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Mr McCarry passed on to the Taoiseach. 1/11

AN RÚNAÍOCHT ANGLA-ÉIREANNACH
BÉAL FEIRSTE

ANGLO-IRISH SECRETARIAT
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TO: Colm O'Floinn

cc G1/Section (Ms Ní Chaoighal RL arrange for Fig 2)

FROM: Val O'Donnell

Subject: **ICPC Statutory Statement to Complainants on the Conclusion of the Investigation into Complaints Against the RUC by the late Mrs Rosemary Nelson**

1. I received a copy of the above statement from a source this morning. It is attached. The text of the full statement appears in today's "Irish News" and is being conveyed separately with the cuttings from the Belfast newspaper.

2. I also had a brief meeting with Paul Donnelly the Chairman of the ICPC last evening at which he

   - summarised the serious concerns/dissatisfaction about the conduct of the initial RUC investigation,on the lines of the summary in page 3 of the statutory statement;
   - said that the Commission's Supervising Member had identified some sixteen aspects of the investigation that illustrated the unsatisfactory nature of the (initial) RUC inquiry; and
   - said that the ICPC's statement confirmed that by the conclusion of the investigation it was a satisfactory one.

   He said the overall attitude of the police who were involved in the initial investigation could be described as follows:

   "They regarded Rosemary Nelson as no better than those she was defending".

3. Donnelly also made the following points which will be of interest but which he stressed should be treated in complete confidence.

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Further report by Commander Mulvihill

Your will note that there is a reference in the penultimate paragraph on page four of the ICPC statutory statement, to an "over-arching review" which the RUC Chief Constable had commissioned from the external investigating officer (Commander Mulvihill). Its purpose was to deal with issues arising from the conduct of police officers during the initial unsatisfactory phase of the investigation. But it was not to be "a full or formal investigation into the detail of the specified conduct".

Donnelly understands that Commander Mulvihill has completed this review and has reported to the Chief Constable. No one else has received a copy of this report, or is entitled to see it. He said that the report did not extend to the ICPC's role in the investigation or to any of its procedures. Donnelly pointed out that the Chief Constable may decide to draw on this report - if it is favourable from his point of view - in the ensuing debate on the Rosemary Nelson complaints investigation, and its broader ramifications.

Chief Constable's Reaction

At a private meeting with the Chief Constable to hand over the ICPC's statutory statement, Donnelly got the clear impression that he intended to "defend the force to the absolute" in the aftermath of the investigation. There were some sarcastic remarks made about the supervising member - Geralyn McNally, who is a practising Barrister. You will see from today's press cuttings that the RUC have issued a statement in connection with the ICPC statutory statement confirming that Commander Mulvihill's investigation file has been forwarded to the DPP. A copy of this RUC statement, received from the other side, is attached.

RUC Officers Criticised in the Report

No names of the RUC Officers are mentioned in the ICPC statutory statement. Donnelly told me that this was in accordance with normal procedures.

The RUC Investigating Officer appointed, a Superintendent, apparently left the day-to-day running of the investigation to the Chief Inspector, who was severely criticised in the statement.

Reaction in the South

Donnelly was keen to be informed about any reaction in the South to the reported conclusions of the complaints investigation, and in particular to any views being expressed in the Dáil. I said I would do the best I could to advise him of any such reaction.

Could you assist please?

Ms Ní Chaighligh — PL comfile

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Investigation into the Murder of Rosemary Nelson

Donnelly was interested to know what line was being taken by the Irish Government on the issue of the independence of the investigation into the murder of Rosemary Nelson. I responded, drawing on the press lines conveyed to us at the weekend. I said that our overall position was that we were insisting on the need for the inquiry to be, and to be seen to be, fully independent. Donnelly seemed to be satisfied with this and added that the ICPC position was that it would not be advocating that the RUC should be excluded totally from the investigation. He believes that RUC involvement is essential for a successful investigation given their networking and intelligence systems within the Loyalist community. He felt that a fully independent investigation could be achieved with RUC involvement if appropriate safeguards were taken. I responded to this by saying that in public comments to date, the Irish Government has not called for a complete exclusion of the RUC from the investigation.

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ICPC - NELSON

ICPC **Independent Commission for Police Complaints for Northern Ireland**
Chamber of Commerce House – 22 Great Victoria Street – Belfast BT2 7LP
Phone (01232) 244821 – Fax (01232) 248563

Chairman: Paul A. Donnelly, BA, MSc Chief Executive: Brian G. McClelland, B.

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THIS STATEMENT IS MADE IN ACCORDANCE WITH ARTICLE 9, PARAGRAPH (8) OF THE POLICE (NORTHERN IRELAND) ORDER 1987, RELATING TO COMPLAINTS AGAINST OFFICERS OF THE ROYAL ULSTER CONSTABULARY MADE BY LAWYERS ALLIANCE FOR JUSTICE IN IRELAND ON BEHALF OF ROSEMARY NELSON, SOLICITOR AND MR COLIN DUFFY

It is a statutory requirement that, on completion of an investigation into complaints against members of the Royal Ulster Constabulary, which has been supervised by a Member of the Independent Commission for Police Complaints for Northern Ireland, the Supervising Member provide a statement. This document should indicate that the investigation has been conducted satisfactorily, or, if there are grounds for withholding or qualifying this certification the legislation requires the Supervising Member to specify those aspects of the investigation which gave rise to concern.

The following statement will confirm that, by the conclusion of the investigation, it was satisfactory, but that there were aspects of the earlier stages that gave rise to serious concerns as to its proper conduct.

THE COMPLAINTS

On 10th April 1997, 18th July 1997 and 10th September 1997 the matters under investigation were variously referred to the Independent Commission for Police Complaints for Northern Ireland under Article 7 of the Police (Northern Ireland) Order 1987. The nature of the complaints fell within the category of discretionary supervision under the provisions of Article 9(3)(a) of the Order and in this context the Commission confirmed that it would supervise their investigation. The Member of the Commission supervising the investigation approved the appointment of an Investigating Officer of the rank of Superintendent, who had been nominated by the Royal Ulster Constabulary. In turn, a colleague, of the rank of Chief Inspector, who undertook the day to day conduct of the investigation, assisted the Investigating Officer.

The allegations made by the Lawyers Alliance for Justice in Ireland concerned death threats to Mrs Nelson.

In order to gain a more detailed understanding of the nature of these and the circumstances in which they were allegedly made, the Supervising Member directed that the Chief Inspector interview, in her presence, Mrs Nelson and Mr Duffy. These interviews took place on 16th September 1997 and 15th October 1997 and written

Commission Members
Hugh Reid (Deputy Chairman), Suzanne Bryson, Robin Davidson
Bob Moore, Geralyn McNally, David Shillington

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statements were provided. Additional witness statements were forwarded by Mrs Nelson and the Lawyers Alliance for Justice in Ireland and, at the direction of the Supervising Member further statements were sought from the Committee on the Administration of Justice, who provided statements from two clients of Mrs Nelson detailing references allegedly made about her by police officers during interviews at Gough Police Office. Efforts to secure interviews with these witnesses and others did not meet with success.

The Supervising Member and a Commission staff colleague spent half a day at the RUC Complaints and Discipline Department reviewing various associated crime file documentation. Subsequently the Supervising Member formally directed that extracts from these be copied and handed over to the Commission.

SUPERVISION OF THE INVESTIGATION

The supervision and direction by a Member of ICPC of an investigation into alleged police misconduct represents a pro-active engagement with the detailed process of the inquiry. There are meetings for information, review and the issuing of further directions held between the Supervising Member, Investigating Officer and their various assistants. The Investigating Officer is required to keep the Member informed of all developments in a case, provide all relevant documentation upon his receipt of it and follow the directions given by the Supervising Member. At interviews of witnesses and police officers who are the subject of complaints the Supervising Member has a right to be in attendance and to direct that certain questions be put or specified matters addressed.

It is the responsibility of the Investigating Officer to conduct his enquiries in an effective and ethical manner, to the satisfaction of the Supervising Member.

In the course of this investigation, in addition to the measures previously outlined in this statement, twenty-eight interviews took place with police officers. The Supervising Member attended twelve of these.

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Throughout the investigation the Supervising Member consistently raised concerns about its conduct and the behaviour and attitudes displayed by police officers in the course of interviews. Ultimately she concluded that the accumulated effect of these shortcomings was such as to be seriously damaging to the credibility of the investigation itself. Equally, the confidence that the complainants and others should rightly expect to have in the investigation of serious allegations concerning threats to a solicitor in the conduct of her professional duties, was potentially severely undermined.

The appendix attached to this statement sets out a catalogue of concerning incidents that occurred in the course of this investigation. Each of these incidents, taken in isolation, would be unacceptable but not calculated to render the overall investigation severely flawed. However, considered accumulatively they do add up to behaviour and attitudinal predispositions which are both unacceptable and undermining of the rigorous professionalism and professional detachment which the Supervising Member is, by statute, required to be satisfied has pertained in any particular case.

In summary, the investigation of the alleged threats to Mrs Nelson by officers of the RUC was unacceptable to the Supervising Member of the ICPC because:

- The officer assisting the Investigating Officer appeared to have difficulty in co-operating productively with the power and authority relationships which are an inherent facet of supervised investigations
- The concerns raised by the Supervising Member were either not addressed or addressed unsatisfactorily
- The apparent prompting of the police officers to have ready prepared statements in advance of interview undermined the possibility of full and candid responses to important questions
- The ill disguised hostility to Mrs Nelson on the part of some police officers was indicative of a mind set which could be viewed as bordering on the obstructive.

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THE METROPOLITAN POLICE TAKE OVER THE INVESTIGATION

The investigation appeared to be close to an outcome which would result in it being declared by the Supervising Member to be "Unsatisfactory". At the Supervising Member's request the Chairman of the Commission conveyed her concerns to the Chief Constable. Because there were issues of public interest and in the light of the United Kingdom's commitments to the United Nations, who had established an interest in the case, the Secretary of State was also communicated with.

The concerns surrounding the investigation were discussed in a meeting at the Commission's headquarters on 1st July 1998 between the Supervising Member, the Chief Constable and his Staff Officer, the Chairman of the Commission and the Commission's Chief Executive.

The Chief Constable proposed that the complaints investigation be taken over by officers from an outside force, subject to the usual vetting of, and approval by the Commission, of the nominated Investigating Officer.

This suggestion was acceptable to the Supervising Member.

The Commission is a statutory body with supervising and disciplinary responsibilities in respect of alleged police misconduct. These responsibilities and the powers that accompany them constitute a position of privilege in respect of any concerns that might be identified by the Commission Members in the discharge of their duties. It is therefore inappropriate for the Supervising Member's concerns on the conduct of this investigation to be considered as constituting a complaint by the Commission.

In response to these concerns the Chief Constable indicated that he was of a mind to ask the external Investigating Officer to consider the conduct of officers in the investigation undertaken by RUC officers. This was not to be a full and formal investigation into the detailed of the specified conduct, but rather an over-arching review that would be reported to him. While clearly the Commission could not submit its stewardship in this case to the scrutiny or critique of an Investigating Officer, the Supervising Member indicated that she would however provide information on the conduct of the police officers concerned.

On 9th July 1998 the Supervising Member met with and approved as Investigating Officer Commander Niall Mulvihill of the Metropolitan Police Service.

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THE INVESTIGATION BY THE METROPOLITAN POLICE

The Commander and his team met regularly with the Supervising Member, to discuss and agree the course of the reviewed investigation.

Numerous attempts were made to obtain interviews with Mrs Nelson, Mr Duffy and various witnesses. Mrs Nelson, Mr Duffy and one other witness attended for interview at the Commission's offices on 21st September 1998; a further witness attended on 22nd September 1998. Mr Lynch from the Lawyers Alliance for Justice in Ireland was present on both dates. One other witness attended the Commission's offices on 6th November 1998. Commission Representatives supervised all of these interviews. Four other potential witnesses failed to co-operate with the enquiry.

During the course of the Commander's investigation thorough interviews were conducted with 21 accused RUC police officers. The Supervising Member oversaw 13 of these interviews.

The copious documentation, assimilated during the course of the investigation, included copies of numerous sets of interview notes, custody records, Occurrences Book Entries, telephone and fax billing records. Contemporaneous notes recorded by Mrs Nelson were provided. These proved to be significant.

The Supervising Member can <u>now</u> confirm that the investigation of these complaints has been conducted to the satisfaction of the Independent Commission for Police Complaints for Northern Ireland.

Geralyn McNally

Geralyn McNally

Supervising Member

22nd March 1999

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APPENDIX

Aspects of this investigation that illustrate the unsatisfactory nature of the inquiry by the RUC are listed below.

- Observable general hostility, evasiveness and disinterest on the part of the police officers involved in this investigation.
- One officer attended for interview 45 minutes late, without explanation. He smelled of alcohol and continually referred to one of the complainants as being the murderer of two police officers.
- An officer indicated, through the Chief Inspector, that on reflection he considered that he ought not to have answered any of the questions that had been put to him.
- An officer's uncooperative stance during an interview was explained by the Chief Inspector as indicative of his "very peppery" character.
- Having declined access to legal advice, an officer, when questioned about matters crucial to the enquiry asked if the interview was going to end. He indicated that if this were not to be the case he would avail of legal advice. This officer left, refusing to sign the last page of his statement, which made references to key allegations.
- Prior to three supervised interviews the officers concerned, without the prior knowledge of the Supervising Member, prepared and presented at interview, written statements.
- When questioned, after caution, about specific allegations one of these officers substantially answered by indicating that his written statement constituted his reply. By doing so did not adequately address the very serious matters that were being put to him.
- The Supervising Member inquired of this officer how it was that he had decided to prepare a statement in advance of the interview. He replied that he had done so at the request of the Chief Inspector who had conducted the interview.
- The Supervising Member directed that the Chief Inspector was not to repeat this request to any other police witness or suspect, as his doing so would prejudice any subsequent interview. At this point the Chief Inspector informed the Supervising Member that he understood that one such statement was currently in preparation by another accused officer.

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- The concerns arising from the pre-interview prepared statements were conveyed in writing to the Investigating Officer. His reply contained a denial on behalf of the Chief Inspector that any such requests had been made by him. However, in response to a question from one officer he had indicated that written statements could be provided. The Investigating Officer confirmed that it was inappropriate for either confirmations of this nature to be provided or for statements to be requested.

- The degree to which the Chief Inspector's rebuttal stands at variance to the reply given to the Supervising Member's direct questioning of the police officer who arrived at the interview with a prepared statement, has not been satisfactorily explained.

- In the report of the investigation drafted by the Chief Inspector he makes a number of assertions which constitute judgements on the moral character of Mrs Nelson and others.

- Although early in the report the Chief Inspector stated that he had no reason to doubt Mrs Nelson's reliability as a witness he subsequently recorded that he in fact did harbour doubts on her reliability. This change of opinion appears to rest primarily on the difficulties that the Chief Inspector experienced in his efforts to arrange interviews with Mrs Nelson.

- In another part of his report the Chief Inspector questioned the circumstances in which Mrs Nelson' s clients' evidence had been prepared and forwarded. This concern is not matched by any supporting substantial evidence.

- The Chief Inspector cited the volume and timing of correspondence received from various international groups on behalf of Mrs Nelson as giving rise to what he claimed was the reasonable suspicion that the complaints were more to do with generating propaganda against the RUC than establishing the truth.

- Another senior officer, reporting on the investigating, coupled the quality of the evidence given by Mrs Nelson, a solicitor and officer of the court in good professional standing, with that of her clients, whose reliability was deemed by him to be questionable. The evidence given by Mrs Nelson was seen as being "no better" than that given by her clients.

Geralyn McNally

Supervising Member

22nd March 1999

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ICPC INVESTIGATION / MURDER OF ROSEMARY NELSON

We fully understand the total anguish being experienced at this time by Mr Nelson and his family. We would not wish to do or say anything to add to that anguish. We assure Mr Nelson that everything humanly possible will be done to bring to justice those responsible for the cowardly and brutal murder of Mrs Nelson.

Our colleagues from the Kent Constabulary and from the FBI share our absolute determination in this regard. With respect to the concerns raised by the ICPC it should be noted that as soon as concerns were expressed to the Chief Constable he brought in Commander Mullvihill from the Metropolitan Police Service in direct response to those concerns.

Commander Mullvihill's investigation of the complaints made on behalf of Mrs Nelson has been completed to the total satisfaction of the ICPC and his file has been forwarded to the DPP for his consideration.

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23 MARCH 1999