'He was shot by an extreme loyalist organisation in a purely sectarian murder.'*
- II. *'He was shot by a republican organisation as a punishment shooting for some unknown infringement of their code.'*
- III. He had been kidnapped *'but he put up a fight and was shot in the struggle.'*

Police Officer 1 added that he thought this latter scenario unlikely as Mr Kelly did not *'appear to have valuable assets.'*

- 5.92. Police Officer 1 stated that an individual, who would not provide their name, telephoned police in January 1976, claiming that UDR Member 20, and a number of another individuals, murdered Mr Kelly. Police Officer 1 arranged for this individual to call back a number of days later, which they did. Police Officer 1 spoke to the individual, who still declined to provide their name, on this second occasion. Police Officer 1 stated that he believed the caller was under the influence of alcohol.
- 5.93. The caller declined to meet with Police Officer 1, before ending the telephone call. Other information that he provided, unrelated to Mr Kelly's murder, was subsequently found to be false. Given the inaccuracy of this information, Police Officer 1 decided to take no further action in respect of the information provided regarding Mr Kelly's murder.
- 5.94. Police Officer 1 concluded in his report that *'The suggestions of UDR involvement appears to be an attempt to blame someone and add fuel to a smear campaign in operation around Trillick at that time.'* He stated that he had received no intelligence regarding Mr Kelly's murder.





## 6.0

### The PSNI Re-Investigation

- 6.1. Police Officer 9, a senior detective on secondment from an external UK police force, was appointed in June 2003 to lead a re-investigation of Mr Kelly's murder. Members of the re-investigation team were not to have had connections with the relevant area or police officers involved in the original investigation. My investigators reviewed the PSNI re-investigation but, as it did not form part of the Kelly family's complaint, did not investigate it.
- 6.2. In January 1999, a national newspaper featured an article stating that a former UDR member had confessed to being present at Mr Kelly's murder. Police sought to interview the journalist who had written the relevant article. She declined to meet with police but stated that she had received this information from the Kelly family solicitor.
- 6.3. In April 1999, a senior police officer met the solicitor of Mr Kelly's family. He stated that he had received the relevant information from two separate individuals, but declined to name them. He also initially declined to name the former UDR member, who had made the alleged confession. This information was provided by the solicitor in August 2001. The UDR member, Person 11, died in October 1999.
- 6.4. In November 2001, in light of this new information, PSNI commissioned a review of the 1974 RUC investigation. Police Officer 8 was appointed to carry out this review. At its conclusion, Police Officer 8 submitted a report to his authorities. He identified a number of investigative opportunities and actions that could be progressed. This review led to Police Officer 9 being appointed to re-investigate Mr Kelly's murder.

- 6.5. Mr Kelly's family sought leave to apply for a judicial review, challenging this decision. They claimed that, as members of the security forces were suspected of having been involved in the murder, it should be re-investigated by an independent police force. This application was dismissed by the then Lord Chief Justice, Lord Kerr.
- 6.6. In June 2003, the re-investigation commenced. Police Officer 8 was appointed as the Deputy Senior Investigating Officer (DSIO), to assist Police Officer 9. A Major Incident Room (MIR) was established at Maydown PSNI Station, Derry/Londonderry. The investigation was managed on the Home Office Large Major Enquiry System (HOLMES) and consisted of 18 dedicated police officers, supported by uniformed officers and administrative staff.
- 6.7. The re-investigation concentrated on the following four scenes:
- I. Badoney Road, where a quantity of blood and other items were found;
  - II. Greenhill Quarry, where Mr Kelly's burnt-out Mazda was located;
  - III. Lough Eyes, where Mr Kelly's body was found; and
  - IV. Eskra, where UDR Member 20's burnt-out car was recovered.
- 6.8. A National Search Advisor and Clinical Psychologist attended the scenes. Specialised search equipment was used to search the Badoney Road area for the two bullets that had never been recovered. These searches failed to locate either bullet.
- 6.9. The Greenhill Quarry scene had been filled-in to a depth in excess of 12 feet, having been used as a landfill site. Given this, it was concluded that nothing could be gained by a further search of the area. The Lough Eyes scene was not searched due to financial restraints, given the cost that would have been involved. Police Officer 1 informed the PSNI re-

investigation team that the bullets, recovered from Lough Eyes, were too corroded to be connected to Mr Kelly's murder. The Eskra scene was also not searched as the relevant area had been reclaimed from marshes.

- 6.10. Police Officer 9 held a conference at Omagh PSNI Station, attended by 12 of the 1974 RUC investigation team, including Police Officer 1. This was to establish if their collective memory could provide any information that might be used to develop new lines of enquiry and progress the investigation. The only information of note to emerge from this conference was that Police Officer 1 did not attend Mr Kelly's post mortem examination. As part of the Maxwellisation process, Police Officer 1 informed my investigators that he intended to be present during the post mortem and attended the mortuary, but the pathologist would only allow his own assistant to be present, due to the condition of Mr Kelly's body. Police Officer 1 waited and, following the post mortem, spoke to the pathologist about his findings.
- 6.11. A review of FSS documentation by the PSNI re-investigation team, indicated that all the original exhibits were to be returned to Enniskillen RUC Station in October 1974. The PSNI re-investigation team searched a number of police stations in County Fermanagh for items recovered during the 1974 RUC investigation. These searches proved negative.
- 6.12. Persons 1, 2, 3, 4, 5, 6, and 7 were listed, in the relevant fingerprint file, as having been arrested, or being suspects, in respect of Mr Kelly's murder. The PSNI re-investigation team added Persons 1 to 7 to the fingerprint file in 2003. The team later compared the fingerprints of these seven individuals against the six fingerprint marks recovered from the burnt-out Mazda car but no matches were made. The fingerprint marks of the seven individuals were also compared against fingerprint marks held on PSNI and An Garda Síochána (AGS) databases. Again, these checks proved negative.

- 6.13. The PSNI re-investigation team also compared the recovered fingerprint marks against the fingerprints of a number of other individuals for elimination purposes. These included Persons 2, 3, 5, and 10, in addition to UDR Members 1, 2, 3, 4, 7, 10, 15, 20, and 21. They were also compared against the fingerprints of Police Officer 10. All these checks proved negative.
- 6.14. The six *very fragmentary* fingerprint marks recovered from Mr Kelly's Mazda car were re-examined by the PSNI re-investigation team in an attempt to produce a LCN (low copy number) DNA<sup>29</sup> profile from a suspected spot of blood found within one of the marks. Two DNA profiles were subsequently obtained. The first was an incomplete LCN DNA profile, indicating that it originated from more than one person. This was of no evidential value.
- 6.15. The second profile originated from a male, but was of insufficient detail to be compared against the National DNA database. However, it was suitable for direct comparison with a suspect's DNA profile if a suspect was identified. The DNA profiles of persons of interest were compared against this partial DNA profile and were all eliminated.
- 6.16. The PSNI re-investigation team interviewed Mr Kelly's brother-in-law, who stated that he went to the Greenhill Quarry scene and found a metal bar in the boot of the Mazda car. He made a police officer at the scene aware of the bar, which he described as approximately 18 inches long, five inches wide, and carved into the shape of a hook.
- 6.17. He stated that it was brown-coloured, appeared rusted, and was blunt at both ends. He described it as the type of item used in making trailers for

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<sup>29</sup> Forensic science has advanced significantly since 1974 with the development of Deoxyribonucleic Acid (DNA) analysis. The first conviction in a murder case, reliant on DNA evidence, in the United Kingdom (UK) was the conviction of Colin Pitchfork in 1988 for the rape and murders of Lydia Mann and Dawn Ashworth. The UK DNA database was not established until 1995.

tractors. He recalled telling the police officer at the scene that it was not the type of object that would have been in the boot of Mr Kelly's car.

- 6.18. Police Officer 9 considered the investigative hypothesis that Mr Kelly's murder was in retaliation for UDR Private Robert Jameson's murder on 17 January 1974. He also considered whether those responsible for Mr Kelly's murder had also carried out the attacks at the Corner Bar and two other gun attacks on 18 January 1974. A central line of enquiry was whether UDR members were involved in Mr Kelly's murder.
- 6.19. Another line of enquiry related to the information supplied by the Kelly family solicitor that a former UDR member, Person 11, had confessed to being present at the murder. At paragraph 6.3 above, the enquiries made of the Kelly family solicitor in respect of Person 11 are noted.
- 6.20. The PSNI re-investigation team established that Person 11 was not a UDR member at the time of Mr Kelly's murder. Police recorded a statement from Person 11's relative who stated that her brother had once, while under the influence of alcohol, confessed to having been present at Mr Kelly's murder, along with UDR Members 20 and 22. Afterwards, Mr Kelly's body had been placed in the back of a UDR landrover. Police also spoke to Person 11's solicitor who stated that the same confession was made to him.
- 6.21. Enquiries were conducted with other relatives of Person 11, in addition to former friends and health care professionals who had previous dealings with him. None of them held any information relevant to the police investigation. Police established that Person 11 had addiction and mental health issues that undermined the credibility of his confession.
- 6.22. The Kelly family raised concerns that Person 11's death was suspicious and that members of the security forces may have been involved. The PSNI re-investigation team contacted the pathologist who carried out the

relevant post mortem examination. He stated that he had found nothing to suggest the death was suspicious.

- 6.23. The Kelly family also raised concerns regarding when a relative last saw Person 11 alive. They initially stated that they saw him the evening before his body was found. However, the pathologist stated that Person 11 had been dead for a number of days before his body was discovered.
- 6.24. Police re-interviewed the relative who stated that they had been in a state of shock when initially interviewed by police. They clarified that they last saw Person 11 alive three days before his body was discovered. Police investigating Person 11's death did not regard it as suspicious.
- 6.25. Police Officer 1 informed the PSNI re-investigation team that he had no knowledge of Person 11, who did not feature in the 1974 RUC investigation. Person 11 was first brought to the attention of police in 1999. My investigators found no intelligence linking Person 11 to Mr Kelly's murder or any paramilitary involvement.
- 6.26. The PSNI re-investigation team made a number of enquiries regarding the rope and weight found attached to Mr Kelly when his body was recovered from Lough Eyes. These enquiries did not progress the investigation.
- 6.27. Police Officer 1 informed the PSNI re-investigation team that he believed a SOCO examined the relevant boat, but could not recall the exact nature of this examination. My investigators found no record that the boat was recovered for forensic examination or examined at the scene. There was also no record that the boat was photographed, or its owner traced and interviewed. As part of the Maxwellisation process, Police Officer 1 informed my investigators that he believed the boat was photographed in situ, including the piece of material attached to its underside. He added

that he would have had a discussion with the SOCO present regarding the need to examine the boat's interior.

- 6.28. Ballistic enquiries conducted by the PSNI re-investigation team also proved negative. A number of legally-held .455 revolvers were forensically examined, but no matches were made with the four bullets recovered during Mr Kelly's post mortem examination.<sup>30</sup>
- 6.29. The four bullets recovered in 1974 were forensically examined again. They were identified as .455 copper jacket lead core bullets, possibly fired from a Smith & Wesson revolver. The revolver had no history of previous, or subsequent, use and has never been recovered.
- 6.30. The photographs of the footwear marks recovered from the Badoney Road scene were examined by a footwear specialist. It was established that the sole was manufactured after 1962 for police, military, and civilian use in the UK. It was a size 6-9 and had been possibly made either in England or a factory in the Ballymena area.
- 6.31. The PSNI re-investigation team interviewed members of the public who owned boats on Lough Eyes in 1974. Enquiries to identify the owner of the boat, from where the piece of Mr Kelly's shirt had been recovered, proved negative.
- 6.32. The Kelly family informed the PSNI re-investigation team that, on the night of Mr Kelly's abduction, a car had broken down at Lough Eyes. The 1974 RUC investigation team had spoken to its owners who stated that one of their children had placed sugar in the petrol tank.

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<sup>30</sup> The four bullets recovered from Mr Kelly's post mortem examination were initially referred to as .45 calibre. They were later examined by forensic scientists and found to be .455 calibre that had all been discharged from the same weapon. Similarly, some of the ammunition recovered in Lough Eyes was initially referred to as 38 x rounds of .45 calibre long and short ammunition. Later scientific examination established that there were 5 x .45 calibre bullets and 33 x .455 calibre bullets.

- 6.33. The PSNI re-investigation team established that the owners of the car were both deceased, but traced and interviewed another family member. She stated that the story regarding sugar having been put in the petrol tank was false and the car had been loaned, at the time of Mr Kelly's abduction, to Person 3, a UVF member who was living in the Lough Eyes area. Person 3 was listed as either '*arrested or suspected*' on the relevant RUC Fingerprint Branch file. The PSNI re-investigation team compared his fingerprints against those recovered from Mr Kelly's Mazda car. These checks proved negative.
- 6.34. Police Officer 9 made a number of media appeals for information regarding Mr Kelly's murder. These resulted in a number of calls being made to the 'Crimestoppers' telephone line. One caller told police where the weight used in the murder originated from. He also named two individuals who had stolen a car on the night of the murder. He had been informed that there was blood in the boot of this car. The caller stated that he had anonymously provided police with this information thirty years ago.
- 6.35. The PSNI re-investigation team interviewed the caller who expanded on the information that he had provided in the 'Crimestoppers' call. He also named two other individuals who he had been informed were involved in Mr Kelly's murder. However, when shown photographs of the weight used in the murder, he stated that it was not the same as the weight he had referred to in his telephone call.
- 6.36. The PSNI re-investigation team interviewed Police Officers 3 and 5 in January 2004. Police Officer 3 stated that he had attended a number of LDV meetings in the Fermanagh area, where IRA members were discussed.
- 6.37. Police Officer 3 subsequently provided a witness statement to the PSNI re-investigation team. He stated that Person 8 chaired the meetings and



named a number of other individuals, including Police Officer 7, who attended them. He stated that Police Officer 7 and two other individuals were arrested on suspicion of a terrorist attack in County Fermanagh in March 1974. He believed that Person 8 organised this attack.

- 6.38. Police Officer 5 informed the PSNI re-investigation team that he had not attended LDV meetings and did not know Mr Kelly. He stated that the information that police held regarding him was inaccurate. He stated that he knew Person 8, but only in a work capacity.
- 6.39. Military generated reports, dated between 2001 and 2003, were available to the PSNI re-investigation team. These reports contained details of intelligence from 1974 and 1975, stating that the same group carried out Mr Kelly's murder and the earlier attack at the Corner Bar on 18 January 1974. It added that Mr Kelly had been abducted, after an argument with UDR members, a number of days prior to his disappearance. Person 2 and UDR Members 1 and 21 had committed the murder, in retaliation for Private Robert Jameson's murder.
- 6.40. The PSNI re-investigation team carried out searches at the addresses of UDR Members 1, 2, 3, 4, 7, 10, 13, 15, 20, 21, 22, and 23. Nothing was found that progressed the murder investigation.
- 6.41. The PSNI re-investigation team reviewed all the available evidence and intelligence and comprised a list of suspects. In early March 2004, police arrested UDR Members 7 and 15 on suspicion of Mr Kelly's murder. Both made no comment during police interviews and were subsequently released without charge.
- 6.42. Later that month, PSNI arrested UDR Members 20 and 22. The former made no comment during police interviews and the latter denied having been involved in Mr Kelly's murder. They were both subsequently released without charge.

- 6.43. In April 2005, the PSNI re-investigation team arrested Persons 2, 3, 9, and UDR Member 23. During police interviews, Person 9 and UDR Member 23 declined to answer any questions. Person 3 denied having been involved in Mr Kelly's murder and was subsequently released without charge. However, he admitted to his role in a bomb attack in County Fermanagh in 1973. Police forwarded a file of evidence to the Director of Public Prosecutions (DPP) regarding Person 3's involvement in this matter. This investigation has been unable to establish if any action was taken in respect of this file.
- 6.44. Person 2 denied having been involved in Mr Kelly's murder but admitted to moving UDA/UFF weapons from County Fermanagh to Belfast in the early 1970s. He was released without charge regarding Mr Kelly's murder. Police forwarded a file of evidence to the DPP regarding Person 2's involvement in the movement of weapons. This investigation has been unable to establish if any action was taken in respect of this file.
- 6.45. At the conclusion of the PSNI re-investigation, Police Officer 9 submitted a report to his authorities, stating that he had completed all major lines of investigation. Any future lines of enquiry or reviews relating to Mr Kelly's murder were to be progressed by PSNI's Historical Enquiries Team (HET). HET did not issue a family report in this matter and currently there is no active investigation by PSNI.

## 7.0

# Security Force Links With Loyalist Groups

- 7.1. My legislative remit is limited to investigating the conduct of serving and former police officers. However, I am of the view that I cannot fully explain the rationale for my actions, decisions, and determinations in this public statement, without referring to the role of the military, primarily the Ulster Defence Regiment (UDR). The manner in which these matters were investigated by police is central to the issues arising from the family's complaint.
- 7.2. This investigation established that the RUC held intelligence indicating a number of named RUC officers had links to loyalist paramilitaries in the County Fermanagh area during the period in question. My investigators sought to establish what police knew of these links and what, if any, action was taken in respect of them.
- 7.3. My investigators reviewed intelligence indicating that a then serving police officer, Police Officer 6, was associating with, and supplying information to, loyalist paramilitaries. This investigation sought to establish what action police took in respect of this individual.
- 7.4. The police officers referred to in this Chapter have been highlighted because they featured within intelligence reports and/or other documentation examined as part of this investigation. I accept that the RUC were faced with unique challenges during the 'Troubles,' given that a number of police officers lived within communities where loyalist paramilitaries also resided. PSNI have advised my Office that they now have a policy in place regarding the disclosure of associations which

could be perceived to be inappropriate and the likely consequences for the failure to do so. This guidance did not exist in 1974.

### **RUC Officers Alleged Links with Loyalist Groups**

- 7.5. An area of this investigation focused on several former police officers with alleged links to loyalist groups, including paramilitaries. Some were suspected of having attended loyalist meetings, while others were linked to terrorist attacks.
- 7.6. On 1 August 1974, a list of 11 names, written in hand on a RUC traffic form, was anonymously forwarded to NICRA. The author stated that the 11 named individuals were involved in Mr Kelly's murder. The names included UDR Member 20 and Police Officer 13. My investigators found no record that this intelligence was shared with the 1974 RUC investigation team, nor that further action was taken by the RUC in respect of Police Officer 13.
- 7.7. In June 1975, police generated an intelligence report stating that a LDV unit were holding meetings at an identified location in County Fermanagh. RUC Officers 3, 4, and 5 attended these meetings, in addition to UDR Members 1, 7, 15, and 18. The meetings were chaired by a former RUC officer, Person 8. My investigators found no evidence that the RUC took any action in respect of this intelligence.
- 7.8. In January 2004, the PSNI re-investigation team interviewed Police Officers 3 and 5 as witnesses. Police Officer 3 stated that he had attended a number of LDV meetings in the Fermanagh area, where IRA members were discussed.
- 7.9. Police Officer 3 subsequently provided a witness statement to the PSNI re-investigation team. He stated that Person 8 chaired the meetings and named a number of other individuals, including Police Officer 7, who

attended them. He stated that Police Officer 7 and two other individuals were arrested on suspicion of a terrorist attack in County Fermanagh in March 1974. He believed that Person 8 organised this attack.

7.10. Police Officer 5 informed the PSNI re-investigation team that he had not attended LDV meetings and did not know Mr Kelly. He stated that the information police held regarding him was inaccurate. He stated that he knew Person 8, but only in a work capacity.

7.11. My investigators reviewed the personnel file of a former RUC officer, Person 8. A note was contained within the file, dated 18 October 1974, stating that he had come under notice, following the arrest of three men, who were found in possession of a firearm, in March 1974. The three men, who included Police Officer 7, were convicted of a number of criminal offences and imprisoned. There is no record that Person 8 was subject to a criminal investigation regarding this offence. However, the PSNI re-investigation team later recorded an account from a witness who indicated that, following the arrest of Police Officer 7 for this offence, Person 8's house was searched by the military. Person 8 was a serving police officer at the time of the search. His personnel file also referenced a note from an Assistant Chief Constable stating that his '*service should terminate*' in late 1974, after he came under '*unfavourable notice*' following the arrests. His employment with the RUC ended in late 1974.

### **Police Officer 6**

7.12. My investigators established that Police Officer 6 was a detective based in the Fermanagh area at the time of Mr Kelly's murder.

7.13. In early August 1975, RUC Special Branch received intelligence, marked NDD. The intelligence referred to a number of incidents, including Mr Kelly's murder. It stated that UDR Members 7 and 15 carried out the

murder. Both were interviewed as witnesses as part of the 1974 RUC investigation.

- 7.14. The intelligence added that Mr Kelly's murder was later discussed at a LDV meeting attended by UDR Members 1, 7, and 15. Police Officers 3 and 5 were also present at the meeting. All five individuals were part of a LDV unit, led by Person 8.
- 7.15. The intelligence continued that Police Officer 6 was close to UDR Member 7. The intelligence also indicated that Police Officer 6 had been seen in the area a number of days prior to a murder which had occurred in May 1975.<sup>31</sup> Parts of this intelligence were shared with CID. My investigators were unable to establish which parts of the intelligence were shared, and to which CID officers.
- 7.16. Other intelligence indicated that Police Officer 6 was passing information, about investigations he was working on, to loyalist paramilitaries. It added that he was notifying loyalists of upcoming police search and arrest operations.
- 7.17. My investigators interviewed Police Officer 6 under criminal caution in May 2022 for the offence of Misconduct in Public Office. This related to information supplied by an untested intelligence source that Police Officer 6 had provided information to loyalist paramilitaries. The interview did not relate directly to Mr Kelly's murder. Police Officer 6 stated, during under caution interview by my investigators, that he knew UDR Member 7 but he denied having been involved in any paramilitary activity.
- 7.18. Police Officer 6 stated that he worked on the Kelly murder investigation team. He stated that Police Officer 1 was seconded to Enniskillen CID due to the number of murders in the region. Police Officer 6 stated that it was a *'very hectic time.'*

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<sup>31</sup> Person 12 was murdered as he worked on a road widening scheme outside Irvinestown, County Fermanagh.

- 7.19. Police Officer 6 stated that his role was to remain impartial and serve both sides of the community. He treated all terrorists the same, regarding them as '*scum*.' He stated that he did not associate with loyalist paramilitaries and was not involved in Mr Kelly's murder. He knew UDR Member 7 but only to say 'hello' to in the street. He stated that the allegations were '*malicious rumours*' that he found hurtful.
- 7.20. Police Officer 6 stated that he knew Person 2 as he was a local terrorist suspect. He added that Person 2 drove past him on the day of Person 12's murder, close to where the attack took place. Police Officer 6 viewed this as unusual as Person 2 was out of his normal area. He reported this sighting to his authorities later the same day, which led to Person 2's arrest and subsequent conviction.
- 7.21. Police Officer 6 concluded that he was '*totally against terrorism from any angle*.' My investigators submitted a file of evidence to the PPS regarding Police Officer 6. The PPS subsequently directed that Police Officer 6 should not be prosecuted because of insufficient evidence.
- 7.22. This investigation has identified a number of then serving police officers who were linked, by intelligence, to the UVF and LDV in County Fermanagh during the 1974-1975 period. They included Police Officer 7, who was arrested and convicted of possession of a firearm, attempted arson, and malicious damage. This investigation found no record that Person 8 was subject to a criminal investigation, despite intelligence linking him to the same incident. However, his employment as a police officer was ended in December 1974 because of his links to Police Officer 7.
- 7.23. This investigation found no record that police took any action regarding Police Officers 3, 4, and 5, despite intelligence linking them to LDV meetings, also attended by individuals with links to a County Fermanagh UVF unit. At one of these meetings, Mr Kelly's murder was discussed.

Police Officer 3, when interviewed by the PSNI re-investigation team, accepted that he attended LDV meetings in 1974.

- 7.24. This investigation found no record that police took action in respect of Police Officer 6, despite intelligence linking him to UDR Member 7, who was linked to both the murders of Mr Kelly and Person 12. Police Officer 6 was also suspected of disclosing information to loyalist groups, yet continued to work within Enniskillen CID on a number of serious criminal enquiries. Special Branch records indicated that this intelligence was shared with the 'L' Division Commander, Police Officer 2, on 26 June 1975 and 16 July 1975. Police Officer 2 is now deceased. However, my investigators found no record that it was shared with the 1974 RUC investigation team.



## 8.0

# Complaints, Questions, and Concerns Raised by Mr Kelly's Family

- 8.1. Mr Kelly's family made a complaint to the former Police Ombudsman, Nuala O'Loan, in January 2002 raising a number of questions and concerns regarding the police investigation and other matters relating to his murder. These were as follows:

**That the Police Ombudsman investigate the conduct of the original RUC investigation, to ensure that all lines of enquiry were properly pursued. This included the treatment of suspects and enquiries relating to the origins of the weapon used to murder Mr Kelly**

- 8.2. My investigators reviewed all the available evidence and intelligence relating to the 1974 RUC investigation. They also interviewed Police Officer 1 in an attempt to obtain additional information relating to his investigative strategies and key decisions that he took during the course of the original police investigation. These enquiries identified a number of investigative failings that will be subject to comment in the concluding chapter of this public statement.

**That the Police Ombudsman establish if police were in possession of evidence or intelligence that, if it had been acted upon, could have prevented Mr Kelly's murder**

- 8.3. My investigators reviewed all the available evidence and intelligence held by police relating to Mr Kelly's murder. No intelligence was identified that could have directly forewarned of, or prevented, his murder.

**Police withheld evidence from the Coroner's Inquest into Mr Kelly's murder. They failed to disclose the presence of footprints found at the Badoney Road scene or a fingerprint mark that was recovered during the investigation**

8.4. The Coroner's Inquest into Mr Kelly's death was held in Enniskillen on 19 February 1975. An 'open verdict'<sup>32</sup> was returned. My investigators reviewed the relevant Inquest file, prepared by Police Officer 10, but could find no reference to the footwear marks found at the Badoney Road scene. It also made no reference to fingerprint marks having been recovered from Mr Kelly's car.

8.5. Police Officer 1, when interviewed by my investigators in 2018, stated that he could not recall the Inquest. He stated that information relating to the footwear was not included in the Inquest file as this was significant information that he did not wish to be released into the public domain at that time. To do so, could have alerted a suspect who could then have disposed of the footwear.

**Police failed to retain items recovered from various scenes, including a rug found in the burnt-out Mazda and a handkerchief found in Mr Kelly's hand when his body was recovered from Lough Eyes. The family also wanted to know what happened to a 'butcher's hook' that was found in the Mazda**

8.6. Mr Kelly's family referred to a 'butcher's hook,' that was recovered from his burnt-out Mazda car at Greenhill Quarry. They stated that it did not belong to Mr Kelly and asked what enquiries were conducted by police in respect of it.

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<sup>32</sup> An open verdict means that there is insufficient evidence to decide how the death came about and no other available verdict is appropriate, given the evidence available.

- 8.7. My investigators reviewed the available RUC documentation but could find no record of any item resembling a *'butcher's hook'* having been recovered from Mr Kelly's car. There was no record that it was submitted for forensic examination and it was not referred to in the statements of the relevant forensic scientists. My investigators were unable to identify the police officer who Mrs Kelly's brother pointed this item out to at the Greenhill Quarry scene.
- 8.8. The RUC investigation papers contained documentation that the relevant rug was seized and submitted to FSS on 14 August 1974. However, there is no record that it was subsequently forensically examined. My investigators have been unable to locate this item.
- 8.9. My investigators established that three handkerchiefs were recovered during the 1974 RUC investigation. Police Officer 1 documented in his hardback diary that he recovered a handkerchief at Geary Bridge on 30 July 1974. Other records indicated that police delivered this item to FSS on 1 August 1974. His relevant entry stated that it is was forensically examined with *'negative result.'*
- 8.10. The SOCO who examined the Lough Eyes scene documented that he recovered two handkerchiefs on 10 August 1974 which he submitted to FSS two days later. My investigators found no record that any of the three handkerchiefs were forensically examined.
- 8.11. My investigators reviewed photographs of the Lough Eyes scene. One of these showed Mr Kelly's body. He appeared to be clutching an item in his right hand. The available RUC investigation papers contained no reference to this item.
- 8.12. The pathologist who conducted the post mortem examination made no reference to an item being found in Mr Kelly's right hand. He stated that

*'most of the superficial epithelium<sup>33</sup> had detached or was detaching'* from Mr Kelly's body and the *'palmar skin had completely detached.'* Therefore, it is possible that the 'item' in Mr Kelly's right hand may have been a loose piece of skin.

**At least one of the two buttons found at Badoney Road did not come from Mr Kelly's shirt. Mrs Kelly believes that this type of button would have come from the inside of an outer coat**

- 8.13. A forensic examination of the shirt Mr Kelly was wearing at the time of his murder established that there were six button positions on its front, but only three buttons attached to it. The three remaining buttons consisted of one at the neck opening and the two bottom buttons. The sleeves of the shirt were rolled up but the fastening buttons remained attached to each cuff.
- 8.14. The two buttons recovered from the Badoney Road scene were forensically examined and compared against the three buttons attached to Mr Kelly's shirt. The first button recovered from the Badoney Road scene was identical to the button at the neck opening and the bottom button. The second recovered button was identical to those still attached to the cuffs. The examining scientist concluded that both of the recovered buttons originated from Mr Kelly's shirt.
- 8.15. The PSNI re-investigation team were unable to locate any of the items recovered during the course of the original RUC investigation. FSS records indicated that all the exhibits submitted to them were to be returned to Enniskillen RUC Station in October 1974.

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<sup>33</sup> The epithelium is the thin layer forming the outer layer of a body's surface.

**Police did not make enquiries regarding the green nylon rope and 56-pound weight found attached to Mr Kelly's body. An identified suspect had access to such ropes and weights but this matter was not investigated by police**

- 8.16. The rope recovered from Mr Kelly's body was forensically examined. It was six millimetres (mm) in diameter, and consisted of three strands of green-coloured polypropylene fibre. It was approximately 45 feet long but had been cut into two pieces, measuring 25 and 20 feet long.
- 8.17. Police established that the rope was similar to a type manufactured by Belfast Rope Works. An investigative action was raised for Police Officer 1 to visit Belfast Rope Works. Enquiries were also to be made with local boat owners on Lough Eyes to ascertain whether any rope, matching this description, was missing from their vessels.
- 8.18. The 1974 investigation team identified a number of businesses in Northern Ireland who sold the relevant type of rope. Police spoke to these retailers who stated that the rope was sold generally but they did not keep sales records. The origins of the rope have never been established.
- 8.19. The weight had been exposed to the weather and was extensively rusted and pitted. The lifting/handling bar was worn at both corners, suggesting that there had been friction at these points between the bar and another object. This could possibly have been caused by a rope over a lengthy period of time. The forensic scientist who examined the weight concluded that it was possible the weight may have been used as an anchor/mooring for a boat, or for securing an outhouse roof or haystack.
- 8.20. In 2003, Police Officer 1 informed the PSNI re-investigation team that such weights were common in that locality and he had been unable to establish its origins. In 2018, when interviewed by my investigators, he stated that he did not regard the weight as a viable line of enquiry, given

that every household had one in 1974. My investigators found no record of any RUC enquiries to establish the origins of the weight.

- 8.21. In late September 1975, RUC Special Branch received intelligence that Person 2 and five other named individuals carried out Mr Kelly's murder. The intelligence report noted that his body was then disposed of in *'the lake'* by two members of Portadown UVF, Person 10 and another unidentified individual. Person 10 had stolen the weight from an identified location in County Fermanagh. This intelligence was marked 'NDD', but Special Branch records indicated that it was disseminated to Police Officer 2, the 'L' Division Commander.
- 8.22. Police Officer 1 informed my investigators that he was not supplied with any intelligence relating to Mr Kelly's murder.

#### **Alibis for a number of UDR members were supplied by RUC officers**

- 8.23. The 1974 RUC investigation team interviewed, as witnesses, a number of UDR members regarding their movements on 23 and 24 July 1974. These are detailed in Chapter 5 of this public statement. My investigators found no record that police conducted enquiries with a number of identified alibi witnesses to corroborate these accounts. However, other witnesses were interviewed and statements recorded from them.
- 8.24. At approximately 10:30am on 25 July 1974, the day after Mr Kelly's abduction, UDR Member 20's car was found burnt-out near Eskra, County Tyrone. He had reported the car as stolen earlier that day. Following Mr Kelly's murder, rumours began to circulate within the local nationalist community that UDR Member 20 had been involved. There were also allegations that UDR duty sheets for the night of Mr Kelly's abduction had been destroyed. My investigators found no record that police, in 1974, conducted enquiries regarding the missing duty sheets.

- 8.25. My investigators reviewed an entry in Police Officer 1's hardback diary that UDR Member 1 was interviewed by military police personnel at a military establishment in Omagh, on the evening of 23 July 1974. He then went to the Camp bar with colleagues. This entry was based on an account provided by UDR Member 1 to police. My investigators found no record that the relevant military police personnel were interviewed by police about this matter.
- 8.26. Police Officer 1 later informed the PSNI re-investigation team that a RUC officer, Police Officer 11, supported UDR Member 20's account that he had been drinking with him in a bar on the night of Mr Kelly's murder. My investigators found no record that witness statements were recorded from UDR Member 20 or RUC Officer 11 during the 1974 RUC investigation.
- 8.27. The PSNI re-investigation team traced and interviewed Police Officer 11. He stated that he could not recall being interviewed by the 1974 RUC investigation team, in respect of providing an alibi for UDR Member 20. He was aware that he was a UDR member but knew nothing about either the theft of UDR Member 20's car or Mr Kelly's abduction and murder. There is no record that any other police officer provided alibi evidence in respect of the 1974 murder investigation.

**The car of an UDR member was found burnt-out on the morning of 25 July 1974 on a road between Badoney Road and the UDR member's house. Did police assist this individual with a subsequent insurance claim for the burnt-out vehicle?**

- 8.28. My investigators reviewed the relevant RUC investigation papers and established that UDR Member 20's burnt-out car was examined by a forensic scientist at Omagh RUC Station on 26 July 1974. He located a stain inside the vehicle but determined that it was not blood, but grease-like in nature. He recorded that he did not identify any evidence that assisted the investigation into Mr Kelly's disappearance.

8.29. My investigators found no other record of enquiries having been conducted by the 1974 RUC investigation team in respect of UDR Member 20 or his burnt-out vehicle.

8.30. Police Officer 1 informed the PSNI re-investigation team that he had an interest in UDR Member 20's burnt-out vehicle. However, he believed that it was primarily forensically examined in respect of the RUC theft and arson investigation. He believed that UDR Member 20 provided a witness statement in respect of the matter, which would have formed part of his subsequent insurance claim.

**Police failed to investigate a number of individuals who were linked to Mr Kelly's murder, because they were UDR members. The family specifically referred to UDR Members 20 and 24. If this was the case then it would amount to collusion.**

8.31. My investigators reviewed the relevant RUC investigation papers in respect of enquiries conducted in 1974 relating to a number of UDR members. These enquiries are detailed in Chapter 5 of this public statement. Police Officer 1 informed my investigators, when interviewed in June 2018, that there was insufficient evidence to warrant any of the UDR members being given suspect status. This included UDR Member 20. He added that there was no information that could '*break the chain*' of them providing alibi accounts for each other. My investigators found no evidence or intelligence linking UDR Member 24 to Mr Kelly's murder. Police Officer 1, in response to the Maxwellisation process, stated that he '*categorically refuted*' that he displayed bias towards UDR members during his investigation.

8.32. There is no record that police interviewed UDR Member 5 and obtained an account of his movements on the night of 23-24 July 1974. Police recorded witness statements from 18 UDR members, and interviewed



two others, all of whom provided accounts of their movements on the night in question. However, in my view the RUC investigation team did not adequately investigate the alibis provided by the majority of these UDR members. In his final investigation report, Police Officer 9 records as follows – *‘the statements obtained in 1974 amount to one or two paragraphs and self alibi one another. They were not tested by the 1974 team and obtained two weeks after Kelly disappeared.’*

- 8.33. There were a number of intelligence reports held by RUC Special Branch linking UDR members to the murder of Mr Kelly. These reports were shared with Police Officer 2. However, Police Officer 1 has consistently stated, both to the PSNI re-investigation team and also my investigators, that he did not receive any intelligence in respect of Mr Kelly’s murder. I will consider the family’s complaint of collusion in detail in Chapter 11 of this public statement.

**Police informed Mrs Kelly that they needed to examine her husband’s body as this would help them discover who murdered him. This turned out to be untrue, as Mr Kelly’s murderers have never been brought to justice**

- 8.34. A post mortem examination was carried out following the recovery of Mr Kelly’s body from Lough Eyes. This was conducted by a qualified pathologist who then prepared a report in respect of his findings. The post mortem examination would have been conducted at the request of the Coroner. A copy of the relevant post mortem examination report was provided to police for the purposes of the murder investigation. This was standard practice at the time and remains so to this day.

**Following the murder, Mrs Kelly was verbally abused by members of the security forces at UDR vehicle checkpoints (VCPs)**

- 8.35. The family have been informed that this investigation did not consider this matter, as my Office has no jurisdiction to investigate complaints against members of the military.

**In August 1974, two members of the Kelly family were arrested on suspicion of the murder of Detective Inspector Peter Flanagan. The Kelly family wished to know the grounds for their arrests, as it felt like a deliberate smear or vendetta, on the part of police, to justify Mr Kelly's murder**

- 8.36. At approximately 11:30am on 23 August 1974, Detective Inspector Flanagan was in the Diamond Bar, George Street, Omagh, when he was murdered by IRA gunmen. He was off-duty at the time. My investigators reviewed the available RUC investigation papers but found no reference to either family member. Another individual was subsequently convicted of Detective Inspector Flanagan's murder.
- 8.37. Police Officer 1 informed my investigators that he was the SIO leading the investigation of Detective Inspector Flanagan's murder. He stated that neither family member were arrested on suspicion of the murder, or linked to it in any way. My investigators found no evidence or intelligence linking them to Detective Inspector Flanagan's murder.

**A former UDR member alleged that another individual was present during Mr Kelly's murder. This individual was interviewed by police, but it is unclear if this was under criminal caution. The family wished to know if any UDR members were interviewed under criminal caution about Mr Kelly's murder**

- 8.38. No UDR members were interviewed under criminal caution during the course of the 1974 RUC investigation. The PSNI re-investigation arrested and interviewed UDR Members 7, 15, 20, 22, and 23 under criminal caution on suspicion of Mr Kelly's murder. They were all subsequently released without charge.

**The Kelly family believe that a former UDR member, Person 11, was murdered. No toxicology tests were carried out. The pathologist who conducted the relevant post mortem examination later informed their solicitor that he would have carried out a full examination had he known the full circumstances of the death**

- 8.39. The PSNI re-investigation team contacted the pathologist who conducted the relevant post mortem examination. He stated that he had found nothing to suggest the death of Person 11 was suspicious.

**Mr Kelly's family also raised concerns about when a relative of Person 11 last saw him alive. The relative initially stated that she saw him the evening before his body was found. However, the pathologist stated that Person 11 had been dead for a number of days before his body was discovered**

- 8.41. Police re-interviewed the relative who stated that she had been in a state of shock when initially interviewed by police. She clarified that she last saw Person 11 alive three days before his body was discovered. Police investigating Person 11's death did not regard it as suspicious.

**Mr Kelly's family alleged that police colluded in the murder by not investigating a number of suspects because they were UDR members**

- 8.42. I am unable to determine the allegation that there was '*collusion*' in Mr Kelly's murder. However, I will outline my views as to whether the conduct of police officers, as alleged by his family, is indicative of '*collusive behaviours*' in Chapter 11 of this public statement.

## 9.0

### Relevant Rules and Standards

- 9.1. The Association of Chief Police Officers (ACPO) first published a *'Murder Investigation Manual'* in September 1998. This set out a framework for murder investigations and is designed to aid and guide the SIO throughout the investigation process. However, this was not in place at the time of Mr Kelly's murder.
- 9.2. It was not until January 1984 that the RUC implemented the *'Major Investigation Incident Room Standardised Administrative Procedures'* (MIRSAP). This formalised management structures and processes within Major Incident Rooms, acknowledging that it was essential for major investigations to have a structure of management which was immediately recognisable and understood by all police officers.
- 9.3. MIRSAP was designed to provide the SIO with *'an accurate record of all relevant information relating to the investigation, together with the enquiries made and results obtained.'* The system was also responsible for *'recording and linking all information...so that it may be readily retrieved to aid the SIO and their team to establish priorities. This will ensure that all enquiries are made efficiently, and the results analysed.'*
- 9.4. The recording of information entering Major Incident Rooms was undertaken by a standardised manual procedure known as MIRIAM (Major Incident Room Indexing and Action Management). In March 1988, the RUC introduced a computerised system known as HOLMES (Home Office Large Major Enquiry System), for the investigation of serious crimes.

9.5. At the time of the 1974 RUC investigation, none of these policies and procedures were in place. Police Officer 1 had limited investigative resources and used a hardback diary to record investigative actions and key decisions that he made during the course of the investigation. The PSNI re-investigation was managed on the HOLMES system and was progressed by a dedicated investigation team, headed by a SIO and DSIO.

9.6. At the time of the murder in 1974, there was no RUC Code of Ethics in place for police officers. However, the duties of a police officer were detailed in the RUC Code of Conduct and RUC Investigation Manual (RUC Manual).

9.7. The relevant extracts from RUC Manual relating to the investigation of murder and other serious assaults stated that:

*'The principal points to be attended to in the investigation of a case of murder are:*

*(1) Speedy communication of all information available.*

*(2) Arrangements for the pursuit of the criminal.*

*(3) Preservation of the scene until such time as it is properly examined.*

*(4) Examination of the scene.*

*(5) Post-mortem examination.*

*(6) Interviewing and examination of suspect(s).'*

9.8. *'The principal duty of the police is to apprehend the culprit. If immediate action on the part of the person in part of the sub-district is likely to achieve this, such action should be taken...'*

- 9.9. *'The preservation of the scene of a murder or serious assault for subsequent detailed examination is one of the most important duties of the police...It cannot be too strongly emphasised that any interference of the scene pending expert examination is likely to result in the destruction of valuable clues by even the best disposed.'*
- 9.10. *'The examination of the scene of a murder or serious assault is part of the investigation which, if conducted carefully, may yield clues of the utmost importance. It is essential, therefore, that it should be carried out by experienced trained police under the best conditions obtainable as soon as possible after the discovery of the crime.'*
- 9.11. *'A detailed record in diary form of all duties carried out by all persons engaged in the investigation giving date, time, place and nature of the duty should be kept by the Officer-in-charge during all stages of the investigation.'*
- 9.12. The RUC Manual stated that, where a crime had been committed, police should immediately commence an investigation. Further, where no direct witness evidence existed, police were required to interview all individuals who might be able to provide relevant information. It emphasised that:

*'The primary duty of a Police Force is the preservation of the peace and the prevention and detection of crime.'*





## 10.0

# Procedural Fairness

### Introduction

- 10.1. In concluding this public statement, I am mindful of the need to ensure procedural fairness to those who may be affected by its content. Mr Justice McCloskey (as then) in the High Court in *Re Hawthorne & White*<sup>34</sup> provided guidance to this Office as to what was generally required. In particular, I have considered relevant passages from that judgment which I outline here for ease of reference, highlighting the requirements of procedural fairness in this context:

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

*[114] The somewhat different challenge brought by Mr White, imbued by corporate and broader ingredients, gives rise to the following conclusion, declaratory in nature. Where the Police Ombudsman, acting within the confines of his statutory powers, proposes to promulgate a "public statement" which is critical of or otherwise adverse to certain persons our fundamental requirements, rooted in*

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<sup>34</sup> [2018] NIQB 5.

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

10.2. This process, sometimes called 'Maxwellisation', involves four fundamental requirements as outlined by Mr Justice McCloskey:

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

## **The 'Maxwellisation' Process**

- 10.3. In order to give the officers concerned a fair opportunity to respond to any proposed criticisms in this public statement, correspondence was forwarded on 8 February 2023 to Police Officer 1 and delivered to Police Officer 6 on 14 February 2023 with extracts from this public statement that impinged directly or indirectly on them, seeking their comments. As is standard practice in my Office, a period of 30 days from receipt of that correspondence was provided in order for the individuals to respond.
- 10.4. Police Officer 1 provided a written response to my Office on 3 April 2023. A solicitor acting on behalf of Police Officer 6 made representations to my Office on 19 March 2023 and 21 March 2023 respectively, raising a number of issues and concerns about the identification of his client in the draft public statement. Police Officer 6 did not provide full responses to the draft extracts from the public statement that related to him. The contents of the correspondence from Police Officer 1 was the subject of careful and conscientious consideration by me. Where I consider it appropriate, his response has been reflected in this public statement. My Office has engaged in correspondence with the solicitor acting on behalf of Police Officer 6 to address his concerns about identifiability.

### **Response from Police Officer 1**

- 10.5. Police Officer 1 stated that he was promoted to the rank of Detective Inspector in November 1973 and transferred to RUC 'M' Division, where he was based at Omagh RUC Station. He was responsible for the Omagh and Cookstown Sub-Divisions, but was also required to cover 'L' Division, if requested.

- 10.6. The Omagh and Cookstown CID offices consisted of one Detective Sergeant and two Detective Constables each, although his Detective Sergeant at Omagh RUC Station was transferred out of 'M' Division, shortly after Police Officer 1's arrival. There were two Detective Constables based at Enniskillen RUC Station.
- 10.7. Police Officer 1 stated that these staffing levels were not equipped to deal with the rising level of terrorist activity in the area. He added that he had no previous experience of an investigation of the '*magnitude*' of Mr Kelly's murder. He stated that the security situation at the time necessitated police officers having to work in pairs and avoid routines. This meant that investigative enquiries were slow and time-consuming.
- 10.8. Police Officer 1 stated that he wished to '*categorically refute*' the allegation that he had displayed investigative bias during the murder investigation. He added that his fundamental attitude was that any individual who resorted to violence to enforce their views was a terrorist. He had no sympathy for such individuals, adding that he would have done everything he could to have stopped them.
- 10.9. Police Officer 1 referred to the manner in which he had handled two anonymous telephone calls during the murder investigation, to evidence that he had not displayed investigative bias. He stated that on the first occasion, the caller was intoxicated but provided the name of an individual alleged to have been involved in Mr Kelly's murder. The caller also provided unrelated information which was found to be false. Police Officer 1 concluded at the time that this inaccurate information, combined with the caller's intoxicated state, undermined the credibility of the information that they had supplied relating to Mr Kelly's murder.

- 10.10. However, he was prepared to facilitate a second telephone call with the same individual. On this occasion, Police Officer 1 stated that he discarded standard security precautions by driving to Enniskillen RUC Station along a main road at nighttime in order to take the call. Throughout the journey there and back to Omagh, he drove with his police issue weapon in his hand. He did not know if the telephone call was genuine or a means to ambush him, but was prepared to take the risk in order to obtain credible information that would advance the investigation of Mr Kelly's murder. He concluded that, had he been seeking to protect members of the security forces, he would not have driven to Enniskillen RUC Station given the serious security risk.
- 10.11. Police Officer 1 further referred to the fatal shooting, on 7 August 1974, of Michael McElhone outside Pomeroy, County Tyrone, by a member of the security forces. He stated that he led this investigation which resulted in a soldier being charged with, and standing trial for, Mr McElhone's murder. Police Officer 1 stated that this was another example of his not displaying investigative bias towards members of the security forces.
- 10.12. He stated that he investigated an incident in South Belfast in the mid-1980s where members of the security forces opened fire on a vehicle that had driven through a Vehicle Check Point (VCP), killing the driver. As part of his investigation, he seized all the weapons and ammunition of the relevant security force members, in order to establish who had fired the fatal shot. He stated that he would not have conducted these enquiries if he had investigative bias. He added that he would not have assisted the 2003 PSNI team re-investigating Mr Kelly's murder if he had investigative bias.

10.13. Police Officer 1 concluded that his actions and decisions during the investigation of Mr Kelly's murder were not indicative of investigative bias but instead as a result of:

- I. His lack of experience of an investigation of this magnitude;
- II. A lack of available policing resources;
- III. A lack of support from senior RUC officers;
- IV. A lack of credible intelligence, as opposed to rumours and gossip;
- V. His involvement in a number of other major investigations at, or around, the same time as Mr Kelly's murder; and
- VI. The effects of ongoing stress and fatigue.

#### **Response from Police Officer 6**

10.14. Although Police Officer 6 was given an opportunity to respond to the specific paragraphs in an earlier draft of this public statement, no detailed response was provided by him. However, solicitors acting on behalf of Police Officer 6 raised concerns about the potential identifiability of their client in a final public statement and the potential risk to him in consequence. I have addressed the concerns about identifiability where appropriate in this public statement.

#### **Summary**

10.15. I have carefully considered the issues and concerns of Police Officers 1 and 6 and incorporated them, where I believe it is appropriate, within the body of this public statement as procedural justice requires. I believe that the contents of this public statement accurately reflect the Police Ombudsman investigation of the complaints of Mr Kelly's family. The views I have expressed in relation to the conduct of police officers within this public statement are based on evidence and other information, gathered during the course of this investigation. I am

satisfied that I have the power to publish this statement on the investigation into this complaint, pursuant to section 62 of the 1998 Act.

10.16. I would like to thank Police Officer 1 for bringing matters to my attention in relation to his role and the resourcing of the 1974 RUC murder investigation. At every stage my investigators have sought to engage with former police officers in order to understand the environment within which they investigated serious crime. I accept that former RUC officers faced significant challenges and pressures. I have also sought to obtain and review the relevant legislation, standards, and guidance that existed in order to understand policing procedures and policies at the time. I believe that this has resulted in a fair and impartial investigation, underpinned by evidence-based conclusions.





# 11.0

## Conclusions

### The Role of the Police Ombudsman

- 11.1. My role as Police Ombudsman is set out clearly in Part VII of the 1998 Act. In the Court of Appeal judgment in *Re Hawthorne and White's application*,<sup>35</sup> the Court ruled that the Police Ombudsman has no role in adjudicating on a complaint of criminality or misconduct. The decisions and determinations of these issues are matters for the Public Prosecution Service (PPS) and criminal courts in relation to allegations of criminality. In this instance, there was no evidence to justify a recommendation to the PPS that criminal proceedings be brought against any police officer. The main purpose of this public statement, therefore, is to address the questions and concerns raised by Mr Kelly's family.
- 11.2. In accordance with my statutory functions, I am also obliged to consider the question of disciplinary proceedings. However, due to the relevant police officers being retired, a misconduct investigation was not possible. This would normally include a misconduct interview where the relevant officers would be asked to account for their decisions and actions after a misconduct caution. As stated by the Court of Appeal, it is not my role to determine whether or not police officers are guilty of misconduct. That is a matter for PSNI's Professional Standards Department (PSD) and the relevant police disciplinary panel in respect of serving police officers.
- 11.3. The investigation of complaints about historical matters is a challenge due to the passage of time and unavailability of relevant witnesses and documentation. However, my investigators gathered substantial evidence and other information during the course of this investigation. This included

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<sup>35</sup> *Re Hawthorne and White's Application for Judicial Review*. [2020] NICA 33.

witness statements, police documentation, and other material within the public domain. I am unable to compel retired police officers to assist investigations in a witness capacity. However, a number of former police officers co-operated with this investigation. I am grateful for their assistance.

- 11.4. I am mindful of the context within which the original police investigation was conducted and the rules and standards that existed in 1974, particularly relating to the requirements on those conducting murder investigations. There are now a range of legal instruments governing police actions and decisions, including the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000. Most significantly, in terms of policing standards and practices, the Major Incident Room Standardised Administrative Procedure (MIRSAP) was introduced in 1981 and adopted by the RUC in 1984. The Murder Investigation Manual was introduced in 1998 and operated together with the new standard training programme for Senior Investigating Officers.

PSNI's Crime Operations Department was established in 2004. PSNI have stated that *'this department is led by a single Assistant Chief Constable thereby ensuring consistency, transparency, and accountability across all investigative and intelligence functions within PSNI.'*

Although RUC Regulations<sup>36</sup> in 1973 provided for a Discipline Code for officers, the PSNI Code of Ethics was first introduced in 2003 and amended in 2008.

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<sup>36</sup> Royal Ulster Constabulary: Discipline and Disciplinary Appeals Regulations 1973. No. 248 Schedule 1

11.5. At the time of Mr Kelly's murder, there was a less developed regulatory framework governing policing practices. Since 1974, dramatic changes have taken place within the political environment, legal frameworks governing policing in Northern Ireland, and police accountability mechanisms. Those changes include:

- I. The Police (Northern Ireland) Act 1998;
- II. The Good Friday Agreement 1998;
- III. The Human Rights Act 1998;
- IV. The Patten Report 1999, which resulted in the creation of the PSNI;
- V. The Regulation of Investigatory Powers Act 2000 (repealed in part by the Investigatory Powers Act 2016);
- VI. The creation of the Police Ombudsman for Northern Ireland in 2000 and the establishment of the Northern Ireland Policing Board (NIPB) in 2001.

11.6. Mr Kelly's family first contacted the former Police Ombudsman Nuala O'Loan in January 2002 and the complaint was accepted for investigation in 2003. My investigators subsequently recorded a statement of complaint from a family member in 2018, where they raised a number of questions and concerns regarding the actions of police before, and after, Mr Kelly's murder.

11.7. I must act lawfully and fairly in the exercise of my functions as provided for under Part VII of the 1998 Act. The Court of Appeal in *re Hawthorne and White*<sup>37</sup> has unanimously ruled on the powers of the Police Ombudsman under that legislation. This includes how the Ombudsman will address complaints about the actions of former RUC officers.

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<sup>37</sup> [2020] NICA 33.

- 11.8. In that context, I have considered the questions and concerns raised by Mr Kelly's family in relation to the RUC investigation of his abduction and murder and also concerns about '*collusion*'. I have carefully assessed the evidence and other information gathered during this investigation. I have detailed a number of failings by police in this public statement.

### **Investigative Failings**

- 11.9. Central to the family's complaint are allegations that police failed to thoroughly investigate Mr Kelly's murder and in particular to examine the involvement of a number of individuals linked to Mr Kelly's murder because they were UDR members. In relation to the complaint about the lack of an effective investigation into Mr Kelly's murder, I conclude that the RUC investigation was wholly inadequate and failed in a number of respects. These are outlined below.

### **Failure to verify UDR Alibi Witness Accounts**

- 11.10. From an early stage of the RUC investigation, there were rumours within the local nationalist community that UDR members had been involved in Mr Kelly's abduction and murder. These rumours were referred to in a newspaper article published in August 1974. On 25 July 1974, a Special Branch report detailing the progress of the investigation was forwarded to RUC Headquarters. This commented on rumours that UDR members had been involved. It also detailed rumours that UDR Member 20 had destroyed relevant UDR log sheets and patrol records.
- 11.11. Original records maintained by Police Officer 1 indicated that he considered the involvement of UDR members in Mr Kelly's abduction and murder as a significant line of enquiry. He subsequently identified and interviewed 20 UDR members who may have been on duty on the night of 23/24 July 1974. The purpose of these interviews was to establish the

movements of the relevant UDR members at the time. Police recorded witness statements from 18 of these UDR members.

- 11.12. In my view the witness statements were brief and lacked evidential content, mainly consisting of one or two paragraphs. Police did not keep detailed records of individuals who may have verified the accounts of relevant UDR members.
- 11.13. In my view Police Officer 1 ought to have assessed the content of the alibis provided by UDR members in order to test the credibility of their accounts. The main objective of these enquiries was to establish if UDR members had provided truthful accounts and could, therefore, be eliminated from involvement in Mr Kelly's abduction and murder. Only alibis provided by a number of UDR members, who had been on patrol in the Dromore area of County Tyrone on the relevant night, were checked. It is my view that Police Officer 1 omitted to verify alibis provided by other UDR members.
- 11.14. There is no record that military police personnel, who interviewed a number of UDR members in Omagh on the evening of 23 July 1974, were interviewed by police. Police Officer 1 ought also to have interviewed relatives of UDR members and other members of the public, who may have corroborated their accounts.
- 11.15. In my view, Police Officer 1 ought to have raised actions to recover military records and obtain relevant witness statements, where appropriate. These enquiries ought to have been raised by police and the results recorded.
- 11.16. It is my view that had Police Officer 1 completed these enquiries, his investigation may have led to the identification of potential suspects, in respect of whom he could have focused further police activity.

- 11.17. It is my view that Police Officer 1's failures in this regard impacted negatively on the ability of the murder investigation to identify the perpetrators of this murder. In particular, this investigation has established that 18 of the interviewed UDR members were not eliminated from the investigation to a satisfactory standard. I have concluded that these failings significantly impeded the investigation of Mr Kelly's murder.
- 11.18. It is my view that Police Officer 1 ought to have considered using the Northern Ireland (Emergency Provisions) Act 1973<sup>38</sup> to arrest, without warrant, and detain those UDR members who could not be eliminated. This would have permitted police to promptly enter and search all relevant premises in order to recover items of potential evidential value. Police, using this legislation, could also have examined vehicles and obtained forensic evidence to compare against footwear marks and tyre marks recovered from crime scenes. Ballistic comparisons could also have been made in respect of any recovered firearms and ammunition. Fingerprints recovered from Mr Kelly's car could have been compared against those of identified suspects.
- 11.19. In 1975, RUC Special Branch received intelligence naming a number of UDR members who had been interviewed in 1974 by police. This intelligence indicated that these UDR members were involved in Mr Kelly's murder. Police Officer 1 has consistently asserted that he did not receive this intelligence. I accept this assertion.
- 11.20. In January 1979, Police Officer 1 submitted a report to Police Officer 2. This report on the murder investigation was carefully considered by my investigators. Police Officer 1 stated that *'The suggestion of UDR involvement appears to be an attempt to blame someone and add fuel to a smear campaign in operation around Trillick at that time.'* I am of the view that this comment was indicative of investigative bias on the part of Police Officer 1, in relation to the potential involvement of UDR members

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<sup>38</sup> Section 10 of the Northern Ireland Emergency Provisions Act 1973.

in Mr Kelly's murder. As the officer in charge of the murder investigation, Police Officer 1 ought to have kept an open mind, in my view. Further, this comment contradicted his early focus on interviewing UDR members. Police Officer 1, during the Maxwellisation process, '*categorically refuted*' that he displayed investigative bias.

- 11.21. It is noteworthy that in his final investigation report, Police Officer 9 records as follows – '*the statements obtained in 1974 amount to one or two paragraphs and self alibi one another. They were not tested by the 1974 team and obtained two weeks after Kelly disappeared.*'

### **The Failure to link Cases**

- 11.22. I am of the view that the following incidents should have been considered as precursor events which were relevant to Mr Kelly's abduction and murder:

- I. The murder of UDR Private Robert Noel Jameson at approximately 5:45pm on 17 January 1974. The IRA later claimed responsibility for his murder and warned other UDR members to resign;
- II. At approximately 11:15pm on 18 January 1974, in response to Mr Jameson's murder, three gunmen opened fire on the Corner Bar, in Trillick, injuring three customers inside. A ballistic examination of the scene indicated that three different weapons had been used in the attack. A .45 bullet was recovered from the bar area. On the same evening, a gun attack occurred at two premises in Enniskillen, a home and business belonging to the same individual. The same weapon, a .455 revolver, was used in all three attacks;
- III. At approximately 02:00am on 21 April 1974, the body of a 42 year old local garage proprietor, James Murphy, was discovered on the forecourt of his garage, situated in Kinawley, County Fermanagh, outside Enniskillen. Mr Murphy, who was a member of Sinn Féin, had been shot four times in the chest with a .455 revolver. Three

.455 bullets were recovered from the scene. The RUC suspected that the UVF were responsible.

- 11.23. A forensic scientist stated that a .455 calibre Colt type revolver was used in the gun attack at The Corner Bar on 18 January 1974 and in Mr Murphy's murder. Therefore, the ballistic examination linked these two attacks with the attacks on the Enniskillen premises by the identification of the same .455 calibre weapon.
- 11.24. Three months later, Mr Kelly was abducted and murdered following the completion of his evening's work as manager of The Corner Bar in Trillick. Similarly, a .455 revolver was used to murder Mr Kelly, although not the same weapon referred to above.
- 11.25. In May 1975, Person 12, whose relatives were suspected of being connected to the IRA, was murdered at a road construction site at Scarbrae, Irvinestown. Person 2, who was regarded as the Officer Commanding of Fermanagh UVF, was arrested and, during police interviews, admitted being responsible for the murder. He appeared at Belfast City Commission in January 1976, where he pleaded guilty to the murder and associated firearms offences, receiving life imprisonment. Following the arrest of Person 2, the number of paramilitary attacks in the Fermanagh area virtually ceased.
- 11.26. It is noteworthy that Police Officer 1 did not record any information in the original RUC investigation papers which indicated that he recognised, or was aware of, the ballistic links referred to above. He did not refer to any linked cases in either his August 1974 investigation report, nor in the 1979 report, where he recorded his ongoing consideration of motives for Mr Kelly's murder.



- 11.27. By May 1975, Person 2 had been arrested and admitted to a sectarian murder. Police Officer 1 did not refer to this in his January 1979 report. My investigators have reviewed intelligence, received by RUC Special Branch in 1975, which named Person 2, and others, as responsible for Mr Kelly's murder.
- 11.28. In 1975, Person 2 was arrested and subsequently convicted of the murder of Person 12. This investigation has established significant links between members of Fermanagh UVF and those loyalist paramilitary attacks referred to above, including Mr Kelly's murder. Although I accept that Police Officer 1 did not have specific intelligence, it is of concern that he did not consider the involvement of Fermanagh UVF members in Mr Kelly's murder. I am critical of Police Officer 1's failures in this respect, given the potential links to the relevant precursor incidents. Further, Police Officer 1 does not refer to the murder of Person 12 in his 1979 report to his authorities.

## **Forensic Failings**

### **Failure to make enquiries about the Footwear Marks**

- 11.29. Police identified two footwear marks at the Badoney Road scene. A plaster cast impression of one of the marks was taken and forensically examined. This established that the impression was made by a heavy duty rubber-soled shoe or boot. The pattern was a type normally associated with rubber Wellington-type boots worn by members of the security forces.
- 11.30. Enquiries conducted by the PSNI re-investigation team established that, while it was a common type of boot, it was worn by members of the security forces. My investigators found no record that the 1974 RUC investigation team carried out any further enquiries regarding the footwear marks.

- 11.31. The PSNI re-investigation team located photographs of two footwear impressions, left and right, found at the Badoney Road scene. Police Officer 1 confirmed to the PSNI re-investigation that two footwear impressions were found at the scene. However, there is only a record of one plaster cast impression having been taken. During the subsequent Maxwellisation process, Police Officer 1 stated that it was possible that the second footwear impression may not have been stable enough for a plaster cast impression to have been taken.
- 11.32. Police Officer 1 informed my investigators in 2018 that this type of boot was very common and was worn by farmers as well as members of the security forces. He stated that there was insufficient evidence and intelligence to justify police seizing the footwear of the UDR members of interest for comparison purposes.
- 11.33. I am of the view that this was a failed investigative opportunity. A number of UDR members were suspected, at an early stage of the investigation, of having been involved in Mr Kelly's murder. Therefore, further enquiries ought to have been made in respect of the footwear marks located at the Badoney Road scene against the limited pool of UDR members under suspicion. Additional evidence ought to have been gathered that may have identified suspects and advanced the police investigation.

### **Failure to recover the Boat at Lough Eyes**

- 11.34. A search of the Lough Eyes scene located a piece of material attached to the underside of a boat. The piece of material was forensically examined and found to have come from Mr Kelly's shirt that he had been wearing at the time of his abduction. Despite this, the boat was not recovered or photographed at the scene, as part of the RUC investigation. Police identified 18 boat owners and fishermen who used Lough Eyes, and interviewed 14 of them. There is no indication, within the available RUC

investigation papers, that the individual who owned the boat, from where the piece of material attached to its hull was recovered, was identified and interviewed by police.

11.35. I am of the view that there were a number of investigative failings in relation to these items and opportunities were missed to develop further lines of enquiry. Firstly, given the location of the material attached to its underside, that matched a piece missing from Mr Kelly's shirt, the boat may have been used when disposing of Mr Kelly's body. I am of the view that the boat ought to have been recovered and forensically examined. This may have secured evidence which could have opened other lines of enquiry and advanced the police investigation.

#### **No Record of Enquiries relating to Fingerprints**

11.36. My investigators reviewed the RUC fingerprint file that referred to six fingerprint marks being recovered from a burnt-out vehicle at Tullyreagh Crossroads, Brookeborough, County Fermanagh. *'Very fragmentary'* fingerprint marks were recovered from the vehicle's metal stripes and door handles. The file indicated that the vehicle was Mr Kelly's Mazda car.

11.37. The 1974 RUC investigation papers included correspondence, dated 10 September 1974, from RUC Fingerprint Branch to Enniskillen CID stating that the fingerprint marks recovered from Mr Kelly's car were available for comparison. It asked that fingerprint marks be obtained from Mrs Kelly and other individuals who had legitimate access to the vehicle. My investigators found no record that these enquiries were carried out by police.

11.38. I am of the view that this was an investigative failing as there may have been viable lines of enquiry that provided opportunities to consider and eliminate potential suspects, leading to arrests. Police ought to have attempted to obtain fingerprint impressions from individuals who had legitimate access to Mr Kelly's car for the purposes of eliminating them. In 1974, as it is today, this was standard investigative practice.

### **The Non-dissemination of Intelligence**

11.39. My investigators reviewed all intelligence held by police linking UDR members and other individuals to Mr Kelly's abduction and murder. A number of relevant pieces of intelligence were recorded as having been shared with the 'L' Division Commander, Police Officer 2, and Enniskillen CID. My investigators found no intelligence that could have directly forewarned of, or prevented, Mr Kelly's murder.

11.40. On 28 July 1974, intelligence was received by RUC Special Branch from a military source that Mr Kelly had an argument with a UDR patrol a number of days before his abduction. The intelligence indicated that members of the local nationalist community believed that UDR members were involved in his abduction. My investigators found no record that this intelligence was shared with the 1974 RUC investigation team.

11.41. In early August 1975, RUC Special Branch received further intelligence, which they marked as NDD. This intelligence referred to a number of incidents, including Mr Kelly's murder. It stated that UDR Members 7 and 15 carried out the murder. My investigators found no record that this intelligence was shared with the 1974 RUC investigation team. Police Officer 1 informed my investigators that he received no intelligence relating to Mr Kelly's murder. However, it is noteworthy that UDR Members 7 and 15 had earlier been interviewed as witnesses by the murder investigation team.

- 11.42. Mr Kelly's murder was later discussed at a LDV meeting that UDR Members 1, 7, and 15 attended. Police Officers 3 and 5 were also present at the meeting. All five individuals were part of a LDV unit, led by Person 8. My investigators found no record that this intelligence was shared with the 1974 RUC investigation team.
- 11.43. When Mr Kelly's body was recovered from Lough Eyes on 10 August 1974, it was attached by a rope to a 56-pound weight. Police Officer 1 informed the PSNI re-investigation team that these weights were common and he had been unable to establish its origins. In 2018, when interviewed by my investigators, he stated that he did not consider the weight was a viable line of enquiry, given every household in the area had one in 1974.
- 11.44. However, in late September 1975, RUC Special Branch received intelligence that Person 2, Person 9, and four other named individuals carried out Mr Kelly's murder. His body was then disposed of in *'the lake'* by two members of Portadown UVF, Person 10 and another unidentified individual. The intelligence indicated that Person 10 had stolen the weight from an identified location in County Fermanagh. This intelligence was marked by RUC Special Branch as 'NDD.' Special Branch recorded that this intelligence was disseminated to the 'L' Division Commander, Police Officer 2. I am mindful that Police Officer 1 has consistently stated that he received no intelligence relating to Mr Kelly's murder which, on balance, based on the available evidence and information, I accept. It is noteworthy that the intelligence was marked NDD. There is no evidence that any action was taken by senior RUC officers, including Police Officer 2, in respect of this intelligence. I am critical of the Special Branch approach to withholding intelligence that would have assisted a murder investigation and its practice of limiting the further dissemination of this relevant information.

- 11.45. I am of the view that this was a significant failing on the part of RUC Special Branch and Police Officer 2 with whom this information was shared. This was an important piece of intelligence that identified a suspect and the origins of the 56 pound weight. My investigators found no record that this intelligence was shared with the 1974 RUC investigation team. The non-dissemination of relevant intelligence deprived Police Officer 1 of the opportunity to identify and progress further lines of enquiry, which may have led to potential arrests, searches, and the identification of suspects.
- 11.46. In May 2002, the PSNI review team established that the RUC received intelligence that the same loyalist group carried out Mr Kelly's murder and the earlier attack at the Corner Bar on 18 January 1974. It added that Mr Kelly had been abducted after an argument with UDR members a number of days earlier and that Person 2 and UDR Members 1 and 21 carried out the murder. The intelligence also indicated that three weapons were used in the Corner Bar attack. One of these was later used in James Murphy's murder.
- 11.47. My investigators found no evidence that the above intelligence was shared with Police Officer 1 by RUC Special Branch. Neither was any investigative action taken in respect of it. Police Officer 1 informed my investigators that he received no intelligence relating to Mr Kelly's murder and I accept this assertion. He stated that RUC Special Branch's attitude was to protect information. He stated that they were reluctant to disseminate intelligence and, if he had challenged this, he would have been '*shown the door.*'
- 11.48. Police Officer 1 consistently stated in written reports<sup>39</sup> that he was aware of rumours about the involvement of UDR Member 20 and other UDR members in Mr Kelly's murder. However, he stated that he took no further action against these individuals as he was satisfied that they had alibis at

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<sup>39</sup> Reports to his superiors and during interviews with the PSNI re-investigation team and my investigators.

the relevant times. He stated that, had he been supplied with relevant intelligence, he would have made arrests.

11.49. In a 1979 report to his authorities, Police Officer 1 stated that *'in the field of intelligence there has been no response in an area where I feel information should have been gained.'* My investigators established that Police Officer 2 would have had sight of Police Officer 1's 1979 report.

11.50. I am of the view, given the available evidence and other information, that it is most likely that none of the intelligence about Mr Kelly's murder was shared with Police Officer 1. The 1974 RUC investigation team were reliant on the timely dissemination of intelligence to identify and pursue lines of enquiry. The available intelligence about Mr Kelly's murder, if disseminated and acted upon, may have allowed further lines of enquiry to have been developed. These enquiries may have resulted in important evidence being gathered that could have identified suspects and potentially secured arrests. This investigation has been unable to establish why this intelligence was not shared by RUC Special Branch and Police Officer 2, with Police Officer 1. There is no record of the rationale for the non-dissemination of this intelligence.

#### **Failure to make enquiries about the Anonymous Letter**

11.51. On 7 August 1974, an anonymous letter was forwarded to the Commanding Officer of a military establishment in Omagh. It named four UDR members as having been involved in Mr Kelly's abduction. Two of them, UDR Members 1 and 16, were interviewed as witnesses during the 1974 RUC investigation. My investigators found no evidence that police made efforts to secure and forensically examine the relevant letter.

- 11.52. Police Officer 1 was aware of this information as he made an entry relating to it, dated 17 August 1974, in his hardback diary. However, there is no record of any enquiries having been conducted in respect of the information. Police Officer 1 informed my investigators that he would not have acted on anonymous information.
- 11.53. I am of the view that this was an investigative failure on his part as these enquiries and forensic examinations may have opened further investigative opportunities. Police Officer 1 informed my investigators that, had he been in receipt of intelligence linking individuals to Mr Kelly's murder, he would have made arrests. However, he was in possession of information that four members of the security forces were involved. My investigators found no evidence that police verified the accounts of UDR Members 1 and 16.

### **Investigative Bias**

- 11.54. I consider that Police Officer 1, in his approach to the investigation of Mr Kelly's murder, was affected by 'latent' investigative bias. Investigative bias can be 'latent' (biases intrinsic to the individual) or 'deliberate' (which arguably is not bias, but instead prejudice). Police Officer 1 refutes that his approach to the investigation of Mr Kelly's murder was affected by his personal bias in respect of the involvement of the UDR.
- 11.55. In a 1979 report to his authorities, Police Officer 1 stated that *'The suggestions of UDR involvement appear to be an attempt to blame someone and add fuel to a smear campaign in operation around Trillick at that time.'* He stated that he received no intelligence regarding Mr Kelly's murder and was satisfied that UDR members were not involved, their movements on the relevant date having been verified.



11.56. Police Officer 1 informed my investigators in his Maxwell response as follows: *'Confirmation was received that the UDR members were at the Lisanelly Army Camp. I am satisfied of that fact. I cannot recall who at the Army base was spoken to. Statements were not taken from SIB as it would have required two officers travelling to Belfast region to do so. A written statement would not have advanced the enquiry.'* I note that there are no records of any discussions between the SIB and the RUC murder investigation team. It is my view that, based on the information available to Police Officer 1, in relation to the potential involvement of UDR members in Mr Kelly's murder, that further testing of the accounts provided by the relevant military personnel would have been required in the circumstances. The failure to test the UDR alibi accounts was also criticised by Police Officer 9 in his investigation report in 2005.

#### **Failure by Senior Officers to act on Intelligence**

11.57. In mid-June 1975, RUC Special Branch received intelligence stating that the LDV were holding meetings at an identified location in County Fermanagh. RUC Officers 3 and 4 attended these meetings, in addition to UDR Members 1, 7, 15, and 18. The meetings were chaired by a former RUC officer, Person 8.

11.58. The intelligence added that there was a UVF unit, consisting of ten named individuals, active in County Fermanagh. Persons 2, 4, and 9 were members of this unit. Special Branch records indicated that this intelligence was disseminated to Police Officer 2, the 'L' Division Commander.

11.59. In late June 1975, Special Branch received intelligence that UDR Member 7 was in possession of an illegal sub-machine gun and was constructing explosive devices, assisted by UDR Member 15. It added that UDR Member 7 had been involved in Person 12's murder in May 1975. Special Branch records indicated that this intelligence was shared with Police

Officer 2 and '*CID and SB murder enquiries.*' The available RUC records did not specify which CID officers received this information. This investigation has established that the intelligence was not shared with the Kelly murder investigation team.

- 11.60. The intelligence also reported that Police Officer 6 was close to UDR Member 7 and the two of them had been seen together a number of days before Person 12's murder, at the location where the murder took place. The available RUC records indicate that parts of this intelligence were shared with CID. However, my investigators were unable to establish whether this intelligence was shared, and to which officers in the RUC murder investigation team.
- 11.61. The PSNI re-investigation team interviewed Police Officers 3 and 5 in January 2004. Police Officer 3 stated that he had attended a number of LDV meetings in the Fermanagh area, where IRA members were discussed.
- 11.62. Police Officer 3 subsequently provided a witness statement to the PSNI re-investigation team. He stated that Person 8 chaired the meetings and named a number of other individuals, including Police Officer 7, who attended them. He stated that Police Officer 7 and two other individuals were arrested on suspicion of a terrorist attack in County Fermanagh in March 1974. He believed that Person 8 organised this attack.
- 11.63. Police Officer 5 informed the PSNI re-investigation team that he did not attend LDV meetings and did not know Mr Kelly. He stated that the information that police held regarding him was inaccurate. He stated that he knew Person 8, but only in a work capacity.

- 11.64. My investigators reviewed the RUC personnel file of Person 8. This contained a note stating that his '*service should terminate*' in late 1974 after he came under '*unfavourable notice*' following the arrest of three men, including Police Officer 7, in possession of a pistol earlier that year. The three men were later convicted of a number of criminal offences. There is no record that Person 8 was subject to a criminal investigation, by police or Police Officer 1, regarding this incident.
- 11.65. This investigation has established that RUC Special Branch and Police Officer 2 were aware of significant intelligence that a UVF unit was active in the Fermanagh area at the time of Mr Kelly's murder. A number of this UVF unit's members were either directly, or indirectly, linked to Mr Kelly's murder and other terrorist attacks. The intelligence indicated that this UVF unit was assisted in their activities by a number of identified RUC and UDR members. However, my investigators found no evidence that any action was taken by Police Officer 2 in respect of this intelligence.
- 11.66. Police Officer 7 was arrested and convicted of a number of criminal offences. However, there is no record that the activities of Person 8, who was linked to the same attack when a serving police officer, was subject to a criminal investigation by police. Further, there is no record that the activities of Police Officers 3, 4, 5, and 6 were subject to scrutiny, despite their alleged association with known UVF members.
- 11.67. Although not the subject of the family's complaint, I am of the view that the PSNI re-investigation, led by Police Officer 9, was conducted in a thorough and professional manner. The PSNI re-investigation team pursued all identified and viable lines of enquiry. This included re-interviewing witnesses, conducting house-to-house enquiries, and forensic examinations of available evidence utilising advanced techniques. A number of house searches were conducted and arrests made. However, to date, no individual has been charged with, or prosecuted for, Mr Kelly's murder.

## Failures in Senior Officer oversight

11.68. From an analysis of the original case papers, there is no reference to whether Police Officer 1 received any supervision or oversight from a more senior officer. In his response to the Maxwellisation process, Police Officer 1 made reference to:

*'A. My lack of experience of an investigation of this magnitude.*

*B. Lack of Resources.*

*C. Lack of support from more senior officers.*

*D. Lack of Graded Intelligence instead Canteen rumour and gossip.*

*E. The commitment to other major crimes...that occurred at or around the same time.*

*F. The effects of stress and continuing fatigue.'*

My investigators had researched Police Officer 1's career as part of this investigation. I am satisfied, in light of this research, that his statement that he was inexperienced is accurate.

11.69. I am of the view that Police Officer 1's supervising officers also had a responsibility to ensure that the investigation was adequately resourced and managed effectively to meet the objective of *'the preservation of the peace and the prevention and detection of crime.'* There is no evidence of intervention by senior officers to support Police Officer 1 and his team in the investigation of Mr Kelly's murder.

## The Family's Complaint about Collusion

- 11.70. It is my view, based on the available evidence and other information, that there were a number of significant failings in the RUC investigation of Mr Kelly's murder. The Kelly family also complained that police failed to investigate a number of individuals linked to Mr Kelly's murder, because they were UDR Members and specifically referred to UDR Members 20 and 24. The family allege that, if this was the case, it would amount to '*collusion.*'
- 11.71. The Court of Appeal in *Re Hawthorne and White* has ruled that the Police Ombudsman cannot make a determination of criminality or misconduct on the part of any police officer. However, the Court identified that, in respect of a complaint about '*collusion,*' the Police Ombudsman may acknowledge whether the matters '*uncovered*' by an investigation are '*very largely*' what Mr Kelly's family claimed constituted '*collusive behaviour.*'
- 11.72. In Chapter 3 of this public statement, I carefully considered the various definitions of '*collusion*' offered by the then Lady Justice Keegan, Lord Stevens, Judge Peter Cory, Judge Peter Smithwick, Sir Desmond de Silva, and a number of former Police Ombudsmen. While these definitions are informative, I acknowledge that there is no universally agreed definition of '*collusion.*' I have, however, identified a number of common features which I summarise as follows:
- I. '*Collusion*' is context and fact specific;
  - II. It must be evidenced but is often difficult to establish;
  - III. '*Collusion*' can be a wilful act or omission;
  - IV. It can be active or passive (tacit). Active '*collusion*' involves deliberate acts and decisions. Passive or tacit '*collusion*' involves turning a blind eye or letting things happen without interference;

- V. *'Collusion'* by its very nature involves an improper or unethical motive;
- VI. *'Collusion'*, if proven, can constitute criminality or improper conduct (amounting to a breach of the ethical Code of the relevant profession) and;
- VII. Corrupt behaviour may constitute *'collusion.'*

11.73. I am mindful of the comments made by Judge Cory in his report into the murder of Robert Hamill. He stated that the public must have confidence in the police. Police must act judiciously and always strive to apply the law fairly, evenly, and without bias and discrimination. Their role is to serve and protect the entire community.

11.74. Lord Stevens stated that *'collusion'* can be evidenced in many ways and *'ranges from the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, through to the extreme of agents being involved in murder.'* This investigation has identified a number of these elements relating to the conduct of former police officers.

11.75. I am also mindful of the limitation of my powers to make a determination of *'collusion'* as clarified in the Court of Appeal judgment. However, this investigation has identified actions and omissions on the part of police which, in my view, are indicative of *'collusive behaviours.'*

11.76. This investigation has established that the 1974 RUC investigation was wholly inadequate and I have identified a number of investigative failings, as follows:

- I. 'Latent' investigative bias on the part of Police Officer 1;
- II. Failure to adequately verify the alibis of UDR members and failure to record detailed witness statements;
- III. Failure to link cases;

- IV. Forensic failings including failure to make enquiries about footwear marks, failure to recover the boat at Lough Eyes and no record of fingerprint enquiries; and
- V. Failure to make enquiries about the anonymous letter.

11.77. These investigative failings were, in my view, significant missed opportunities, which involved obvious lines of enquiry. I am mindful that this investigation did not meet the standards of an effective murder investigation.

11.78. There were other systemic and contextual factors that impacted on the effectiveness of the investigation. These factors were as follows:

- I. A failure by RUC Special Branch and Police Officer 2 to disseminate intelligence relevant to both the murder and the activities of a UVF unit operating in the Fermanagh area linked to a number of RUC and UDR members;
- II. The absence of senior officer oversight of the murder investigation; and
- III. The constraints on operational resources to adequately investigate multiple murders and tackle mounting paramilitary activity.

## **Withholding of Intelligence**

11.79. I am of the view that the deliberate withholding of intelligence and other information from the murder investigation team was another example of *'collusive behaviour.'* This removed the possibility of further lines of enquiry being developed and progressed, which may have led to the arrest and prosecution of offenders. The non-dissemination and restrictions placed on the sharing of intelligence with the 1974 RUC investigation team resulted in Police Officer 1 not being provided with relevant information. It is my view that this information could have changed the direction of the investigation and opened new lines of enquiry.

## **Failure to act on Intelligence**

11.80. This investigation has established a failure by the RUC to address the implications of other intelligence linking RUC and UDR members to a UVF unit, based in County Fermanagh. I am of the view that this was indicative of deliberately *'turning a blind eye'* which constituted *'collusive behaviour'* on the part of RUC Special Branch and Police Officer 2 who were accountable for these decisions. Police Officer 2 was deceased at the time the family made their complaint to this Office. Therefore, my investigators were unable to interview him about these matters. However, based on all available evidence and information, as the Commander in charge of 'L' Division, Police Officer 2 had overall responsibility for the murder investigation and for taking measures to counter the paramilitary threat existing in his Division which put members of the public at risk.



## Overall Conclusions

11.81. As an elected independent councillor, Mr Patrick Kelly represented the rural community in which he lived during a tumultuous and particularly violent period of the 'Troubles' in Northern Ireland. In the early hours of 24 July 1974, having closed his place of work at Trillick, County Tyrone, Mr Kelly was travelling home to his pregnant wife and four children when he was abducted and murdered. I believe that Mr Kelly was the innocent victim of a campaign of sectarian violence mounted against the nationalist community. The Police Ombudsman has concluded that Mr Kelly was the innocent victim of a campaign of sectarian violence mounted against the nationalist community. Loyalist extremists were responsible for Mr Kelly's murder.

It is well established that during the early 1970s the RUC faced unprecedented policing challenges throughout Northern Ireland. However, in my view the police response to Mr Kelly's murder was affected by bias and was adversely impacted by an investigative mind-set that discounted local concerns about potential involvement of the security forces. In a report to his authorities, the officer leading the murder investigation later described these concerns as *'an attempt to blame someone and add fuel to a smear campaign.'* This 'latent' investigative bias manifested in a failure to robustly pursue a number of key lines of enquiry, notably verification of accounts provided by certain UDR personnel of their whereabouts at the time of Mr Kelly's abduction and murder.

The inexperience of the officer leading the murder investigation, the inadequacy of the resources made available to him, and the extent of his caseload of serious crime, including the murder of Mr Kelly, demanded he receive practical support and supervision. This was not provided by Police Officer 2 who was responsible for oversight of these investigations. Instead, a construct of strategic decision making and intelligence sharing

frameworks, actively served to undermine the policing response to Mr Kelly's murder. This undermined police efforts to combat a UVF unit operating in County Fermanagh at the time and is concerning in view of the unit's reported intelligence links to members of the UDR and RUC. A series of intelligence reports implicating members of the UDR in the murder of Mr Kelly was not addressed until the murder was re-examined by PSNI almost 30 years later. By this time potential evidential opportunities are likely to have been lost. This non-dissemination of intelligence by RUC Special Branch and Police Officer 2 to the murder investigation team was extensive and remains unexplained.

This investigation has uncovered conduct on the part of RUC Special Branch and Police Officer 2 which I consider constitutes 'collusive behaviour', in particular the deliberate withholding of intelligence from the murder investigation team and the failure to act on intelligence about an active UVF unit in the Fermanagh area.

In view of the investigative failings identified and my finding in relation to 'collusive behaviour', I have concluded that Mr Kelly's family was failed by police.

In light of the above, I am of the view that the family's complaints about investigative failings are legitimate and justified in a number of respects. I thank them for their patience in awaiting the outcome of this protracted and complex investigation.

**Marie Anderson**

**Police Ombudsman for Northern Ireland**

**26 April 2023**