

Mr Irvine

THE NEIDERMAYER CASE

An alerting notice was circulated by Criminal Injuries Branch on 14 August and the next day I minuted all concerned to say I was pursuing a particular line of enquiry. I am now in a position to recommend a firm course of action in the case.

2. The position is as follows. Mrs Niedermayer has lodged a dependency claim on her own and her daughter's behalf in respect of "the abduction and subsequent murder" of her husband; also a claim, in her case, for nervous shock. In support a Chief Constable's Certificate has been furnished to the effect that Mr Neidermayer was abducted from his home on 27 December 1973 by a malicious person acting on behalf of or in connection with an unlawful association and is presumed dead; a copy of the Certificate is attached. Also submitted and attached is a copy of a "Declaration of Death" by the Nurnberg District Council which has been obtained by Mrs Niedermayer to enable her husband's affairs to be wound up.

3. As far as the claim for nervous shock is concerned it is my opinion (not shared by the Branch, let me add) that provided the medical evidence supports it, a court would be likely to hold that it was directly attributable to the fact that her husband had been abducted and that week after week went by without any news of his whereabouts or condition. In those circumstances I believe a court would be likely to regard it as irrelevant whether she was present at the time of abduction or not. As to the claim in respect of his "abduction and subsequent murder" - which is the *raison d'être* of this submission - we have a Chief Constable's Certificate which confirms his ~~and~~ abduction and presumes, on the basis of intelligence, that he is dead; we also have a declaration by the Nurnberg District Court founded on the grounds that (a) the local circumstances prevailing at the time of his disappearance constituted "an abnormally

high risk of life" for the purposes of (in West Germany) their Missing Persons Act and (b) that he is missing "under circumstances which give cause for serious doubts as to his continued life". Whether a Northern Ireland Court would accept the evidence which could be laid before it as adequate proof for the purposes of the Criminal Injuries to Persons (Compensation) Act 1968 is quite another matter of course and while there are obvious reasons why we should seek to avoid court proceedings and argument in the case - with all the attendant criticism it would be bound to attract - we have also to be satisfied that on the information available to us liability ought to be accepted ^{on the grounds that} on the balance of probabilities, a court would be likely to do so. Were we to accept it without further ado however and were it to be insufficient it would leave FUS vulnerable, as Accounting Officer, and could well create an embarrassing precedent where other claims involving missing persons are concerned.

4. I have therefore had the benefit of a useful discussion with Special Branch and you will see from the attached letters - copied only to PUS at this time - that intelligence (as opposed to firm evidence) is available to support the conclusion he is dead; also that he was not taken outside Northern Ireland at any time. It is intelligence, we are told, that has come from a highly reliable source.

5. I have also discussed the case with Senior Counsel (Mr W A Campbell, QC) and I attach a copy of his Opinion which I have just received.

6. There is no other "missing person" case on record in which the grounds for accepting death are anything like as strong. We are aware of four other people who have disappeared in mysterious circumstances. They were Mr Patrick Mooney (19 August 1976); Mr Brendan Megraw (8 April 1978); Mr Brian McKinney (25 May 1978) and Mr John McClory (25 May 1978). The Police think that Mooney may be dead but have neither evidence nor intelligence to support that opinion as yet. They have no information whatever in the other

cases but have pointed out that McKinney and McClory, who disappeared together, were known to have PIRA connections.

7. The Mooney case is a particularly awkward one from our point of view. A building contractor, he was last seen walking along the Upper Malone Road towards Dub Post Office, at which he was carrying out repairs. His car, with the keys inside it, was found outside the Post Office and there were small bloodstains on the inside panel of the driver's door. As far as is known he had no involvement with any para-military organisation and no one has claimed responsibility. At the time of his disappearance he was known to be in financial difficulties, a factor which may not be without significance. The solicitors in the case have asked that a criminal injury claim for dependency (which had been lodged with the Branch) be adjourned "until the Police have completed their investigations into the matter" and an adjournment sine die has been agreed. The embarrassing aspect of the case is that the bloodstained material was sent to the Forensic Laboratory for examination in the normal way and destroyed in the fire before it had been reported upon. From what I have gathered however, a small quantify of blood only was present and the view has been expressed that it could equally well have come from a person in the building trade who had cut his hand.

8. In the light of the information available to us and the advice of Senior Counsel I have no hesitation in recommending to you, and PUS, that despite the absence of "firm evidence and a body" in the case we should not deny liability. If that is agreed we will ask Senior Counsel to negotiate with his opposite number on our behalf in the matter of quantum. Should we be forced (I trust not) into a court situation on that score it would be much less damaging to us of course than would a "no liability" stance, and the adverse public criticism that that would draw.

9. Because the case falls to be dealt with under the 1968 Act, rather than the 1977 Order, any settlement reached will have to be ratified by the courts. When that approval is sought we can anticipate that a court journalist is likely to pick it up and ask the question "Are you satisfied then that Mr Neidermayer was murdered", to which the answer would have to be "The Police are satisfied, on the basis of the information available to them etc". It will be necessary therefore to consult both the Chief Constable and Mr David Gilliland about the precise form the reply should take.

Victor Morrison

J V MORRISON

8 September 1978

cc PS/S of S (I&B)
PS/Mr Concannon (I&B)
PS/PUS (I&B)
Mr Hannigan
Mr Ford
Mr Waterfield
Mr Gilliland
Mr Smartt ✓
Mr Carswell

HMC