

# Robert Hamill Inquiry Report

# **Robert Hamill Inquiry**

## Report

Sir John Evans  
Sir Edwin Jowitt<sup>1</sup>  
Reverend Baroness Kathleen Richardson

Presented to Parliament pursuant to section 26 of the Inquiries Act 2005

Ordered by the House of Commons to be printed on 14 September 2026

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<sup>1</sup> Sir Edwin Jowitt stepped down as Chair on 7 October 2024 and was replaced by Sir John Evans on that date.



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# *Preface*

The Inquiry Report was completed in readiness for publication in 2011. On 28 February 2011 the then Secretary of State for Northern Ireland informed the House of Commons that following an announcement by the Public Prosecution Service for Northern Ireland that it planned to prosecute three individuals in connection with the death of Robert Hamill, he would not publish the Inquiry report until those legal proceedings had concluded. Publishing the report while proceedings were ongoing would have risked jeopardising the individuals' right to a fair trial. For this reason, the Report was placed in safe custody.

Unfortunately, the prosecution process relating to the three individuals was not concluded until 14 June 2024, when Robert Atkinson was sentenced to 12 months' imprisonment for conspiring to pervert the course of justice.

On 7 October 2024 I was appointed by the Secretary of State for Northern Ireland as Chair of the Inquiry in place of Sir Edwin Jowitt who was unfortunately unable to continue with the role. Sir Edwin Jowitt acted as Chair of the Inquiry from its establishment on 19 November 2004 until 7 October 2024. During that time, he chaired all of the public hearings, and he was also responsible for the first draft of the report. Sir Edwin Jowitt sadly died on 22 June 2026.

Before the Report could be published it was necessary for a further checking process to be undertaken in order to meet the obligations on the Secretary of State in relation to Article 2 of the European Convention on Human Rights and national security.

Given the long time that had passed, it was also necessary for warning letters to be sent to those who were the subject of proposed criticism in the report, and for them to be given the opportunity to respond to criticism where this was appropriate<sup>1</sup>, prior to the finalisation of the Report.

Whilst the delays with publication of the Report are unfortunate, the views expressed in the foreword remain relevant. Most particularly, we hope the report will go some way to help events in the past enable a better future and ensure that Robert Hamill will not have died in vain.

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<sup>1</sup> See Chapter 1 (para 1.70-1.72) for a further explanation of the Inquiry's approach to this issue.

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**Sir John Evans**

A handwritten signature in black ink, appearing to read 'Kathleen Richardson', written in a cursive style.

**Reverend Baroness Kathleen Richardson**

# *Foreword by Sir Edwin Jowitt*

It would not be right to present our Report without expressing thanks to the many people who have helped us prepare for our hearings and assisted in the course of them. We do not propose to lengthen our list by naming everyone from whom we have received help. From what we have just said they will be aware of our gratitude.

As one would expect in an Inquiry of this length, there were changes of staff during the course of our work. We should, though, like to make special mention of Judi Kemish, Solicitor and Secretary to the Inquiry; her Deputy Solicitor Nicola Enston; her Deputy Secretary Paul Hill-Gibbins; her personal secretary Sheila Werry; Ashley Underwood QC, Counsel to the Inquiry; and those Counsel who have assisted him at different stages. We should like to express our thanks to all of the Inquiry's administrative team based in London and Belfast as well as our press officer, Liz Fawcett, the Information Technology Team and the shorthand writers. Without their assistance our hearings could not have run smoothly and neither could the public have been kept informed of our proceedings.

Our thanks go to the family of Robert Hamill who have continually provided insightful lines of enquiry and whose dignity and co-operation has been evident throughout.

We express our gratitude to the legal teams, both the advocates who appeared before us and those who instructed them. Their co-operation has made it possible for us to be confident that we have received all of the evidence relevant to our Terms of Reference. The submissions that were made to us assisted with our deliberations and helped us to reach our conclusions.

We must also thank the Police Service of Northern Ireland (PSNI) for unfailingly providing us with the information and documentation we sought. We acknowledge the contribution made by Richard Ferguson QC, Leading Counsel to the PSNI who, to the sadness of us all, died at a late stage of our hearings.

On a personal note, I, as Chairman, would like to offer my grateful thanks to my colleagues on the Panel, the Reverend Baroness Richardson and Sir John Evans, for their support, help, kindness and friendship throughout our labours.

When we opened this Inquiry we expressed our wish that our work may do a little to help people in Northern Ireland to look forward with hope to the future. We have sought to fulfil that aim and hope that our Report is a contribution to the break with the past that the Peace Process represents, and that Robert Hamill will not have died in vain.

A handwritten signature in black ink, appearing to read 'Edwin Jowitt', written in a cursive style.

**Sir Edwin Jowitt**

A handwritten signature in black ink, appearing to read 'Kathleen Richardson', written in a cursive style.

**Reverend Baroness Kathleen Richardson**

A handwritten signature in black ink, appearing to read 'John Evans', written in a cursive style and enclosed within a large, loopy oval.

**Sir John Evans**

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# *Executive Summary*

1. In the early hours of 27 April 1997 Mr Robert Hamill received serious head injuries in the centre of Portadown. He did not recover consciousness, and he died in hospital on 8 May 1997. There has been no inquest and when this Inquiry began hearing evidence it had not been established whether Robert Hamill had in fact died as a direct result of his injuries. Further, there were important issues about whether police stationed in the centre of Portadown on public order duties had seen Robert Hamill being attacked and had done nothing. We also had to consider whether the Royal Ulster Constabulary (RUC) had inhibited the investigation into his death or had been negligent in the conduct of the investigation.
2. In order to resolve those and other significant matters we heard evidence from 174 witnesses and the statements of 37 further witnesses were read to us in the hearings. We have considered many thousands of documents, written and oral submissions and a large number of issues. A good deal of what we have heard has been controversial, requiring us to decide between competing accounts.
3. As a result we have formed a clear picture of the events surrounding Robert Hamill's death and its investigation. In this Executive Summary we are able to set out the significant facts as we have found them, as well as the criticisms which we make as a result.
4. Our Terms of Reference are:  
  
**'To inquire into the death of Robert Hamill with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary facilitated his death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of his death was carried out with due diligence; and to make recommendations.'**
5. We should draw attention to a number of aspects of those Terms of Reference. They do not include the word 'collusion', despite the general understanding that this is a 'collusion inquiry'. Nonetheless we are satisfied that the Terms of Reference as drawn enable us to investigate conduct which would amount to collusion, so we have not been hampered by the way they are phrased.
6. The Terms of Reference refer to wrongful acts or omissions which may have obstructed the investigation and which may have been deliberate. We have considered each of those aspects:

- (a) In our view, 'wrongful' provides a requirement of culpability, to be assessed by the standards of a reasonable person in the position of the individual whose culpability is in question at the relevant time.
  - (b) A wrongful act or omission obstructed the investigation if it might reasonably have been capable of affecting the line or outcome or both of a further investigation.
  - (c) We believe that for an act or omission to be characterised as 'deliberate', it must have been done in the knowledge that it was wrong.
7. The part of the Terms of Reference which relates to due diligence is not restricted to the acts or omissions of the RUC, but extends to other persons and bodies involved in the murder investigation. In considering due diligence we also have had in mind standards of reasonable conduct at the time in question and in the light of information which was known or should reasonably have been known.

### **Summary of our findings**

8. On the night of Saturday 26 April 1997 there was a dance at St Patrick's Hall, Portadown. At that time, this was a town in which sectarian violence was known to occur. St Patrick's Hall was frequented by Catholics, but in order to walk from there to the estates where, in the main, Catholics lived they would pass over a crossroads where Thomas Street and Woodhouse Street meet Market Street and High Street. We refer to this crossroads as 'the junction'. Catholics were wary of the centre of town. It was regarded by many Protestants as a Protestant part of town and in the early hours of Sunday mornings Protestant youths would regularly be found there buying food and clustering in groups. The centre of Portadown was closed to traffic by way of security barriers, and it was common practice for the RUC to patrol the centre of the town in armoured Land Rovers on Friday and Saturday nights.
9. In the early hours of 27 April 1997, when the function finished at St Patrick's Hall, a large number of people tried to get taxis outside in Thomas Street. Because of the delays in getting taxis some Catholics decided to walk down Thomas Street, intending to cross over the junction into Woodhouse Street to get home. Robert Hamill was among them. He had been with a man and two women to whom we have given anonymity. We have called them Witnesses D, E and F.
10. Robert Hamill, Witnesses D, E and F walked from St Patrick's Hall towards the junction at about the same time as a couple, Mr Colin Prunty and Miss Maureen McCoy.
11. When the six got within sight of the junction they paused. Witness F warned Maureen McCoy not to continue because there were some Protestant youths at the junction. Nonetheless, Robert Hamill, Witnesses D, E and F carried on, as did

Maureen McCoy and Colin Prunty. Shouting broke out between the group and Protestants at the junction, who included Mr David Woods, Mr Andrew Allen and Mr Rory Robinson. That shouting was loud enough to draw the attention of a number of people living in the area, as well as the staff of Jameson's Bar in Thomas Street near the junction.

12. When the two groups met violence broke out between them. The Protestant group was reinforced by a large number of Protestant youths who were in the town centre. Nothing in the evidence suggests that the violence which broke out at the bottom of Thomas Street continued beyond a few blows or that it continued for an appreciable length of time.
13. Robert Hamill suffered head trauma either shortly after that violence broke out or a little later when, as we shall set out below, Protestant youths kicked him while he was on the ground. The trauma included axonal injury, in particular in the brain stem. We find that those injuries directly caused his death. Witness D was also knocked to the ground at this stage and was unconscious for a time.
14. Robert Hamill's injuries tell us the following about the severity of the assault:
  - (a) a blow from a thrown bottle would not have sufficed to cause axonal injury but a blow from a bottle held by an assailant could have knocked him to the ground. However, such a blow would have been unlikely to have caused the totality of the axonal injury;
  - (b) the strong likelihood is that the totality of brain damage can be accounted for by at least three blows to the head, which could have been the head hitting the ground and kicks or stamping on the head. We accept the medical opinion that it would be difficult for an assailant to deliver punches to Robert Hamill's head while he was on the ground; and
  - (c) all the injuries to Robert Hamill could have occurred within a matter of seconds. However, this does not mean they did occur so swiftly.
15. We are satisfied that Robert Hamill's death was murder, because those who assaulted him must at least have intended to cause serious injury to him. Had we been an inquest jury we would no doubt have delivered a verdict of 'unlawful killing'. Our Terms of Reference do not extend to identifying the murderer or murderers, so we have been careful not to identify suspects and deal with their actions more than is necessary to examine the investigation into Robert Hamill's death.
16. An RUC Land Rover was in the centre of town at the time of Robert Hamill's murder. There were four officers in it. In the light of previous experience of disorder in Portadown town centre, we consider that the allocation of a crew of four to the Land Rover was a sufficient deployment, bearing in mind that they

could call for reinforcements. The driver was Police Constable Alan Neill (PC Neill). The front seat passenger, Reserve Constable Denise Cornett (Res Con Cornett), was the Observer. In the rear were Reserve Constable Robert Atkinson (Res Con Atkinson) and another Reserve Constable to whom we refer as P40 (Res Con P40). Those officers had been selected to do an extended shift starting at 15:45 on 26 April and covering the early hours of 27 April 1997 and had been briefed by Police Sergeant P89 (Sgt P89) for public order duties in the town centre. All of the officers in the Land Rover were experienced in this duty and understood that the duties required constant vigilance.

17. A little before the group including Robert Hamill reached the junction another Catholic, Mr Thomas Mallon, who had been at St Patrick's Hall, encountered the Land Rover at the junction. He gave a warning, which Res Con Cornett heard and relayed to PC Neill, that other Catholics were likely to be following him. As a result PC Neill looked up Thomas Street but could see no-one there. He decided to drive down High Street, turn round and come back up to position the Land Rover at the mouth of Thomas Street. Before he could do so, Thomas Mallon was confronted by two local youths, Mr Stacey Bridgett and Mr Dean Forbes.
18. Thomas Mallon felt threatened by the approach made to him. PC Neill was concerned for Thomas Mallon's safety and so asked Res Con Cornett to intervene. She opened her door and shouted to Stacey Bridgett and Dean Forbes. As a result they approached the Land Rover and stood there talking to Res Con Cornett and Res Con P40. The officers told us that they did not spend long talking, but the evidence established an exchange which took some minutes.
19. While that conversation was continuing a man pulled PC Neill's door open and pulled him out of the Land Rover. The man accused PC Neill of sitting there while something had happened. The complaint that the police watched what happened was, as PC Neill accepts, made by three different people at the scene. We do not think that this was simply a reaction to the fact that an aggressive crowd shouting sectarian abuse gathered in the junction. We find that what provoked a man to pull PC Neill from his vehicle was the attack upon Robert Hamill and Witness D, which happened while the officers were still in the Land Rover. The other officers got out and were faced with a scene of disorder. Robert Hamill had already by that stage been attacked, though further attacks on him continued while he was lying on the ground. The officers attempted to bring the disorder under control, but until reinforcements arrived they were hopelessly outnumbered. Res Con Cornett operated the radio in the Land Rover, as was her duty, and she made frantic efforts to get reinforcements.
20. We have already mentioned that at some stage Robert Hamill was on the ground and was being kicked by Protestant youths. The clearest evidence of that emerges

from the witness statement of Miss Tracey Clarke, given to the police on 10 May 1997. Furthermore, after PC Neill had emerged from the Land Rover he saw one of the youths referred to by Tracey Clarke kicking at Robert Hamill. It follows that, although we cannot say precisely what happened to Robert Hamill it is clear that at some point he fell to the ground and was unconscious and that assaults on him continued for a short time.

21. We find that the assault on Robert Hamill began before the Land Rover officers got out of their vehicle. However, they were not aware of the assault until they got out and they did not in any way condone or collude with attackers. The reason why the Land Rover crew failed to appreciate that Robert Hamill was being attacked was that their attention was focused on Stacey Bridgett and Dean Forbes.
22. Sir John Evans and the Reverend Baroness Richardson do not find any of the officers in the Land Rover guilty of a wrongful act or omission in relation to the death of Robert Hamill. Sir Edwin Jowitt, whilst Chairman, took a different view, concluding that each of the officers in the Land Rover was guilty of a wrongful omission in failing to ensure that a watch was being kept on the mouth of Thomas Street whilst Stacey Bridgett and Dean Forbes were at the Land Rover. All members of the panel agreed that the distraction of the Land Rover crew did not facilitate Robert Hamill's death.
23. Reinforcements arrived quickly, as did an ambulance. Robert Hamill was taken to Craigavon Area Hospital and order was then restored.
24. Seven reinforcement officers arrived by car. Inspector Alan McCrum (Insp McCrum) and Sgt P89 attended on foot from the police station in nearby Edward Street. They directed and assisted in crowd control. A number of witnesses described the disorder as an affray and we have no doubt that it was a very ugly incident. We find that Insp McCrum remained in charge until Detective Chief Inspector P39 (DCI P39) arrived at around 07:00.
25. At least two officers believed Robert Hamill to have been seriously injured. He was unconscious when put into the ambulance by stretcher. Neither Insp McCrum nor Sgt P89 took any adequate steps to talk to officers at the scene to discover how serious Robert Hamill's condition was or whether there was any useful information to be had about suspects or witnesses.
26. Insp McCrum sent some officers to the hospital to try to recover Robert Hamill's clothes. Proper steps were taken to obtain clothing but they were frustrated by the fact that, through no fault of the police, a nurse at the hospital gave Robert Hamill's clothing to a member of or someone present with the family and by subsequent difficulties that the police had in recovering it.

27. While she was at the scene Constable A (PC A), one of the reinforcement officers, detained Mr Wayne Lunt in the Land Rover to check his identity. As she was releasing him, she was approached by two men who pointed out Wayne Lunt and told her that he had kicked Robert Hamill. She failed to take the names of these men or to re-arrest Wayne Lunt. She did not record this incident in her notebook.
28. The various officers at the scene went on to other duties or finished their shifts without making statements or notebook entries about what had happened in Portadown.
29. Insp McCrum should have carried out a debriefing, beginning at the scene of the disturbance, to be followed by a full debriefing at the police station. However, he failed to require the debriefing of any member of the RUC who had been at the scene, including the Land Rover crew, or to ensure that notebook entries were made before officers went off duty. Insp McCrum's failure to do so was a wrongful omission.
30. Insp McCrum left Portadown sub-division to conduct a tour of the division for which he had responsibility. We have received no evidence to suggest that there was any pressing need for Insp McCrum to be seen in other parts of his division at that time and our view is that he should have remained in Portadown. Sgt P89 was dealing with a drink driving offence between 03:00 and 04:15, which was while Insp McCrum was away. Until this task was completed it required Sgt P89's constant attention. We do not find that Sgt P89 bore any responsibility for debriefing others.
31. Insp McCrum authorised the issue of a press release, which referred to a clash of rival factions and to the police themselves coming under attack. We do not find that this was a wrongful act, although it may have had the unfortunate effect of discouraging Catholic witnesses from coming forward.
32. By about 04:30 on 27 April 1997 Insp McCrum had returned from the tour of the division and learned from Craigavon Area Hospital that Robert Hamill's condition was potentially life-threatening. Consequently he called in the on-call detective, Detective Constable Donald Keys (DC Keys). As a result of their discussions he recalled the Land Rover crew to duty for the purpose of making statements.
33. DC Keys attended, and he visited the scene. He in turn called out DCI P39. The detectives called out the Scenes of Crime Officer (SOCO) and ensured that the junction was taped off, that the SOCO picked up anything which he thought could be of evidential value and arranged for photographs to be taken.
34. DCI P39 commenced an investigation assisted by DC Keys and she required statements from all officers at the scene. DCI P39 should have ensured that

the officers were debriefed about every aspect of their involvement in public disorder, including information which may have led to witnesses or suspects being identified. The most that was done was that, in the days following the incident, the Land Rover crew were asked some questions arising out of their statements. DCI P39 wrongfully omitted to ensure that all officers who had been at the scene were fully debriefed.

35. Two officers exacerbated the debriefing failures by their own omission to supply information. They were Sgt P89 and Res Con Atkinson. While attempting to get the crowd under control Sgt P89 had a confrontation with Mr Allister Hanvey, who was acting very aggressively. Res Con Atkinson warned the Sergeant that the man, who he identified as 'Hanvey', was a martial arts expert. Neither Sgt P89 nor Res Con Atkinson made any reference to Allister Hanvey in their notebook entries or their statements. In each case that was a wrongful omission.
36. After Res Con Atkinson had made his statement he went home and within minutes he telephoned the house where Allister Hanvey lived, although Hanvey had not returned home by that stage, and gave a warning probably to his parents, which resulted in Allister Hanvey destroying or putting beyond reach of the police the clothes he had worn that night. This is known as the tip-off allegation. In making that telephone call Res Con Atkinson was guilty of a wrongful act.
37. From the point of her being called out on 27 April until Robert Hamill's death on 8 May 1997 DCI P39 was in charge of the investigation. In that period DCI P39 was assisted by Detective Inspector Michael Irwin (DI Irwin). He devised a form of questionnaire which led to the identification of a number of potential witnesses and suspects. He also created and managed a system by which information received was considered and acted upon. Officers of the RUC were diligent in trying to interview potential witnesses.
38. We have considered whether sufficient resources were available to conduct the investigation. So far as is relevant to this Inquiry we do not think the RUC was short of resources. There is one exception to that, namely that DCI P39 was not trained and prepared to have charge of an investigation into a life-threatening assault. However, we do not find that this was a wrongful act or omission on the part of the RUC.
39. Concerns have been raised about the apparent lack of closed circuit television (CCTV) evidence and about a briefing by DI Irwin to Robert Hamill's sisters regarding the CCTV. However, it was clear to us that there was no relevant CCTV footage from anywhere. We accept the evidence of DI Irwin that he did not tell Robert Hamill's sisters when they visited the police station that the Land Rover

- could be seen on the tapes. We believe that there was a misunderstanding. We have accepted the evidence of DC Keys that the tapes showed nothing.
40. DCI P39 had a strategy of attempting to enlist the support of the Catholic community. That was a sensible strategy and it was diligently pursued. Regrettably, neither the Catholic community nor the Protestant community gave very much assistance to the police. We have no doubt that many on the Protestant side were frightened of reprisals. On the Catholic side there was a degree of existing mistrust of the RUC and that was reinforced by the view that the Land Rover crew had sat and watched Robert Hamill being assaulted, and a rumour that police had tipped off suspects. We consider it likely that this lack of support had already begun before the solicitor Miss Rosemary Nelson had been instructed on behalf of Robert Hamill's immediate family, and Rosemary Nelson did not improve the situation. DCI P39 expressed the view that the first press release had played a part in the lack of co-operation, and we agree.
41. On 6 May 1997, DCI P39, having reluctantly accepted that her strategy had failed, arranged for a number of arrests for the offence of causing grievous bodily harm to Robert Hamill, and for those arrested to have their houses searched. As she told us candidly, she did not believe those arrests would result in successful prosecutions.
42. As we have said, Robert Hamill died on 8 May 1997 as a result of the injuries which he had received, without regaining consciousness. The investigation became a murder investigation on that day and Detective Chief Superintendent Maynard McBurney (DCS McBurney), the head of Regional CID, was appointed senior investigating officer (SIO). DCI P39 remained as his deputy until the end of May 1997. DI Irwin remained on the investigation, nominally as the office manager.
43. On 9 May DCI P39 opened a policy book, which was intended to keep a record of decisions taken in the investigation. She recorded entries up until she left the investigation on 30 May 1997. After DCI P39 left, DCS McBurney did not keep a policy book. We take the view that his failure to do so was a wrongful omission.
44. The allegation that the Land Rover crew deliberately failed to get out and help Robert Hamill became a formal written complaint on 6 May 1997, made by Rosemary Nelson on behalf of Robert Hamill's sister Miss Diane Hamill. There is reason to believe that by the time that complaint reached the appropriate officers in the RUC, someone in the Chief Constable's office had attempted to refer the allegation to the Independent Police Complaints Commission (ICPC/the Commission).
45. The ICPC has no record of the attempt by the RUC to refer the matter of its own accord but it did agree to supervise the investigation into Rosemary Nelson's

complaint. DCS McBurney was appointed as the SIO of the neglect investigation because he had expressed the view that the allegation of the neglect of duty and the murder investigation were inextricably linked. That was subsequently also the view of Detective Chief Inspector K (DCI K), who was the SIO of the murder investigation when this Inquiry was established. It is also our view that the murder investigation and the neglect investigation were inextricably linked. Although DCS McBurney was the SIO of both investigations, the senior officers assisting him were different in each. The assisting investigating officers for the neglect investigation were Superintendent Robert Anderson (Supt Anderson) and Chief Inspector Richard Bradley (CI Bradley), who were both from the Complaints & Discipline (C&D) Branch of the RUC.

46. Supt Anderson and CI Bradley wrongfully omitted to ensure that the tip-off allegation was supervised by the ICPC; to ensure that the attention of the Chief Officer's Group of the RUC was drawn to the fact that DCS McBurney was not treating the tip-off as part of the murder investigation; to concern themselves with what steps DCS McBurney was taking on the tip-off allegation; and to ensure that the tip-off allegation was properly recorded. They also omitted to refer the allegation immediately to C&D so that consideration could be given to serving a written notice of the allegation or complaint, which also contained a written caution (form 17/3), on Res Con Atkinson and consideration could be given to his immediate suspension.
47. DCS McBurney treated the tip-off allegation not as part of the murder investigation but as part of the neglect complaint. There was no justification for that. However inextricably linked the murder and the neglect were, the tip-off allegation related to assisting an offender where the offence was the murder. The failure by DCS McBurney to regard the tip-off allegation as an inherent part of the murder investigation was wrongful.
48. The Commission was not asked to supervise the tip-off investigation. Had the tip-off been treated by DCS McBurney as part of the murder investigation and had the Commission been properly invited to supervise it then no doubt the Commission would have accepted that invitation. Senior officers in the RUC told us that the ICPC should have been supervising the investigation into the tip-off and also that they believed it to have been doing so.
49. A breakthrough in the investigations was made when, on 8 May 1997, Mrs Andrea McKee told detectives that her niece Tracey Clarke was able to name the murderers and also had information to give about Res Con Atkinson's tip-off. On 9 May 1997 Detective Constable John McAteer (DC McAteer), in the presence of DCI P39, interviewed Tracey Clarke and took a statement from her, which dealt with both the murder and the tip-off. However, the statement was incomplete as

it failed to include a description of Allister Harvey's clothing despite Tracey Clarke being able to provide one. That statement was not completed until the early hours of 10 May 1997. The truth or otherwise of the statement was hotly contested before us. Tracey Clarke claimed that it was in all material aspects false and arose from a combination of undue pressure applied to her by the police and her own malice. We unhesitatingly reject Tracey Clarke's current contention that the statement was false.

50. At about the same time that Tracey Clarke was giving her statement, Detective Constable Edward Honeyford (DC Honeyford) interviewed and took a statement from Mr Timothy Jameson. He had completed a questionnaire but denied seeing anything important. Subsequently, however, he had spoken to two officers, Reserve Constable McCaw and Reserve Constable G, whose duty it was to protect Timothy Jameson's father. They believed him to have confessed to taking part in the violence and those officers went to see DCS McBurney and DCI P39. Although one of those officers told us that the confession was reported to those detectives, we are satisfied that what was conveyed to them was simply an urgent need to re-interview Timothy Jameson. What DC Honeyford then learned from Timothy Jameson, because he had evidence to offer about the assault, supported what Tracey Clarke had said about the murder.
51. On 10 May 1997 arrests were made of those who had been identified in the statements of Tracey Clarke and Timothy Jameson as having attacked Robert Hamill, and the homes of those who had not been arrested on 6 May were searched. Allister Harvey said in his police interview that he was wearing a black CAT jacket, which was the only one he owned. However, by that stage the detectives had, from Reserve Constable Paul Warnock (Res Con Warnock), one of the reinforcement officers, a description of the jacket worn by Allister Harvey on the night which was different to the description Allister Harvey gave. The search of Allister Harvey's home was poorly performed. No attempt was made to look for signs of destroyed clothing. We conclude that the briefing of the search team should have included an instruction to look for signs of clothing having been destroyed and also for all shoes that Allister Harvey may have worn on the night. Further, those conducting the search should not have contented themselves with seizing clothing identified by Allister Harvey. The failure to pursue the search more rigorously was a wrongful omission by DC McAteer, who had interviewed Tracey Clarke and was therefore aware of the possibility that clothing had been destroyed, and Sergeant Michael Bingham, who led the search team.
52. It is important to point out what was not done in response to Tracey Clarke's statement. Plainly the detectives, including DCS McBurney, accepted the truth of its contents. However, no action was taken in relation to the tip-off allegation.

Res Con Atkinson was not arrested. Although he was subsequently served with a form 17/3 in relation to the neglect complaint, he was not notified or cautioned about the tip-off allegation.

53. On 11 May 1997 Mr Jonathan Wright, who had been at the scene with Allister Hanvey, made a statement in which he also gave a description of the jacket worn by Allister Hanvey on the night which contradicted what Allister Hanvey said about his jacket.
54. A factor which led to some initial inactivity on DCS McBurney's part was his concern for Tracey Clarke's safety and his anxiety not to do anything to damage the prospect of being able to call her as a witness.
55. On 16 May 1997 DCS McBurney received confirmation from the telephone company that a call had been made from Res Con Atkinson's home to the Hanvey home at 08:37 on 27 April 1997. He took no further steps to investigate the tip-off allegation in the period between 16 May 1997 and 9 September 1997, when he interviewed Res Con Atkinson.
56. The allegation by Tracey Clarke against Res Con Atkinson was very serious. She was accepted by the RUC as a witness of truth regarding the murder and, although her evidence against Res Con Atkinson was hearsay, it was supported by telephone intelligence. We have accepted the evidence of Tracey Clarke contained in her 10 May 1997 witness statement. There are a number of examples in which the tip-off allegation investigation was flawed:
  - (a) DCS McBurney's decision that the allegation did not form part of the murder investigation when it obviously did;
  - (b) the failure to record the allegation as a crime or make a paper referral for record purposes to C&D at RUC Headquarters as required by RUC Force Orders;
  - (c) Allister Hanvey had gone to a gathering at Miss Tracey McAlpine's house after the violence, where the events of the night were discussed. When interviewed by police he lied about being there, and the police at all material times had the evidence to prove that to be a lie but took no action to see whether this evidence could be added to by more detail or by other witnesses and be followed up by questioning Allister Hanvey and Thomas Hanvey, his uncle, about it;
  - (d) Allister Hanvey lied about what jackets he owned as he said he only owned a black CAT jacket, which suggested that he had in fact destroyed the jacket described by Res Con Warnock or Jonathan Wright. The lie was not challenged;

- (e) the failure to follow up Allister Harvey's account of talking to a police officer after the incident;
- (f) the failure to pursue and translate telephone intelligence into evidence;
- (g) the failure to produce timelines (also known as chronologies) on the movements of Res Con Atkinson and Allister Harvey to show contact to add to the telephone analysis. Res Con Atkinson's duty records were not obtained until 2000;
- (h) no investigation was carried out in response to the detective's visit to Mr Kenneth and Mrs Elizabeth Harvey on 11 May 1997 in which they claimed that Allister Harvey had helped a police officer who would give evidence on behalf of their son, and their false alibi for him;
- (i) during his interview on 9 September 1997 Res Con Atkinson told DCS McBurney that he had seen Allister Harvey at the scene. This information was not passed to the Director of Public Prosecutions (DPP) when he was considering a murder prosecution in reliance on Res Con Atkinson's evidence and also whether or not he should direct DCS McBurney about further questioning of Res Con Atkinson in relation to Allister Harvey;
- (j) after the false alibi had been given by the McKees and the Atkinsons on 9 October 1997 (see paragraph 61), DCS McBurney should have secured the telephone records of all those involved in the conspiracy; and
- (k) lest it be thought that DCS McBurney held back from investigating the tip-off in order to protect Tracey Clarke, we note that he was aware some months after she made her statement that Tracey Clarke was openly talking about her statement. In any event, a number of steps could have been taken without exposing her.

The investigation into the tip-off allegation (which ought to have been regarded as a part of the murder investigation) was inadequately conducted and the omissions pointed out were wrongful.

57. The murder investigation itself was not progressed very much further after 10 May 1997. A file was sent to the Office of the Director of Public Prosecutions (ODPP) in late July 1997 containing a recommendation that Tracey Clarke and Timothy Jameson should be interviewed by prosecuting Counsel. Those interviews took place and both of those prospective witnesses made it plain that they would not give evidence. Timothy Jameson dishonestly claimed that DC Honeyford had knowingly taken a false statement from him. Tracey Clarke, who was the sometime girlfriend of Allister Harvey, said that she would not give evidence because of her feelings for him. The others she named were her friends.

58. The murder investigation following the arrest and charge of six suspects was not properly developed. There are several examples which demonstrate this:
- (a) Allister Hanvey's home telephone number and that of Res Con Atkinson were analysed for contact on 9 May. No other suspect or key witness was investigated in this way to establish if contact had been made immediately after the incident;
  - (b) there was a lack of attention to police evidence; it was clear from an early stage that eyewitness testimony would be limited, and therefore every opportunity had to be taken to obtain evidence from those officers who had been at the scene. Allister Hanvey mentioned Reserve Constable Jim Murphy (Res Con Murphy) in interview as being the only officer he saw at the scene who he knew. Res Con Murphy was not questioned about this until 2000. Similarly Sgt P89 was not questioned at all about his poor statement until 2000, when he gave evidence about Allister Hanvey. This clearly demonstrates that the Home Office Large Major Enquiry System (HOLMES) incident room and the SIO were not working properly as they failed to recognise lines of investigation. It was for the SIO to ensure that they were. These and other examples should have been investigated fully in May 1997;
  - (c) that there was an omission to advance the investigation carefully is further demonstrated by the failure to keep the statements of Tracey Clarke and Timothy Jameson off the HOLMES system. DCS McBurney said he did not want them placed on HOLMES, yet within days they were;
  - (d) the information given by Andrew Allen in his police interview that he heard at the party that Allister Hanvey had hit someone with a bottle was not further investigated. Neither was it referred to in the report to the DPP in relation to the murder nor the report to the DPP in relation to the neglect complaint, where credence is given to the alibi provided for Allister Hanvey. There is no record of any discussion taking place with the potential of using Andrew Allen as a witness;
  - (e) there is no explanation as to why the jacket worn by Allister Hanvey was not pursued in 1997 with Paranoid, a clothing store in Portadown, and without a policy file we can only speculate;
  - (f) the party at Tracey McAlpine's house was known about in May 1997 but was not the subject of investigation until 2000;
  - (g) the alibi provided by Thomas Hanvey about Allister Hanvey's whereabouts after the disturbance might have been broken if the suspects had been thoroughly investigated to prove their movements; and
  - (h) the RUC failed to properly manage the scientific investigation carried out by the then Forensic Science Agency Northern Ireland.

DCS McBurney was responsible for the handling of the murder investigation and the failure to develop it adequately was a wrongful omission on his part.

59. Although the Office of the Director of Public Prosecutions (ODPP), now known as the Public Prosecution Service (PPS), and Prosecuting Counsel considered whether there was nonetheless any evidence to proceed with a charge against any of those who had been arrested in May 1997, they concluded that there was not, save in the case of Mr Marc Hobson who was prosecuted for murder on the strength of eyewitness evidence from PC Neill. He was acquitted of murder but convicted of affray. We have carefully considered whether the ODPP's decisions not to proceed against other defendants were reached with due diligence. We have concluded that they were.
60. None of the Land Rover crew were interviewed for the purposes of the neglect investigation until September 1997. Even at that stage, Res Con Atkinson had received no written notification or caution in relation to the tip-off. When interviewed on 9 September 1997 he was asked about the tip-off by DCS McBurney, who conducted the interview. He did not put the content of the telephone records to Res Con Atkinson in interview. Rather, he asked him whether he had made telephone contact with the Hanvey household on 27 April 1997 and it was agreed that Res Con Atkinson would get his own telephone records and attend for a further interview.
61. Res Con Atkinson then entered into a conspiracy with his wife Eleanor Atkinson, with Andrea McKee and her husband Michael McKee, and with Allister Hanvey's parents Kenneth and Elizabeth Hanvey. The purpose of that conspiracy was to deceive the police by telling them that the telephone call of which the police had a record had in fact been made by Michael McKee and concerned the whereabouts of Tracey Clarke.
62. That conspiracy was put into effect on 9 October 1997 when Res Con Atkinson was re-interviewed and he gave that false account. Subsequently Eleanor Atkinson and the McKees gave statements in which they advanced the false account and Allister Hanvey's parents also gave that false account orally to detectives. In relation to Res Con Atkinson this was a further wrongful act.
63. On 22 December 1997 DCS McBurney delivered a file to the ODPP in relation to the neglect investigation and the tip-off. In relation to the tip-off allegation he expressed scepticism about the account of the telephone call given on 9 October but recommended no prosecution. That prosecution file explicitly said that every effort had been made to prove or disprove the tip-off allegation. Plainly this was not correct. As we have said, we are satisfied that DCS McBurney could and should have done more to further the investigation into the tip-off in 1997 and

that the report to the ODPP should have reflected his failures. It was a misleading report and its submission in that state was wrongful.

64. Nothing of substance was then done in relation to the tip-off or murder investigations until June 2000. By that stage the Coroner had decided not to hold an inquest into Robert Hamill's death, on the basis that he could not reasonably require the attendance of Tracey Clarke and Timothy Jameson. DCS McBurney believed that an inquest would have been capable of shedding light on the tip-off. Having learned of the Coroner's decision he decided to re-interview Andrea McKee. He and DI Irwin made an unannounced visit to her on 20 June 2000 and interviewed her without cautioning her. She freely admitted her part in the conspiracy of October 1997, and gave a statement to that effect.
65. We have considered carefully the evidential difficulties which DCS McBurney faced in proving that a crime had been committed by Res Con Atkinson until the conspiracy involving Michael and Andrea McKee came into being and the reasons for the decision he made thereafter to play a waiting game. This has to be borne in mind in assessing the degree of his culpability in relation to some of his wrongful acts and omissions. We take the view that overall the difficulties DCS McBurney faced, along with the responsibilities of the rest of his caseload, do provide some degree of mitigation.
66. We have considered with care the role of the then Chief Constable of the RUC, Sir Ronnie Flanagan, in relation to the murder investigation. We found his evidence confused. Nonetheless, we have found no evidence that he acted wrongfully in relation to the investigation into Robert Hamill's death.
67. A good deal of criticism has been levelled against DI Irwin for his part in the investigation, but having given that criticism careful consideration we conclude that he was not guilty of any wrongful act or omission. Rather he is to be praised for taking a number of valuable steps in the investigation, including setting up a mini-MIRIAM system (which collated information received) and designing questionnaires.
68. In due course, on 10 April 2001, Res Con Atkinson, Eleanor Atkinson, Michael McKee, Andrea McKee, Thomas Hanvey, Kenneth Hanvey, Elizabeth Hanvey and Allister Hanvey were arrested. Andrea McKee repeated that there had been a conspiracy and Michael McKee admitted his part in the conspiracy, but all the others denied any wrongdoing. By this stage Detective Chief Superintendent Colville Stewart was the SIO of the murder investigation as well as of the reinvigorated investigation into the tip-off. He was assisted by Detective Chief Inspector K (DCI K). We were impressed by these two officers. We have no doubt that, had Res Con Atkinson told the truth at that stage, those officers would

- have used it as the basis for further investigations into the murder, not least by confronting Allister Hanvey with the evidence that had accumulated against him.
69. Andrea and Michael McKee subsequently pleaded guilty to perverting the course of justice and Andrea McKee agreed to be a prosecution witness in a trial against her co-conspirators. Her account was corroborated by her husband's plea of guilty and by telephone and taxi records which contradicted what she had said in furtherance of the conspiracy and supported the evidence she was proposing to give. We are satisfied that her plea of guilty was an honest one.
70. Res Con Atkinson and Eleanor Atkinson were prosecuted for conspiracy to pervert the course of justice and Kenneth Hanvey was prosecuted for perverting the course of justice, but not conspiring to do so. The preliminary enquiry before the magistrate was due to take place on 22 December 2003 but Andrea McKee did not travel from North Wales to give evidence. The reason she gave was that her young son was ill, and the magistrate granted an adjournment and required the prosecution to substantiate the child's illness. In the course of seeking to do that Andrea McKee told lies about dealings which she had had with an out-of-hours clinic on the weekend preceeding 22 December 2003. The ODPP arranged for Andrea McKee to be seen in consultation by Junior Counsel Miss Christine Smith and Leading Counsel Mr Gerald Simpson QC with a view to deciding whether, despite those lies, she could still be relied upon in the prosecution. Counsel advised that she could not and the Director of Public Prosecutions (DPP), Sir Alasdair Fraser, accepted that advice. Before he reached a final decision he consulted the Attorney General, Lord Goldsmith. The prosecution was discontinued on 19 March 2004.
71. We believe on the strength of the evidence available that the prosecution would have been, at that time, likely to succeed. We also believe that, once convicted, Res Con Atkinson would have been approached by DCI K and asked to tell the truth about what he saw Allister Hanvey do on the morning of 27 April 1997. The DPP's decision prevented DCI K from being able to advance the murder investigation in that way, and so shaped it. We have no doubt that the ODPP failed to act with due diligence. No proper steps were taken to obtain reports which demonstrated whether and to what extent what Andrea McKee had said about her son's illness was true. The relevant officer within the ODPP, Mr Ivor Morrison, misled himself into believing that he could not satisfy the magistrate that the adjournment had been justified and furthermore that the magistrate could and would dismiss the case as a result. None of those involved approached the question of Andrea McKee's credibility in its proper context and all appear to have taken against her because she had lied to them about what was in fact a

peripheral matter. The DPP and the Attorney General were wrongly led to believe that there was no corroboration of Andrea McKee's evidence.

72. On 31 January 2010 we delivered an interim report to the Secretary of State for Northern Ireland, recommending that the PPS reconsider the decision in relation to prosecuting Res Con Atkinson. On 21 December 2010 the PPS informed us that it had reviewed the decision and had decided that the Test for Prosecution was met in respect of two persons for an offence of conspiracy to pervert the course of public justice and one person for doing an act with intent to pervert the course of public justice.
73. We make a number of recommendations. The RUC has, of course, been replaced by the Police Service of Northern Ireland, and there have been considerable changes of practice which have already dealt with many of our concerns.

## **Conclusions**

74. Where we have found a wrongful act or omission we must next consider whether it obstructed the murder investigation. If it did so, we must go on to consider whether it was deliberate or negligent. If it did not do so then it amounted to a failure of due diligence.
75. The Terms of Reference would have required us to undertake a similar exercise in relation to facilitating Robert Hamill's death. In the event, however, we have found no wrongful act or omission which facilitated Robert Hamill's death.
76. We therefore now turn to considering whether the wrongful acts and omissions which we have identified obstructed the murder investigation and whether they were deliberate or negligent. We approach the wrongful acts and omissions chronologically and we endeavour to consider them in the round.

## **Wrongful acts and omissions**

### **Inspector McCrum's wrongful omission to debrief (Paragraph 29)**

77. We are clear that the omission to obtain an initial understanding of what had happened and which officers may have useful information about witnesses and suspects had a serious and continuing impact on the murder investigation. That was exacerbated by the failure in the hours following the assault to ensure that officers made proper notebook entries or statements. Evidence obtained from officers in 2000 and 2001 clearly demonstrated that evidence was missed which would have assisted the investigation. We have no doubt that Insp McCrum's omission in those respects obstructed the investigation. We believe that his omissions were negligent.

**Detective Chief Inspector P39's wrongful omission to ensure that all officers who had been at the scene were fully debriefed (Paragraph 34)**

78. We have already found that the failure of the initial debriefing obligation amounted to obstruction. DCI P39 was in a position to recover lost ground by ensuring that all of the officers who had been at the scene were properly debriefed as soon as possible following the assault, but failed to do so. Her omission to do so was obstructive. We are satisfied that she did not deliberately obstruct the investigation. We are bound to conclude that her omission was negligent because it fell short of the accepted standard. However, we must record that she had not been properly trained or prepared for her role and that her personal responsibility for her omissions should be viewed in that context.

**Sergeant P89's wrongful omission to record his dealing with Allister Harvey or Reserve Constable Atkinson's warning (Paragraph 35)**

79. We have no doubt that the failure on Sgt P89's part to inform detectives that he had seen Allister Harvey behaving aggressively and that he had been warned of him by Res Con Atkinson inhibited the investigation and so obstructed it. We find the omission to tell the detectives of these things very striking but have no evidence that it was deliberate. In those circumstances we conclude that it was negligent.

**Reserve Constable Atkinson's wrongful omission to record what he saw of Allister Harvey on the night of the assault (Paragraph 35)**

80. This omission cannot be viewed in isolation. Taken together with what we have found about the telephone call made some hours later by Res Con Atkinson to the Harvey home and with the concerted lies subsequently told by the Harvey family, we believe that Res Con Atkinson obstructed the investigation by withholding relevant information and that he did so deliberately.

**Reserve Constable Atkinson's wrongful act of telephoning Allister Harvey's home (Paragraph 36)**

81. Plainly this obstructed the investigation. Equally plainly it was deliberate.

**Detective Chief Superintendent McBurney's wrongful omission to keep a policy book (Paragraph 43)**

82. DCS McBurney should have maintained a policy book for the murder investigation. He accepted that it was the norm to do so. In failing to keep a policy book his thinking as an SIO was hidden from others. This obstructed the murder investigation by being part of a series of acts or omissions which resulted in DCS McBurney not being properly overseen by senior officers, the ICPC and the DPP.

83. Powerful submissions were made to us to the effect that those failures in oversight were so widespread that they must have resulted from some form of collusion and accordingly that they were deliberate. After very careful consideration we find that they were not. On the contrary, we think that DCS McBurney was guilty of a number of negligent acts and omissions, of which the failure to keep a policy book was one.

**The wrongful omission of Superintendent Anderson and Chief Inspector Bradley to monitor the complaints element of the investigation by Detective Chief Superintendent McBurney (Paragraph 46)**

84. This was the first of the failures in oversight, and it was a persistent one. Had these two officers carried out their roles adequately then, as the matter was referred through the proper channels in C&D, it would have been brought to the attention of the Chief Officer's Group and they would have realised that the tip-off allegation was not being adequately investigated and therefore that the murder investigation was not being properly investigated. The Chief Officers Group would have ensured that the tip-off was being overseen by the ICPC. In all those circumstances the omissions plainly obstructed the murder investigation. Supt Anderson was unable through illness to attend the Inquiry and give oral evidence. CI Bradley did give oral evidence and we considered very carefully whether his omissions were deliberate and, having regard to his demeanour in the witness box, we conclude that he simply did not understand the function that he was supposed to have been performing. We conclude in those circumstances that these officers were negligent.

**The wrongful omission by Detective Chief Superintendent McBurney to regard the tip-off allegation as an inherent part of the murder investigation (Paragraph 47)**

85. This is a prime example of an omission which we cannot view in isolation. As we have said, DCS McBurney was not supervised by the ICPC in relation to the tip-off. He chose to treat the tip-off as part of the neglect complaint for the purposes of reporting to the DPP, which meant that he did not present his report until months after the murder file was delivered. He was able to separate the murder from the tip-off in a way which we regard as wholly artificial. We find his omission to amount to an obstruction. It was negligent.

**Detective Constable McAteer's wrongful omission to include a description of Allister Hanvey's clothing in Tracey Clarke's statement (paragraph 49)**

86. Tracey Clarke would have been capable of describing Allister Hanvey's clothing on the night of 27 April because she had seen him at the scene of the disturbance and she had bought him the jacket he was wearing. Such a description would have allowed the detectives to challenge Allister Hanvey when he said he only had

a black CAT jacket. DC McAteer's omission obstructed the investigation. It was negligent.

**Detective Constable McAteer and Sergeant Bingham's wrongful omission to ensure that Allister Harvey's home was searched rigorously (Paragraph 51)**

87. It is unlikely that a proper search on the 10 May 1997 would have yielded any better results than the search which was properly conducted on the 13 May 1997. We cannot say that their omissions obstructed the investigation in those circumstances. It amounted to a lack of due diligence.

**Detective Chief Superintendent McBurney's wrongful omission to investigate the tip-off allegation between 16 May 1997 and 9 September 1997 (Paragraph 55)**

88. As we have made clear, any unjustifiable failure to investigate the tip-off was bound to influence the investigation of the murder. We conclude, therefore, that this omission amounted to an obstruction. We have already concluded that DCS McBurney wrongly failed to treat the tip-off as part of the murder investigation. He consciously chose to take no steps in the tip-off investigation until 9 September 1997. In the course of that period he ignored evidence which could have, among other things, broken Allister Harvey's alibi about his whereabouts after the disturbance and could have uncovered the truth about what he was wearing on the night. His omission was negligent because we do not find it deliberately wrongful.

**Detective Chief Superintendent McBurney's wrongful omission to develop the murder investigation following the arrest and charge of six suspects (Paragraph 57)**

89. As we have pointed out there were investigative steps which could have been taken without disclosing Tracey Clarke's identity or revealing what the police had learned about what Allister Harvey had told her, in relation to Res Con Atkinson, the omission of which did amount to an obstruction and was negligent.

**Reserve Constable Atkinson's wrongful act of conspiring to cover-up the tip-off telephone call (Paragraph 61)**

90. When Res Con Atkinson created this conspiracy in September and October of 1997 the murder investigation was at an important stage. The suspects remained in custody and Tracey Clarke was still regarded as a key witness. Had he told the truth at that stage about the cover-up and divulged information about Allister Harvey then it plainly would have had a significant impact on the murder investigation. His conspiracy amounted to an obstruction and was obviously deliberate.

**Detective Chief Superintendent McBurney's wrongful act of delivering a misleading prosecution file in relation to the tip-off (Paragraph 63)**

91. This act has to be viewed in the context of the artificial separation of the murder and tip-off investigations and of the failure to progress either of them properly. We are clear that if DCS McBurney had informed the DPP that there were investigative leads left unresolved he would have been directed to resolve them. Instead the consequence of his report was to leave undone investigative steps for a significant period of time, which could have helped to develop the murder investigation. For those reasons we find that the wrongful act of delivering a misleading prosecution file was obstructive of the murder investigation. We find that this was the one deliberate wrongful act done by DCS McBurney.



# *Chapter One*

## **Setting up the Inquiry and aspects of its conduct**

### **Background**

- 1.1 In the early hours of 27 April 1997 Mr Robert Hamill was seriously injured in an outbreak of violence in the centre of Portadown. The crossroads where that occurred was a known flashpoint for sectarian trouble, and a Royal Ulster Constabulary (RUC) Land Rover with four officers in it was stationed nearby to maintain public order.
- 1.2 The Inquiry has produced a virtual reality model of the area from police photographs of the scene. Below is a snapshot taken from it which shows the view from outside Jameson's Bar on Thomas Street looking across to Woodhouse Street. The Land Rover is in the position it was in during the violence, partially obscured by the lamp-post.



**Virtual reality image from outside Jameson's Bar looking down Thomas Street towards the Land Rover at the mouth of Woodhouse Street (colour images are available in Appendix C)**

- 1.3 When the violence broke out it became an affray. Some idea of the scale and severity of the disorder can be gleaned from the log of radio traffic between the Observer, Reserve Constable Denise Cornett (Res Con Cornett), in the Land Rover and the controller, Police Constable Simon Godly (PC Godly). This is set out below.

| <b>Time</b> | <b>Speaker</b>  | <b>Content</b>                                                            |
|-------------|-----------------|---------------------------------------------------------------------------|
| 1:46:21     | Res Con Cornett | <b>Roger, we need back-up urgently in town, over</b>                      |
| 1:46:24     | PC Godly        | <b>Roger, there are other mobiles, they're already on their way, over</b> |
| 1:46:27     | Res Con Cornett | <b>Roger, they're killing one another in the middle of town</b>           |

- 1.4 Even before the violence was brought under control there were allegations that the Land Rover crew could have done more to avert the incident. Within days rumours were circulating within the Catholic community in Portadown to the effect that the police sat in the Land Rover watching the violence and did not intervene because their sympathies were with the Protestant assailants. There was also a rumour that at least one of the officers knew one or more of the attackers.
- 1.5 Robert Hamill died in hospital on 8 May 1997 without regaining consciousness. At that stage it was not clear whether the death was a direct result of the injuries he had sustained on 27 April.
- 1.6 By 10 May 1997 the RUC had the identities of a number of Protestants who were thought to have attacked Robert Hamill. Further, it had intelligence that one of the Reserve Constables in the Land Rover, Reserve Constable Robert Atkinson (Res Con Atkinson), had sought to protect one of the attackers by telling him to destroy the clothing he had worn on the night and by keeping him informed about the ongoing police investigation. In September 1997 those matters were put to Res Con Atkinson and in October 1997 he gave an explanation which the RUC suspected involved a further conspiracy to pervert the course of justice.
- 1.7 In November 1997 the RUC received the formal pathologist's report attributing Robert Hamill's death directly to the injuries he had received on 27 April.
- 1.8 Although a number of arrests were made speedily and recommendations for prosecution were delivered to the Office of the Director of Public Prosecutions (ODPP), no one was convicted of Robert Hamill's murder and only one person was convicted of affray arising out of the attack on him. Res Con Atkinson was eventually charged with conspiracy to pervert the course of justice in relation to the explanation he gave in October 1997 about a telephone call which had been made from his home on the morning of 27 April 1997. However, the proceedings were withdrawn on 19 March 2004.

## Historical context

- 1.9 In order to gain some understanding of the troubled background in which Robert Hamill's murder and the subsequent police investigations took place, we commissioned reports from two independent police experts, Mr Colin Murray, formerly a Detective Superintendent in England with a wide experience in the investigation of crime, and Mr Ken Armstrong, a former Detective Chief Inspector in Northern Ireland with wide experience as a senior investigating officer in murder reviews.
- 1.10 Professor Kieran McEvoy, Professor of Law and Transitional Justice, Queen's University Belfast, was asked also to provide a report for the Inquiry on a number of issues in a historical context. A number of the areas explored in Professor McEvoy's report relate directly to policing matters which inform the broader context of the events surrounding Robert Hamill's murder and the investigation of his death. It provides an assessment also of political events and their impact on the Northern Ireland Peace Process.
- 1.11 Further, to gain a broader understanding of the historical context to this Inquiry, the Panel read a number of books and publications from differing perspectives. To familiarise ourselves with the scene we visited Portadown on 26 January 2005. We walked around the streets forming the crossroads where, or near to which, Robert Hamill received his injuries. We looked particularly at sight lines from various points. We undertook two further visits. One visit was conducted on the evening of 15 January 2009, when a limited number of journalists were invited, as we viewed a Land Rover which was of a similar model to that used on the night in question. A final visit took place on 23 April 2009, when we re-examined the scene.
- 1.12 We are mindful that the Orange Order march at Drumcree Church outside Portadown was an annual flashpoint for protest and violence during the summer marching season. It has been tradition for the Drumcree Orange parade to take place during the first Sunday in July and for various lodges to march from Drumcree Orange Hall into Portadown. The Orange Order, the largest Protestant organisation in Northern Ireland, has marched this route since 1807.
- 1.13 Certainly by 1997, the Drumcree parade raised the expectation of trouble for a large proportion of people in Northern Ireland. After two previous years of serious public disorder and a sense of real injustice, there existed growing resentment and tension between the two main communities. Notably, on 6 July 1996 Sir Hugh Annesley, the then RUC Chief Constable, decided to re-route the Orange Order parade from the Garvaghy Road in Portadown. This decision was made in the light of circumstances the previous year and the likelihood of serious public disorder. After five days, the Chief Constable reversed his original decision to re-route the

parade and over 1000 Portadown Orangemen were allowed to march down the Garvaghy Road.

- 1.14 During the stand-off period, supporters at Drumcree had grown to almost 10,000 and serious public order and crime had erupted in many parts of Northern Ireland. This included people being intimidated out of their homes and the murder of a Catholic taxi driver.
- 1.15 As Detective Constable Edward Honeyford remarked in his statement to the Inquiry, **'1996 and 1997 in Portadown was a particularly vicious and wicked time'**. During his oral evidence he told us

**'It must be remembered that this was the time of the Drumcree saga which started in 1996 and caused a lot of tension in Portadown generally where both sides hated the police. It particularly engendered hatred in the Protestant community towards the Police. Any support or information that people may have given to the police in the past stopped after the Drumcree troubles.'**

- 1.16 Ken Armstrong, one of the two independent police expert witnesses instructed by the Inquiry, commented that the events of Drumcree sparked off both republican and loyalist violence on a scale which was not seen anywhere else in the UK. The impact of Drumcree permeated Northern Ireland, particularly in the form of sectarian attacks and street disorder, focusing mainly in and around those communities where community divides or peace lines existed.

## **Justice Cory**

- 1.17 This Inquiry was established following recommendations made by Justice Cory, a retired Canadian Supreme Court Judge, in his report published on 1 April 2004 entitled Cory Collusion Inquiry Report: Robert Hamill.
- 1.18 Justice Cory was appointed to undertake an investigation of allegations of collusion between British and Irish security forces and paramilitaries in six particular cases in Northern Ireland. Justice Cory's appointment was a critical element of the Weston Park Agreement in which the British and Irish governments recognised jointly that,
- 'Certain cases from the past remain a source of grave public concern, particularly those giving rise to serious allegations of collusion by security forces in each of our jurisdictions.'**
- 1.19 Two of the cases, namely the killing of two RUC officers and the killing of former Northern Ireland Lord Justice, Sir Maurice Gibson, and his wife Lady Gibson, related to allegations of collusion by the Garda Síochána in the Republic of Ireland and these reports were submitted to the Irish Government. The remaining four

cases, the murders of Patrick Finucane, Robert Hamill, Rosemary Nelson and Billy Wright, related to allegations of collusion by British security forces and these were submitted to the British Government.

1.20 Justice Cory concluded that certain aspects of the conduct of the police in relation to the death of Robert Hamill were capable of supporting an inference of collusion and that a public Inquiry should be held to review the actions of the police immediately prior to his murder and during the subsequent investigation into that murder.

1.21 Upon receiving the recommendation of Justice Cory, the Rt Hon Paul Murphy MP, the then Secretary of State for Northern Ireland, set up this Inquiry under Section 44 of the Police (Northern Ireland) Act 1998. In explaining its purpose, he said,

**‘It is essential that all people in Northern Ireland can have confidence in the integrity of the state and its institutions. Where there are serious allegations of wrongdoing it is important that the facts are properly established. It is important that we find a way in Northern Ireland of dealing with the past in a way that recognises the pain associated with it without allowing it to destroy all hope of a better future.’**

## Terms of Reference

1.22 In his report Justice Cory gave his own definition of the word ‘collusion’. A reading of the introductory part of Justice Cory’s Report in which he explains why he gave the word this extended meaning leads us to conclude that this was to enable him to report on the range of issues which he thought necessary to consider in order to accomplish his task.

1.23 The word ‘collusion’ should be given its ordinary meaning which implies an agreement, or meeting of minds, to bring about a devious end. Deliberately, the term did not appear in our Terms of Reference or in those of the Inquiries into the deaths of Rosemary Nelson and Billy Wright. Our Terms of Reference are wide enough to include collusive actions. They are wide enough also to include wrongful actions which involved dishonesty or fault whether or not involving an agreement or meeting of minds and so allow us to look beyond what is properly to be regarded as collusive action and collusion.

1.24 The Inquiry’s Terms of Reference are:

**‘To inquire into the death of Robert Hamill with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary facilitated his death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation**

**of his death was carried out with due diligence; and to make recommendations’.**

- 1.25 The Terms of Reference refer to wrongful acts or omissions, and in our view ‘wrongful’ provides a requirement of culpability, to be assessed by the standards of a reasonable person in the position of the individual whose culpability is in question at the relevant time. Further, we have to be satisfied that the person was culpable having regard to the information which he had or which was reasonably available to him at the time. Moreover, in making judgments we have been cautious against applying the wisdom of hindsight and not to make an adverse finding when two views are reasonably possible.
- 1.26 A wrongful act or omission obstructed the investigation if it might reasonably have been capable of affecting the line or outcome or both of a further investigation. It would not be appropriate to require proof that it would have had such an effect since in relation to an investigation which is initially directed at one target it may become apparent as it is pursued that it should be directed at a different target and it may well not be possible in either case to say what would have been the outcome of the investigation.
- 1.27 For an act or omission to have been ‘deliberate’ means something more than that it was intentional. We believe that for it to be characterised as deliberate, an act or omission must have been done in the knowledge that it was the wrong thing to do.
- 1.28 We believe that the Terms of Reference recognise two areas of public concern. Very broadly, the first area of public concern is centred upon whether the officers in the Land Rover should be regarded as in any way being responsible for Robert Hamill’s death. The second is whether the investigation into the death was inhibited by any wrongful act or omission on the part of the RUC. Additionally, the Terms of Reference require us to consider due diligence in relation to the murder investigation. The parts of the Terms of Reference which relate to due diligence are not restricted to acts or omissions of the RUC, but extend to other persons and bodies involved in the murder investigation.
- 1.29 A public inquiry is by its nature an inquisitorial process and there is no burden of proof on any party or witness. In relation to the standard of proof we have adopted a sliding scale. For us to be satisfied that an event occurred or that an inference is to be drawn we have worked on the basis of balance of probabilities. However, the more serious the consequences of a finding or of an inference the more cogent the evidence has had to be in order for us to be satisfied of it.
- 1.30 Although the Inquiry was in a position to begin calling evidence in the latter half of 2007, an issue which had arisen in connection with its Terms of Reference had

not been resolved. On 3 January 2007 an application was sent to the Secretary of State for Northern Ireland, then the Rt Hon Peter Hain MP, on behalf of the Hamill family requesting an extension of our Terms of Reference to include the role and decisions of the then ODPP, now known as the Public Prosecution Service (PPS), in relation to prosecutions arising out of the death of Robert Hamill.

- 1.31 We had also formed the view that in order for the Inquiry to allay public concern, it was necessary for the acts and omissions of the ODPP to be included within the Inquiry's remit. We were mindful of the fact that the review of prosecutorial decisions was rare since a decision is not necessarily 'wrong' because another lawyer might reach a different view. Nevertheless, we considered the role of the ODPP and its decisions to be of fundamental importance to our Inquiry, and the circumstances so exceptional, that the Inquiry supported the Hamill family's request for our Terms of Reference to be enlarged.
- 1.32 The Secretary of State for Northern Ireland considered representations from the Hamill family, the Inquiry, and the then Attorney General, Lord Goldsmith.
- 1.33 The Secretary of State for Northern Ireland, then the Rt Hon Shaun Woodward MP, communicated his decision in a letter dated 20 March 2008, regrettably over a year after the application was made, that the Terms of Reference should not be extended.
- 1.34 The Hamill family challenged this decision by means of judicial review in the High Court, Belfast, with the support of the Inquiry. Mr Justice Weatherup ruled that the Secretary of State's decision was unlawful on the grounds that he should have decided whether or not an extension of the Terms of Reference was in the public interest, rather than considering the question as to whether there were exceptional circumstances justifying the review of prosecutorial decisions to meet the public interest test. As a result, the matter was referred back to the Secretary of State for reconsideration.
- 1.35 The Secretary of State duly invited further representations from the Hamill family, the Inquiry and the Attorney General. A new decision letter was issued on 4 November 2008 in which the Secretary of State again refused the extension, but stated that, in his view, the due diligence of the ODPP was already within the existing Terms of Reference in relation to the investigation of Robert Hamill's death. He said that insofar as the RUC investigation was shaped by prosecutorial decisions of the Director of Public Prosecutions (DPP), the question of whether such decisions had been made with due diligence could be the subject of inquiry, though it would not be permissible for the Inquiry to reach conclusions as to the merits of such prosecutorial decisions.

- 1.36 We have taken that explanation of the Secretary of State's reading of the Terms of Reference to mean that we shall consider the adequacy of the processes leading to prosecutorial decisions, if such decisions shaped the murder investigation. We are satisfied that, explained in this way, our Terms of Reference allowed us to examine thoroughly all the relevant evidence and issues to allay public concern.
- 1.37 It has to be remembered that it does not fall directly within our Terms of Reference to investigate the attack on Robert Hamill as an end in itself. Having said this, it is a part of our task to try to determine what happened in the course of the violence for two reasons.
- 1.38 The first reason is to ascertain how the tension between the Protestant and Catholic groups who were approaching and reached the junction on the night in question built up and degenerated into violence and the stage at which the four police officers in the stationary Land Rover on the Woodhouse Street side of the junction left their vehicle. These are relevant to ascertaining whether or not the criticism that they did not leave their vehicle promptly enough is well founded and, if so, what effect any delay had on whether either the development and/or the extent of the violence are attributable to this.
- 1.39 The second reason is that in considering the police investigation into the attack on Robert Hamill, it has been important, so far as we have been able to do so, to consider what happened in the violence and also what evidence was available which would have been admissible in evidence in a criminal trial. This was to help us to decide what evidential material was available to the police and what light this may throw on the criticisms made of their investigations into their attack on Robert Hamill and his death.
- 1.40 In considering these two aspects we have had to be careful not to stray outside our Terms of Reference. As a consequence, where our conclusions about a witness have not been of assistance in relation to either aspect we have, except where necessary to provide clarity to our report, refrained from making any findings, adverse or otherwise, in relation to him or her. To say that we have refrained from making adverse findings means only that. There should not be read into the absence of an adverse finding a positive finding that we found the witness to be a witness of truth. We have simply not announced any finding in relation to the veracity of the evidence or the lack of it.

### **Interested parties**

- 1.41 At the outset of the Inquiry, interested party status was granted to the Hamill family and the Police Service of Northern Ireland. On 4 August 2008, interested party status was extended to Res Con Atkinson and Mrs Eleanor Atkinson. British

Irish Rights Watch and the Committee on the Administration of Justice held the status of official observers.

## **Gathering of evidence**

- 1.42 The Inquiry team began to gather materials as early as December 2004. Ultimately over 90,000 pages of documents were received. The Inquiry began the task of contacting potential witnesses for interview in the autumn of 2005. The location of some witnesses was ascertained through documents held by the Inquiry whilst others were contacted through their current or former employers or legal representatives. Some individuals were traced with the assistance of the Police Service of Northern Ireland.

## **Contacting witnesses and interviews**

- 1.43 Prior to being interviewed, potential witnesses were informed in writing of the Inquiry's Terms of Reference, their right to apply for legal representation and their right to apply for anonymity. In addition, witnesses were advised of the undertaking provided by the Attorney General that any evidence given by a witness would not be used in evidence against them in any criminal proceedings, except in proceedings where they were charged with having given false evidence in the course of the Inquiry or having conspired with or procured others to do so. Before any relevant documents were sent to witnesses, a signed confidentiality undertaking had to be returned to the Inquiry.

## ***Witness statements***

- 1.44 All the interviews with witnesses were tape recorded and then transcribed. From the transcripts of interviews, which were provided to the witness for agreement, statements were drafted by the Inquiry team and sent for signature. In most cases statements were returned to the Inquiry, duly signed. In other cases, where statements were not signed, almost all witnesses accepted the accuracy of the drafts.

## ***Enforcement***

- 1.45 The Inquiry was converted to an Inquiry under the Inquiries Act 2005 on 29 March 2006, following a request made by the Chairman, Sir Edwin Jowitt, to Mr Jonathan Phillips, the Permanent Secretary of the Northern Ireland Office. The reason for that request was that the Act gave the High Court power, on an application by the Inquiry, to decide whether to compel the attendance of witnesses to give evidence in the event that they refused to attend.
- 1.46 The Inquiry referred the non-attendance of one witness, Miss Tracey Clarke, to the High Court, Belfast, invoking its powers under the Inquiries Act 2005, with the result that this witness gave evidence via video link.

### ***Categorisation of witnesses***

- 1.47 In the interests of fairness, witnesses were divided into two categories, category A and category B. Every witness was told of their allocation to the relevant category by the Inquiry prior to the hearing. Category A comprised those witnesses whom the Inquiry did not anticipate would be subject of any significant criticism in relation to the death of Robert Hamill and its investigation. Category A witnesses were generally not granted public funding for legal representation for giving oral evidence. The Inquiry provided a dedicated witness support team to offer guidance and any necessary assistance to these witnesses.
- 1.48 Category B witnesses were those whom the Inquiry anticipated might face some significant criticism in its Report. Each witness in this category was notified of the anticipated nature of significant criticism and the anticipated source of such criticism. Reasonable public funding was granted for preparation and representation at the oral hearings.
- 1.49 It was open to any witness to make representations to transfer from one category to another, setting out those grounds within a certain time-scale.

### ***Anonymity***

- 1.50 One of the crucial issues which had to be resolved before the public hearings could commence was that of witness anonymity. We received a substantial number of applications for anonymity, for the most part from serving and retired police officers who had expressed concerns about their identities becoming known in connection with the Inquiry.
- 1.51 We held a two-day hearing on 15 and 16 May 2006 to consider these applications, and we received a great deal of material and representations, both written and oral.
- 1.52 In considering the effect that anonymity would have on the openness and public nature of our Inquiry it was necessary to look at the context in which this Inquiry was held, the reasons why it was established, and the public expectations arising from this. Counsel to the Inquiry submitted

**‘If the Inquiry were to anonymise, or screen, the very people whose actions the Inquiry was designed to illuminate, it would serve to undermine public confidence in the process.’**

- 1.53 At those anonymity hearings, Mr Barra McGrory QC, the legal representative of the family of Robert Hamill, said that the public perception of the impartiality of public inquiries was vital to the success of the Inquiry. Further, he submitted that in the context of events in Northern Ireland known as The Troubles and subsequently,

**‘This is no ordinary Inquiry and one in which the principle of openness is exceptionally important.’**

- 1.54 In our view, to grant anonymity to a large number of witnesses would have made an unacceptable inroad into the transparency of our proceedings and would have given rise to doubts about our impartiality amongst a significant proportion of the public. In August 2006 we refused these applications in all but one case. In doing so we did not feel able to follow the process approved by the Court of Appeal in anonymity decisions arising out of the Bloody Sunday Inquiry, because we thought that the Court of Appeal had given insufficient weight to Human Rights considerations.
- 1.55 It became necessary to resolve the issue of the law relating to the anonymity of witnesses in the House of Lords. Their Lordships agreed with the approach which we had adopted, judgment being handed down on the 31 July 2007, reported as *Re Officer L (Respondent) (Northern Ireland)* [2007] UKHL 36. However, the decision of the House of Lords left an issue still to be dealt with by the High Court in Northern Ireland, as to whether we were entitled to reach the decisions that we did on the evidence before us. In the event that issue was not pursued, so that our decision then became effective. The lengthy legal process in *Re Officer L* served the useful purpose of clarifying the law on anonymity, not only for our Inquiry but for other Inquiries.
- 1.56 We received renewed applications for anonymity and/or screening on behalf of a large number of police witnesses during the course of the public hearings owing to the marked change to the security situation in Northern Ireland with the tragic death of two soldiers and Constable Stephen Paul Carroll on 9 March 2009.
- 1.57 Those murders coincided with the period when these police witnesses were due to attend to give oral evidence before us. In order to determine the applications it was necessary to carry out further enquiries and obtain up-to-date information on the matters raised, including security assessments.
- 1.58 As an interim measure, with the helpful agreement of all parties, we ruled that the serving and former police officers in question would not be named during their oral evidence pending the determination of their anonymity applications. Furthermore, to avoid publication of the names of police officers on documents shown on the public and press monitors, those monitors were taken out of use on a temporary basis whilst interim redactions (i.e. the removal of the names of relevant police officers) were made to the documents.
- 1.59 Upon receipt of relevant information permitting us to assess the risk we ruled that 19 witnesses who were serving or retired police officers could give their evidence from behind a screen, but would not be granted full anonymity. The

detailed ruling made extensive reference to the materials which we had seen and the evidence which we had heard. With regret, we concluded that our full ruling ought not to be published, because of the nature of those materials and that evidence, and those reasons still apply.

- 1.60 It was necessary to give several witnesses anonymity. This was done either on medical grounds or on right to life grounds under Article 2 of the European Convention on Human Rights. In either case it was necessary for the witness to satisfy the Chairman, or if a review by them was sought, the full Inquiry Panel, that the granting of anonymity was necessary. The Inquiry also redacted, as a matter of course, private information such as a witness's home address or material that may lead to the identification of their home address, their telephone numbers, personal email addresses, dates of birth and previous convictions, except where the convictions were relevant to the Inquiry's Terms of Reference.

## **Article 2 of the European Convention on Human Rights**

- 1.61 Article 2 of the European Convention on Human Rights requires that where the state may have had a hand in the death of one of its citizens there must be an independent investigation into that death. This Inquiry has conducted itself in accordance with the obligation. The principal procedural requirements in relation to the independent investigation can be summarised as follows:
- (a) Where agents of the state have used lethal force against an individual the facts relating to the killing and its motivation are likely to be largely, if not wholly, within the knowledge of the state, and it is essential both for the relatives and for public confidence in the administration of justice and in the state's adherence to the principles of the rule of law that a killing by the state be subject to some form of open and objective oversight;
  - (b) The purposes of such an investigation are clear: to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others;
  - (c) There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case; and
  - (d) In all cases the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.

- 1.62 This Inquiry has been conducted entirely openly by an independent panel. It has had unrestricted access to materials in the hands of the state and all relevant materials have been put into the public domain. The Hamill family has been fully engaged with the Inquiry processes so as to safeguard their legitimate interests.

## Hearings

- 1.63 With the issues of anonymity and the Terms of Reference resolved, we were finally able to commence our oral hearings on 13 January 2009 at the Interpoint Centre in Belfast. This phase was concluded on 22 September 2009, although one witness, the former Chief Constable of the RUC, Sir Ronnie Flanagan, was recalled to give further evidence via video link on 16 December 2009. We heard evidence from 174 witnesses. The statements of 37 further witnesses were read. We should emphasise that, with the exception of materials which we saw for the purposes of anonymity applications, all the materials we have seen have been made public.
- 1.64 In the course of the hearings, we were met with a reluctance among many, though not all, Protestant witnesses to co-operate with the Inquiry by providing evidence of matters within their knowledge when to do so might appear to be critical of themselves or members of their own community. Those who have withheld information have resorted to the pretence that they remember nothing and saw nothing save of the most general nature. Some appear to have been motivated by a desire to conceal any active part they played in the violence. Others appear to have been motivated by unwillingness to say anything critical of those involved in the violence. Some may have been unwilling to speak out against their friends or against those who are members of their community because they have been afraid to say what they saw. We are left in no doubt that the decision by so many to have no recollection was by no means always spontaneous but was the result of suggestion, cajolery and in some cases threat. This has added to our difficulties.
- 1.65 However, we are mindful of the fact that witnesses were asked to look back at incidents which happened a good many years ago. Even with the help of statements made soon after those incidents, there are matters about which, despite their endeavour to assist us, some had been genuine in saying they could no longer remember. We do not include these witnesses in the strictures we have expressed against those who have deliberately chosen to pretend that they now have no recollection of the events which they witnessed and in which some of them, we believe, played a part. The sham of the latter has been in quite a number of cases plain for all to see.
- 1.66 Silence has not been confined to one side of the sectarian divide in the community of Portadown. In the case of the Catholics who were present at the time of the violence only a handful of people have come forward to say what they saw. With

minor exceptions, those who have are not guilty of the pretence that they saw nothing at all of the violence. As will be seen when we come to their evidence, it does not follow that everything some of them have told us could be relied upon. However, of those Catholics who were present (and there were significantly fewer Catholics than Protestants), only about half have been prepared to come forward and give their accounts despite attempts at the time to persuade more of them to do so.

## **Role of Counsel**

- 1.67 In many Inquiries the questioning of witnesses is done principally or solely by Counsel to the Inquiry. For a number of reasons, we took the view that it would be desirable to allow questioning by advocates on behalf of witnesses and interested parties. We set out in Appendix A why this procedure was adopted.

## **Interim Report**

- 1.68 On 29 January 2010 the Inquiry delivered an Interim Report containing one recommendation to the Secretary of State for Northern Ireland. The recommendation was that the DPP should reconsider the decision whether or not to prosecute Res Con Atkinson for conspiracy to pervert the course of justice. On 12 March 2010, the Secretary of State invited the Inquiry Chairman to publish that Interim Report.
- 1.69 On 21 December 2010 the PPS informed the Inquiry that the Test for Prosecution was met in respect of two persons for an offence of conspiracy to pervert the course of justice and one person for perverting the course of justice.

## **Warning Letters**

- 1.70 Throughout the course of this Inquiry procedures were adopted with the aim of ensuring that potential criticisms were identified and notified to the individual concerned so that he or she could respond to them. In particular such procedures operated when witnesses were interviewed, when oral evidence was given and when written and oral submissions were made.
- 1.71 Further, to the extent that the Panel were minded to make criticisms in its report, and the individual being criticised had not previously had a fair chance to deal with that criticism, a letter was sent to him or her. Such letters set out the gist of the criticism that the Panel was minded to make and gave the individual an opportunity to make representations.
- 1.72 Due to the passage of time between the Interim Report and our final Report being published, and so far as possible<sup>1</sup>, such letters were also sent in early 2026 to

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<sup>1</sup> In some instances, this was not possible, for example where an individual was deceased or where the Inquiry was unable to trace the relevant individual.

individuals who were likely to be criticised in the report, to ensure that they had a fair chance to deal with the criticism.

## **The Report**

- 1.73 Inevitably there will be from time to time in our Report a repetition of evidence already mentioned. This is because there are passages in the evidence which are relevant for more than one issue with which we have to deal. We think that repetition may be easier for anyone reading our Report than to have to turn back to earlier pages to find the evidence.
- 1.74 In the chapters which follow we set out the principal issues which arose from the evidence, and our analysis of those issues.
- 1.75 The transcripts of oral evidence and documentary evidence referred to in the Inquiry hearings are published on the Robert Hamill Inquiry website ([www.roberthamillinquiry.org](http://www.roberthamillinquiry.org)). In our Report, where we have referred to oral evidence, we have used the day number of the Inquiry proceedings to denote when the evidence was heard, rather than the date. Where we have made a reference to documentary evidence we have used the Inquiry document page reference. Where this is not the start page of a particular document, the start page is given, with the actual page referred to in parentheses.



# Chapter Two

## The cause of death

- 2.1 In this chapter we investigate the cause of Mr Robert Hamill's death. We do so for two reasons. Firstly, there has been no inquest which might have definitively established the cause of death but there has been speculation that there may have been one or more factors intervening between the assault and the death which broke the chain of causation. Secondly, we were concerned to discover whether the medical evidence could shed light on the severity and duration of the assault. Before we address those matters we will set out something of Robert Hamill's condition when conveyed to hospital, the injuries which were noted there and his treatment. We do not propose to do so in more detail than is necessary to deal with the issues.

### The head injury and its treatment

- 2.2 The ambulance arrived at the scene at 01:58 on 27 April 1997<sup>1,2</sup>. Mr David Morrow, the leading ambulance man, attended Robert Hamill. He saw that Robert Hamill had an abrasion to the side of his head. David Morrow thought that he had been hit by a bottle because there was one lying nearby, there was wetness in the general area, and Robert Hamill's head was a little damp near the abrasion<sup>3</sup>. Robert Hamill was unconscious but was breathing with a good pulse<sup>4</sup>. Mr Glen Stewart, the paramedic who travelled in the back of the ambulance with Robert Hamill, told us that his breathing was laboured<sup>5</sup>. Glen Stewart could not insert a plastic airway into Robert Hamill's throat in the ambulance because his teeth were clenched, so he was given oxygen by way of a mask and bag<sup>6</sup>.
- 2.3 The ambulance arrived at the Craigavon Area Hospital at 02:09<sup>7</sup>. Dr Boon Low attended Robert Hamill and found a very low oxygen saturation of 75%<sup>8</sup>. He too was unable to insert a tube to aid breathing because Robert Hamill's jaw was in spasm. He used an oxygen bag and arranged for an anaesthetist to intubate

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<sup>1</sup> See paragraph 1.75 of this Report for an explanation of the numbering of documents in these footnotes.

<sup>2</sup> 08153.

<sup>3</sup> Day 19 (para 11C).

<sup>4</sup> 80978 (80981, para 15).

<sup>5</sup> Day 22 (para 13 (25)).

<sup>6</sup> 81590 (81593, para 14).

<sup>7</sup> 08153.

<sup>8</sup> 38677.

Robert Hamill, who was unconscious<sup>9</sup>. No open injury or limb fracture was seen<sup>10</sup>, but it was impossible to conduct a computerised tomography scan (CT scan) because the hospital's scanner was not working.

- 2.4 For that reason<sup>11</sup> Robert Hamill was transferred to the Royal Victoria Hospital, where he arrived at 06:30<sup>12</sup>. There, he was noted to have a Glasgow Coma Scale of 3<sup>13</sup>, which is the lowest reading on the scale, signifying deep coma. A CT scan showed no abnormality<sup>14</sup>. Mr Thomas Fannin, who was in charge of his care, decided to let him wake with a view to getting him off ventilation<sup>15</sup>. Over the course of 27 April Robert Hamill gradually regained movement and his Glasgow Coma Scale level rose. However, he became very agitated and was trying to remove his face mask and lines and he was accordingly treated by the administration of a drug called Chlorpromazine. That broadly remained the position until 7 May 1997, when Robert Hamill's temperature began to rise. At 14:00 on 8 May 1997 it had reached over 40 degrees Celsius, his systolic and diastolic blood pressure was unrecordable and his breathing had deteriorated. Despite resuscitation efforts being made Robert Hamill was pronounced dead at 17:03 that day<sup>16</sup>.

## The causation question

- 2.5 The members of staff at the Royal Victoria Hospital were not certain of the cause of Robert Hamill's death. The clinical diagnosis contained in the notes subsequently sent to the State Pathologist, Professor Jack Crane, was of diffuse brain injury<sup>17</sup>. The summary prepared following death gave the primary diagnosis as a closed head injury with subsidiary diagnoses as possible cerebral hypoxia and septicaemia, but it noted the head injury as relatively minor<sup>18</sup>.
- 2.6 Dr Low<sup>19</sup> gave evidence to us about his finding of 75% oxygen saturation, a dangerously low level. He said that on reading the notes he believed that Robert Hamill had cerebral irritation, which is known to cause spasms and which may have led to Robert Hamill's jaw being clenched shut. Dr Brian Herron, a consultant neuropathologist, told us that the evidence of hypoxia (lack of oxygen) observed post-mortem was not the cause of the axonal injury<sup>20</sup>. Dr William Lawler, a Home

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<sup>9</sup> 00674.

<sup>10</sup> 38677.

<sup>11</sup> 80245 (80246, para 5).

<sup>12</sup> 38551.

<sup>13</sup> 38549 (38635).

<sup>14</sup> 80245 (80247, para 13).

<sup>15</sup> 80245 (80247, paras 11 & 14).

<sup>16</sup> 38549 (38552 & 38610).

<sup>17</sup> 72832.

<sup>18</sup> 38549 (38552).

<sup>19</sup> 80691 (para 18 & 19) & Day 2 (para 39 (11)).

<sup>20</sup> Day 3 (para 62–64).

Office Pathologist, said that the hypoxic damage seen post-mortem was no more or less than he would expect in association with a head injury causing the axonal injuries which he accepted to be present<sup>21</sup>.

- 2.7 All of the eminent experts who appeared before us or who provided reports have ruled out hypoxia at the scene as a material contributory factor in Robert Hamill's death, and no-one has sought to challenge that conclusion. No expert considered there to be any evidence of septicaemia. In those circumstances, we are confident that we too can rule out those possibilities.
- 2.8 A post-mortem autopsy was conducted by Professor Crane<sup>22</sup>. He sought the expert opinion of Dr Herron, who microscopically examined sections of Robert Hamill's brain. Both gave oral evidence to us<sup>23</sup>. These two experts concluded that Robert Hamill had died as a result of diffuse axonal injury. Axons are somewhat analogous to wires conducting nerve impulses between nerve cells. We think it unnecessary to resolve a debate that was held between the experts about the precise severity of the axonal injury. Dr Herron told us that in Robert Hamill's case the structures in the brainstem were severely damaged. Both he and Professor Crane regarded, and still regard, that damage as sufficient to fully explain Robert Hamill's death.
- 2.9 We also heard evidence from Dr Lawler<sup>24</sup>, who was instructed to provide an independent opinion to the Inquiry<sup>25</sup>. He believes that there was a slightly different mechanism for Robert Hamill's death, that is, the immediate cause was a rare reaction to Chlorpromazine, known as neuroleptic malignant syndrome (NMS). Some light was shed on the debate by reports from a further Consultant Neuropathologist, Dr Helen Reid<sup>26</sup>, and by a Consultant Neurosurgeon, Mr Nicholas Todd<sup>27</sup>. They too were instructed by the Inquiry. However, it was common ground between the experts that axonal injury was present, that it was caused by the assault, and that it caused the unconsciousness and was life-threatening. Further, it was agreed that if Chlorpromazine was a factor in Robert Hamill's death the administration of it had been appropriate and was not open to criticism.

## **Conclusion on causation**

- 2.10 Our findings as to the cause of Robert Hamill's death are that he suffered head trauma which included axonal injury, in particular in the brain stem. He was properly prescribed Chlorpromazine as a result of the head injury. The immediate

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<sup>21</sup> Day 4 (para 16 (17)).

<sup>22</sup> 954–960.

<sup>23</sup> Day 3.

<sup>24</sup> Day 4.

<sup>25</sup> 72226–72250.

<sup>26</sup> 72526–72534.

<sup>27</sup> 72617–72624.

cause of death was either the axonal injury or NMS. In either event it was caused directly by the head injury.

- 2.11 We should, for completeness, note that the two non-governmental organisations granted observer status in this Inquiry, British Irish Rights Watch and Committee on the Administration of Justice, jointly commissioned their own medical opinion after the close of the evidence and supplied it together with their written submissions. The opinion is by Professor Vanezis, a Home Office Pathologist. His report is based on a synopsis of the evidence, and is consistent with the findings that we have reached on the material to which we have referred.

### **The severity and duration of the assault**

- 2.12 We now proceed to a consideration of what the medical evidence about the cause of the axonal injury can tell us about the violence and nature of the trauma to Robert Hamill's head. In the light of this we have to consider what help it gives us when we come to assess the conflicting accounts that we have heard about the way he came to suffer that violence. We are aware that Robert Hamill suffered bodily bruising in addition to his head injuries, but it has not been suggested that analysis of those relatively minor injuries assists us.
- 2.13 We have been told that axons are present in all parts of the brain, and that axonal injury consists in the stretching of the axons so that they become porous. As a result other chemicals from within the brain seep into the axons with the serious consequence of obstructing the transmission of the control messages needed for the healthy activity of the brain.
- 2.14 Dr Herron is familiar with the interpretation of diffuse axonal injury. He found widespread serious diffuse axonal injury which had resulted from trauma to Robert Hamill's head. It was common ground that such damage is caused by a sudden and rapid acceleration and deceleration and possible rotation in the movement of the brain within the skull. Professor Crane described it as a high degree of violence to the brain.
- 2.15 The hypothalamus is a small organ buried deep in the brain. It plays a major role in directing the functioning of the brain and in Robert Hamill's case it had suffered extensive axonal injury which had adversely affected the performance of that role. In Dr Herron's view the extension into the brain stem and the hypothalamus of the axonal injury observed was indicative of a severe head injury. This was because only the severest acceleration forces, whether with or without deceleration, would cause diffuse axonal injury extending down into these parts of the brain. A higher degree of acceleration to the brain was required to produce the injury in this part of the brain than would have been required to produce a similar degree of injury in a part of the brain close to the skull.

- 2.16 Professor Crane was uncertain about this but Dr Lawler told us that he preferred on this point to defer to Dr Herron's view. We believe he was correct to do so as Professor Crane also generally deferred to Dr Herron on the question of axonal injury, and accordingly we accept Dr Herron's view about it.
- 2.17 That said, Dr Herron pointed out that no direct equation can be drawn between the damage to the brain and the degree of violence to the skull required to produce the requisite degree of sudden movement of the brain within the skull. A glancing blow to the skull can produce a rapid and sudden movement of the brain within the skull. Nonetheless, it is clear from the medical evidence, not only about the degree of axonal injury but also about injuries to the head, that we are enabled to form the view that the violence to Robert Hamill's head involved significantly more than a glancing blow or blows. We are therefore able to form tentative views about the degree of violence to the skull likely to have been needed to produce the widespread axonal damage and its penetration deep into the brain.
- 2.18 Dr Lawler told us, and we accept, that serious diffuse axonal injury is well recognised as a consequence of assaults, particularly when the head is subjected to repeated kicking, punching or stamping. He also drew our attention to what he described as a constellation of four injuries suffered to Robert Hamill's head. In the time between the infliction of the violence he suffered in the early hours of 27 April 1997 and his death on 8 May 1997 some healing had taken place so that not all the injuries could be seen at the post-mortem. The triage form<sup>28</sup> completed by Nurse Maureen Millar, though, noted the presence of blood on Robert Hamill's head when he was received into the resuscitation room. Also noted was a small wound about 1 cm long on the occiput (the lower back of the skull where it merges with the neck). Bearing in mind that the scalp is very vascular we have no hesitation in accepting Dr Lawler's evidence that this blood must have come in large part from this wound. The absence of any reference to this injury in the post-mortem report<sup>29</sup> suggests that it had healed by the time of Robert Hamill's death.
- 2.19 Drawing on the notes made in the resuscitation room as well as in the post-mortem report, Dr Lawler gave us his views about this and three other injuries to Robert Hamill's head. There was a bruise on each side and a large graze on the left side of the head, which Staff Nurse Maureen Hagan<sup>30</sup> told us was three to four inches in diameter. These were consistent with at least two separate blows to the skull which could have been the result of punches, kicks or stamps, and the graze was suggestive of contact between the left side of the head and the ground when a blow was struck to the right side of the head. The fourth injury was bruising

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<sup>28</sup> 38972, 38973 & 38665.

<sup>29</sup> 00954.

<sup>30</sup> Day 4 (para 55(a)).

into the left upper eyelid, not related to any bruising of the scalp, and a fracture, almost hairline, of the front part of the skull running into the roof of the left orbit. Dr Lawler told us that the bleeding into the left eyelid could have been the result of bleeding from this fracture and that this is a well recognised consequence of an impact between the brain and the occiput.

- 2.20 Professor Crane's view was that this was a case of very serious axonal injury. He told us that loss of consciousness from the beginning, and the area of the brain affected, namely the brain stem and the hypothalamus, were indicators of the seriousness. He believed that the injury was consistent with Robert Hamill's head being jumped on while he was on the ground. The degree of axonal injury required there to have been a significant amount of force applied to the head, though provided they were forceful enough it may not have needed many blows.
- 2.21 Professor Crane was asked whether a blow from a flying bottle would have been sufficient to explain the extent of the injuries. That question arose from information given to Staff Nurse Hagan, in all likelihood by one of the ambulance crew. As we have noted above, David Morrow inferred that a bottle was involved in the injury. Professor Crane thought not. We accept Professor Crane's view of the gravity of the axonal injury, and the degree of force required to cause it. He told us, and we accept, that had Robert Hamill suffered NMS this would not affect his assessment of the severity of the axonal injury.
- 2.22 In Professor Crane's view an accelerated fall, for example if someone running at speed fell or slipped, could produce the amount of force required to cause the injury he observed, but the likelihood of this was considerably lower than that Robert Hamill suffered a number of blows. Moreover, Professor Crane told us that if Robert Hamill did fall and hit his head there must have been some additional trauma because of the evidence of more than one injury.
- 2.23 Professor Crane accepted that the axonal injury could have been caused by a blow which caused Robert Hamill to fall backwards and strike his head on the ground. However, in view of the fact that there was no trace of injury to the occiput at the time of death, this suggested cause, though possible, was not likely. His view was that the most likely scenario would be blows to the head while Robert Hamill was on the ground and, depending on the degree of force, one or two severe kicks to the head. The fact that there were three separate areas of injury to the head suggested to him the possibility of three blows or contacts, with one of the injuries perhaps caused by falling. Professor Crane also told us that he could not say with certainty that there were more than two or three kicks to the head, and all the violence could have been administered in a matter of seconds. He agreed, though, that if Robert Hamill's assailant or assailants wore light footwear, for example

trainers, there could have been a sustained attack without every kick leaving some physical manifestation. We accept all of this.

- 2.24 Dr Lawler also considered that Robert Hamill's injuries could have been precipitated by a blow to the head from a bottle. However, he said he thought the likeliest explanation for the four injuries was a fall, followed by a kick or kicks to the head. He was doubtful that was an accelerated fall. He told us that there was evidence of blunt force injury to the head externally and internally and he expressed the view that the suggestion that there was just one blow or an accelerated fall was an extremely unlikely explanation for the severity of the axonal injury.
- 2.25 Dr Herron's evidence accorded with this. He said that more was needed to cause the damage which occurred to Robert Hamill's brain than a simple fall causing his head to hit the ground.

### **Conclusion on indicators of severity and duration of assault**

- 2.26 We can summarise our findings on the medical pointers to the degree of violence inflicted on Robert Hamill's head in the following propositions:
- (a) A blow from a bottle thrown at Robert Hamill's head would not have caused his axonal injury, but a blow to his head from a bottle held in his assailant's hand could have knocked him to the ground.
  - (b) Such a blow or any other single blow to Robert Hamill's head would have been very unlikely to have caused the totality of the axonal injury.
  - (c) The strong likelihood is that the totality of the brain damage could only be accounted for by at least three blows to his head, which could have been as a result of Robert Hamill's head hitting the ground (to explain one of them) and kicks or stamping on his head (to account for the others). Professor Crane and Dr Lawler told that us it would have been difficult for a standing assailant to deliver punches to Robert Hamill's head while he was lying on the ground. We consider that choosing the head as a target suggests a hostile intent of serious gravity; and
  - (d) All the violence could have occurred in a matter of seconds. However, this does not necessarily mean that it did happen so swiftly.



# Chapter Three

## How the violence began

- 3.1 In this chapter we consider how violence broke out in the centre of Portadown in the early hours of 27 April 1997. We do so in order to establish what the Land Rover crew could and should have seen and heard, in order to determine whether any of the officers were guilty of a wrongful act or omission. It is not within our Terms of Reference to criticise any civilian for their role in the violence, though we make findings relevant to members of the Royal Ulster Constabulary (RUC) from which inferences may be drawn against civilians.

### The undisputed evidence

- 3.2 At about 01:20 on Sunday 27 April 1997 Robert Hamill left St Patrick's Hall in Thomas Street, Portadown, where there had been a dance, and walked down towards the junction with High Street and Market Street. There were some other Catholics walking in the same direction at roughly the same time, namely a man we have called Witness D, two women we have called Witnesses E and F<sup>1</sup>, Mr Colin Prunty and Miss Maureen McCoy<sup>2</sup>.
- 3.3 At the junction violence erupted and both Witness D and Robert Hamill were put to the ground with head injuries<sup>3</sup>. Witness D was able to walk to an ambulance, which took him to hospital. Robert Hamill had to be put into that ambulance by stretcher<sup>4</sup>.
- 3.4 The observer in the police Land Rover, Reserve Constable Denise Cornett (Res Con Cornett), first called for back-up at 01:45<sup>5</sup>. At 01:48 she called for an ambulance<sup>6</sup>. The ambulance arrived at the scene at 01:58 and left at 02:02<sup>7</sup>.
- 3.5 Almost everything else that happened between the time when Robert Hamill left St Patrick's Hall and the time he was put into the ambulance is a matter of dispute.

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<sup>1</sup> 09098.

<sup>2</sup> 09106.

<sup>3</sup> 09098.

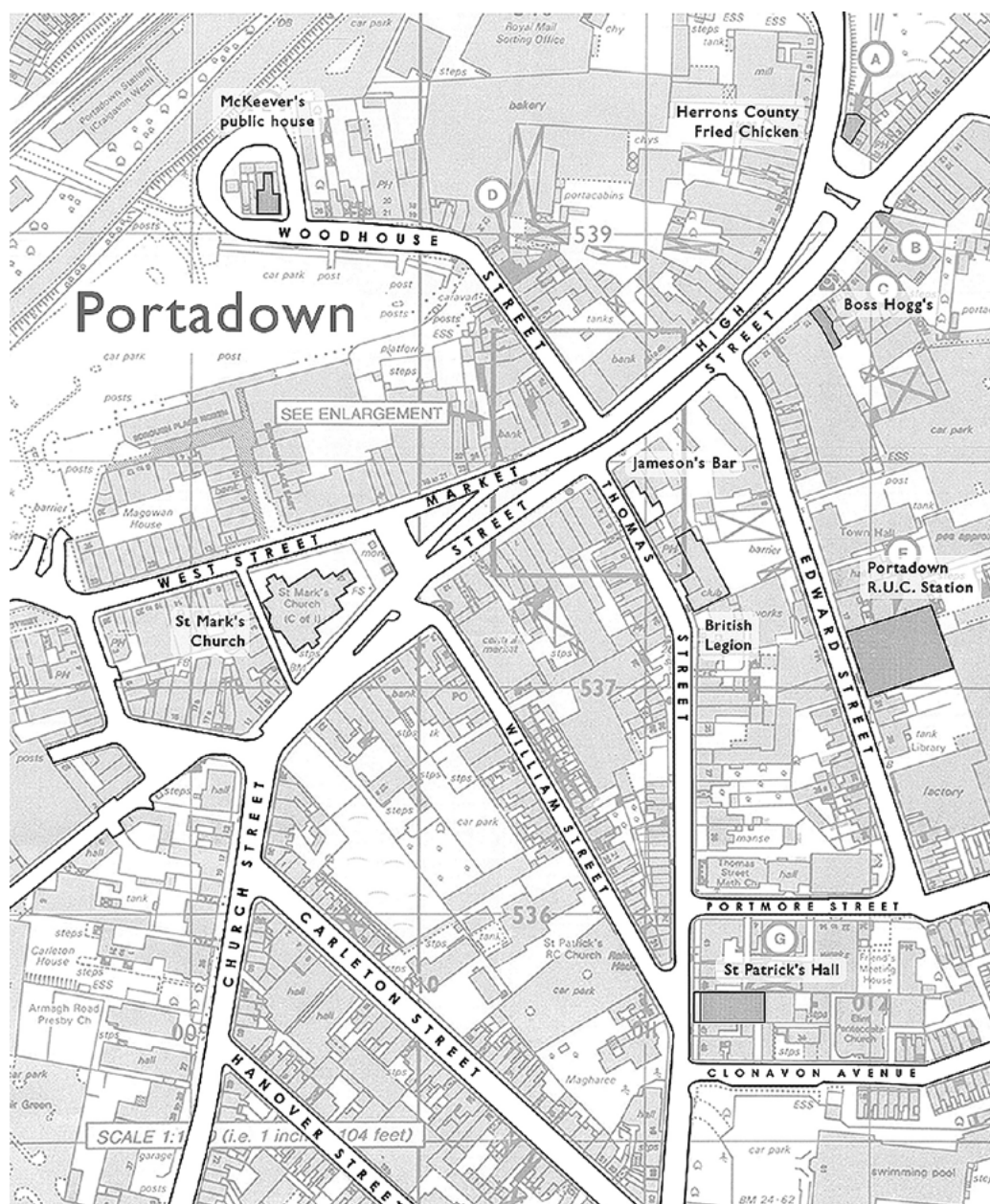
<sup>4</sup> 80978 (paras 14 & 17).

<sup>5</sup> 06583.

<sup>6</sup> 06589 (06590).

<sup>7</sup> 08153.

- 3.6 We include a map of Portadown centre. For the purposes of this chapter, we will focus on the junction where the incident occurred, which is marked by the box, and St Patrick's Hall, which is marked 'G'.



**Map of Portadown town centre, focused on the junction of Thomas Street, Woodhouse Street, Market Street and High Street (map based on 00261).**

## The disputed evidence

### Thomas Mallon's evidence<sup>8</sup>

- 3.7 Mr Thomas Mallon, a man then in his late 20s, was one of those who attended the dance, arriving at about 22:30. By the time he left St Patrick's Hall it was about 01:00 and he had had five to six pints of beer to drink, whether all at St Patrick's Hall he did not say. It was likely he was to some extent affected by drink.
- 3.8 Thomas Mallon knew Robert Hamill by sight but not personally and he was not aware whether or not he was present that night at St Patrick's Hall.
- 3.9 When he was ready to leave St Patrick's Hall Thomas Mallon went into the lobby. There were people there getting their coats and waiting to telephone for a taxi. He realised it would take some time before he could get one and decided to walk home. He said it was about 01:00 to 01:05 when he left.
- 3.10 Thomas Mallon told us that when he went out of St Patrick's Hall into Thomas Street he saw no one in front of him. When he got closer to the junction of Thomas Street and Market Street he saw there were quite a lot of young people about. They were moving along High Street towards the junction. He was aware of the sectarian tensions in Portadown between Catholics and Protestants and, as a Catholic, had no wish to linger.

### The evidence of Witness P132, Witness P133 and Mr Anthony Byrne

- 3.11 The Inquiry also heard evidence from Witnesses P132<sup>9</sup>, P133<sup>10</sup> and Mr Anthony Byrne<sup>11</sup>. Anthony Byrne was a taxi driver in Portadown in April 1997 and he said that a couple had taken his taxi home on the night of 27 April 1997. The couple told him that they had been chased by a group and the female had slipped and cut her knee. He identified the man as Witness P132. He went on to say that after he had arrived at their home Witness P132 wanted to go back to the junction and fight. Witness P132 and Witness P133 said that this was not right as they had run across Market Street and Witness P132 had slipped and cut his knee. On their account there was no violence at the junction while they were there and they were not chased by anybody. We prefer the evidence of Anthony Byrne but take the view that the evidence of Witnesses P132 and P133 does not assist us in reaching a conclusion about the outbreak of the violence.

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<sup>8</sup> 81861–81865 & Day 5 (pages 50–97).

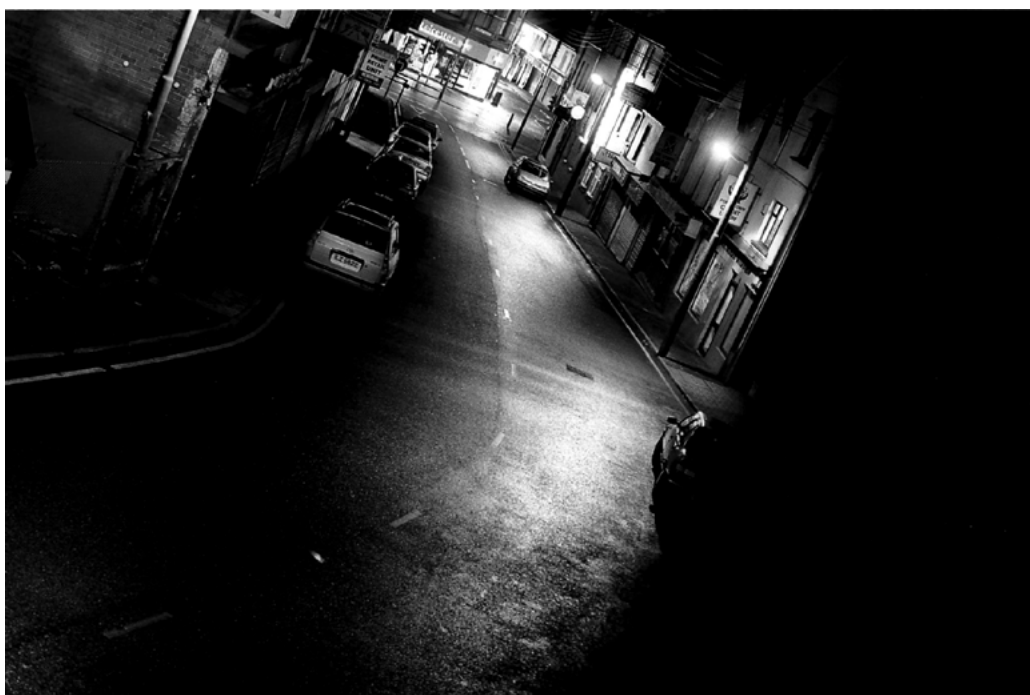
<sup>9</sup> Day 56 (pages 102–114).

<sup>10</sup> Day 56 (pages 114–127).

<sup>11</sup> 81813 & Day 56 (pages 84–102).

### **The evidence of Witness P42<sup>12</sup>**

- 3.12 Witness P42 was in a flat on an upper floor overlooking the lower part of Thomas Street on the same side of the road as Jameson's Bar and roughly on the bend in the street, so that from the window he had a view down the street to its junction with High Street.
- 3.13 Witness P42 told us that on the night of the violence he was in the flat with the window open when he heard some shouting in the street. As his car was parked on the street he looked out of the window to make sure that nothing should happen to it, and he says that this led him to witness the activities which culminated in the violence that night in the town centre.
- 3.14 We have heard from a police photographer, Mr Peter Maile<sup>13</sup>, who took photographs from the windows of Witness P42's flat which overlook the junction of Thomas Street, Market Street and High Street. He told us the view is as set out in the photographs below:



**Photograph from a window in the flat that Witness P42 was living in, looking down Thomas Street towards the mouth of Woodhouse Street.**

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<sup>12</sup> 80912 & Day 5 (pages 1–50).

<sup>13</sup> Day 20 (pages 15–32).



Photograph from a window in the flat that Witness P42 was living in, looking down Thomas Street towards the mouth of Woodhouse Street.

- 3.15 Witness P42 told us that as a result of what he saw he felt he should tell the police what he had seen. He said that he was reluctant, though, to do so openly because of the danger in which this might place him. And so, according to his evidence to us, later on during 27 April, he spoke to his future wife's father about his dilemma and received the advice that he should send an anonymous letter to the police. He told us that his future wife typed out an account of what Witness P42 said he had seen, which was delivered anonymously to the police about three weeks later. Witness P42 said that he could not now recall what he saw. The letter<sup>14</sup> reads as follows:

**'On the date of the fight I observed two men and two ladies walking in the direction of the town centre from the fire station. One lady said not to walk any further as a crowd of lads were standing at the corner bakery, to which the man replied, "This is a free country and I will walk where the f\*\*\* I like".**

**At this he shouted to the fellas do you want a fight, this was shouted about two maybe three times before the crowd at the bakery responded. Then from this both sides started provoking each other. The man that had been doing most of the talking then walked out to the middle of the road, placing his bottle to the ground, he raised his hands into the air and waved as he repeatedly said "Come on then".**

**Eventually one man stepped out from the crowd at the bakery and shouted "I'll take you then". At this point the ladies that were with the two men shouted for them to stop and walk home. But the provoking became worse until both men were about a foot away and sizing each other up. With not one ready to throw a punch, until another man broke from the crowd at the bakery, ran between the both and punched the one facing the town, ran off in the direction of St Mark's Church.**

**The one who received the blow to his face then punched the one who was sizing up to him and ran after the man who had thrown the first punch.**

**Then one by one the crowd started to run in the direction of the fight. Being followed by the man and both ladies who had been with the person who had started the provocation.**

**The police tried to break up the small crowd without siding with either side, trying to calm the situation, but having no success they had to call for more police to control the crowd. Two cars pulled into the middle of**

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<sup>14</sup> 01038.

**the town, one marked car and an unmarked Sierra, the police then ran in the direction of St Mark's Church.**

**One man was then brought to the landrover and placed inside until the fight died down. The ambulance arrived and stretchered one man away.**

**To my knowledge this is as much as I can remember about the night in which the fight took place.'**

- 3.16 Witness P42 made an application for anonymity and screening supported by a medical report. He also gave oral evidence in support of his application. We were satisfied that he was not exaggerating the stress he was under and that his application should be granted on compassionate grounds. It was apparent from the manner in which he then gave his evidence that our decision was justified and it has helped us to gauge whether the letter was a true account of what he saw. We acknowledge the generosity of the Hamill family who, though they knew the nature of the evidence he could give, did not oppose his application.
- 3.17 What we have to consider is whether an account Witness P42 gave 11 years ago of events of which he now has only a scant memory is one on which we can rely. Two factors help us in making our assessment. The first is what motivated him to send his anonymous letter to the police, and the second is whether he could see what he says he did.
- 3.18 It is important to stress that while an account given years ago calls for careful scrutiny when the witness now has only a scant recollection of it, so making it very difficult to test and probe, it by no means follows that a contemporaneous account should not be given credence.
- 3.19 The question of motive is important. If Witness P42's motive was a bad one, that would be likely to destroy the credibility of the account he gave in his letter. On the other hand, if his motive was a good one, the strong likelihood is that he was telling the truth. Is there any evidence of a bad motive? Witness P42 did not know any of those about whom he spoke in his letter. His desire not to reveal his identity to the police suggests that he was not motivated by any hope of a reward. There has been a hinted suggestion that because Witness P42's prospective father-in-law was a retired police officer he had some motive to make false assertions. This has no basis at all. We accept that his prospective father-in-law encouraged him to place the information he had in the hands of the police, but this provides no ground for suggesting dishonesty on Witness P42's part. We are satisfied there is no evidence of a bad motive and conclude that Witness P42 sent his anonymous letter to the police out of an honest desire in the public interest to convey the information he had to give but, like many others, was in fear for himself if his

identity should become known. He was able to see from the window of his flat what was happening in the street, as is evident from the photographs.

- 3.20 Witness P42 agreed with the suggestion made to him by Mr Charles Adair QC, Leading Counsel for the police officers represented by Edwards & Co Solicitors, that the police were out of the Land Rover very quickly after the beginning of the fighting, as opposed to the shouting. But he added that it would be after they started to head up towards the town. We find this confusing. It appears to be a reference to the crowd but the evidence of the police officers who were involved was that this movement did not begin until after back-up police had arrived and this was several minutes after the Land Rover crew left their vehicle. Witness P42 also agreed that it was immediately after or virtually within a short period after the initial punching that the police came out from the back of the Land Rover, which Witness P42 could see from his flat. In his letter Witness P42 spoke of the actions of the police officers in trying to break up the crowd but did not say when in relation to the beginning of the violence he first saw them. Our conclusion is that we cannot gain any help from Witness P42 about the interval of time between the beginning of the violence and the crew of the Land Rover leaving their vehicle.
- 3.21 After that he saw a man being taken to and put inside the Land Rover. He remained inside the Land Rover until the fight had died down. Then he heard the ambulance arrive and after that saw a man on the ground, on a stretcher, and saw him carried away. This happened on the edge of his vision.

### **Jameson's Bar staff**

- 3.22 Jameson's Bar is in Thomas Street on the junction side of the bend in the street and on the right hand side as one walks towards the junction. We had evidence from four members of the staff: Miss Beverly Irwin, Miss Julie Sherwood, Mr Stephen Thornbury (the manager) and Mr Derek Lyttle. Their observations and what they say they heard deal with different stages in a continuum of events. To some extent they overlap and are not wholly consistent.
- 3.23 Of their number we received the fullest account from Beverly Irwin<sup>15</sup>. Her account begins after the bar had closed and the staff were busy about the jobs which had to be done before they went off duty. Beverly Irwin went to the store, which fronts onto Thomas Street and is the furthest part of the premises from the junction, in order to lower the shutter to the street door and cash up. Julie Sherwood went with her. The door is marked at point 5 in this photograph:

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<sup>15</sup> Day 9 (pages 92–129).



Photograph showing the exterior of Jameson's Bar, with the locations of the doors as marked during the hearings. The colour of the marks has been lightened for clarity.

- 3.24 Beverly Irwin said that she began to cash up but then opened the door onto the street just sufficiently to put her hand through and reach the switch which operated the shutter. She heard a voice coming from just outside the door saying, **'Fucking Orange bastards'**. Beverly Irwin said she was frightened and froze, and told Julie Sherwood to fetch Stephen Thornbury. Still looking through the gap between the door and the frame she counted two women and either two or three men walking, not running, down the street towards the junction. Either then or, she said, later she heard the oldest of the men tell one of the group not to shout. Stephen Thornbury came and, once the shutter had been put down, Beverly Irwin continued to cash up. In all it took about 20 minutes to cash up, after which she returned to the bar and was there on her own. Twenty minutes was not suggested by Beverly Irwin as a precise time but we bear in mind it was a Saturday night's takings which had to be cashed up so that the time taken, some of it before Beverly Irwin heard the shouting, seems to us to be a reasonable estimate.

- 3.25 While he was still in the bar Stephen Thornbury<sup>16</sup> had heard a commotion in the street and the bar windows being banged, he told us. Derek Lyttle<sup>17</sup>, also in the bar, said he had heard the shutters of the front doors being rattled and people shouting. Some of what they shouted was of a sectarian nature. We conclude that these incidents occurred before Beverly Irwin heard the shouting in the street outside the store. When Stephen Thornbury came to the store he had opened the door onto Thomas Street and looked out briefly. He saw two groups of people squaring up to one another and heard a lot of shouting. Then he returned to the bar. There had evidently been an interval of time between Beverly Irwin seeing the people who walked past the premises and what Stephen Thornbury saw when he looked out of the door.
- 3.26 Stephen Thornbury told us that about five or ten minutes after he returned to the bar he looked out onto the street and the junction through the window of the lavatory, which was on the junction side of the double doors from the street into the bar. He saw the police Land Rover parked on the Woodhouse Street side of the junction and that there were people outside at the rear of the Land Rover. There were police there but only about two, of whom one might have been a woman. They were trying to separate two groups of people. Stephen Thornbury's view up Market Street was limited, he said, and so he cannot say whether or not there were any officers there. We conclude that these observations were made while Beverly Irwin was still cashing up.
- 3.27 Beverley Irwin said that after she had finished this job she went out into Thomas Street. She saw people running about, shouting and scuffling, though she saw no real fighting. She thought there were about 20 of them, but it was hard to say as they were all moving about. She also saw the Land Rover, though she is not sure of its position. She told us that it was after this that she saw a young man on the ground opposite the Instep shop and nearer to the pavement on the Thomas Street side than to the central reservation. She told us that there was also a young woman who was very upset and weeping and shouting for help. Near her was a police officer, a policewoman Beverly Irwin thought, with blonde hair. The two of them were initially positioned one on either side of this man. Beverly Irwin told us that the young woman may have been on the ground and then was pacing about and she thinks the policewoman may have spoken to her. There was no one attacking the man and Beverly Irwin had not seen anyone attacking him. She said that the police were trying to stop people from scuffling and arguing. Beverly Irwin could not say whether the men she had seen walking past Jameson's Bar were involved.

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<sup>16</sup> Day 9 (pages 128–144) & 09125.

<sup>17</sup> Day 9 (pages 156–173).

- 3.28 Beverly Irwin told the police that she saw a man she took to be a Catholic, who was in his 40s and was wearing a round necked jumper and possibly a brown jacket, who was trying to persuade a young man to leave the area of the disturbance and blaming him for beginning the trouble by shouting **'Orange bastards'** and for not realising that there were a lot of Protestants there. Although Beverly Irwin acknowledged to us that her memory was now not entirely clear, she stood by this evidence, albeit with some diffidence. We conclude that this younger man cannot have been either Witness D or Robert Hamill since they were by now both lying on the ground. We are unable to say who the man in his 40s was or from where he came.
- 3.29 Stephen Thornbury told us that looked out of the lavatory window a second time and thought he remembers seeing someone being put into an ambulance. Also he saw other officers present, one of whom had a baton gun.

**David Woods, Carol Ann Woods, William Jones, Rory Robinson and Andrew Allen**

- 3.30 Mr David Woods<sup>18</sup>, who was 15 years old at the time of the incident and was drunk, said in evidence to us that he had come on the bus from the Coach Inn at Banbridge and that when he got off he began to walk straight up from Boss Hogs, a fast food outlet, intending to turn left into Thomas Street and go home. He hadn't stopped to buy food or to talk to any one and was on his own. He saw no one in front of him and did not see the Land Rover. He told us that he assumed there would be people behind him from the bus but he did not know how far behind they were.
- 3.31 David Woods told us that at the junction, still on his own, he turned into Thomas Street and when he was still outside the bakery he saw a crowd, as he called it, coming down Thomas Street. They were making a bit of a racket. At first he walked on but then stopped, hoping these people would come past him. There were maybe five of them, men and women. He told us that he couldn't remember where they were when he first saw them, as he was very drunk. As well as shouting they were kicking a door. Which door it was he couldn't say, according to his evidence. Then a man from the group came and punched him in the mouth, he told us. He did not see whether this man had broken away from the others, according to his evidence.
- 3.32 Having been hit once David Woods moved back a step or two in case he was struck again, he told us. But there was no further attack and they walked on past him, he said. Then his sister, who lives in the flat above Jameson's Bar, or, he said, whoever it was, opened the door and let him in. This was the door nearest to the bakery.

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<sup>18</sup> Day 24 (pages 1–54).

- 3.33 When he appeared to give evidence to us David Woods was reminded of his interview with the police<sup>19</sup> in which he said that as he was coming up the town he heard people shouting about **'Orange bastards'** and that this was coming from in front of him. David Woods said he could not remember this. Then he accepted that the group in front of him had been shouting about **'Orange bastards'** and that this could only have been directed at him. Rather than retreat he had simply stood there hoping, he said, they would pass him by. He denied that he had been given courage because he had two mates with him and was looking for a fight.
- 3.34 David Woods' sister, Miss Carol Ann Woods, lived with Mr William Jones in a first floor flat above Jameson's Bar in Thomas Street. They were in the living room together and, according to a witness statement which he made, through the open window William Jones<sup>20</sup> heard shouting in the street. He looked out of the window and saw a group of people running down towards the junction. There were three or four men and three women. One of them ran to the junction of Thomas Street and Market Street and struck a person who was standing at the junction in the face. He realised it was David Woods. All this had taken about 20 seconds according to his statement. William Jones and Carol Ann Woods hurried downstairs to bring her brother in through the street door. The statement continued that in the brief seconds while he was outside William Jones could hear shouts of **'Orange bastards'**, **'Fenian bastards'**, **'up the IRA'** (Irish Republican Army) and **'up the UVF'** (Ulster Volunteer Force). When they got David Woods up to their flat his sister could see that his face was marked.
- 3.35 We reject David Woods' evidence that he walked up Market Street on his own. Mrs Pauline Rogers<sup>21</sup>, then Miss Pauline Newell, had come on the bus from Banbridge with her friends and went to Boss Hoggs to buy a takeaway. While she was there she looked up High Street and saw David Woods with Mr Andrew Allen and Mr Rory Robinson walking towards Thomas Street. Andrew Allen's evidence<sup>22</sup> to us was that David Woods and Rory Robinson walked up High Street in front of him and that they all stopped at the corner of Thomas Street to wait for others from the bus to catch up with them. He said that he heard people in Thomas Street shouting and saw three or four girls and three or four men in a group walking down Thomas Street to the junction. We conclude that the three males walked as a group up to Thomas Street.

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<sup>19</sup> 07486–07554.

<sup>20</sup> 09111–09115.

<sup>21</sup> Day 17 (pages 1–23) & 81043 & 09128.

<sup>22</sup> 07305 & Day 25 (pages 120–122).

- 3.36 Rory Robinson<sup>23</sup> gave evidence to us and said he had no recollection of this and did not know David Woods. We give no credence at all to his professed lack of memory. His evidence was to the effect that he remembered nothing. Indeed, he went so far as to say he could not remember the IRA.
- 3.37 In his witness statement William Jones gave descriptions of three men he saw in Thomas Street<sup>24</sup>. Number 1 was about five feet ten inches tall and wore a waist length black leather jacket and black trousers and had dark short hair. Number 2 was about five feet eight inches tall, lightly built with dirty fair hair and wore a grey patterned jumper and blue jeans. Number 3 was about five feet ten inches tall, stocky, well-built with blonde hair and wore a pale blue shirt, a dark tie and black trousers. He was neat and tidy.
- 3.38 We conclude that David Woods did not enter Thomas Street alone and that there are significant similarities between Beverly Irwin's and William Jones' accounts of what they say they saw and heard and the account of Witness P42.

### **Witnesses D, E, F, Maureen McCoy and Colin Prunty**

- 3.39 Maureen McCoy<sup>25</sup> and Colin Prunty<sup>26</sup> went together to the Saturday night dance at St Patrick's Hall on 26 April 1997. Colin Prunty gave evidence to us and said that they arrived between 9:30 and 10:00 and left sometime between 1:00 and 1:30. By then Maureen McCoy had consumed five pints of cider and she described her condition as tipsy. Colin Prunty acknowledged that he had drunk ten pints. Maureen McCoy told us he was a man who could carry his drink. He says of himself that he was drunk by the time they left, but not very drunk. At the outset of his evidence he said that his memory of the events which happened after they left St Patrick's Hall was pretty good. As the questioning of him continued that assertion rang less true.
- 3.40 There was a large attendance at the dance, according to Colin Prunty. Those attending included Colin Prunty himself, Maureen McCoy, Witnesses D, E, F and Robert Hamill. Witness D was male and was married to Witness E. Witnesses E and F were sisters and they were related to Robert Hamill. Though Colin Prunty and Maureen McCoy both knew Witnesses D, E and F and Robert Hamill, they did not see them that night until after they left St Patrick's Hall, according to Colin Prunty. In the lobby there was a queue of people waiting to telephone for taxis to take them home and, because they expected they would have to wait quite a while for a taxi, and it being a fine night, Colin Prunty and Maureen McCoy decided to walk home.

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<sup>23</sup> Day 26 (pages 1–81).

<sup>24</sup> 09111.

<sup>25</sup> Day 6 (pages 5–82).

<sup>26</sup> Day 7 (pages 83–172).

- 3.41 Outside St Patrick's Hall, according to Maureen McCoy's evidence to us, it was fairly quiet as most of those who had attended the dance were still in the hall. Maureen McCoy said that when they reached the bend in Thomas Street they may have crossed the road and it was then that she could see the off-side and rear of a parked police Land Rover. It was at this point, short of the premises of the British Legion and on the same side of the road, that they met Witnesses D, E and F with Robert Hamill, who were standing and looking towards the junction of Thomas Street and High Street. According to Maureen McCoy, Witness F said to them, **'Don't go down there Maureen. There's a crowd down in the corner'**, and she seemed quite frightened and agitated. Maureen McCoy told us that she saw perhaps half a dozen or more people down at the corner as they peeped from the corner to look into Thomas Street and leaned back again. She told us that the presence of the Land Rover gave her confidence, though, so that she was not apprehensive and, despite the warning, she and Colin Prunty continued on their way, leaving the others behind them. Maureen McCoy's evidence of what Witness F said is so strikingly similar to what Witness P42's letter recorded him as hearing that it strongly indicates the letter to be accurate.
- 3.42 Witness F<sup>27</sup> told us that that William Jones' description of Number 1's build fitted Robert Hamill and that he was wearing a black jacket, but he had fair hair. Witness D said that Robert Hamill was wearing a black jacket but that William Jones' description of Number 1 did not match Robert Hamill, who had light coloured hair. In fact, the post-mortem photographs of Robert Hamill showed that his hair was dark in colour. It must be remembered, though, that colours can change their appearance in artificial light.
- 3.43 Witness D<sup>28</sup>, Witness E<sup>29</sup> and Witness F told us that the description of Number 2 did not fit Witness D, as he had dark hair. Witnesses D and E said that the description of Number 1 could not fit him either because he was definitely not wearing a jacket and Witness D said he does not remember ever owning a black jacket. When Witness E made a statement to the police on 28 April 1997<sup>30</sup> she gave a description of her husband's clothing which made no reference to a jacket. When she made a statement to the Inquiry in November 2006<sup>31</sup> she said that Robert Hamill was wearing jeans and a three-quarter length jacket, which she thought was black. She could not remember whether Witness D was wearing a jacket, but accepted that it was a possibility.

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<sup>27</sup> Day 7 (pages 55–95).

<sup>28</sup> Day 8.

<sup>29</sup> Day 7 (pages 1–54).

<sup>30</sup> 09096.

<sup>31</sup> 81369.

- 3.44 Witness D said to us that he could not say whether the description of height and build in description Number 3 fitted Colin Prunty. Witness E said that no one in their group was wearing a blue shirt and tie. Colin Prunty accepted in evidence that description Number 3 fitted him. He did not suggest that it fitted either Robert Hamill or Witness D. These were the only men whom the evidence shows to have been in close proximity to Colin Prunty.
- 3.45 Maureen McCoy told us that as she and Colin Prunty reached the junction, still on their own, about a dozen people appeared from the right-hand corner. Their mood was aggressive and they were shouting sectarian remarks. She said that the next thing that happened was an attack on Witnesses D, E and F and Robert Hamill, who were all to the rear of them.
- 3.46 Maureen McCoy told us that she ran across the road into the doorway of Eastwood Clothing Company to safety and it was from there that she saw that there was someone in the road being violently attacked with feet and fists. This was on the Market Street carriageway. The attack went on for two or three minutes, she said. Who the victim was she didn't know, and neither did she know where Colin Prunty was then, according to her evidence.
- 3.47 Then, she told us, she saw someone lying in the road where the attack had taken place. She said that she crossed over the junction to the Alliance & Leicester to be near the Land Rover, probably, she said, because she was frightened.
- 3.48 At this point it is useful to consider the conflict in the evidence of Colin Prunty, from the time of the encounter with the Witnesses D, E, F and Robert Hamill up to this point, with Maureen McCoy's evidence. He makes no reference to any warning given by one of the sisters against continuing down Thomas Street.
- 3.49 According to Colin Prunty, as he and Maureen McCoy were walking towards the junction of Thomas Street and Market Street a crowd of 20 to 30 people came into the junction from his right. At this time, the other four were by the bakery and he and Maureen McCoy came up close behind them. He said that his best recollection was that a crowd of youths, 15 to 30 of them, jumped on Robert Hamill and dragged him to the ground on the Thomas Street side of, and near to the central reservation in, Market Street. His evidence was that when this happened he and Maureen McCoy ran to try to bring an end to the attack. He said he tried to pull a few people away but they simply joined in the attack again and he was hit a couple of times himself. Robert Hamill did nothing to defend himself, Colin Prunty told us. Colin Prunty saw him lying on the ground in the same carriageway as Witness D and near to the central reservation, he said.

- 3.50 Colin Prunty told us that it all happened very quickly and he didn't really see what the others were doing. He insisted that there was no provocation or aggression from the four or from Maureen McCoy or himself. Her account was similar. She said that she did not hear anyone say, **'This is a free country'**, as according to Witness P42's letter had been said. She went on to say that it could have been said and agreed, somewhat inconsistently if she hadn't heard it, that it could well have been Colin Prunty who said it. But she did not recall hearing him say, **'Do you want a fight?'** If she had she would not have gone down Thomas Street because her practice is to avoid fights at all costs.
- 3.51 Witness E told us that she had had three to four drinks in three hours and was not drunk. Witness F told us that she does not drink and had a good recollection of the night's events. They said they left St Patrick's Hall at about 01:20 and, rather than wait for a taxi, the four of them decided it would be quicker to walk home. They set off down Thomas Street. Witness E said they knew Colin Prunty and Maureen McCoy but did not see them that night either in St Patrick's Hall or after they left.
- 3.52 According to the evidence of Witnesses E and F, Witness D and Robert Hamill walked in front of them. They were not aware of anyone else being in Thomas Street except, though Witness F did not mention this, for a couple walking ahead of the four of them. Whether they became involved in the trouble Witness E could not say. Witness D said he saw no one else in Thomas Street when they left St Patrick's Hall.
- 3.53 All three of them said that none of them rattled the shutters or made a loud noise as they passed Jameson's Bar. It was well known as a loyalist bar and you would go past it as quickly and quietly as you could, they told us. They reached the mouth of Thomas Street without incident.
- 3.54 According to her evidence to us, the first time that Witness E was aware of anything untoward happening was when the two men were opposite Eastwood Clothing Company and they were both attacked and knocked to the ground. Witness E said that she could not now remember her husband being kicked but that she had remembered this when she made her statement to the police on the same day as the incident. Witness E's principal concern when she saw her husband on the ground was directed towards him, she said. He was over towards Eastwood Clothing Company, that is, to her left of the junction, and in the carriageway of Market Street. She said she did not see what was happening to Robert Hamill other than that he was also lying on the same carriageway near the central reservation and to the left of the junction.

- 3.55 Also, according to Witness F there was nothing untoward and no sight or sound of trouble until they reached the junction. As they were turning the corner at the junction to cross over into Woodhouse Street she saw 30 or 40 people coming from her right along High Street. However, she said she had seen the Land Rover and felt safe knowing the police were there and so was not expecting any trouble.
- 3.56 According to her evidence, the next thing she remembered was that Robert Hamill was on the ground and his head was being kicked. One man, who was kicking his head, was shouting, **‘Fenian bastard’**. There were about ten people around Robert Hamill but she said she thought that there were people in front of her blocking her view and so she didn’t see how he went to the ground. He was roughly opposite the Instep shop close to the central reservation in the St Mark’s bound carriageway. Witness F said she did not see how it came about that Robert Hamill had moved to the left of the junction.
- 3.57 Witness F told us that she also saw Witness D lying on the road but did not see how he came to be there. When she was at the junction Witness D was closer to her than Robert Hamill. She said that she hadn’t seen the beginning of the attack on either man and did not know whether or not Robert Hamill fell at the spot where he was attacked.
- 3.58 We note that these witnesses, save Witness F, had been drinking alcohol in varying quantities. We take into account also in assessing Colin Prunty’s evidence that Mr Gordon Kerr QC saw him in consultation (i.e. in the presence of his solicitor) on behalf of the Director of Public Prosecutions to assess his likely quality as a witness and formed a favourable impression of him<sup>32</sup>. We have to say that our impression of Colin Prunty was less favourable. We have commented critically already on the quality of his recollection.

## Findings

- 3.59 It is unnecessary for us to reach conclusions about every aspect of the evidence which we have set out above. For the purpose of our Terms of Reference, what matters is whether violence broke out suddenly or whether there was such a lead up to it as ought to have put the Land Rover crew on notice that it was about to erupt. It is also important to decide whether the violence involving Robert Hamill continued for an appreciable time.
- 3.60 We point out that it would be simplistic to suppose that a witness must either be right or be wrong about all aspects of his or her evidence. There may be a fault in recollection. A witness may be reluctant to tell the truth about certain things and so, for example, be led to deny having heard something said or seen something happen. Reservations about the witness’s evidence on some matter, whether

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<sup>32</sup> 17633 (17635–17636).

from a faulty recollection or lack of candour, do, of course, call for caution before accepting his or her evidence on other matters. It not infrequently happens, though, that a witness's evidence, though not reliable in all it says, is in part reliable.

- 3.61 As we have indicated, we substantially accept the contents of Witness P42's letter, to the extent that we find that a group of Catholics were making sufficient noise outside the British Legion to cause him to go to his window; that Witness F warned Maureen McCoy not to continue; that the group then proceeded towards the junction nonetheless, where there was a confrontation with some Protestant youths, that the confrontation took a little time and that it ended in violence. We conclude that Robert Hamill formed part of the group of Catholics seen by Witness P42 and that the Protestant youths initially comprised David Woods, Andrew Allen and Rory Robinson. We make no finding as to who instigated the violence or inflicted violence on any person. Nothing in the evidence we have recited thus far suggests that the violence which broke out at the bottom of Thomas Street continued beyond a few blows or that it continued for an appreciable length of time. However, we must now consider the evidence of the Land Rover crew and of others who were near to them.

# Chapter Four

## The police response at the scene

- 4.1 In this chapter we deal with the actions of the Land Rover crew and other police officers at the scene and what they did to discharge their responsibilities.

### Background

- 4.2 It has been common ground before us that the junction was a flashpoint. It was not the only flashpoint in Portadown<sup>1</sup> but it appears in our view to be one which had significant potential for trouble. In fact the statistics show that in the 12 months from October 1996 there were 160 recorded incidents of violence of varying gravity within the security barriers<sup>2</sup>. The potential for trouble arose from the following facts. In the early hours of a Sunday when, as on the night in question, there had been a dance at St Patrick's Hall, the Catholics would be coming down Thomas Street from St Patrick's Hall in order to cross the junction and go into Woodhouse Street, which would take them to their homes in the part of Portadown where the residents were predominantly Catholic. Also, at about the same time Protestants, for the most part in their late teens and their 20s, would be walking from the bus which had brought them from the Coach Inn at Banbridge to the bottom end of the town up the town and across the junction to the part of Portadown where the residents were predominantly Protestants. Many of these would call at Country Fried Chicken or Boss Hoggs, fast food outlets, to buy takeaways before continuing up the town.
- 4.3 Trouble could flare up when members from the two groups were crossing the junction at the same time. Three factors added to the risk. Firstly, members from both groups would have been drinking, some to excess<sup>3</sup>. Secondly, there was a general feeling among Protestants that the centre of the town was their territory<sup>4</sup>. Thirdly, the restrictions and controls relating to the marching season imposed by the Parades Commission and which had to be enforced by the police exacerbated existing tensions. This also heightened the strains between both communities and the police<sup>5</sup>. In order to try to avoid trouble and to prevent escalation and quell it if it should break out the centre of Portadown was closed off to vehicular

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<sup>1</sup> Day 62.

<sup>2</sup> 74592 (74607, para 1.3.4).

<sup>3</sup> 74592 (74607, para 1.3.2).

<sup>4</sup> 81919 (81920, para 8).

<sup>5</sup> Day 55 (pages 1–2).

traffic by barriers at night and a Land Rover would patrol within the barriers with the purpose, by maintaining a police presence, of discouraging the outbreak of serious violence<sup>6</sup>. Additionally, reinforcement officers on mobile patrol were on call if reinforcements should be required, though, because of the area they had to cover they might be some miles away from Portadown<sup>7</sup>. For example, the Mobile Support Unit, which generally numbered 12 officers, was at Banbridge 11 miles away at the time the violence broke out in Portadown<sup>8</sup>. It was stationed near the Coach Inn so as to prevent disorder there<sup>9</sup>.

### **The evidence: what the Land Rover crew should have seen**

4.4 On the night of the 26 and 27 April 1997 there were four officers in the Land Rover. Three of them were Reserve Constables. The fourth officer (and driver), Police Constable Alan Neill (PC Neill), not being a reservist, was recognised by his colleagues as the senior officer. Their shift had begun at 15:45 on the Saturday and was due to finish at midnight. However, they were retained to assist the night duty section for the area, which came on duty at 23:45<sup>10</sup>. PC Neill told us this was a usual practice<sup>11</sup>. It was more common for five officers to be allocated to the Land Rover<sup>12</sup> but on this night Police Sergeant P89 (Sgt P89), who was the duty sergeant, in the performance of his usual task of considering what personnel were available to him and deploying them accordingly, allocated four officers to the Land Rover. He considered this to be sufficient<sup>13</sup> and this decision has not been criticised. We were helped about this by the evidence of Mr Colin Murray, formerly a Detective Superintendent in England with wide experience in the investigation of crime, who was called as an expert in policing matters to assist the Inquiry in coming to its conclusions. In summary his view is that one has to keep a sense of proportion in deciding what staffing levels are called for. To expect every potential trouble spot to have a police presence sufficient to cope with the worst possible case would be unrealistic and place a disproportionate burden on a police force. There was no intelligence to suggest there would be a serious outbreak of violence on 27 April 1997. In the light of previous experience of disorder in Portadown town centre, Colin Murray considered the allocation of a crew of four to the Land Rover was a sufficient deployment<sup>14</sup>. This evidence has not been challenged and we accept it.

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<sup>6</sup> 81919 (para 10).

<sup>7</sup> 81683 (para 4).

<sup>8</sup> 74391 (para 3.14).

<sup>9</sup> Day 62.

<sup>10</sup> 81146 (para 5).

<sup>11</sup> 81030 (para 7).

<sup>12</sup> Day 30 (page 75).

<sup>13</sup> Day 32 (pages 1–3).

<sup>14</sup> 74391 (para 3.17).

- 4.5 Implicit in what Colin Murray said is the proposition that if there should be an outbreak of violence in which a large number of people are involved, a situation can develop in which the handful of police officers immediately available to deal with it are simply outnumbered. In considering, therefore, how police officers should go about their task of preventing and controlling public disorder the emphasis must be on maintaining constant vigilance so as to try to nip any trouble in the bud. Common sense suggests that even when a substantial number of people are present this is by no means necessarily a hopeless task. In the case of a spontaneous as opposed to a pre-planned outbreak of violence those initially involved are likely to be only a handful of people. A police presence may prevent such an occurrence. If it does not, though, prompt action at a time when the police are not overwhelmed by those presently engaged in violent activity may prevent the escalation which can so easily occur without prompt police intervention.
- 4.6 When Sgt P89 briefed the Land Rover crew before they went out on duty he reminded them of the need to pay particular attention to Woodhouse Street and McGowan Buildings<sup>15</sup>. PC Neill's evidence was that the briefing also covered the need to pay attention to the bottom end of the town and the people coming from the clubs and bars and St Patrick's Hall<sup>16</sup> and returning from the Coach Inn. Sgt P89 said the hope was that the police would prevent trouble because if it began there was a danger of escalation. This, he said, required constant vigilance on the part of the officers at the scene to see who was coming and from where and how things were developing as a way of seeing whether trouble was brewing<sup>17</sup>. We accept this. The good sense of this is in our view self evident and we accept that this and the previous paragraph correctly set out how the officers in the Land Rover should have approached their task.
- 4.7 PC Neill said there was no set routine about whether the Land Rover crew, when on public order duty, would remain in the vehicle or get out and whether the windows should be open or shut. But it was normal, he said, for them to remain in the vehicle, though he accepted that if a fight did flare up they would be expected to get out and stop it. He did say, though, that one or more of them would get out if people's attitude appeared to threaten trouble<sup>18</sup>. To do this would, in our view, be to try to prevent trouble and that is what we believe to be the effect of PC Neill's evidence. Chief Superintendent William Desmond McCreesh (CS McCreesh), who was the deputy to the Assistant Chief Constable (ACC) in South Region, which included Portadown, had a supervisory responsibility to ensure adequate resources were made available in the event of any serious

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<sup>15</sup> 81698 (para 4).

<sup>16</sup> 81030 (para 8).

<sup>17</sup> Day 32 (pages 23).

<sup>18</sup> Day 51 (page 1).

incident including public disorder. He said the function of the Land Rover crew was to deter fighting, which clearly embraces prevention. He also said officers were expected to intervene to make sure a situation did not deteriorate<sup>19</sup>. Inspector, now Chief Superintendent, Alan McCrum (Insp McCrum) said that in the event of a disturbance officers were expected to get out of the Land Rover in order to protect people. The main role of the crew, he said, was to prevent the outbreak of violence. He acknowledged, though, that sometimes violence can arise so spontaneously that this cannot be achieved. If this was the case the duty then was to try to manage the disorder and, if large numbers were involved, this might require an immediate call for reinforcements<sup>20</sup>.

- 4.8 The members of the Land Rover crew had varying experience of public order duties. Of PC Neill's 13 years' service five years had been in Portadown and he had received training in public order duty<sup>21</sup>. Reserve Constable Denise Cornett (Res Con Cornett) was too ill to give oral evidence following an injury suffered in a road traffic accident but her written statement to the Inquiry<sup>22</sup> was read. She had spent two years attached to a Mobile Support Unit (MSU), for which she had received public order training. She did not think she had patrolled the area where this disturbance occurred on public order duty before the night in question. Res Con Cornett was the Observer and sat in the front passenger seat. She operated the radio in the Land Rover and had her own personal radio. Reserve Constable Robert Atkinson (Res Con Atkinson) had served as a Reserve Constable for 22 years. He sat on the nearside bench in the rear of the vehicle<sup>23</sup>. He had served for about 20 years in the Portadown area, attached for part of that time to an MSU, before being posted to Portadown police station<sup>24</sup>. Res Con P40 sat on the offside bench in the rear of the vehicle<sup>25</sup>. He said at one interview that he had witnessed 30 to 50 sectarian conflicts<sup>26</sup>, though he told us his experience of public order duty did not extend to riot situations. However, he said that in 1996 he had been injured in a public order incident when on duty in Portadown<sup>27</sup>. Despite what he said in his oral evidence about his lack of experience we believe, having regard to his earlier experiences, that he knew what was expected of him in a public disorder involving violence.

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<sup>19</sup> Day 55 (pages 1–2).

<sup>20</sup> Day 62 (pages 8–9).

<sup>21</sup> 81030 (para 5).

<sup>22</sup> 80207.

<sup>23</sup> 09476 (09477).

<sup>24</sup> 81385 (para 4).

<sup>25</sup> 09351 (09353).

<sup>26</sup> 09351 (09356).

<sup>27</sup> Day 34 (page 19).

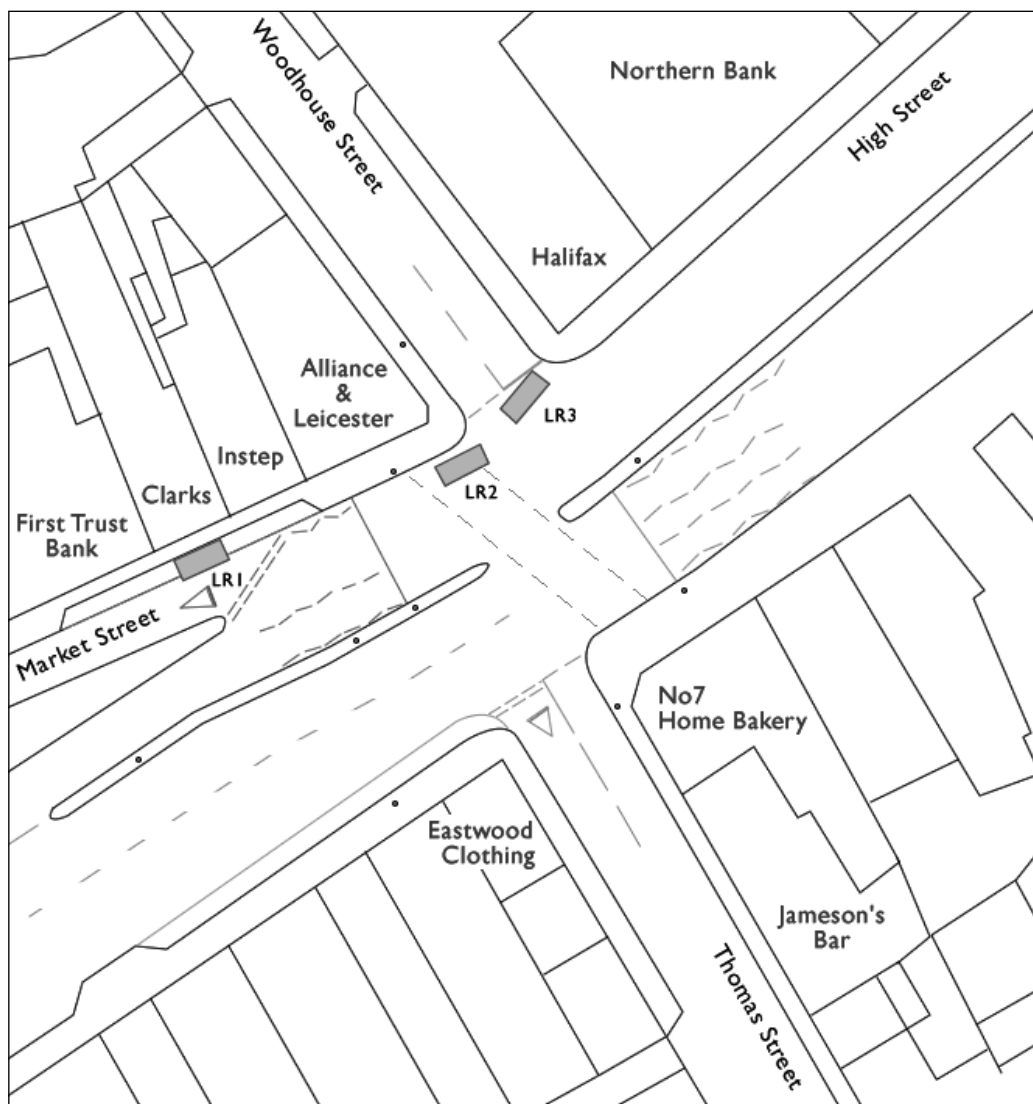
- 4.9 Res Con Atkinson said there was a long arm (a rifle) in the Land Rover in the charge of Res Con P40. According to Res Con Atkinson, in order to prevent the rifle from getting into the wrong hands it was necessary for Res Con P40 either to stay in the Land Rover with it or to remain close to the vehicle<sup>28</sup>. Res Con P40 said he could not remember if he had a rifle. He did not have a rifle when he was out of the Land Rover and does not suggest that he was in any way inhibited in what he did by concern about a rifle<sup>29</sup>.
- 4.10 The submission made by leading counsel to the inquiry, and adopted by British Irish Rights Watch (BIRW) and Committee on the Administration of Justice (CAJ), was that the briefing of the Land Rover crew was perfunctory and that there was no real expectation of what the crew would do in the event of an incident of public disorder. BIRW and CAJ submitted that the police had set low expectations for themselves and the community and that the fault for the lack of appetite to tackle this lay with senior officers within the Royal Ulster Constabulary (RUC). The fact is that outbreaks of sectarian violence in parts of Northern Ireland were not uncommon in 1997 and public order policing made significant demands on police resources. We have received no evidence to justify this grave attack upon senior officers of the RUC. We note it is not a criticism made by Colin Murray, who has never been a member of the RUC, nor by Mr Ken Armstrong, another expert in policing matters, whose report and evidence we received and who has been a member of the RUC. The Police Service of Northern Ireland (PSNI) has submitted that the briefing was adequate.
- 4.11 PC Neill's evidence that there was no understanding of what they should do was inconsistent with other evidence he gave. It is significant that the submissions made by those counsel who appeared for the Land Rover crew dealing with the criticisms of their inactivity, Mr Charles Adair QC and Mrs Margaret-Ann Dinsmore QC, Leading Counsel for Res Con Atkinson, have not sought to find a defence in the proposition that they received inadequate briefing. On the contrary, they accepted that the briefing was sufficient. Finally on this point, Mr Barra McGrory QC, for the Hamill family, has not sought to reinforce his submissions that the Land Rover crew were tardy in their response to the outbreak of violence by a submission that their briefing was inadequate. These considerations reinforce our conclusion that the briefing was adequate and we reject the criticism made of senior members of the RUC.
- 4.12 During the period of time which we have to consider, the Land Rover was parked or stopped in three different positions. It is not to be expected that these positions can be shown with complete accuracy. They have been referred to in the course

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<sup>28</sup> Day 47 (page 52).

<sup>29</sup> Day 34 (pages 101–102).

of the evidence as LR1, LR2 and LR3 and the general consensus of the evidence presented to us is shown with sufficient accuracy for our purposes on the following plan.



**Map of the junction of Thomas Street, Woodhouse Street, Market Street and High Street, showing the positions where the Land Rover parked, labelled LR1, LR2 and LR3 (map based on 00295).**

- 4.13 Ken Armstrong, who gave expert evidence on policing, conducted a test in 2008 to find out what could be seen and heard from inside the Land Rover when it was parked at LR3<sup>30</sup>. He said that:
- (a) he could see down the High Street from the front seats of the Land Rover;
  - (b) he could see the pavement in front of the Halifax building from behind the driver; the view from the rear of the vehicle was similar to that from the front if he lowered his head to look between front seats;

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<sup>30</sup> 75268.

- (c) from behind the passenger he could see five to ten metres down the pavement on the left hand side of High Street, but not the road;
- (d) it was not possible to see the bus drop-off area for the bus from the Coach Inn at Banbridge or Herrons Country Fried Chicken (one of the takeaways, along with Boss Hoggs, patronised by people from the bus) from the Land Rover;
- (e) he could see the upper half of people outside Boss Hoggs when he was in the front seats. He could see Boss Hoggs from behind the driver or through the baton hatches on the offside of the Land Rover and could see Boss Hoggs from behind the passenger if he looked down out of the front windscreen or looked through the baton hatches on the offside of the Land Rover;
- (f) from the driver's seat turning his head to look behind over his right shoulder Ken Armstrong was able to see up the centre of Thomas Street. His view was restricted to the centre part of the road alongside the British Legion (see map after paragraph 3.5), beyond which he could no longer see two Inquiry staff walking up the road. The footpath on the left hand side of the street could not be seen much more than about 15 metres from the junction with Market Street. He could see up to the Faith Mission bookshop on the footpath on the right hand side. This is close to the right hand bend at the top of the hill in Thomas Street;
- (g) from the front passenger seat upon turning to look towards the area directly behind the driver Ken Armstrong was able to see up Thomas Street through the baton hatch slot nearest to the driver. His view was still restricted to the middle of the road and the Faith Mission bookshop/public bar on right hand side of the footpath. He could see slightly further than he could from the driver's position;
- (h) he could not see Thomas Street from behind the driver unless he turned his body to look through the driver's side baton hatches. Then he could see half of the left hand side of road continuing up to the bend. He could see all of the right hand footpath as far as the bend;
- (i) from behind the passenger seat he could see up Thomas Street through the rear door window or driver's side baton hatches. He could see up the pavement to the entrance of Jameson's Bar;
- (j) with all of the doors shut and the engine on he could not hear people at Eastwood Clothing Company who were shouting up Thomas Street. With the engine off and the passenger door open, he heard shouting from outside the British Legion. This was despite someone who was sitting in the front seat talking periodically; and
- (k) it should be noted that Ken Armstrong was not wearing body armour when he determined what he could or could not see, so it is not an exact comparison with what an officer wearing body armour (as the Land Rover crew were) could see.

- 4.14 We should sound a note of caution. The RUC staged a reconstruction of the positions of the Land Rover on 10 June 1997. The position of LR3 was agreed by those officers who attended it. Photographs were taken and they formed the basis of a virtual reality suite which was used in our oral hearings. From the photographs and from the virtual reality suite it does not seem to us that the view from the driver's seat into Thomas Street was as extensive as Ken Armstrong found when the vehicle was repositioned for him. It is impossible to know precisely where LR3 was, and indeed a number of police witnesses before us spoke of a range of positions.
- 4.15 PC Neill told us that about 01:30 they were parked in Market Street in the lay-by in position LR1. It was a usual place to park because it gave a view down High Street and of the junction<sup>31</sup>. The following image from the virtual reality model broadly shows the view that PC Neill would have had from the Land Rover.



**Virtual reality image of the view from the driver's seat of the Land Rover parked at position LR1, looking over the junction of Thomas Street, Woodhouse Street, Market Street and High Street and down towards Boss Hogs.**

- 4.16 PC Neill saw about 50 people walking up High Street towards Market Street in groups of two to four. There may have been fewer than this because some people had already gone past the junction<sup>32</sup>. Res Con Atkinson's recollection is that people were coming in small groups but he saw nothing to suggest a sectarian clash was imminent<sup>33</sup>. Res Con Atkinson does appear to have identified the potential risk

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<sup>31</sup> 81030 (para 16).

<sup>32</sup> 81030 (para 17).

<sup>33</sup> 81385 (para 15–16).

from people not yet in view. The risk of a serious clash is made more likely once there are two factions on converging or intersecting paths and Res Con Atkinson would have known that many of those coming up High Street could be expected to be affected by drink and so have more volatile tempers because of this. Res Con P40 said that after Mr Thomas Mallon's warning (see the next paragraph) was given he saw about 25 people coming up High Street<sup>34</sup>.

- 4.17 PC Neill's intention was to drive down to the bottom of the town because there was a crowd around Boss Hoggs and trouble sometimes flared up there. As he began to move forwards a man (in fact the witness Thomas Mallon) came from the direction of Thomas Street. PC Neill could see he was mouthing something as he walked across the front of the vehicle and so he stopped the Land Rover at position LR2 and asked Res Con Cornett to ask Thomas Mallon what he had said<sup>35</sup>.
- 4.18 Thomas Mallon said that having reached the mouth of Thomas Street he had looked and seen the police Land Rover parked across the road in the lay-by. As he was crossing the road it had begun to move forward and he waved his hand at the vehicle, which was coming from his left. It stopped. He says that he went to the driver's side and that he thought the driver was a woman police officer. In fact it is clear from the evidence of PC Neill and Res Con Cornett that he went to her passenger door, which she opened. He asked the officers if they were leaving and explained that there were people coming down Thomas Street. He explained to us that he was afraid this might produce a dangerous situation and hoped that the warning he gave to the police might prevent trouble. Then he left to make his way down Woodhouse Street and to his home<sup>36</sup>.
- 4.19 Res Con Cornett's statement confirms what Thomas Mallon says he told her. In his statement PC Neill said that he could not hear what Thomas Mallon had said but that Res Con Cornett told him that there were more people coming from St Patrick's Hall<sup>37</sup>. Res Con Atkinson made no reference to a warning having been given<sup>38</sup>. PC Neill knew St Patrick's Hall to be a Catholic hall where there was a function on some Saturday nights. He looked up Thomas Street as far as the bend but could see no one there. He saw Thomas Mallon continue into and down Woodhouse Street. The bend in Thomas Street was only 50 metres from the junction<sup>39</sup>. This is the view, taken from a police video incorporated into the virtual reality model, from the driver's seat at LR2:

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<sup>34</sup> Day 34 (page 1) & 00695.

<sup>35</sup> Day 51 (page 5).

<sup>36</sup> Day 5 (page 76).

<sup>37</sup> 81030 (para 19).

<sup>38</sup> Day 47 (page 56).

<sup>39</sup> 81030 (paras 20–21).



**Still from a video showing the view from the driver's seat of the Land Rover parked at position LR2, looking up Thomas Street.**

- 4.20 There being no one in view in Thomas Street, PC Neill did not alter his intention to drive to the bottom of the town, check the people there and then return to the junction. He accepted that unless there is a falling out within a faction the trouble comes when two different factions meet. PC Neill said that on other occasions there had been no trouble other than a bit of pushing and shoving when the two factions met<sup>40</sup>. Mr Donald Blevins, who was present on this night and who later tried to help the police to move the crowd away, said that from time to time on other occasions he had seen scuffling break out at the junction and that the police who were on duty in the Land Rover had remained in the vehicle<sup>41</sup>. All police witnesses who were asked about this denied that this had happened. We do not need to come to a conclusion on this issue because the situation which anyone present in the junction would have seen developing was of a different order from those incidents spoken of by Donald Blevins. We do not think the Land Rover crew on this particular night would have remained in their vehicle had they seen the situation developing and PC Neill stated this.
- 4.21 The question is whether or not PC Neill should have taken the view that the absence of anyone within his view in the short stretch of Thomas Street visible to him should have led him to the view that Thomas Mallon's warning should not alter his intention to drive down to Boss Hoggs and return to the top of Thomas

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<sup>40</sup> Day 51 (page 34).

<sup>41</sup> Day 27 (page 93).

Street. Any judgment passed upon a person's decision or action at some earlier time inevitably involves looking back. It is common to caution against the wisdom of hindsight but this advice has to be seen in relation to PC Neill as a warning that, in making a judgment, we should consider only those matters which would or should have been known to him.

- 4.22 PC Neill<sup>42</sup> accepted that, after Thomas Mallon's warning, it would with hindsight have been more sensible to wait for people to come down from St Patrick's Hall to the junction and make sure there was no clash rather than continue with his intention to drive to the bottom of the town and then come up again. We repeat here our earlier reference to PC Neill's evidence about flash points, namely that there could be sectarian conflicts at the bottom of the town because of the different factions who used the fast food outlets. However, he said that had he been asked before this night which was the likelier spot for trouble he would have said it was probably the junction. At the time Thomas Mallon's warning did not make him think he had to be additionally vigilant. PC Neill said that with hindsight he accepts the warning should have put him on guard. We do not think that the hindsight of which PC Neill speaks involves taking into account factors other than those of which he knew or should have known on the night in question. He agreed that if he had seen Protestants at the bottom of Thomas Street and Catholics coming down Thomas Street that would ordinarily have sparked him into action. And if they had seen people putting their heads round the corner from High Street and then drawing them back they would have been out of the Land Rover. They would not have sat in the Land Rover but would have done something. This reference to people putting their heads round the corner comes from the evidence of Miss Maureen McCoy. PC Neill should have taken into account the following facts, which were already known to him: that the absence of anyone within his view in Thomas Street could have changed at any moment; that to walk from the bend to the junction, not quite 50 metres, even at a leisurely pace, would take hardly more than a minute, if that; and that, as he said, there were already people in Market Street approaching and in the vicinity of the mouth of Thomas Street.
- 4.23 PC Neill said he could not have driven across the junction to the mouth of Thomas Street because of the kerbs dividing the two lanes, which were about a foot high. However, the contemporaneous police photographs of the junction (see below) show simply a standard kerb one sees at the edge of pavements and nothing like a foot high. This would not have provided an obstacle to a Land Rover. CS McCreesh told us that the Land Rover had a skirt made of rubberised material as a protection against bombs, which would not have prevented it from climbing the kerb<sup>43</sup>. Nor

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<sup>42</sup> Day 51 (page 35).

<sup>43</sup> Day 55 (page 28).

did PC Neill mention the skirt as an obstacle. He could, as an alternative, have manoeuvred the Land Rover into a position facing the mouth of Thomas Street. This would have given a good view of the junction and of Thomas Street and the view down High Street and up Market Street.



**Photograph from the centre of High Street, looking up Woodhouse Street.**

- 4.24 PC Neill said that as he began to drive forwards he saw two men walking on the pavement up High Street on the Woodhouse Street side. It was obvious they had shouted something to Thomas Mallon because Thomas Mallon stopped in Woodhouse Street and turned round. PC Neill therefore stopped the Land Rover at position LR3. The two men had gone about 20 to 30 yards into Woodhouse Street and one of them, Mr Stacey Bridgett, was face to face with Thomas Mallon. The other man was Dean Forbes<sup>44</sup>. In his oral evidence<sup>45</sup> Thomas Mallon said there had not been any confrontation with Stacey Bridgett or Dean Forbes and they both deny that there was<sup>46,47</sup>. However, in the statement Thomas Mallon made to the police on 12 May 1997<sup>48</sup> he said he had felt threatened by them. We believe he probably did feel threatened. This accords with Res Con Cornett's evidence<sup>49</sup> that she opened her door and told them to clear off home. As a result they turned away from Thomas Mallon towards the Land Rover. PC Neill kept an eye on them,

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<sup>44</sup> 07026 (07053).

<sup>45</sup> Day 5 (page 65).

<sup>46</sup> Day 24 (page 60).

<sup>47</sup> Day 25 (page 34).

<sup>48</sup> 09091 (09092).

<sup>49</sup> 80207 & 09440 (09452).

though, in case they should turn round again. Thomas Mallon continued to walk down Woodhouse Street<sup>50</sup>. We note also that Res Con Cornett did not suggest that they continued to show any interest in him.

- 4.25 Stacey Bridgett and Dean Forbes came to the near side of the Land Rover. PC Neill recognised Stacey Bridgett. Res Con Cornett had opened her door and began to talk to Stacey Bridgett. PC Neill thinks Res Con P40 joined in. He saw Stacey Bridgett was holding a green bottle by the neck. He could not hear any noise from the street because of the noise of the vehicle's engine. PC Neill says that Stacey Bridgett and Dean Forbes were at the Land Rover only for about one and a half to two minutes and that it was a very brief conversation. He does not remember all the details but remembers one of the two said he was a painter. They had been at the Coach Inn and had spoken to someone who had bought a hotel and was wanting to get it painted. There was some talk of the painter doing some work for him. He, the painter, had been looking for work in the Coach Inn at Banbridge. PC Neill said they were all involved in the conversation. He does not remember any reference to the clothing Stacey Bridgett was wearing, which Stacey Bridgett says he and Res Con Cornett spoke about<sup>51</sup>. PC Neill was also asked if there was some banter about whether Res Con Cornett was married or engaged. He replied that this was quite possible. He did not suggest this would have been quite outside the scope of what was talked about<sup>52</sup>. We refer to this as being another indication that what took place was more than a brief exchange. All four members of the Land Rover crew, he said, were involved in the conversation. He did not recall Res Con P40 giving him the warning, which Res Con P40 said he gave, of there being a crowd by Wellworths at the top end of the High Street.
- 4.26 In his oral evidence Res Con P40<sup>53</sup> said that Stacey Bridgett simply put his head through the door, said hello and then withdrew his head and that he, Res Con P40, merely acknowledged him. This must be contrasted with something else which Res Con P40 has said, namely that Stacey Bridgett put his head through the passenger door and asked, **'There's [Reserve Constable P40]. How are you doing?'**, and that there followed a brief conversation. In September 1997 Res Con P40 spoke to senior detectives who were investigating the neglect complaint against him<sup>54</sup>. He was asked what had happened when the two youths came to the Land Rover. He said they had seen Stacey Bridgett and, because he was a trouble-maker, **'we pulled in to see what the craic was and started chatting away, so we did. He knows me by name, so he does'**. Res Con P40 told us that this meant **'What are you doing about this time of night?'** Seeing what

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<sup>50</sup> Day 51 (page 8).

<sup>51</sup> Day 51 (page 43).

<sup>52</sup> Day 51 (page 44).

<sup>53</sup> Day 34 (page 32).

<sup>54</sup> 09361.

the craic was and beginning to chat in our view suggests a significantly longer exchange.

- 4.27 While it may not have been as long as five minutes the conversation does not seem to have been so brief as to last only one and a half minutes to two minutes.
- 4.28 PC Neill said he was half turned in his seat so that he could see down Woodhouse Street. He could see down High Street but could not see across the road to Thomas Street. He knew he could not hear what was going on outside because of the engine noise<sup>55</sup>. This raises the question of whether there was all the more need to look and to focus, in the light of Thomas Mallon's warning, on the Thomas Street side of the junction rather than to turn half round to get a view down Woodhouse Street. He had seen Thomas Mallon walk into and down Woodhouse Street and made no mention of seeing other people about in that street. Turning half round to his left gave PC Neill a better view of Stacey Bridgett and Dean Forbes.
- 4.29 Then, suddenly, he said, the driver's door was pulled open and a man was pulling PC Neill out of the vehicle. He was in his mid 30s, wearing a blue shirt and with short hair and stubby build. This man was accusing them of sitting there and watching what had happened. PC Neill said there was a woman 10 to 20 feet behind him and she was shouting the same sort of thing at him<sup>56</sup>. Additionally, it has been suggested by a witness, Mr Colin Hull, that someone banged on the door of the Land Rover<sup>57</sup>. PC Neill said that no one had done this. This would have been audible inside the vehicle. Stacey Bridgett and Dean Forbes were still at the passenger door when PC Neill was pulled out of the vehicle. PC Neill also said that when he went later to one of the two men who were lying on the ground the woman who was with this man shouted at him, reproaching him in a similar way<sup>58</sup>.
- 4.30 Dean Forbes said that as he crossed Market Street he saw five or six people, both Catholics and Protestants, shouting sectarian insults at each other in the mouth of the junction. He said that he and Stacey Bridgett did not want to get involved in the shouting so they crossed to the Land Rover as they thought it would be safer<sup>59</sup>. Pauline Newell told us that when she passed the Land Rover there was **'bickering'** coming from the other side of the street and that Dean Forbes and Stacey Bridgett were by the open passenger door of the police vehicle<sup>60</sup>. Res Con P40 told us that after he saw Thomas Mallon walk in front of the Land Rover he

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<sup>55</sup> Day 51 (page 6).

<sup>56</sup> Day 51 (pages 12–13).

<sup>57</sup> Day 9 (page 6).

<sup>58</sup> Day 51 (page 47).

<sup>59</sup> Day 25 (page 12).

<sup>60</sup> Day 17 (page 9).

looked and saw a crowd of 25 coming up Market Street and heard shouting. He informed PC Neill<sup>61</sup>. Furthermore, on 10 May 1997 police received intelligence<sup>62</sup> that a person who we believe to be Pauline Newell was present during the fight. We had significant reservations about Dean Forbes's reliability as a witness but we find, even though the evidence does not provide detailed clarity, that at this time there had already developed a potential disturbance.

- 4.31 Thomas Mallon told us that on his way down Woodhouse Street he bumped into and spoke to the witness Colin Hull, whom he knew and who was with another person whom he knew only by sight. Then, when Thomas Mallon reached a bend in the street, he glanced over his shoulder and saw a policeman standing at the side of the Land Rover<sup>63</sup> speaking to the youths Thomas Mallon had previously been speaking to. This must have been after PC Neill had been pulled out of the vehicle because there were no police officers outside the vehicle before this. It could not therefore have been earlier than about 01:45 (based on the timing of Res Con Cornett's radio call<sup>64</sup> for help, see paragraph 1.3), so that Thomas Mallon's assertion<sup>65</sup> that it was about 01:25 when he reached home, a time he said which was confirmed by his wife, cannot be correct. Thomas Mallon had used this time to estimate his time of leaving St Patrick's Hall as being about 01:05.
- 4.32 Who was it who pulled PC Neill from the Land Rover? We conclude it was not Thomas Mallon despite Res Con Atkinson's evidence to the contrary. Diane Hudson, Robert Hamill's sister, said<sup>66</sup> she had heard gossip that it was Colin Hull who pulled PC Neill out of the Land Rover. She asked him if it was he who had done this and he told her that he had. He denied in his evidence to us ever having been near the Land Rover at any stage<sup>67</sup>. We do not consider it necessary to resolve the issue.
- 4.33 To pull a police officer out of his vehicle at the scene of a disturbance would not be without risk of adverse consequences to the person doing this. Common sense suggests, therefore, that whoever did this must have been acting spontaneously, affected by some serious provocation and indignation caused by what he had seen. The complaint that the police watched what had happened was, as PC Neill accepts<sup>68</sup>, made by three different people at the scene. We do not think that this was simply a reaction to the fact that an aggressive crowd shouting sectarian abuse had gathered in the junction.

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<sup>61</sup> Day 34 (page 3).

<sup>62</sup> 50182.

<sup>63</sup> Day 5 (page 68).

<sup>64</sup> 06583.

<sup>65</sup> Day 5 (page 72).

<sup>66</sup> Day 35 (page 12).

<sup>67</sup> Day 9 (page 14).

<sup>68</sup> Day 51 (page 46).

- 4.34 Mr Adair represented the members of the Land Rover crew other than Res Con Atkinson. In his oral closing submission he accepted with candour that it was difficult to see why someone would use such startling words as were used if it had not been something as serious as two people having been assaulted and ending up on the ground. If it was just the fight at the corner of Thomas Street and a couple of blows were struck, he submitted, it would not seem likely that someone would rush over to the Land Rover and say, **'You have sat there and watched that happen'**. Mr Martin Wolfe, Junior Counsel for the PSNI, said in his oral closing submissions for the PSNI that for someone to pull PC Neill from the Land Rover suggested that something significant had happened while the police were in the vehicle. He did not accept, though, that that event was Robert Hamill and Witness D being knocked unconscious. Mr Wolfe suggested as another possibility the assault as seen by Miss Carol Ann Woods. We reject this and prefer what we regard as Mr Adair's more realistic approach. In her closing oral submissions for Res Con Atkinson Mrs Dinsmore said that if we did not accept Res Con Atkinson's evidence that he was certain he saw no one on the ground when he left the Land Rover, it is open to us to conclude that his failure to see was because his line of vision was obstructed and he was concentrating on moving people to Woodhouse Street and dealing with the violence.
- 4.35 Although all four members of the Land Rover crew assert that Robert Hamill and Witness D were not lying on the ground when they first got out of the Land Rover and, indeed, PC Neill went so far as to say that the confrontation suddenly developed into fighting after they left the Land Rover<sup>69</sup>, we do not accept that he and his three colleagues were in a position to see that this was so, given that the crowd was milling about. Indeed, Mr Wolfe accepted this.
- 4.36 Furthermore, we have regard to what Res Con Cornett has said on different occasions. The stress and panic which were apparent in the recording of this officer's voice<sup>70</sup> when she called for help and her words, **'they're killing each other'**, tell the story of a serious and frightening incident. In her notebook entry for 01:40 on 27 April 1997<sup>71</sup> she said,
- 'we got out of the landrover and there were several fights in progress and a lot of shoutings [sic]. Women were screaming. I ran back to the landrover and I called for assistance. I then had to call for a ambulance [sic] as there were 2'.**

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<sup>69</sup> Day 51 (page 47).

<sup>70</sup> 06589.

<sup>71</sup> 09832.

In her witness statement of 27 April 1997<sup>72</sup>, made when she was recalled to duty for that purpose, she said,

**‘we all alighted from the landrover. I could see different groups fighting and women screaming. I ran back to the landrover to call for assistance and also an ambulance as two people had been injured.’**

When she was interviewed<sup>73</sup> for the purpose of amplifying her witness statement records, in response to the suggestion that **‘two people injured so must have been injured when got out of landrover’** she said **‘after radio for assistance and got out of Land Rover, saw injured’**. In the notice of intention to apply for compensation dated 16 June 1997<sup>74</sup> Res Con Cornett said they were called to the assistance of two people who had been attacked by the mob. In a psychiatric report<sup>75</sup> supporting an application for compensation dated 24 July 1997<sup>76</sup> she said that they were alerted by shouts of **‘you’re sitting there watching this’**. She then ran over and saw two badly injured men on the ground. She then ran back to the Land Rover to radio for assistance, and also tried to give the men first aid.

- 4.37 We find that what provoked a man to pull PC Neill from his vehicle was the attack upon Robert Hamill and Witness D, which happened while the police officers were still in the Land Rover. It would be quite wrong, though, to conclude that the members of the Land Rover crew watched what was happening. Having regard to what the officers did once they got out of the Land Rover, and having paid careful attention to their demeanour when they gave evidence to us, we conclude that had they seen what was happening they would not have remained in their vehicle. What we have to consider next is why they did not see it and whether they are to be criticised for this.
- 4.38 We have already spoken of the need for vigilance and of the fact that it could not be safely assumed there was no potential for a confrontation simply because when Thomas Mallon gave his warning there was no one to be seen in Thomas Street up to the bend in the road. It is no answer for PC Neill to say, as he did<sup>77</sup>, that on other occasions there had been no trouble other than a bit of pushing and shoving when the Catholics and Protestants met. This is tantamount to saying the previous history gave no reason to take precautions to avoid more serious trouble. The evidence we received was to the effect that there had been trouble at this junction on a number of occasions which had gone beyond a bit of pushing and shoving. If what PC Neill said is to be treated as a fair description of the extent of trouble

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<sup>72</sup> 61357.

<sup>73</sup> 09681.

<sup>74</sup> 72251.

<sup>75</sup> 72257 (72258).

<sup>76</sup> 72256.

<sup>77</sup> Day 51 (page 34).

which was to be expected at this junction, we ask rhetorically why it had the reputation of being a flashpoint, and why did PC Neill regard it as having a greater potential for trouble than the flashpoint at the bottom end of the town?

- 4.39 PC Neill said that had he seen Protestants at the bottom of Thomas Street and Catholics coming down Thomas Street this would normally have sparked him into action. He said there were people coming up High Street from the bottom of the town in various stages of their walk up to and beyond the junction<sup>78</sup>. How was it a different situation because people were not to be seen in Thomas Street when, quite probably in the light of Thomas Mallon's warning, they might make their appearance within just seconds? The duty of the Land Rover patrol was not to be on guard only against what certainly or probably would happen. The duty was also to be on guard against that which, as a real as opposed to a fanciful possibility, could happen. What did happen was well within the bounds of such a real possibility. PC Neill said when questioned by the Inquiry Chairman<sup>79</sup> that he was right to say that if he had seen heads looking round the corner the Land Rover crew would not have stayed in their vehicle. Of course, the people whose heads they were might simply have been looking to see whether it was safe to go up Thomas Street, but, for all an observer might know, they could have been people looking for a chance to jeer or strike a blow against someone. When people have been drinking jeering may easily lead to violence.
- 4.40 The Land Rover was there so that its crew might keep a look out in case there might be trouble and Thomas Mallon had given a warning that the other component of possible trouble was on its way down Thomas Street to the junction. As long as the Land Rover remained at the junction the duty of the crew members was to keep watch. As PC Neill said<sup>80</sup>, the conversation with Stacey Bridgett and Dean Forbes was a distraction. What happened was that a significant crowd gathered at the junction. It was far more than just a handful of people. As we have found in Chapter Three, a confrontation between the group of Catholics walking from St Patrick's Hall and a small group of Protestants escalated into violence by way of shouted insults and a stand off. There was an angry mood which developed with the exchange of more sectarian insults and the situation erupted into violence on a scale which the Land Rover crew endeavoured, once they left their vehicle, to quell. However, until more officers arrived they were overwhelmed. Not a single part of what had built up had been seen by any of the four officers and it was only the intervention of the man who pulled PC Neill out of the vehicle which brought it to their attention.

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<sup>78</sup> Day 51 (page 38).

<sup>79</sup> Day 51 (page 145).

<sup>80</sup> Day 51 (page 39).

- 4.41 We quote here a passage from the oral evidence which PC Neill gave to the Inquiry<sup>81</sup>:

**‘No I do regret in hindsight not having done things differently. I mean, it goes through my head two or three times a week. I have sleepless nights and everything else to what may or may not have happened if we had done something differently but, I mean, I just simply can’t say what may have happened.**

**It is something I have to live with every day and I go through it. I can only imagine what the family go through.’**

- 4.42 We acknowledge the sincerity of these words and the regret which is implicit in them. We are not inclined, however, to regard this as an admission by PC Neill of fault. This is not to say that we should not make an adverse finding without an admission of fault. The courts daily make adverse findings despite the lack of any admission. The question is whether, in the absence of any admission, there is other evidence to show fault.

### **Findings: what the Land Rover crew should have seen**

- 4.43 Baroness Kathleen Richardson and Sir John Evans do not find any of the four officers in the Land Rover guilty of wrongdoing within our Terms of Reference. The duty of the Land Rover crew was to be vigilant and be mindful of any build up which could lead to confrontation<sup>82</sup>. Having been alerted by Thomas Mallon to the fact that other Catholics could be following him down Thomas Street, PC Neill looked up the street and could not see anyone there. He took the decision to drive down Market Street and return into position at the junction on the other side of the road where any altercation was more likely<sup>83</sup>. We find that this was not an unreasonable decision for him to make. Nor, in the event, was it an unreasonable decision to pull into the side of the road, albeit at an angle, to respond to the situation of possible threat to Thomas Mallon from Dean Forbes and Stacey Bridgett. Dean Forbes and Stacey Bridgett were known trouble-makers<sup>84</sup>, they had clearly been drinking and Stacey Bridgett was carrying a bottle in a way that seemed threatening to Thomas Mallon<sup>85</sup>. It is understandable that the crew were distracted from their wider vigilance. When the officers had dealt with this situation and Thomas Mallon continued on his way down Woodhouse Street, Dean Forbes and Stacey Bridgett remained by the nearside door of the Land Rover and Stacey Bridgett put his head through the opened door to speak to the officers

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<sup>81</sup> Day 51 (pages 25–26).

<sup>82</sup> Day 32 (page 24).

<sup>83</sup> Day 51 (page 7).

<sup>84</sup> Day 34 (page 46).

<sup>85</sup> 09091.

in the back<sup>86</sup>. Although the reported conversation seems to be of no consequence, the presence of the two known trouble-makers engaging the officers at a time of heightened tension between the Protestant community and the RUC meant that the attention of the officers was focused for some minutes on Dean Forbes and Stacey Bridgett.

- 4.44 The position of the Land Rover now meant that the crew were not in a good position to see what was happening at the junction. PC Neill and Res Con Cornett had a view down Market Street but they could only effectively see beyond the junction; Res Con P40 was sitting on the offside so would have to turn round completely to look through the narrow baton hatch behind him, not an easy thing to do in body armour; and Res Con Atkinson would have had to look beyond and behind Res Con P40 from his place on the nearside bench. Taking the two reasonable and not irresponsible decisions meant that the Land Rover was then in the wrong position to allow for a good view of the junction and therefore the crew missed the crucial moments that allowed the affray to become violent. If we cannot (and we do not) find that the decisions to move the Land Rover were wrongful, the only possible wrongful act was to pause for too long in that position to converse with Dean Forbes and Stacey Bridgett.
- 4.45 It has been suggested that the conversation that ensued took longer than the one and half to two minutes estimated by PC Neill. We are not in a position to know exactly how long this conversation took, and it seems reasonable to suppose that it could have lasted more than a couple of minutes. However, if the evidence of Thomas Mallon is to be believed, he had only walked a short distance to the bend in Woodhouse Street before he looked back and saw a police officer standing by the Land Rover<sup>87</sup>. This could only have been after PC Neill had been pulled from the vehicle. This suggests that the conversation could not have been as long as five minutes and probably much less.
- 4.46 Much is made elsewhere in this chapter of the word 'distraction'. It often carries the meaning of an occurrence that acts as an irritant or intrusion taking away attention from the main event. Its use in this sense to describe the interaction between the Land Rover crew and Dean Forbes and Stacey Bridgett may be challenged. It is true that the attention of the four officers was focused for the few crucial minutes on the engagement at the nearside of the vehicle. To say this distracted them is to say that they were occupied in a way that took them away from the public order duty assigned to them. The fact is that Dean Forbes and Stacey Bridgett, drunk, not likely to be well disposed towards the police presence at the junction, could have been rather more than a minor irritant. Indeed, both were later to be arrested on suspicion of murder. It was not that engagement

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<sup>86</sup> Day 34 (page 32).

<sup>87</sup> Day 5 (page 68).

which led the Land Rover crew to take their eye off the ball. For those few moments that was where the action was and from where the threat might still come. Their attention was attracted to this and not distracted by it. In any case, public order duties must also involve seeking to create better relationships and, in the absence of an obvious threat elsewhere, this could be construed as a proper engagement.

- 4.47 With the benefit of hindsight we now know that the main action was taking place on the other side of the junction. That is the tragedy but the Land Rover crew were not to blame for it. The decisions they took were reasonable in the light of what they knew or could foresee and were designed to minimise risk. The fact that later PC Neill could later express regret over those decisions does not necessarily make him guilty of wrongdoing.
- 4.48 It is only fair to record that, whilst Chairman, Sir Edwin Jowitt took a different view. He considered that there was a wrongful act on the part of the Land Rover crew in failing to maintain a wider vigilance and watch on the general area of the junction and that it was inappropriate for the Land Rover crew to restrict their attention to Dean Forbes and Stacey Bridgett. In particular, Sir Edwin Jowitt considered that, had PC Neill applied his mind to the desirability of being able to see into Thomas Street, he would have moved the Land Rover a short distance in order to keep an eye on the junction. As Sir Edwin Jowitt was not in a position to review the responses to warning letters, we simply note this difference of opinion.

### **The evidence and findings: what the police did**

- 4.49 We return now to Robert Hamill and Witness D. They had been knocked to the ground and both were unconscious. Witness D was lying on the road just into the mouth of Thomas Street and quite close to the pavement in Thomas Street which was on the High Street side of the junction. Robert Hamill was lying on the carriageway in Market Street but not far from the mouth of Thomas Street. Unsurprisingly there are variations in how these positions are described by different people, but they are not of significance and are in broad agreement with the positions we have described. According to witness statements given to the Inquiry by Witness E<sup>88</sup> and Witness F<sup>89</sup>, people were still kicking and trying to kick the two men and they went over to them, Witness E to Witness D, her husband, and Witness F to Robert Hamill. There was little they could do for the two men other than to shield them from further violence. The violence of the attack on the two men had abated by the time the police reached them, though. It is doubtful whether any blows landed on the two men after the two sisters went to them and certainly no significant blows, though there were still sporadic attempts being

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<sup>88</sup> Day 7 (page 42).

<sup>89</sup> Day 7 (page 65).

made to get at the two men and land blows upon them. It would appear that the sisters were already with Robert Hamill and Witness D before PC Neill was pulled out of the Land Rover. Stacey Bridgett left the Land Rover after PC Neill was pulled out. By the time the disturbance had come to an end he had received a bloody nose and, still bleeding, had stood over the prostrate Robert Hamill so that a drop of his blood fell onto the leg of Robert Hamill's trousers.

- 4.50 After PC Neill had been pulled out the other three members of the crew left the vehicle and joined him. Res Con Cornett went immediately to where the disturbance was taking place and saw the two men lying on the road. She realised the need for backup from other officers. However, she realised that her personal radio was in the Land Rover and returned to it to radio to the police control room for help. This call was received at 1:45:37. Res Con Cornett then returned to the scene of the disturbance. She realised that the two men were in need of medical assistance and so at 01:48 she made a radio call to the control room for an ambulance<sup>90</sup>. This was passed on to the ambulance service at 01:49. At 01:58 the ambulance arrived<sup>91</sup>.
- 4.51 We find that PC Neill and Res Con Atkinson behaved with courage and vigour and tried to quell the disturbance. Res Con Cornett played her part in addition to making the radio calls. Res Con P40 took up his position in the mouth of Woodhouse Street to make sure that Catholics did not come out of or Protestants go into Woodhouse Street. He opted for this task. His reason for choosing this task was that he would not be exposed to the same risk as the other officers<sup>92</sup>. It was, though, a task which needed to be done by someone.
- 4.52 Three patrol cars with reinforcements arrived<sup>93</sup> before the attendance of the ambulance and this provided seven more officers to help control the crowd and bring the disturbance to an end. These were Police Constable John Adams (PC Adams) and Reserve Constable Godfrey Dean Silcock (Res Con Silcock) in the first car<sup>94</sup>, Reserve Constable Warnock (Res Con Warnock), Police Constable Gordon Cooke (PC Cooke) and Reserve Constable Jim Murphy (Res Con Murphy) in the second car<sup>95</sup> and Police Constable David Orr (PC Orr) and Police Constable A (PC A) in the third<sup>96</sup>. Until their arrival the Land Rover crew had been unable to make much impact in their endeavours to quell the disturbance.

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<sup>90</sup> 80207 (para 14).

<sup>91</sup> 08153.

<sup>92</sup> Day 34 (page 17).

<sup>93</sup> 03838.

<sup>94</sup> Day 29 (pages 38–87 & 156–178).

<sup>95</sup> Day 31 (pages 1–171).

<sup>96</sup> Day 29 (pages 88–155).

- 4.53 It is convenient at this point to refer to an incident in which PC A was involved. As she drove onto the junction she saw a man who proved to be Mr Wayne Lunt running towards a crowd of youths and holding a bottle upside down by its neck. The car was stopped alongside him and she got out. He ran off towards St Mark's Church. PC A ran after him but he outdistanced her and she lost him and so returned to the car, which was parked near the Land Rover. Later, when PC A was part of the line of officers moving the crowd back, she saw Wayne Lunt again. He was pushing against the line of officers and saw her and ran away. She pursued him and managed to grab hold of his top. He turned and began to kick her legs and ankles and the crowd tried unsuccessfully to pull him away from her grasp<sup>97</sup>. Then PC Orr came to PC A's assistance and together they took Wayne Lunt to the Land Rover<sup>98</sup>. PC A put him into the back and climbed in behind him<sup>99</sup>.
- 4.54 The Land Rover was not equipped to enable her to leave him inside by himself. By this time Wayne Lunt had calmed down as a result, she thought, of being removed from the company of his friends. PC A got from him his name and address and radioed the control room at Portadown police station to ask for the details to be checked. When they had been checked and found to be correct PC A released Wayne Lunt. Her intention was to call him back to the police station at a later date to interview him with a view to prosecuting him for assaulting her. She saw that he did not return to the crowd.
- 4.55 After PC A had released Wayne Lunt she was approached by an angry man who demanded to know why she had released him, saying that he was one of the ones that did it<sup>100</sup>. This in fact was Mr Colin Prunty. The officer realised that he was referring to what had happened to the two men lying in the road. PC A did not take the name of this man or of the more moderate man who was with him<sup>101</sup>. They might have proved to be valuable witnesses. Instead she gave them her own details, name and police station, assuming that the man who was so angry would seek her out at the police station<sup>102</sup>. However, this never happened. PC A explained that she had to get back to help her colleagues to cope with the crowd<sup>103</sup>. She could have taken the names of one or both of these men and, as a consequence of this failure, she faced a disciplinary charge as a result of which she was admonished. The view of Superintendent Karen Kennedy (Supt Kennedy)<sup>104</sup>,

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<sup>97</sup> 81683 (para 4).

<sup>98</sup> Day 30 (page 1–32).

<sup>99</sup> 81683 (para 14).

<sup>100</sup> Day 29 & 81683 (para 18).

<sup>101</sup> Day 29 & 81683 (para 18).

<sup>102</sup> Day 29 & 81683 (para 18).

<sup>103</sup> Day 29 & 81683 (para 19).

<sup>104</sup> 10120 (10168).

which we share, was that a properly conducted debriefing would probably have brought this omission from PC A's statement to light.

- 4.56 In the event no harm ensued as a result of PC A's failure because the police were aware of Colin Prunty and he told them about this incident. It would be unfair to PC A to sound this note of criticism without also acknowledging the courage and determination she displayed that night in the performance of her duties. Moreover it can be said for PC A by way of mitigation that she did try belatedly to make amends for her failure by giving the details she had omitted from her notebook on a message form on 19 May 1997<sup>105</sup>.
- 4.57 Why was there no prosecution of Wayne Lunt based on what Colin Prunty said he had seen? Colin Prunty believed the man he had seen put into the Land Rover was one of those involved in the attack on Robert Hamill<sup>106</sup>. However, he later saw television footage of Dean Forbes being released from police custody and was confident that this was the man he had seen being placed in the Land Rover<sup>107</sup>. He remained adamant when he was shown photographs of Dean Forbes and Wayne Lunt. In fact, questioning of Colin Prunty showed that he did not have the man who joined in the attack in his vision continuously until he saw, in fact, the man we know to be Wayne Lunt being put into the Land Rover<sup>108</sup>. There was therefore no evidence to identify Wayne Lunt as having joined in the attack on Robert Hamill. Also, there was other evidence to show that the person seen by Colin Prunty to be taking part in the attack was not Dean Forbes.
- 4.58 Estimates of the number of people involved in the disturbance varied. It would have been difficult to make an accurate estimate. People were in groups of differing numbers and were moving about and the police were obviously not at leisure to make a head count. Probably the number involved in the disturbance was about 40 to 60 with numbers fluctuating as more people came and others moved away. Res Con Murphy<sup>109</sup> said he had never seen violence on a scale like this before and he felt frightened and threatened. Res Con Warnock<sup>110</sup> seems to have taken more relaxed view and said he saw no fighting.
- 4.59 Res Con Silcock<sup>111</sup> went over to where Witness D lay. His wife, Witness E, was with him and nearby, with Robert Hamill, was Witness F. Both women were distressed and voluble. At one stage there was a crowd of about 30 who were only two or three feet from Witness D. Res Con Silcock did not see anyone try

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<sup>105</sup> 07789.

<sup>106</sup> 09101 (09103).

<sup>107</sup> 09105.

<sup>108</sup> Day 6 (page 168).

<sup>109</sup> Day 30 (pages 75–102).

<sup>110</sup> Day 30 (pages 35–74).

<sup>111</sup> Day 29 (pages 47–48).

to attack them but he had to take out his baton in order to get them to move back. Res Con Silcock also went over to Robert Hamill. He saw that he was having difficulty in breathing and put him into the recovery position. He also kicked away some broken glass which was near Robert Hamill's head so that he would not be cut by it.

- 4.60 Together with the Land Rover crew the backup officers began to move the crowd back. It was not an easy task. The mood of the crowd was hostile. There was sectarian abuse and there were some cries of **'I hope he dies'**<sup>112</sup>. One of those who attracted attention to himself was Rory Robinson. Next to him was Stacey Bridgett, whose nose was bleeding. PC Cooke<sup>113</sup> said these two men were both trying to push through the police line and PC Cooke had to push Rory Robinson back a number of times. Res Con Warnock<sup>114</sup> saw Mr Allister Hanvey at the front of the crowd. He was shouting at the police but was not trying to push against them, though he was one of the more prominent members of the crowd.
- 4.61 We have made reference to the actions and moods of Allister Hanvey, Rory Robinson and Stacey Bridgett because of the allegations made against them by Tracey Clarke and Mr Timothy Jameson, to which we shall refer later. It is clear from the statements which these three men made to the Inquiry and from their oral evidence before us that they did not intend to assist the Inquiry in fulfilling its task. Their evidence was a mixture of not remembering, not knowing, not seeing and denial. We do not regard them as witnesses of truth so far as the violence is concerned and we have gained no help about the incidents of the night in question from their evidence.
- 4.62 PC Orr<sup>115</sup> said it was not the worst public order incident he had witnessed but he was afraid it could get worse and so, while other officers were pushing the crowd back, he asked Res Con Warnock to go to the police station for a baton gun. PC Adams drove Res Con Warnock there. The police station was quite close, a few minutes walk away from the scene. On their way to the police station they met Insp McCrum who, with Sgt P89, was on his way to the scene of the disturbance. Insp McCrum's notebook<sup>116</sup> records that he had been told at 01:51 of Res Con Cornett's call for help and that immediate assistance was wanted. Insp McCrum<sup>117</sup> wanted first to see the situation himself before deciding whether or not to call in the MSU, which was some distance away at Banbridge. He authorised the issue of baton guns for Sgt P89 and Res Con Warnock and Sgt P89<sup>118</sup> went with Res

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<sup>112</sup> 80862 (para 25).

<sup>113</sup> Day 31 (pages 8 & 10).

<sup>114</sup> Day 30 (page 48).

<sup>115</sup> Day 30 (page 10).

<sup>116</sup> 09960.

<sup>117</sup> Day 62 (page 12).

<sup>118</sup> Day 32 (page 6).

Con Warnock into the police station and issued a baton gun to him and collected one for himself. Detective Chief Inspector Desmond Jackson (DCI Jackson)<sup>119</sup> of Complaints and Discipline Branch (C&D) told us that once Insp McCrum had authorised the issue of a baton gun and reached the scene the responsibility for supervision was his. This remained the position notwithstanding the subsequent arrival of Detective Constable Donald Keys (DC Keys) at 05:30 or soon after. A detective constable, DCI Jackson said, cannot tell an inspector what to do, though he can advise and make suggestions. He said that Insp McCrum remained in charge until DCI P39 had arrived at around 07.00 and he had briefed her and handed over to her. We accept DCI Jackson's evidence about this and prefer it to the evidence of Supt Kennedy<sup>120</sup>, also of C&D, that PC A, as the Observer in the main response car, remained the reporting officer. We regard the latter view as unrealistic. DCI Jackson's evidence accords with that of Colin Murray. Moreover, it is clear that Insp McCrum conducted himself as the officer who was in charge. There is an issue about the time at which Insp McCrum arrived at the scene. His evidence<sup>121</sup> was that the ambulance overtook them on their way to the scene and that when he got there someone was already being put into it. This would put his time of arrival at about 02:02. In April 2001 Insp McCrum was interviewed by Supt Kennedy<sup>122</sup> in relation to a disciplinary charge to which we shall refer later. She records him as telling her that he reached the scene at 02:10 and that PC Cooke told him that two men had been assaulted and taken by ambulance to the hospital. He had entered the same information in his notebook<sup>123</sup>. Nonetheless, Insp McCrum insisted that the account he gave to us was the correct one. It is difficult to understand why his notebook should record the briefing he received from PC Cooke if he had been at the scene in time to see someone being put into the ambulance. We conclude that the record in his notebook and what Insp McCrum is recorded as having told Supt Kennedy are to be preferred to what he told us. The effect of his oral evidence suggests a greater degree of urgency than the record in the occurrence book made on Insp McCrum's return to the police station. In fact, if Insp McCrum did not go to the scene as quickly as he might have done no harm seems to have been occasioned by the delay. He assumed control and the officers present were already moving the crowd up towards the church and away from the junction. Insp McCrum dealt competently with this and the crowd was dispersed.

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<sup>119</sup> Day 44 (page 53).

<sup>120</sup> Day 44 (page 13).

<sup>121</sup> Day 62 (page 14).

<sup>122</sup> 10361.

<sup>123</sup> 09960.

- 4.63 Res Con Warnock<sup>124</sup> said that the crowd had increased in size by the time they returned with the baton guns. Both he and Sgt P89 joined the reinforcements with the baton guns strapped and held across their chests and the required warning was shouted that they might have to be discharged. In fact this was not necessary. Nor would it have been safe to discharge them at such close quarters, in the opinion of Sgt P89<sup>125</sup>.
- 4.64 Another incident occurred after Insp McCrum and Sgt P89 had arrived. The Sergeant was in the cordon of police officers helping to push the crowd back up the street and Res Con Atkinson was to his right for part of the time. One drunken man in particular was very hostile towards the Sergeant and would not move back so that the Sergeant had to push against his chest to make him go back. The man was shouting in Sgt P89's face so that he thought he was going to be hit. Res Con Atkinson warned him to watch the man as he was a martial arts black belt and told him his name was 'Harvey'<sup>126</sup>. Res Con Atkinson did not mention this in his police statement and mentioned it only when he was interviewed on 9 September 1997<sup>127</sup>. His explanation was that, having told Sgt P89 at the scene who Harvey was nothing further was required of him. We do not accept this. Res Con Atkinson knew that Sgt P89 was not a detective. Moreover, when Detective Sergeant Derek Bradley (DS Bradley) took Res Con Atkinson to task because, despite being a local officer, he had not named anyone he had seen at the disturbance, he responded by providing the names of one woman and one man but deliberately withheld (as we conclude) the name of Allister Harvey. We reject the submission made on his behalf by Mrs Dinsmore in her closing submissions that he did all he could to help to name and identify those whom he had seen at the scene of the disturbance. We shall return to this point when we deal with the issue of debriefing and again when we deal with the allegation that Res Con Atkinson advised Allister Harvey to get rid of the clothing he had worn at the scene of the disturbance.
- 4.65 The MSU did not arrive until after the arrival of Insp McCrum. They joined the cordon and helped to push the crowd back but by this time things had quietened down. Colin Murray praised the way in which Insp McCrum brought the crowd under control and achieved its dispersal<sup>128</sup>. Before Insp McCrum's arrival the officers present were already bringing the crowd under control but we accept that praise of his actions once he arrived at the scene is deserved.
- 4.66 PC Neill said<sup>129</sup> that he saw Mr Marc Hobson kicking Robert Hamill. Marc Hobson was convicted of the offence of affray with regard to this incident in a trial before

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<sup>124</sup> Day 30 (pages 33–74).

<sup>125</sup> Day 32 (page 99).

<sup>126</sup> 11084.

<sup>127</sup> 09476 & 09510.

<sup>128</sup> 74391 (74415).

<sup>129</sup> 09672.

Lord Justice McCullum. His appeal against conviction was dismissed<sup>130</sup>. That conviction stands and it is not within our Terms of Reference to reconsider it. It is only relevant for us to consider evidence on which Marc Hobson's conviction was founded if that evidence is relevant to our Terms of Reference. It was suggested to PC Neill that his evidence about Marc Hobson was untrue. The truth or otherwise of this evidence does not affect our finding about when the Land Rover crew left their vehicle. We say this because there is clear evidence that attempts to kick Robert Hamill did not stop once he was on the ground but continued for a short period<sup>131</sup>. There is, therefore, no contradiction between PC Neill's evidence about Marc Hobson and this finding. So far as PC Cooke's evidence about Marc Hobson (paragraph 6.13) is concerned, it does not have a bearing on the part PC Neill played in helping to control the crowd.

- 4.67 Marc Hobson's account of his activities on the night in question is wholly inconsistent with the proposition that he was guilty of affray. According to him, although he was in the town centre he was at all times well away from the violence<sup>132</sup>. As we have said, his conviction stands and we do not accept this evidence from him. We do not regard him as a witness of truth and we have received no help from him about the violence.
- 4.68 Two people, whose names we do not need to publish, spoke in evidence of their unwillingness to assist the police because of their fear of the paramilitaries. We mention this only as being illustrative of the difficulties that we have said were already faced by the police when they tried to make their investigations into the murder of Robert Hamill.
- 4.69 After the crowd had dispersed there was a party at the home of Miss Tracey McAlpine<sup>133</sup>. Many of those who attended it had been in the town centre at the time of the disturbance and two witnesses, Miss Kelly Lavery<sup>134</sup> and Miss Pauline Newell<sup>135</sup>, said that Allister Hanvey was at the party. Several witnesses who attended this party admitted to hearing a discussion of what had happened in the disturbance<sup>136</sup> and about who did what.
- 4.70 Allister Hanvey was turned out of Tracey McAlpine's house because of a practical joke which had been played on Kelly Lavery. This was some time after 05:00<sup>137</sup>. At 08:46 £10 was withdrawn from a cash point on Allister Hanvey's cash card at

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<sup>130</sup> 08753.

<sup>131</sup> 00510.

<sup>132</sup> Day 27.

<sup>133</sup> 80771 (para 12).

<sup>134</sup> 00551.

<sup>135</sup> 09129 (09129).

<sup>136</sup> 03419.

<sup>137</sup> Day 17 (page 74).

an Ulster Bank in Portadown town centre<sup>138</sup>. He did not suggest that his cash card had been lent to anyone or lost or had been stolen<sup>139</sup>. We conclude, therefore, that this withdrawal was made by Allister Hanvey. When he was interviewed by the police he did not say he had been to Tracey McAlpine's house or drawn out money at a cash point. What he said was that he had gone from the town centre to the home of his uncle, Mr Thomas Hanvey<sup>140</sup>. Thomas Hanvey was seen by the police and supported this<sup>141</sup>. This is inconsistent with his nephew's having been at the party and having drawn money from a cash point. However, the giving of a false alibi for the time beginning after the disturbance had come to an end, although generating suspicion, does not, considered on its own, provide any evidence that Allister Hanvey was involved in the violence.

## **Summary of our findings in this chapter**

- 4.71 We find that Robert Hamill had been assaulted before the Land Rover officers got out of their vehicle. However, they were not aware of the assault and after they had got out of their vehicle they attempted to restore order. They did not in any way condone or collude with attackers.
- 4.72 The reason why the Land Rover crew failed to appreciate that Robert Hamill was being attacked was that they were distracted by talking to Stacey Bridgett and Dean Forbes. However, we do not find that their omission facilitated Robert Hamill's death.

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<sup>138</sup> 17323.

<sup>139</sup> Day 28 (pages 14–15).

<sup>140</sup> 06599 (06605).

<sup>141</sup> 09193.



# Chapter Five

## Debriefing

- 5.1 In this chapter we consider the debriefing of the police officers and the gathering of evidence. Debriefing is the practice followed by the police in gathering information about what has happened in an incident which has called for their involvement. Chief Inspector Henry McMullen<sup>1</sup> (CI McMullen) was the Deputy Sub-Divisional Commander for Portadown at the time. He said the practice followed in 1997 was for all uniformed officers to be debriefed by their sergeant or inspector, or both, before going off duty. Whether or not by both would have depended on the gravity of the incident which had occurred and the number of officers involved. A debriefing might require writing statements, filling in forms or leaving information, depending on the circumstances. The form which the exercise took and the detail it would require would depend on circumstances and what had happened during a tour of duty. CI McMullen went on to say if an officer had been on duty for a long period and it was now in the early hours it might be appropriate to wait until he or she returned to duty for a (full) debriefing. But before the officer went off duty it would be necessary to establish what he or she had done and what there still was to do. It is our view that only if it was agreed by the supervising officer that what was still left to be done could properly be done later should an officer be permitted to retire from duty.
- 5.2 It was submitted on behalf of Inspector Alan McCrum (Insp McCrum) that he should not be criticised for debriefing failures as there was no set pattern for the exercise of debriefing. Mr Charles Adair QC, on behalf of those police officers whom he represented, sought to deflect criticism of the debriefing by saying that the understanding of how debriefings were to be carried out varied. Both these submissions are flawed in that they look only at form and fail to look at substance. The substance of what debriefing was required to achieve was clear. Information had to be gathered about what police officers saw happening and whether they could identify by name or description, or both, those taking part in the disturbance. Those engaged in debriefing needed to be aware that it was likely that no one officer would have seen the whole picture and that, consequently, something one officer may have seen which, taken on its own, might not prove anything may nonetheless have value when considered along with what another

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<sup>1</sup> 80942 & Day 41 (page 44).

officer or other officers has or have seen. The precise form, though, which a debriefing took might vary from case to case and depend on circumstances. Mr Adair also pointed to the problems which may be caused at trial when the recollections of police officers have been pooled for the purpose of a collective debriefing. While views may vary about the wisdom of collective debriefing and pooling of recollections it does not follow that this must always be inappropriate. Moreover, this does not detract from the need to debrief properly or excuse the failure to do so. Indeed, once a general picture has been established from a collective debriefing, significant detail can be gleaned from a witness by individual debriefing.

- 5.3 The topic of debriefing led on to CI McMullen speaking about the question of police officers' notebooks. He said the practice was (and is) for an officer to write up his or her notebook as his period of duty was continuing, noting things as soon as practicable after they happened. (We stress as soon as practicable. This would not have been possible as long as the disturbance was continuing.) An officer going off duty after a long spell of duty might simply make a list of things still to do when he or she had not as yet had time, or was too tired, to do them. An officer might consider their recollection of something was clear in their mind and that they need not put pen to paper about it until they dealt with it in a statement. Again, something might already be noted on the command and control log so that there might not be a pressing need for an officer to write up the same information in his notebook straight away. However, we would add, it remains good practice to make basic aides-memoire as soon as practicable in the notebook which may be added to from other sources when preparing a statement of evidence.
- 5.4 But CI McMullen said that if an officer had witnessed a serious incident and could perhaps identify witnesses or potential wrongdoers, the sergeant or inspector should not need to remind them that he should make a note about it while it was fresh in his mind. The officer should know they had to do this. We point out, though, that this is a matter of basic police training and that, as the exercise of debriefing involves an early consideration of whatever an officer has recorded in order to drive the investigation forward where there appears to be a paucity of detail, this should provoke questions to the officer concerned.
- 5.5 CI McMullen said that if what was to be recorded in a notebook might be important in evidence then, unless it was something concise which the officer would be able to remember clearly, the sooner they made a note, or at least a sufficient note on which they would later be able to enlarge, the better, even though they might be tired. And the more there was to remember the more important it was to make at least a list of points to be used later to refresh their

memory so that he would be able to make a fuller note later. An officer also needed to try to avoid laying themselves open to cross-examination about why they did not write up their notebook earlier. Again, a sensible officer would know this. CI McMullen said he would still expect a list of points to be made even after a long shift. Officers are trained in the proper use of a notebook – what should be put into it and when. It is the view of Sir John Evans, shared by his Panel colleagues, that tiredness should never be used as a reason or excuse for not completing the appropriate notes.

- 5.6 Turning to the writing of statements, CI McMullen said it would not be a good idea after a long shift, when an officer was tired, for him or her to begin to write a statement. These are the circumstances in which mistakes can be made. He said that neither was it a good idea, when an officer had gone off duty after a long shift, to call him or her back after only two hours sleep in order to make a statement. While we agree with this as a general proposition we do not think it can be regarded as inflexible. Indeed, a recall to duty may be justified and necessary to obtain information on intelligence to further the investigation even though a statement may not be taken until later. Moreover, CI McMullen did not say this by way of qualification of his evidence to which we have referred in the preceding paragraph. He accepted that in general there should not be any delay in beginning the investigation of a serious offence. When police officers have been present at the time of the offence it is all the more important that they should be debriefed or spoken to about what they can say. It would be especially important to get from them any information they could give relevant to the identification of participants and witnesses. He said that in a serious case it is important to gather this kind of information as quickly as possible. The word we would use is ‘vital’.
- 5.7 In accepting the general thrust of CI McMullen’s evidence we take the view that circumstances may dictate that no time is to be lost in making full notebook entries and obtaining statements. Those circumstances applied here.
- 5.8 It is clear from CI McMullen’s evidence that one should not make hard and fast pronouncements about the manner of the debriefing. The complexity of debriefing required will depend upon the incident being investigated. The fact that it is not possible to formulate a uniform method of debriefing and that there may be more than one way of accomplishing this task satisfactorily does not mean that failure in debriefing, when it has occurred, cannot be recognised. We take the view that when some officers spoke of not being debriefed this may be explained by the fact that there is not a single way of debriefing officers after an incident and by a failure to understand what amounts to a debriefing.

- 5.9 Chief Superintendent William Desmond McCreesh<sup>2</sup> (CS McCreesh) was the deputy to Assistant Chief Constable Fred Hall (ACC Hall), who had responsibility for South Region, which includes the subdivision of Portadown. He said he would have expected the senior officer at the scene (Insp McCrum) to obtain at least a preliminary briefing from the officers who had been present at the disturbance about what had happened before they went to other duties. CS McCreesh believed there should generally have been some type of debriefing to establish at least the basic facts. He would have expected that as two people were in hospital at the very least this should have been conducted as a preliminary exercise. He accepted, though, as officers had been involved in a traumatic situation, it might not have been a bad thing to let them go home and then put them through a comprehensive interview at a very early stage. This would be a plausible strategy and a reasonable one but this did not exclude the need for a preliminary (and we would add adequate) debriefing to provide a starting point from which to begin an investigation. He also said that the level of debriefing depends on the seriousness of the incident.
- 5.10 CS McCreesh considered that after the Land Rover crew had gone off duty it was the right thing to do to call them back to the police station to make statements or at least to provide information to help build a picture to further the investigation.
- 5.11 If the duty inspector was in the police station then CS McCreesh would have expected the duty inspector to do the initial debriefing. But the important thing was that the debriefing should take place. If it was Police Sergeant P89 (Sgt P89) who was to do the debriefing then there had to be liaison between him and Insp McCrum. We accept the evidence we received from CS McCreesh.
- 5.12 The fact that there were differences of emphasis between the evidence of CI McMullen and CS McCreesh demonstrates the conclusion we have set out above, that there was no set way of debriefing officers after an incident and that the focus has to be on the substance rather than the form of the exercise. All of this is a part of training, experience and good supervision and management.
- 5.13 We turn now to consideration of the actions of Insp McCrum after he had directed and supervised steps to restore order at the junction.
- 5.14 His evidence<sup>3</sup> was that having sent Sgt P89 to make enquiries at Craigavon Area Hospital about the seriousness of the injuries suffered by Mr Robert Hamill and Witness D and satisfied himself that the members of the Mobile Support Unit were managing the town centre he went about his other duties that night. He was

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<sup>2</sup> Day 55 (page 5) & 81919.

<sup>3</sup> Day 62 & 80878.

driven by Police Constable John Adams (PC Adams) first to Banbridge and then to Lurgan. His practice was to make sure that he was seen by his officers who were on duty.

- 5.15 Before leaving Portadown Insp McCrum took no steps to preserve the scene as he did not know then the severity of the injury to Robert Hamill. It would probably have taken three officers to seal off the scene and he saw no requirement for this. He said, though, that there were police officers on duty at the junction to prevent any vehicular movement through the scene and he thought the barriers were closed. By the time the incident was over Portadown town centre would have been very quiet. It seems to us that whatever might have been the textbook requirement there had been a great deal of pedestrian traffic at the junction before the crowd was moved away. The town centre would by then be quiet and the barriers were still down. We doubt in the circumstances that anything was lost by not sealing off the scene of the disturbance sooner than happened.
- 5.16 A passage from the report of Her Majesty's Inspector of Constabulary into the Police Service of Northern Ireland (PSNI) in 2002 was quoted in the submission made to us on behalf of Insp McCrum by way of defence against the criticism that he had failed to secure the crime scene. The report said that evidence had been found **'of uniformed inspectors taking limited responsibilities at [crime] scenes and being content to leave Criminal Investigation Department (CID) in charge'**<sup>4</sup>. The report does not suggest that the practice to which it refers was the norm or that it was a practice accepted by the Royal Ulster Constabulary (RUC). In fact the report is commenting on a practice which meant that some uniformed inspectors were not accepting their proper responsibility.
- 5.17 By way of further response to this criticism Insp McCrum said that this appeared to have been an incident which was of common occurrence and there would not have been enough resources to secure every such scene in J division, which included Portadown, Banbridge and Lurgan. In any event, there had been so many people milling about that he was unclear where the crime scene actually was. He had not learned anything to suggest that this had been a serious assault. He had spoken to virtually all the officers present as they were moving the crowd back and none of them said that either of the two men had suffered a life-threatening injury. In these circumstances he considered he had done all that he needed to do.
- 5.18 In the light of what officers have told us about the fact that Robert Hamill was gasping for breath and the fact that he was unconscious when he was put into the ambulance we conclude that whatever Insp McCrum had talked about to the officers he had not made a sufficient effort to find out from them whether or not Robert Hamill or Witness D had suffered serious injury. We conclude that he

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<sup>4</sup> 74391 (74414, para 6.31).

should have done. It would not have been a difficult task. Insp McCrum was asked specifically whether he had tried to find out from the officers the extent of the injuries suffered by Robert Hamill and Witness D. He avoided the issue and did not provide a clear answer. Then, in answer to a question from the Inquiry Chairman, which it was necessary to repeat, Insp McCrum said he did ask a question which sought an answer about how serious the injuries were and was not told that Robert Hamill's breathing was rasping, which still really did not answer the question. But if, as Insp McCrum says, he had spoken to the officers as the crowd was being pushed back then, regardless of what injuries had been caused, he surely ought to have elicited what a number of them told us, namely, that this had been a more than usually serious incident and not just a usual Saturday night brawl. The significant number of people involved in the disturbance, which Insp McCrum had been able to see for himself, and the fact that he had authorised the issue of a baton gun, should have told him this. We accept the correctness of the opinion of Detective Chief Inspector Desmond Jackson<sup>5</sup> (DCI Jackson) that Insp McCrum's decision to authorise the issue of a baton gun was an indication that there was a very volatile situation.

- 5.19 We accept DCI Jackson's evidence that Insp McCrum should have carried out a debriefing which could have begun at the scene of the disturbance to be followed by a full (we would prefer to say a more detailed) debriefing at the police station with questions about what had happened and how serious the injuries were and with directions being given about what should be done. An allegation that the victim had been kicked in the head and his head jumped on would have pointed to the need to question some of the officers who had been at the scene, asking them what they had seen and whether they could identify anyone (suspects or witnesses). They should have been asked to draw up statements or write up and photocopy their notebooks for later examination by the detectives so as to provide them with some understanding of the incident to help them to begin their investigations.
- 5.20 Superintendent Karen Kennedy<sup>6</sup> (Supt Kennedy), of Complaints and Discipline, was of the view that members of the Land Rover crew should have been debriefed by the supervisor before they went off duty (this would have been Insp McCrum or Sgt P89). The fact that Robert Hamill had been seen by an officer to be having difficulty breathing and that the officer had been led by this to believe he had been seriously injured should have come to light at a debriefing. We accept Supt Kennedy's evidence about this. If Insp McCrum had done this before the time at

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<sup>5</sup> Day 44 (page 50).

<sup>6</sup> Day 44 (page 16).

which he in fact left Portadown, the need for careful debriefing would have been apparent to him sooner than it was and he should and probably would have seen the need to remain there.

- 5.21 Insp McCrum was, in our view, readier than he should have been at the time he left Portadown to conclude that this was not a serious incident requiring his continued presence there. We see no reason why he could not have telephoned his sergeants at Banbridge and Lurgan to see whether there was anything calling for his immediate presence, rather than leaving the scene of his own volition.
- 5.22 We accept that in the ordinary course of events it would have been legitimate for Insp McCrum to take the view that it was necessary that he should be seen in other parts of the division for which he was responsible. However, for the reasons we have given what had happened was not part of the ordinary course of events on a Saturday night. We have received no evidence to suggest that there was any pressing need for Insp McCrum to be seen in other parts of his division at that time and our view is that he should have remained in Portadown. The time he spent away from Portadown, about an hour, was important time lost in setting in hand the investigation of what had happened. Insp McCrum must have realised, if he had thought about it, that the mood in Portadown at this time (it has been referred to by Mr Ken Armstrong, an expert witness to the Inquiry on policy matters, as the **'Drumcree effect'**) was such that eyewitness evidence and cooperation from those people who had witnessed the disturbance would be difficult to obtain. He should have realised that this added to the importance of an early commencement to the investigation.
- 5.23 Insp McCrum returned to Portadown at about 04:00. Sgt P89<sup>7</sup> had already returned from the Craigavon Area Hospital and he informed the inspector that he had not been able to find out about the injured men's condition. It was not until 04:30 that Insp McCrum telephoned the hospital and was told by a doctor in the intensive care unit that one of the two men had sustained a serious head injury which might be life threatening. Insp McCrum's evidence is that it was not until this stage that he realised the police might be dealing with a serious assault rather than a normal Saturday night brawl.
- 5.24 While Insp McCrum was out of the station Sgt P89 was engaged with processing a drink driving arrest and subsequently with visiting Craigavon Area Hospital. On all the available evidence it is clear that Sgt P89 would have had no opportunity to arrange for any debriefing to have occurred, even if it had been clear to him that Insp McCrum had himself failed to do that.

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<sup>7</sup> Day 32 (page 90).

- 5.25 Insp McCrum authorised the call out of the CID officer, Detective Constable Donald Keys (DC Keys), at 04:42. When this officer arrived at the police station Insp McCrum suggested to him that they should go to the junction to co-ordinate the early stages of the investigation in consultation with one another and establish what the area of the crime scene was. However, Insp McCrum did not call out Detective Chief Inspector P39 (DCI P39), as we believe he should have done. This did not happen until about 06:45, when she was called out by DC Keys<sup>8</sup>, who acted on his own initiative. Insp McCrum should have regarded as a matter of urgency the debriefing of officers so as to obtain from them details of what they had seen and names and descriptions where they could be given. This debrief should have been in two parts: first, the Land Rover crew, and second, the remaining officers on night duty. Time should not have been lost before attempting to obtain evidential items, particularly clothing which might as a result of scientific examination produce valuable evidence, and, if possible, to make arrests and searches. The prospect of difficulties in obtaining eyewitness evidence and co-operation increased the importance of scientific evidence, if it could be obtained, and delays of only a few hours could jeopardise the prospect of the police being able to lay hands on items which could be submitted for scientific examination.
- 5.26 What follows is Insp McCrum's account of what he says happened that night in relation to debriefing. The officers themselves were trying to piece together exactly what had taken place. But the information Insp McCrum was hearing was only of a general kind. He says he directed all the officers on duty that night who had been at the scene to make formal statements, as it was his responsibility to ensure all officers had made contemporaneous notes and provided evidence as soon as possible to CID. He said he could not remember if this was before or after DC Keys' arrival. He says he emphasised he wanted them completed before any officer went off duty. The Land Rover crew had already gone off duty and so he ordered them back to the police station to make their statements. Insp McCrum says he wanted to ensure that no information would be lost to the investigation; he says that he also briefed his superior officers about the incident. As the officers returned to the police station at different times it was not possible to have a collective debriefing. When CID came in they were taking over the investigation and were best placed to debrief.
- 5.27 Insp McCrum considered that Police Constable Gordon Cooke (PC Cooke) had the best personal knowledge of those who had been present and he says he asked PC Cooke to consult with the other section officers who had been at the scene. In particular, he wanted them to draw up a list of people who had been identified at the scene so as to assist in the investigation. This needed to be done quickly

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<sup>8</sup> Day 48 & 80595 (para 25).

and Insp McCrum said his recollection was that PC Cooke began to do this in the communications room. Insp McCrum was confident that PC Cooke would supply a list of names to DC Keys. This did not happen. The evidence of PC Cooke<sup>9</sup> is that he was not given this instruction. We prefer his evidence about this to the evidence of Insp McCrum. It was submitted on behalf of Insp McCrum that it is unfair to criticise him for failing to make sure that PC Cooke had carried out this order because he, Insp McCrum, had no time to do so. If we are wrong to prefer PC Cooke's evidence about whether or not the order was given, it does not seem to us that Insp McCrum was so hard pressed that he did not have time to ask PC Cooke whether he had carried out the instruction he had been given.

- 5.28 Insp McCrum said he gave no specific instructions to the Land Rover crew. They were finishing duty and it was for Sgt P89 as their front-line supervisor to debrief them before they went off duty. We contrast this with Insp McCrum's evidence that as a consequence of the fact that Sgt P89 was mainly engaged for about two hours after Insp McCrum's return to Portadown in dealing with the drunken driver, Insp McCrum was left to try to manage the situation without another level of support beneath him. This, in our view, had the effect of increasing the need for him to make sure that officers did not go off duty without complying with the instruction, which he says was given, to write up their notebooks. In fact he remained in ignorance of the failure to comply with the instruction. He said it was a standard thing for him to tell officers to make sure their notebooks were complete at the end of their tour of duty and that if he had told eight or ten officers to make up their notebooks and none of them did he would be disappointed and a little surprised. This is in fact what happened and we are not persuaded that this instruction was given by Insp McCrum on this particular night. We accept that it was part of Sgt P89's role to ensure that officers had completed their notebooks. However, the fact that this officer was having to deal with the drunken driver adds force to Colin Murray's criticism that Insp McCrum should have made sure that his own instructions had been carried out.
- 5.29 Insp McCrum said he was sure, though, that before he left the scene he told every officer, as a matter of routine, to make a contemporaneous note of what had happened.
- 5.30 Insp McCrum said he had taken all reasonable steps to ensure that CID had everything they needed. It was for them to follow up the lines of enquiry he had opened for them. The fact is that his actions that night were the subject of a disciplinary investigation. As a result he was admonished. He told us that he admitted the charge '**without prejudice**', though he did not agree with the finding made against him. Whatever his view, the finding was made and he

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<sup>9</sup> Day 31 (page 21).

admitted it and the finding does not fit well with his assertion that he had taken all reasonable steps in the discharge of his duty on that night. We do not accept Insp McCrum's assertion that he had taken all reasonable steps.

- 5.31 After DC Keys had returned with Insp McCrum from their visit to the junction, Insp McCrum told the members of the Land Rover crew who were present what he wanted their statements to deal with. DC Keys said that in his experience it was not the practice to go through an officer's statement with him or her, but that if it contained a glaring omission this would be raised with the officer. We find that DC Keys was a conscientious and competent officer but the approach he describes lacks flexibility in achieving the purpose of debriefing.
- 5.32 On the Sunday morning (27 April 1997), DC Keys read the statements made by the members of the Land Rover crew other than Reserve Constable Robert Atkinson (Res Con Atkinson), whose statement he did not receive, though DC Keys was on duty at the police station until 23:30 that night. The statement was received by Detective Sergeant Derek Bradley on the following day, Monday, as his signed and dated signature endorsed on it shows<sup>10</sup>. This was the day on which DS Bradley joined the investigating team. If, as Res Con Atkinson says and told PC Neill, he left his statement in the pigeonhole in the CID room<sup>11</sup>, it seems to us that he should have realised that it would have been sensible to tell DC Keys. However, if his statement was ready on the Sunday we cannot see why he did not hand it directly to DC Keys.
- 5.33 DC Keys said it would not have been and never had been part of the role of a detective constable to debrief an officer. This would have been the task of duty inspector or sergeant. This in our view suggests a further inflexibility in procedure which prevailed at that time which had the potential to create a hiatus in the progress of an investigation in the absence of a duty inspector or sergeant. We note, though, DC Keys' evidence that the approach to debriefing is now vastly different from what it was then.
- 5.34 Detective Constable John McDowell was one of the officers who joined the investigating team. He gave evidence about what debriefing should have involved, and this evidence chopped and changed as the questioning of him continued<sup>12</sup>. In consequence his evidence provided no consistent picture about his views, understanding and experience of what debriefing should involve. His evidence was of little value to us.

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<sup>10</sup> 06346.

<sup>11</sup> Day 47 (page 80).

<sup>12</sup> Day 42 (pages 75–113).

- 5.35 On Monday 28 April 1997, DS Bradley<sup>13</sup> and Detective Sergeant George Lawther<sup>14</sup> shared the task of debriefing Police Constable Alan Neill (PC Neill), Reserve Constable Denise Cornett and Reserve Constable P40. The debriefing notes show that the focus of the questions was on where the crowd and the officers had been and what the officers had been doing. The focus was not on whether they could provide more information about what they had seen people doing. For example, in four and a half pages of debriefing notes in the case of PC Neill<sup>15</sup> he was not asked what those he had named in his statement were doing and whether he saw anyone else. On 19 June 2001 PC Neill was interviewed<sup>16</sup> and made a statement in which he said he had seen Mr Allister Harvey, one of the murder suspects, at the disturbance. He said Allister Harvey was not doing anything wrong and was wearing a tracksuit top. If PC Neill had been asked at his debriefing what Allister Harvey was wearing he might have been able to give a better description of Allister Harvey's clothing than he was able to give three and a half years later.
- 5.36 PC Neill also said at this interview that Res Con Atkinson had spoken to him on the telephone at the time they were called back to the police station on 27 April. Res Con Atkinson told him that he had seen people around the injured men but added that he could not or did not identify them (PC Neill is not sure which). If there had been a proper debriefing PC Neill might well have mentioned this and his memory might have been better. But whether or not he would have been uncertain at that time, Res Con Atkinson could have been questioned about it and might have been able, had he so wished, to provide some useful information. This illustrates how something said at a debriefing, though not in itself providing information, may provide a lead. It illustrates that it is not sufficient to rely on an officer to provide whatever information he has which may prove of value when seen as part of a larger picture of the investigation.
- 5.37 DCI P39<sup>17</sup> was called out from her home at about 06:50 and would have arrived at Portadown police station shortly after. She was briefed by Insp McCrum and at that stage became the officer in charge of the investigation, though Insp McCrum remained on duty until 08:15. Insp McCrum told DCI P39 that the officers who had been on duty that night had gone home. She told him they should return immediately as their statements were needed. DCI P39 explained to us that she wanted them back at the police station so as to learn from them what had happened and what evidence was available to the investigation. With the exception of PC Neill, who fell asleep again after being telephoned at his

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<sup>13</sup> 17572.

<sup>14</sup> 81758.

<sup>15</sup> 09673.

<sup>16</sup> 17247.

<sup>17</sup> 81567 & Day 43 (page 5).

home and was late in returning, the other three members of the Land Rover crew returned to the police station promptly. DCI P39 told them the details that their statements needed to cover and that they should write their own statements.

- 5.38 DCI P39 told us that she thought Res Con Atkinson's statement should have included more detail, including an account of the incident involving Allister Hanvey and the warning Res Con Atkinson gave about Allister Hanvey to Sgt P89. She said that Insp McCrum's and Sgt P89's statements were brief and contained nothing of value. She could not explain why neither of them was debriefed. Insp McCrum told us that his statement was brief because he could make no contribution to the investigation. We conclude that it would have been appropriate for him to say in his notebook what the more important decisions he made were and why he made them.
- 5.39 DCI P39 told us that her view was that debriefing had already taken place long before she came on duty on the Sunday morning. This would have been the responsibility of Insp McCrum and we know it did not take place. DCI P39 says it was important for the statements made to be reviewed by a detective and she asked on the morning of Monday 28 April for this to be done. Save for the four members of the Land Rover crew this never happened. It obviously should have been done very soon after they made their statements. DCI P39's instructions were not complied with and we conclude that her failure to ensure her instructions had been complied with was a wrongful omission on her part as she was in charge of the investigation. Nor were these officers properly debriefed once Detective Chief Superintendent Maynard McBurney (DCS McBurney) became the senior investigating officer on 8 May.
- 5.40 When Allister Hanvey was interviewed following his arrest for murder on 10 May 1997<sup>18</sup> he said the only person he knew at the scene of the disturbance was Reserve Constable Jim Murphy (Res Con Murphy). He was one of the backup officers but he was never asked if he had seen Allister Hanvey and, if so, what Allister Hanvey was doing and whether Res Con Murphy could describe Allister Hanvey's clothing. On 2 January 2001 Res Con Murphy made a statement<sup>19</sup> in which he said he had seen Allister Hanvey at some stage but that he was not doing anything of note. It does not follow from this that he could not in May 1997 have described his clothing. DCS McBurney must bear responsibility for the fact that Res Con Murphy was not questioned following the interview of Allister Hanvey. This and DCS McBurney's failure to debrief officers will be considered in Chapter Eight.

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<sup>18</sup> 10018 (10054).

<sup>19</sup> 34807.

- 5.41 Sgt P89 is an officer who showed himself to be casual about the need to provide information to help in the investigation. His notebook entry was not made until the evening of 27 April. He did not prepare a written statement until a detective asked him for one on 7 May 1997. The statement<sup>20</sup> gives no detail and was essentially worthless. In particular, it does not mention the incident involving Allister Hanvey. In consequence he was not asked anything about Allister Hanvey or about what clothing he was wearing. Again, responsibility for not ensuring that Sgt P89 was properly debriefed must be laid, after he became involved in the investigation, at the door of DCS McBurney. It was not until 28 December 2000, when a further statement was taken from Sgt P89<sup>21</sup>, that he mentioned the incident involving Allister Hanvey and that Res Con Atkinson had warned Sgt P89 about him. Sgt P89 says by way of excuse that he did not connect the Hanvey who had been named to him in the warning given by Res Con Atkinson with the Allister Hanvey who had been arrested for murder and had not thought it relevant. We reject this explanation. It was a wrongful omission. In our view what Sgt P89 had seen should have led a police officer of his experience to realise that it might be of importance, and his failure to write up his notebook before going off duty may have been the root cause of his failure to provide statements of any value in 1997. Sgt P89's wrongful omission obstructed the murder investigation because it inhibited proper enquiries into Allister Hanvey's role on the night. We have no reason to believe this was a deliberate omission and accordingly we find that it was negligent.
- 5.42 Res Con Atkinson also failed to say in his notebook<sup>22</sup> or his initial statement<sup>23</sup>, and even when pressed about who he had seen in Portadown town centre<sup>24</sup>, that he saw Allister Hanvey or that Allister Hanvey was involved in a confrontation with Sgt P89. Those failures were wrongful omissions. Viewed in conjunction with the findings in Chapter Seven, we conclude that they were deliberate.
- 5.43 Colin Murray<sup>25</sup>, an expert witness to the Inquiry on police matters, said that the importance of a properly conducted debriefing cannot be overemphasised. It provides an opportunity to identify suspects, witnesses, gaps in evidence, additional lines of enquiry and any other investigative requirements necessary to drive the inquiry forward.
- 5.44 Colin Murray said in his experience a failure properly to debrief an incident, such as the assault on Robert Hamill, would undermine the Inquiry.

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<sup>20</sup> 09213.

<sup>21</sup> 11084.

<sup>22</sup> 09840.

<sup>23</sup> 00692.

<sup>24</sup> 04162.

<sup>25</sup> Day 67 & 74391 (74413), Day 68 (page 32).

- 5.45 Ken Armstrong<sup>26</sup>, the other expert witness about police practices, said nothing to disagree with any of this.
- 5.46 Having concluded that there were failures in the debriefing exercise it is necessary to consider what the effect of this was on the outcome of the investigation into Robert Hamill's death. We cannot say that the outcome would have been different. All we can conclude is that had there been an effective debriefing this might have led to evidence being obtained which might have led to a different outcome of the investigation. To put the matter any higher would be to speculate.
- 5.47 We conclude this section of our report by making further reference to some of the other submissions which were made to us. British Irish Rights Watch (BIRW) and Committee on Administration of Justice (CAJ) submitted that debriefing was not coherent or systematic. We have made clear already our findings about the defects in the debriefing exercise. Mr Martin Wolfe, for the PSNI, does not challenge the proposition that there were defects but made a submission about the conclusion to be drawn from this.
- 5.48 BIRW and CAJ referred to a deliberate withholding by Res Con Atkinson of information about Allister Hanvey's presence at the disturbance. They submit also that Police Constable A (PC A) withheld information by not recording in her notebook or statement information about the detention and release of Mr Wayne Lunt. They submit that this raises the question in the case of each of these officers of whether what was done had the motive of protecting Allister Hanvey in the one case and Wayne Lunt in the other. We shall deal with the allegation against Res Con Atkinson in Chapter Seven. So far as PC A is concerned, though, we absolve her entirely of any suspicion that she was motivated to protect Wayne Lunt. She had been through a frightening experience and had conducted herself with courage and determination. We conclude that the omission was the result of an oversight. If her intention had been to shield Wayne Lunt she would hardly have given her contact details as a police officer to Mr Colin Prunty and his colleague, enabling them if they so wished to bring to her superiors' attention the fact that she had released Wayne Lunt. Further, she would have known that there would be a record in the control room of her radio calls made to establish Wayne Lunt's identity and address.
- 5.49 Mr Wolfe submitted that, Res Con Atkinson apart, the failure of police officers to give relevant details was not the result of any cover-up. Rather, if a detail which had been seen but not noted by an observer and was not elicited by the debriefing process becomes relevant in the light of other evidence this would be due to the lack of a structured debriefing. We agree with this submission, save that we would prefer to speak of the lack of a carefully thought out and conducted debriefing.

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<sup>26</sup> Day 68 (page 165) & 74592.

- 5.50 BIRW and CAJ made a further submission about what information the police should have had available to them. It was submitted that as those who were arrested chose to go onto paramilitary prison wings when they were remanded in custody the police should already have known they had a relationship with paramilitaries. This is a *non sequitur*. Someone may have sympathy with paramilitaries without having any political or terrorist involvement with them. Further, choosing to go onto a paramilitary wing provides no proof of participation in the attack on Robert Hamill and Witness D or basis for reasonable suspicion that someone has committed a criminal offence.

## Conclusions

- 5.51 We conclude that there was a significant and persistent failure to debrief officers who had been at the scene. That failure was attributable to Insp McCrum and DCI P39. DCS McBurney's failures in relation to debriefing will be dealt with in Chapter Eight. Although we cannot say with any confidence what would have happened had there been adequate debriefing we are clear that it would have opened up further lines of enquiry, and we therefore conclude that the failure was a wrongful omission and obstructed the murder investigation and was negligent. We do not consider that Sgt P89 was guilty of any wrongful omission in relation to debriefing others.
- 5.52 We are clear that the wrongful omission by Insp McCrum to get an initial understanding of what had happened and which officers may have had useful information about witnesses and suspects had a serious and continuing impact on the murder investigation. That was exacerbated by the failure in the hours following the assault to ensure that officers made proper notebook entries or statements. Evidence obtained from officers in 2000 and 2001 clearly demonstrated that evidence was missed which would have assisted the investigation. We have no doubt that Insp McCrum's omission in those respects obstructed the investigation. We believe that his omissions were negligent.
- 5.53 We have already found that the failure of the initial debriefing obligation amounted to obstruction. DCI P39 was in a position to recover lost ground by ensuring that all of the officers who had been at the scene were properly debriefed as soon as possible following the assault. Her omission to do so was obstructive. We are satisfied that she did not deliberately obstruct the investigation, and we have necessarily found her conduct to be culpable by describing it as wrongful. We are bound to conclude that her omission was negligent because it fell short of the accepted standard. However, we must record that she had not been properly trained or prepared for her role and that her personal responsibility for her omissions should be viewed in that context.



# Chapter Six

## The investigation between the violence and the death of Robert Hamill

- 6.1 This chapter deals with the period between the debriefing of the officers on 27 April 1997 and when Detective Chief Superintendent Maynard McBurney (DCS McBurney) took over the investigation on 8 May 1997 after the death of Robert Hamill.
- 6.2 We remind ourselves that our Terms of Reference require us to inquire into the death of Robert Hamill with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary (RUC) facilitated his death or obstructed the investigation of it. Robert Hamill had not yet died during the period we are about to consider, and the investigation being conducted by the RUC was for grievous bodily harm with intent. Nonetheless, it is of course possible that any wrongful act or omission in this part of the investigation obstructed the subsequent murder investigation.

### Press releases

- 6.3 In the hours following the events of 27 April 1997 the RUC issued a press release. It referred to a **'clash between rival factions'** and said that the police themselves had come under attack by a section of the crowd<sup>1</sup>. The RUC reasonably believed that there was some urgency after such a serious incident to issue a press release. In those circumstances we do not take the view that issuing the press release in that form constituted a wrongful act or omission on the part of Inspector Alan McCrum (Insp McCrum). It may nonetheless have had the unfortunate effect of discouraging Catholic witnesses from coming forward.

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<sup>1</sup> 15068.

## **The investigation**

### **What was known before 6 May**

- 6.4 It may be helpful for us to set out here what was and what was not known by the detectives about those in respect of whom there were in fact grounds for suspicion prior to the arrests which were made on 6 May 1997.

#### ***Allister Hanvey***

- 6.5 Although Police Sergeant P89 (Sgt P89) had seen Mr Allister Hanvey acting very aggressively and had been warned about him by Reserve Constable Robert Atkinson (Res Con Atkinson)<sup>2</sup>, and although Res Con Atkinson may have commented about Allister Hanvey to other officers, the detectives knew nothing of that. In the period we are considering here the detectives had no reason to suspect Allister Hanvey of any wrongdoing. He was not arrested until 10 May 1997<sup>3</sup>.

#### ***Wayne Lunt***

- 6.6 The detectives knew from Police Constable A (PC A) that Mr Wayne Lunt had been detained as a potential trouble-maker<sup>4</sup>, but had no reason to believe that he had been fighting let alone that he had attacked Robert Hamill. Although PC A had been told forcefully by Mr Colin Prunty that Wayne Lunt was an attacker<sup>5</sup>, the debriefing failed to elicit that or any information to substantiate what Colin Prunty had told her.

#### ***Dean Forbes***

- 6.7 The detectives knew that Dean Forbes had been talking to the occupants of the Land Rover prior to them getting out<sup>6</sup>. They had also been told by PC A that he was later seen in the crowd with Mr Stacey Bridgett acting aggressively<sup>7</sup>.

#### ***Stacey Bridgett***

- 6.8 Reserve Constable Godfrey Dean Silcock (Res Con Silcock) informed detectives that a youth had been pointed out to him by a woman at the scene as one of those who had jumped on the head of one of the injured men. The youth had a bleeding nose. Res Con Silcock saw him and heard him answering to the name Stacey<sup>8</sup>. PC A told the detectives that Stacey Bridgett had a bleeding nose at the

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<sup>2</sup> 11084.

<sup>3</sup> 07942.

<sup>4</sup> 11040.

<sup>5</sup> 81683 (para 18).

<sup>6</sup> 09667 (09668).

<sup>7</sup> 11040.

<sup>8</sup> 09220 (09221).

scene<sup>9</sup>. The detectives who interviewed Stacey Bridgett were aware that the name Stacey was an unusual one<sup>10</sup>. Res Con Silcock told detectives that Stacey was with Mr Rory Robinson in the crowd that shouted '**I hope they die**' as the injured men were placed into the ambulance<sup>11</sup>.

- 6.9 What Res Con Silcock said he was told would not have been admissible in evidence. This is not the end of the matter as regards Stacey Bridgett, though. If the woman who spoke to him was telling the truth about what she had seen of the attack on Robert Hamill or Witness D and she could be traced, what she had to say could have been of great value to the investigation. Res Con Silcock was able to say that this woman who spoke to him was wearing a white top<sup>12</sup>. From the complaint she made it could be deduced that it was likely that she was either a Catholic or one who sympathised with the victims. No attempt appears to have been made to discover the identity of this woman other than to ask Witness F if she was the woman. She told the police she was not<sup>13</sup>. The matter was not followed up with Res Con Silcock. For example, he could have been asked if he had more to add to what he had said. Also Witness F could have been asked if she saw any other women wearing white tops on the night in question. More general enquiries could have been made. It may be that enquiries of this kind would not have borne fruit. We have no means of knowing. All we can say is that this was a potentially important lead in the investigation which was not properly followed up.

### **Rory Robinson**

- 6.10 As noted above, Res Con Silcock told detectives that Rory Robinson was part of an aggressive crowd<sup>14</sup>. Res Con Atkinson said that he had to strike a man he believed to be Rory Robinson in the stomach with his baton<sup>15</sup>. Police Constable Alan Neill (PC Neill) saw Rory Robinson moving along the police line and taunting the injured men and said that he squared up to PC Neill on a few occasions<sup>16</sup>.

### **Marc Hobson**

- 6.11 PC Neill saw a man in his late 20s, who had a small goatee beard, a round face and short hair and was wearing a leather waistcoat, kick at Robert Hamill<sup>17</sup>.

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<sup>9</sup> 00716 (00717).

<sup>10</sup> 07269 (07274).

<sup>11</sup> 09221.

<sup>12</sup> 09220.

<sup>13</sup> 07783.

<sup>14</sup> 09221.

<sup>15</sup> 06348.

<sup>16</sup> 06335.

<sup>17</sup> 06334.

- 6.12 Res Con P40 saw a man in the crowd who had very short black hair, a moustache and a goatee beard. The man was five feet nine inches and stocky. He wore a black leather jacket and blue jeans<sup>18</sup>.
- 6.13 In his statement Police Constable Gordon Cooke (PC Cooke) spoke of a man who was wearing a black leather jacket and blue denim trousers. He gave this man's first name as Marc but gave a surname other than Hobson<sup>19</sup>. In his notebook he also said this man had a goatee beard<sup>20</sup>. Only on 26 May did he tell detectives that the man he had identified was actually Marc Hobson<sup>21</sup>.

### **Conduct of the investigation**

- 6.14 It has been argued that the crime was never likely to be solved through the use of eyewitness evidence, because of the difficulties in getting witnesses to come forward, and therefore it was vital that the strategy for attempting to obtain scientific evidence was effective. We have heard evidence that in January 2001 Detective Chief Superintendent Colville Stewart identified that there had been inadequate crime scene preservation and little consideration of the possibility of obtaining scientific evidence<sup>22</sup>. Mr Chris Mahaffey of the Office of the Police Ombudsman of Northern Ireland agreed that the investigation should have focused on, amongst other things, scene preservation, seizure of suspects' clothing, and gathering debris which may have been of evidential value<sup>23</sup>. Mr Colin Murray, independent expert to the Inquiry, identified several areas in which further action should have been taken, including scene preservation, recovery of victims' clothing, and closed circuit television (CCTV) capture<sup>24</sup>.
- 6.15 Colin Murray told us that Detective Chief Inspector P39 (DCI P39) should have<sup>25</sup>:
- (a) managed the crime scene once it had been sealed off;
  - (b) met Police Constable Mark Ardis (PC Ardis), the Scenes of Crime Officer (SOCO), to discuss forensic strategy;
  - (c) commenced a policy file in relation to the assault;
  - (d) debriefed all officers who had attended the scene;
  - (e) called out additional staff to progress the investigation;
  - (f) ensured victims' clothing was seized;
  - (g) considered seizure of paramedics' clothes;

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<sup>18</sup> 06350.

<sup>19</sup> 00709.

<sup>20</sup> 09969.

<sup>21</sup> 11063.

<sup>22</sup> 81895 (para 13).

<sup>23</sup> 81895 (para 13).

<sup>24</sup> 74391 (74429, para 11.2).

<sup>25</sup> 74391 (74422, para 9.4).

- (h) determined CCTV strategy;
  - (i) determined a suspect strategy;
  - (j) determined press strategy; and
  - (k) retained responsibility for supervision and investigation for assault.
- 6.16 Colin Murray also said it was a serious failing that DCI P39 did not identify the fast track actions (investigative steps which should be taken by the police as quickly as possible after they learn of the commission of a crime) that Insp McCrum had failed to perform<sup>26</sup>. The independent expert police witness Mr Ken Armstrong shared concerns about the scene management and thought it was related to officers' lack of training, experience and resources that the scene was not cordoned off<sup>27</sup>.
- 6.17 In those circumstances we will examine a number of components of the investigation in its early days, to see whether there was any failure which falls within our Terms of Reference.

### ***Organising the scene***

- 6.18 DCI P39 arrived on duty at the police station at 07:15 on 27 April, having been called out by Detective Constable Donald Keys<sup>28</sup> (DC Keys). She assumed responsibility for the investigation on arrival at Portadown station because she was the detective in charge of the local area<sup>29</sup>.
- 6.19 At 07:25 the scene was taped off by PC A and Police Constable David Orr<sup>30</sup> (PC Orr). Neither PC A<sup>31</sup> nor PC Orr<sup>32</sup> knew who gave them the order to tape off the scene.
- 6.20 At 07:27 PC A opened a scene log. She handed the scene over to another officer at 08:13<sup>33</sup>.
- 6.21 At 08:00 DC Keys directed the SOCO to attend the scene<sup>34</sup>. The SOCO arrived at 09:55<sup>35</sup>. At 10:20 photographs were taken of the scene by the RUC photographer<sup>36</sup>.

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<sup>26</sup> 74391 (74430, para 11.5).

<sup>27</sup> Day 68.

<sup>28</sup> Day 43 (page 5).

<sup>29</sup> Day 43 (page 5).

<sup>30</sup> 81071 (para 17).

<sup>31</sup> 81683 (para 33).

<sup>32</sup> 81071 (para 17).

<sup>33</sup> 10993.

<sup>34</sup> 09250.

<sup>35</sup> 10993.

<sup>36</sup> 09250.

- 6.22 DCI P39 told us<sup>37</sup> that she was contacted by DC Keys around 06:50 on 27 April and told about the incident and that he said that the scene had been sealed. She asked him to call out the SOCO. After she arrived at the station she went to the scene. She arrived before the SOCO and photographer arrived.
- 6.23 DC Keys said he told DCI P39 that the scene was not secure. He said it was her responsibility to ensure that it was made secure<sup>38</sup>.
- 6.24 Chief Inspector Henry McMullen (CI McMullen) said there were the resources to call out a SOCO within an hour. He told us that he had experience of SOCOs arriving four or five hours after they were called, often because they were at other scenes, but there would be a record of who was on duty and why there was such a delay. It took the SOCO about an hour and a half to put together his equipment and drive to Portadown and then he had to be briefed<sup>39</sup>. It is our view that he should have been called out sooner by Insp McCrum and, following his failure, by DCI P39. However, there is no evidence to suggest any interference with the crime scene between the time at which it had been sealed off and the arrival there of the SOCO and we have dealt already with the period before it had been sealed off.
- 6.25 At 10:00 Detective Constable John McDowell (DC McDowell) went to the scene with DC Keys. He went through the cordon to look around the scene, which he said he was allowed to do. He did not remember whether the log keeper was there. He did not see the SOCO. He assumed the SOCO had finished but did not confirm that. He said that it was not obligatory to have contact or liaise with the SOCO before going into scenes of crimes.
- 6.26 DC McDowell did not see it as his responsibility to preserve the scene. He said if a scene is to be preserved then it is a scene log officer or a more senior uniformed officer's duty to make sure procedures are properly followed<sup>40</sup>.

***Gathering debris which might have been of evidential value***

- 6.27 PC Cooke said he went back to the scene with DC Keys at 06:30. The street looked the same as on any weekend morning; there was the usual dirt, debris, litter and glass<sup>41</sup>.
- 6.28 PC A said there was broken glass and bottles at the Thomas Street and Market Street junction when she arrived to tape off the scene<sup>42</sup>. PC Orr said there was a

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<sup>37</sup> Day 43 & 81567.

<sup>38</sup> 80595 (para 27).

<sup>39</sup> Day 41 & 80027.

<sup>40</sup> Day 42 (page 106).

<sup>41</sup> 81674 (para 33).

<sup>42</sup> 81683 (para 33).

- lot of debris on the ground<sup>43</sup> and Police Constable Rachel Murphy said that there were many small particles of broken glass around the Thomas Street junction<sup>44</sup>.
- 6.29 When Robert Hamill was at the scene Res Con Silcock and PC Neill said there had been glass around his head that looked as though it had come from a broken bottle. PC Neill said that he did not preserve the glass, which he moved<sup>45</sup>, and Res Con Silcock said he had never received any training in scene preservation<sup>46</sup>.
- 6.30 Res Con Silcock was later served with a form 17/3 by Complaints and Discipline (C&D) (served when a complaint or disciplinary offence has been alleged against an officer who is under investigation), the allegation being that he had neglected his duty by not preserving glass that he had removed from near an injured person's head, and so taken no action to preserve the scene. Res Con Silcock did not believe that he had a role to play in preserving the scene<sup>47</sup>. Superintendent Karen Kennedy (Supt Kennedy) made no finding on this allegation. We consider that to criticise Res Con Silcock for having failed to preserve the glass he had moved away from Robert Hamill at a time when he was engaged, with others, in trying to bring under control the people involved in a serious disturbance is unsustainable.
- 6.31 Reserve Constable Warnock (Res Con Warnock) said that at 07:15 he went to the scene with a Criminal Investigation Division (CID) officer, who did not ask for a walk-through of the scene. Res Con Warnock did not remember seeing any bottles or broken glass. He did not remember being asked to lift any items but said that if he had seen something of potential evidential significance he would have lifted it on his own initiative, although he did not have any scene preservation training. He told us that he picked up a child's belt, of which he did not think CID were aware as he did not remember telling them at the scene and he did not remember seeing the log keeper. At this stage the street cleaner had not been through the scene<sup>48</sup>.
- 6.32 PC Ardis was the SOCO. He said that he was the only SOCO on duty for the area that weekend<sup>49</sup>. He told us that he was briefed by DC Keys at the scene. The briefing consisted of outlining that there had been a serious assault and that he was required to 'go and see what was there'<sup>50</sup>. DC Keys told us that he told PC Ardis to lift all the items at the scene, including blood and debris<sup>51</sup>.

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<sup>43</sup> 81066 (para 17).

<sup>44</sup> 81710 (para 7).

<sup>45</sup> 10423 (10426).

<sup>46</sup> 10478 (10487).

<sup>47</sup> Day 29 & 10478 (10482).

<sup>48</sup> 81238 (para 33).

<sup>49</sup> Day 46 & 80027 (para 33).

<sup>50</sup> 80027 (para 6).

<sup>51</sup> 80595 (para 33).

- 6.33 Supt Kennedy's report said no attempt was made to gather debris (broken bottles etc.) at the scene. She said, in effect, that had a complete debriefing taken place, the glass removed from around Robert Hamill's head may have been recovered, and that this could perhaps be a criticism of the debriefing<sup>52</sup>. The difficulty in this is that it was not made clear to the SOCO just where Robert Hamill and Witness D had lain in the road. Our view is that fixing the positions in which these two men lay on the road might well have been helped if one or more of the officers who saw them lying there had been directed to the scene to assist the SOCO with the benefit of their recollection. Also, we think an attempt should have been made to obtain the assistance of the ambulance crew. We recognise, though, that it might not have been possible to obtain their attendance at the time when the SOCO needed to begin his examination of the crime scene.
- 6.34 The SOCO picked up broken bottle glass from the Thomas Street and Woodhouse Street sides of the junction<sup>53</sup>. Whether he picked up all the glass that lay on the ground has not been established. The broken glass from the Thomas Street side obviously had the greater potential to yield evidence of value. These pieces of glass, together with an unbroken bottle, were sent to the police Fingerprint Bureau<sup>54</sup>. Wayne Lunt's fingerprint was found on the bottle<sup>55</sup> but apart from this no other fingerprints were found. This bottle was found in a flower bed<sup>56</sup> and there is no evidence of its use against Robert Hamill or Witness D so that the fingerprint provides no evidence to incriminate Wayne Lunt in the attack other than to place him at the scene holding a bottle. The materials used for the purpose of the fingerprint tests meant that it would no longer be possible to identify any DNA on the pieces of glass. Also, the taking of blood samples from part of a piece of glass would have destroyed any fingerprint evidence that might have been on that part. It would have been better had the pieces of glass first been examined visually to see whether any of them bore any traces of blood and reserved these for possible examination for traces of DNA. It would have been appropriate also before any tests were made to consult both the Fingerprint Bureau and the then Forensic Science Agency of Northern Ireland (FSANI) to determine the best way forward.
- 6.35 Our view is that the examination of the crime scene and the consideration of what steps should be taken in relation to the pieces of glass found did not receive the direction from DCI P39 which was needed. It is clear to us that she was a conscientious officer and anxious to play her proper part in ensuring an effective investigation, of which she was in charge until DCS McBurney became the

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<sup>52</sup> 10120 (10153).

<sup>53</sup> 08161.

<sup>54</sup> 80027 (para 20).

<sup>55</sup> 12508.

<sup>56</sup> 00236.

senior investigating officer (SIO). Hers was not a conscious failure but the result of a lack of the preparation, training and experience which was called for in the case of someone occupying her position. Regrettable though the early stages of securing the scene and obtaining samples and debris were, we do not believe in all the circumstances that DCI P39 was guilty of a wrongful act or omission in this respect.

- 6.36 Further, a proper debriefing might have provided more information for the SOCO and so might have resulted in a more focused examination of the scene. If not all the glass of sufficient size to be usefully examined had been retrieved then we can conclude that proper debriefing and direction might have obtained fingerprint evidence which, taken with other evidence, may have had a useful evidential significance. A combination of Robert Hamill's blood and a fingerprint on a piece of broken glass could have provided valuable information if the person leaving the fingerprint could have been identified. However, there was little blood at the crime scene and we think that, even without the shortcomings we have identified, the prospects of obtaining incriminating evidence of this kind would have been slight. If in fact all of the fragments of glass large enough to be worth examining were recovered we can say that the absence of fingerprint evidence would mean that they could not have yielded any useful evidence. Robert Hamill's blood on a fragment of glass, without any fingerprint, would have had no evidential significance.

### ***Seizure of clothing***

- 6.37 Miss Diane Hamill, Robert Hamill's sister, told us that the police had gone to her house on 27 April 1997 to get Robert Hamill's clothes<sup>57</sup>. On 29 April Robert Hamill's fiancée delivered his clothing to a solicitor's office<sup>58</sup>.
- 6.38 Mrs Brid Rodgers was a councillor in the Portadown area in 1997. She went with Witness E to the police station on 27 April, when Witness E had been requested to take Witness D's clothes but did not<sup>59</sup>. DC Keys said that he had spoken to Witness E and stressed the importance of getting his clothes but she did not bring them with her<sup>60</sup>. Brid Rodgers could not tell us why Witness E did not take Witness D's clothes with her, as had been requested<sup>61</sup>. Later that day DC McDowell retrieved Witness D's clothing from his house<sup>62</sup>.

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<sup>57</sup> Day 35.

<sup>58</sup> 09589.

<sup>59</sup> Day 51 (page 151).

<sup>60</sup> 80595 (para 30).

<sup>61</sup> Day 51 (page 155).

<sup>62</sup> Para 9 & 80895.

- 6.39 PC Orr denied that he had been ordered by Insp McCrum to collect the clothing of the injured parties. PC Orr said that he was at the hospital on another matter<sup>63</sup>. PC Cooke also denied being asked by Insp McCrum to collect the clothing of the injured parties. He said that if he had neglected to do that, it would have been noticed and someone would have ordered him to fulfil the task<sup>64</sup>.
- 6.40 Supt Kennedy's report concluded that no consideration was given as to the seizure of suspects' clothing for the purpose of scientific examination. Without being able to establish decisions made which determined the course of the initial assault investigation this cannot be fully explored. One might conclude that if there was no strategy for whom to arrest and when, a consequence was that there was no strategy for obtaining forensic evidence<sup>65</sup>. When she gave evidence, Supt Kennedy told us that whether seizure of clothing would overshadow the building of a case is a matter of judgment. She also agreed that it is a matter of judgment whether to attempt to secure forensic evidence or to build a case before making an arrest<sup>66</sup>.
- 6.41 Our findings on the steps taken to seize clothing of the injured parties are that proper steps were taken but they were frustrated through no fault of the police.

### ***Scientific testing***

- 6.42 Detective Inspector Michael Irwin (DI Irwin) sent Robert Hamill's and Witness D's clothing to FSANI for scientific testing on 6 May<sup>67</sup>. An additional form was sent to FSANI submitting Robert Hamill's clothing and requesting FSANI to check for blood and hair contact with any of the suspects' clothing and to determine whether intimate samples were required from the suspects<sup>68</sup>.
- 6.43 On 7 May items of clothing attributed to Stacey Bridgett were sent to FSANI<sup>69</sup>. Over the next two weeks FSANI received blood from Stacey Bridgett, Dean Forbes, Rory Robinson, Andrew Allen and David Woods<sup>70</sup> and blood samples lifted from the scene by the SOCO<sup>71</sup>. They also received items of clothing from Dean Forbes, Rory Robinson, David Woods, Andrew Allen, Wayne Lunt and Marc Hobson. Miss Maureen McCoy's clothing was also received<sup>72</sup>.

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<sup>63</sup> Day 30 (page 17).

<sup>64</sup> Day 31 (page 23).

<sup>65</sup> 10120 (10153).

<sup>66</sup> Day 44 (page 25).

<sup>67</sup> 08176.

<sup>68</sup> 08178.

<sup>69</sup> 08181.

<sup>70</sup> 17798–17807.

<sup>71</sup> 38842.

<sup>72</sup> 17798.

- 6.44 Supt Kennedy concluded that it was impossible to be precise in stating whether valuable scientific evidence was lost and impossible to state the position regarding the loss of valuable identification evidence<sup>73</sup>. The accuracy of this conclusion depends upon whether or not only some or all of the broken glass was recovered. We have said already that the evidence about this is not clear.
- 6.45 Our view about the gathering of evidence for scientific testing is naturally tempered by failures of debriefing. As we have indicated, evidence which might have come to light as a result of a thorough debriefing might have led to searches and seizure of clothing in relation to a number of suspects on or shortly after 27 April 1997.

***Closed circuit television***

- 6.46 On 29 April DC Keys was instructed by DCI P39 to identify all the premises in the area that had video cameras and to check and obtain the videos and submit them for copying. On the same day DC Keys noted the following results<sup>74</sup>:
- (a) the Queen's Bar on Thomas Street had a video camera that covered only the door;
  - (b) the First Trust Bank on Market Street had a camera which did not record;
  - (c) the Alliance & Leicester on Market Street had two tapes which did not contain night scenes; and
  - (d) the Northern Bank on High Street showed the area by the cash dispensers, front door and footpath.
- 6.47 On 7 May the CCTV from Boss Hoggs, a fast food outlet, was obtained. It was of poor quality and was said to have shown nothing of significance<sup>75</sup>.
- 6.48 Miss Monica O'Reilly worked at the Alliance & Leicester. She told us that there were four external cameras at the bank. Those cameras operated 24 hours a day and she thought that there was a weekend setting. She told us that no one who worked for Alliance & Leicester checked the tapes as the incident had no relation to the bank.
- 6.49 Monica O'Reilly was surprised to hear there were no night scenes, as that was the point of the cameras. She told us she had never looked at the videos so could not tell us what the cameras showed. She also had never checked to see whether they worked and did not know whether there was a system to show that a camera was not working<sup>76</sup>.

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<sup>73</sup> 10120 (10156).

<sup>74</sup> 13291.

<sup>75</sup> 03309.

<sup>76</sup> Day 35 (pages 40–49).

- 6.50 Miss Julie Sherwood and Miss Beverly Irwin told us that there was a camera above the main door of Jameson's Bar but that it did not record<sup>77</sup>.
- 6.51 The main issue about the CCTV is what two of Robert Hamill's sisters, Fiona and Diane Hamill, say they were told at a meeting with DI Irwin. Both of them told us that DI Irwin had said that there was nothing of significance on CCTV but that a tape showed the Land Rover. He did not identify which tape this was. According to the sisters Detective Sergeant Derek Bradley (DS Bradley), the other officer in the room, looked shocked at this information<sup>78</sup>.
- 6.52 DI Irwin said the meeting took place on 30 October 1997. He identified that from the **'See no evil, hear no evil'** report compiled by CAJ, which described Diane Hamill's view of the meeting. DI Irwin said that the Hamill family were very distressed as suspects had just been released. At the meeting he said that the Land Rover had moved from outside First Trust Bank. That was the only place it could have been seen on CCTV and there was no video from there. He told us he had never seen the Land Rover on CCTV. DS Bradley did not remember having a meeting with the Hamills about CCTV<sup>79</sup>.
- 6.53 We accept DC Keys' evidence that the video films from the Alliance & Leicester premises showed nothing at all. We also accept the evidence of DI Irwin that he did not tell the Hamill sisters when they visited the police station that the Land Rover could be seen on the video films. It is clear from DI Irwin's evidence that from the time he became involved in the investigation of the disturbance he pursued it with commendable vigour. Had there been anything on the video films we see no reason why he would not have told us about how this evidence would have been considered in order to determine whether it had any evidential significance. We find that he did not deliberately suppress evidence in order to frustrate the investigation in which he was involved and we believe that he did his work with integrity. We accept that the Hamill sisters believe that they were told that there was something on the CCTV but conclude that they misunderstood what they were being told. That is entirely understandable in light of the considerable distress that the murder of their brother had caused them.

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<sup>77</sup> Day 9 & 80513 (para 16) & 81153 (para 21).

<sup>78</sup> Day 35 (page 3).

<sup>79</sup> Day 49 (page 82).

### ***Witness strategy***

- 6.54 We dealt with the witness statements that were taken from police officers when we considered debriefing. We will therefore concentrate on the efforts that police made to get evidence from civilian witnesses.
- 6.55 On 27 April 1997 the police issued a press release appealing for witnesses to come forward<sup>80</sup>.
- 6.56 On 27 April Witness E<sup>81</sup> and Witness F<sup>82</sup> were interviewed. They were the first members of the public to whom the police spoke. Witness E said that Witness F, Witness D and Robert Hamill were with her. Neither identified nor described any attackers.
- 6.57 A number of steps were taken on 29 April 1997. Witness D was interviewed. He said he was with Witnesses E and F and Robert Hamill. He also did not describe or identify any attackers<sup>83</sup>.
- 6.58 Diane Hamill called the police to inform them that Mr Thomas Mallon had approached the Land Rover<sup>84</sup>. Thomas Mallon was interviewed by questionnaire. He did not identify anybody at the scene<sup>85</sup>.
- 6.59 Witness F was re-interviewed. An action sheet was created as a result noting that she denied being the person who had told a uniformed officer that someone had jumped on the head of an injured man<sup>86</sup>.
- 6.60 DI Irwin had drawn up a questionnaire to help gather information from those identified at the scene. It was used on DCI P39's instructions to help identify potential witnesses. All those who were identified were interviewed, irrespective of their religion or political sympathies<sup>87</sup>.
- 6.61 Supt Kennedy told us that questionnaires were not commonplace in her experience in 1997. She could not explain why they were used in the Robert Hamill investigation. She said that a statement would have been of much more evidential value<sup>88</sup>.

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<sup>80</sup> 15068.

<sup>81</sup> 09096.

<sup>82</sup> 09098.

<sup>83</sup> 09094.

<sup>84</sup> 02161.

<sup>85</sup> 08117.

<sup>86</sup> 07783.

<sup>87</sup> 81418 (81445).

<sup>88</sup> Day 44 (page 21).

- 6.62 On 29 April, Rory Robinson<sup>89</sup>, Lisa Hobson<sup>90</sup>, Timothy Jameson<sup>91</sup>, Victoria Clayton<sup>92</sup>, Kenneth Milligan<sup>93</sup>, Lee Stockdale<sup>94</sup>, Noelle Moore<sup>95</sup>, Witness P53<sup>96</sup> and Michelle Jamieson<sup>97</sup> were seen and questionnaires were completed. None of them provided any relevant information.
- 6.63 On 30 April Mr Donald Blevins<sup>98</sup>, Mr Kyle Magee<sup>99</sup> and Mr Andrew Hill<sup>100</sup> were interviewed by questionnaire. Kyle Magee and Andrew Hill provided no relevant information. Donald Blevins said that he had heard that the people who carried out the assault had been talking to the police a short time before the assault. Victoria Clayton<sup>101</sup> was also interviewed. She accepted that she had wiped blood from the nose of someone who could have been Stacey Bridgett.
- 6.64 On 1 May Mr David Morrow, the leading ambulance man who attended Robert Hamill, made a statement<sup>102</sup>. He did not provide any relevant information.
- 6.65 On 2 May Mr Stephen Bloomer<sup>103</sup> and Mr Matthew Bloomer<sup>104</sup> were seen. They did not provide any relevant information.
- 6.66 On 3 May Colin Prunty was interviewed<sup>105</sup>. He told police that he saw a man in a Rangers scarf being put into the Land Rover. He had earlier seen that man **'put the boot into'** Robert Hamill.
- 6.67 During his interview after his arrest on 6 May<sup>106</sup> Dean Forbes said he had seen two men kicking at a man on the ground. One was five feet nine inches, or five feet ten inches, with broad shoulders, black bomber jacket, black jeans and shoulder length black hair. The other was six feet, had a dark green shirt, brown short hair and possibly black trousers.

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<sup>89</sup> 08125.

<sup>90</sup> 08107.

<sup>91</sup> 70865.

<sup>92</sup> 08115.

<sup>93</sup> 08109.

<sup>94</sup> 08103.

<sup>95</sup> 08105.

<sup>96</sup> 08137.

<sup>97</sup> 08111.

<sup>98</sup> 13319.

<sup>99</sup> 08119.

<sup>100</sup> 08113.

<sup>101</sup> 02150 & 80191 (para 5).

<sup>102</sup> 09186.

<sup>103</sup> 08121.

<sup>104</sup> 08123.

<sup>105</sup> 08135.

<sup>106</sup> 06928 (pages 55–56).

- 6.68 Allister Hanvey was interviewed by questionnaire on 7 May<sup>107</sup>.
- 6.69 Also, on that day police took a questionnaire from another person which showed that someone had jumped on the head of one of the injured men. Despite further enquiries by the police they were unable to obtain any evidence to substantiate this. We mention this by way of example to show that the police did not ignore but, on the contrary, followed up possible leads.
- 6.70 DCI P39 told us that after she read the police statements on 27 April, the evidence was unclear. She believed the best way forward would be to try to get witnesses to come forward. She attempted to get the Catholic community to come forward to assist the investigation. In particular she contacted local priests. They were unable to provide any help. In the end she abandoned her strategy as it was not providing any assistance and there was animosity building against the police. She believed the animosity was building because of the lack of support from the Hamill family and because of the initial press releases<sup>108</sup>. Given DCI P39's view that difficulties with Catholic prospective witnesses were in part caused by the press release, we believe that those difficulties existed before the well known local solicitor Rosemary Nelson was instructed to make a complaint on behalf of the Hamill family.
- 6.71 DI Irwin thought that everything was done in relation to identification that could have been done. He added that house-to-house enquiries took place<sup>109</sup>. We have seen the relevant action sheets<sup>110</sup> and see that the enquiries were conducted on 16 May. We also note that a reconstruction of the positions of the Land Rover was carried out on 10 June 1997<sup>111</sup>.
- 6.72 Colin Murray believed there was little more the RUC could have done to identify potential witnesses. This is particularly so given that a number of people were unwilling to provide evidence<sup>112</sup>.
- 6.73 Ken Armstrong told us that the influence of paramilitaries was an ever present problem<sup>113</sup>. On several occasions witnesses giving evidence to us would not answer when asked what they were afraid of. They also told us that there was a real fear of violence and death.

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<sup>107</sup> 08131.

<sup>108</sup> Day 43 (page 27).

<sup>109</sup> Day 61 (page 65).

<sup>110</sup> 03529, 03531, 03533 & 03535.

<sup>111</sup> 09279.

<sup>112</sup> 74391 (para 14.16).

<sup>113</sup> 74592 (para 1.2.3).

- 6.74 Brid Rodgers told us there was a serious distrust of the police within the Catholic community. She told us that Witness E was asked if she wanted to make a complaint against the police and was told the Independent Commission for Police Complaints would be investigating. Witness E thought that there was no point as the police were investigating the police. She said this was a common view in the Catholic community. Brid Rodgers herself also wondered how thorough the investigation would be but would have suggested the family should co-operate. Brid Rodgers said there was a widespread lack of confidence in Portadown in the willingness of the police to investigate an allegation of criminality where the victim was a Catholic<sup>114</sup>. We have no doubt that this did have an influence on the reluctance of Catholics to come forward as witnesses. It seems to us unfortunate, though, that while Brid Rodgers, who as a local politician obviously wielded some influence in Portadown at the time, was prepared to say publicly that those who had evidence to provide to the police should do so, she did much to undo what good effect this might have had by being less emphatic, as her evidence acknowledged, in her private dealings. It is unfortunate that whatever the misgivings of those to whom she spoke, Brid Rodgers did not appeal to them privately to give the police an opportunity to demonstrate impartiality.
- 6.75 It is abundantly clear that witnesses did not co-operate with the police. We have read documents showing that there were instances in which witnesses would not open their door to speak to the police or would claim not to remember anything. Most people said that they 'did not want to be involved' in the investigation.
- 6.76 After Rosemary Nelson was instructed by the Hamill family she did not co-operate fully with the RUC by, for example, providing witness statements that she held<sup>115</sup>. The police wrote to Rosemary Nelson asking for the co-operation of her clients on 20 May 1997<sup>116</sup>. She produced the statements of Mr Colin Hull and Mr Dermot McNeice, but although she had witnessed them on 15 May 1997 she did not provide them until 19 October 1998<sup>117</sup>. The Hamill family told us that they had not asked Rosemary Nelson to hold back the statements<sup>118</sup>. DI Irwin told us that Rosemary Nelson did not return any calls or letters from the police<sup>119</sup>.
- 6.77 Counsel for the police officers and Counsel for the PSNI submitted that DCI P39's strategy to enlist the support of the Catholic community was reasonable and rational. It failed because of non-co-operation.

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<sup>114</sup> Day 51 (page 154).

<sup>115</sup> Day 35 (page 24).

<sup>116</sup> 08085.

<sup>117</sup> 15046.

<sup>118</sup> Day 35 (page 24).

<sup>119</sup> 81418 (81463).

- 6.78 We find that the police did all they could to try to obtain witness evidence about what had happened. A considerable number of people were questioned and their answers recorded on questionnaires. House-to-house enquiries were conducted in the area of the junction. Police met with a reluctance by both Catholic and Protestant members of the community to come forward and say what they had seen.
- 6.79 One piece of evidence which was not obtained until November 2000 (and only then as a result of an instruction issued by Detective Chief Inspector K) was that Allister Harvey's cash card had been used to withdraw £10 from a cash point at the bottom end of the town, next to the office of Call-A-Cab. The withdrawal was made at 08:46 on 27 April 1997<sup>120</sup>. It provided no evidence of Allister Harvey's involvement in the disturbance but it appeared to be inconsistent with the account which he and his uncle, Thomas Harvey, gave to the police that he was at that time at Thomas Harvey's home. Shortly after this withdrawal was made Allister Harvey closed the account from which the money had been withdrawn<sup>121</sup>.

### ***Arrest strategy***

- 6.80 As we have mentioned, we do not know what would have been the effect of a full debrief. In particular we cannot say whether it would have put the police in a position to arrest Stacey Bridgett, Marc Hobson, Allister Harvey, Rory Robinson or Wayne Lunt on or shortly after 27 April 1997.
- 6.81 Both DCI P39<sup>122</sup> and DI Irwin<sup>123</sup> said that on 1 May 1997 the police intended to arrest Stacey Bridgett, Dean Forbes and the man whose surname PC Cooke had mistakenly given to the police. The arrests had to be postponed to 6 May as the six interview rooms in the division were in use.
- 6.82 DCI P39's view of Stacey Bridgett's involvement had not changed from 27 April to 1 May. She did not arrest him on 27 April as she made the decision to seek the help of witnesses. She abandoned her strategy on 1 May.
- 6.83 On 6 May police carried out a number of arrests and searches of the homes of those arrested. The man whom PC Cooke had named initially gave an alibi, which was investigated. The result of this investigation and the police's assessment of him led to his release.
- 6.84 DC McDowell told us that the investigators considered arresting suspects immediately, but it was considered too early. He did not remember any of the

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<sup>120</sup> 17323.

<sup>121</sup> 17323.

<sup>122</sup> Day 43 (page 18).

<sup>123</sup> Day 61 (page 39).

detail of these discussions but thought the view was that there was insufficient evidence to proceed<sup>124</sup>.

- 6.85 Colin Murray told us that his main criticism was the delaying of arrests. He said that the longer the delay, the more eyewitness evidence became the basis of the investigation as the scientific evidence would be lost. He agreed that the decision to seek the help of Catholic witnesses was a matter of judgment and that it was a good strategy to abandon that course of action when witnesses were not forthcoming<sup>125</sup>.
- 6.86 The question therefore is whether the detectives should have organised arrests and searches quickly after suspects such as Stacey Bridgett and Rory Robinson had been identified. We believe that with proper debriefing the RUC would have had sufficient evidence to arrest a number of men for affray. Arrests would have been followed by searches, which could have led to the obtaining of scientific evidence providing evidence of guilt. It has not been necessary to name those who could have been arrested in order to justify the criticism we make and therefore to do so would not fall within our Terms of Reference.

#### ***Detective Chief Inspector P39's performance***

- 6.87 During the course of our hearings concern was expressed at the lack of operational experience that DCI P39 had in investigating serious crimes.
- 6.88 Colin Murray thought that DCI P39 had failed to investigate or direct the investigation in any meaningful way. He added that she had a lack of investigative experience<sup>126</sup>. If this caused her failures then she should not have managed the investigation. We appreciate that as the senior detective for that area she had no option but to manage it.
- 6.89 Counsel for the police officers submitted that as this was her first major investigation, she was entitled to rely on the experience of DC Keys in its initial stages and, we would add, later DI Irwin.
- 6.90 Counsel for DCI P39 said that considering she had received little training, she managed the grievous bodily harm investigation professionally and set up a mini-MIRIAM system for collecting and collating data. They also point out that she said that she did not want to waste time and was conscious of the risk of losing evidence if she delayed.
- 6.91 Counsel for the PSNI accepted that an individual's training and experience, as well as the other demands on an officer's professional time, are relevant when

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<sup>124</sup> Day 42 (page 81).

<sup>125</sup> Day 67 (page 80).

<sup>126</sup> 74391 (para 9.6).

assessing the performance of the officer and whether criticism is appropriate, and pointed to Ken Armstrong's evidence about resources.

- 6.92 In our view she had not been sufficiently prepared for the role she then had to undertake.

### **Resources**

- 6.93 Chief Superintendent William Desmond McCreesh said that he was fairly certain he had discussions with senior CID officers about the investigation on the Sunday and the Monday and that they had also discussed putting extra resources into the Portadown area. He told us that at no stage was he asked for additional resources<sup>127</sup>.
- 6.94 CI McMullen said that his role was to ensure there were adequate resources for the investigating officers. Significantly, he said that in the Robert Hamill investigation there was no shortage of resources<sup>128</sup>.
- 6.95 Conversely, DI Irwin said that the availability of resources was a constant issue. He knew that DCI P39 sought additional CID and Regional Crime Squad personnel to support the investigation, but there were no officers immediately available. Uniformed personnel were also fully employed within the Sub-Division<sup>129</sup>.
- 6.96 More specifically than the general availability of officers, Ken Armstrong told us that CID was so overworked that they did not have time for training and had inadequate resources. Many CID officers lacked awareness of what was required at the beginning of an investigation<sup>130</sup>. There were heavy demands on resources, both time and training. He made the point, though, that this should not be seen to detract from the value of internal on-the-job training received by officers in the course of their duties from their supervising and more experienced officers<sup>131</sup>.
- 6.97 Counsel for the PSNI did not accept that resources had any bearing on the investigative strategy or the approach to obtaining CCTV tapes in the hope of obtaining evidence from them.
- 6.98 Our view about the adequacy of resources available, and its effect on the investigation, is that those involved in the investigation were at times fully stretched and some use had to be made of the services of uniformed officers to carry out work which would normally have been allocated to detectives. However, we have received little evidence that the investigators had to leave undone work which should have been done. Police, like other organisations, have to work

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<sup>127</sup> Day 55 (page 10).

<sup>128</sup> Day 41 (page 43).

<sup>129</sup> 81418 (81450).

<sup>130</sup> 74592 (para 1.8.7).

<sup>131</sup> Day 68 (page 172).

with the resources available to them, making the best use they can of them. It has to be remembered that in 1997 the RUC were fully stretched, with a very heavy workload. The level of investigative work obviously did not continue at a constant level. Inevitably, therefore, there were times when those in charge of a criminal investigation must have wished they had more resources available to them. With one exception, though, we do not think that the case has been made out that on this occasion the RUC was constrained by the availability of the resources dedicated to this investigation or that its general level of efficiency was significantly impaired. The exception to which we refer comes from Ken Armstrong's evidence, which we accept, about the lack of training available to members of the RUC. The most effective use can be made of officers available to an investigation when they have been properly trained. DCI P39 was a case in point.

## **Conclusions**

- 6.99 We find that the investigation conducted by the RUC between 27 April and 8 May 1997 was in some ways inadequate but that the inadequacies flowed from the failure to debrief which we identified in the preceding chapter. Additionally, the difficulties created by the RUC's failure to learn what its own uniformed officers had seen were compounded by the press release issued on the instructions of Insp McCrum. That press release had the effect that prospective Catholic witnesses were less likely to come forward.

# *Chapter Seven*

## **Reserve Constable Atkinson**

- 7.1 In this chapter we deal with allegations that Reserve Constable Robert Atkinson (Res Con Atkinson) telephoned Mr Allister Hanvey to tip him off, and that he then created an agreement to cover up that telephone call. We will also consider the decision, in 2004, to discontinue the prosecution of Res Con Atkinson<sup>1</sup>.
- 7.2 We are conscious of the fact that any findings we make about whether or not Res Con Atkinson did indeed tip off Allister Hanvey or was a party to any agreement to provide a false explanation for the telephone calls made from his to Allister Hanvey's home, and any recommendations we might make in relation to them, could not, in accordance with the rules of evidence in criminal (and civil) proceedings, be received in evidence in such proceedings. The matter is put beyond doubt, if there could be any doubt, by section 2 of the Inquiries Act 2005, which provides that we are not to rule on or determine any person's civil or criminal liability. An adverse finding of fact by us which, if it were to be made in criminal proceedings, would be probative of liability could have no relevance in those proceedings. Only a criminal court can make findings which are relevant and admissible in law to the establishment of criminal liability. No one could be brought before a criminal court to be sentenced, nor could judgment be entered in a civil court, in reliance on a finding by an inquiry held under the Act.
- 7.3 Our Terms of Reference require us to consider whether any wrongful act or omission by or within the Royal Ulster Constabulary (RUC) obstructed the investigation of Robert Hamill's death, or whether attempts were made to do so; and whether any such act or omission was intentional or negligent. We have heard evidence suggesting that within hours of Robert Hamill being injured Res Con Atkinson telephoned the home of Allister Hanvey to tip him off to destroy the clothes he had been wearing on the night in question, and that Res Con Atkinson then kept Allister Hanvey informed about the continuing investigation. We have also heard evidence that, after those matters were put to him, Res Con Atkinson entered into an agreement with his wife, Eleanor Atkinson, Mr Kenneth and Mrs Elizabeth Hanvey (Allister Hanvey's parents) and Mr Michael McKee and Mrs Andrea McKee to lie to the detectives investigating the murder about who made

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<sup>1</sup> As noted in the Preface to this Report, Reserve Constable Atkinson was subsequently prosecuted and pleaded guilty to conspiracy to do an act with intent to pervert the course of justice in 2024. He was sentenced to 12 months' imprisonment on 14 June 2024.

the telephone call on 27 April 1997. Andrea McKee gave important evidence to us in relation to both allegations. Res Con Atkinson strenuously denies them, as do his wife Mrs Eleanor Atkinson and Allister Hanvey and his parents.

7.4 The alleged tip-off falls squarely within our Terms of Reference. Further, we take the view that any agreement between Res Con Atkinson and others to mislead the police about whether there was a tip-off similarly falls within them. We therefore must address the issues of whether the allegations are true. In doing so we apply the civil standard of proof, namely the balance of probabilities. Having regard to the gravity of the allegations, however, we will consider them to be true only on the basis of very cogent evidence. We have not been bound by rules regarding hearsay evidence which applies in criminal courts but we have not accepted the truthfulness of the content of any hearsay evidence without carefully considering its reliability. Further, we have received oral evidence not only from the witnesses who gave it but also from those who have denied saying what has been attributed to them by such hearsay evidence.

7.5 The issues of the alleged tip-off and of the cover-up are plainly linked. In order for us to determine whether either of them occurred we must make findings about the credibility of a number of witnesses. That exercise requires us to pay close attention to a decision reached by the Director of Public Prosecutions (DPP), Sir Alasdair Fraser, in March 2004 and the material presented to him to enable him to make his decision. His decision was that Andrea McKee would not be used as a witness in a prosecution of Res Con Atkinson for conspiracy to pervert the course of justice arising out of the alleged cover-up and that without her evidence there was no sufficient case to be advanced against Res Con Atkinson and others. We will therefore summarise the agreed and disputed evidence. We shall then remind ourselves of the submissions made to us. We will then set out our findings about the allegations and about the DPP's decision of March 2004.

## **The largely undisputed evidence**

7.6 While moving aggressive Protestant youths away from the scene of the violence Police Sergeant P89 (Sgt P89) had a confrontation with a person who Res Con Atkinson identified to him as Hanvey. Res Con Atkinson warned the Sergeant to watch out for Hanvey because he was a martial arts expert<sup>2</sup>. Res Con Atkinson was involved in the Tae Kwon Do club in Portadown. Allister Hanvey was an expert in the discipline who had taught Res Con Atkinson's daughter there<sup>3</sup>.

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<sup>2</sup> 11084.

<sup>3</sup> 81385 (paras 44–45).

- 7.7 Allister Hanvey was indeed at the scene. Res Con Atkinson now acknowledges that he saw him there and identified him to Sgt P89<sup>4</sup>. Eyewitnesses described Allister Hanvey as wearing either a dark jacket with greyish sleeves<sup>5</sup> or a grey jacket with orange stripes on both arms<sup>6</sup>, though this is denied by him<sup>7</sup>.
- 7.8 Having been recalled to Portadown police station, Res Con Atkinson made a statement<sup>8</sup> commencing shortly after 06:00 on 27 April 1997<sup>9</sup>. It made no mention of seeing Allister Hanvey or of warning Sgt P89 about him.
- 7.9 Res Con Atkinson left the station for home at about 08:00 on the morning of Sunday 27 April 1997<sup>10</sup>. At 08:37 a telephone call was made from his home to the house where Allister Hanvey lived with his parents and brothers. The call lasted one minute 35 seconds<sup>11</sup>.
- 7.10 There are two conflicting accounts of where Allister Hanvey spent the hours after the violence in Portadown. His account, supported by his family, is that he went to his uncle Thomas Hanvey's house, from where he was picked up by his father after 09:00<sup>12</sup>. The other is that he was at a gathering at Miss Tracey McAlpine's house, and that he then walked into the town centre and caught a taxi home<sup>13</sup>. This second account is given by a number of independent witnesses and is inconsistent with him having been at his own or his uncle's home at 08:37. In fact, though, at 08:46 a cash withdrawal was made from a cash point in Portadown using Allister Hanvey's debit card<sup>14</sup>.
- 7.11 On 7 May 1997 Allister Hanvey was interviewed<sup>15</sup> about the night of the violence. He said that he had been asked by a policeman to help move some people back to the church. He did not name that policeman, but gave a description that largely matched Res Con Atkinson.
- 7.12 Michael and Andrea McKee ran the Tae Kwon Do club. They were friends with Res Con Atkinson and his wife. On 8 May 1997 Reserve Constable David McCaw (Res Con McCaw) was at the club and he was told that Miss Tracey Clarke knew that Res Con Atkinson had telephoned Allister Hanvey on the morning of

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<sup>4</sup> Day 47 (page 75).

<sup>5</sup> 09229 (09230).

<sup>6</sup> 09137 (09139).

<sup>7</sup> Day 27 (page 18).

<sup>8</sup> 06346.

<sup>9</sup> 09840.

<sup>10</sup> 09840.

<sup>11</sup> 09350.

<sup>12</sup> Day 28 (page 4).

<sup>13</sup> 17308.

<sup>14</sup> 17323.

<sup>15</sup> 09190.

27 April 1997 and told him to get rid of his clothes<sup>16</sup>. Tracey Clarke is Andrea McKee's niece by marriage and was the girlfriend of Allister Hanvey, though they used to fall out so that sometimes they were going out together and at other times not. She said that at the time of the attack on Robert Hamill they were not. She was 17 years old<sup>17</sup>. There is conflicting evidence about whether Res Con McCaw was given the information by Andrea McKee or overheard Tracey Clarke gossiping.

- 7.13 Res Con McCaw relayed the allegation about the tip-off to Detective Constable John McAteer (DC McAteer), who, on instructions, obtained Tracey Clarke's responses to the standard questionnaire on 8 May 1997<sup>18</sup>. Tracey Clarke did not repeat the allegation, and said that she had not seen the assault, although she had been in the centre of Portadown on the night of 27 April 1997 and had seen two men on the ground<sup>19</sup>.
- 7.14 In the evening of 8 May 1997 DC McAteer and Detective Inspector Irwin (DI Irwin) met Andrea McKee. She repeated the tip-off allegation, and said that Tracey Clarke had told her of it<sup>20</sup>.
- 7.15 Late in the evening on 9 May 1997 Andrea McKee took Tracey Clarke to Portadown police station, where Tracey Clarke was interviewed in Andrea McKee's presence. The interview was conducted by DC McAteer and Detective Chief Inspector P39 (DCI P39). Tracey Clarke signed a statement<sup>21</sup> in the early hours of 10 May 1997. In it she named five men who, she said, she saw jump all over and kick one of the men on the ground on 27 April. One of those attackers was Allister Hanvey. She gave an account of subsequent conversations with Allister Hanvey. She said in her statement

**'I remember Robbie Atkinson's name coming up and Allister said that Robbie Atkinson had been very good to him because on the Sunday morning after the incident in the town centre he rang him at about 8.00 am and told him to get rid of the clothes he was wearing the previous night...He also told me that Robbie Atkinson was ringing him every day to keep him up to date with the Police investigation.'**

- 7.16 At about the time that Tracey Clarke was being interviewed another witness was giving a statement at Portadown police station. He was Mr Timothy Jameson. He also said that he had seen the violence on 27 April 1997, and he named

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<sup>16</sup> 22670.

<sup>17</sup> Day 54 (page 18).

<sup>18</sup> Day 41 (page 97).

<sup>19</sup> 70900.

<sup>20</sup> 22760 (22770).

<sup>21</sup> 00262.

perpetrators. He said that he saw Allister Harvey **'punch and kick this fellow who was lying on the ground'**. His statement<sup>22</sup> was taken by Detective Constable Edward Honeyford (DC Honeyford).

- 7.17 During the morning of 10 May 1997 a number of arrests were made, on the strength of the statements to which we have just referred. Allister Harvey was one of those arrested, and he was interviewed under caution<sup>23</sup>. He denied any role in the violence on 27 April 1997. He said that was wearing a black jacket on the night, and that it was the only jacket that he owned. He denied knowing Res Con Atkinson by name and said that the only policeman present on the night of 27 April 1997 whom he knew was a Reserve Constable Jim Murphy (Res Con Murphy). Allister Harvey gave the account that from about 02:00 until about 09:00 on 27 April 1997 he had been at his uncle Thomas's house, from where he was collected by his father.
- 7.18 On 11 May 1997 detectives spoke to Allister Harvey's parents<sup>24</sup>. His father, Kenneth Harvey, had known Res Con Atkinson for many years, and he worked in the same organisation as Eleanor Atkinson. Kenneth and Elizabeth Harvey said that Kenneth Harvey had picked up Allister from the home of Thomas Harvey, Allister's uncle, on the morning of 27 April 1997 and that Allister had been wearing a black jacket that night. Kenneth Harvey told detectives that Allister had said that he had helped police keep the crowd back. Kenneth Harvey suggested that the policeman Allister Harvey helped would be giving evidence on behalf of his son, although Kenneth Harvey refused to name the officer.
- 7.19 On the same day Thomas Harvey made a statement<sup>25</sup> supporting the account given by Allister and his parents of being at Thomas Harvey's house in the hours after the violence.
- 7.20 Res Con Atkinson was questioned under caution<sup>26</sup> by detectives on 9 September 1997 about the alleged tip-off. He denied it, and was asked to produce his telephone accounts. He reported sick and ceased to work the next day.
- 7.21 A further interview<sup>27</sup> took place on 9 October 1997, when Res Con Atkinson said that the telephone call at 08:37 on 27 April had been made by Michael McKee. He said that the McKees had been staying overnight, unbeknown to him, that he had reported the violence to his wife, she had relayed that information to the

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<sup>22</sup> 00266.

<sup>23</sup> 06599.

<sup>24</sup> 17361.

<sup>25</sup> 09193.

<sup>26</sup> 09476 & 09510.

<sup>27</sup> 09541.

- McKees and they had telephoned the Harveys to see if Tracey Clarke, Michael McKee's niece, was there. Also on 9 October Eleanor Atkinson<sup>28</sup> and Michael McKee<sup>29</sup> attended the police station to give statements supporting that account.
- 7.22 On 17 October 1997 Tracey Clarke was seen in consultation by Mr Gordon Kerr QC in the presence of Mr Roger Davison of the Office of the Director of Public Prosecutions (ODPP)<sup>30</sup>. She said that she would not give evidence, because she loved Allister Harvey.
- 7.23 On 21 October 1997 Timothy Jameson was seen in consultation by Mr Kerr, again in the presence of Roger Davison of the ODPP<sup>31</sup>. DC Honeyford was also there but took no part in the interview. Timothy Jameson said that he had no memory of the fight, and that he had simply written in his statement of 9 May what the police had told him.
- 7.24 Andrea McKee gave a statement<sup>32</sup> to DI Irwin on 29 October 1997 supporting what Res Con Atkinson had told the police on 9 October about the telephone call of the 27 April.
- 7.25 On 25 November 1997 DI Irwin spoke to Kenneth Harvey<sup>33</sup>, who told the Inspector that he had received a telephone call on the morning of 27 April 1997 from Michael McKee, enquiring about Tracey Clarke.
- 7.26 On 9 November 1999 the Coroner spoke to Tracey Clarke by telephone<sup>34</sup>. He had a copy of her police statement of 10 May 1997. She told him that she was not willing to give evidence at an inquest into Robert Hamill's death. The reason she gave for her unwillingness was a fear of paramilitaries.
- 7.27 In 1999 the McKees separated, and Andrea McKee returned to her native North Wales<sup>35</sup>. On 20 June 2000 DI Irwin and Detective Chief Superintendent Maynard McBurney (DCS McBurney) visited her there. She told them that her statement of 29 October 1997 had been false. Without cautioning her DI Irwin then took a further statement<sup>36</sup> from her. In it she said that she and her husband had not been at the Atkinson home on the night of 26 and 27 April 1997, but had been at home. She said she had made a false statement because Res Con Atkinson had approached Michael McKee to cover a phone call that had been made to Allister Harvey's house.

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<sup>28</sup> 09195.

<sup>29</sup> 34603.

<sup>30</sup> 17591.

<sup>31</sup> 17591.

<sup>32</sup> 09200.

<sup>33</sup> 22104.

<sup>34</sup> 00270.

<sup>35</sup> Day 14 (page 75).

<sup>36</sup> 14956.

- 7.28 On 25 October 2000 DI Irwin visited Andrea McKee again, on this occasion in the company of Detective Chief Inspector K (DCI K). She made a further statement<sup>37</sup> consistent with, but elaborating on, the statement she gave on 20 June 2000. Again she was not cautioned. She said that

**‘Tracey told me that Allister Hanvey had told her that Robert Atkinson had rang his dad.’**

She added that on the night of 26 and 27 April 1997 a couple had been at home with her and her husband. Initially she gave names that are not relevant to this Inquiry but then corrected these to Mr Rodney Smyth and Joy Kitchen.

- 7.29 On 5 December 2000 Michael McKee received a letter with a bullet, telling him to **‘keep your mouth shut’** and that the next one was for his head. He immediately telephoned Res Con Atkinson’s home from a public call box to ask him whether he had sent it, but Eleanor Atkinson put the phone down on him<sup>38</sup>.
- 7.30 On 10 April 2001 the police made a number of arrests including both McKees and both Atkinsons<sup>39</sup>. On this occasion Andrea McKee was interviewed<sup>40</sup> under caution. She maintained her account that the alibi given in October 1997 was false. Michael McKee was also interviewed<sup>41</sup> under caution, and he too admitted that his statement of October 1997 was false. The Atkinsons<sup>42</sup> maintained their story about the McKees being present and responsible for the telephone call.
- 7.31 On 4 March 2002 both the McKees pleaded guilty to charges that **‘with intent to pervert the course of public justice they did an act which had a tendency to pervert the course of public justice by giving false information that Michael McKee had made the telephone call at 08:37 on 27 April 1997’**. The case was opened by the Crown on the basis that Res Con Atkinson had asked for the lie to be told. Michael McKee was sentenced to six months’ imprisonment and Andrea McKee was sentenced to six months’ imprisonment suspended for two years<sup>43</sup>.
- 7.32 In due course the Atkinsons were charged with conspiracy with the McKees to pervert the course of public justice in that they agreed to give false information to police officers about who had made the telephone call at 08:37 on 27 April 1997. Kenneth Hanvey was charged **‘that with intent to pervert the course of public justice he did an act which had a tendency to pervert the course of**

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<sup>37</sup> 14908.

<sup>38</sup> 17372.

<sup>39</sup> 21586.

<sup>40</sup> 21224.

<sup>41</sup> 20998.

<sup>42</sup> 21295, 21446, 21480, 21481, 21509, 21521 & 35472.

<sup>43</sup> 20098.

**public justice by giving false information that Michael McKee had made the telephone call at 08:37 on 27 April 1997<sup>44</sup>.** Andrea McKee was to be the principal witness in each case.

- 7.33 A joint committal hearing was fixed for Monday 22 December 2003 at Craigavon Magistrates' Court. Andrea McKee was due to attend to be cross-examined<sup>45</sup>. On Sunday 21 December she telephoned the police to say that her son was ill and she was not prepared to leave him<sup>46</sup>. The case was adjourned, and the prosecution was to provide substantiation of the boy's illness<sup>47</sup>.
- 7.34 Investigations were then conducted in North Wales. They showed that the boy was ill, and had been for some weeks<sup>48</sup>. However, in the course of those investigations Andrea McKee told police that she had taken him to Pendine out-of-hours clinic over the weekend prior to 22 December<sup>49</sup>. The clinic had no record of that<sup>50</sup>. Mr Ivor Morrison of the ODPP and Miss Christine Smith, Junior Prosecution Counsel, travelled to North Wales to confer with Andrea McKee<sup>51</sup>. Then the DPP, Sir Alasdair Fraser, asked Mr Gerald Simpson QC to see her, and under close questioning by him Andrea McKee gave an account which was inconsistent with what she had previously said about Pendine<sup>52</sup>.
- 7.35 On 18 March 2004 Sir Alasdair decided that Andrea McKee's evidence could no longer be relied upon<sup>53</sup>. The proceedings were therefore discontinued on 19 March 2004<sup>54</sup>.

## The disputed evidence

- 7.36 We heard from Andrea McKee and Tracey Clarke as well as from other witnesses whose evidence touches on their credibility. In addition we heard from the Atkinsons and from Allister Hanvey and his parents. In view of the gravity of the allegations against Res Con Atkinson we consider it right to summarise the evidence at some length.

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<sup>44</sup> 68319.

<sup>45</sup> 33909 (para 17).

<sup>46</sup> 58454.

<sup>47</sup> 34061.

<sup>48</sup> E.g. 59853.

<sup>49</sup> 34052.

<sup>50</sup> 58454 (58455).

<sup>51</sup> 81924 (para 10).

<sup>52</sup> 33961.

<sup>53</sup> 33908.

<sup>54</sup> 33891.

**Andrea McKee<sup>55</sup>**

- 7.37 Andrea McKee told us that she had been at home on the night of 26 and 27 April 1997, together with her husband, Joy Kitchen and Rodney Smyth. That couple had not stayed at her home without her being present. Tracey Clarke had told her of the fight and the tip-off. Andrea McKee's evidence was that Res Con McCaw had directly overheard Tracey talking about it in the Tae Kwon Do club. She said that Res Con McCaw had then asked her who the girl was.
- 7.38 In relation to the cover-up Andrea McKee told us that she gave a false statement to DI Irwin in October 1997 because Res Con Atkinson had asked her husband to cover up the telephone call. The details of the cover-up were arranged at a meeting at the Atkinsons' home.

**Joy Kitchen and Rodney Smyth<sup>56</sup>**

- 7.39 They told us that they are now married, but in April 1997 had only recently started going out together. They had been to the McKee home but could not remember dates. They used taxis when they were visiting. They did not have a key to the McKee house.
- 7.40 The police discovered that in the early hours of 27 April 1997 a telephone call was made from the McKee house to the taxi company Call-A-Cab as a result of which that company sent a taxi to take 'Smith' from there into town. At that time Rodney Smyth was living in the centre of Portadown. The telephone record is now very faded, but in 2000 DCI K saw and was able to decipher it.

**Catherine Jagger<sup>57</sup>**

- 7.41 Miss Catherine Jagger is a solicitor in North Wales. In April 2001 she was contacted by the police who were to arrest and interview Andrea McKee, with a view to Catherine Jagger representing her at the interview. Catherine Jagger told us that she had been given disclosure and sufficient time to prepare for the interview. She realised that the admissions previously made by Andrea McKee had not been made under caution so there was a good chance they were not admissible against her, and that Andrea McKee would have been able to refuse to answer any more questions. It seemed to her that Andrea McKee had covered up something that she felt bad about and she wanted to have it dealt with so she could get on with her life. She was completely clear that Andrea McKee wanted to co-operate with police. At all times Andrea McKee had made it absolutely clear that she was going to plead guilty and, in Catherine Jagger's view, Andrea McKee was committed to acting as a witness.

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<sup>55</sup> Day 14.

<sup>56</sup> Day 14.

<sup>57</sup> Day 14.

### **Darren Wright<sup>58</sup>**

- 7.42 Mr Darren Wright was an investigating officer employed by the Police Ombudsman for Northern Ireland (PONI). On 10 April 2001 he observed on behalf of PONI a police interview of Michael McKee.
- 7.43 Michael McKee was interviewed in the presence of his solicitor. The purpose of the interview was explained to him and the contents of a statement he had made to assist Res Con Atkinson in relation to the tipping-off allegation were discussed, as was his relationship with Res Con Atkinson. At an early stage the interview was suspended to enable Michael McKee to speak to his solicitor.
- 7.44 Following this the interview was resumed. Michael McKee confirmed that the statement he had made to the police in October 1997 was untrue and that Res Con Atkinson had asked him to cover making a phone call and stupidly he had agreed. He agreed that the statement he had made about the phone call was false and that he should not have done what he did.
- 7.45 It seemed to Darren Wright that Michael McKee's admission of guilt was straightforward when he realised the weight of the evidence against him. The interview was properly conducted and no inducements were held out to him. Darren Wright had no cause to be concerned that this might be a man confessing to something of which he was not guilty.

### **The Director of Public Prosecutions investigations into Andrea McKee**

- 7.46 Miss Christine Smith was Junior Counsel for the prosecution. Mr Simpson was to lead her at the trial. Miss Smith and Ivor Morrison of the ODPP saw Andrea McKee in conference on 21 October 2003. Miss Smith told us that, without reference to her witness statements, Andrea McKee was able to give an account which was consistent with them. Andrea McKee attended the Magistrates' Court in Craigavon on 27 October 2003 to give evidence at the committal proceedings but they were adjourned until 22 December 2003, a Monday. Andrea McKee had a young son and Miss Smith acknowledged that she was anxious that she should be able to go to Craigavon and give her evidence and return to Wrexham on the same day<sup>59</sup>.
- 7.47 On Friday 19 December 2003 Detective Constable Patricia Murphy (DC Murphy), whose job was to liaise with Andrea McKee as a witness, telephoned her to make arrangements for her journey to Craigavon on the following Monday. Andrea McKee's manner was still the pleasant one she had shown before. She made no mention of her son's illness and the officer expected she would be travelling to Craigavon on the following Monday.

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<sup>58</sup> Day 49.

<sup>59</sup> 81924.

- 7.48 On Sunday 21 December 2003 Andrea McKee telephoned the police to say that her son was ill and that she would not be able to travel to court on Monday 22 December 2003. DC Murphy told us that she telephoned Andrea McKee at 10:30 to be told that the little boy had mumps and 'ochtitis' [sic] (described to her as a swelling of the testes, a complication of mumps) and that there was concern that because of his high temperature he might have a fit. Andrea McKee explained that his illness had begun two weeks earlier with an ear infection. She said she had taken him to see the doctor on two occasions and he had made a home visit and that her son had been prescribed amoxicillin and Calpol. She said she would be taking him to see the doctor again on the next day, Monday. She was very apologetic but said she was not prepared to travel as she was not prepared to leave her son with anyone. DC Murphy made a note of this conversation.
- 7.49 DC Murphy told us that Andrea McKee said she would 'definitely not' be available on Tuesday or, because she did not know what her son's condition would be then, in the following week. Future dates were discussed. Andrea McKee offered the half term break (she was attending college) as being the ideal time. DC Murphy told us her impression was that Andrea McKee could not attend court because her son was sick. It was not her impression that Andrea McKee did not want to give evidence<sup>60</sup>.
- 7.50 On 22 December 2003 at Craigavon Magistrates' Court Miss Smith explained to the Resident Magistrate the reason given by Andrea McKee for her non-attendance that day. The defence solicitors expressed scepticism about the explanation offered but were prepared to accept that there should be an adjournment on terms that medical evidence<sup>61</sup>, recorded as a 'certificate' in the notes of the prosecuting lawyers, was provided. The Resident Magistrate agreed to adjourn the committal proceedings until 8 March 2004 but said the case should be mentioned on 2 January 2004 so that the medical evidence he called for could be produced<sup>62</sup>.
- 7.51 The police asked Andrea McKee's General Practitioner's (GP) receptionist what had been the diagnosis of her son's illness. The GP was away, and no one else at the practice was prepared to provide that evidence. Then, when the GP returned on 24 December, he provided a brief statement that said that he had seen Andrea McKee's son on 1 December and his partner had seen the son on 22 December<sup>63</sup>.

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<sup>60</sup> 81875 (para 18).

<sup>61</sup> 81924.

<sup>62</sup> 34061.

<sup>63</sup> 59852.

- 7.52 After receipt of that statement from the GP, police pressed Andrea McKee. She reiterated that there had been two other consultations and also added that she had taken her son to the Pendine out-of-hours clinic on the evening of 19 December<sup>64</sup>.
- 7.53 On 30 December the GP gave a further statement accepting that he had seen Andrea McKee's son at home on 11 December<sup>65</sup>. He had failed to provide the information about the home visit earlier because, according to the detective who took his statements, **'he was not as keen on keeping records as I thought'**<sup>66</sup>. Even after the delivery of his second statement, the GP had therefore only confirmed one visit to the surgery prior to 22 December, not two, and a home visit as reported by Andrea McKee.
- 7.54 Andrea McKee gave the Inquiry free access to her son's medical records<sup>67</sup>. They disclose that she did indeed take her son to the GP twice and that the GP visited him at home once in the period leading up to 22 December 2003. The first of those consultations was on 18 November 2003. The record shows that on that day the GP suspected that the child had mumps, and that he found swelling below both ears. We do not know why the GP made no mention of that consultation in either of his statements.
- 7.55 The records disclose that during the second consultation, on 1 December, the doctor diagnosed Andrea McKee's son with an ear infection, otitis media, and the possibility of mumps. He was prescribed **'appropriate treatment'**. According to the records, during the home visit on 11 December the doctor again noted that Andrea McKee's son was suffering from an ear infection and there was the possibility of mumps, and prescribed antibiotics. On 22 December the GP's partner **'again diagnosed an ear infection in both ears'**.
- 7.56 Ivor Morrison told us<sup>68</sup> he did not know if it was a reasonable inference from the two ear infections that the child may have a high temperature. He agreed that a child of two having the possibility of mumps and ear infections over the course of December would worry his or her mother. Overall, he did not feel that the evidence available to him about the illness was sufficient to justify the adjournment.
- 7.57 Miss Smith<sup>69</sup> had thought, and still thought, that the statements were inadequate as they did not refer to the child being ill on the weekend of 19 and 20 December and they did not refer to orchitis. Miss Smith thought the statements were

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<sup>64</sup> 81924 (para 10).

<sup>65</sup> 59853.

<sup>66</sup> 34055.

<sup>67</sup> 72794.

<sup>68</sup> Day 65 (page 21).

<sup>69</sup> Day 61 (page 76).

insufficient to show that the information she had given the court was correct. However, she did not advise asking the doctor how ill the child was, as she understood that the doctor had been spoken to by the police and been asked for a statement. She believed from Ivor Morrison that this was all she would be getting. Ivor Morrison himself said that he did not give consideration to getting a medical report from the doctor as they had the statements.

- 7.58 Miss Smith thought that Andrea McKee was lying about her son being ill because she was not prepared to miss an appointment she had arranged on 23 December. Miss Smith said that she herself had known about the fear of a fit and the high temperature on 21 December and would have told the court about it on 22 December. She said that she was **'never given an explanation'** for this from Andrea McKee.
- 7.59 After Andrea McKee said that she had taken her son to the Pendine out-of-hours clinic on the evening of Friday 19 December, the police conducted enquiries about that. Ivor Morrison said that he wanted the information about Pendine as it may have dispelled inconsistencies in the statements from the doctor. However, those enquiries did not support Andrea McKee's assertion that she had attended on 19 December. The local police confirmed on 1 January 2004<sup>70</sup> that for **'the weekend from'** 18 December, Pendine did not have any record of any calls made by Andrea McKee; there was no record of a doctor visiting her address and the on-call locum doctor did not have any records of Andrea McKee.
- 7.60 At a further consultation with Miss Smith and Ivor Morrison on 9 January 2004<sup>71</sup>, Andrea McKee repeated that she had attended Pendine on 19 December 2003. She said that she had phoned her surgery on 19 December and the call was automatically redirected to Pendine. Her new husband spoke to someone at the surgery who said to give the son antibiotics and they would phone back in an hour to see how he was. This took place and Andrea McKee spoke to a lady doctor who said that the son's temperature was still too high and so he should be brought to the Pendine, which Andrea McKee and her husband did. Her husband spoke to the receptionist, who did not make any notes. Andrea McKee went into the examination room while a grey-haired male doctor examined the son. The doctor did not take any notes when she was there. Statements were taken from the three doctors on duty at Pendine<sup>72</sup> and the receptionist<sup>73</sup>, none of whom had any recollection of anyone matching their names or descriptions attending Pendine.

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<sup>70</sup> 34041.

<sup>71</sup> 33991.

<sup>72</sup> 59845, 34052 & 59847.

<sup>73</sup> 59835.

- 7.61 The telephone records of Andrea McKee's landline were obtained and they did not contain any calls to or from the Pendine clinic during the weekend of 19 to 21 December<sup>74</sup>.
- 7.62 Another development had occurred when, on or about 23 December, Andrea McKee received what on the face of it was a threatening letter. In consequence, police officers attended the conference with Miss Smith and Ivor Morrison on 9 January 2004<sup>75</sup>. On 12 January Miss Smith wrote a letter to Ivor Morrison in which she said that Andrea McKee had taken the threat seriously and so could no longer give evidence while remaining at her current address. Miss Smith said that, **'It is clear that Andrea McKee states that she remains willing to give evidence, she wishes to do so on terms which I doubt can be met.'**<sup>76</sup> Ivor Morrison told us<sup>77</sup> that he formed the view that Andrea McKee had set impossible conditions for giving evidence. He said this was because Andrea McKee was not prepared to move away from Wrexham and so the police were not able to put her in witness protection. Miss Smith also told us<sup>78</sup> that, in her view, Andrea McKee was not prepared to assist in meeting conditions which Andrea McKee had herself set for giving evidence. In fact, on the evidence we have heard<sup>79</sup>, the police were content to protect her in Wrexham.
- 7.63 Miss Smith's letter to Ivor Morrison did not record any concerns about Andrea McKee's credibility, but in her statement to the Inquiry<sup>80</sup> Miss Smith said, **'I came away from that consultation with a very different impression of Andrea McKee to the one I had before. I had real concerns about her credibility from that point on.'** She said that she felt that Andrea McKee was happy to move to another address in Wrexham but it had to be in a certain area. Miss Smith felt that that did not seem practical and that it made her question the authenticity of the threat. In her oral evidence<sup>81</sup> Miss Smith said that when she wrote the letter to Ivor Morrison she did not have serious concerns about Andrea McKee's credibility, but alarm bells were beginning to ring. She said that her doubt over the authenticity of the threatening letter did not affect her assessment of Andrea McKee's credibility at the time. One cause for concern was something she read into Andrea McKee's demeanour and what she said when the question was raised of moving house to ensure her safety. According to Miss Smith, what Andrea McKee said about moving house made her wonder whether Andrea McKee was

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<sup>74</sup> 59856–59878.

<sup>75</sup> 33991.

<sup>76</sup> 33989.

<sup>77</sup> Day 65 (page 47).

<sup>78</sup> Day 61 (page 88).

<sup>79</sup> Day 63 (page 7).

<sup>80</sup> 81924.

<sup>81</sup> Day 61 (page 94).

trying to get something out of it. However, Miss Smith denied that thinking that Andrea McKee was **'after something'** affected her view of Andrea McKee's credibility. The question which arose at this point with Miss Smith was whether Andrea McKee was asking herself what was in it for her. She said her impression was that Andrea McKee would have been quite happy not to have to give evidence.

- 7.64 According to her statement, on 17 and 25 February 2004 Miss Smith attended consultations with Mr Simpson, Ivor Morrison and DCI K. She said that as a result of these conferences it became clear that Andrea McKee could not be put forward by the prosecution as a witness of truth. Further investigations had provided no evidence that she had been to Pendine on 19 December 2003. At the second of these consultations Miss Smith and Mr Simpson advised against proceeding because there was no case without Andrea McKee's evidence and her credibility was, to use Miss Smith's word for it, **'shot'**. In her statement Miss Smith added that **'As a result of those consultations it became clear that Andrea McKee could not be put forward by the Prosecution as a witness of truth'**. Miss Smith said that the issue of Pendine was **'a wholly peripheral issue and not directly relevant to the evidence in the prosecution of the Atkinsons. However, having determined that she had lied on a peripheral issue, her entire credibility was in question and she could not be put forward as a witness of truth.'**
- 7.65 Another conference was held on 26 February 2004, which was attended by the DPP Sir Alastair Fraser, the Senior Assistant Director, Ivor Morrison and Mr Simpson. The latter is recorded as saying<sup>82</sup> that Andrea McKee was not credible about whether she had attended Pendine on 19 December, he said. However, **'While there was no reason to doubt that she was telling the truth about the main issue on which she was expected to give evidence, her credibility as a Crown witness would nevertheless be damaged.'** The DPP requested that Mr Simpson confer with Andrea McKee, as she may remain credible on the main issue and he wanted to know if Andrea McKee could be presented as a credible witness. As a result of that meeting, on 27 February Ivor Morrison requested the court to adjourn the question of the validity of the conditional adjournment. The Resident Magistrate commented that he felt that the court had previously been misled<sup>83</sup>.
- 7.66 Mr Simpson's consultation with Andrea McKee took place on 2 March 2004 in the presence of Ivor Morrison<sup>84</sup>. Mr Simpson's questions focused almost entirely on what she had told police about her visit with her son to Pendine clinic on

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<sup>82</sup> 33979.

<sup>83</sup> 33909 (para 2).

<sup>84</sup> 33965.

19 December 2003. The contradiction between what Andrea McKee had said to the police about the grey-haired male doctor and what Pendine had said, that there was no doctor matching that description, was put to her. Andrea McKee sought to deal with it by saying that she had not gone into the examination room, but her husband had, which is a direct contradiction to what she had said to Miss Smith on 9 January. It is our conclusion that one lie begot another, all stemming from the initial lie told by Andrea McKee, that she had taken her son to the Pendine clinic.

- 7.67 Mr Simpson told us<sup>85</sup> that the result of these lies was to lead him to the firm conclusion that Andrea McKee's credibility would be so damaged by cross-examination that it was not possible for her to be put forward as a witness of truth. This view was shared by Ivor Morrison<sup>86</sup>.
- 7.68 In addition, Ivor Morrison was troubled by the problem of how the false story, which fairness and legal principle required be disclosed, would be dealt with in the Magistrates' Court. However, it is right to say that Ivor Morrison did consider that the real question about Andrea McKee related to the trial, namely, whether in the light of the lies about Pendine the test for prosecution could be met as to whether there was a reasonable prospect of a conviction. This was also the view of Sir Alasdair when the matter was placed before him for his decision<sup>87</sup>.
- 7.69 Ivor Morrison told us<sup>88</sup> that the view of the ODPP was that the guilty pleas were pretty powerful indicators that her evidence that she gave a false alibi was the truth, and that the ODPP would not have directed a prosecution of Res Con Atkinson if they had not thought that her evidence would have been impressive. He also told us that he thought that Michael and Andrea McKee had not entered false pleas of guilty to the conspiracy. As we have said, DCI K also did not change his belief that she was telling the truth about the conspiracy.
- 7.70 The DPP received Mr Simpson's written Opinion that Andrea McKee could not be presented as a witness of truth. The lies she had told about Pendine had so severely damaged her credibility that there was no longer a reasonable prospect of obtaining a conviction as, without Andrea McKee's evidence, there would be no case to present to court. Ivor Morrison was of the same view as Mr Simpson and made his views known to the DPP<sup>89</sup>.

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<sup>85</sup> Day 56 (page 55).

<sup>86</sup> Day 65 (page 88).

<sup>87</sup> 33878.

<sup>88</sup> Day 65 (page 90).

<sup>89</sup> 33909 (para 35).

- 7.71 The DPP wanted to make sure that he had before him all the information which would be relevant to the decision whether or not to prosecute. He considered that he had. He also brought the case to the attention of the Attorney General, Lord Goldsmith, who considered the papers and whose view was that a decision not to prosecute was within the parameters of the judgment which the DPP had to make. Sir Alasdair dealt directly with Mr Kevin McGinty of the Attorney General's Office and those two men had a telephone conversation at 17:50 on 18 March 2004. Sir Alasdair's memorandum<sup>90</sup> recorded the telephone call and said that he

**'noted that in any event that [Andrea McKee] was an accomplice and that a judge would have to warn the jury about the dangers of convicting without corroboration.'**

Kevin McGinty's memorandum<sup>91</sup> said of Andrea McKee

**'she is an accomplice and her evidence will have to be given subject to a warning about the dangers of convicting on her evidence without other corroboration. There is no other corroboration. This puts her in a rather different position from the usual run of witnesses.'**

- 7.72 The DPP concluded that there was not a reasonable prospect of obtaining a conviction and directed that there should be no prosecution. As a result the committal proceedings were withdrawn on 19 March 2004<sup>92</sup>. Sir Alasdair said in his evidence<sup>93</sup> that the decision he had to make had been finely balanced and that he took responsibility for it.
- 7.73 Andrea McKee was robustly challenged when she gave evidence to us<sup>94</sup> about the account she had given to the DPP and others about Pendine. She maintained that she had told the truth.

### **Tracey Clarke<sup>95</sup>**

- 7.74 Since 1997 Tracey Clarke has married Allister Hanvey and had two children with him. When she gave oral evidence to the Inquiry via video link she had recently separated from him. When interviewed by the Inquiry<sup>96</sup> she asserted that her statement of 10 May 1997 was untrue insofar as it named attackers and in respect of the tip-off allegation. She was questioned<sup>97</sup> extensively about the circumstances

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<sup>90</sup> 33886.

<sup>91</sup> 40221.

<sup>92</sup> 33887.

<sup>93</sup> Day 66 (page 122).

<sup>94</sup> Day 14.

<sup>95</sup> Day 54.

<sup>96</sup> 80184.

<sup>97</sup> Day 54 (page 106).

in which she gave her statement and about its contents. Tracey Clarke told us that she was drunk and on drugs on the night of the incident. She said that the content of the questionnaire, completed on 8 May 1997, was all true.

7.75 Dealing with her knowledge of events which were contained in her statement, she said that the fight was discussed by everybody at the Tae Kwon Do club and in town. A policeman asked Andrea McKee questions, and she told them about Res Con Atkinson phoning the Harvey house. Andrea McKee took Tracey to the police because **'I was a chatterbox'**, and not because she knew what had happened. She said that Andrea McKee was a **'know-it-all'** who liked to be in the middle of the conversations. Andrea McKee took Tracey Clarke to the police station **'because she had a story to tell as well'**.

7.76 Tracey Clarke told us that when interviewed in the police station she had been working all day and had not eaten. She remained in the interview room while her statement was being taken. She did not know how long it took but it was dark when she left. During the course of it Andrea McKee was saying **'Tell them this. Tell them that. Tell them what you told me earlier'**. She added that Andrea McKee was vindictive and did not like Allister Harvey so put things in Tracey Clarke's statement to hurt him.

7.77 According to Tracey Clarke, the police were aggressive while she was making her statement. They said, **'We can prove you seen it'**. She told them she had not seen the fight but they said, **'We can prove it'**. They banged the table. They said they would put her in jail. They also said that they would break down her mum's door. She told us that she now knew that they were in another room questioning another person and simply gathering a lot of information, because they wanted to get people for this murder, because it had changed from a beating up to a murder, and she just went along with it. She did not recall who was banging the table but they were standing up. Andrea McKee was sitting beside her. She was not sure which of the police officers made the threats. The police did say what they would put her in jail for but she did not remember what it was. She did not remember a policewoman being there. She thought it was only men. Only the policeman banged the table and made the verbal threats.

7.78 A passage in the statement,

**'I went home the next day and told my parents what had happened and about the two men being attacked in the town centre and that my ex-boyfriend, Allister Harvey, was involved in it',**

was true. She said that she told her mum that Allister was involved to hurt him. Tracey Clarke told us she was crying and terrified by the police's threats but she was still able to make the accusations about Allister Harvey.

7.79 In relation to other parts of the statement which she now says are false, Tracey Clarke said that people were suggesting things to her which were written into the statement. She did not read the statement before she signed it.

7.80 The passage **'These persons were kicking the person on the ground around the head and body'** was false. She did not see that. Likewise

**'They jumped all over him and kicked him. I saw the persons who were doing this and I can identify them as (1) Dean Forbes (2) Allister Hanvey (3) Stacey Bridgett (4) "Muck", (5) Rory Robinson'**

is not true. Tracey Clarke told us that the names came from rumours about town and they were also suggested to her by police. She just agreed with the names and said she saw the fight. She told us that she did not know 'Muck' at the time.

7.81 The names being discussed in town as being involved included those Tracey Clarke named in her statement. She told us she did not recall who told her Dean Forbes was involved and cannot remember if she saw Dean Forbes in town that night. It was hearsay that Stacey Bridgett, 'Muck' and Rory Robinson were involved in the murder. She does not know who told her. The police also mentioned those names. She cannot remember if she saw Stacey Bridgett or Dean Forbes in town that evening. She made up Allister Hanvey's name as being involved but his name **'was about town too'**. She said that she had put it around town. She told her mum and her auntie. She cannot remember if anyone else was mentioning his name in relation to the murder. She told us she did not see Allister Hanvey in town that night.

7.82 Tracey Clarke told us she did not see the events described in the passage:

**'The other person lying near Eastwoods was being helped by Michelle Jamieson, but I saw persons run up and kick him around the head and body and Michelle was telling them to stop.'**

She does not know how the words

**'At that time, I saw a number of police behind the crowd who were attacking the two persons lying on the ground. As far as I could see, the police were not doing much to stop what was happening.'**

came to be in the statement. She does not know if police suggested it or if she said it.

7.83 Tracey Clarke was directed to the passage which reads:

**'I remember Robbie Atkinson's name coming up and Allister said that Robbie Atkinson had been very good to him, because on the Sunday morning after the incident in the town centre, he rang him at about**

**08.00 and told him to get rid of the clothes he was wearing the previous night.'**

She said that came from her aunt, as she was friendly with Res Con Atkinson. Tracey Clarke said she had believed it was true and told the police.

7.84 She was also asked about the passage:

**'Since then, Allister has contacted me on numerous occasions and he keeps asking me what I have said to the police. He also told me that Robbie Atkinson was ringing him every day to keep him up to date with the police investigation.'**

She told us that, too, came from her aunt who was talking to the police in the interview room when she was giving her statement.

7.85 Tracey Clarke told us that she made up the passage

**'On Thursday of last week Allister's mother rang my work to speak to me, but I was off that day and I didn't speak to her. I spoke to Allister Hanvey yesterday and I asked him what he did to the person that they attacked in the centre of Portadown who is now dead. Allister said he jumped on his head and kicked his head. I told him that is how he got the fractured skull, and he said he doesn't have a fractured skull anymore.'**

She did so because she wanted to get Allister Hanvey into trouble. This information did not come from the police or Andrea McKee.

7.86 All the allegations about Res Con Atkinson telling Allister Hanvey about his clothes came from Andrea McKee, Tracey Clarke told us.

7.87 She said that she realised shortly after 10 May that people knew she had made a statement to the police. She does not know how others became aware she had made the statement, but they were annoyed. She hated herself for lying in the statement so she subsequently chose to move to Belfast and she changed jobs.

### **Tracey Clarke's mother**

7.88 Tracey Clarke's mother, whose name it is not necessary to state, gave a statement to police on 1 November 2000<sup>98</sup>. She was too ill to give evidence to us.

7.89 In that statement she said

**'It was around 12 midday when the news was on and I remember Tracey turning the radio up at the news. She told me that she had seen an awful fight in the town last night.'**

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<sup>98</sup> 14896.

Tracey Clarke told us that she would have said she had seen the fight, even though she had not, to **'bump herself up'**.

7.90 The statement also said that

**'After the first few days, Tracey started to talk to us, that's me, and her stepdad, Jim Murray, about the fight in Portadown and what went on. She told us that Robbie Atkinson, who I know was a policeman in Portadown, had told Allister to burn his coat.'**

That was put to Tracey Clarke<sup>99</sup>, and she said that would have been talked about as gossip between Andrea McKee, Tracey Clarke and her mum.

7.91 The statement continued

**'Tracey was saying, "Imagine telling him to burn that good silver coat". It cost Tracey £175 out of Paranoid in High Street mall... Tracey knew a girl who worked in Paranoid and she had left the jacket over and Tracey was paying weekly out of her pay so that Allister could have it by Christmas 1996.'**

Tracey Clarke accepted she had bought Allister clothes but she told us she did not remember buying a jacket on the lay-away system at Paranoid at Christmas 1996. In fact we heard evidence from the proprietor of that shop<sup>100</sup> that she had bought a blue jacket at that time.

7.92 Also in her statement Tracey Clarke's mother wrote

**'She also said that Robbie had told him, that's Allister, to burn everything; trousers, shirts, the lot. Tracey said that Allister had burned the clothes and that his mother helped him to do this.'**

Tracey Clarke told us that this information came from Andrea McKee, and was all gossip and hearsay. The information went possibly from Andrea McKee to Tracey Clarke to her mum. Tracey Clarke told us that she had been very gullible and whatever Andrea McKee had said she believed. She said she did not talk to Allister Hanvey about this.

### **Jim Murray<sup>101</sup>**

7.93 Mr Jim Murray is Tracey Clarke's stepfather. He gave a statement to police on 16 November 2000<sup>102</sup> and gave oral evidence to us. He frankly admitted that he had a serious drink problem, both in 2000 and at the date of giving his evidence.

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<sup>99</sup> Day 54 (page 24).

<sup>100</sup> Day 12.

<sup>101</sup> Day 11.

<sup>102</sup> 17338.

7.94 In his statement to the police Jim Murray wrote that Tracey Clarke

**‘said they all came back from the Coach and there was a fight. She said a lot ran up to the fight and Allister Hanvey was there.’**

Tracey Clarke told us she did not recall that.

7.95 The statement continued

**‘I remember after Tracey met Allister for lunch, Tracey said that Allister felt quite proud of what he’d done. This was after [her mother] had asked her how she got on with Allister. Tracey also said that Allister said, “Sure, he was only a Fenian bastard”, and that was the type of attitude he had.’**

Tracey Clarke told us that she did not know how her stepfather got that information. She may have made that up.

7.96 Speaking of the night on which Tracey Clarke had given her statement to the police Jim Murray’s statement said

**‘I remember I got up that night and, when Tracey came home, she was crying and [Tracey’s mother] was comforting her. I also remember, although I don’t know exactly when, Tracey said Allister had got rid of the clothes and burnt them.’**

Tracey Clarke told us she did not tell her mother about what happened at the police station.

7.97 Jim Murray’s statement also contained the passage

**‘Tracey had bought him a silver jacket from Paranoid for that Christmas, that’s 1996 and I never saw it after that Hamill incident. The jacket was silver, like anorak material without the lining in it. I remember the jacket had an orange stripe on the sleeves...’**

Tracey Clarke told us she thought it could have been a silver jacket but she did not know. She said that there had been an Adidas jacket with an orange stripe.

### **Gordon Kerr QC<sup>103</sup> and Roger Davison<sup>104</sup>**

7.98 Both Mr Kerr and Roger Davison told us that when Tracey Clarke was seen in consultation on 17 October 1997 she had recounted events consistent with her statement, and that she was able to do so without being shown it by them beforehand. Both thought that while she was doing so she was telling the truth. She was asked about that and told us that she did not know why she repeated

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<sup>103</sup> Day 13.

<sup>104</sup> Day 13.

what she had said in her statement during the consultation. She said **'I didn't know I could tell them the truth'** and just went along with what she said before even though she was being asked what she saw, not if her statement was true. She told us that both Mr Kerr and Roger Davison were wrong in their assessment that she was being truthful.

### **The Coroner**<sup>105</sup>

- 7.99 The Coroner, Mr John Leckey, gave evidence to us. He told us that when he had spoken to Tracey Clarke on the telephone about the prospect of giving evidence at an inquest she had expressed fear of reprisal and was very concerned even at the notion of her statement being read out. At no stage did she tell him that the statement was false. Tracey Clarke told us that she did not know that she could have done so.

### **Trevor Leatham**<sup>106</sup>

- 7.100 Mr Trevor Leatham was a prison officer who knew Res Con Atkinson and Allister Hanvey. He told us that within one or two weeks of the attack on Robert Hamill he spoke to Res Con Atkinson about it. He thinks it was one evening in the Tae Kwon Do club.
- 7.101 Trevor Leatham told us that he mentioned to Res Con Atkinson the allegation that the police had stayed in the Land Rover and was told by him it was rubbish. He said that when the incident began the Land Rover was driven up round the back of the church and to the incident. He went on to say that at the scene of the violence he saw Allister Hanvey standing back and watching it. Allister Hanvey was either drunk or high on drugs. Res Con Atkinson had told him to **'fuck off'** out of the road but Allister Hanvey had stood there for a while before leaving.

### **Marc Hobson**<sup>107</sup>

- 7.102 Mr Marc Hobson told us that in 1997 Tracey Clarke did know him as 'Muck'.

### **Timothy Jameson**<sup>108</sup>

- 7.103 Timothy Jameson told us that when he was seen in consultation on 21 October 1997 the police had put words into his mouth when he gave his witness statement naming, among others, Allister Hanvey. To an extent Tracey Clarke's evidence to us amounts to a complaint that the police bullied her into making a statement at very much the same time. In those circumstances we need to consider those allegations against the interviewers to see if they were guilty of

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<sup>105</sup> Day 10.

<sup>106</sup> Day 12.

<sup>107</sup> 80464 (para 13).

<sup>108</sup> Day 15 (page 92).

wrongdoing. If they were, then that wrongdoing would fall within our Terms of Reference, and of course it would be material to our assessment of the evidence given to us by Tracey Clarke.

- 7.104 Timothy Jameson gave evidence to us. He said that he was taken from the home in Portadown, where he lived with his mother, to the local police station at about 19:00 by DC Honeyford and kept there for four to five hours. During this time, he says, he was persistently intimidated by this officer as DC Honeyford made suggestions to him about what his statement should say. This was followed by the officer writing out a statement not based on anything Timothy Jameson had said but with the contents coming from DC Honeyford as he wrote down what he wished the statement to say. When the writing of the statement was complete he read it over to Timothy Jameson and told him to sign it, which he did.

#### **Detective Constable Honeyford<sup>109</sup>**

- 7.105 On 29 April 1997 DC Honeyford went through the standard questionnaire prepared by DI Irwin with Timothy Jameson and recorded his answers<sup>110</sup>. In summary, Timothy Jameson said he had seen nothing.
- 7.106 On 9 May 1997 DC Honeyford interviewed Timothy Jameson after being briefed by DCS McBurney and DI Irwin and after being told that information was now available to the police that Timothy Jameson had not told the truth in his answers to the questionnaire and had confided to someone that he had seen the assault on Robert Hamill. DC Honeyford was not told to whom it was that this confidence had been given and at the time thought it would have been to Timothy Jameson's father, Mr Robert Jameson. It was only later he learned that it had been to one of the officers who was part of Robert Jameson's police escort. DC Honeyford said that probably he had heard it from some other detective, but whether he had been told or heard it said in his presence he could not now remember. DC Honeyford was instructed to interview Timothy Jameson that same night.
- 7.107 DC Honeyford said he had his own suspicions about Timothy Jameson but had not been given any information to suggest that he had done anything wrong. Before he began the interview, though, he thought the stage might come when he would have to treat him as a suspect and caution him. In that event, he said, he would also have arrested him.
- 7.108 DC Honeyford went to Timothy Jameson's parents' home. He was not there and DC Honeyford saw Timothy Jameson's mother and told her he had to interview her son as a matter of urgency. She asked if he was in trouble and he told her he was not. Although Timothy Jameson was an adult, being 18 years old,

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<sup>109</sup> Days 11 & 12.

<sup>110</sup> 70865.

DC Honeyford told her his parents could come to the interview if they wished. He explained in his evidence that it was not the regular practice for there to be two officers present at an interview with an adult witness, though that might happen, depending on the manpower available.

- 7.109 Timothy Jameson attended Portadown police station at about 20:00. He was calm. DC Honeyford did not feel there was any problem and approached the interview with an open mind because he did not have a lot of information about what had happened on the night of the violence. He says he first of all discussed with Timothy Jameson what he was able to tell him and, in the course of this, made notes. Timothy Jameson was naming people who, he said, had taken part in the violence. However, DC Honeyford did not begin to write any statement because Timothy Jameson was repeatedly expressing concern about his position if his identity should become known. DC Honeyford was trying to help him and felt they had established a good relationship. He had formed the view that Timothy Jameson was being truthful. He was of the opinion, though, that he simply would not make a written statement until his concern had been resolved. As he had no authority to give him anonymity he told Timothy Jameson he was going to talk to DCS McBurney.
- 7.110 DC Honeyford saw DCS McBurney, who had DI Irwin with him. He informed DCS McBurney of the problem and DCS McBurney made a decision that Timothy Jameson could give a statement and be known as Witness B.
- 7.111 Accordingly Timothy Jameson then made a statement, which DC Honeyford wrote down, attaching importance to obtaining a good description of the appearance and clothes worn by those whose activities the statement dealt with.
- 7.112 He considered that Timothy Jameson's account was the truth. At the back of DC Honeyford's mind had been the possibility that Timothy Jameson might himself have been involved in the violence but by the time the interview was finished he was happy with what he had been told and felt confident that Timothy Jameson had not been involved. As a matter of routine DC Honeyford asked him how much he had had to drink, to assist an assessment to be made of his potential quality as a witness. After the statement had been taken and signed Timothy Jameson left the police station in a good state.
- 7.113 DC Honeyford told us he took no part in the consultation with Timothy Jameson on 21 October 1997. It was Mr Kerr who was asking the questions and it seemed to DC Honeyford that Timothy Jameson was holding back and was reluctant to answer the questions being posed. This was a witness, DC Honeyford said, who did not want to give evidence and he saw that his way out of this difficulty was to say that the police had put words into his mouth. At that time, DC Honeyford said, this was a common ploy adopted by both Catholics and Protestants who had

made statements and then did not want to appear in court as witnesses. At the consultation Timothy Jameson said he could not remember what had happened on the night of the violence and that when he made his statement the police had told him what to write. He said that although he didn't want to give evidence he wasn't frightened of doing so and his desire not to give evidence was not affecting his inability to remember.

- 7.114 DC Honeyford told us that Mr Kerr had given Timothy Jameson a fair grilling and made the points that he had to in order to make his assessment of Timothy Jameson. DC Honeyford said he kept silent at the consultation. He said it was not his place to respond to Timothy Jameson's allegation and he was not asked to do so. He said he did not think anyone believed Timothy Jameson and is sure that his father would have complained if he had believed what his son had said.
- 7.115 DC Honeyford told us there was no truth in the suggestions that he put words into Timothy Jameson's mouth or intimidated him in any way. The statement he made was the account he gave and was agreed by him. At the time he took this statement from Timothy Jameson he had no knowledge of any names given to the police by Tracey Clarke.
- 7.116 No other person present at that consultation told us that they believed Timothy Jameson's allegations against DC Honeyford.

#### **Detective Chief Inspector P39<sup>111</sup>**

- 7.117 DCI P39 said she was present when Tracey Clarke made her statement to DC McAteer. Andrea McKee was also present. In her evidence to us DCI P39 said that Tracey Clarke was apprehensive about making a statement and it was very necessary to reassure her and urge her to tell the truth as she knew it. She was a nervous and vulnerable girl and DCI P39 realised that it was necessary to speak to her parents. DCI P39 and DC McAteer took Tracey Clarke home after her statement was completed and spoke to them to try to put their minds at rest about her safety. DCI P39 continued after this to have dealings with Tracey Clarke and her mother but had no further dealings with Andrea McKee. DCI P39 regarded the allegations made later by Tracey Clarke about her treatment by the police when she made her statement as utter nonsense. She told us that she believed Tracey Clarke's mother knew what Tracey was doing when she went to the police station and never suggested her daughter had not seen anything.

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<sup>111</sup> Day 43.

**Detective Constable McAteer<sup>112</sup>**

- 7.118 As we have said (see paragraph 7.13), it was DC McAteer who received information from Res Con McCaw about Res Con Atkinson. Res Con McCaw told him it came from Andrea McKee, whose source was said to be Tracey Clarke. The police's main concern was to learn from Tracey Clarke what she could say. DC McAteer went to her home on 8 May to seek answers to the questionnaire which had been prepared for general use. Although Tracey Clarke seemed reasonably co-operative, DC McAteer suspected, in the light of what he had learned, that she was not telling him the truth. However, as he had not yet spoken to Andrea McKee he did not feel in any position to press matters further. He had thought it better to confine himself strictly to the questions set out in the questionnaire and not to probe further by asking questions not contained in the questionnaire.
- 7.119 The next step, therefore, was to try to meet Andrea McKee. She did not want to visit the police station in case anyone saw her. To accommodate her wishes it was arranged that DC McAteer should meet her on the road adjacent to Kernan Cemetery. He and DI Irwin went there together by car on the evening of 8 May and Res Con McCaw took Andrea McKee to the car to meet them. She sat in the car and told them about a phone call Res Con Atkinson was said to have made to Allister Harvey. She told them also that Tracey Clarke had said she saw Allister Harvey jump on Robert Hamill's head. He told Andrea McKee of the need for the police to talk to Tracey Clarke herself.
- 7.120 The evidence of DC McAteer was that as a result of the interview with Andrea McKee Tracey Clarke went to Portadown police station with her late in the evening of the 9 May. Andrea McKee remained in the interview room with Tracey Clarke as it was thought this would help to put her at her ease. DCI P39 was also present. Andrea McKee from time to time made reassuring remarks to Tracey Clarke but once the writing of the statement began she remained silent. If Andrea McKee had interfered, DC McAteer told us, he would have asked her to leave the room. He explained to Tracey Clarke what the procedure would be. He has no doubt that he told her, probably early on, that he did not think she had told the truth when she had answered the questionnaire. He said she accepted this but explained that at that time she had not wanted to get involved.
- 7.121 DC McAteer said that what Tracey Clarke later told the police about how she had been mistreated and browbeaten was nonsense. She had come to the police station voluntarily and was at liberty to leave whenever she wished. He told us there was no immediate outpouring of information by Tracey Clarke. She needed to be coaxed but once she began to give her account the whole story came out. He thought she could not believe that Allister Harvey had done what he had told

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<sup>112</sup> Day 41.

her and was quite upset about it. She said that as long as her name did not come out she was happy to talk and give evidence in court and she made her statement as Witness A. DC McAteer told us that Tracey Clarke told him that she had already, before speaking to the police, said to Allister Hanvey that she had told the police about what had happened.

- 7.122 DC McAteer said that once Tracey Clarke had given her account he began to write down her statement. He would steer her from one topic to the next but the words in the statement were hers and as he wrote them down he repeated what he was writing. She had not appeared to be scared in the police station and seemed to DC McAteer to be very genuine. He did not think she could have told him what she did without having a fair knowledge or having been present and he had no doubt she had told him the truth. He told us his judgment about her reliability did not depend only on the account she gave. He was helped by having spoken to her parents and by being able to see the kind of person she was. DC McAteer said also that DCI P39 was quite happy with her and believed her. After the statement was completed DC McAteer and DCI P39 drove Tracey Clarke and Andrea McKee home.

### **The Atkinsons<sup>113</sup> and the Hanveys<sup>114</sup>**

- 7.123 Res Con Atkinson and his wife Eleanor gave evidence to us, as did Allister Hanvey and his parents Kenneth and Elizabeth. Each denied any wrongdoing. Res Con Atkinson denied seeing Allister Hanvey participating in any attack and he denied tipping him off. He denied Trevor Leatham's evidence. He maintained that the statements given in October 1997 about the telephone call of 27 April 1997 were true. The alleged cover-up was stoutly denied by all.

### **Submissions made on behalf of interested parties and witnesses**

#### ***For the Atkinsons***

- 7.124 We were reminded that Res Con Atkinson pointed Allister Hanvey out to Sgt P89 and it was suggested that this was not the action of man seeking to protect Allister Hanvey. It was submitted that Trevor Leatham was undermined when he was called. No one other than Trevor Leatham has suggested that Allister Hanvey spoke to Res Con Atkinson at the scene.
- 7.125 It was submitted that whether there was a tip-off depends entirely upon the assessment of the evidence of Tracey Clarke and Andrea McKee. We were urged to find that Andrea McKee was a chatterbox and liked to be in the middle of things. She took Tracey Clarke to the police to spread gossip. We were reminded that Jim Murray said he would not trust Andrea McKee. Tracey Clarke was

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<sup>113</sup> Day 47.

<sup>114</sup> Day 15 and Day 27 & 28.

vulnerable and greatly under the influence of Andrea McKee. Andrea McKee gossiped extensively with Tracey Clarke's mother. Jim Murray's alcoholism was so severe and given the personalities involved, the contents of Tracey's mother's and Jim Murray's statements emanated largely from Andrea McKee.

- 7.126 We were told that Andrea was the only person to deny that Michael McKee had a drink problem. After he left her she wished to destroy his name in Portadown. She was close friends with the Atkinsons and stayed up with the family when Res Con Atkinson was in Mahon Road Barracks.
- 7.127 We were invited to conclude that Andrea McKee had no credibility in saying that Rodney Smyth and Joy Kitchen were staying at the McKees on the night of 26 and 27 April 1997. That was because she had given an account in 2000 about watching boxing that night with a couple called Wickham, which has been disproved. It was pointed out that only when shown the taxi record did Andrea McKee identify the couple as Rodney Smyth and Joy Kitchen. It was noted that the taxi records do not show Smyths arriving and leaving by taxi. No telephone records show that the taxi arrived. The record does not show 'Smyth' going to Thomas Street, only 'Smith' into the town centre. Further, we were reminded, Rodney Smyth and Joy Kitchen do not recall going to the McKees on the night.
- 7.128 It was suggested that not wanting to go to a police station and meeting at a secret location late at night is **'the hallmark of a drama queen'**. The interview with DI Irwin was argued to be attention seeking as telling gossip made Andrea McKee a player. She made a large number of statements to police. Those parts which Andrea McKee said were true were shown to be lies during the Inquiry. When she **'broke'** the alibi she did not go to the police. They came to her. At the time there was very great animosity between her and her husband. We were told that police set up Andrea McKee in circumstances that gave rise to a guilty plea in an exceptional and unusual way, in that the police wrote a letter suggested by her solicitor, Catherine Jagger, as she was trying to get help for Andrea to be dealt with leniently. Without contrary evidence it is reasonable presumption that Andrea McKee initially instructed Catherine Jagger that she wished to plead not guilty, because that was what was said in the defence statement. There was no realistic possibility of a custodial sentence.
- 7.129 It was argued that Andrea McKee lied about Pendine. Miss Smith was totally satisfied that she was not a credible witness. Mr Simpson considered her to be a brazen liar. It was submitted that we can be assured that Mr Simpson addressed what weight he attached to Andrea's guilty plea.

- 7.130 It was said that Tracey Clarke answered questions co-operatively and fully on 8 May when not under Andrea's influence. We were also urged to conclude that Res Con Atkinson served with no sectarian orientation whatsoever. His family had suffered sectarian attacks. He was helpful in the community. He co-operated with everyone fully.
- 7.131 We were reminded that the only evidence about the content of the tip-off phone call was from Kenneth Harvey and Eleanor Atkinson. Andrea McKee could not give us direct evidence on the contents of the call or about being present when Res Con Atkinson made an admission to the effect of the call. She gave no evidence, direct or hearsay, about Res Con Atkinson admitting making the call. It was pointed out that we had no evidence from Michael McKee. Further, contrary to the allegation in Tracey Clarke's police statement, there was no evidence that Res Con Atkinson made daily calls to Allister Harvey.
- 7.132 We were urged to accept that the evidence is conflicting about the top that Allister Harvey was wearing. No witness described a silver jacket with orange braiding running down the sleeves. The coat bought from Paranoid was a blue three-quarter length padded Daniel Poole coat with a silver cross on.
- 7.133 We were told that Michael McKee pleaded guilty when he was a pathetic broken individual who went along with anything. Andrea McKee's plea served a purpose at no real cost. She explored potential advantages to obtain a move. Her plea was opportunity to get vengeance on Michael McKee.
- 7.134 In oral submissions it was emphasised that Andrea McKee had given conflicting accounts of who was at her home on 26 and 27 April 1997, that the Smyths do not recall being there on that particular night, and that the evidence of a taxi being called was unsatisfactory. We were reminded that there was no evidence of the contents of the telephone call from the Atkinson house on 27 April 1997, and that Res Con Atkinson is not said ever to have admitted tipping off Allister Harvey.

***For Tracey Clarke***

- 7.135 It was submitted on Tracey Clarke's behalf that, in considering her police statement, we should bear in mind that:
- (a) she was 17 at the time;
  - (b) she is described as a 'voluntary attender' but was brought by Andrea McKee without any prior notice;
  - (c) Andrea McKee had liaised with the RUC previously without the knowledge of Tracey Clarke and had provided a detailed briefing to the officers at a late night meeting at Kernan;
  - (d) notwithstanding the fact that the interview was part of a planned strategy by the RUC investigation team, and could therefore have been arranged by

appointment, the interview commenced in the late evening and continued into the early hours of the following morning;

- (e) the interview of a minor was conducted outside normal Police and Criminal Evidence (PACE) rules;
- (f) Tracey Clarke was interviewed after a day of work without any opportunity to rest, eat, take advice from a legal representative or consult those who had parental responsibility. If these features pertained in an interview today any self-incriminating statement produced would be subject to serious challenge as to its admissibility. We take the view that this submission is wrong in law. The statement which Tracey Clarke made did not incriminate her, nor was it a statement taken with a view to putting it in evidence. It was a witness statement which would have been used for the purpose of facilitating her oral evidence. Her parents and she agreed that Andrea McKee should be present with her. Also she was 17 years of age and a witness to whom the code would not have applied, had it been in force; and
- (g) Tracey Clarke was identifiably a vulnerable person (borne out by the subsequent years of psychiatric treatment). She ought therefore to have been interviewed in the company of an appropriate adult as required by PACE Code of Practice C paragraph 1.8. Andrea McKee did not meet the PACE definition of an appropriate adult as she did not have parental responsibility and police were aware that there were other persons who did meet the appropriate criteria. We point out that this code applied only to people in police detention. Tracey Clarke was not in police detention. Moreover, there is no evidence that at the time to which this submission relates that Tracey Clarke was suffering from any psychiatric illness.

7.136 We were asked to conclude that the totality of evidence shows that the police statement was partially false. The questionnaire and the statement are consistent with one another apart from whether or not she saw the assault. That Tracey Clarke saw the attack does not, as a matter of pure logic, square with the fact that she and her friend had heard shouting about a fight and run to the scene where they saw motionless people on the ground. She saw the aftermath. This is supported by the failure to identify any of the people who were kicking or jumping all over the body. The statement gives a numerical list of five persons who were involved. However, a numbered list is not how she names people who were on the bus. This adds weight to her claim that police provided her with a list of names.

7.137 It was also submitted that the police statement lacks internal logic. If Tracey Clarke saw Allister Hanvey attack, why would she ask him what he did?

- 7.138 Our attention was drawn to the issue about whether Res Con McCaw had overheard Tracey Clarke. She had no recollection of him. In his 2000 interview he did not remember anything except what Andrea McKee said, or anything about Tracey Clarke. This was said to cast serious doubt on the contention that Tracey Clarke was brought in because she was overheard. It was submitted that she was brought in because of the Andrea McKee interview. Andrea McKee contributed to the interview and prompted Tracey Clarke to recall issues for police.
- 7.139 It was suggested that we had no definitive evidence that Tracey Clarke repeated the statement about the telephone call to Mr Kerr or that it was regarded as 'truthful'. The note of the consultation with the DPP and Tracey Clarke does not record that she was able to 'recite the events of the night in accordance with her statement without having had an opportunity to refresh her memory'. The note of the consultation records that she was 'able to relate the events of the night more or less in accordance with her statement. She had not had an opportunity to refresh her memory.' There is a significant difference between a person being able to 'relate' the events of a significant night in their lives 'more or less' and a person who is able to 'recite' the events without refreshing their memory. It does not follow that, because Tracey Clarke could give a coherent account of the night in question, that the statement she made to the police was true. The making of the statement was 'indelibly burned in her memory'.
- 7.140 It was pointed out that the attendance note from the Coroner about the call from Tracey Clarke on 9 November 1999 does not record the Coroner forming the view that she was 'being truthful'. The Coroner recorded that **'when she spoke to me she was very tearful and I was completely satisfied that she was genuine'**. We were told that it cannot be inferred that the Coroner had formed the view that Tracey Clarke was being truthful about the contents of her police statement.
- 7.141 We were reminded that the statement by Tracey Clarke's mother, from whom Tracey was semi-estranged, was taken more than three years after the event. The mother records no details at all about the actual fight, despite saying Tracey talked about it. The absence of corroboration between this statement and Tracey Clarke's was said to be striking.

#### ***For the Hanveys***

- 7.142 It was submitted that the fact that Res Con Atkinson saw Allister Hanvey at the scene does not necessarily mean that he saw him fighting, and that there is no evidence linking Allister Hanvey with direct physical contact with anyone.
- 7.143 We were reminded that there is no clear account as to the description of the jacket allegedly worn by Allister Hanvey and that no two witnesses describe any such jacket in the same way. Jim Murray and Tracey Clarke's mother's evidence are

not contemporaneous accounts. We were invited to ask ourselves whether they could recall the jacket, or were they 'prompted'. We could not test the mother's credibility and Jim Murray stated he had had a drink problem. It was said that Tracey Clarke maintains that Andrea McKee was not truthful and furnished the information to Tracey Clarke's mother and Jim Murray. They described the jacket differently and when shown a diagram of a silver 'Skanx' jacket both volunteered that whilst similar, the jacket was different. The price described does not accord with the price of the Skanx jackets. The proprietor of Paranoid denied selling such jackets. He sold Tracey Clarke a Daniel Poole padded jacket at a price of approximately £150.00. The Daniel Poole and Skanx jackets were not comparable by price.

***For the Public Prosecution Service***

- 7.144 The question of whether Andrea McKee is to be believed about the cover-up and the question of whether the prosecution of Res Con Atkinson should have been discontinued are plainly linked. For that reason it is helpful to set out here the arguments advanced for the Public Prosecution Service (PPS) which covered both. The PPS is the successor of the ODPP.
- 7.145 It was accepted that the ODPP are in the Terms of Reference as far as advising or directing the RUC to conduct further inquiries necessary to make an informed decision on prosecutions. A prosecutorial decision shaping the murder investigation is within them. We were asked to say that decisions were 'shaped' if the consequence of the ODPP's decision would have been that further steps would properly have been taken. The merits of a decision cannot be questioned. We are to consider only whether the DPP properly equipped himself to take it, somewhat analogously with a judicial review. We were also told that the question of what weight was to be given to evidence was a matter for the DPP. Nonetheless, it was acknowledged that we should have careful regard to the reasoning of the ODPP in relation to Andrea McKee when we reached our own view about her credibility.
- 7.146 We were told that the only issue that could potentially be within the Terms of Reference relating to Andrea McKee is whether the decision not to rely upon her evidence was made with due diligence. Her credibility was already damaged by the fact that she was an accomplice witness where the essence of the offence in question demonstrated a propensity to lie. Documentation required to satisfy the court for the reason for adjournment was satisfactory written evidence establishing that her child was ill and suffering from conditions described. The adjournment was procured on the basis of her son having been ill over the weekend of 20 and 21 December 2003 with mumps, orchitis, and a high temperature causing a risk of having a fit. The medical evidence obtained from her GP's surgery did not support this. There was no evidence that the child had either swollen testes or a high

temperature, causing a risk of having a fit, nor any evidence that he had seen a doctor between 11 and 22 December 2003. The medical evidence simply did not support the account that Andrea McKee had given. It is therefore not correct to suggest that the medical evidence in the possession of the ODPP was sufficient to justify the reasons given for the adjournment.

- 7.147 The PPS urged us to conclude that that investigations into Pendine were proper because:
- (a) it was the police, not the ODPP, who initiated the investigation;
  - (b) inquiries into Pendine were a perfectly proper attempt to verify the account of her son's illness that Andrea McKee had given. It was not an attempt to discredit her but an attempt to corroborate her;
  - (c) it is correct that the GP was not further contacted following the 9 January 2004 consultation, but considerable inquiries had already been made of her GP's surgery. It overstates the position to suggest that the account given on 9 January 2004 was not checked at all or that no steps had been taken to test her account of the child's illness in the period prior to the weekend of 19-21 December. Even if a further statement was obtained from the GP which supported some aspects of what Andrea McKee had said in consultation, she was still maintaining that she had attended Pendine. If she had not, she was persisting in a significant, albeit collateral, lie. A further statement from the GP could not alter that fact and could therefore have had no impact upon Mr Simpson's assessment of her credibility; and
  - (d) it was immaterial that those advising the DPP or Attorney General may have been under the mistaken impression that the Resident Magistrate had power to stop the case, as such a consideration played no part in the DPP's reasoning.
- 7.148 We were told that the evidence, both in 2004 and before us in 2009, demonstrates that Andrea McKee fabricated her account of a visit to Pendine. She did not mention her child's illness to DC Murphy on 19 December 2003; she did not mention Pendine on 21 December; there are no records of any contact between her and Pendine; the doctor described by her did not exist at Pendine; she fabricated a story when the doctor's description was put to her in consultation on 2 March 2004 and Andrea McKee could not offer an adequate explanation when giving Inquiry evidence.
- 7.149 The PPS argued that the decision not to rely on Andrea McKee was reached with due diligence. The decision not to use her was considered by the DPP himself, Ivor Morrison, Mr Simpson and Miss Smith. The Attorney General and Kevin McGinty had oversight and Mr David Perry QC had concluded that it was reasonable. It was argued that it was incorrect to suggest that the ODPP or counsel failed to recognise that the central issue was Andrea McKee's general credibility, not

whether she was lying to them. The DPP had an open mind to this and he was the final decision-maker in the case. Others in the process appreciated that the central issue was her credibility, including Mr Simpson and Ivor Morrison, and they applied the correct test:

**‘did the lie on the peripheral issue so damage Andrea McKee’s credibility on the principal issue such that there was no reasonable prospect of conviction?’**

- 7.150 We were told that the ODPP considered the prosecution test and took into account: Andrea McKee’s crime; her confession; her conviction; that she was an accomplice; the limited corroboration; that her evidence and credibility would be central issues; that Pendine was a peripheral, but significant, issue; that the outcome of Pendine investigations was obliged to be disclosed and that the defence would be entitled to cross-examine her on the issue at trial. The threatening letter was disregarded when reaching the decision on her credibility as its provenance was unknown.
- 7.151 It was emphasised that the final decision was taken by the DPP, with the superintendence of the Attorney General. Although the power of intervention was rarely used, the Attorney General could have expressed any concerns to the DPP. The medical evidence would have had no bearing on the outcome because the concern was not the extent of Andrea McKee’s son’s illness but her credibility. It was the view of all concerned that her credibility was very damaged by the Pendine lie. We were told that Mr Perry had reviewed the issues and concluded that: **‘the decision of Leading Counsel was one reasonably open to him’**. It submitted that it was a reasonable decision reached with due diligence. Mr Perry had been asked if there was **‘room for doubt’** about the decision to discontinue the prosecution. He did not think so. Senior Counsel, having seen the witness, had formed the professional judgment that she was unreliable. The fact that others may disagree with this assessment is, we were told, irrelevant. As the DPP rightly pointed out, this is plainly a decision about which reasonable prosecutors might differ.
- 7.152 It was accepted that there was no proper basis on which the Resident Magistrate could have retrospectively revoked the adjournment and thus ended the proceedings. Ivor Morrison and Kevin McGinty may have misunderstood the position on this issue but this issue formed no part of the DPP’s reasoning and he himself doubted whether the Resident Magistrate would have the power to bring the proceedings to an end on that basis. The prosecution could have been continued by a voluntary bill of indictment.

- 7.153 The PPS does not accept that if Ivor Morrison took the view that a jury would probably conclude that Andrea and Michael McKee had entered their guilty pleas on a proper basis, then the test for prosecution was met. We were told that the pleas of guilty were undoubtedly important factors in determining whether the lies told about Pendine so undermined her general credibility that there was no longer a reasonable prospect that a jury would be prepared to convict upon her evidence. There is nothing to suggest that this factor was ignored. It is wrong to say that it inevitably led to the conclusion that the test for prosecution was met. Andrea McKee's recognition of her own guilt, through her plea of guilty, did not inevitably mean that the test for prosecution was met against any person she named as being involved in the conspiracy with her. Ivor Morrison was not the decision-maker. The decision was made by the DPP himself, having canvassed the views and advice of all those who had consulted with Andrea McKee. We were reminded that the DPP specifically took into account Andrea McKee's plea of guilty as a relevant factor in reaching the decision that she was no longer a credible witness.
- 7.154 It was submitted that a suggestion that the failure to obtain a more detailed medical report from the GP is evidence that the ODPP was addressing the wrong question, and was not focused on whether Andrea McKee was generally credible, is a complete *non sequitur*. The decision-maker did indeed address his mind to the correct legal test and the immediate concern about her credibility was the lie she had told about Pendine. The issue to be determined was whether that lie, taken in conjunction with the other relevant considerations, so undermined her general credibility that there was no longer any reasonable prospect of conviction. Even if the GP had been able to substantiate Andrea McKee's account (and there is no reason to believe that this would have been possible) it would not have altered the legal test which was applied in determining whether the prosecution should proceed.
- 7.155 We were told that the decision to abandon the prosecution of Res Con Atkinson and others did not shape the investigation, so is outside our Terms of Reference. The highest the matter can be put is that it is 'possible' that if convicted Res Con Atkinson 'may' have testified against Allister Hanvey. Leaving aside the hypothetical nature, the PPS points out that: (a) there is no evidence on which the Panel could properly find that Res Con Atkinson had any direct evidence to give about Allister Hanvey's involvement in the murder; and (b) the suggestion that he might be willing to give that evidence if he were prosecuted to conviction is inherently unlikely.

## Our conclusions

### The cover-up

- 7.156 We address this first because we have direct and conflicting evidence on the issue which we can and must resolve.
- 7.157 We bear in mind the fact that Rodney Smyth and Joy Kitchen could not fix the date of their visit, and the fact that Andrea McKee did not at first remember their names and had gone so far as to give a different set of names in her statement of 25 October 2000<sup>115</sup>. However, the independent evidence from the Call-A-Cab taxi office giving the date, the time and the address from which the fare was to be picked up<sup>116</sup>, supported by the log, and Joy Kitchen's evidence<sup>117</sup> that she and Rodney Smyth had not been alone in the McKees' house, provide strong support for Andrea McKee's evidence<sup>118</sup> that she and her husband did not spend the night at the Atkinsons' home, as asserted by Eleanor Atkinson<sup>119</sup>. It is right to say, as submitted on behalf of the Atkinsons, that Andrea McKee was mistaken about which programme she and others had watched on television on the night of 26 and 27 April 1997. The event she had named was shown by Sky Television, which did not provide a free service to viewers, and neither she nor her husband subscribed to Sky Television<sup>120</sup>.
- 7.158 We accept the evidence of Andrea McKee about this issue. Her evidence, supported by the evidence from Call-A-Cab, Rodney Smyth and Joy Kitchen, leaves us in no doubt that Michael and Andrea McKee did not spend the night of 26 and 27 April 1997 at the Atkinsons' home.
- 7.159 It necessarily follows from this that the phone call to the home of Allister Harvey's parents was not made by Michael McKee and that the statements he<sup>121</sup> and his wife<sup>122</sup> made to the police which said that the call was made by him were false. The fact that Eleanor Atkinson supported this false story and the high improbability of the McKees making false statements to the police without being asked to do so lead us inexorably to believe that this was an agreement whose purpose was to frustrate any attempt by the police to learn the true purpose of the phone call. We have not reached our conclusion about this without

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<sup>115</sup> 14908.

<sup>116</sup> 17365.

<sup>117</sup> Day 14 (page 3).

<sup>118</sup> Day 14 (page 71).

<sup>119</sup> Day 47 (page 7).

<sup>120</sup> 04360.

<sup>121</sup> 34603.

<sup>122</sup> 09200.

considering also what Mr Kenneth Harvey told DI Irwin, namely that he had received a telephone call from Michael McKee enquiring about Tracey Clarke. We conclude, however, that what Mr Kenneth Harvey told DI Irwin was untrue.

- 7.160 We have plainly not accepted Andrea McKee's evidence without anxious thought. In relation to her plea of guilty we have in mind the submission that Andrea McKee had her own devious motive for pleading guilty and knew she was not putting herself at any risk of being sent to prison as there was simply no realistic chance that this would ever happen. We do not accept it. Having sentenced her husband to a term of immediate imprisonment, the judge said to Andrea McKee<sup>123</sup>: **'So far as you are concerned, Andrea Louise McKee, I would have imposed on you a similar sentence but for the fact that it is quite clear that you, by coming clean and telling the police when they went to Wales what had happened, were instrumental in having these charges brought.'** Further, we note the comment in the pre-sentencing report<sup>124</sup> to the effect that Andrea McKee was in no doubt that she was in jeopardy of being sent straight to prison. We bear in mind those matters and also the advice Andrea McKee received from her solicitor before she made any admission of guilt that she was at risk of losing her liberty because of what she had done. We are satisfied that her plea of guilty was an honest plea.
- 7.161 We have, as we indicated, also had careful regard to the fact that the ODPP believed Andrea McKee to be so tainted by a lie that it could not call her to give evidence. However, we note that it was clear to the police officers who had any dealings with Andrea McKee that she was anxious to give evidence, and they regarded her as being truthful in what she had said about the conspiracy from the time she was seen in Wrexham on 20 June 2000. DCI K<sup>125</sup> told us that he still had that view. On close analysis of their evidence, we also do not think that Ivor Morrison, Miss Smith or Mr Simpson believed her to be lying about the issue.
- 7.162 We therefore find as a fact that there was an agreement to lie to the police about the telephone call of 27 April 1997 to which Andrea McKee and her husband were parties, as were the Atkinsons. The agreement was reached in September or October 1997 when Res Con Atkinson remained a Reserve Constable. Accordingly we conclude that Res Con Atkinson's role in the cover-up was a wrongful act. We are satisfied that it obstructed the murder investigation because if a true account had been given of the call it would plainly have furthered the investigation. Res Con Atkinson's wrongful act was obviously deliberate. We will now deal with that telephone call. We will consider later what effect the cover-up may have had on the murder investigation.

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<sup>123</sup> 20098.

<sup>124</sup> 21851.

<sup>125</sup> Day 59 (page 73).

**The tip-off**

- 7.163 The fact that we have found Andrea McKee to be telling the truth about the cover-up does not necessarily mean that her account of what Tracey Clarke told her of the tip-off was true, nor that whatever Tracey Clarke told her was itself true. We must assess this very serious allegation carefully.
- 7.164 The phone call, as established by the telephone records, was made shortly after Res Con Atkinson had returned to his home from the police station. There is no evidence to suggest that Eleanor Atkinson made it or that she played any part in procuring the compliance of Michael and Andrea McKee, so we are faced with the fact that Res Con Atkinson made a call that he felt the need to cover up.
- 7.165 Res Con Atkinson had seen Allister Hanvey at the scene of the public disorder and had thought it desirable to warn Sgt P89 to be on his guard against him, but he did not name him in his statement. He still did not name him when Detective Sergeant Derek Bradley (DS Bradley), investigating the attack on Robert Hamill, expressed surprise that as a local officer Res Con Atkinson was unable to name anyone whom he had seen at the incident. Although he did then name two other people about whose behaviour on the night in question no adverse comment has been made, he still did not name Allister Hanvey. We reject Res Con Atkinson's attempt to justify this failure by saying that he had named him to his sergeant. Res Con Atkinson knew full well that it was DS Bradley and not Sgt P89 who was investigating the disturbance and gathering the evidence. Those matters suggest that Res Con Atkinson may have had cause to warn the Hanveys that Allister could be in some trouble.
- 7.166 Having found that the McKees were not party to that call, we have to consider how Andrea McKee could have found out that one was made. Andrea McKee's account<sup>126</sup>, of course, is that Tracey Clarke told her. Tracey Clarke denies that<sup>127</sup>, but we cannot realistically envisage any other way in which Andrea McKee could have learned of it. If Tracey Clarke told her of the call and of its contents then we see no sensible alternative to a finding that she, Tracey Clarke, must have been given that information by Res Con Atkinson or by one of the Hanveys.
- 7.167 Did Tracey Clarke tell Andrea McKee about the contents? Tracey Clarke told us that she was being vindictive and made up lies about Allister Hanvey to hurt him. Even accepting that she was keen to get him into trouble by saying that he was involved in the attack, she could not tell us why in her police statement of 10 May 1997 she should also get Res Con Atkinson into trouble. She sought to blame Andrea McKee for some parts of that statement, but again we can find no reason why Andrea McKee should have invented the tip-off allegation. Furthermore, we

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<sup>126</sup> Day 14.

<sup>127</sup> Day 54.

were particularly struck by Tracey Clarke's evidence that, at the police station, Andrea McKee was urging her to tell the police what she had already told Andrea McKee. Tracey Clarke also asserted that she had been poorly treated by the police when giving her statement. We have of course seen DC McAteer and DCI P39 give evidence. We unhesitatingly reject Tracey Clarke's evidence about her treatment. We believe that she was treated sympathetically at the police station and that the officers continued to offer support to Tracey Clarke and her family after the statement was taken.

- 7.168 For completeness we should also say that, having considered the evidence about Timothy Jameson's police statement on 9 May 1997, we unhesitatingly reject his allegation that he was in some way coerced into making a false statement.
- 7.169 Tracey Clarke had two obvious opportunities to tell the authorities that the contents of her police statement were false, namely at the consultation in 1997 and in the telephone call with the Coroner in 1999. Not only did she fail to take that opportunity while refusing to give evidence at a trial, but at the consultation she volunteered an account consistent with the statement. Mr Kerr and Roger Davison, both experienced prosecutors, believed that she would be able to give compelling evidence. It follows that the account she gave them must have contained information that went far beyond what she had said in her questionnaire. We conclude that she believed the contents of her statement to be true. We accept that part of it which alleged that Allister Hanvey jumped on and kicked Robert Hamill was also true.
- 7.170 There is also evidence to support what Tracey Clarke's statement said of the tip-off. We mentioned above that there were two conflicting accounts of where Allister Hanvey spent the hours after the violence on 27 April 1997. The Hanvey family presented a united front to the effect that he was at his uncle's and was then picked up after 09:00 by his father. There is overwhelming evidence that their joint account was false. He was placed at Tracey McAlpine's house by a number of witnesses. We find that he withdrew cash in Portadown centre at 08:46. That account was then closed within days and Allister Hanvey was unable to explain why that was so. He lied to police on 10 May 1997 about only owning one jacket in early 1997. His parents were able to tell police on 11 May 1997 that a policeman would give evidence that he had actually helped the police on 27 April 1997. It follows that the Hanvey family felt the need to create a false alibi, that Allister Hanvey felt the need to close an account that could undermine the alibi, and to lie about his jacket. His parents told the police that a policeman would give evidence on his behalf which would have been untrue. Those matters point to the conclusion that in the telephone call on 27 April 1997 Res Con Atkinson conveyed a warning and also an offer of support.

- 7.171 We paid particular attention to the oral evidence given by the Atkinsons and the Hanveys and to their demeanour in the witness box when faced with the evidence of the tip-off. We found that they were lying to us, that the Reserve Constable saw enough of Allister Hanvey's behaviour on the night to prompt him to make the telephone call which was the subject of the cover-up, and that in it he conveyed a warning which led to the Hanveys taking steps to mislead the police about Allister Hanvey's clothing and behaviour on the night of 26 and 27 April 1997. It is obvious that if, instead of acting on what he had seen so as to protect Allister Hanvey, Res Con Atkinson had given a truthful account to the detectives, the murder investigation might well have been conducted differently.
- 7.172 It follows that Res Con Atkinson's telephone call was a wrongful act. We are clear that it obstructed the investigation of Robert Hamill's death. It was obviously deliberate.

### **The Director of Public Prosecutions**

- 7.173 As we have said, the police thought Andrea McKee was telling the truth about the cover-up. We have also found that she was. We now turn to consider whether the decision by the ODPP that she could not be advanced as a witness capable of belief in the prosecution of Res Con Atkinson was reached with due diligence.
- 7.174 Although we are conscious that this question has been a matter of some public concern, the PPS has asked us to say that we should not consider it because it is not within our Terms of Reference. Of course we accept that if it is not within the Terms of Reference we must not consider it. Conversely, if it is within them then we must do so. The reason we are urged to conclude that it is outside our Terms of Reference is that it is said that the decision to discontinue the prosecution did not shape the murder investigation. As we have recorded above, the PPS submits that a decision shaped the investigation only if the consequence of the opposite conclusion would have been that further steps would properly have been taken. That puts the test too high in our view. For us to reach conclusions about the consequences of a hypothetical decision necessarily means that we must gauge what we think may have happened had it been taken. This is not a question of the standard of proof or of mathematical calculation. The word 'would' connotes certainty.
- 7.175 The PSNI submitted that, had the prosecution continued and been successful then Res Con Atkinson could have co-operated with police by giving evidence against Allister Hanvey. The murder file is still open to this day, and so that co-operation would have shaped the investigation. The ODPP essentially asks us to say that this is speculation. Our conclusions on the issue are these. Firstly, having seen all the relevant witnesses give evidence we believe that the prosecution of Res Con Atkinson would probably have succeeded. Secondly, having seen DCI K

give evidence and having regard to the exemplary way in which he conducted the murder investigation, we have no doubt that he would have used every effort to take advantage of such a conviction to further it. We are clear that he would have taken steps to interview Res Con Atkinson, which would obviously have been steps in the investigation. Thirdly we have regard to Sir John Evans' experience in analogous situations in which a convicted former officer has gone on to co-operate in order to lessen the time in prison which he faced. Fourthly, we have regard to the association between the Atkinsons and the Hanveys. We heard argument about the motivation for giving the tip-off, but did not consider it necessary to reach a conclusion. What is clear, however, is that the families are not now close. We think that if Res Con Atkinson had been convicted of the very serious offence of conspiracy there is a real chance that he would have chosen a lesser sentence over loyalty to the Hanveys. Fifthly, we believe that he had useful information to give. We remind ourselves that he saw enough to warn his sergeant about Allister Hanvey, that he felt the need to omit any mention of him from his statement or his debriefing, and that he felt the need to give the tip-off. In all those circumstances we are confident that the decision to discontinue the prosecution denied the PSNI a real opportunity to further the murder investigation in such a way as to shape it.

7.176 It is useful to set out the test for prosecutors. Sir Alasdair told us<sup>128</sup> that in 2004 there was a Handbook for Prosecutors, and that in 2005 the Code for Prosecutors was published. He said that the test for prosecution is set out in both and has not changed at any material time. It is a two-fold test. There is the evidential test, posing the question: is there sufficient evidence to afford a reasonable prospect of obtaining a conviction? Then there is the public interest test: is prosecution required in the public interest? The evidential test is a constant: it asks whether there is sufficient evidence to provide a reasonable prospect of conviction. Sir Alasdair went on to say that the Code for Prosecutors now sets out factors in favour or against prosecution in detail.

7.177 We have looked at the Code, which is a public document. The element 'credible evidence' is described in this way **'This means evidence which is capable of belief. It may be necessary to consult with a witness before coming to a decision as to whether the evidence of that witness is credible. It may be that a witness is likely to be so discredited that no court could safely act on his or her evidence. In such a case it may be concluded that there is no reasonable prospect of obtaining a conviction. If, however, it is judged that a court in all the circumstances of the case could reasonably act on the evidence of a witness, notwithstanding any particular difficulties, then such evidence is credible and must be taken into account... Public**

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<sup>128</sup> 82032 (para 7).

**Prosecutors must therefore make an assessment of the quality of the evidence. Where there are substantial concerns as to the credibility of essential evidence, criminal proceedings may not be proper as the evidential test may not be capable of being met. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as cogent as it first appears. Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they must look closely at it when deciding if there is a reasonable prospect of conviction.'**

- 7.178 As we have said, Sir Alasdair reacted to the information that Andrea McKee was lying about Pendine by specifically asking to be advised whether the lies about it so damaged her credibility on the principal issue that there was no reasonable prospect of conviction. In the light of the test which he was bound to apply it seems to us that he asked the right question.
- 7.179 We accept that we are not to look at the merits of the answer which was reached. The only issue for us is whether due diligence was employed in reaching it. Due diligence plainly refers to the standard to be expected of a reasonable prosecutor in 2003 and 2004, and accordingly what we must consider is whether the process by which the decision to discontinue the prosecution was arrived at met that standard. In doing so we intend to consider the various stages of the process and then assess them in the round to see whether, in their totality, the standard was met.
- 7.180 In considering the issue we bring to bear our own experience of decision-making in general and the experience also of two of our number of dealing with criminal cases and we have had careful regard to the evidence and to the submissions which we have heard. We have of course had the considerable advantage of seeing the relevant witnesses give evidence and respond to searching questions.
- 7.181 As we have said, the evidence included advice from a leading English criminal practitioner, Mr Perry, commissioned by the Attorney General. We have read everything he wrote and also the notes of what he said in consultation, but he was addressing the merits of the decision and not the question which our Terms of Reference require us to consider about process.
- 7.182 Of course, the test for prosecution was considered to be met prior to 22 December 2003, and the ODPP was content to rely on Andrea McKee's evidence.
- 7.183 The illness of Andrea McKee's son and the Pendine issue were therefore thought sufficiently important as to call for the test for prosecution to be revisited. Sir Alasdair said in his statement to the Inquiry<sup>129</sup>

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<sup>129</sup> 82032 (para 47).

**‘...I did not regard the events at Pendine Park as being merely peripheral. In my estimation these events had moved to the centre of the issue of credibility.’**

In those circumstances it was important for a prosecutor to take care to inform himself about the context of what Andrea McKee said about her dealings with that clinic.

- 7.184 On 9 January 2004 Andrea McKee gave a full account<sup>130</sup> to Ivor Morrison and Miss Smith of the history and what she had been told and believed about the seriousness of her son’s illness. In order to assess the significance of the evidence about Pendine in the light of that account we would have expected the ODPP to find out more about the little boy’s health, but Ivor Morrison considered that the brief information supplied rather reluctantly by the GP sufficed<sup>131</sup>. We do not think he was entitled to hold that view. If a full medical report had been commissioned on the boy’s condition and the history of his treatment we are satisfied that a comprehensive picture would have emerged which would have been of relevance and assistance to the assessment of the significance to be attached to Andrea McKee’s lies about Pendine. The ODPP knew that the GP’s record-keeping was suspect. The information did not bear out what Andrea McKee had said about the duration and severity of her son’s illness. As a result of that failure to get better information neither the full picture nor the medical consultation in November 2003 was taken into account. The information obtained did not support what had been relayed to the Resident Magistrate about those matters. If Andrea McKee’s account of 9 January 2004 had been borne out and the full medical position been known then the lies about Pendine may have been seen to be less significant in relation to her credibility as a witness.
- 7.185 Had Ivor Morrison taken steps to provide himself with the full medical position, enabling him to check Andrea McKee’s account, we believe that the ODPP would have known that in fact her son had not been at all well for some time and his health was up and down. It is also relevant that Andrea McKee had herself been ill for some weeks. It would have been easy for the ODPP to understand how a mother might be concerned about recurrent earache and the fear of mumps which the doctors reported, and how she might put the worst construction on it both when thinking about it herself and when speaking to others. The ODPP may also have been satisfied that what Miss Smith had told the Resident Magistrate was at least what Andrea McKee believed, and perhaps also was what the GP had told her. Instead the ODPP thereafter considered the lies about Pendine out of their proper context of illness and concern. Further, no real regard was had to

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<sup>130</sup> 33991.

<sup>131</sup> Day 65 (page 38).

the fact that the visit to Pendine arose only from a concern with checking whether it was permissible to give the boy Calpol as well as the antibiotics he had been prescribed.

7.186 We turn now to the evidence of Miss Smith. As we have said, she was critical about Andrea McKee's attitude towards moving house and thought she was being choosy about where she was prepared to move to. She said her impression was that Andrea McKee would have been quite happy not to have to give evidence. We regard this, and being choosy about where she was prepared to move to, as very doubtful indications of a lack of credibility. Andrea McKee did not have to give evidence. She had nothing to gain by giving evidence and the officers dealing with her accept that she was acting out of a desire to help the police. We ask rhetorically, why should she be expected to move to **'live in a dump'**, as she told Miss Smith?

7.187 We have had the opportunity to assess Miss Smith's attitude towards Andrea McKee in her oral evidence and compare it with the letter she wrote to Ivor Morrison and her statement to the Inquiry. Her judgment of Andrea McKee seems to have become significantly more critical over time, without any real justification. In giving evidence to us she was antagonistic to Andrea McKee, but we do not know when that antagonism first manifested itself. Having heard evidence from the officers who dealt with the threatening letter and witness protection we are clear that Andrea McKee was not setting impossible or unworkable conditions for giving evidence and Miss Smith's view that she had been was not justified.

7.188 As we have recorded above, both Miss Smith and Mr Simpson had considered the effect of the Pendine lie in consultation before Mr Simpson saw Andrea McKee at the DPP's request. We repeat that Miss Smith said to us that

**'As a result of those consultations it became clear that Andrea McKee could not be put forward by the Prosecution as a witness of truth'**

and that Pendine was

**'a wholly peripheral issue and not directly relevant to the evidence in the prosecution of the Atkinsons. However, having determined that she had lied on a peripheral issue, her entire credibility was in question and she could not be put forward as a witness of truth.'**

7.189 We acknowledge that there has been a long-standing practice in Northern Ireland by which counsel for the prosecution may see a prosecution witness in consultation to assess them. It seems to us, however, that if Andrea McKee was to be seen for that purpose care should have been taken to ensure that the lawyer chosen should be in a position to approach the assessment with an open mind. We accept that it would not be appropriate to criticise someone who had

formed what was only a provisional view and who saw the witness to reach a final conclusion. However, from the way in which Miss Smith describes them it would be difficult to see anything tentative about the conclusions reached at the end of the consultation on 25 February<sup>132</sup> by, among others, Mr Simpson.

- 7.190 We have two notes of the consultation which Mr Simpson then had with Andrea McKee on 2 March 2004<sup>133</sup>. One runs to three pages. The final four paragraphs on the last page record a discussion of Andrea McKee's safety. The remainder were devoted to the Pendine issue. The other note<sup>134</sup> shows that questions about Andrea McKee's safety were interleaved with questions about Pendine. Neither note shows any question raised about what Andrea McKee said about the cover-up.
- 7.191 An impression all three of us had formed independently of one another before we discussed our views of Mr Simpson's evidence about the consultation was that he had taken personal offence about Andrea McKee lying to him so persistently. We cannot help but think that this reaction trespassed somewhat upon his objectivity.
- 7.192 Mr Simpson's Opinion<sup>135</sup>, delivered on 16 March 2004, recorded some history. It said that during the month of December Andrea McKee had some problems with her son, and he was seen by the GP twice. As we have said, Mr Simpson had not been told the boy had been ill in November, and had been seen then. Mr Simpson made no mention of what Andrea McKee said the GP had told her of the diagnosis, and of course he did not know the degree of the boy's illness nor what a mother may reasonably have thought of it. He was not in a position to analyse the Pendine lie in its true context.
- 7.193 Mr Simpson wrote that

**'It transpires that she had to attend, on the Tuesday, a previously arranged medical appointment relating to a job for which she was applying. She did not inform police of this at any time.'**

He told us that he included this passage merely as part of the narrative. However it plainly reads as criticism, and conveys the impression that Andrea McKee had as the ulterior motive for not attending on 22 December the undisclosed fact that she had an appointment in North Wales on the following day. That was echoed by Miss Smith, who plainly believed Andrea McKee had that motive. That was wrong and unfair. Andrea McKee had made it plain that she was only to be in Northern Ireland for a day, and we have had evidence of the travel arrangements made by the police to get Andrea McKee back to North Wales on 22 December.

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<sup>132</sup> 33909 (para 30).

<sup>133</sup> 33965.

<sup>134</sup> 59856–59940.

<sup>135</sup> 33915.

- 7.194 The following nine paragraphs of Mr Simpson's Opinion were concerned with Pendine. Mr Simpson then noted that the issue of the threatening letter was unresolved and was not taken into account. In paragraph 17 he said that Andrea McKee was the principal witness and was to be treated as an accomplice. Accordingly, he said, her credibility was of central importance. He went on, in paragraph 18, to say that the prosecution would be called upon to explain the adjournment, and could not advance the version of events given by Andrea McKee. He concluded that the overall effect of the maintenance of her story was to contaminate any evidence that Andrea McKee may give.
- 7.195 We think that the question of whether Andrea McKee needed to be treated as an accomplice was dealt with too simplistically by those who advised the DPP. Andrea McKee lied in the statement she made in October 1997 so as to provide, according to her evidence, an innocent explanation for the telephone call. A jury would have been directed by the judge about the caution needed in assessing the evidence of an accomplice but such a direction should have been one which was appropriate to the circumstances of Andrea McKee's involvement in the conspiracy. A one-size-fits-all approach would have failed to fulfil its purpose since accomplices can be met in different circumstances and what may be an appropriate direction for one set of circumstances may not be appropriate for another. An accomplice may be giving evidence in a case in which it is accepted there has been a conspiracy to which he or she was a party, the question being whether the particular person against whom the accomplice is giving evidence, the defendant, was in fact a party to the conspiracy. While the jury may have no difficulty in accepting the accomplice's evidence that he or she was a party to the conspiracy their focus will be upon whether the accomplice has been truthful about whether the defendant was a party to it.
- 7.196 But there are also cases in which, it being clear there has been a conspiracy, the focus will be on whether the evidence shows that the nature and purpose of the conspiracy is such as to show that there could only have been a conspiracy if the defendant was a party to it. If an accomplice has pleaded guilty the jury will have to decide what weight to give to the plea of guilty. The weight may be different, as between the different circumstances set out in the previous paragraph. In the present case, set out earlier, we believe that the conspiracy to which Andrea McKee pleaded guilty was akin to the second example we have given. The statement which Andrea McKee made in October 1997 and her proposed evidence in the prosecution could both be true. A jury would have been directed to consider whether they were satisfied that the statement made in 1997 was false and, if so, whether that means she told the truth to them. We have already set out our own conclusion and the reasons for it.

- 7.197 One factor which was not considered by those advising the DPP and which we have found illuminating is to consider why Andrea McKee lied as she did about Pendine and whether she faced an analogous situation in giving her evidence to us about the conspiracy. The reason why Andrea McKee became embroiled in a series of lies about Pendine, which changed as she ran from one difficulty into another, was that she had told an initial lie about Pendine and was then driven, if she was to avoid admitting to that lie, into more lies. She accepted when she gave evidence that the statement she made at Res Con Atkinson's behest was false<sup>136</sup>. She did not retreat from this and assert the truth about the earlier statement and we take the view that she would adopt the same stance if she were to give evidence in court about it. We regard as remote in the extreme any possibility (and it has not been suggested) that she would ever assert the truth of that statement. There is therefore no analogy to be drawn between the difficulty in which Andrea McKee found herself because of her lie about Pendine and the situation she faced before us and would face if she were to be giving evidence in a court about the conspiracy.
- 7.198 We are struck by Mr Simpson's failure to revisit the admissible evidence. In particular there was no reference to the plea of guilty entered by Michael McKee. By section 71 of the Police and Criminal Evidence (Northern Ireland) Order 1989, that was admissible and was corroborative of Andrea McKee's evidence. Another matter to which we attach great importance and to which we have referred already is the evidence about the telephone call to the office of Call-A-Cab and the evidence of Mr and Mrs Smyth. The prosecution file which contains this evidence was sent to the ODPP. That too was corroborative of Andrea McKee's evidence in the conspiracy.
- 7.199 The tone and content of the Opinion, taken together with the impression Mr Simpson gave in the witness box, leads us to the view that he did not squarely address the question of whether a jury could properly believe Andrea McKee's evidence about the cover-up.
- 7.200 Ivor Morrison was responsible for the file and for providing the DPP with the information and advice on the basis of which he was to decide whether to discontinue the prosecution. He instructed, and was at the consultations with, counsel. He received Mr Simpson's Opinion. He maintained a summary of events. He provided Sir Alasdair with his view by a minute dated 16 March 2004. In that minute he noted that the advice of Mr Simpson was consistent with earlier advice given by Miss Smith and his own views.

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<sup>136</sup> Day 14 (page 89).

7.201 As we have said, Ivor Morrison was troubled by the problem of how the false account of Pendine would be dealt with in the Magistrates' court. The last entry in his summary<sup>137</sup>, dated 18 March 2004, contained the passage

**'in the absence of satisfactory evidence supporting the nature and seriousness of Andrea's son's illness, it is probable that [the Resident Magistrate] would be unwilling to allow the proceedings to proceed further'**

7.202 That was an error. There could be no question of the Resident Magistrate simply refusing to hear the case at all. He had no power to do this.

7.203 In any event, given that Ivor Morrison was so troubled by the truth or otherwise of what the Resident Magistrate had been told on 22 December 2003, it is all the more striking that he did not take the trouble to get a proper history and perhaps opinion from the GP to deal with the problem. Reading Ivor Morrison's summary in relation to what happened at the Magistrates' Court on 27 February 2004, and the final paragraph of that summary, it is evident that Ivor Morrison did not believe what Andrea McKee had told him on 9 January 2004 about the degree of the illness. He appears to have accepted that the Resident Magistrate had been misled without taking adequate steps to discover the degree of the son's illness.

7.204 As we have also said, Ivor Morrison did consider the question of whether in the light of Andrea McKee's lies about Pendine the test for prosecution could be met. When he gave evidence to us<sup>138</sup> he was asked **'Did you believe, as of 18 March 2004, that a jury would probably find that she and her husband had falsely pleaded guilty?'** He said **'No'**. We find it very difficult to reconcile Ivor Morrison's evidence with a proper regard to the test for prosecution. Moreover, he did not tell Sir Alasdair of his belief. That is material as we find that the DPP addressed himself to the right question and was plainly reliant on Ivor Morrison to provide him with the relevant information.

7.205 Ivor Morrison's summary, his minute of 16 March 2004 and Mr Simpson's Opinion were forwarded by Sir Alasdair to Kevin McGinty at the Attorney General's office on 18 March 2004<sup>139</sup>. The covering letter noted that the DPP had had regard to the Opinion and the facts and matters available. Sir Alasdair said that he was minded to offer no evidence the next day. The letter asked for a discussion.

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<sup>137</sup> 33909.

<sup>138</sup> Day 65.

<sup>139</sup> Day 66 & 33908.

7.206 As we have said, that conversation took place that same day at 17:50. As we have also said, it is plain that Sir Alasdair believed, and fostered a belief in Kevin McGinty, that Andrea McKee's evidence about the cover-up was uncorroborated.

7.207 As we have also said, in his minute to the Attorney General Kevin McGinty mentioned the accomplice issue and continued

**'There is no other corroboration. This puts her in a rather different position from the usual run of witnesses.'**

The Attorney General repeated the substance of that in a letter to the Chief of Staff to the Prime Minister, Mr Jonathan Powell, the same day. The letter explained that he was content to leave the matter to the DPP, who had

**'given this matter the most careful consideration having consulted fully with Senior Prosecuting Counsel.'**

7.208 As we have indicated, there was significant corroboration. Regrettably we must therefore conclude that the Attorney General was not accurately briefed in an important respect. Accordingly that that part of the process by which the Attorney General decided not to take the decision himself was flawed. We have considered carefully whether there is any evidence that Sir Alasdair was made aware of corroboration of Andrea McKee's evidence, but have concluded that there is none. He clearly believed the inaccurate information which, via Kevin McGinty, he gave the Attorney General. Indeed he repeated in his statement to us his belief that he was satisfied that

**'a judge would inevitably have exercised his discretion to warn the jury to exercise caution before acting on the evidence of Andrea McKee without supporting evidence.'**

It follows that the DPP was misled about the absence of corroboration.

7.209 Given that the question of the accomplice warning and the alleged lack of corroboration feature in the minute of the discussion between Sir Alasdair and Kevin McGinty, in Kevin McGinty's minute to the Attorney General, in the Attorney General's letter to the Prime Minister's office, and in Sir Alasdair's statement to us, it is plain that those concerned at the highest level with the decision were influenced by it. That is unsurprising. If a reasonable prosecutor were considering whether a witness's lie about something other than the core evidence was destructive of her credibility it is obvious that he or she should consider whether there is any other evidence which could support the core evidence.

- 7.210 Sir Alasdair then took his decision to discontinue the prosecution. As we have indicated, he told us that the decision he had to make had been finely balanced and that he took responsibility for it. He agreed that his is a vicarious responsibility. It is right to make it clear that as DPP it was not possible for him to examine the nuts and bolts of all the decisions made in his department for which he shouldered responsibility. He was entitled, as DPP, to assume that advice he was given was based upon all relevant matters and that all relevant matters were being drawn to his attention.
- 7.211 Having regard to the overall effect of all of the failings we have identified above and to our own experience of the criminal justice system we have come to the firm view that the process by which the decision was reached to discontinue the prosecution of Res Con Atkinson was riddled with significant flaws. We have reached the clear view that it was not carried out with due diligence.
- 7.212 We delivered an Interim Report to the Secretary of State for Northern Ireland, the Rt Hon Shaun Woodward MP, on 29 January 2010. It was accompanied by a recommendation that the PPS should review its decision not to prosecute Res Con Atkinson. On 21 December 2010 the PPS informed us that it had conducted that review and have reverted to its original decision to prosecute two people for conspiracy to pervert the course of justice and one person for perverting the course of justice<sup>140</sup>.

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<sup>140</sup> As noted in the Preface and in the footnote to paragraph 7.1, those proceedings concluded on 14 June 2024, when Reserve Constable Atkinson was sentenced to 12 months' imprisonment for conspiracy to do an act with intent to pervert the course of public justice.



# *Chapter Eight*

## **Investigations from 8 May 1997 to 13 December 2000**

8.1 In this chapter we begin by setting out the principal events from May to December 1997 in the course of which we also include some conclusions. We then turn to an analysis of a number of aspects of the investigation during that period. Following that we resume the chronology and deal with the period January 1998 to December 2000, when Detective Chief Superintendent Maynard McBurney (DCS McBurney) ceased to be the senior investigating officer (SIO) of the murder investigation. Finally we consider the conduct of the investigation during that period.

### **The principal events from May to December 1997**

8.2 On 6 May 1997 Miss Rosemary Nelson made a complaint to the Royal Ulster Constabulary (RUC) on behalf of Miss Diane Hamill, to the effect that police officers witnessed the assault on her brother, Mr Robert Hamill, but did not intervene promptly. The complaint appears to have been received by the Complaints and Discipline Branch (C&D) of the RUC on 7 May<sup>1</sup> and was then referred to the Independent Commission for Police Complaints (ICPC)<sup>2</sup>. That organisation could supervise investigations being conducted by the RUC in one of only two ways. The first is if the investigation arose from a complaint by a member of the public which was referred to the ICPC by the Chief Constable. The second is if the Chief Constable referred a matter to the ICPC which had not arisen from a complaint by a member of the public. The first of those powers of the ICPC flowed from Article 7 of the Police (Northern Ireland) Order 1987<sup>3</sup> and the second arose from Article 8.

8.3 There is some evidence that the then Chief Constable of the RUC, Sir Ronnie Flanagan, had referred the same matter to the ICPC under Article 8 prior to the receipt by C&D of Rosemary Nelson's complaint<sup>4</sup>. However, the ICPC opted to

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<sup>1</sup> 15272.

<sup>2</sup> 15273.

<sup>3</sup> 73303.

<sup>4</sup> 44407 & 15273.

supervise the investigation of the complaint made by Rosemary Nelson under Article 7<sup>5</sup>. Further, the RUC investigation which was subsequently conducted was expressly based on Rosemary Nelson's complaint<sup>6</sup>.

- 8.4 On 7 May 1997 Mr Allister Harvey was interviewed as a witness<sup>7</sup>. He said that he had been in town in the early hours of 27 April and had seen fighting. He said that he helped a policeman move people back. He did not name that officer, but he gave a description which broadly fitted Reserve Constable Robert Atkinson (Res Con Atkinson). Allister Harvey claimed that he had been wearing a black CAT jacket.
- 8.5 On 8 May 1997, subsequent to Robert Hamill's death, the investigation of an offence of causing grievous bodily harm became a murder investigation<sup>8</sup>. DCS McBurney was appointed SIO, Detective Chief Inspector P39 (DCI P39) was appointed as Deputy SIO and Detective Inspector Michael Irwin (DI Irwin) was named as the office manager<sup>9</sup>.
- 8.6 On that day Mr Colin Prunty made a statement to the police<sup>10</sup> describing a man wearing a Rangers Football Club scarf as having kicked Robert Hamill and as having then been detained in the RUC Land Rover. This repeated what he had said in his questionnaire of 3 May<sup>11</sup>. He also said he had confronted a policewoman about releasing the man from the Land Rover. That officer transpired to be Police Constable A (PC A), who subsequently accepted<sup>12</sup> that she had detained and then released a man in a Rangers scarf, whom she had identified as Mr Wayne Lunt.
- 8.7 On 9 May 1997 DCS McBurney was appointed SIO of the investigation of Rosemary Nelson's complaint. His Assistant Investigating Officers were Superintendent Robert Anderson (Supt Anderson) and Chief Inspector Richard Samuel Bradley (CI Bradley) of C&D. The instrument appointing him directed him to prepare reports for the Director of Public Prosecutions (DPP), for the ICPC and for C&D by 27 August 1997<sup>13</sup>.
- 8.8 A policy book (a record book kept on the instructions of the SIO which records all major decisions and events) was opened on 9 May 1997 and was maintained by DCI P39<sup>14</sup>. It fell into disuse at the end of May 1997 when DCI P39 left the investigation. DCS McBurney did not keep a policy book and it was only when

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<sup>5</sup> 15265.

<sup>6</sup> 00913 (00916).

<sup>7</sup> 09190.

<sup>8</sup> 00913 (00914).

<sup>9</sup> 00913 (00915).

<sup>10</sup> 09101.

<sup>11</sup> 08135.

<sup>12</sup> 09238.

<sup>13</sup> 08089.

<sup>14</sup> 00913.

Detective Chief Inspector K (DCI K) joined the investigation in June 2000 that another policy book was begun. We will deal with this in detail later. Also on 9 May 1997 the murder investigation was transferred onto the Home Office Large Major Enquiry System (HOLMES) computer system<sup>15</sup>. That entailed the use of a computer situated at Gough Barracks<sup>16</sup> in Armagh, although the investigating officers, and the paperwork, were at Portadown RUC station, about 10 miles away.

- 8.9 Reserve Constable G (Res Con G) and Reserve Constable David McCaw (Res Con McCaw) visited Portadown RUC station on 9 May 1997 to pass on information they had obtained about Mr Timothy Jameson<sup>17</sup>. As will be seen in the paragraphs which follow what was said and to whom is in dispute. However, the outcome of it is clear. Timothy Jameson was interviewed later that day by Detective Constable Edward Honeyford (DC Honeyford) as a witness and he made a statement<sup>18</sup>. In it he named a number of people involved in fighting at the time Robert Hamill was injured. In particular he said that he saw Allister Hanvey kick and punch Robert Hamill while on the ground, and saw **'Fonzy'** kick the man lying on the ground. Timothy Jameson made the statement as 'Witness B'.
- 8.10 The disputes about what was said between Timothy Jameson and Res Cons G and McCaw, and between Res Con G and DCS McBurney, are important and we proceed next to give our conclusions about them.
- 8.11 Res Con McCaw has suffered from serious mental health problems since 1997, and was not in a position to assist DCI K in 2000<sup>19</sup> or to give evidence to us about what he was told by Timothy Jameson or what he subsequently told detectives. We are therefore entirely reliant on Res Con G for an account of both those matters.
- 8.12 On 29 November 2000 Res Con G spoke to Detective Sergeant H (DS H). The Sergeant made a note<sup>20</sup> to the effect that Res Con G told him that Timothy Jameson had said to Res Con G and Res Con McCaw that he had heard and seen the fight and that the two Res Cons had reported that to DI Irwin. On 7 December 2000 Res Con G told DS H<sup>21</sup> that he and Res Con McCaw had heard Timothy Jameson say that he had **'put the boot in'**. On 23 March 2001 Res Con G<sup>22</sup> said that he was **'almost 100% sure'** that Res Con McCaw had told DI Irwin and DCS McBurney about Timothy Jameson putting the boot in. Res Con G said at

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<sup>15</sup> 00913 (00914).

<sup>16</sup> 81418 (81422).

<sup>17</sup> 81638 (81642).

<sup>18</sup> 00266.

<sup>19</sup> 15949.

<sup>20</sup> 15944.

<sup>21</sup> 57519.

<sup>22</sup> 14351.

that stage that he could not understand why he and Res Con McCaw did not make entries in their notebooks. He could not recall whether DCS McBurney told them not to.

- 8.13 In his evidence to us Res Con G<sup>23</sup> was clear that on 9 May 1997 Timothy Jameson told him and Res Con McCaw that he had put the boot into one of the men on the ground on 27 April. He told us when giving evidence that on the 9 May 1997, arising out of what Timothy Jameson had said, he and Res Con McCaw went to the police station. Whilst there Res Con McCaw spoke to DI Irwin and DCS McBurney, but Res Con G could not remember what he said. Res Con G told us that he said that he had asked DCS McBurney if they should make notebook entries and was told **'Don't bother boys, we'll deal with it.'** He also said that DS H's note of 29 November 2000 was incorrect as Res Con G had told DS H that Timothy Jameson had put the boot in.
- 8.14 Res Con McCaw could not remember anything about Timothy Jameson because by the time he was interviewed, on 8 December 2000, his memory had been affected by the medical treatment he had received.
- 8.15 DCI P39 said in an interview in 2001<sup>24</sup> that she was in the office with DCS McBurney when Res Con McCaw came into the office to talk about Timothy Jameson. Res Con McCaw was introduced by DI Irwin, who then left. Res Con McCaw said that Timothy Jameson had been in town and had heard what happened. DCS McBurney decided to get DC Honeyford to speak to Timothy Jameson. DI Irwin said that he took Res Con McCaw to the door and then left to go to meet someone. He was briefed later about Timothy Jameson witnessing the incident.
- 8.16 DCS McBurney<sup>25</sup>, DCI P39<sup>26</sup> and DI Irwin<sup>27</sup> denied being told about Timothy Jameson's admission.
- 8.17 DC Honeyford told us in evidence<sup>28</sup> that he remembered talking to DCS McBurney and DCI P39 but DI Irwin was not present. He said he was briefed to re-interview Timothy Jameson and assess him as a witness and consider the possibility that he was involved in the attack. He told us there was no suggestion that Timothy Jameson had acted criminally. DC Honeyford's evidence was that he did not know of the **'putting the boot in'** allegation at the time.

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<sup>23</sup> Day 45 & 81638 (para 17).

<sup>24</sup> 14622 (14625).

<sup>25</sup> DCS McBurney interview of 4/5/06 (page 216).

<sup>26</sup> Day 43 (page 95).

<sup>27</sup> Day 60 (page 157).

<sup>28</sup> Day 11 (page 8).

- 8.18 The Police Ombudsman for Northern Ireland (PONI) conducted an investigation into the handling of Timothy Jameson as a witness and nothing was uncovered to suggest that Timothy Jameson received any form of protection or favour<sup>29</sup>. Mr Chris Mahaffey of the PONI told us<sup>30</sup> that DCS McBurney, DI Irwin and DC Honeyford had raised a valid point by querying what was to be gained by not treating him as a suspect. Detective Chief Superintendent Colville Stewart (DCS Stewart) also told us<sup>31</sup> that there was nothing to support Res Con G's account.
- 8.19 We do not believe that Res Con G lied to us when he gave evidence before the Inquiry. We consider it likely that Timothy Jameson did make an admission that in going past one of the men on the ground he put the boot in. The difficult issue has been to decide whether this information was passed on to DCS McBurney. According to Res Con G it was Res Con McCaw who spoke to DCS McBurney in the presence of DI Irwin, but not DCI P39, in DCI P39's office<sup>32</sup>. He is not supported in this by DI Irwin, who says<sup>33</sup> that he merely took Res Con McCaw to see DCS McBurney and did not remain to hear what was said. DCS McBurney denies having received any information that Timothy Jameson had confessed to putting the boot in anyone. DCI P39 said<sup>34</sup> she was at the police station but was never given this information. We bear in mind also that Res Con G said, when he was interviewed by DS H in December 2000, that it was Res Con McCaw who had spoken to DI Irwin and DCS McBurney but that he could not remember what Res Con McCaw had said. The allegation by Res Con G against DCS McBurney and DI Irwin is a grave one, in that it accuses them of suppressing evidence of an admission of guilt, and calls for weighty evidence in order for it to be proved.
- 8.20 We conclude that Res Con McCaw did see DCS McBurney, but that Res Con G did not overhear what he said, and so there is no basis for concluding that DCS McBurney was told of an admission of guilt which he then consciously suppressed. As a result of speaking to Res Con McCaw DCS McBurney gave an instruction to DC Honeyford to re-interview Timothy Jameson and consider the possibility that he was involved in the attack. DC Honeyford was never told that Timothy Jameson had made an admission.
- 8.21 There was a further breakthrough in the investigation on 9 May 1997 when, as a consequence of information provided by Res Con McCaw to the police about what he had heard at the Tae Kwon Do Club<sup>35</sup> in Portadown, Miss Tracey Clarke was brought into Portadown RUC station by her aunt, Mrs Andrea McKee. Tracey

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<sup>29</sup> 81909 (para 29).

<sup>30</sup> 81909 (para 30).

<sup>31</sup> 81895 (para 29).

<sup>32</sup> Day 45 (page 9).

<sup>33</sup> Day 60 & 81418 (81457).

<sup>34</sup> Day 43 (page 94).

<sup>35</sup> 80776 (para 19).

Clarke was interviewed by Detective Constable John McAteer (DC McAteer) in the presence of DCI P39. She made a statement as 'Witness A'<sup>36</sup> in the early hours of Saturday 10 May 1997. In it she named Dean Forbes, Allister Hanvey, Stacey Bridgett, 'Muck' and Rory Robinson as having jumped on and kicked Robert Hamill. She also attributed to Allister Hanvey a remark about Robert Hamill: **'He doesn't have a fractured skull any more'**. DC McAteer failed to obtain from Tracey Clarke any description of the clothing worn by Allister Hanvey on the night in question. We believe that, having regard to conclusions which we reached in Chapter Seven about Tracey Clarke that, had he pressed her on this, she is likely to have said that Allister Hanvey had been wearing a silver jacket with orange stripes on the sleeves.

- 8.22 We regard DC McAteer's failure as a wrongful omission both because the identification of the clothing of a murder suspect was important for the purposes of building a case and particularly because there was an allegation that there was something significant about Allister Hanvey's clothing which led to the tip-off to destroy it. We are clear that this wrongful omission obstructed the investigation. Had the detectives been armed with a description of the silver jacket by 10 May 1997 it is unlikely that Allister Hanvey would have been able to lie about owning only a black jacket without challenge and it is probable that interviews of partygoers and other witnesses would have been conducted more effectively. We conclude that DC McAteer's wrongful omission was a negligent one.
- 8.23 Tracey Clarke's statement also made the allegation that Allister Hanvey had told her that Res Con Atkinson had telephoned him and advised him to get rid of the clothing he had been wearing.
- 8.24 An application for Res Con Atkinson's telephone records was prepared and DCS McBurney gave approval for it to be made on 9 May 1997<sup>37</sup>, prior to Tracey Clarke signing her statement.
- 8.25 DCS McBurney and the other detectives believed the contents of Timothy Jameson's and Tracey Clarke's statements to be true<sup>38</sup>. They acted swiftly and on the morning of 10 May 1997 Allister Hanvey, Dean Forbes, Stacey Bridgett, and Marc Hobson (whom they believed to be 'Muck') were arrested. Wayne Lunt was also arrested. Rory Robinson was located and arrested later in the day. Searches were conducted at the premises of Allister Hanvey, Marc Hobson, Wayne Lunt and Rory Robinson. The homes of Dean Forbes and Stacey Bridgett had been searched on 6 May when they were first arrested in connection with the disturbance and released on bail<sup>39</sup>.

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<sup>36</sup> 00262.

<sup>37</sup> 24695 (24696).

<sup>38</sup> 06080 (06134).

<sup>39</sup> 81418 (81451).

- 8.26 A briefing was given by DI Irwin to all those uniformed officers who were to conduct searches on 10 May 1997<sup>40</sup>. We have no criticism of the searches of the homes of suspects other than that of Allister Hanvey. Those other searches were not all confined to one room. The position is different, however, when it comes to the search of Allister Hanvey's home. The searchers were accompanied by DC McAteer<sup>41</sup>, who had interviewed Tracey Clarke and Andrea McKee. He was therefore well aware of the tip-off allegation and of the prospect that Allister Hanvey may have destroyed his clothes. Detectives also had seen the statement of Reserve Constable Paul Warnock<sup>42</sup> (Res Con Warnock), which contradicted what Allister Hanvey had already said about wearing a black jacket, but we do not know whether that statement was in the briefing pack made available to searchers or whether DC McAteer or DI Irwin had seen it.
- 8.27 It is against that background that we must ask whether this search was conducted with appropriate thoroughness and if not why not. As we have said, it stopped short. Allister Hanvey lived at the house with his three brothers and his parents. He shared a bedroom with one brother<sup>43</sup>. Access to that bedroom, which we call 'bedroom three' here, could only be obtained via another bedroom<sup>44</sup>. Yet only the bedroom which Allister Hanvey claimed was his was searched. No check was made in the grounds or outhouses for any signs of destroyed clothing. Only one set of clothes was seized and they were clothes identified by Allister Hanvey as those he had been wearing on the night in question<sup>45</sup>.
- 8.28 Each of the officers concerned with the Hanvey search was asked to explain its limited nature. Nothing they said gave us any assistance. We bear in mind that the large number of officers constituting the search parties was assembled very hurriedly. We appreciate that DI Irwin, who briefed them, and DC McAteer were likely to have been very tired. We are also conscious that the transfer to the HOLMES system which began on 8 May meant that documents were in transit, so Res Con Warnock's statement and the record of Allister Hanvey's interview of 7 May might not have been available.
- 8.29 At the briefing the search team was not briefed about a possible burn site since the investigation team was not aware of any allegation that clothes were burnt. Our view is that advice to get rid of clothing should have suggested to DI Irwin that burning it was a possible response to this advice and that briefing for this search should have referred to the need to look for any burn site or other means of disposal.

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<sup>40</sup> 81418 (81452).

<sup>41</sup> Day 41 (pages 104–105).

<sup>42</sup> 09229.

<sup>43</sup> Day 28 (page 127).

<sup>44</sup> 73989 (74000).

<sup>45</sup> 81580 (para 15).

- 8.30 Sergeant Michael Bingham (Sgt Bingham) was in charge of this particular search<sup>46</sup>. Although DCS McBurney said the search team was briefed to look for clothing with specific colours, it does not appear that he was present at the briefing (and there was no reason why he should have been). His absence is borne out by the evidence of DI Irwin and Sgt Bingham. As we have said, only one room was searched in the house, which was bedroom three. Sgt Bingham told us they were not told to look for, and did not look for, signs of clothing which had been disposed of. If they had done this it would have been noted in the log. From memory, he said, they were very much guided by DC McAteer and he would have given the instruction for the search to cease. DC McAteer does not agree with this. He says he was there simply for the purpose of arresting Allister Hanvey at the conclusion of the search. According to DC McAteer, although he would have asked Tracey Clarke what clothing Allister Hanvey had been wearing, she did not volunteer information about it and gave no useful detail, so that there was nothing in her statement about it. If he had had a useful description of Allister Hanvey's clothing he would have told DI Irwin for the purpose of his briefing of the search teams. DC McAteer was not himself at the briefing. He said he would have expected there to be a full search of the house to look for anything which might connect Robert Hamill with Allister Hanvey.
- 8.31 We conclude that the briefing of the search team should have included an instruction to look for signs of clothing having been destroyed and for footwear which could have some forensic importance. We bear in mind as providing some mitigation for DI Irwin's failure to give that instruction the fact that he had been on duty until well after midnight and was on duty again by about 06:00 and, as we have said, is likely to have been very tired. Nor do we think the search itself was thorough enough. Sgt Bingham, as a sergeant and the officer in charge of the search, cannot shift his responsibility for this onto DC McAteer. Nonetheless, with DC McAteer's awareness of what Tracey Clarke said Allister Hanvey had told her, we believe he should have played a more proactive role in the search and should have suggested to Sgt Bingham the desirability of looking for signs of destroyed clothing. We say that in the light of his knowledge as the officer who took Tracey Clarke's statement.
- 8.32 On 13 May 1997 further searches were conducted of both Thomas Hanvey's<sup>47</sup> and Allister Hanvey's<sup>48</sup> homes. On this occasion the searchers were expressly briefed about a grey jacket, and they looked for burnt material<sup>49</sup>.

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<sup>46</sup> 81500 (para 11).

<sup>47</sup> 50121.

<sup>48</sup> 50023.

<sup>49</sup> 04562.

- 8.33 We cannot say that any other jacket belonging to Allister Harvey or evidence of the destruction of clothing would have been found if there had not been these failures. It has to be remembered that the tip-off had been given on the morning of 27 April. It would not have required any great astuteness for Allister Harvey to realise that however he disposed of any clothing his home might be searched and it would be important that nothing should be found. On the whole we think that as the evidence of the tip-off did not come to the notice of the detectives until nearly two weeks after the incident it was probably too late by then for a search to discover any incriminating evidence of the destruction of clothing. Allister Harvey had had ample time in which to dispose of any clothing which might have incriminated him and to do so in a manner which left no trace of it at his parents' home. Nonetheless, the omission to search Allister Harvey's home more carefully on 10 May 1997 was wrongful on the part of DC McAteer and Sgt Bingham. We conclude that it did not obstruct the murder investigation because we do not believe that it was likely to have had a better result had it been conducted more thoroughly. In those circumstances we are restricted to finding that the wrongful omission was a failure of due diligence on the part of DC McAteer and Sgt Bingham.
- 8.34 Interviews were conducted of all those who had been arrested<sup>50</sup>, and each was charged with Robert Hamill's murder<sup>51</sup>. In the course of his interview<sup>52</sup> Allister Harvey was asked whether he knew any Constable by name other than Reserve Constable Jim Murphy (Res Con Murphy), whom he had named in his statement, but he denied knowing anyone else. In the light of the undisputed fact that he coached Res Con Atkinson's daughter in Tae Kwon Do we regard this as a lie. He also said that he spent the period from the early hours of 27 April 1997 to about 09:00 that morning at his uncle Thomas Harvey's house. As we have said in relation to the tip-off, that was a false alibi. Allister Harvey also claimed that the black CAT jacket he said he had been wearing was the only jacket he owned.
- 8.35 On Sunday 11 May 1997 Thomas Harvey was interviewed<sup>53</sup>. He supported the false alibi. His home was searched for clothing belonging to Allister Harvey, without result<sup>54</sup>. Also on that day Allister Harvey's parents, Kenneth and Elizabeth, were seen by Detective Constable Paul McCrumlish and Detective Constable John McDowell<sup>55</sup>. As we have said in Chapter Seven, they lied to those detectives about their son's activities on the night of 26 and 27 April 1997. They supported the false alibi and claimed that Allister had said he had helped a police officer, though

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<sup>50</sup> 00913 (00917).

<sup>51</sup> 00913 (00923 & 00925).

<sup>52</sup> 06599.

<sup>53</sup> 09193.

<sup>54</sup> 04577.

<sup>55</sup> 17361.

they refused to identify him. The detectives were so struck with the potential importance of this information that they stopped a short distance away from the Harvey house to record it in their notebooks to ensure that they had an accurate account.

- 8.36 Mr Jonathan Wright made a statement on 11 May 1997<sup>56</sup>. In it he said that he had been with Allister Harvey on the night of the murder and that the latter had been wearing a grey top with orange stripes on the sleeves. Although Jonathan Wright later made further statements, and gave evidence to us, giving a contradictory picture of what else he had seen on the night, he has never retreated from that description of Allister Harvey's clothing. Taken together with Res Con Warnock's description, the detectives had reason to doubt Allister Harvey's assertion that he had been wearing a black CAT jacket and that it was the only jacket that he owned. These two pieces of information about Allister Harvey's clothing obviously called for careful attention by DCS McBurney.
- 8.37 The developments of Saturday 10 May 1997 were the subject of discussions at a high level. On 10 May Sir Ronnie telephoned DCS McBurney twice, to be updated. On the same day DCS McBurney twice updated Assistant Chief Constable Fred Hall (South Region) (ACC Hall). On 11 May he had a meeting with ACC Hall from 14:00 to 16:00. On 12 May DCS McBurney: twice updated ACC Hall; spoke to Assistant Chief Constable Raymond White (Crime) (ACC White); had a meeting with Office of the Director of Public Prosecutions (ODPP) officers; and had a meeting with the ICPC. On the 13 May he had a further meeting with the DPP officers<sup>57</sup>.
- 8.38 ACC Hall told us<sup>58</sup> that he was informed of the allegation against Res Con Atkinson during the meeting on Sunday 11 May, when he went to speak to DCS McBurney on Hall's day off. We have seen notes of the record of meetings that DCS McBurney attended on 12 and 13 May. There is no mention of the Atkinson tip-off allegation in the note of meeting with the DPP<sup>59</sup> on 12 May, although DCS McBurney believed they would have discussed it<sup>60</sup>. However, the notes of the other two meetings<sup>61</sup> do contain references to discussions of the allegation.
- 8.39 DCS McBurney told the Inquiry when interviewed that he could not be sure what he told the Chief Constable on 10 May as the latter may have just asked about the arrests and the chance of convictions, but DCS McBurney believed that if he did not tell the Chief Constable about the Atkinson allegation then he did so quickly

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<sup>56</sup> 09137.

<sup>57</sup> DCS McBurney interview of 4/5/06 (page 89).

<sup>58</sup> Day 55 (page 32).

<sup>59</sup> 31613.

<sup>60</sup> DCS McBurney interview of 4/5/06 (page 8).

<sup>61</sup> 31603 & 19069.

afterwards. DCS McBurney said that he kept ACC White and ACC Hall briefed about the Atkinson allegation and that he believed they would have briefed the Chief Constable on everything he told them.

- 8.40 Sir Ronnie accepted the evidence<sup>62</sup> of DCS McBurney that there was contact between them on 10 May. However, he told us he had no recollection of the briefings and said that he would have remembered if DCS McBurney had raised the tip-off allegation. We will need to return to the questions of what Sir Ronnie knew of the tip-off allegation, when he knew of it, and what he did in response.
- 8.41 At the meeting with the ICPC on 12 May 1997 it was noted<sup>63</sup> that DCS McBurney would continue with the murder investigation as well as being in charge of the neglect complaint investigation because all strands of the incidents were inextricably linked, and it was necessary to examine all the strands.
- 8.42 On 13 May 1997 a form 17/3<sup>64</sup> was served on Res Con Atkinson. That form was a notification of investigation. It referred only to the neglect of duty complaint made by Rosemary Nelson. It did not refer to the tip-off allegation, although DCS McBurney was treating that allegation as part of the neglect investigation rather than as part of the murder.
- 8.43 A further potential breakthrough was made on 13 May 1997. Mr Christopher Henderson was interviewed<sup>65</sup> and revealed that he was with Allister Hanvey at Miss Tracey McAlpine's house after 05:00 and that he later walked into town with him and they got a cab home from Z Cabs, a taxi company in Portadown. That information obviously undermined the account given collectively by the Hanvey family.
- 8.44 On 14 May 1997 detectives got confirmation of Christopher Henderson's information. Miss Kelly Lavery made a statement<sup>66</sup> in which she said that Allister Hanvey was at Tracey McAlpine's house until Kelly Lavery threw him and others out. She said that she herself left 10 to 30 minutes later and went home, arriving there at about 09:00. That suggests that Allister Hanvey left at about 08:00. Within days other partygoers<sup>67</sup> also told detectives that Allister Hanvey had been at Tracey McAlpine's house at times when, according to the Hanvey family, he had been at his uncle Thomas's.

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<sup>62</sup> Day 61 (page 190).

<sup>63</sup> 14822 (14823).

<sup>64</sup> 61214.

<sup>65</sup> 02279.

<sup>66</sup> 09178.

<sup>67</sup> 09184.

- 8.45 Mr Andrew Allen was arrested on 15 May 1997<sup>68</sup>. He accepted that his nickname was 'Fonzy', and that he had been involved in fighting at the junction, together with David Woods and Rory Robinson. He named Marc Hobson and Stacey Bridgett as being at the fight. He said that he had also been at Tracey McAlpine's party, where there had been talk to the effect that Allister Hanvey had hit someone with a bottle.
- 8.46 Andrew Allen was released on police bail without being charged<sup>69</sup>. David Woods was then arrested and interviewed<sup>70</sup>.
- 8.47 David Woods was released without charge on 16 May 1997<sup>71</sup>. Also on that day the telephone records for Res Con Atkinson arrived<sup>72</sup>, and they showed that there had been a call to Allister Hanvey's parents' home at 08:37 on 27 April.
- 8.48 On 19 May 1997 DCS McBurney and other officers met Mr Kevin Murnaghan and Mr Gregory Mullan of the ICPC. DCS McBurney said in his interview that Kevin Murnaghan was the lawyer supervising the investigation of the complaint and either he or Gregory Mullan made it clear that the investigation the ICPC was supervising was only the neglect complaint and not the murder or the tip-off allegation. The note of the meeting<sup>73</sup> shows that DCS McBurney told him that Res Con Atkinson's telephone records were in the process of being seized. There is no evidence that DCS McBurney ever told any of the senior officers or supervisors that the police had already received Res Con Atkinson's phone records. There was no reason why the ICPC should have been told, but, had it been supervising the investigation, it would have been necessary for it to be told about the telephone records and we believe it likely that the ICPC would have asked DCS McBurney why senior officers had not been told that the telephone records had been received and that they supported the tip-off allegation.
- 8.49 On 30 May 1997 DCI P39 was transferred to another post<sup>74</sup> and no replacement Deputy SIO was appointed. DI Irwin continued as Office Manager.

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<sup>68</sup> 07300.

<sup>69</sup> 80009 & 00913 (00931).

<sup>70</sup> 07486.

<sup>71</sup> 00913 (00933).

<sup>72</sup> 44931.

<sup>73</sup> 14803.

<sup>74</sup> 00935 (00941).

- 8.50 On 9 June 1997 Mr Lawrence Marshall of the Forensic Science Agency of Northern Ireland (FSANI) told detectives<sup>75</sup> that he had found Stacey Bridgett's bloodstain on Robert Hamill's jeans. Lawrence Marshall had initially reported the presence of that blood on 12 May 1997. The detectives expected a written report later that week, although in the event none arrived until 24 October 1997<sup>76</sup>.
- 8.51 On 12 June 1997 Andrew Allen was re-interviewed<sup>77</sup> about a transcription error concerning his nickname which had affected his earlier interview. He refused to give answers.
- 8.52 From May 1997 onwards efforts were made to interview a number of potential witnesses, both Catholic and Protestant. Those efforts were largely fruitless<sup>78</sup>. This included a reconstruction of the scene of the incident on 10 June.
- 8.53 On 6 July 1997 rioting took place at Drumcree, near Portadown, which led DI Irwin to believe that the attitude of Protestant witnesses could become hardened, so it was not guaranteed that the witnesses would give evidence<sup>79</sup>.
- 8.54 A file for the DPP relating to the murder was submitted by DI Irwin on 21 July 1997. It spoke of a separate file to follow, dealing with the tip-off allegation. The file recommended prosecution of Dean Forbes, Stacey Bridgett, Allister Harvey, Wayne Lunt, Rory Robinson and Marc Hobson for murder. It recommended no prosecution of David Woods or Andrew Allen. It suggested that witnesses should be seen in consultation by Leading Counsel for the prosecution. The report was endorsed by a senior officer in Crime Branch on 30 July 1997 and was then sent to the DPP<sup>80</sup>.
- 8.55 None of the four Land Rover officers was interviewed in relation to the neglect complaint until 8 September 1997, which was 12 days after the due date for the delivery of the DPP file<sup>81</sup>. On that day Police Constable Alan Neill<sup>82</sup> and Reserve Constable P40<sup>83</sup> were interviewed. On 9 September 1997 Res Con Atkinson was interviewed<sup>84</sup> by DCS McBurney, in the presence of his solicitor. Before the interview commenced the solicitor was warned that there would be questions about assisting offenders and withholding information about an arrestable offence<sup>85</sup>. No form 17/3, a form used to set out a complaint or allegation, which

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<sup>75</sup> 03743 & 31613.

<sup>76</sup> 17797.

<sup>77</sup> 07484.

<sup>78</sup> 03873.

<sup>79</sup> 06080 (06131).

<sup>80</sup> 06080 (06136).

<sup>81</sup> 08089 (08091).

<sup>82</sup> 09389.

<sup>83</sup> 09351.

<sup>84</sup> 09476 & 09510.

<sup>85</sup> 61223.

contains a written caution, was served about the tip-off allegation. Res Con Atkinson was then asked whether he had contacted Allister Hanvey to tell him to dispose of his clothing, and specifically whether he had telephoned him. Res Con Atkinson denied those allegations. The telephone records were not put to him, but instead he was asked to produce his own telephone accounts, so the detectives could look at them.

- 8.56 Res Con Atkinson obtained his telephone records on 11 September 1997<sup>86</sup> and they were subsequently sent to the RUC by Res Con Atkinson's solicitor, but he was not re-interviewed until 9 October 1997<sup>87</sup>. He then explained the call of 27 April to the Hanvey home by saying that it was made by Mr Michael McKee. As we have said in Chapter Seven, that was a lie. As we have also said, the McKees<sup>88</sup> and Mrs Eleanor Atkinson<sup>89</sup> then presented themselves to give a dishonest account supporting his lie, which they did as a result of an agreement to mislead the police.
- 8.57 Consultations were held with Jonathan Wright and Tracey Clarke on 17 October 1997. Timothy Jameson was seen in consultation on 21 October 1997. The outcome was that the evidence of Tracey Clarke and Timothy Jameson was no longer treated as available to support prosecutions. Mr Gordon Kerr QC advised that without the evidence of Tracey Clarke and Timothy Jameson there was insufficient evidence to prosecute Dean Forbes, Allister Hanvey or Rory Robinson for murder<sup>90</sup>. Directions of no prosecution were therefore subsequently issued in respect of them<sup>91</sup>.
- 8.58 Colin Prunty was seen in consultation<sup>92</sup> on 30 October 1997 and was regarded as an impressive witness against Wayne Lunt. However, when watching a television news item showing release of the suspects he misidentified Dean Forbes as the man in the Rangers Football Club scarf<sup>93</sup>. He was seen again in consultation, and was then regarded as unreliable as a witness against either Wayne Lunt or Dean Forbes. Accordingly Wayne Lunt was not prosecuted<sup>94</sup>.

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<sup>86</sup> 61308.

<sup>87</sup> 09541.

<sup>88</sup> 09198 & 09200.

<sup>89</sup> 09195.

<sup>90</sup> 17633.

<sup>91</sup> 18052.

<sup>92</sup> 18062.

<sup>93</sup> 09105.

<sup>94</sup> 08994.

- 8.59 In November 1997 further consideration was given to the nature of the blood transfer between Stacey Bridgett and Robert Hamill's jeans, and the DPP staff considered that there was insufficient evidence to proceed against Stacey Bridgett<sup>95</sup>. The only person prosecuted, therefore, was Marc Hobson.
- 8.60 On 25 November 1997 Kenneth and Elizabeth Hanvey spoke to DI Irwin<sup>96</sup>. They said that the telephone call on the morning of 27 April 1997 from the Atkinson house had indeed been made by Michael McKee. As we have said, that was a lie.
- 8.61 On 22 December 1997 DCS McBurney submitted a report to the DPP relating to the neglect complaint and the tip-off allegation<sup>97</sup>. He recommended no prosecutions. We will consider the content of the report in some detail below. The DPP responded to it by requesting a final report at the conclusion of the Marc Hobson trial<sup>98</sup>.

## **Analysis of the investigation between May and December 1997**

### **Detective Chief Superintendent McBurney's role as senior investigating officer of three elements of the police investigations**

- 8.62 Investigation of the neglect complaint raised issues about the sequence of events in the course of the disturbance and so had a relevance to the murder investigation. Other than the fact that Res Con Atkinson was a member of the Land Rover crew there was no link between the neglect complaint and the tip-off allegation.
- 8.63 The reason advanced by DCS McBurney in May 1997 for his conducting all elements of the investigations was that the murder and neglect allegations were inextricably linked, as were the murder and tip-off allegations. Further, DCI K took the same view of the renewed investigations in June 2000<sup>99</sup>. That was clearly correct.
- 8.64 Despite DCS McBurney regarding all three elements of the police investigations as inextricably linked, he in fact divided them into two components. On the one hand he regarded the murder investigation as fit for a report to the DPP on its own. On the other hand he treated the tip-off allegation as part of the neglect complaint for the purposes of investigating it and reporting on it. It has been said on behalf of the Hamill family that DCS McBurney's decision to treat the tip-off as part of the neglect investigation rather than the murder one was wrong. It was common ground amongst senior officers who gave evidence before us that the tip-off and

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<sup>95</sup> 08994.

<sup>96</sup> 09903.

<sup>97</sup> 09028.

<sup>98</sup> 63507.

<sup>99</sup> 32348 (32353).

the murder were closely associated<sup>100</sup>. Although DCS McBurney said that he never thought the tip-off allegation should have been treated as part of the murder investigation we are persuaded by the evidence of DCI K and our own perception that it should have been. The separation was artificial. Investigation of the tip-off allegation had an obvious potential to provide evidence relevant to the murder investigation.

- 8.65 We believe that the principal reason in DCS McBurney's mind for the separation was his wish to protect Tracey Clarke. However, it is entirely clear that this artificial separation was a wrongful act or omission. The tip-off allegation was in truth an allegation of assisting an offender, when the offender was an alleged murderer and the person assisting him was a serving police officer. As Mr Kevin McGinty from the Attorney General's Office told us<sup>101</sup>, it is difficult to imagine a much more serious allegation against a police officer. Despite that, DCS McBurney did not even record it as an allegation of a crime. We are clear that the failure to investigate the tip-off allegation together with the murder obstructed the murder investigation.
- 8.66 DCS McBurney died without giving oral evidence to this Inquiry. We have the advantage of audio records of very extensive interviews of him conducted by a police advisor to the Inquiry. We have listened to those with great care, and we have had close regard to what other officers have had to say about DCS McBurney, his attitude and his competence. We have reached the view that he was a powerful character with strongly held views about how to conduct an investigation. He had a strong belief that his way was the right way and that oversight was unwarranted interference. We accept the evidence given by a number of witnesses that he would have found the prospect of a police officer tipping off a murderer to be completely abhorrent. Despite the unsparing attention to detail which the inquiry team deployed in uncovering evidence and in questioning witnesses there is no reason whatever to believe that DCS McBurney had a desire to protect Res Con Atkinson or Allister Hanvey. In all those circumstances we conclude that in general the wrongful acts and omissions which we lay at DCS McBurney's door resulted from negligence and overconfidence in his abilities. The separation of the two investigations was obviously intentional but was not deliberately wrongful. We find that it was negligent.

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<sup>100</sup> 32348 (32353).

<sup>101</sup> Day 66 (page 23).

### **Avoidance of checks and balances**

- 8.67 There was a system of checks and balances which included provision for ICPC supervision, the reviewing of prosecution reports by senior officers, the input of C&D and the delivery of prosecution reports to the DPP. In various ways all these checks and balances failed in relation to the murder and associated tip-off investigation as a result of separating the tip-off from the murder.
- 8.68 We have referred to the two senior officers from C&D, Supt Anderson and CI Bradley. Their roles were broad<sup>102</sup>. On the one hand they were assisting DCS McBurney in the neglect investigation, which DCS McBurney chose to extend to cover the tip-off allegation. On the other hand they had a prospective role in the internal disciplinary processes which may follow the criminal investigation, and had the task of ensuring that nothing in the criminal investigation needlessly prejudiced the one which may follow. Further they were the conduit to the Chief Officer's Group of the RUC of information relating to disciplinary matters. It is startling that they allowed DCS McBurney to treat the tip-off investigation as part of the neglect complaint without questioning it, without referring it to the Chief Officer's Group via their ACC, without ensuring that Res Con Atkinson was notified and cautioned about the tip-off allegation, without ensuring that the ICPC extended its investigation to cover it and without ensuring that any consideration was given to suspending Res Con Atkinson from duty. It is remarkable that they appear to have taken no steps whatever which may have prevented DCS McBurney from pursuing an idiosyncratic and negligent course of action with the effect that the tip-off was separated from the murder and both investigations suffered.
- 8.69 We have seen CI Bradley<sup>103</sup> but we have not seen Supt Anderson<sup>104</sup>. He was too ill to attend at the Inquiry hearings and his statement was read to us.
- 8.70 We cannot see what CI Bradley, though nominally assisting DCS McBurney, in fact did to help the investigation by C&D of either the tip-off or the neglect allegation. He began the disciplinary investigation after the DPP had decided that there would be no criminal proceedings against any of the members of the Land Rover crew. He spoke briefly to Res Con Atkinson about the tip-off allegation without first serving on him a form 17/3. This form was required whether or not the investigation of this allegation was being supervised by the ICPC. Nor do we gain any help from Supt Anderson's statement as it did not assist us about what DCS McBurney said concerning Tracey Clarke's statement because, he said, either he was not present at the part of the meeting of C&D at which it was mentioned or he couldn't remember. He was aware of her name and of Timothy Jameson's

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<sup>102</sup> Day 45 (pages 54–119).

<sup>103</sup> Day 45.

<sup>104</sup> 80013.

name. He was not aware, though, of the tip-off allegation or of Andrea McKee's name, he said in his statement. He said that neither was he aware that telephone records had been obtained. In his statement Supt Anderson did not speak of any active part he played in C&D's disciplinary investigation. Overall it does not appear that C&D, through Supt Anderson and CI Bradley, made any useful contribution to the disciplinary investigation. It was really left by them to DCS McBurney. CI Bradley simply accepted his conclusions.

- 8.71 We are clear that Supt Anderson and CI Bradley were guilty of wrongful omissions, and that those omissions obstructed the murder investigation. As we have said, Supt Anderson was unable to defend himself by giving oral evidence. In those circumstances we paid particular regard to CI Bradley when he appeared before us. Our conclusion was that he simply failed to understand what had been required of him in relation to his role, and we have no reason to believe that Supt Anderson had any better grasp. We find that the wrongful acts and omissions of both of them were negligent.
- 8.72 As we have said, the ICPC was supervising the investigation of the neglect complaint. Although he should not have been, DCS McBurney was treating the tip-off investigation as part of the neglect complaint. Nonetheless, the ICPC did not supervise the investigation into the tip-off allegation. All senior officers of the RUC who gave evidence to us on this topic believed that it should have done<sup>105</sup>. In fact, they all believed that it was doing so. ACC Hall told us<sup>106</sup> that he had even telephoned Kevin Murnaghan, the responsible officer of the ICPC, to make sure that he included the tip-off. Something went very wrong. Gregory Mullan of the ICPC told us<sup>107</sup> that he had not received a formal request to supervise the tip-off investigation, and it is clear that as far as he was concerned that meant that he would not have considered that investigation. On 19 May 1997 Kevin Murnaghan told DCS McBurney in the presence of Supt Anderson that he was not supervising the tip-off investigation<sup>108</sup>.

### **The policy book**

- 8.73 DCS McBurney was conscious that a good record had to be kept of the first meeting with the ICPC<sup>109</sup>. DCI P39 remembered<sup>110</sup> DCS McBurney telling her to make a full note of the first meeting with Gregory Mullan. DCS McBurney told the inquiry that he assumed the policy book would be dispensed with after the ICPC meeting.

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<sup>105</sup> 61 (page 274).

<sup>106</sup> Day 55 (page 37).

<sup>107</sup> Day 50 (page 37).

<sup>108</sup> 00935 (00936).

<sup>109</sup> DCS McBurney interview of 4/5/06 (page 21).

<sup>110</sup> Day 43 & 81567 (para 29).

- 8.74 He said in interview that he did not keep a policy book as he needed to keep the investigation secret and was concerned about leaks. He did not trust a sensitive policy book any more than he trusted an open one. He said it was an investigation that depended on uniformed personnel talking openly to Criminal Investigation Department (CID) and that it would put them off if they knew it was all recorded.
- 8.75 DI Irwin told us<sup>111</sup> that after the police had interviewed Andrea McKee on 8 May 1997, DCS McBurney directed that no notebook entries should be made. At that stage the priority was that the material should not be known by those friendly to Res Con Atkinson. Another consideration was the risk of placing Andrea McKee's life in jeopardy. He told us that secret policy books were not in use in crime investigations in 1997 within the RUC. DCI P39 also said<sup>112</sup> that DCS McBurney made it clear that due to Res Con Atkinson's involvement the recording of information had to be restricted.
- 8.76 DCS McBurney said he did not instruct DCI K on the use of policy books in 2000. He was not concerned about DCI K keeping policy books as he did not feel there were the same issues regarding secrecy by 2000.
- 8.77 ACC White told us<sup>113</sup> that policy books were compulsory by the end of 1997. Before then the SIO had some flexibility. Conversely, DCS Stewart<sup>114</sup> said that policy books and sensitive policy books were standard procedure in 1997. He had no doubt that DCS McBurney did not use a policy book because he did not trust all those officers who may have been able to get access to the intelligence and information and because he did not normally commit a lot to paper.
- 8.78 It was submitted by Counsel for PSNI that Force Order No. 91/97 did not come into effect until 31 December 1997 from when keeping a policy book became mandatory. However, he said that it was generally understood that when HOLMES was used, it would be accompanied by a policy book.
- 8.79 We conclude that there is no simple explanation of why DCS McBurney did not keep a policy book. He did, however, keep two journals and eight notebooks. They covered not only this investigation but other investigations he was conducting during this period and he handed them to the Inquiry so that the relevant parts of them could be photocopied. It follows that the failure to keep a policy book did not mean that DCS McBurney kept no record of the Robert Hamill investigation. Why did he not keep a policy book? In our view there was an interplay of reasons and we find evidence for them in what DCS McBurney said about his approach to his work and in what other senior detectives told us about his working practices.

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<sup>111</sup> Day 60 (page 72).

<sup>112</sup> Day 43 (page 30).

<sup>113</sup> Day 52 (page 125).

<sup>114</sup> Day 56 (page 128).

A reason that seemed to weigh with DCS McBurney was his dislike for, and neglect of, paperwork. He was also known to keep his cards close to his chest and furthermore he was concerned about leaks.

- 8.80 Whatever his reasoning we are clear that it was a wrongful omission not to keep a policy book. The absence of a policy book impeded the monitoring of the important steps in the conduct of the investigation. The wrongful omission therefore contributed to an obstruction of the murder investigation.
- 8.81 Before we consider whether the omission was deliberate or negligent we need to determine whether DCS McBurney had either of two other possible reasons for not keeping a policy book. These are that it might have suited his own private plan to frustrate the investigation of the tip-off allegation because of a dishonest motive to protect Res Con Atkinson, or that it might have suited him because he wanted to cover up what he had done in order to avoid bringing the RUC into ill repute. Senior officers who had known DCS McBurney over a number of years all spoke of him as a good detective and a police officer of integrity who was dedicated to his work in the RUC. We were told that he would have despised anyone who did what Res Con Atkinson was alleged to have done and would never have had any wish to shield him as he would have wanted to see him turned out of the RUC and brought to justice<sup>115</sup>. Further, after the Coroner, Mr John Leckey, made it clear that he would not be calling the McKees as witnesses at any inquest, DCS McBurney went to North Wales and took a statement from Andrea McKee<sup>116</sup>. It was then that she admitted<sup>117</sup> that the earlier statement she had made to DI Irwin was false and had been made at the instigation of Res Con Atkinson. We do not look at this question in isolation. We have considered it in the round and in the light of the other wrongful omissions to which we turn below. We conclude that neither of these two reasons operated on DCS McBurney's mind and conclude that the failure to keep a policy book was negligent.

### **General failures of direction in the murder investigation**

- 8.82 As we have said, Res Con Atkinson's telephone records were analysed, and some efforts were also made to establish whether there was telephone contact between the Hanvey household and others<sup>118</sup>. However, as of 10 May 1997 the RUC had a number of suspects and had some reason to believe that they had attacked Robert Hamill in a concerted manner<sup>119</sup>. In those circumstances we think that DCS McBurney was bound to have called for a more thorough analysis of telephone

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<sup>115</sup> Day 56 (page 179).

<sup>116</sup> Day 60 (page 78).

<sup>117</sup> 14956.

<sup>118</sup> 44915.

<sup>119</sup> 00262.

contact between the suspects and known witnesses. This would have facilitated questioning of Res Con Atkinson about telephone calls without divulging the identity of Tracey Clarke. The failure to do that was a wrongful omission by him.

- 8.83 While we cannot say what would have been the outcome of a proper telephone analysis we are confident that the failure to conduct it was part of a generalised failure to pursue the murder investigation purposefully and therefore that it contributed to the obstruction of that investigation. We conclude that DCS McBurney was negligent in this omission.
- 8.84 DCS McBurney failed to ensure that police witnesses were questioned properly about any evidence which they could usefully give. For example, Allister Hanvey told interviewing officers that he had seen Res Con Murphy at the scene<sup>120</sup>, yet that officer was not asked about seeing Allister Hanvey at the scene until after DCI K became involved in the investigation in 2000<sup>121</sup>. Sgt P89's statement in relation to the events of 27 April<sup>122</sup> was obviously inadequate and should plainly have been the subject of further enquiry. DCS McBurney wrongfully omitted to pursue potential police evidence. We have no doubt that his omission obstructed the investigation. It was negligent.
- 8.85 DCS McBurney did not interview Res Con Atkinson until 9 September 1997. We see no reason why he should not have interviewed him soon after the record of telephone calls made from the Atkinson home was received by the police, on 16 May 1997. When Res Con Atkinson was interviewed DCS McBurney should have asked him why he did not mention Allister Hanvey in his statement, even though DS Bradley suggested to him that there must have been people whom he saw at the scene of the disturbance whom he could name. Questions could then have been put about whether Allister Hanvey had helped an officer, of whom he gave a description resembling Res Con Atkinson, and whether he knew why Allister Hanvey's parents should have told the police this officer would give evidence on his behalf and why his uncle should have provided a false alibi for him. The delay in interviewing Res Con Atkinson and the failure to ask him those questions were wrongful, obstructed the investigation and were negligent.
- 8.86 DCS McBurney did not keep tight control over the murder investigation. He decided that the statements of Tracey Clarke and Timothy Jameson should not be put on the HOLMES system because of the risk of intimidation<sup>123</sup>, and

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<sup>120</sup> 06599.

<sup>121</sup> 34807.

<sup>122</sup> 09213.

<sup>123</sup> DCS McBurney interview of 4/5/06 (page 45).

yet they were in fact placed on HOLMES<sup>124</sup>. His failure to exert control was a wrongful omission. We are satisfied that it contributed to the obstruction of the investigation which resulted from his overall failures. We believe it was negligent.

- 8.87 Andrew Allen told police<sup>125</sup> that at Tracy McAlpine's party he had heard it said that Allister Hanvey had hit someone with a bottle. That was not followed up with the partygoers. That was plainly a wrongful omission which obstructed the investigation. We conclude that it was negligent.

### **Scientific evidence**

- 8.88 DCS McBurney failed to manage the scientific investigation carried out by FSANI. It was left to that agency to decide what tests to carry out on the glass, clothing and other materials retrieved, and in what order to conduct those tests. It is clear that the tests could have been conducted more thoroughly and in a better sequence had FSANI been provided with fuller details of the incident and of the investigative strategy<sup>126</sup>. The omission was wrongful on the part of DCS McBurney. We believe that it contributed to the obstruction of the murder investigation. It was negligent.
- 8.89 Having said that, we should deal with one specific piece of clothing which was retrieved, about which we heard a good deal of evidence and argument. On the leg of Robert Hamill's jeans was found a blood spot about the size of a one pence piece which matched Stacey Bridgett's blood<sup>127</sup>. Lawrence Marshall, a leading forensic scientist in Northern Ireland, found the blood spot but could not say in what direction the blood had travelled through the air before falling on the jeans. He thought it unlikely that it was the result of a motion of Stacey Bridgett's head at a time when his nose was bleeding. Lawrence Marshall said that by reason of the fact that the blood spot was circular it had fallen perpendicularly onto the jeans. The likeliest explanation, from a common sense point of view, was that Robert Hamill had been lying on the ground and that Stacey Bridgett had been standing directly over him. Stacey Bridgett had lied to the police when he said to them that he had not been close to Robert Hamill<sup>128</sup>.
- 8.90 The question arises whether the police ought to have sought to re-interview Stacey Bridgett in the light of Lawrence Marshall's finding or whether the DPP should have advised or directed them to attempt this. The interview would have had to be in prison. Stacey Bridgett would have had to consent to see the police and he would have been entitled to have a solicitor present to advise him (PACE Code C). The only purpose of an interview would have been in the hope that Stacey Bridgett would have given some excuse for the presence of his blood on

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<sup>124</sup> DCS McBurney interview of 4/5/06 (page 58).

<sup>125</sup> 07300 (07344).

<sup>126</sup> Day 48 (page 6).

<sup>127</sup> 72304.

<sup>128</sup> Day 48 (page 13).

Robert Hamill's jeans which could be shown to be false. This assumes that he would have agreed to see the police, which we think very unlikely. Mr Kerr<sup>129</sup> was doubtful if the prosecution case could have been improved upon. He pointed out that the person faced with this evidence might lie out of fear and he did not regard a lie about this as providing sufficient evidence to prove murder.

- 8.91 A further issue arises for consideration: should the DPP have called for a second opinion from another forensic scientist about the evidential significance of the blood spot? Lawrence Marshall was a very experienced forensic scientist. Although he had received no formal training in the assessment of the pattern of bloodstains he nonetheless had considerable experience in examining patterns of bloodstains and assessing their significance. He did not suggest that the assessment of the blood spot lay outside his professional competence or that the police or the DPP should consider obtaining a second opinion<sup>130</sup>. The police and the DPP were entitled to rely upon the fact that they received no such suggestion. It cannot be said that the failure to obtain a second opinion amounted to failure to obtain relevant information before making a decision on whether or not to prosecute Stacey Bridgett for murder.
- 8.92 We do not think it can be said that the police failed to take steps which they should have done in relation to further investigation of Stacey Bridgett's explanation for the blood spot. It was a matter of judgment whether to seek to re-interview him. There was no failure to exercise due diligence.
- 8.93 Nor, looking at the various matters we have considered, can it be said that the DPP made a decision not to prosecute for murder without having before him all relevant scientific evidence.

### **Allister Harvey**

- 8.94 The issue of Allister Harvey's jacket was not pursued. It should have been obvious to an SIO that Allister Harvey had lied about having only the black CAT jacket<sup>131</sup>. That made it all the more important to interview anyone who may have seen him on the night about what he was wearing. As we have said, had Tracey Clarke been pressed about that she is likely to have divulged the information that she had bought the jacket that he was wearing on the night. Inquiries could also then have been made of the shop in which she bought it. The failure to make any adequate enquiries about the jacket was a wrongful omission. We believe it obstructed the investigation. It was negligent.

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<sup>129</sup> Day 59 (page 129).

<sup>130</sup> Day 48 (page 14).

<sup>131</sup> 06367.

- 8.95 The Hanvey family provided a false alibi for Allister Hanvey<sup>132</sup> with the obvious purpose of distancing him from Tracy McAlpine's party. That should have alerted DCS McBurney that the family had something to hide. In fact, we think that if partygoers had been questioned they may have assisted the police about what Allister Hanvey had been wearing on the night. The omission to take an interest in the false alibi was wrongful. It obstructed the murder investigation. It was negligent.
- 8.96 Did the knowledge that there had been mention at Tracey McAlpine's party that Allister Hanvey had been involved in the violence<sup>133</sup> call for further investigation? This provided an additional reason why the partygoers should have been re-interviewed and asked about Allister Hanvey's presence at the party, whether his participation in the violence had been spoken of by him or anyone else and what he was wearing. If DCS McBurney had known of this conflicting evidence he should have directed this re-interviewing and we would have expected him to do so. It is not clear to us that any of this was brought to his attention but as the SIO it was DCS McBurney's duty to keep himself informed of the progress of the investigation. This was a wrongful omission on the part of DCS McBurney. It is plain that it obstructed the investigation. It was negligent.
- 8.97 Christopher Henderson was one of those who had been at the party. He and Allister Hanvey had left the house together and gone to Z Cabs and taken a taxi<sup>134</sup>. The evidence of the taxi driver was not sought until November 2000. By this time the taxi records had been destroyed. Why was there this delay? In fact the information that should have prompted an inquiry of Z Cabs would have been placed on HOLMES but no action was raised upon it. Again, the failure to ensure that the staff at Z Cabs were interviewed was a wrongful omission on DCS McBurney's part. It too obstructed the investigation and was negligent.
- 8.98 The withdrawal from the cash point in Portadown at 08:46 from Allister Hanvey's account<sup>135</sup> showed that he was not at that time at the home of his uncle Thomas Hanvey and that he and his uncle had lied about this to the police. However, this lie was about a period after the disturbance in the town centre had finished. By itself it could not have carried the murder investigation forward. Could it, in conjunction with other evidence, have had probative value in relation to the murder? If evidence had been obtained from one or more of the partygoers that Allister Hanvey had admitted taking part in the attack, or not denied a suggestion that he had taken part, his lies about where he had been, supported in them by his uncle, would have had an added significance. The admission or failure to deny

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<sup>132</sup> 09193.

<sup>133</sup> 07300.

<sup>134</sup> 02279.

<sup>135</sup> 81622 (para 22).

such a suggestion would have provided a reason for the false alibi, which would in turn have strengthened any evidence about the making of an admission or failure to deny a suggestion he had taken part in the violence. Alternatively, the false alibi given by Allister Harvey and his Uncle Thomas might be explained on the basis that he was being given a false alibi to prove he was not at his parent's home when the telephone call was received there at 08:37 from Res Con Atkinson's home<sup>136</sup>. This would have been capable of supporting Tracey Clarke's evidence<sup>137</sup> against Allister Harvey about the advice that he told her he had been given by Res Con Atkinson to get rid of his clothing and would also have been capable of supporting her evidence about the part she had seen him, Allister Harvey, play in the attack on Robert Hamill. Whichever is the explanation, it would have been important to question Allister Harvey and his uncle about the false account they had given to the police concerning his whereabouts. The omission to do so was wrongful on DCS McBurney's part and obstructed the investigation. It was negligent.

- 8.99 In September 2000 DCI K obtained bank details for the Atkinsons, the McKees, Allister Harvey, his parents and his uncle. DCI K's object was twofold. The first was to discover whether there had been any payments made by any of the Harveys to Res Con Atkinson and whether there was anything to show that Michael McKee was under some financial obligation to Res Con Atkinson which might have enabled him to put pressure on Michael McKee. The second was to learn of any withdrawals from cash points by any of the Harveys whose timing was inconsistent with the false alibi<sup>138</sup>. The withdrawal at 08:46 was the sole result of this investigation which, as we have pointed out, had relevance if the police had admissible evidence that he made an admission at the party.
- 8.100 In 1997 there was no practice of conducting financial investigations in relation to crimes which were not of a financial nature<sup>139</sup>. Having regard to this, the fact that DCS McBurney did not institute such an investigation was not a wrongful omission.
- 8.101 It is appropriate to point out that in October 1997, after Tracey Clarke had refused to give evidence and Timothy Jameson had repudiated his statement<sup>140</sup>, there was no real prospect of preparing a prosecution for any of the murder suspects other than Marc Hobson (and he was acquitted of murder and convicted only of

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<sup>136</sup> 23814.

<sup>137</sup> 00262.

<sup>138</sup> 32348 (32371).

<sup>139</sup> Day 56 (page 79).

<sup>140</sup> 17591.

affray<sup>141</sup>), Wayne Lunt and Stacey Bridgett. We have serious reservations about whether steps not taken would have produced witnesses who would, so to speak, have stayed the course and been prepared to give evidence at trial.

- 8.102 A suggestion has been made that the DPP should have obtained an order from a judge for Tracey Clarke's witness statement to be read in evidence, on the basis that her refusal to give evidence was influenced by fear. Mr Kerr<sup>142</sup>, a very experienced criminal advocate practising in Northern Ireland, gave evidence about this to the inquiry. He said that even had it been possible to prove to a judge that Tracey Clarke would not give evidence through fear, the judge would not have exercised his statutory discretion to allow it to be read and that his decision would have been influenced by the fact that Allister Harvey's counsel and, we add, counsel for the other defendants who had been named by Tracey Clarke, would be deprived of the opportunity to cross-examine her, hers being the principal evidence against them. We respect and accept the Opinion of Mr Kerr about this, based as it is on long experience. It is also relevant, in our view, that in this case it was not the other defendants who had put Tracey Clarke in fear.

### **Response to the tip-off allegation**

- 8.103 Although investigation of some matters relating to the tip-off allegation would not appear to have any prospect of bringing either Res Con Atkinson or Allister Harvey to justice in relation to this allegation, this was not a good reason for failing to investigate matters relating to the tip-off allegation if they also had a bearing on the investigation of the murder. It is for this reason that we have made adverse findings against DCS McBurney about omissions in relation to the investigation of such matters. Once the conspiracy involving Michael and Andrea McKee had come into being, investigation of it was directly relevant to the murder investigation. In the event of a conviction of Res Con Atkinson for conspiracy, it should be regarded as realistic that he might decide he could best help himself to gain a more lenient sentence by giving evidence in a prosecution against Robert Hamill for murder, given that the file in relation to it was still open.
- 8.104 We have already set out a number of wrongful acts and omissions in relation to the murder investigation but which were also material to the tip-off. In considering the investigation of the tip-off allegation itself and what Tracey Clarke said about what Allister Harvey had told her about the advice given to him by Res Con Atkinson, it is only fair to DCS McBurney to say that the police never had any evidence to prove that he had advised Allister Harvey to get rid of his clothing. Nor had the police any evidence to prove that Res Con Atkinson and Allister Harvey had conspired with one another that Allister Harvey should get rid of

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<sup>141</sup> 08753.

<sup>142</sup> Day 59.

his clothing. The significant difficulty was that the only evidence the police had, assuming Tracey Clarke might, contrary to her refusal to give evidence, have in the end been prepared to give evidence, was hearsay evidence so far as Res Con Atkinson was concerned and not admissible against him.

- 8.105 Although DCS McBurney was investigating the tip-off allegation, whether as an offence of assisting an offender to avoid prosecution or arrest or as a conspiracy, he faced what were probably insuperable difficulties until Res Con Atkinson started the conspiracy to pervert the course of justice involving Michael and Andrea McKee.
- 8.106 Mr David Wood was the Executive Director of Investigations with the PONI and he had previously been a Commander in the London Metropolitan Police. He gave evidence to us<sup>143</sup> in which he was critical of what he saw as DCS McBurney's failures in relation to the tip-off allegation in the period before the conspiracy with Michael and Andrea McKee came into being. His view is that Res Con Atkinson should have been arrested. We have considered this. Whether or not these failures should be seen as relating to DCS McBurney's investigation of the murder, if this criticism is not well founded fairness to him requires that we should say so.
- 8.107 Any questioning of Res Con Atkinson would have had to have been under caution. He would have been entitled to have a solicitor present to advise him (a right he exercised when DCS McBurney questioned him<sup>144</sup>). If his solicitor considered that he or she needed more information in order to give proper advice to Res Con Atkinson and was not given it they would have been entitled to advise Res Con Atkinson not to answer questions. No judge would have permitted an adverse inference to have been drawn against Res Con Atkinson for exercising his right of silence if he was doing it following legal advice. If he was under arrest he could not have been held for many hours before being brought before a magistrate and there would have been no likelihood of bail being refused to a police officer of previous good character on the basis of suspicion unsupported by any admissible evidence. There were no grounds for arresting Eleanor Atkinson. Questioning her while her husband was in custody, as David Wood suggested should have happened, would probably not have been fruitful. We doubt that to approach the case as David Wood suggested would have assisted in building up a case against Res Con Atkinson. He has throughout steadfastly maintained his innocence of any crime.
- 8.108 We have criticised DCS McBurney for his delay in interviewing Res Con Atkinson and for his failure to ask various questions when he did interview him. This however, does not mean that the whole of his dealings with Res Con Atkinson

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<sup>143</sup> Day 57.

<sup>144</sup> 09476.

are to be condemned. We consider that asking Res Con Atkinson to provide telephone records, which unsettled him so that he created a further conspiracy which could be unravelled without the evidential difficulties of proving the tip-off, could be seen as a shrewd move which was reasonable for an investigator to take. This aspect of his investigation did not amount to a lack of due diligence. It bore fruit. We turn now to consider the delay in unravelling the conspiracy below.

- 8.109 DCS McBurney took no steps in relation to that conspiracy in the period October 1997 to December 1997. If DCS McBurney had obtained Andrea McKee's telephone records for April 1997 he would have been able to challenge her statement that she and her husband had stayed at the Atkinsons' house on the night of 26 and 27 April 1997. Had he been in a position to do so, ought he then to have challenged the McKees? He thought that the McKees were likely to separate before long (see paragraph 8.137); would it have been a judgment reasonably open to him to have decided to wait until Andrea McKee ceased to be under the influence of her husband and, by extension, Res Con Atkinson? At that time the McKees were still friendly with Res Con Atkinson<sup>145</sup>. If they had been challenged then what were the chances that Michael McKee and his wife would have confessed to a serious crime of conspiracy to pervert the course of justice which they must realise was connected with the murder of Robert Hamill? We consider the chances minimal.
- 8.110 Ought DCS McBurney to have challenged Res Con Atkinson and his wife? Eleanor Atkinson might have said that it was late when the McKees arrived. Res Con Atkinson could have said that he was not at home when they arrived. They would have had to be cautioned and almost certainly would have been represented by a solicitor. We think it is unlikely that any admission would have been made by either of them at that stage.
- 8.111 Even if armed with the evidence of the Smyths<sup>146</sup> and the taxi firm<sup>147</sup>, it would have been a credible view for an investigator to take that while it was likely he would be able to obtain confessions from the McKees, the Atkinsons would probably not confess their guilt. Reminding ourselves of what he said to DI Irwin, we think this could well have been the view which DCS McBurney would have taken. We believe he wanted to see Res Con Atkinson convicted. There still would have remained the problem affecting both Michael and Andrea McKee to which we have referred already when speaking of the need to avoid damaging the credibility of Andrea McKee. A conviction of the McKees with Res Con Atkinson going free would have been a pyrrhic victory.

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<sup>145</sup> Day 14 (page 45).

<sup>146</sup> 17380.

<sup>147</sup> 17365.

- 8.112 We recognise the difficulty of saying how DCS McBurney would or might have reacted in circumstances in which, albeit because of his own failure, he was never placed. In expressing a view we are inevitably in the realm of conjecture. Nonetheless, we think we can say that it would have been in character for DCS McBurney to have decided against challenging the Atkinsons and to have waited as he did. We think that such a decision would have been within the range of options available to an experienced investigator, albeit near the borderline, without being guilty of a lack of due diligence.
- 8.113 We have also given careful consideration to the contents of the DPP report submitted by DCS McBurney on 22 December 1997<sup>148</sup>. He said that every effort had been made to prove or disprove the tip-off allegation<sup>149</sup>. Plainly this was not correct. He did not mention that Andrea McKee had been the source of the allegation, had sat in on Tracey Clarke's interview and had then given a contradictory alibi in October 1997. DCS McBurney also said that the interview on October 1997 revealed contact between the Atkinson and Hanvey homes<sup>150</sup> when, of course, it was the receipt of records on 16 May which had done that. It would have been more accurate, though still not giving the whole picture, to say that Res Con Atkinson had confirmed this contact when he was interviewed. We have received submissions to the effect that the DPP report was deliberately misleading, and was designed to disguise inactivity.
- 8.114 DCS McBurney could have informed the DPP that the investigation of the tip-off allegation had undergone a change of focus, in that he now had good reason to think that the McKees had become involved with Res Con Atkinson in a conspiracy to pervert the course of justice but that he thought now was not the time to try to expose it, and he could have given his reasons. Had he done so the DPP would most likely have taken the view that it fell outside his province to direct DCS McBurney about what he should do in an ongoing investigation. However, before the report went to the DPP it would have gone to Crime Branch of the RUC for quality control purposes<sup>151</sup>. This might have provoked questions about whether DCS McBurney was correct in his view about taking no action at that time. We believe that he would not have welcomed what he would have regarded as interference in his investigation. Bearing in mind also DCS McBurney's fear about leaks<sup>152</sup> we think he may have thought that the less he said the better, for fear that information about what he had in mind might leak out and reach Res Con Atkinson, and so perhaps cause him to try to put pressure on Andrea McKee. We take the view that neither of these reasons can be regarded as excusing the way

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<sup>148</sup> 09028.

<sup>149</sup> 09080 (para 125).

<sup>150</sup> 09082 (para 133).

<sup>151</sup> Day 52.

<sup>152</sup> DCS McBurney interview of 4/5/06 (page 45).

DCS McBurney dealt with the tip-off allegation in the DPP file and that if he had a fear of information leaking out there were ways open to him of avoiding this. Whether or not an SIO might, on a rare occasion, be justified in presenting less than the full picture, we believe that to present a DPP file which was misleading cannot be condoned. It was a wrongful act.

- 8.115 It is likely that, had DCS McBurney acknowledged in the report that a number of investigative steps had been left undone, the DPP would have declined to make any prosecutorial decisions until those steps had been taken. In those circumstances the misleading DPP file obstructed the murder investigation. The wrongful act of delivering it was clearly deliberate.

### **The principal events between January 1998 and December 2000**

- 8.116 Before we look more closely at DCS McBurney's investigation after December 1997 we will complete the chronology of his investigation.
- 8.117 On 23 March 1999 Sir Joseph Pilling, the Permanent Secretary of the Northern Ireland Office, asked Mr Anthony Langdon, a retired civil servant, to report on, among others, the Robert Hamill case<sup>153</sup>. He sent a commissioning note, saying that since the Good Friday Agreement on 10 April 1998, the RUC had been under **'closer attention than ever'**. The note recorded that the Rt Hon Christopher Patten (Chris Patten) had conducted an Inquiry on the major reform of the police service and he had said that the Patrick Finucane and Robert Hamill cases caused him **'particular disquiet'** and wondered if the Government might want to do something about them before his report was published. Sir Joseph had the impression that Chris Patten would say **'quite a bit about each of these cases in his report if they were not, as it were, taken off the table beforehand'**.
- 8.118 On 25 March 1999 Marc Hobson was convicted of affray but acquitted of murder<sup>154</sup>. DCS McBurney reported further to the DPP on the neglect complaint on 1 June 1999<sup>155</sup>, advising that **'no further lines of investigation were required'**. The DPP accordingly directed that there should be no prosecution of any of the Land Rover crew<sup>156</sup>. DI Irwin acted as the liaison officer between the Coroner and the police. After the conclusion of Marc Hobson's trial DCS McBurney instructed DI Irwin to see the Coroner and encourage him to hold an inquest into Robert Hamill's death<sup>157</sup>.

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<sup>153</sup> 39511.

<sup>154</sup> 08753.

<sup>155</sup> 19370.

<sup>156</sup> 08999.

<sup>157</sup> Day 60 (page 71).

- 8.119 On 11 January 2000 the Coroner disclosed the statements of Tracey Clarke and Timothy Jameson to Mr Barra McGrory QC, the Hamill family's solicitor<sup>158</sup>. Having spoken on the telephone to those two potential witnesses<sup>159</sup> the Coroner made the decision not to hold an inquest<sup>160</sup>.
- 8.120 British Irish Rights Watch and Committee on the Administration of Justice are critical of the failure of the police to inform the Hamill family about the tip-off allegation themselves. The investigation of this allegation was a very sensitive matter and it remained so until the police were confident that they had at least the evidence of Andrea McKee and were confident of her willingness to give evidence for the Crown in a prosecution of Res Con Atkinson for perverting the course of justice. DCS McBurney said<sup>161</sup>, and we accept, that to have given information to the Hamill family before this would have run the risk that one of them might, without any malice, have made some disclosure which might have got into circulation and been able to jeopardise the prospects of any future prosecution.
- 8.121 The Coroner informed DI Irwin on 1 June 2000 of his decision not to hold an inquest<sup>162</sup>. He had earlier made clear to DI Irwin his view that the tip-off allegation would be an integral part of the scope of any inquest. DI Irwin informed DCS McBurney of this decision. DCS McBurney already knew that the McKees had separated and when told of the Coroner's decision commented to DI Irwin that it was time to move<sup>163</sup>.
- 8.122 On 12 June 2000 Sir Joseph Pilling wrote a review of a meeting he had had with the Chief Constable on 9 June 2000. In it he said that the Secretary of State for Northern Ireland, the Rt Hon Peter Mandelson MP, was seeing increasing difficulty in resisting demands for a public inquiry in light of the neglect allegations<sup>164</sup>.
- 8.123 On 14 June 2000 DI Irwin and DCS McBurney spoke about making further enquiries of the McKees<sup>165</sup>.
- 8.124 An internal Northern Ireland Office memorandum of 15 June 2000<sup>166</sup> considered whether there was a comparison between the circumstances of the murders of Stephen Lawrence and Robert Hamill. Stephen Lawrence, a black man, was murdered in London and a subsequent inquiry found the investigation into his

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<sup>158</sup> 41373.

<sup>159</sup> 80646 (paras 21 & 24).

<sup>160</sup> 00464.

<sup>161</sup> DCS McBurney interview of 4/5/06 (page 203).

<sup>162</sup> 00453.

<sup>163</sup> Day 60 (page 141).

<sup>164</sup> 39623.

<sup>165</sup> 17427.

<sup>166</sup> 39669.

murder by the London Metropolitan Police to have been flawed by institutionalised racism. It is recorded that the profile of the Robert Hamill case had risen significantly on 7 June 2000 when it was announced that there would not be an inquest. The day after that the Hamill family met the Taoiseach and as a result, the Irish Government called for a public inquiry. The note set out the reasons why the Hamill family were seeking an inquiry. It recorded that the Hamills perceived a direct link between the institutionalised racism in the Metropolitan police in the Lawrence case and institutionalised sectarianism in the Hamill case.

- 8.125 Anthony Langdon was appointed on 16 June 2000 to conduct a review of the Robert Hamill case and to raise significant points. He told us that the collapse of the inquest precipitated the activity that took place in June 2000, including his appointment. However, he did not know precisely what influenced the police or the Northern Ireland Office to take action<sup>167</sup>.
- 8.126 On 20 June 2000 DCS McBurney and DI Irwin visited Andrea McKee in North Wales and on DCS McBurney's instruction DI Irwin interviewed her as a witness<sup>168</sup>. As we have set out in Chapter Seven she gave a statement in which she recanted the lie which she had told in support of Res Con Atkinson's cover-up of the tip-off. We will consider in Chapter Nine what led to the decision to re-interview Andrea McKee, and the role the Chief Constable had to play in that decision.
- 8.127 Andrea McKee's new statement led to renewed investigation into Res Con Atkinson and others. The murder file remained open, as no-one had been convicted. DCS McBurney remained the SIO, but DCI K was appointed as Deputy SIO on 26 June 2000<sup>169</sup>. The tip-off allegation was referred by the Chief Constable under Article 8(1) of the Police (Northern Ireland) Order 1987 to the ICPC, which decided to supervise the police investigation of the tip-off allegation<sup>170</sup>. The DPP was asked by the ICPC for a point of contact and Mr Raymond Kitson of the ODPP was briefed for that role<sup>171</sup>.
- 8.128 On 30 June 2000 DCI K decided that the new Res Con Atkinson investigation would be managed and actioned within the original murder file on the HOLMES system because the allegations of conspiracy were inextricably linked with Robert Hamill's murder, and might present new evidence about the murder and so open up new lines of enquiry<sup>172</sup>.

- 8.129 On 21 July 2000 Anthony Langdon had a meeting with the Chief Constable<sup>173</sup>.

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<sup>167</sup> Day 67 (pages 3–4).

<sup>168</sup> 22143.

<sup>169</sup> 32348 (32349) & Day 59.

<sup>170</sup> 27145.

<sup>171</sup> 18977.

<sup>172</sup> 32348 (32353).

<sup>173</sup> 39692.

- 8.130 DCI K had the day-to-day conduct of the investigation from 30 June 2000, although he kept DCS McBurney informed<sup>174</sup>. Very considerable investigative steps were taken over the following months, including telephone analyses, interviews of Tracey Clarke's family, enquiries of clothing suppliers, tracing of taxi records, and re-interviews of police officers<sup>175</sup>. From November 2000 those steps were overseen by the PONI, which replaced the ICPC. Chris Mahaffey was the supervising officer<sup>176</sup>.
- 8.131 The PONI staff lacked confidence in DCS McBurney, and on 13 December 2000 the Chief Constable was asked to appoint a new SIO. He duly appointed DCS Stewart in DCS McBurney's place<sup>177</sup>.

## Analysis of the investigation after December 1997

### Detective Chief Superintendent McBurney and the conspiracy

- 8.132 It was submitted to us that DCS McBurney's decision not to caution Andrea McKee when he interviewed her on 20 June 2000 was an attempt by him to protect Res Con Atkinson. DCS McBurney's notebook entry for 20 June contains a long section on this point<sup>178</sup>. It says that when Andrea McKee told him parts of her statement were false he had a conversation with DI Irwin about the conduct of the interview. DCS McBurney decided to interview her as a witness. He explained to Andrea McKee that, although it was unusual, he would do so with a view to her giving evidence. He also told her **'she must understand that others may direct that she be interviewed after caution with a view to legal action'**. DI Irwin<sup>179</sup> felt that they were obliged to caution Andrea McKee but his evidence of the discussion is along the same lines as DCS McBurney's notebook.
- 8.133 DCI K told us<sup>180</sup> that when he interviewed Andrea McKee in October 2000 he also did not conduct the interview under caution. He said he wished to get as much information as he could to open investigative leads and a caution could have caused an unco-operative response. He also told us that she was someone who was totally co-operative and wanted to tell her story.
- 8.134 The PACE Code of Practice (C) which deals with the questioning of and taking a statement from a person against whom the police have reasonable suspicion that he or she has committed an offence provides that he or she must first be cautioned and told he or she need not answer questions. Does this provision apply in all circumstances without qualification? To answer this question it is necessary

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<sup>174</sup> Day 59 & 81774 (para 9).

<sup>175</sup> 32348–32379.

<sup>176</sup> Day 61 & 81909.

<sup>177</sup> 14867 (14877).

<sup>178</sup> 22150.

<sup>179</sup> Day 60 (page 78).

<sup>180</sup> Day 59 (page 22).

to consider the purpose of the Code of Practice. It is to protect a suspect in order that a case should not be presented against him or her based on things he or she might not otherwise have said, or might have wanted to consider more carefully before saying. But the purpose of taking a statement from Andrea McKee was not to build up a case against her but against Res Con Atkinson. There is no substance in any suggestion that DCS McBurney took a statement from Andrea McKee without cautioning her because he expected that the prosecution would not be allowed to use oral evidence from her based on it and so was seeking in this devious way to protect Res Con Atkinson.

8.135 DCS McBurney judged that in a statement not made under caution Andrea McKee would speak more freely than she might have done had it been a statement made under caution, because this statement could never have been used as evidence against her in any prosecution. Further, the statement she later made under caution admitting her guilt could have been excluded if the judge in any trial of her had concluded that she would have been unlikely to make the later statement had she not made the original statement not under caution. The provision in the Code of Practice is made for the protection of the suspect who is being questioned or is making a statement, and not for a third party. We conclude that there was no unfairness to Andrea McKee and no impropriety in taking a statement from her about her own wrongdoing and the part played in it by Res Con Atkinson without cautioning her. No attempt was made by DCS McBurney to persuade Andrea McKee to tell lies about Res Con Atkinson<sup>181</sup> and he did not believe she was lying to him in the statement she made<sup>182</sup>. Nor was she. In these circumstances there was no unfairness to Res Con Atkinson and his rights were not jeopardised by the fact that Andrea McKee made her statement without first being cautioned. There was no wrongful act or omission involved in relation to the statement taken from Andrea McKee on 20 June 2000.

8.136 Andrea McKee was interviewed under caution by DCI K on 10 April 2001<sup>183</sup>. On that occasion she was represented by Miss Catherine Jagger, a solicitor who practised in North Wales. Catherine Jagger had received a full briefing from DCI K which she considered to be adequate for her to be able to advise Andrea McKee properly and she told us she had sufficient time to prepare herself and advise Andrea McKee. Andrea McKee made it clear to her that she wished to assist the police in a prosecution for conspiracy to pervert the course of justice and that she knew that she herself was liable to be prosecuted and that she could face a prison sentence. There is no evidence to suggest that Andrea McKee was offered any inducement or was in any other way cajoled by the police into making a

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<sup>181</sup> Day 14 (page 70).

<sup>182</sup> DCS McBurney interview of 4/5/06 (page 179).

<sup>183</sup> 21224.

statement. She knew it was for her to decide whether or not she should make one<sup>184</sup>. The taking of earlier statements from her without first cautioning her, having regard to their purpose and intended use and the circumstances in which they were taken, was not unfair to her or improper.

- 8.137 We need to consider why, having done nothing for two and a half years in relation to the tip-off, DCS McBurney travelled to Wrexham with DI Irwin to interview Andrea McKee in June 2000. DCS McBurney has explained<sup>185</sup> that his belief when Andrea McKee made her false statement in October 1997 was that her marriage to Michael McKee was unstable and that they would separate and that this would present a further investigative opportunity. DI Irwin confirmed<sup>186</sup> that this view was expressed to him by DCS McBurney after Andrea McKee had made her statement. DI Irwin told us that DCS McBurney was delighted that by persuading the McKees to make false statements to the police Res Con Atkinson had introduced two other people into the conspiracy. DI Irwin told us that DCS McBurney regarded Andrea McKee as the weak link. He was in no doubt that DCS McBurney's strategy was to break the alibi when the time was ripe. However, he, DCS McBurney, thought that while Andrea McKee was still with her husband she would not be prepared to say anything to incriminate Res Con Atkinson. Timing was important and he was prepared to wait.
- 8.138 DCS McBurney's view that the marriage was unstable has been criticised on the basis that no evidence has been produced to justify it. There may, though, be occasions when it may be difficult to show why one has an instinct that something will happen. Further, in the event DCS McBurney's instinct proved right. The McKees separated in April 1999<sup>187</sup>. DI Irwin appears to have become aware of this in October 1999 and provided a message sheet to DCS McBurney telling him that Michael McKee was in Cork<sup>188</sup>. Ought DCS McBurney to have learned earlier that the McKees had separated? He had told DI Irwin to inform him if he learned that this had happened. Bearing in mind that DCS McBurney saw a separation as something which would provide an opportunity to approach Andrea McKee in circumstances in which she would be free from the influence of her husband, ought he to have set up some sort of plan to enable him to learn as soon as he could of any separation?
- 8.139 The separation had happened 18 months after DCS McBurney interviewed Res Con Atkinson for the second time. Allister Hanvey had not been prosecuted for murder and Res Con Atkinson would no doubt have learned through him that

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<sup>184</sup> Day 14 (page 70).

<sup>185</sup> DCS McBurney interview of 4/5/06 (page 171).

<sup>186</sup> Day 60 (page 78).

<sup>187</sup> Day 14 (page 75).

<sup>188</sup> 02395.

Tracey Clarke was not prepared to give evidence in any prosecution. We think it likely that DCS McBurney thought that this was Res Con Atkinson's state of mind. Common sense suggests that DCS McBurney would not have wanted to do anything which would have unsettled Res Con Atkinson. To have set enquiries in train in Portadown could have done this since word of it could very easily have got back to Res Con Atkinson. As is clear from DI Irwin's evidence what DCS McBurney did was to play a waiting game until DI Irwin, as a local officer, provided him with information.

- 8.140 Why did DCS McBurney not move into action promptly once he learned of the McKees' separation in October 1999? DI Irwin said<sup>189</sup> that DCS McBurney told him he was waiting for the inquest to be held. As well as being DCS McBurney's number two in the investigation, DI Irwin was the liaison officer between the Coroner and the police and, as we have said, made known to the Coroner that DCS McBurney was hoping for the inquest to be started soon. We have said earlier (paragraph 8.121) that the Coroner made it clear to DI Irwin that he regarded the tip-off allegation as an integral part of any inquest into Robert Hamill's death. This was also the view of DCI K after he took over day-to-day control of the murder and conspiracy investigations<sup>190</sup>. His view was that the McKees entered into the conspiracy knowing that it would interfere with the murder investigation. He regarded the two investigations as intrinsically linked so that any new evidence of the conspiracy might helpfully lead to further investigation of the murder investigation. Expressed in another way, the new evidence meant that the investigation of the murder had not as yet been concluded.
- 8.141 We can say in answer to the question we have asked in the preceding paragraph that DCS McBurney's failure to move promptly was not caused by any desire to protect Res Con Atkinson or preserve the reputation of the RUC by bringing to light what he had done. In reaching that answer we have considered DCS McBurney's behaviour in the round, as well as that of the Chief Constable, to which we turn in the next chapter.
- 8.142 There was no reason for DCS McBurney to believe that it would take another eight or nine months for the Coroner to reach a decision, and neither is there evidence that DCS McBurney foresaw that the Coroner would decide against holding an inquest. Two years had passed since the conspiracy involving the McKees had come into being.
- 8.143 We bear in mind the considerable pressure upon his time and energy imposed on him by his other workload as a senior detective. There is no evidence that this load was getting any less. What is clear is that once the Coroner decided on

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<sup>189</sup> Day 60 (pages 134–135).

<sup>190</sup> 32348 (32353).

2 June 2000 not to hold an inquest DCS McBurney went into action. He made arrangements to be able to interview Andrea McKee in North Wales and on 20 June he saw her there and interviewed her<sup>191</sup>.

- 8.144 We bear in mind also that there was pressure in the public domain about the Robert Hamill case but, understandably, the focus of this was on the murder investigation. The closeness in time between the Coroner's decision and DCS McBurney's interview of Andrea McKee in Wales leads us to conclude that it was that decision which triggered the interview with Andrea McKee.
- 8.145 We have said already that because we have not been able to hear oral evidence from DCS McBurney, we have had to do the best we can, gaining some help from his interviews and from the evidence of DI Irwin already referred to, to see whether there is a tenable explanation for the delay which would enable us to draw an inference about the reason for it.
- 8.146 In the next chapter we consider Sir Ronnie Flanagan's evidence about how he says he first came to learn of the tip-off allegation and the part he says he played in DCS McBurney's visit to North Wales on 20 June 2000 to interview Andrea McKee.
- 8.147 At this point we wish to set out our findings about DI Irwin's involvement in the investigations. At no point have we found a want of due diligence by DI Irwin. In this chapter, any want of due diligence that we attach to DCS McBurney does not attach to DI Irwin, even if DI Irwin was the individual undertaking the relevant action. DI Irwin was DCS McBurney's junior and was, according to ACC White<sup>192</sup>, expected to follow DCS McBurney's orders. We also have considered the oral evidence of Mr Colin Murray. He said that DI Irwin was very thorough, very diligent and very active and that he thought that DI Irwin was the driving force behind the investigation and there was not much more that DI Irwin could do<sup>193</sup>. We agree with that analysis.

### **The role of the Director of Public Prosecutions**

- 8.148 A number of complaints were raised about the actions of the ODPP. Those included the decision not to pursue a murder charge against Wayne Lunt, the limited disclosure of Tracey Clarke's statement, and the failure to bring public order charges against those charged with murder.
- 8.149 We remind ourselves of our Terms of Reference. They do not allow us to examine the correctness of the DPP's prosecutorial decisions and we can only consider whether there was a lack of due diligence in making such decisions, provided that those decisions shaped the murder investigation. As the evidence and

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<sup>191</sup> 22143.

<sup>192</sup> Day 52 (page 145).

<sup>193</sup> 74391 (para 24.1).

submissions developed before us it became apparent that, while those matters raised legitimate concerns, there was no want of due diligence in relation to them. Our only criticism of the ODPP in relation to the prosecution of Res Con Atkinson is dealt with in Chapter Seven.

# Chapter Nine

## The influence and actions of the Chief Constable

- 9.1 It has been suggested to us that Sir Ronnie Flanagan, Chief Constable of the Royal Ulster Constabulary (RUC), was a guiding hand in the way Detective Chief Superintendent Maynard McBurney (DCS McBurney) conducted the tip-off and murder investigations and that he urged a 'go slow' in relation to Reserve Constable Robert Atkinson (Res Con Atkinson), which he then reversed in June 2000. A criticism is made by British Irish Rights Watch and Committee on Administration of Justice of senior officers and the Independent Commission for Police Complaints (ICPC) which suggests that DCS McBurney 'hoodwinked' them and that it suited them to allow this to happen. It is true that he did not disclose all the information he had in relation to the tip-off allegation. These are not simply accusations of a failure in confidence but are accusations against the integrity of the ICPC and the RUC. We deal with the ICPC in Chapter Ten. Sir Ronnie was recalled to the witness box to give him the chance to deal with the allegation that the wrongful acts or omissions by DCS McBurney suited the RUC and that he was the guiding hand. We shall now address the evidence which is material to them.
- 9.2 To keep informed of events that occurred throughout the RUC, Sir Ronnie<sup>1</sup> received daily incident reports. If he wanted more detail on an incident than was in a report he would have contacted the source of the report, which in this case would have been either Assistant Chief Constable Raymond White (Crime) (ACC White) or Assistant Chief Constable Hall (South) (ACC Hall), Portadown being part of the area for which ACC Hall had responsibility. He also had weekly meetings of the Chief Officer's Group<sup>2</sup>. These meetings alternated, with one of the two weeks devoted to operational matters, involving ACC (Crime), ACC (Special Branch), ACC (North), ACC (South) and ACC (Belfast). Sir Ronnie told us that he was briefed by ACC Hall (South) and ACC White about the Robert Hamill case in the operational meetings as it was of high importance.
- 9.3 Sir Ronnie would also have had daily contact with his ACCs between the Chief Officer's Group meetings. His aim was that all of his ACCs would regularly give

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<sup>1</sup> 80267 (para 5).

<sup>2</sup> 81831 (para 3).

him an overview of what was happening on a strategic, not tactical, level in their areas. He saw it as a very important part of his role as Chief Constable to be well informed on a more strategic level about intelligence, because of the impact that intelligence would have on the transitional phase that the RUC was in in 1997. In addition, all ACCs had meetings on a regional level. If there was something specific arising from those meetings then the regional ACC would bring it to Sir Ronnie's attention. Otherwise it would be fed into the Chief Officer's Group meetings<sup>3</sup>. ACC Hall said<sup>4</sup> that he talked to the Chief Constable about the investigation of Robert Hamill's murder '**umpteenth times**' in the two or three days between Robert Hamill's death and finding out about the tip-off allegation. They spoke in a similar way about all murders.

- 9.4 ACC Hall said<sup>5</sup> that he briefed the Chief Officer's Group meeting on 12 May 1997. He relayed the tip-off allegation as it was a very serious matter, a view held by the other officers at the meeting. ACC Hall told us that when he was briefed by DCS McBurney his first objective was to get the fullest possible overview of the murder investigation so that he could brief the Chief Constable. We have seen ACC Hall's journal entry for 12 May<sup>6</sup> and it states that he was at a meeting at RUC Headquarters. He briefed the Chief Constable, Deputy Chief Constable and ACC White about the allegation against Res Con Atkinson by Tracey Clarke.
- 9.5 When it was put to Sir Ronnie when he gave evidence to us that ACC Hall had told him about the tip-off allegation on 12 May 1997, he accepted what ACC Hall said as he had every trust in him but did not recall ACC Hall telling him about the tip-off allegation. This is extremely similar to the evidence he gave about being in contact with DCS McBurney on 10 May<sup>7</sup>. We do not believe that both ACC Hall and DCS McBurney can have failed to inform Sir Ronnie of this significant and disturbing allegation and we prefer their evidence about this to that of Sir Ronnie.
- 9.6 ACC White told us<sup>8</sup> that he did not remember the meeting. In his statement<sup>9</sup> he said that he did not know of this allegation against Res Con Atkinson from the outset although he agreed<sup>10</sup> that ACC Hall's note contradicts this and accordingly accepted that he must have been aware of the allegation. He agreed that the allegation would have been taken extremely seriously.

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<sup>3</sup> Day 61 (page 236).

<sup>4</sup> Day 55 (page 53).

<sup>5</sup> Day 55 (page 230).

<sup>6</sup> 74231.

<sup>7</sup> Day 61 (page 189).

<sup>8</sup> Day 52 (page 48).

<sup>9</sup> 81659 (para 23).

<sup>10</sup> Day 52 (page 58).

- 9.7 Sir Ronnie said<sup>11</sup> that the police needed confirmation of intelligence before it could be passed on, but we consider that the need for confirmation does not prevent a briefing about an allegation contained in a statement. The confirmation that the phone call from the Atkinson household to the Hanvey household had been made was received on 16 May 1997<sup>12</sup>. In this respect, DCS McBurney's notebook<sup>13</sup> shows that he attended a meeting on the afternoon of 16 May, which the Chief Constable attended. We note that the Rt Hon Tony Blair MP, who had become Prime Minister on 1 May 1997, and Dr Rt Hon Mo Mowlam MP, the new Secretary of State for Northern Ireland, were also present at the meeting, so it is highly unlikely that such a detailed issue would have been raised.
- 9.8 Sir Ronnie also told us that the chain of command was in place for people to receive updates on the investigation and DCS McBurney was in contact with ACC Hall on an almost daily basis. In this case the chain of command succeeded in passing the tip-off allegation to him<sup>14</sup>.
- 9.9 It was submitted to us on behalf of the Hamill family that when the Labour Government came to power in May 1997 there was a pro-Catholic and anti-RUC feeling amongst politicians, of which the Chief Constable would have been very aware. It was further submitted that Sir Ronnie would therefore have been keen to downplay the accusation of a corrupt officer but very anxious to be seen to be solving the murder.
- 9.10 There has also been criticism of the ICPC for failing to suggest to the RUC that the ICPC should be invited to supervise the investigation of the tip-off allegation. Given that there was no power to refer the matter to itself and no statutory duty to ask that a matter should be referred to it, there is no basis in law for this criticism. But if the ICPC had allowed the RUC to assume that it was supervising the investigation of this allegation, or had realised that this was the assumption of the RUC, it would not have been acceptable for it to allow the RUC to remain under the misapprehension that it was supervising the investigation. In fact on 19 May 1997, which was soon after the ICPC had become aware of the tip-off allegation, the RUC was told by Mr Kevin Murnaghan that the Commission was not supervising its investigation<sup>15</sup>. However, for some months after this DCS McBurney's superiors continued to believe that it was, though this was not his belief.
- 9.11 A question has been raised whether DCS McBurney should have asked for a referral under Article 8 of the tip-off allegation to the ICPC to gain the benefit of

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<sup>11</sup> Day 61 (page 234).

<sup>12</sup> 44931.

<sup>13</sup> 73092 (73097).

<sup>14</sup> Day 61 (page 238).

<sup>15</sup> 00935 (00936).

any help to the investigation which supervision might have provided. Whether there should have been a referral under Article 8 was a matter for the Chief Constable with the help of his advisers in the RUC above the level of DCS McBurney provided the Chief Constable knew of the allegation, as he did within days of Tracey Clarke making her statement. As we have said, Complaints and Discipline (C&D) were told at a meeting on 19 May 1997 that the ICPC was not supervising the investigation of the tip-off allegation. The appropriate route of communication to the Chief Constable of this fact was by C&D through Assistant Chief Constable Archibald Hays (ACC Hays), who had the responsibility for C&D<sup>16</sup>. We do not see that DCS McBurney is to be criticised for not bypassing C&D and going directly to ACC Hays, still less for not bypassing him and going directly to the Chief Constable. If the report on the neglect investigation from DCS McBurney to the Director of Public Prosecutions (DPP) had dealt properly with the state of the investigation of the tip-off allegation, the appropriate adviser would have been put into a position in which he could give advice to the Chief Constable. This is where the fault of DCS McBurney is to be found.

- 9.12 There was an exchange of letters in 1997 between the then Secretary of State for Northern Ireland, Mo Mowlam, and Sir Ronnie about a meeting that the Secretary of State had with Robert Hamill's family on 24 November 1997. The first letter was sent by the Secretary of State on 28 November to the Chief Constable and the Attorney General, John Morris. In the letter<sup>17</sup> the Secretary of State said that she was keen to defend the justice system from the criticisms that it was facing at the time and that she wanted to be supplied with as much detail as possible so that she could reply to the Hamills. She was keen to answer as many points as she could but would say if any points were the subject of litigation. She understood that the Chief Constable and Attorney General would have reservations about what she was trying to do but wished to give the family an honest response. One of the points raised which the Secretary of State wanted the Chief Constable to provide information on was **'There have been some press reports that have claimed there were links between some officers and some of the defendants. Have these alleged links been investigated?'**
- 9.13 The letter initiated a response that involved many areas of the RUC. On 15 December 1997 Detective Inspector Michael Irwin (DI Irwin) sent a report<sup>18</sup> to a Detective Superintendent in the Crime Administration Unit about some of the points raised. On the relationship issue he said, **'A DPP file is being submitted which relates to an allegation of a link between one of the accused and a police officer.'**

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<sup>16</sup> Day 52.

<sup>17</sup> 60487.

<sup>18</sup> 16499.

9.14 DI Irwin told us<sup>19</sup> that from his answer, which he sent and which details a specific link, it can be inferred that he was asked about a link between a suspect and a police officer. The answer on the same point in the letter sent by Sir Ronnie<sup>20</sup> did not deal with a specific allegation.

9.15 ACC White sent a letter to the Chief Constable's Staff Officer on 18 December 1997<sup>21</sup>. He provided full responses to the points raised by the Secretary of State. His response to the point about the relationship between officers and defendants is:

**'This matter is the subject of a criminal investigation and a file will be forwarded to the DPP in due course. It would not be prudent to make any comment about this at this stage, nor to pre-empt the decision of the DPP'.**

9.16 Sir Ronnie told us<sup>22</sup> that he was briefed by ACC White on 18 December about this and sent a response to the Secretary of State on 23 December 1997. The final response to the question about the relationship between officers and defendants was

**'This allegation has been included in the criminal investigation and will be considered by the DPP'.**

9.17 Sir Ronnie clearly took the information he put in his letter from the report by ACC White and that report did not provide him with detailed information about the Atkinson allegation. However, Sir Ronnie told us<sup>23</sup> that as a result of the Secretary of State's letter in November 1997 he was advised that the tip-off allegation was going to go to the DPP.

9.18 He was asked during the Inquiry if the response to the Secretary of State was deliberately misleading and it was suggested to him that she would have wanted to know of the Atkinson allegation. He said that the response would be set out under the headings she had used in her letter. Sir Ronnie denies that he was being economical with the detail as it is not the role of the Secretary of State to get into the detail of the investigation. If she had wanted more information she could have had it.

9.19 In the first of the two statements which Sir Ronnie made to the Inquiry<sup>24</sup>, he said that he first became aware of the Atkinson allegation around June 2000. He was briefed by DCS McBurney about a **'development'** and was told detectives

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<sup>19</sup> Day 60.

<sup>20</sup> 15375.

<sup>21</sup> 15385.

<sup>22</sup> Day 61 (page 185).

<sup>23</sup> Day 61 & 15376.

<sup>24</sup> 80266.

had concerns about a call that had been made advising a suspect to dispose of clothing but there was always strong alibi evidence. The extent of the briefing was that a couple who had provided the alibi had separated and DCS McBurney wanted to take the opportunity to re-interview the woman to see if he could break the alibi. He was also told that DCS McBurney had been unable to undermine the alibi previously, but was not told that Mrs Andrea McKee had been in contact with the Criminal Investigation Department previously and had been present when Tracey Clarke gave her statement. Sir Ronnie believed that Res Con Atkinson's alibi had been provided immediately. It surprised him that the alibi came five months after the allegation.

- 9.20 In his first statement. Sir Ronnie said he thought he would have been briefed upon DCS McBurney's return from Wales, which was on 20 June, but he did not recall a briefing. He said that in any case, the briefing about the allegation would have been from ACC White, and not DCS McBurney. It is worth noting here that this echoes what DCS McBurney said about the transfer of information within the RUC, namely that he would have expected either ACC Hall or ACC White to brief the Chief Constable.
- 9.21 On the first occasion when he gave evidence<sup>25</sup> Sir Ronnie said that after the briefing he contacted the DPP because he wanted someone from that office to work with DCS McBurney on the strategy. We have a note from the DPP<sup>26</sup> in which he says that he received a call from Sir Ronnie on 22 June 2000. The note states that the DPP was told about the Atkinson allegation, which had been investigated and **'although it was alleged that the call was improper, it had been accepted that it was innocent'**. The note also stated the relevant police officer had been re-interviewed and had **'changed his story'**. When asked about this note in his evidence<sup>27</sup> Sir Ronnie said that the contents of the note were incorrect. **'Changed his story'** was wrong as Res Con Atkinson had not been re-interviewed. In addition, the **'innocence of the phone call'** was not accepted by police. There was not the evidence to prove it was not innocent.
- 9.22 We do not accept Sir Ronnie's evidence about the accuracy of the note made by the DPP of this conversation. On this basis, if the note is correct, which the Inquiry considers most likely, the information he was given by Sir Ronnie was wrong. Whether he had not briefed himself properly or not expressed himself with clarity and so was misunderstood or whether he set out to mislead the DPP is something we have considered. Our starting point is to ask why Sir Ronnie spoke to the DPP. Did Sir Ronnie tell the DPP this because he wanted to suppress the truth about the tip-off allegation in order to stifle any prosecution of Res Con Atkinson? This

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<sup>25</sup> Day 61.

<sup>26</sup> 18977.

<sup>27</sup> Day 61 (page 267).

is a very serious allegation and would require cogent evidence to prove it. It must have been clear to Sir Ronnie from the briefings he had received that, even had Tracey Clarke been prepared to give evidence about what Mr Allister Harvey had told her about the content of the telephone call from Res Con Atkinson, this was not evidence and there was no admissible evidence against Res Con Atkinson that he had advised Allister Harvey to get rid of his clothing. What DCS McBurney was hoping to be able to prove was that there had been a conspiracy to pervert the course of justice in which Res Con Atkinson was involved by enlisting the McKees to provide a false explanation for the phone call made from his home to Allister Harvey's home on the morning of 27 April 1997. This was a quite separate offence from the offence of assisting an offender, about which Tracey Clarke had provided information which could never have been used in any trial of Res Con Atkinson.

- 9.23 It is not clear whether Sir Ronnie realised either of two things. The first was that with the evidence of Andrea McKee it would now be possible to prosecute Res Con Atkinson for a new and quite separate offence, conspiracy to pervert the course of justice. The second was that in the trial of this new offence, although the need for a false explanation for the telephone call had been triggered by the tip-off given to Allister Harvey, the prosecution would not have been allowed to call the evidence about the tip-off and had no need to. We point out in a later paragraph that at a meeting with the Police Ombudsman for Northern Ireland in the following year Sir Ronnie said he was **'unaware of the detail'** of the Atkinson case. Be this as it may, he must have realised when he made his telephone call to the DPP that any prosecution of Res Con Atkinson based on the original tip-off allegation would not succeed. Further, any case against Res Con Atkinson based on his involvement of Michael and Andrea McKee in providing false information to the police had not yet been prepared so as to enable a prosecution file to be submitted to the DPP.
- 9.24 That file was in due course prepared and submitted<sup>28</sup> and a prosecution was begun. There is no evidence that Sir Ronnie ever did anything to try to frustrate this. What evidence there is is that he tried to urge it along. We conclude, therefore, that his telephone call to the DPP was not motivated by a desire to prevent a prosecution of Res Con Atkinson and that the reason for the DPP being misinformed was that Sir Ronnie either had not briefed himself properly or had expressed himself in a confused way and been misunderstood.
- 9.25 When interviewed by the Inquiry, DCS McBurney denied that he spoke to the Chief Constable before he went to see Andrea McKee. He said that he was in charge of the case and did not have to ask anyone. DCS McBurney said that he

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<sup>28</sup> 20021.

spoke to the Chief Constable on his return from interviewing Andrea McKee. He also said that he saw the DPP on 26 June 2000 as he wanted to confirm that the Office of the Director of Public Prosecutions (ODPP) would be happy with Andrea McKee giving evidence although she had not been cautioned and whether they would be happy for DCS McBurney to take a statement from Mr Michael McKee under the same conditions. This is confirmed by Mr Gregory Mullan of the ICPC<sup>29</sup>, who attended the meeting in a supervisory capacity.

- 9.26 As we have said, on 12 June 2000 Sir Joseph Pilling, the then Permanent Secretary at the Northern Ireland Office, wrote a review of a meeting he had had with the Chief Constable on 9 June 2000 in relation to a public inquiry and the neglect allegation<sup>30</sup>.
- 9.27 The note went on to say that in response to the allegation that an officer had advised a suspect to dispose of his clothing Sir Ronnie had said: the officer was Res Con Atkinson; the suspect had been charged with murder but the charge had been dropped; the claim was made in a statement by the then girlfriend of the suspect, which was subsequently withdrawn; the police believed the claim had prima facie credibility and the allegation had been exhaustively investigated under the direction of the ICPC's most competent member (now dead) and even the ICPC were not suggesting that any disciplinary charge should be brought.
- 9.28 According to the note, Sir Ronnie continued, saying that it was true that a call had been made from Res Con Atkinson's home to the suspect's home on the morning of the incident. He said that Res Con Atkinson's explanation was that he lived with his mother who had been visited that morning by a friend who was the aunt of either the leading suspect or his girlfriend. He, Res Con Atkinson, was asleep and his mother explained to the friend that there had been trouble in the town and he had come in only at 04:00 or 05:00. The visitor then wished to check that her nephew or niece had not been caught up in the trouble and had made the phone call shown in the billing records. Sir Joseph told Sir Ronnie that he had been told that there was a pattern of calls from Res Con Atkinson's number to the suspect. Sir Ronnie accepted this and said that the explanation was that the two of them were members of the same martial arts club. He thought that if the tip-off was given, it was more likely to have been done face to face than over the telephone. Our reaction to what Sir Ronnie was saying in this meeting with Sir Joseph is that he was not as aware of the details of the case as he made himself out to be and that there was a degree of speculation in what he was saying.
- 9.29 According to the note Sir Joseph said that he was uncomfortable about the allegation and that any social contact between a suspect and an officer who had

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<sup>29</sup> 27142.

<sup>30</sup> 39623.

been present at the crime was, at its lowest, unwise or unprofessional. Sir Ronnie responded that in similar circumstances he had sacked people and paid whatever it cost because they could not be brought to justice. Sir Ronnie implied that if Sir Joseph asked him to do so, he would sack Res Con Atkinson.

- 9.30 When he gave evidence<sup>31</sup> Sir Ronnie said he would never sack anybody because he had been asked to do so by a Permanent Secretary and did not agree with that section of the note.
- 9.31 On the second occasion when he gave evidence<sup>32</sup>, Sir Ronnie was asked again about the comments recorded in Sir Joseph's note. He said that he could not remember the context of the conversation but it is apparent from the context of the conversation that it was a conversation about a public inquiry. Eight days after that conversation DCS McBurney saw Andrea McKee in Wrexham. Sir Ronnie denied that once a public inquiry was looming he changed his position and took DCS McBurney off his 'go slow'.
- 9.32 We referred in Chapter Eight (paragraph 8.117) to Sir Joseph Pilling's instructions to Mr Anthony Langdon and to Chris Patten's **'particular disquiet'** about the Robert Hamill case. Chris Patten's report was published in September 1999 and did not make any mention of the Robert Hamill and Patrick Finucane cases. Anthony Langdon told us<sup>33</sup> that he was engaged on 22 March 1999 by the Northern Ireland Office to report on cases that had attracted the attention of the Chris Patten review.
- 9.33 We have referred (paragraph 8.124) to the Northern Ireland Office memorandum prepared on 15 June 2000 comparing the murders of Stephen Lawrence and Robert Hamill and also to Anthony Langdon's appointment on 16 June 2000.
- 9.34 As we have said, on 21 July 2000 Anthony Langdon had a meeting with the Chief Constable. Anthony Langdon told us<sup>34</sup> that during the meeting he wrote some aides-memoire and would have written the note as soon as he could after the meeting. At that stage he had not yet formulated an account of what had happened. He said that he had no reason to distrust his note. There are several issues in the note and we will deal with them individually.
- 9.35 The note<sup>35</sup> states that Anthony Langdon found the Chief Constable in a **'pretty defensive and critical mood'**. Sir Ronnie denied to us<sup>36</sup> that he was. If he was

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<sup>31</sup> Day 61 (page 195).

<sup>32</sup> Day 75 (page 36).

<sup>33</sup> Day 67.

<sup>34</sup> Day 67 (page 19).

<sup>35</sup> 39692.

<sup>36</sup> Day 61 (page 256).

defensive it would be about the police's reputation. To defend it he was rigorous about removing anyone who would damage that reputation.

- 9.36 The note<sup>37</sup> also showed that Sir Ronnie commented that Robert Hamill's death could have been caused by his own family cradling his head in a way that led to oxygen starvation. Although Sir Ronnie accepted the beating was the cause of Robert Hamill's death, he thought the connection was indirect and it might not have been possible to sustain a charge of murder at trial. When asked about the comment Sir Ronnie thought<sup>38</sup> it was a disgraceful record to say

**'he commented Hamill's death could have been caused by his own family cradling his head...that led to oxygen starvation'**

and to suggest that Robert Hamill's death was caused by anything other than the beating was disgraceful.

- 9.37 Anthony Langdon told us<sup>39</sup> that he clearly remembered Sir Ronnie making the comment about Robert Hamill's family potentially causing his death as he remembered Sir Ronnie making a cradling gesture. He did not challenge the Chief Constable on this issue as he did not see it as his role. He remembered the Chief Constable saying that his force was being **'unfairly pilloried'** but does not recall him specifically mentioning Robert Hamill's sister, although he did not remember the discussion relating to anyone other than Robert Hamill's family.
- 9.38 Anthony Langdon's note<sup>40</sup> also stated that Sir Ronnie thought it was noteworthy that it was Robert Hamill's sister, Miss Diane Hamill, rather than his partner who was making the running and that Diane Hamill had her own agenda to discredit the RUC.
- 9.39 When he first gave evidence<sup>41</sup> Sir Ronnie said that he did not say that Diane Hamill had her own agenda to discredit the RUC. He believed she had never had an agenda to discredit the RUC but had an agenda to find out what happened to her brother. When he was recalled<sup>42</sup>, Sir Ronnie said that any comments made about Diane Hamill having an agenda to discredit the RUC would have been made in the context of people suggesting this. He did not subscribe to those theories. He had never met Diane Hamill and had no knowledge that would lead him to that conclusion, although it was possible that other people were suggesting it. He denied that by engaging Rosemary Nelson, Diane Hamill had shown that she had an agenda and that this made her subject to that criticism. Sir Ronnie said

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<sup>37</sup> 39692.

<sup>38</sup> Day 61 (page 257).

<sup>39</sup> Day 67 (page 26).

<sup>40</sup> 39692.

<sup>41</sup> Day 61 (page 258).

<sup>42</sup> 42 Day 75 (page 33).

that there was absolutely no reason for him to have said to Anthony Langdon that Diane Hamill had her own agenda to discredit the RUC.

- 9.40 Anthony Langdon asked Sir Ronnie<sup>43</sup> what had precipitated the new criminal investigation. The Chief Constable said that when the Coroner had given **'the gem'** to Robert Hamill's family's solicitors he himself had **'pushed and pushed'**, and the re-interview of Andrea McKee followed directly from that. The note states that Anthony Langdon thought that **'the gem'** was the information that statements identifying the murderers had been withdrawn.
- 9.41 When he gave evidence for the second time<sup>44</sup> Sir Ronnie did not understand the section containing **'gem'** as he would not use the word and did not understand it in that context. If it was **'gen'**, meaning information, then he could have used that word. The driving force was created by DCS McBurney briefing Sir Ronnie about the new information. The briefing that DCS McBurney gave was that he had been waiting for the McKees to split up and that then there would be an opportunity. Accordingly, Sir Ronnie contacted the DPP and ICPC to get them involved.
- 9.42 Anthony Langdon<sup>45</sup> did not dispute that the word **'gem'** may be **'gen'** but he did not think he could have misunderstood that whatever the Coroner had said to the Hamill family was an important factor.
- 9.43 Sir Ronnie said<sup>46</sup> that DCS McBurney saw him before he went to see Andrea McKee and that Sir Ronnie pushed DCS McBurney to seek advice from the ODPP about how to treat Andrea McKee. Sir Ronnie told us that he did not have to push DCS McBurney to interview as he was delighted to have the opportunity. When he gave evidence before us a second time Sir Ronnie said that the phrase **'pushed and pushed'** was **'not necessary'**. He thought that DCS McBurney would have taken that course of action anyway as DCS McBurney was pleased that a new opportunity had arisen, and Sir Ronnie was determined to make sure the opportunity was taken.
- 9.44 We have analysed with great care the question raised in paragraph 9.1 that Sir Ronnie was the guiding hand behind DCS McBurney's conduct of the investigation into the tip-off allegation and of the conspiracy to cover it up. We have considered whether DCS McBurney went to Wales to see Andrea McKee only because Sir Ronnie suggested that he should in order to avert or delay a public inquiry, and not genuinely to further the murder investigation. Sir Ronnie has said at one stage that he **'pushed and pushed'** DCS McBurney. He told us that DCS McBurney needed no pushing. DCS McBurney himself says he went of

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<sup>43</sup> 39692.

<sup>44</sup> Day 61 (page 200).

<sup>45</sup> Day 67 (page 30).

<sup>46</sup> Day 61 (page 221).

his own volition to see Andrea McKee and did not see Sir Ronnie until after he had seen her. We prefer his recollection to that of Sir Ronnie. We find support for DCS McBurney in DI Irwin's evidence that when the Coroner informed him on the 2 June 2000 that he did not intend to hold an inquest he passed this information on to DCS McBurney and his response was that it was now time to move. We note that, in his first statement to the Inquiry Sir Ronnie said he would have been briefed on DCS McBurney's return from Wales. This is confirmed by DCS McBurney's notebook, where he gives the date as 21 June, which was the day after he went to Wales.

- 9.45 In these circumstances we have had to look at the evidence we have received and ask whether there is an explanation to be offered which is in harmony with the evidence. In considering this we bear in mind what we have been told about DCS McBurney, about his ability, his competence and reputation, and his integrity. This information came from senior police officers. We believe that the explanation we have set out for the delay (namely that he intended to break the conspiracy once Andrea McKee ceased to be under the influence of her husband) can reasonably be inferred from the foregoing and we draw the inference. In our view, when examined carefully and critically, it is a more likely explanation than others which call into question DCS McBurney's integrity. It is a course of action which an investigator could reasonably have followed. We reject the allegation that DCS McBurney acted wrongfully in relation to the interview of Andrea McKee in June 2000. Our view, supported by passages in the evidence of DI Irwin about his conversations with and the instructions he received from DCS McBurney, is that DCS McBurney went to Wales to see Andrea McKee on his own initiative and not as a result of any urging by Sir Ronnie.
- 9.46 We have found a large number of wrongful acts or omissions on the part of DCS McBurney which, we are satisfied, obstructed the murder investigation. With the exception of the misleading prosecution file, which DCS McBurney submitted knowing it to be wrong, we find that what he did was negligent. We have considered with particular care the question of whether any of his wrongful acts or omissions resulted from collusion either with anyone he was trying to protect or with senior officers who were directing him. We are satisfied that there was no such collusion. Rather, there was a catalogue of failures in the checks and balances which should have operated to ensure that he conducted the murder investigation properly. It follows that we also reject the submission by Mr Barra McGrory QC that it suited the RUC for DCS McBurney to have been guilty of wrongful acts or omissions and that Sir Ronnie was **'the guiding hand'**.

# Chapter Ten

## The role of the Independent Commission for Police Complaints

- 10.1 We have already dealt in the preceding chapter with the role of the Independent Commission for Police Complaints (ICPC/the Commission) in relation to the supervision of the complaint made by Miss Rosemary Nelson in May 1997 and the supervision of the renewed investigation into Reserve Constable Robert Atkinson (Res Con Atkinson) in June 2000. We considered those matters for the purpose of identifying whether there was any wrongful act or omission, or want of due diligence, within the Royal Ulster Constabulary (RUC). We will now turn to the consideration of the question of whether there was any want of due diligence in relation to the failure to ensure that the Commission supervised the tip-off allegation.
- 10.2 The Commission was created by the Police (Northern Ireland) Order 1987<sup>1</sup>. As a statutory body it had only those powers conferred on it under statute. Powers not so conferred on it could not be assumed by agreement with or the acquiescence of another party or as a result of a mistaken assumption on the Commission or anyone else's part. This is an elementary principle of the law relating to the construction of the powers of a body which is a creature of statute and a principle which should have been known by both the Commission and the RUC, since both bodies were involved with the fulfilment of the duties and the exercise of the powers created by the Order.
- 10.3 How did the Order provide for the Commission to take up a matter and exercise its power to supervise a disciplinary investigation? It is not our purpose to deal at large with the powers and duties which the Commission had under the Order but only with those which are relevant to a consideration of our Terms of Reference. Article 2(2)<sup>2</sup> of the Order provided that a complaint for the purpose of the Order was one made about the conduct of a police officer which was submitted by or on behalf of a member of the public. Article 4<sup>3</sup> of the Order imposed a duty on the Chief Constable of the RUC, where a complaint had been submitted to him, to determine whether he was the appropriate authority in relation to the member of

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<sup>1</sup> 73303.

<sup>2</sup> 73303–73304.

<sup>3</sup> 73305.

the police force against whom the complaint was made. In this case the complaint was made against officers none of whom was 'a senior officer' within the meaning of the Police Act (Northern Ireland) 1970 and so under Article 2 (2)(b)<sup>4</sup> of the Order the Chief Constable was the appropriate authority.

- 10.4 By Article 5(5)<sup>5</sup> of the Order if the Chief Constable determined that he was the appropriate authority, and if it appeared to him that the complaint was not suitable for informal resolution, he was obliged to appoint a member of his or another police force to investigate it formally. In that event Article 7(1)<sup>6</sup> required him to refer the complaint to the Commission.
- 10.5 By Article 8(1)<sup>7</sup> the Chief Constable also had the power to refer to the Commission a matter that was not the subject of a complaint, if it appeared to him that a member of the police force had committed a criminal offence or an offence against discipline, and if it appeared to him that it ought to be referred by reason of its gravity or of exceptional circumstances.
- 10.6 Those were the only two ways in which a Chief Constable could bring an allegation against a police officer to the attention of the Commission.
- 10.7 The Commission was obliged to supervise an investigation referred to it under Article 7 if the complaint alleged that the conduct of a member of the police force resulted in death or serious injury: Article 9(1)<sup>8</sup>. Serious injury was defined by Article 9(1) as meaning a fracture, damage to an internal organ, impairment of bodily function, a deep cut or a deep laceration. In the case of a complaint which did not make such an allegation, or in the case of a referral of a matter that was not the subject of a complaint, Article 9(3)<sup>9</sup> provided that the Commission may supervise the investigation. If the Commission did so decide, it was required by Article 9(4)<sup>10</sup> to notify the Chief Constable to this effect.
- 10.8 The Chief Constable received a letter dated 6 May 1997 from Rosemary Nelson, the solicitor acting for Robert Hamill's family, in which she complained that the members of the Land Rover crew had not acted promptly in response to the disturbance which occurred at the junction in the early hours of 27 April 1997<sup>11</sup>. This complaint was duly referred to the Commission on behalf of the Chief Constable and by a letter dated 13 May 1997 the Commission notified Detective Chief Superintendent Maynard McBurney (DCS McBurney) that it would be

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<sup>4</sup> 73303 (73304).

<sup>5</sup> 73306.

<sup>6</sup> 73308.

<sup>7</sup> 73308.

<sup>8</sup> 73309.

<sup>9</sup> 73309.

<sup>10</sup> 73303 (73309).

<sup>11</sup> 15272.

supervising this complaint<sup>12</sup>. The letter referred to Article 9(1), which refers to a mandatory requirement to supervise an investigation by the police, whereas it seems more likely that it was exercising a discretionary power under Article 9(3). At about the same time there was a referral by the Chief Constable under Article 8(1)<sup>13</sup> arising out of his awareness of allegations in the media about the failure of the police to take prompt action in response to the disturbance. It does not appear that the Commission responded to this referral. This may have been because it was thought unnecessary to do so having regard to the decision made in respect of the complaint contained in Rosemary Nelson's letter.

- 10.9 Mr Barra McGrory QC, for the Hamill family, has submitted that the letter from Rosemary Nelson operated also as a complaint made by or on behalf of a member of the public about the tip-off allegation. This argument is quite untenable. The tip-off allegation cannot be considered as an aspect of an allegation of neglect of duty made against the members of the Land Rover crew. It was wholly different in character and was separated by time and place from that complaint. Moreover, the tip-off allegation had not come to light at the time Rosemary Nelson wrote her letter to the Chief Constable. A further fatal difficulty in the way of Mr McGrory's submission is that the tip-off allegation was an allegation that Res Con Atkinson had committed the criminal offence of assisting an offender. It therefore became the subject of a criminal investigation and by virtue of Article 4(5)<sup>14</sup> Article 7 could not apply to it. The only route by which the Commission could have become the supervisor of this investigation was by means of a referral under Article 8(1).
- 10.10 The representative from the Commission who supervised the investigation was the late Mr Kevin Murnaghan. Over the weekend of 10 and 11 May 1997 Assistant Chief Constable Fred Hall (ACC Hall), who was responsible for policing in South Region, learned of the tip-off allegation from DCS McBurney<sup>15</sup>. This was raised at the weekly meeting of the Chief Officer's Group chaired by the Chief Constable on Monday 12 May 1997<sup>16</sup>. ACC Hall assumed that the investigation of this was being supervised by the Commission<sup>17</sup>. He says he telephoned Kevin Murnaghan to confirm that he was aware of the allegation and that it would be included in his remit. ACC Hall said that Kevin Murnaghan responded by saying,

**'You never know what comes up in an investigation. We will see what the evidence is.'**

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<sup>12</sup> 15265.

<sup>13</sup> 44407.

<sup>14</sup> 73305.

<sup>15</sup> Day 55 (pages 31–32).

<sup>16</sup> 74231.

<sup>17</sup> Day 55 (page 33).

The evidence of Kevin Murnaghan's response is not supported by any contemporaneous document, so ACC Hall was relying upon a recollection of a brief conversation which took place several years before he made his statement to the Inquiry<sup>18</sup>. Mr Gregory Mullan, the ICPC officer handling the file, said that the only documentation he was aware of which related to the Article 7 referral of Rosemary Nelson's letter of complaint was her letter and the letters from the Commission dated 13 May 1997 to the RUC and DCS McBurney. He and Kevin Murnaghan were both of the view that the tip-off allegation was an integral part of the murder investigation which, of course, the Commission had no power under the Order to supervise since none of the murder suspects was a police officer<sup>19</sup>. The Commission has no record of any conversation between ACC Hall and Kevin Murnaghan. It is significant that there is no record of any notification by the Commission to the Chief Constable that it had decided to supervise the investigation of the tip-off allegation. If the words attributed to Kevin Murnaghan by ACC Hall were said, and we are not in a position to make a finding about this, they fell short of what would be required for a referral under Article 8 by or on behalf of the Chief Constable and fell short of the expression of a decision made by the Commission to supervise an investigation in response to an indication to do so. In our view it is clear that the Commission was never invited to supervise the investigation of the tip-off allegation.

- 10.11 A meeting on 19 May 1997 was attended by DCS McBurney, Mr Gregory Mullan, Kevin Murnaghan, Detective Chief Inspector P39, Detective Inspector Michael Irwin and Superintendent Robert Anderson (Supt Anderson). Gregory Mullan's minute shows that the tip-off allegation was raised and that he and Kevin Murnaghan were told by DCS McBurney that telephone records were in the process of being seized<sup>20</sup>. It has to be remembered that this was a meeting attended by a Complaints and Discipline (C&D) officer who was concerned with both the neglect complaint and, regardless of whether or not it was being supervised, the tip-off allegation. When Res Con Atkinson was interviewed by DCS McBurney on 9 September 1997 Kevin Murnaghan was in attendance. At this interview the questioning of Res Con Atkinson dealt with both the neglect complaint and, in less detail, the tip-off allegation<sup>21</sup>. Bearing in mind that DCS McBurney was investigating both the murder (of which the tip-off allegation was essentially a part) and the neglect complaint it should not be a matter of surprise that Kevin Murnaghan was present at this interview, although it might have been more appropriate had Kevin Murnaghan withdrawn from the interview before

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<sup>18</sup> 74272.

<sup>19</sup> Day 50 (page 44).

<sup>20</sup> 14803.

<sup>21</sup> 09476.

any questions were asked about the tip-off allegation. This does not affect the question about referral, though.

- 10.12 The fact was, however, that the Chief Constable and other senior officers were under the impression that the investigation of the tip-off allegation was also being supervised by the Commission<sup>22</sup>. We have heard the view expressed by more than one senior officer, including the Chief Constable, of the practice that if in the course of a supervised investigation another matter which needed to be investigated should come to light that would be subsumed within the complaint being supervised by the Commission<sup>23</sup>. This was also the view of Mr Paul Donnelly, the then Chairman of the Commission<sup>24</sup>. This was not a view supported by Assistant Chief Constable Archibald Hays, who was responsible, under the supervision of Deputy Chief Constable Blair Wallace, for C&D. He thought the tipping-off allegation would have justified a reference by the Chief Constable to the Commission under Article 8 and he would have expected that the Commission would then have supervised its investigation. However, for the allegation to reach the Chief Constable so that he would have power to refer under Article 8, the senior investigating officer of the criminal investigation, DCS McBurney, would have needed to bring the matter to the attention of Assistant Chief Constable White (Crime) so that he might pass it on to the Chief Constable<sup>25</sup>, as that was the established procedure. DCS McBurney said that the Commission was not asked to supervise the investigation of the tip-off allegation and did not want to<sup>26</sup>.
- 10.13 Whether or not a matter had been referred to the Commission was able to have practical consequences limiting a Chief Constable's freedom of action. If the Commission had supervised an investigation by the police and it considered that the report on an investigation indicated that a criminal offence might have been committed by the police officer reported upon, it had power under Article 12<sup>27</sup> to direct the Chief Constable to send to the Director of Public Prosecutions (DPP) for Northern Ireland a copy of the report. Under Article 13<sup>28</sup>, following the report on an investigation, the Commission had power to recommend to a Chief Constable who had not laid disciplinary charges against a police officer or did not propose to that he should lay such disciplinary charges as it might specify. If he was unwilling to do so the Commission had the power to direct him to do so. The police officer concerned, as well as the Chief Constable, might have had an interest in whether there had in fact been a referral to give the Commission the power it was seeking

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<sup>22</sup> Day 61 (pages 191–192).

<sup>23</sup> Day 61 (page 274).

<sup>24</sup> 82078 (para 11).

<sup>25</sup> Day 52 (pages 10–11).

<sup>26</sup> DCS McBurney interview of 4/5/06 (pages 19 & 107–108).

<sup>27</sup> 73303–73336.

<sup>28</sup> 73303 (73316).

to exercise. It was important, therefore, that there was clarity about whether or not there had been a referral to the Commission and whether it was under Article 7 or 8 in case the question might be raised whether there had in fact been a referral to the Commission and what had been referred. The rights of a third party, the police officer, were involved and it was not for the RUC or the Commission to ignore the statutory requirements and substitute for them a regime of their own.

- 10.14 Once Gregory Mullan said that the Commission was not supervising the tip-off allegation it was then a matter for the RUC to decide whether to refer this matter to the Commission under Article 8(1). The question has been raised of whether the Commission had power to refer an investigation to itself so as to be able to supervise it. Since the Order made no provision for this, the Commission had no such power.
- 10.15 On 22 December 1997 DCS McBurney submitted his report about the allegations of neglect against the members of the Land Rover crew. In the report he said there was no evidence of criminal neglect by members of the Land Rover crew and that, though one could remain sceptical, there was no evidence to prove the tip-off allegation against Res Con Atkinson<sup>29</sup>. The report had in fact been prepared for the DPP and dealt also with the murder and tip-off investigations. The fact, therefore, that it dealt with the tip-off allegation cannot be taken as an indication that DCS McBurney regarded the Commission as supervising the investigation of this allegation. He said that in his view the Land Rover crew had done all they reasonably could have done. They could not have anticipated what happened and were ill equipped to stop the fighting once it began.
- 10.16 To repeat what we said in Chapter Eight, the ICPC was supervising the investigation of the neglect complaint. Although he should not have been, DCS McBurney was treating the tip-off investigation as part of the neglect complaint. Nonetheless, the ICPC did not supervise the investigation into the tip-off allegation. All senior officers of the RUC who gave evidence to us on this topic believed that it should have done. In fact, they all believed that it did. ACC Hall told us that he had even telephoned Kevin Murnaghan, the responsible officer of the ICPC, to make sure that he included the tip-off. Something went very wrong. Gregory Mullan of the ICPC told us that he had not received a formal request to supervise the tip-off investigation, and it is clear that as far as he was concerned that meant that he would not have considered that investigation. He was entitled to take that course. What went wrong was that no formal referral was ever made and that when Gregory Mullan told Supt Anderson that he was not supervising the tip-off investigation, the Superintendent failed to act on that information.

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<sup>29</sup> 09028.

- 10.17 The question of whether the ICPC adequately supervised the neglect complaint is not within our Terms of Reference. The due diligence of the ICPC would have been within our Terms of Reference had it been supervising the investigation into the tip-off allegation, as that allegation bore on the murder investigation. However, it was not supervising either the murder or the tip-off investigations.



# Chapter Eleven

## The investigations after 12 December 2000

- 11.1 In this chapter we consider the investigations in the period after Detective Chief Superintendent Maynard McBurney (DCS McBurney) ceased to be the senior investigating officer (SIO). We do not propose to consider the generality of the investigations in this period, as there has been a general consensus that Detective Chief Inspector K (DCI K) acted in a most competent manner. However, criticism has been made of the way in which Reserve Constable Robert Atkinson's (Res Con Atkinson) arrest was handled, and we must address that. The issue of Mr Timothy Jameson deserves further analysis.
- 11.2 We bear in mind that on 4 November 2001 the Royal Ulster Constabulary (RUC) was replaced by the Police Service of Northern Ireland (PSNI), and our Terms of Reference require us to ask different questions of those two organisations. In relation to the PSNI we are only able to consider due diligence, rather than obstruction of the murder investigation. As we will set out, however, that distinction has no practical effect on our conclusions.
- 11.3 On 13 December 2000 it was agreed that Police Ombudsman for Northern Ireland (PONI) would conduct an investigation invoking its power under Section 55(6) of the Police (Northern Ireland) Act 1998 into the handling of Timothy Jameson as a witness and in taking the alibi statement from Mrs Andrea McKee<sup>1</sup>. This PONI investigation was led by Mr Chris Mahaffey, a SIO<sup>2</sup>. Section 55(6) enabled the Ombudsman's office to investigate a matter on its own initiative where it appeared that a police officer may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings<sup>3</sup>. The investigation would consider the way in which these witnesses were handled by officers, including DCS McBurney and Detective Inspector Michael Irwin (DI Irwin), and was to run alongside the supervised investigation into the alleged conspiracy involving Res Con Atkinson.

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<sup>1</sup> 14881.

<sup>2</sup> 81909 (para 2).

<sup>3</sup> 81909 (para 7).

- 11.4 The PONI investigation into the handling of these two witnesses was treated as a misconduct one, rather than an investigation into a criminal offence by a police officer<sup>4</sup>. Discipline notices were accordingly served on DCS McBurney, DI Irwin, Detective Constable Edward Honeyford and Detective Constable John McAteer<sup>5</sup> (DC McAteer). In due course they were all interviewed, apart from DC McAteer, who had left the force and did not appear for interview<sup>6</sup>.
- 11.5 Following the concerns raised by David Wood of PONI with the Chief Constable, Detective Chief Superintendent Colville Stewart (DCS Stewart) replaced DCS McBurney as the SIO on the murder investigation on 15 December 2000<sup>7</sup>. DCI K remained the deputy SIO. It will be recalled that the investigation into Res Con Atkinson and others was regarded as inextricably linked to the murder investigation and was being conducted in parallel with it.
- 11.6 On 10 January 2001, DCS Stewart and DCI K attended a directional meeting with Chris Mahaffey<sup>8</sup>. This was followed by a further meeting on 18 January 2001 with David Wood, the Chief Constable and DCS Stewart, who expressed his concerns about the initial stages of the murder investigation. DCS Stewart had carried out a review of the murder investigation and from that had produced a report for the Chief Constable setting out his concerns, which centred on scene management, a lack of debriefing and arrest strategy<sup>9</sup>.
- 11.7 DCS McBurney retired on 5 February 2001<sup>10</sup>. Prior to his retirement David Wood and Chris Mahaffey concluded that there was no reason to recommend to the Chief Constable that his retirement should be deferred<sup>11</sup>.
- 11.8 PONI agreed to supervise a further investigation into these matters conducted by Complaints & Discipline. This too was supervised by Chris Mahaffey, with the police investigator initially being a Superintendent who was soon replaced by Superintendent Karen Kennedy<sup>12</sup>. Her report covered the seven areas of concern which had been identified by DCS Stewart. It contained recommendations which concentrated on policy and procedural issues and identified training needs<sup>13</sup>.
- 11.9 Chris Mahaffey submitted his report into the handling of Timothy Jameson and Andrea McKee in November 2003<sup>14</sup>. There were no misconduct outcomes

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<sup>4</sup> 81909 (para 18).

<sup>5</sup> 81909 (para 19).

<sup>6</sup> 81909 (para 21).

<sup>7</sup> 81895 (para 2).

<sup>8</sup> 81895 (para 12).

<sup>9</sup> 81895 (para 13).

<sup>10</sup> DCS McBurney interview of 4/5/06 (page 8).

<sup>11</sup> 81909 (para 20).

<sup>12</sup> 81909 (para 41).

<sup>13</sup> 10120.

<sup>14</sup> 26926.

available against DCS McBurney as he had retired<sup>15</sup>. David Wood reviewed his report and agreed with the conclusions. They concluded that there was no evidence or any allegation that DCS McBurney had perverted the course of justice. Rather, in his view, DCS McBurney had just not done his job very well<sup>16</sup>.

- 11.10 In his evidence to us Chris Mahaffey pointed out that if DCS McBurney had still been serving, he would have recommended a misconduct charge regarding the handling of the neglect investigation – primarily regarding the lack of supervision and failing to keep records<sup>17</sup>. He also felt that DI Irwin was put in a very difficult position and that he took Andrea McKee's false statement in October 1997 only because he had been ordered to. He did not think there was sufficient evidence to discipline DI Irwin<sup>18</sup>. David Wood told us that he agreed entirely with Chris Mahaffey's report and that the perceived need for disciplinary action was completely dispelled. He felt that the investigations conducted by DCS McBurney suffered from some aspects of cultural difficulties in confronting what needed to be done. His investigation was conducted poorly and amounted to a neglect by him of his duty but there was nothing sinister about the way he conducted it<sup>19</sup>.
- 11.11 On 28 February 2001 Chris Mahaffey attended a presentation by DCS Stewart and DCI K on the evidence available. Mr Raymond Kitson from the Office of the Director of Public Prosecutions (ODPP) was also present. It was proposed to deal with Andrea McKee through the courts. The issue as to how she could be used as a witness was fully discussed<sup>20</sup>.
- 11.12 The issue of implementation of intrusive surveillance was discussed on 6 March 2001, when DCS Stewart and DCI K attended a meeting with David Wood and Chris Mahaffey. It was agreed that intrusive surveillance would be implemented.
- 11.13 DCI K explained to us that as early as July 2000 he had considered implementing an intrusive surveillance strategy in terms of trying to penetrate the conspiracy, given that the investigation had already managed to obtain evidence that the McKees and the Atkinsons had conspired with one another. However, he considered the Atkinson/Harvey aspect more difficult to prove. During the months that followed before the intervention of the Ombudsman in November 2000 he sought to develop some intelligence leads. He did not feel at that point that he could progress with intrusive surveillance until he had a very firm intelligence

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<sup>15</sup> 26925.

<sup>16</sup> 81276 (para 13).

<sup>17</sup> 81909 (para 36).

<sup>18</sup> 81909 (para 27).

<sup>19</sup> Day 57 (page 7).

<sup>20</sup> 74152.

foundation. He also needed to understand the issues around the lifestyles of the people concerned<sup>21</sup>.

- 11.14 Both DCS Stewart and DCI K were agreed that intrusive surveillance was a good option<sup>22</sup> but the possibilities of the overt side of the investigation had not yet been exhausted. There was also a question of proportionality. The Regulation of Investigatory Powers Act 2000 (RIPA) was still in its infancy, and priority in the use of the available equipment was given to counter-terrorism. He said that in such circumstances a judgment has to be made about the best time to mount an operation with the best chance of success<sup>23</sup>.
- 11.15 David Wood's view was that the police never came up with a viable strategy as to how to place intrusive surveillance prior to the arrests. He rejected the proposition advanced by these two officers that surveillance would be useless in Res Con Atkinson's home as he knew of the availability to the police of covert surveillance and was alert to the prospect of being bugged. David Wood's view was that the police could not substantiate this. **'The reality was he was a Reserve Constable.... Intrusive surveillance was at the Special Branch end of anti-terrorist work'**, he said. He told us the police had never used intrusive surveillance operationally for evidential purposes and so he did not think **'there were any grounds that a Reserve Constable would for a moment dream'** that he would be subjected to that surveillance<sup>24</sup>. DCI K said that David Wood was not correct in stating that this sort of intrusive surveillance had not been used in Northern Ireland<sup>25</sup>.
- 11.16 David Wood saw resistance in the culture of the police towards subjecting one of its own officers to intrusive surveillance: **'It was about the stomach to do this to their own.'** He felt that the senior officers were fearful of how the community would interpret surveillance of Res Con Atkinson, who was perhaps part of the loyalist side of the community. He did not feel that these were viable objections from the PSNI. He did not feel, though, they were protecting their own<sup>26</sup>. The officers David Wood was dealing with, DCS Stewart and DCI K, were the ones he thought were resistant<sup>27</sup>. The fact was that the Chief Constable was the person who had to authorise the surveillance under RIPA. The Chief Constable did not sort out the issue with hardware immediately, but he did so once the issue was brought to his attention a second time<sup>28</sup>. The issue advanced by the police

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<sup>21</sup> Day 59 (pages 11–12).

<sup>22</sup> Day 59 (page 11).

<sup>23</sup> Day 59 (pages 13–15).

<sup>24</sup> Day 57 (pages 4–5).

<sup>25</sup> Day 59 (page 16).

<sup>26</sup> Day 57 (page 6).

<sup>27</sup> Day 57 (page 17).

<sup>28</sup> Day 57 (page 18).

was that using surveillance in this case could raise community tensions<sup>29</sup>. They advanced a concern that using surveillance on Res Con Atkinson could lower morale in the local police<sup>30</sup>.

- 11.17 This meeting was followed on 10 April 2001 by the arrest of the Atkinsons<sup>31,32</sup>, Michael McKee<sup>33</sup>, Mr Allister Hanvey<sup>34</sup>, his parents Mr Kenneth and Mrs Elizabeth Hanvey<sup>35,36</sup> and his uncle Mr Thomas Hanvey<sup>37</sup>. That same day DCI K, with another officer, arrested Andrea McKee and then interviewed her under caution in Wrexham in the presence of her solicitor<sup>38</sup>. As we have said, she again admitted her part in the conspiracy<sup>39</sup>, as did Michael McKee<sup>40</sup>. Michael McKee was interviewed under caution because DCI K regarded him as a principal player in the conspiracy and believed that he should appear before the court and pay the appropriate penalty<sup>41</sup>. On the other hand, DCI K had not yet formed a view that Andrea McKee should necessarily be prosecuted. She admitted her guilt without prevarication and this was important in relation to her character as a witness. DCI K believed her account<sup>42</sup>.
- 11.18 On the 10 April 2001, after the arrests had been made, surveillance was installed at the homes of Res Con Atkinson and others<sup>43</sup>.
- 11.19 There had to be a delay in making the arrests until the new equipment required for surveillance arrived. When he was released on bail Res Con Atkinson made enquiries of his family and neighbours as to who had attended his house, what had been seen and the number of officers and vehicles present. Police were aware that Res Con Atkinson was advising those with whom he was in contact to be careful because someone might be listening in, and he began to search for devices<sup>44</sup>.
- 11.20 There was no intelligence or information that Res Con Atkinson had been tipped off prior to the installation of the equipment<sup>45</sup>. David Wood, during questioning,

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<sup>29</sup> Day 57 (page 68).

<sup>30</sup> Day 57 (page 73).

<sup>31</sup> 81875 (para 6).

<sup>32</sup> 22225.

<sup>33</sup> 21052.

<sup>34</sup> 20374.

<sup>35</sup> 24275.

<sup>36</sup> 24372.

<sup>37</sup> 24446.

<sup>38</sup> 81774 (paras 47–48).

<sup>39</sup> 21224.

<sup>40</sup> 21051–21075.

<sup>41</sup> Day 59 (pages 23–24).

<sup>42</sup> Day 59 (pages 24–26).

<sup>43</sup> 21586.

<sup>44</sup> 81774 (para 50).

<sup>45</sup> Day 59 (page 48).

said that it was his belief at the time that Res Con Atkinson had been told about the surveillance, but he accepted that there was no proof that this had happened<sup>46</sup>, although DCI K told us that during the period of surveillance, an officer had visited Res Con Atkinson at his home. The officer was interviewed and DCI K was satisfied the officer had no prior knowledge of the surveillance<sup>47</sup>.

- 11.21 Res Con Atkinson in fact discovered the surveillance equipment. It was then removed and an investigation was conducted into the possibility that he had been tipped off. That investigation provided no evidence of this<sup>48</sup>. DCS Stewart said that Res Con Atkinson was already aware that the police were interviewing witnesses, and DCS Stewart was concerned that Res Con Atkinson would suspect that the police would try to install technical equipment and would become aware of it. Intelligence indicated that Res Con Atkinson believed he was the subject of 24-hour surveillance and that his telephone calls were being intercepted. He was believed to have a proficiency in dealing with electronics and computers so that he might have had some knowledge of the police's technical surveillance capability. DCS Stewart said he foresaw that the presence in the house of Res Con Atkinson's two teenage children could also present a problem with the installation of equipment, and it was very clear in his mind that the attempt at surveillance would not work. He made this clear to Chris Mahaffey and that he would have preferred to begin intrusive surveillance before arrests were made since Res Con Atkinson might not at that time have been aware of it<sup>49</sup>. He did not agree with the strategy proposed by the PONI and expressed his views very strongly and explained them to Chris Mahaffey. He believes that the insistence, principally of David Wood, spoilt the chance of getting any evidence against Res Con Atkinson from surveillance<sup>50</sup>. We accept that it did not require any great sophistication on Res Con Atkinson's part to suspect that intrusive surveillance might be used against him.
- 11.22 We believe that DCS Stewart and DCI K were fully entitled to hold the view they did, based on the extent of their knowledge of intrusive surveillance. However, we also believe that Mr Wood was entitled to believe that it would not be productive to delay Atkinson's arrest for some unqualified period so as to permit the surveillance to start before it.
- 11.23 On 6 April 2002 DCI K was appointed SIO of the murder investigation following the retirement of DCS Stewart<sup>51</sup>. As we have said, on 7 May 2002 Andrea McKee pleaded guilty at Craigavon Crown Court, after which she made a further statement. We have dealt extensively in Chapter Seven with the way in which the

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<sup>46</sup> Day 57 (page 37–38).

<sup>47</sup> Day 59 (page 48–49).

<sup>48</sup> Day 59 (page 50).

<sup>49</sup> Day 56 (pages 130–132).

<sup>50</sup> Day 56 (page 167–168).

<sup>51</sup> 81774 (para 52).

case against Res Con Atkinson and others was then presented to the Director of Public Prosecutions and was handled by the ODPP. We do not propose to revisit those matters here.

- 11.24 On 19 November 2002 Timothy Jameson was arrested and interviewed under caution<sup>52</sup>. The only evidence against him was that of Reserve Constables G (Res Con G) and McCaw (Res Con McCaw). The latter was undergoing therapy for mental illness<sup>53</sup>. As the evidence against Timothy Jameson was limited he was not prosecuted<sup>54</sup>. Nothing had been entered into the Home Office Large Major Enquiry System (HOLMES) system or in any policy document about Timothy Jameson. In his interviews, DCI K did not explore with Res Cons G and McCaw why they did not make any notes. His understanding was that if an officer came into the station with such information, a message would have been completed and put into the HOLMES account. DCI K found no policy documents about Timothy Jameson<sup>55</sup>.
- 11.25 So far as Timothy Jameson is concerned we have already set out our findings about whether DCS McBurney was informed of an allegation that he had said that he kicked one of the two men who lay on the ground. We find nothing to criticise in the way he was dealt with as a potential witness to the attack on Robert Hamill.
- 11.26 The murder file is still open and to this day no one has been convicted of causing Robert Hamill's death. Nonetheless, for the reasons set out above, our conclusion in relation to the investigations conducted while DCI K was the Deputy SIO and subsequently SIO is that they were conducted with all due diligence and left nothing to be desired.

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<sup>52</sup> 15881.

<sup>53</sup> 15949.

<sup>54</sup> 31715.

<sup>55</sup> 81774 (para 62).



# Recommendations as at 2011<sup>1</sup>

## Policing recommendations

### Scene management

In Chapters Five and Six we are critical of the initial response to the crime of grievous bodily harm with intent on the part of the duty inspector, including the failure to identify the precise part of the scene which was most relevant for scientific analysis, failure to call out a detective earlier and failure to direct the seizure of scientific evidence.

The Royal Ulster Constabulary (RUC) review of the scene management in the Robert Hamill case was critical of the police response. This was first highlighted by Detective Chief Superintendent Colville Stewart and then by Superintendent Karen Kennedy.

Her Majesty's Inspectorate of Constabulary (HMIC) Thematic Report on Murder Investigation (2003) looked at the first response to a designated crime scene. The report acknowledged that scene logs appeared to be readily available and promptly commenced, but with variation in their quality. HMIC reported that it found evidence of uniformed duty inspectors taking limited responsibility at scenes and being content to leave Criminal Investigation Department in charge at scenes with uniformed constables continuing with the scene log.

Although no recommendations were made by the HMIC this would appear to be a similar position to that which existed in Portadown six years previously.

Attending an incident and obtaining an overview in order to direct officers and understanding the seriousness of an incident must be a priority for any supervisory officer. The Police Service of Northern Ireland (PSNI) General Orders make this point very clear. However, this did not appear to happen on 27 April 1997.

HMIC in its thematic report on Murder Investigation (2003) recommended a review of the role and structures of Scenes of Crime Officers. The PSNI has subsequently produced a General Order 48/2004 – Serious Crime Investigation – Forensic Management Strategy; and a General Order 47/2006 – Duties of Personnel attending a Serious Crime Scene. Training of officers for specific roles also falls within the Professionalising Investigation Programme (PD 02/08).

The delivery of scene management is always reliant upon the first officer(s) and supervisor(s) who attend the scene.

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<sup>1</sup> This chapter was prepared in 2011. We are conscious that some of these recommendations will have been overtaken by the passage of time between 2011 and the publication of this report. The Inquiry did not receive any further evidence pertaining to this Chapter after 2011.

### **Recommendation One**

***The Inquiry Panel recommends that the PSNI examines the level of training given to uniformed supervisors and constables on their role at a major crime scene. The Panel notes that despite the training which is in place, not all officers did what they were trained to do. This calls for an examination of the adequacy of the training and the implementation of checks to ensure that officers carry out their role in the manner expected.***

### **Debriefing**

In Chapters Five and Six we make a number of findings which are critical of RUC officers for failing to ensure that officers who had been at the scene were adequately debriefed.

The four officers in the public order Land Rover were not debriefed prior to going off duty. Evidence to the Inquiry demonstrated a difference of opinion between supervisory officers and constables. This varied from an expectation that a debrief would occur, and that there was a fifteen-minute time period built into a tour of duty for the purpose, to not understanding the need for a debrief and never being debriefed.

The National Intelligence Model, which became policy of the Association of Chief Police Officers (ACPO) in 2000, introduced minimum standards and basic principles, uses intelligence and information in a circulatory manner. It recognises that the need to obtain intelligence from officers is essential. There is also a need to ensure that evidence is gathered as soon as is practicable.

### **Recommendation Two**

***The Inquiry Panel recommends that the PSNI ensures that officers are debriefed by a supervisory officer at the completion of a tour of duty and that any intelligence or evidence gathered is correctly disseminated.***

### **Public order training**

In Chapter Four we note that members of the Land Rover crew were talking to Stacey Bridgett and Dean Forbes while the violence was breaking out. Baroness Kathleen Richardson and Sir John Evans do not find that any officer acted wrongfully by not seeing or hearing the violence develop. We were not able to say that Robert Hamill's tragic death would have been averted had they been aware of the outbreak of the violence. Nonetheless, the evidence disclosed a lack of preparedness, training and anticipation in relation to what each member was expected to do in order to prevent public disorder.

Policing of Portadown for the prevention of public disorder in 1997, in the evidence presented to the Inquiry, consisted of placing officers in armoured Land Rovers inside the gated town centre. The levels of training and experience of the officers on duty on

27 April 1997 varied but all had performed similar duties using a Land Rover on previous occasions.

The Inquiry has had the benefit of examining the inside of an armoured Land Rover and understands the difficulties for officers using the vehicles.

The PSNI has produced General Orders and Manual of Guidance on Public Order policing which reflect the PSNI policy on Human Rights and the use of force in public order situations. This includes the use of vehicles where there is the serious and immediate threat to life in public order incidents.

### **Recommendation Three**

***The Inquiry Panel recommends that officers performing public order duty, whether or not performing that duty in a vehicle, receive training in policing spontaneous public disorder; and***

### **Recommendation Four**

***The Inquiry Panel recommends that the PSNI training in public order includes awareness training on the specific roles of the crew within a public order vehicle.***

## **Personal safety**

In Chapter Four we note that the junction in the centre of Portadown was a known flashpoint for sectarian violence.

We read the Inquiry statement of Reserve Constable Denise Cornett, who explained that that she had never experienced violence like that on 27 April 1997, even when she was with the Mobile Support Unit.

We also heard from Reserve Constable P40, who was asked about various statements he had provided following the events on the 27 April 1997. In those statements he expressed his concern about what would happen to him should he become involved in the violence and how the four officers might well have been overwhelmed. We also heard that he had been removed from the list of a subsequent public order training course in May 1997 because of an ongoing knee injury.

The PSNI Policy Directive 07/07 – Public Order and Use of Force (including CS incapacitant spray, batons, handcuffs and vehicle-mounted water cannon), is intended to support and inform operational performance, decision-making, planning and training in order to improve safety during normal patrolling or during the policing of violent or potentially violent situations.

The Directive sets out a number of matters including that training will follow national guidelines and where any deviation is made it should be clearly documented. In addition police officers are reminded of their personal responsibility to identify their training needs and to bring them to the attention of their immediate supervisor. It is acknowledged that there is a statutory requirement for the PSNI to provide adequate training (ACPO recommends a minimum of 12 hours personal safety training each year) and it points out an onus on all officers and members of staff to co-operate and attend relevant training courses when required. Furthermore, local commanders are responsible for ensuring that officers are provided with regular opportunities to attend training in appropriate aspects of personal safety, first aid and Human Rights.

The Inquiry Panel notes that the PSNI now uses the nationally approved Hydra/Minerva Simulated Learning System used for incident training, crime and public order training and firearms commander courses. This system is designed and built to recreate live critical incidents to ensure that experience gained in training can be transferred to live incidents and events.

#### **Recommendation Five**

***The Inquiry Panel recommends that the PSNI ensures that all officers engaged in public order policing receive the minimum 12 hours training in their own personal safety as recommended by ACPO.***

The Inquiry Panel notes that the PSNI places responsibility on local commanders for ensuring that officers are adequately trained in personal safety, as set out in PSNI Policy Directive 07/07 – Public Order and Use of Force.

#### **Recommendation Six**

***The Panel recommends that the PSNI ensures, through its Best Value inspection process which monitors and manages performance, that the necessary training is being delivered.***

### **Communications**

In Chapter Five we make a number of criticisms of the duty inspector in relation to his initial response to the crime.

Officers at the scene used two types of radio to communicate with the control room based at Portadown. Those transmissions were recorded and the Inquiry has had the benefit of reading and hearing the operational calls. Little use was made by supervisory officers of the radio network to generate specific tasks. The radio network could have been used by supervisors to record tasks which they wished to be performed and/or tasks which they had given to officers at the scene. Inspector Alan McCrum (Insp McCrum) was at odds with officers over what he had tasked them to perform.

A verbal communication recorded on tape by the communications operator would have ensured that such tasks were recorded and the supervisor would have at a later stage been able to verify that all of the tasks he had set had been acted upon, e.g. officers tasked to visit the hospital and ascertain the injuries sustained by Robert Hamill and Witness D.

The Inquiry Panel observes that officers at a scene of an evolving public order incident will have little time to make notes of what they did or asked others to do.

#### **Recommendation Seven**

***The Panel recommends the use of command and control systems to record operational decisions and actions at the scene, allowing the decision-maker and any other officer to check that each task has been performed and recorded.***

#### **Media training**

Criticism and a public complaint were made regarding the press releases made in the early stages of the Robert Hamill investigation.

The PSNI in its closing submissions accepted that the initial press release was misleading. Insp McCrum says it was the duty inspector's responsibility to forward a press release to the press office at Headquarters.

Supervisory officers need to present factual information for release to the media in order that it cannot be misconstrued. Training should be available for all officers who are required to prepare information for the media.

#### **Recommendation Eight**

***The Inquiry Panel recommends that media awareness be an integral part of training given to newly promoted sergeants and inspectors. We do not see this as something which requires a full training package but rather can be incorporated into supervisor training.***

#### **Scientific evidence**

In Chapter Eight we are critical of the senior investigating officer (SIO) of the murder for his failure to liaise with the Forensic Science Agency and to direct it adequately about their scientific investigations.

The Criminal Justice Inspectorate for Northern Ireland (CJINI) and the HMIC jointly conducted a review in 2005 of the delivery of scientific services to the PSNI. This was the subject of review in 2007 and, whilst acknowledging that the PSNI had taken on board recommendations made in 2005, they reported in 2007:

**‘Inspectors however found that many frontline officers still lacked forensic awareness and the training delivered so far to these members of staff had not resulted in significant improvements.**

**A five-day scientific evidence model is now included as part of the Student Officer initial training programme at the PSNI College, yet despite this development, supervising officers stated that many new Student Officers required re-training in the basics on reaching their District Command Unit (DCU).’**

This would appear to demonstrate the same issue as that in initial scene management, i.e. how training and knowledge is imparted. The scientific training model referred to in the CJINI/HMIC report in 2007 does nothing to address the lack of training of those officers already in post.

#### **Recommendation Nine**

***The Inquiry Panel acknowledges the developments in gathering and using scientific evidence made by the PSNI and reported on by CJNI/HMIC in 2005 and 2007. The report in 2007 highlights that there are still issues regarding officers’ awareness of scientific issues. As this is a developing area the PSNI should consider how to update regularly the knowledge of officers as and when useful advances are made in the field of forensic science.***

#### **Evidence gathering**

All of the officers concerned with the public order incident in Portadown had considerable policing experience, either as Police Constables or Reserve Constables. The Inquiry accepts that the training given to Reserve Constables in evidence gathering and presentation

was not as full as that for Police Constables. However, in Chapter Five we have found that officers including Sergeant P89 and Reserve Constable Robert Atkinson (Res Con Atkinson) exacerbated the debriefing failures by omitting to supply information. Neither officer made any reference to Mr Allister Hanvey in their notebook entries or in their statements.

Statement recording, notebook entries and personal journal entries were methods of recording information by officers. The quality of statements was criticised internally and during the Inquiry. The retention of journals by senior officers was also commented on.

This problem had already been identified by the RUC by 1997. The PSNI quality assurance checks now rest within the Operational Support Services Branch.

**Recommendation Ten**

*The Inquiry Panel recommends that the PSNI identifies any necessary additional training for officers in relation to the gathering of evidence and preparation of statements. This could be done through officers' personal development plans and quality control checks.*

**Recommendation Eleven**

*The Inquiry Panel recommends that the PSNI reviews the role of supervisory officers and the requirement to monitor notebook entries on a regular basis and, on a random basis, compare entries with statements of evidence.*

**Recommendation Twelve**

*The Inquiry Panel recommends that the PSNI ensures that where officers of whatever rank use a personal journal or any other book for recording evidence and policy/strategy, such books are available for inspection and upon completion stored securely on police premises to meet disclosure requirements.*

**Police complaint procedures**

In Chapter Eight we are critical of the RUC for failing to ensure that Complaints & Discipline Branch (C&D) took sufficient interest in the allegation that Res Con Atkinson had assisted an offender; of the SIO for failing to investigate that allegation adequately; and of two officers within C&D for failing to ensure that the investigation was being supervised by the Independent Commission for Police Complaints (ICPC). We also note that there was insufficient consideration of the question of suspension of Res Con Atkinson.

The Professional Standards Department (PSD) is now responsible to the Deputy Chief Constable replacing C&D. Its function is to prevent and detect corruption, dishonesty and unethical behaviour. This is set out in PSNI Policy No. 11/07 – Integrity and Professional Standards, which reflects the HMIC Report, 'Raising the Standard' (2005) and Home Office Report, 'A Review of Police Disciplinary Arrangements' (2005).

A Code of Ethics (2008) for the PSNI sets out the ethical standards required and expected of police officers. There are two possible breaches of the Code – misconduct and gross misconduct. The majority of misconduct cases are dealt with at a local level.

Gross misconduct is defined as

**‘a breach so serious as to make any further relationship and trust between the police service and the officer concerned impossible. Examples of offences include: theft, fraud, assault, damage to police property, racial or sexual harassment, serious negligence which causes unacceptable loss, damage or injury, and serious acts of insubordination’.**

The Inquiry notes that methods of referral to the ICPC regarding the criminal allegation against a police officer were available to the RUC. Structures were in place to do so and there was no reason for the ICPC not to have accepted a referral. Individual errors resulted in the correct practices not being adopted.

In the PSNI Policy Directive 11/07 policy on the suspension of officers subject to criminal and disciplinary investigations is clearly set out under the heading ‘suspension of officers’. It recognises that the decision is a serious one and that such a decision should be **‘necessary, proportionate and justified’**. Importantly, it points out that the suspension of an officer should not be viewed as being indicative of guilt, nor as a punishment, but rather as an appropriate measure in certain cases.

The considerations to be taken into account when reaching such a decision are clearly set out and are summarised as:

- (a) the nature and seriousness of the alleged action, including aggravating or mitigating factors;
- (b) the strength of the evidence;
- (c) the public interest;
- (d) the reputation of the PSNI and public confidence;
- (e) whether effective investigation of the allegation may be compromised if the officer remains in post;
- (f) the nature of the current post held and alternative posts available, and the potential risk to public confidence;
- (g) the likely outcome of a conviction or disciplinary finding; and
- (h) the impact on organisational efficiency.

We also note that to ensure that suspension of an officer is continued only if necessary, each case will be reviewed by the head of the PSD on a monthly basis or sooner in the event of a significant change of circumstances.

It is unclear what considerations were taken into account by Detective Chief Superintendent Maynard McBurney and/or any other officer in connection with whether or not Res Con Atkinson should be suspended for what would have amounted to gross misconduct.

**Recommendation Thirteen**

*The Inquiry Panel recommends that the PSNI revisits its policy 11/07 on suspending an officer and ensures it is clear that when a decision is made not to suspend an officer, despite suspension criteria having been met, there is a formal and documented record for not doing so.*

**Further recommendations****Recommendations relating to the provision of services by neuropathologists in Northern Ireland**

The Inquiry Panel heard evidence from Professor Jack Crane and Dr Brian Herron in relation to the services performed by neuropathologists and the manner in which their expert opinion is sought. We heard that any necessary intervention of a neuropathologist is on a voluntary, unpaid basis, as explained by Professor Crane:

**‘I should also say that neuropathology is done out of good will by Dr Herron and his colleagues. They are employed to deal with living patients in the health service. They provide the service as a courtesy to us.’**

He added that this tends to be the practice throughout the United Kingdom.

The Inquiry Panel found that there was no delay in the production of Dr Herron’s report.

**Recommendation Fourteen**

*The Inquiry Panel recommends that consideration be given to reviewing the manner of funding in which neuropathology services are currently provided in Northern Ireland.*



## **Recommendations considered but no longer necessary in view of changes between 1997 and 2011**

The recommendations listed below acknowledge the changes made to policing in Northern Ireland in the period 1997-2011. The establishment of the Police Service for Northern Ireland (PSNI) and the adoption of nationally driven working practices and policies has altered policing from that presented in evidence to the Inquiry.

Influences on this change have been the Patten Report on Policing and the Oversight Commission which have reshaped the policing style in Northern Ireland. The Inquiry is aware of the impact of the Office of the Police Ombudsman for Northern Ireland (PONI) on the manner in which complaints against police officers and alleged criminality are now dealt with.

There are other substantial changes made which reflect policing in England and Wales. These have come from adopting guidance and policy from the Association of Chief Police Officers (ACPO) and inspection reports from Her Majesty's Inspectorate of Constabulary (HMIC). This has been complemented by the establishment of the Criminal Justice Inspectorate for Northern Ireland (CJINI) which has reported on policing activity.

Therefore, listed below are recommendations which have been considered by the Inquiry Panel which were relevant in 1997 but, because of changes in policing, were no longer necessary at the time this report was prepared in 2011.

### **Reserve Constables**

#### **Recommendation Considered: The PSNI reviews the role and training given to Reserve Constables**

Of the four officers deployed for public order duty on 26 and 27 April 1997, three were Reserve Constables, each with a variety of experience and training. The Inquiry is aware of the background to the post of Reserve Constable and how, out of necessity, this role developed from a security post to one in which officers would be deployed in a patrol function and carry out investigative functions. Concerns about the level of training given to Reserve Constables were expressed by senior management levels of the Royal Ulster Constabulary (RUC) in evidence presented to the Inquiry. The Patten Commission looked at this issue and made a recommendation for the phasing out of Reserve Constables. At

the time of writing (in 2011), the PSNI is on course to complete this recommendation by April 2011.

The Patten Commission made a recommendation to recruit additional part-time Reserve Constables to assist in local high-visibility policing. This recommendation has been overtaken by the recruitment of Police Community Support Officers, a role being used by police forces in England and Wales to provide high-visibility policing to communities.

***The Inquiry therefore does not propose to make a recommendation on the role of Reserve Constables.***

## **Public order equipment for officers**

### **Recommendation Considered: The PSNI reviews the equipment available to officers attending public order incidents**

All four officers in the Land Rover crew were equipped with personal handguns; the male officers also had an issue baton (truncheon). Officers called to the scene requested the issue of a riot baton gun. Two were later issued but not used. The PSNI has carried out an extensive review of equipment available to officers based on the Human Rights legislation and also ACPO national guidance. As the Baseline Assessment Report 2006 sets out the PSNI, together with the Northern Ireland Policing Board, invited HMIC to undertake a comprehensive review of firearms and less-than-lethal weapons. The subsequent report resulted in 26 recommendations, which have been accepted. Officers are now equipped with CS spray to complement personal issue of handguns.

Between 1 April 2007 and 31 March 2008 CS spray was used as a non-lethal weapon against 479 people (Freedom of Information Request PSNI Ref F 2010-00179).

The PSNI has also taken into use, as a less-than-lethal weapon, the Taser gun. This can only be used by specialist firearms officers and its use has to be authorised by an Assistant Chief Constable (ACC). During the period between 3 August 2009 and 31 January 2010 a Taser gun was used on three occasions (PSNI Quarterly statistics 2010)

In addition, the riot baton gun has, since 2002, been replaced by the attenuating energy projectile baton gun.

***The Inquiry Panel acknowledges the extensive review carried out in relation to the equipment available to officers attending public order incidents and does not propose to make any further recommendations.***

## **Custody sergeants**

### **Recommendation Considered: The PSNI evaluates the use of section sergeants performing the role of custody sergeant to the detriment of their role as an operational supervisor**

The debriefing of officers from the public order crew could not be performed by the duty sergeant because he was acting as a custody sergeant dealing with a road accident breath test. According to the evidence of the sergeant he was engaged with this prisoner for some hours, which meant that there was no first line of supervision in Portadown until Inspector Alan McCrum's return.

Portadown station is now only retained as a reporting centre for the public and it no longer has the facilities to process prisoners. The current position is that in general, all persons detained should be taken to a designated custody suite which has dedicated custody staff. However, there are some non-designated facilities where detained persons can be held for under six hours. This does not require a sergeant to perform the role of custody sergeant.

***In view of the change in practice the Inquiry Panel does not propose to make any further recommendation in connection with this matter.***

## **Murder investigation**

### **Recommendation Considered: The PSNI reviews the management of murder investigations and the role of senior officers**

The Inquiry is aware that in 1997 the number of murders in Northern Ireland (both current investigations and 'cold case' murders) placed a considerable demand on the Criminal Investigation Department (CID) and senior investigating officers (SIOs). Criticism has been made of the investigation conducted in the Robert Hamill murder, particularly that the SIO did not keep a policy book. Further criticisms have related to the strategy adopted, the use of proactive evidence gathering including analysis of evidence, and the financial profiling of suspects.

The PSNI has been the subject of two HMIC reports which have affected investigations in Northern Ireland. The inspection of intelligence was carried out by Her Majesty's Inspector Mr Dan Crompton, while the inspection of murder investigations was carried out by Her Majesty's Inspector Mr David Blakey. Another factor influencing policing was the third report of Sir John Stevens, a former Commissioner of the Metropolitan Police who led an external enquiry into allegations in Northern Ireland of collusion between the security services and loyalist terrorists to kill Irish nationalists, which was published in April 2003.

Significantly, the Blakey Report in 2003 recommended that ownership of murder investigations should be clarified and that all District Command Unit (DCU) Commanders and SIOs should attend critical incident training.

The PSNI, in its policy directive PD 10/07 – Managing Actual/Potential Critical Incidents, has sought to enable police officers to recognise critical incidents and respond effectively by drawing on lessons learned from a number of inquiries into incidents that would now be characterised as critical incidents. The policy defines a critical incident as

**‘any incident, where the effectiveness of the police response is likely to have a significant impact on the confidence of the victim, their family and/or the community which is beyond the capability of a District and/or has the potential to generate grave public concern at a local, regional, national or international level.’**

The Inquiry is of the view that the murder of Robert Hamill was a critical incident using the above definition. The police response to the incident would have benefited from the policy which is now in place in Northern Ireland.

This policy is linked to a Gold command structure. An officer of ACC rank will normally assume the role of Gold Commander and formulate the strategy for dealing with the incident. This would have assisted the SIO in the Robert Hamill murder investigation.

A comprehensive training programme is in place to equip officers across all ranks to deal with critical incidents in accordance with their role and function. (CJINI/HMIC Baseline Assessment – October 2006). The Inquiry Panel acknowledges that the PSNI has developed an operational approach to managing murder investigation that is markedly different to that which existed in the late 1990s.

***The Inquiry therefore notes the ownership and management improvements made by the Police Service for Northern Ireland in murder investigations and does not propose to make further recommendations.***

## **Murder investigations: staffing levels**

### **Recommendation Considered: The staffing levels committed to murder investigations should be reviewed**

The SIO in the Robert Hamill case had a limited number of detectives with which to conduct the investigation. Officers were drawn from sub-divisional resources and supplemented by Regional Crime Squad officers. It is clear that the arrest and charge of a suspect does not mean that all investigative lines are complete and the removal of resources too quickly can have an impact on the investigation.

The Blakey Report contained a number of suggestions that were not specific recommendations. However, some of them were particularly significant to murder investigations and were duly treated by the PSNI as recommendations. For example the report found that staffing levels and expertise in murder investigations consistently fell short of requirements and that the PSNI SIOs were not following the investigative decision-

making process of the Murder Investigations Manual which had been introduced to CID training by 2002/2003.

The years 2003 and 2004 saw significant changes introduced to policing teams investigating murder in Northern Ireland. These included a new branch of crime operations called Serious Crime (C2), which was given specific responsibility for the investigation of murder. In addition, dedicated Major Investigation Teams (MITs) were created and a murder review team was introduced. Also, the Historical Enquiries Team, a specialised team to review unsolved murders from The Troubles, was resourced in co-operation with the Government.

As the CJINI/HMIC Baseline Assessment Report 2006 acknowledges, the creation of ten dedicated MITs has ensured the investigation of Category A and B murders and the initial response to Category C murders should not have a detrimental effect on DCU or regional resources.

***The Inquiry acknowledges that the PSNI committed more detectives to serious crime investigation at a time when the total number of police officers was reducing in line with the Patten Commission staffing levels and does not propose any further recommendations.***

## **Murder investigation: policy books**

**Recommendation Considered: The use of a policy book on all murder investigations should be standard practice**

**Recommendation Considered: The PSNI considers implementing random checks on policy books maintained by investigating officers**

Policy books were not used by the SIO and he gave reasons for not doing so in his interview to the Robert Hamill Inquiry. The PSNI murder investigations now use policy books as recommended by ACPO. By 1998 the use of policy books in major incidents was covered by the implementation of a general order (GO 91/97) which required the use of policy books in murder investigations.

In addition, current practice is that policy books may be reviewed as part of the peer review process. All SIOs are aware of this and it is part of CID training modules.

The Inquiry Panel acknowledges that policy books are now used in all murder investigations and the review process in place. The Panel does not propose any further recommendations.

## **Murder investigation: analysts**

### **Recommendation Considered: The PSNI uses a dedicated analyst to assist the SIO on murder investigations**

There is no evidence to show that the original SIO used any form of analysis to assist with the evidence gathered or for the interviewing of suspects. Detective Chief Inspector K in 2000 did use analysis which included plotting the movement of a suspect by using records from a cash point and telephone analysis to show contact between key witnesses.

In 2003 and 2004, following an important recommendation in the Crompton Report, the PSNI recruited additional analysts who were allocated to MITs, Organised Crime Branch and Intelligence Branch (formerly Special Branch). Intelligence cells now form part of the investigation process in accordance with the ACPO Murder Manual in 1998 (reprinted in 2006), which recommends the use of analysis and charting techniques as key tools of an SIO.

***The Inquiry Panel acknowledges the developments made in this area and does not propose any further recommendations with regard to analysts.***

### **Recommendation Considered: The PSNI adopts the use of an intelligence cell to assist the SIO with research**

The use of intelligence within the RUC in 1997 was complicated, with Special Branch having an overall responsibility for terrorism-linked intelligence. Detective Chief Superintendent Maynard McBurney (DCS McBurney) did not have an intelligence cell or a dedicated intelligence officer to assist his investigation team with research into the suspects and the associates of the victims.

The Robert Hamill murder investigation revealed that there was considerable contact between suspects and potential witnesses. The Inquiry Panel is of the view that analysis and research by dedicated officers would have assisted the investigation team in 1997 with plotting and highlighting conflicting information to assist with interviewing suspects and witnesses.

In 2003 and 2004, the PSNI implemented a major overhaul of its intelligence as part of the review of crime operations functions and to give effect to the recommendations of the HMIC reports. The PSNI also developed the National Intelligence Model (NIM), which became policy of the ACPO in 2000 and introduced minimum standards and basic principles. The use of intelligence cells also form part of the Murder Investigation Manual. By developing NIM the PSNI changed the way that CID and uniformed officers gathered and managed intelligence on crime and public order. The PSNI now has an intelligence dissemination policy on how the Intelligence Branch will provide information to SIOs on covert human intelligence sources.

***The Inquiry recognises that the PSNI has adopted national policies on the use of intelligence in murder investigations and does not propose any further recommendation.***

## **Murder investigation: family liaison**

### **Recommendation Considered: The PSNI use Family Liaison Officers on all murder investigations**

Contact between the Hamill family and the investigation team was limited although on several occasions Detective Chief Inspector P39 (DCI P39) tried to be a link with the family. This did not form any structured dedicated service and relied on the commitment of the officer.

Since 2002 the PSNI Policy Directive PD05/06 'Dealing with victims and witnesses' has acknowledged that support is required for victims. It sets out, **'the PSNI will treat victims and witnesses according to their particular needs both as victims and witnesses and as individuals'**.

Family Liaison Officers are now attached to C2 with the brief to **'facilitate an investigation in the family's loss by establishing and maintaining a sensitive supportive and appropriate relationship which links the family and the enquiry team'**.

The same policy highlights the role of the Victim Support Service (VSS) and PSNI refers relatives of homicide victims to the VSS unless the victim's family does not consent to the referral.

The Inquiry is aware, at the time of writing in 2011, that the PSNI, together with other criminal justice agencies, is preparing a new booklet 'A guide to Northern Ireland's Criminal Justice System for bereaved families and friends following murder or manslaughter'. This will replace a murder victim pack which was used by the RUC.

***The Inquiry Panel does not consider that any further recommendation is necessary.***

## **Murder investigation: Home Office Large Major Enquiry System (HOLMES)**

### **Recommendation Considered: The staffing of and number of HOLMES incident rooms is reviewed**

### **Recommendation Considered: ACPO guidance on training and staffing levels is complied with**

In 1997 in the South Region of the RUC ten serious cases were managed on HOLMES. Of these cases, eight were murders. At the time of the murder of Robert Hamill there were

seven HOLMES accounts still being run as live investigations by a dedicated staff of ten officers. This was a very small staff compared with guidelines set out by ACPO.

Access to HOLMES by investigators was limited with senior investigators and detectives working on the investigation having little knowledge of HOLMES.

The Blakey Report was critical of the use of HOLMES by the PSNI and the inspection team expressed concern at the cramped working conditions and numerous murder investigations being managed from HOLMES rooms. In 2003 and 2004 the PSNI sought to give effect to the recommendations and co-located dedicated HOLMES staff in additional rooms with the newly created MIT teams. A course was introduced for all HOLMES staff including the office manager, disclosure officers and exhibit officers. In addition, HOLMES 2 was introduced.

***Whilst the Inquiry Panel recognises that staffing levels and equipment for HOLMES incident rooms are a matter of judgment, it acknowledges that the PSNI has improved the staffing and equipment levels. The Panel does not propose to make any further recommendation on this matter.***

## **Murder investigation: training**

### **Recommendation Considered: The PSNI adopt nationally approved CID training for all officers engaged in the investigation of crime**

The level of training for detectives in the RUC in 1997 was piecemeal and consisted partly of on-the-job experience. Officers could attend nationally accredited courses but these were not universally offered. The Inquiry has noted the level of training given to the three senior investigators involved in the murder of Robert Hamill.

DCS McBurney attended a nationally approved course at the Police Staff College, Bramshill, in 1989. That was the last CID course he attended.

DCI P39 attended a senior CID initial course in 1994 but received no other training relevant to CID investigative work.

Detective Inspector Michael Irwin (DI Irwin) was promoted to Inspector in November 1996 and in December 1996 he requested a CID Management Investigation Course. He attended the course in April 1998. DI Irwin subsequently undertook a full SIO training programme.

The PSNI Policy Directive 02/08 'Professionalising Investigation Programme' (PIP) aims to improve the investigative process by examining existing investigation procedures and developing ways to make the police service more professional, ethical and effective for both officers and police staff involved in investigations. The PIP programme has four levels of training for officers which can be summarised as follows:

- (a) Level One – entry level for investigators. All entrants are expected to achieve this level.
- (b) Level Two – Detective Constables undergo a seven-week course. The training includes all aspects of crime investigation, including an overview of HOLMES. Officers are then assessed for accreditation having produced a portfolio of their work. Detective Sergeants also complete a three-week initial management of serious crime course. The third week of the course involves an exercise using the Hydra/Minerva simulated learning system used for incident training, crime and public order training and firearms commander courses, during which officers apply the lessons from the first two weeks.
- (c) Level Three – SIO and deputy SIO course, which includes a three-day HOLMES overview course. Officers then undergo a Hydra/Minerva murder exercise, where they use their training and experience to investigate a double murder. Once accredited, officers are re-accredited annually and must complete 20 hours of continued professional development.
- (d) Level Four – Linked Series/Officer in Overall Command course. The delivery of this course is currently under review. The vision for the future is that there would be a small cadre of PIP Level Four SIOs who would be deployed on a national rota.

***The Inquiry Panel would have commented adversely on the lack of professional training of officers dedicated to the investigation. However, given the radical changes to detective training both in theory and scenario-based incident training adopted by the PSNI, the Panel does not consider further recommendation to be necessary.***

## **Training: interviewing of witnesses**

### **Recommendation Considered: Interview training is a requirement for all detective constables**

In April 1997 neither Detective Constable John McAteer nor Detective Constable Edward Honeyford (DC Honeyford), who interviewed Tracey Clarke and Timothy Jameson, had undergone formal training on interviewing techniques although both officers were recognised as experienced detectives and relied upon by the SIO.

Neither officer conducting the interviews had received training in the ACPO approved interview technique training, commonly referred to as PEACE. Indeed, DI Irwin said in his statement that in 1997 RUC officers were not regularly updated or trained in the recording of witness statements or in any PEACE models. There are five phases to the PEACE framework: planning and preparation, engage and explain, account, closure and evaluation. It is compatible with the framework for interviewing witnesses described in 'Achieving Best Evidence in Criminal Proceedings'.

DC Honeyford attended an interview technique course in 1999 and later described it as the best course he had been on during his police service.

The PSNI have now adopted, as part of their 'Professional Investigation Programme', PEACE interview technique training for all officers engaged in crime investigation and PEACE 2 for all detective constables.

***In view of the significant interview training the PSNI has adopted since 1997 the Inquiry Panel does not propose to make any further recommendation.***

## **Management of evidence from key or significant witnesses**

### **Recommendation Considered: The PSNI reviews how it manages evidence from key or significant witnesses**

Tracey Clarke and Timothy Jameson were significant witnesses whose evidence enabled the SIO to charge six men with the murder of Robert Hamill. The fact that neither were willing to give evidence in accordance with their statements had a huge impact on the murder prosecution.

Both witnesses were young and vulnerable and there was no apparent strategy on how they were to be interviewed in order to obtain the best evidence which could later be relied upon at court proceedings. Tracey Clarke was interviewed with another adult present but Timothy Jameson was not, although he had the opportunity to have an adult present. Neither interview was recorded either by audio or video recording. DC Honeyford said that the practice was only to tape record interviews of suspects. Portadown station also had no facilities for video recording interviews at that time.

The PSNI now has audio/video interview suites which can be used for significant witness interviews. Since 1998 the ACPO Murder Investigation Manual has recommended that video evidence gathering was a preferred option for the investigation for significant witnesses and audio recording an alternative option.

***The Inquiry Panel does not propose to make any recommendation in view of these developments.***

## **Scientific support and forensic awareness**

### **Recommendation Considered: The PSNI reviews its scientific support for murder investigations**

**Recommendation Considered: The PSNI uses a dedicated scene manager at a murder scene**

**Recommendation Considered: The scene manager assists the SIO with the development of a forensic strategy and has a liaison role with the Forensic Science Agency Northern Ireland**

In 1997 Police Constable Mark Ardis was the only scenes of crime officer dedicated to the murder investigation. He had no involvement in forensic strategy or liaison with the Forensic Science Agency Northern Ireland (FSANI). No scientific support officer worked as part of the murder investigation team, and liaison with the FSANI was ad hoc through DI Irwin.

The joint CJINI/HMIC inspection of forensic science and scientific support undertaken in 2005 examined in depth the forensic processes and systems and made a number of recommendations in the report dated December 2005. The subsequent PSNI Baseline Assessment (2006) reported that initial indications were that in many key areas DCU commanders and crime managers had observed a noticeable improvement in the overall service provided and particularly the turnaround times for fingerprints and DNA identifications.

The Blakey Report also made reference to the fact that greater use should be made of crime scene managers. As part of giving effect to the recommendations and observations contained in the Blakey Report, the PSNI has increased the number of scenes of crime and crime scene managers. In addition policy has been developed and is contained in General Order GO 48/2004 – Serious Crime Investigation Forensic Management Strategy. Reviews conducted in 2007 and 2009 have highlighted the improvements in the scientific support structure.

***In view of the reviews which have been conducted the Inquiry Panel does not propose to make any further recommendations on these matters.***

## **CCTV evidence**

**Recommendation Considered: The PSNI ensure that where CCTV evidence has been seized and viewed in a murder investigation the tapes are retained**

In 1997 there was no direction for the seizure of non-evidential tapes. Closed circuit television (CCTV) tapes were viewed by officers but returned to the premises where they had been recorded. Comment was made by the Hamill family about evidence available on these video tapes.

In 2003 and 2004 a complete overhaul was made of the way exhibits (such as tapes) were handled in murder investigations. This included the introduction of dedicated exhibit officers and a new central exhibits store.

As the PSNI pointed out in its closing submissions to the Inquiry, the position in 1997 was that when a tape was seized from a business and it transpired that the tape did not record anything of value, it would be returned to the business concerned. That procedure has now changed and CCTV evidence is retained.

***The Inquiry Panel does not therefore wish to make any recommendation in connection with CCTV evidence.***

**Recommendation Considered: The PSNI consider the use of body-worn video cameras as outlined in Home Office Guidance (2007) for use by officers who will be engaged in public order duty to improve the level of evidence presented to the courts and also deter potential offenders at public order incidents**

The use of CCTV and other video evidence has increased dramatically since 1997 and police forces throughout the UK have experimented with methods of assisting officers in public order situations with evidence gathering. The PSNI is no different in this regard and uses video evidence gathering for major public order policing.

In Plymouth, a Home Office supported project was trialled using a body-worn video camera. The trial was found to have reduced the amount of time officers spent in court, and the volume of street offences decreased. The Home Office, after reviewing the pilot, produced Home Office Guidance for the Police Use of Body Worn Video Devices, which was published in July 2007.

***The PSNI has adopted the use of body-worn video cameras and the Inquiry Panel does not propose any further recommendation in connection with their use.***

**Recommendation Considered: The Police Complaints and Discipline Branch (now the Professional Standards Department) should ensure where an investigating officer has been appointed to investigate a complaint that regular written updates are provided by the investigating officer on the progress of the investigation and on major developments in the case**

DCS McBurney was the appointed SIO of the complaint of alleged neglect of duty by the four officers in the Land Rover on 27 April 1997. When a further serious allegation came to light that one of the officers had tipped off a suspect to dispose of his clothing, DCS McBurney did not document or record the matter but said that he orally briefed senior officers. Furthermore, despite an investigating officer from Complaints and Discipline (C&D) assisting him in the original neglect complaint investigation, the further allegation was not referred to C&D. Given that it was not recorded, it could not be the subject of referral to the Independent Commission for Police Complaints (ICPC) under existing procedures.

The PSNI Policy Directive PD 11/07 **'applies to all police officers and seeks to set standard practice for dealing with allegations of misconduct. The policy is applicable to all officers of the PSNI up to and including the rank of Chief Superintendent.'**

The policy also defines 'gross misconduct' as being

**'a serious breach of the code of Ethics which may lead to summary dismissal (dismissal without notice) for the first offence. The breach is so serious as to make any further relationship of trust between the Police Service and the police officer concerned impossible.'**

A list of examples follows.

With regard to the internal reporting of misconduct matters, under the heading 'referral to PSD', the policy states

**'in some cases it will be clear that the matter is potentially so serious that no local enquiries would be possible or appropriate or that a formal misconduct hearing is likely. In such cases the matters should be referred to PSD, via the District Commander/Head of Branch, unless the matter is of an urgent nature.'**

The Directive goes on to explain that upon receipt of such reports the Superintendent in the Professional Standards Department (PSD) will consider the facts of the case and may decide to conduct further enquiries. In addition there are occasions where the PSD will direct that a criminal matter be investigated locally but the PSD will 'shadow' the investigation and commence misconduct procedures once the criminal aspect is completed.

Importantly, it adds, **'the local investigating officer must inform PSD of all significant developments in the case including court dates and outcomes'**.

The Panel acknowledges that should circumstances occur whereby it is alleged that officers in close proximity to a scene of violence neglected their duty and as a result death of an individual occurred, the matter would be automatically referred to the PONI for investigation. This is clearly set out in the wording of the 55(2) of the Police Act 1998, which provides

**'The Chief Constable shall refer to the Ombudsman any matter which appears to the Chief Constable to indicate that the conduct of a member of the police force may have resulted in the death of some other person.'**

The PSNI Policy Directive PD 04/09 – Policies and Procedures relating to the Police Ombudsman for Northern Ireland categorises the various circumstances in which death can result from police contact and which should be referred to the Ombudsman. The

definition of a death of the member of the public during or following police contact was revised on 1 April 2002 by the Home Office in order to provide greater clarity and avoid confusion. The categories are contained in a Home Office circular 13/2002 dated 26 March 2002 and are outlined as follows:

- (a) category 1 covers fatal road traffic incidents involving the police;
- (b) category 2 covers fatal shooting incidents where police fire fatal shots;
- (c) category 3 covers deaths in or following custody;
- (d) category 4 covers deaths during or following other types of contact with the police, which includes

**‘circumstances where a person dies during or after some form of contact with the police which did not amount to detention and there is a link between that contact and the death’.**

It is also specified in relation to this category that

**‘in the event that a death is not within the above categories, but there is other evidence to implicate police, the death should be treated as a death following police contact.’**

***The Inquiry Panel acknowledges the development of comprehensive policy contained in Policy Directive PD 11/07, which has considered the HMIC report Raising the Standard (2006) and the Home Office report A Review of Police Disciplinary Arrangements (2005). It also notes the radical changes to the police complaints system which have been made with the establishment of the Office of the Police Ombudsman for Northern Ireland. Should the death of a member of the public occur in similar circumstances to that of Robert Hamill, the investigation, from its inception, would be a matter for the Police Ombudsman. The Inquiry Panel does not propose to make any further recommendations.***

## **Handling of complaints against the police**

### **Recommendation Considered: Changes to the referral and handling of complaints and non-complaint matters to the ICPC, including a power to “call in” complaints**

In 1997 the handling of complaints and police discipline was overseen by the ICPC. The legislative framework was derived from a number of sources, including the Police (Northern Ireland) Order 1987 and the Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Regulations 1988, as amended by the Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Amendment Regulations 1989.

One of the issues arising before the Inquiry Panel related to the mechanism of referring, to the ICPC for supervision, public complaints against police officers as well as potential breaches of discipline or the criminal law. The Inquiry Panel noted that the ICPC had no power to 'call in', i.e self-refer, matters that were not the subject of a complaint for the purposes of supervision. Instead, the legal framework relating to referral by the Chief Constable or the Police Authority had to be observed before supervision could take place. This gave rise to circumstances in which certain investigations against police officers were not supervised.

This is in contrast to the power of PONI, established in November 2000 under the Police Act 1998 to provide an independent police complaints system. By virtue of Section 55(6) of that Act, the Ombudsman can formally investigate any matter on his or her own initiative where it appears that a member of the police force may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings.

Furthermore, the PSNI has developed policy, in consultation with the PONI in its Policy Directive PD 04/09 – Policies and Procedures Relating to the Police Ombudsman for Northern Ireland, which is designed to provide comprehensive information on the functions of the PONI and to guide the PSNI and contracted staff on PONI-related issues. It has a unit within the PSD which liaises with the PONI. The policy recognises that effective implementation of the procedures is dependent upon productive working relationships between the organisations and, to that end, joint conferences are arranged periodically.

***The Inquiry Panel is aware of the significant changes to the police complaints system with the introduction of the Police Ombudsman's Office that is required by law to strive to deliver a police complaints system in which the public and police officers can have confidence. The Inquiry Panel does not propose to make any further recommendations.***

## **Prosecuting Reserve Constable Atkinson**

### **Recommendation considered: The Director of Public Prosecutions should reconsider the decision whether to prosecute Reserve Constable Atkinson**

On 31 January 2010 the Inquiry delivered an Interim Report to the Secretary of State for Northern Ireland, the Rt Hon Shaun Woodward MP. It contained one recommendation, which was that the Director of Public Prosecutions should reconsider the decision whether to prosecute Res Con Atkinson for conspiracy to pervert the course of justice.

On 21 December 2010 the Public Prosecution Service informed us that it had reviewed the decision and had decided that the Test for Prosecution was met in respect of two persons for an offence of conspiracy to pervert the course of public justice and one person for doing an act with intent to pervert the course of public justice.

When the Interim Report was published, reasons were not provided because the Panel was concerned that this could affect the fairness of any future proceedings. As the Report has now been published, the Panel wish to make clear that the recommendation was made for the reasons contained in Chapter Seven. In summary they are:

1. The Panel find as a fact that Res Con Atkinson agreed with others to advance a false account of the telephone call he made to the Hanvey house on the morning of 27 April 1997
2. The decision not to proceed with the prosecution was not made with due diligence.

# Procedural issues

## **The Inquiries Act 2005**

The Robert Hamill Inquiry was initially established under the Police (Northern Ireland) Act 1953. It was converted to an Inquiry under the Inquiries Act 2005 (the 2005 Act) following a request by the then Chairman of the Robert Hamill Inquiry, Sir Edwin Jowitt, to Mr Jonathan Phillips, the then Permanent Secretary of the Northern Ireland Office on 9 December 2006. The principle reason for that request was that the 2005 Act would give the Inquiry the power to compel the attendance of witnesses to give evidence in the event that they refused to attend.

The 2005 Act in terms of its enforcement powers (Sections 21, 35 and 36) has been helpful to our Inquiry and ensured that we were able to call all our key witnesses. The Inquiry conducted successful enforcement proceedings in the High Court, Belfast, against one key witness, who had refused to attend up to that point and whose evidence was central to our Terms of Reference.

Section 40 of the 2005 Act also helped us to keep legal costs to a minimum, although we did fund a large number of legal teams who represented key witnesses who might be the subject of significant criticism in our report. Funding was granted for fairness reasons.

### ***Inquiry set-up***

Under section 17(1) of the Inquiries Act 2005 power is given to an inquiry chairman to appoint a secretary and a solicitor. It appears to have been the practice when it is established that an inquiry will need both administrative and legal support to appoint a different person to assume each role. Indeed, it would appear not to be unusual that, following this practice, when the Chairman of an Inquiry is appointed the names of a secretary and solicitor to the inquiry are suggested to him or her. This was the case with the Robert Hamill Inquiry. The time came, however, when it was necessary for the Inquiry to appoint a new secretary and the Chairman decided, after considering the matter with the other Panel Members, to combine both roles in one person, the solicitor Judi Kemish.

This has worked very well and has saved money. We do not regard combining the two roles in one person as second best. It can have clear advantages. For example, the question of funding for an interested party may involve input from both roles but there is no reason why a single person cannot consider both aspects of the decision and be the sole decision-maker, consulting the chairman if need be.

In our view there should be no assumption when both roles are likely to be involved in running an inquiry that a separate person should be appointed for each role. It would be more appropriate before any appointment is made to either post to allow the chairman an opportunity to acquire some grasp of the issues and problems with which the inquiry will have to deal and to decide then whether they can be carried out by the same person or whether it would enable the inquiry to function better if the roles are split.

# Appendix A

## The way in which evidence was given

1. A public inquiry is an inquisition. This implies a task on the part of the inquisitors who form the inquiry panel to investigate all matters relating to the truth of what falls within their terms of reference rather than, as is the case with civil and criminal litigation, to determine on the basis of the evidence which the parties to the litigation place before them where the truth lies on the subject matter of the litigation. In the case of a public inquiry the panel determines, consistently with its terms of reference, what the issues to be investigated and determined are. Choosing and assembling the evidence to be considered is done by the solicitor and counsel to the inquiry in consultation with the panel. The panel, therefore, has a wider remit than does the tribunal in the case of civil and criminal litigation, which is not free to make its own selection of issues and has no role in choosing and assembling the evidence to be presented.
2. This distinction between the two types of proceeding has helped to shape what has been a common approach to the way in which evidence is produced before an inquiry, namely that counsel to the inquiry asks all the questions of the witnesses except when the members of the panel wish to ask questions. The lawyers acting for the parties who have an interest in the proceedings do no more than suggest to counsel to the inquiry lines of questions, or particular questions, that they would like to see pursued, and counsel to the inquiry is not required to pursue them unless directed to do so by the panel. This is not the procedure followed inflexibly in all inquiries and in some a limited remit to ask questions is accorded by the panel to those lawyers to put questions of their own. The general nature of the questions will usually be considered and approved in advance by the panel. At some inquiries, which we think are probably in a minority, a largely unlimited permission to ask questions, subject to propriety, relevance and the avoidance of repetition and lengthiness, is accorded to the lawyers for interested parties.
3. We do not believe that there should be a single approach to be adopted uniformly by all inquiries. Nor do we take the view that what we have referred to as a common approach should be regarded as the norm, to be departed from only if good reason is shown for this. We consider that the approach in any particular

case is best determined by considering the answers to a number of questions, which may vary from case to case. We think that the questions along the following lines will usually be helpful.

- (a) What is the nature of the issues to be considered?
  - (b) What is the nature and degree of any conflict or confrontation to be expected?
  - (c) How well will a proper exploration of relevant issues be facilitated by channelling all questions through counsel to the inquiry as opposed to a less restrictive procedure?
  - (d) How effectively will counsel to the inquiry be able to put on a succession of different hats in questioning one witness when there are sharply conflicting interests, which may produce acute changes of direction in the questioning; and what will be the likely public perception of this?
  - (e) How will the kind of procedure adopted affect the perception by those who are being heavily criticised of whether what they have to say is being adequately presented and whether they are receiving an adequate opportunity to test and address the evidence against them?
  - (f) How will the procedure adopted affect the public perception of whether the inquiry's efforts to uncover the truth are effective and the public's confidence in its proceedings?
4. The consideration of the interplay between the answers to these questions is likely to be helpful in deciding the extent to which it is desirable to channel all questions through counsel to the inquiry or to allow others to question witnesses and, if so, whether some or all of the witnesses and whether on all relevant matters or only some. We accept, though, that if an inquiry has to consider issues which relate to security at a national or more restricted level or are of a confidential nature a more restrictive approach to producing evidence about them may be desirable or necessary.
5. To allow advocates acting for particular interests who have mastered the intricacies of their briefs to put questions relating to those interests may be of greater help to the panel than if they have, in effect, to brief counsel to the inquiry. These advocates' knowledge of their own briefs may give them a significant advantage over counsel to the inquiry when it comes to follow-up questions, because questioning opens up issues for investigation. Further, it may be unduly burdensome to counsel to the inquiry if he or she has to direct questions in accordance with the brief of another advocate and will not have had the advantage of discussing the relevant issues with the witness; this is even more burdensome if a witness's evidence needs to be tested on the basis of a number of conflicting standpoints and if counsel to the inquiry is being briefed by a number of advocates.

6. In addition, fairness to witnesses who are at risk of being severely criticised in the course of the inquiry's hearings or its report, or both, also requires that consideration should be given to whether, in addition to being questioned by counsel to the inquiry and other advocates who have critical questions to put, it should be possible for their own advocates to question them in the hope of drawing up matters favourable to them and which may provide answers to criticisms of them.
7. We have put the questions about the public interest and confidence at the end of our list. This is because the other factors all have an impact on this and not because we regard the public's perception as the least important. This is far from our view. It is necessary to consider what has to be established by statute before a minister of government can exercise his or her powers to appoint an inquiry under the Inquiries Act 2005. It has to appear to the minister that particular events have caused, or are capable of causing, public concern or that there is public concern that particular events may have occurred. In other words, the perception of public concern is pivotal to and a prerequisite to any decision by a minister to appoint an inquiry. In our view this gives the perception and confidence of the public an importance of the first order in deciding how the hearing of evidence by a public inquiry should be shaped. Further, in our view the greater and sharper the conflict arising from the issues presented to an inquiry, the less effective the common approach mentioned in paragraph 2 is likely to be in establishing the truth and commanding the public's confidence, and the less likely it is to enable the protagonists to feel they have received a fair hearing.
8. We do not envisage in the suggestions we have made that counsel to an inquiry should ever play a minor role. This counsel should always begin the questioning of a witness and elicit thoroughly the matters that he or she considers to be relevant before any other advocate questions the witness. He or she will also be able to ask further questions of the witness after other advocates have asked their questions. Also, it will always be important for the chairman to keep advocates to what is relevant and to prevent repetition and prolixity.
9. The Chairman of this Inquiry initially gave a direction that lines of questioning should be given (where possible in advance) to Counsel to the Inquiry but that advocates would be permitted to ask questions on their own if the Chairman considered this appropriate. However, on reflection he did not require advocates to seek permission to ask their questions. We believe this approach worked well. Counsel to the Inquiry received co-operation on all sides and the proceedings were able to run smoothly. We have received no complaints that the Panel or Counsel to the Inquiry have not accorded a fair hearing to those who gave evidence before us. The Panel have been greatly helped by all this. We think that the common approach would very probably have worked less smoothly. Almost inevitably

there would have been disputes about the extent to which Counsel to the Inquiry should follow lines of questioning and dissatisfaction if the Chairman gave an adverse ruling, with the consequent risk of delay and cost caused by judicial review proceedings of a ruling.

10. We have described our approach to the way we received oral evidence in order that those who might be interested may understand why we adopted this approach rather than the common approach. We accept that our approach may have added to the length of our hearings but not, we believe, significantly given the time which might well have been consumed by the submissions and rulings to which the common approach would almost certainly have given rise. We have been conscious of the need to keep down the costs of this Inquiry. It would, though, have been quite wrong to choose a form of procedure simply because it would have been cheaper if that form would have hampered the effectiveness of the Inquiry, particularly in gaining the public's confidence in its proceedings, as we believe it would have done.

# *Appendix B*

## **Participants in the Inquiry and their representatives**

### **Counsel to the Inquiry**

Mr Ashley Underwood QC

Ms Julie Anderson (to July 2009)

Ms Alyson Kilpatrick (to June 2007)

Instructed by Ms Judi Kemish, Solicitor to the Inquiry

### **Interested Parties**

The Hamill Family

The Police Service of Northern Ireland

Reserve Constable Atkinson and  
Mrs Eleanor Atkinson

### **Representatives**

Mr Barra McGrory QC

Mr Eugene McKenna

Instructed by:

Mrs Doris Sherlock

P J McGrory & Co Solicitors

Mr Richard Ferguson QC (to July 2009)

Mr Martin Wolfe

Instructed by:

Mr Richard Ferguson

The Police Service of Northern Ireland

Mrs Margaret-Ann Dinsmore QC

Mr James Mallon

Instructed by:

Mr Brendan Hagan

John P Hagan & Co Solicitors, now known  
as JPH Law

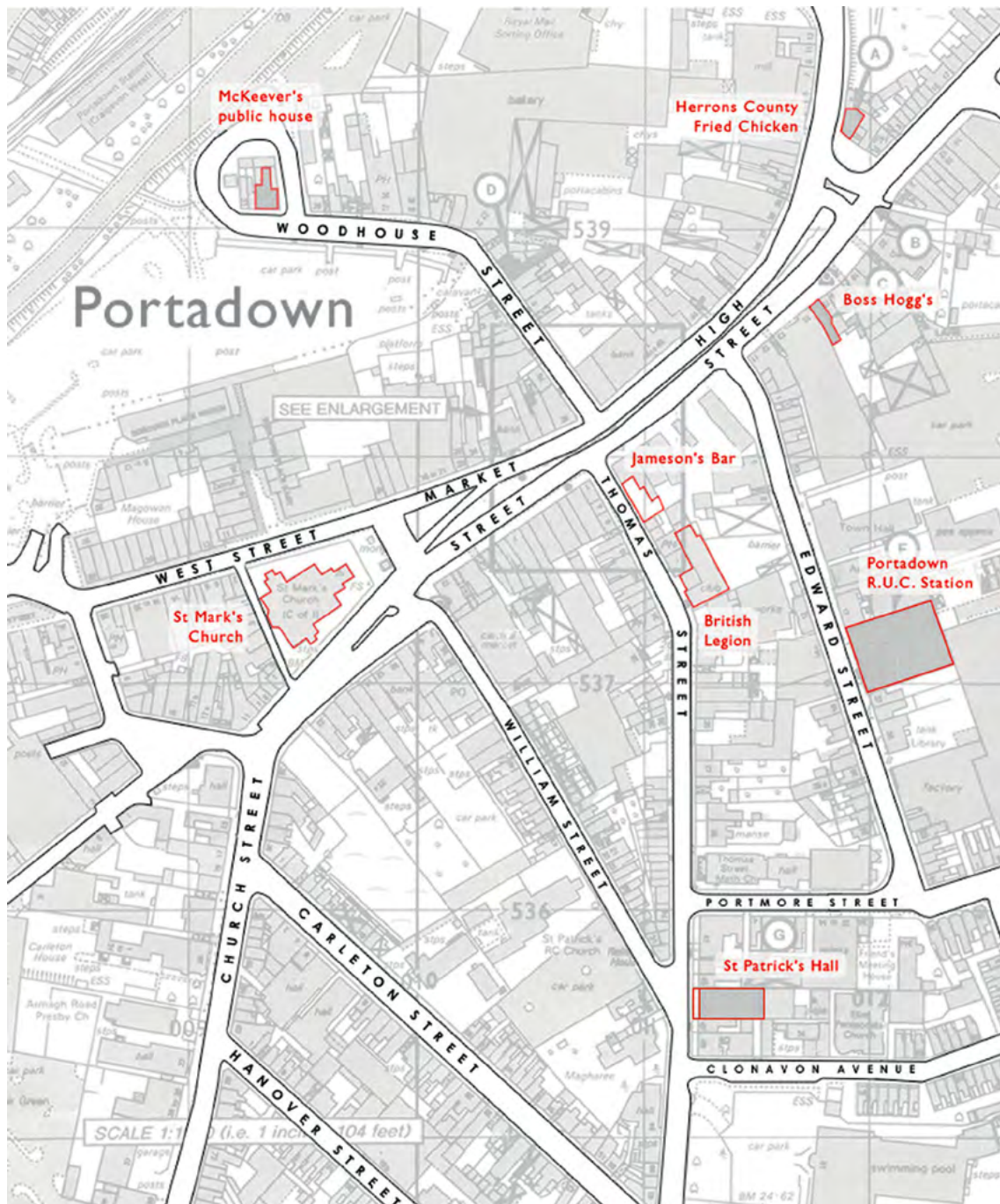


# *Appendix C*

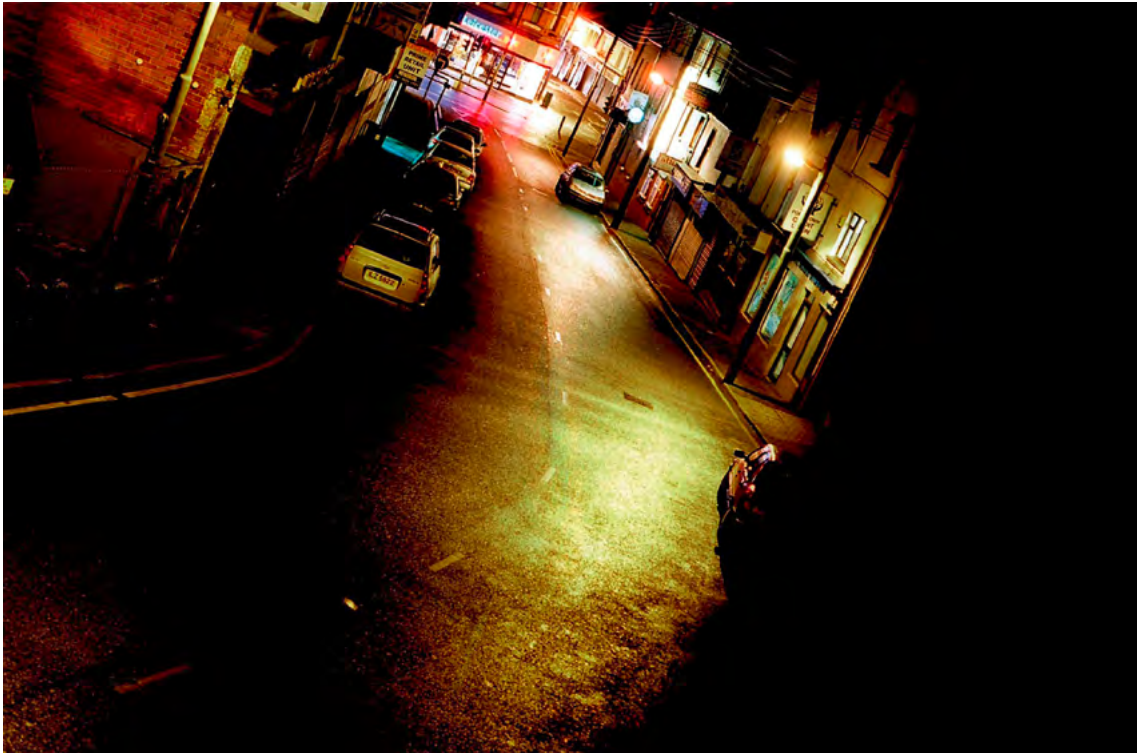
## Colour Images



Virtual reality image from outside Jameson's Bar looking down Thomas Street towards the Land Rover at the mouth of Woodhouse Street (colour images are available in Appendix C)



Map of Portadown town centre, focused on the junction of Thomas Street, Woodhouse Street, Market Street and High Street (map based on 00261).



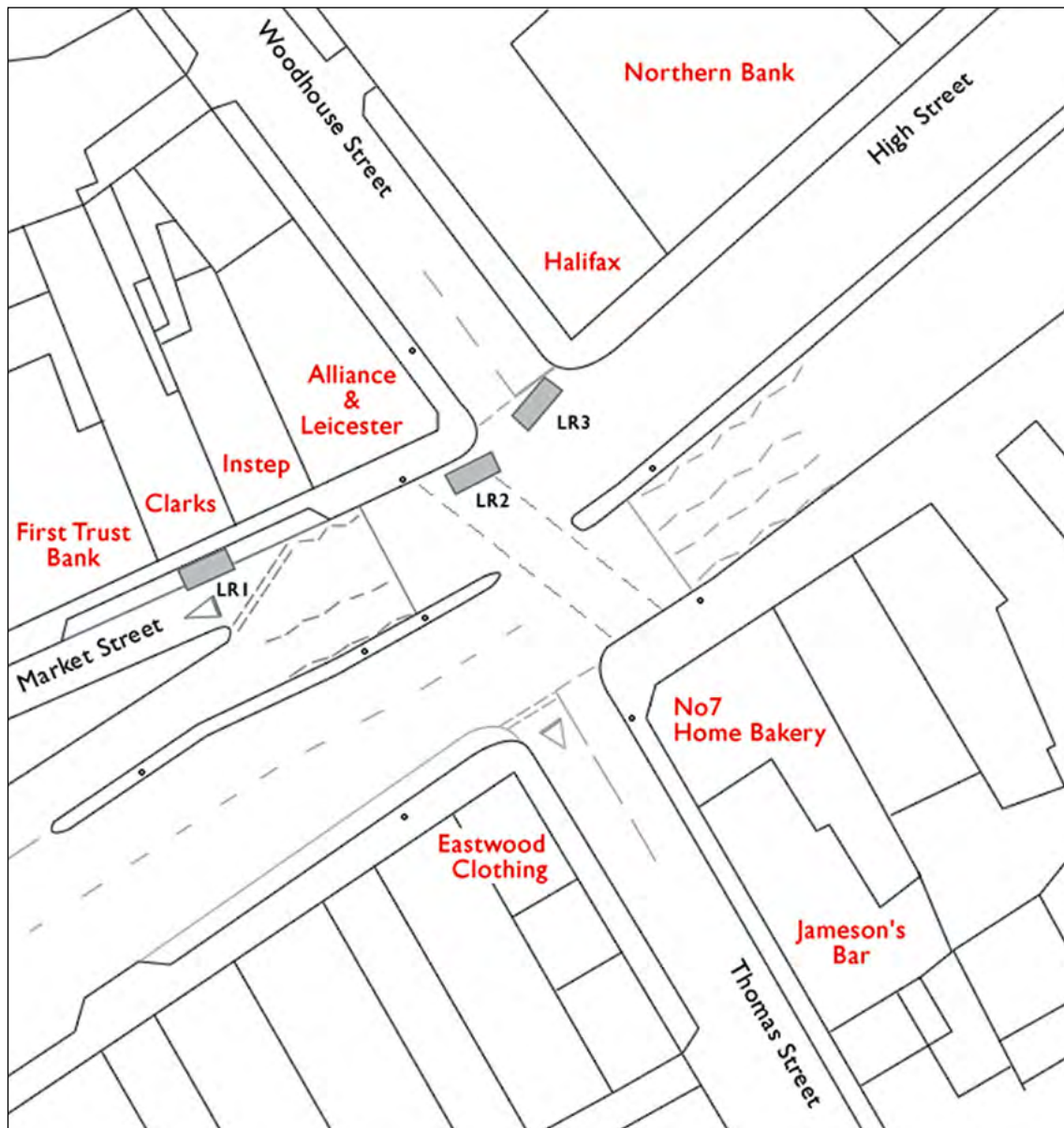
Photograph from a window in the flat that Witness P42 was living in, looking down Thomas Street towards the mouth of Woodhouse Street.



Photograph from a window in the flat that Witness P42 was living in, looking down Thomas Street towards the mouth of Woodhouse Street.



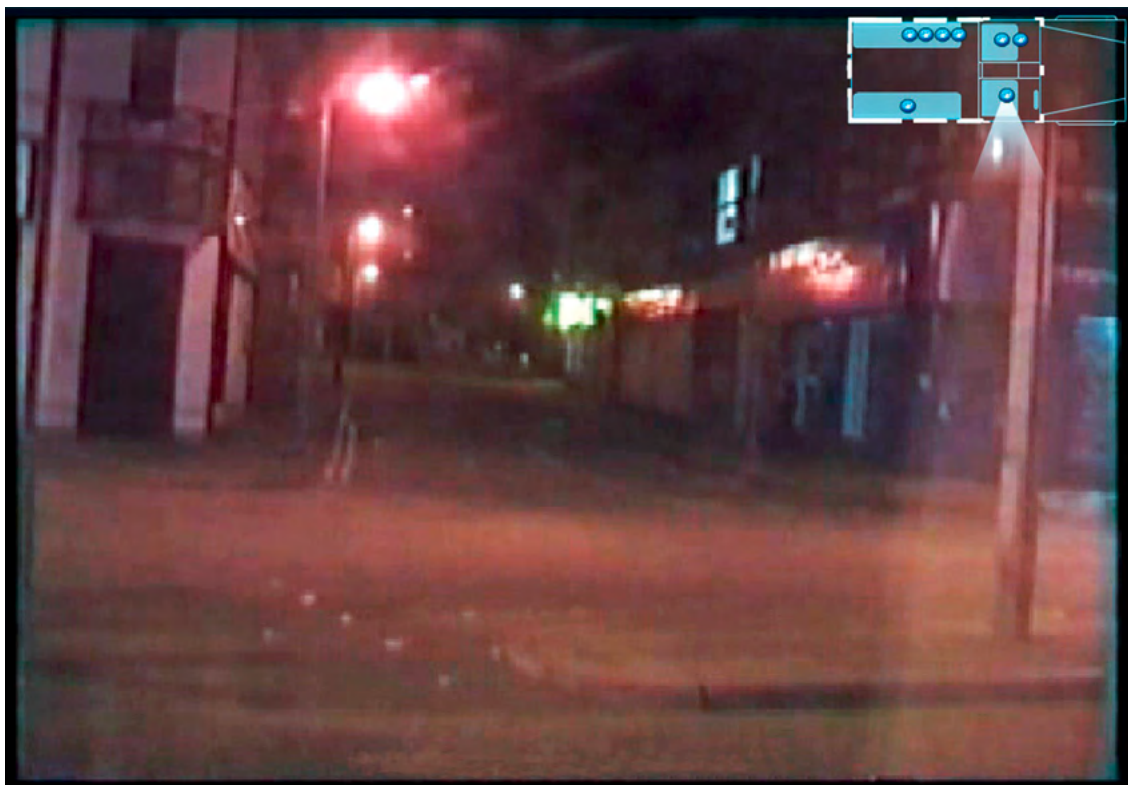
Photograph showing the exterior of Jameson's Bar, with the locations of the doors as marked during the hearings.



Map of the junction of Thomas Street, Woodhouse Street, Market Street and High Street, showing the positions where the Land Rover parked, labelled LR1, LR2 and LR3 (map based on 00295).



Virtual reality image of the view from the driver's seat of the Land Rover parked at position LR1, looking over the junction of Thomas Street, Woodhouse Street, Market Street and High Street and down towards Boss Hogs.



Still from a video showing the view from the driver's seat of the Land Rover parked at position LR2, looking up Thomas Street.



Photograph from the centre of High Street, looking up Woodhouse Street.

