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TRANSCRIPT OF OUR CONTRIBUTIONS TO THE JOINT OIREACHTAS SUB COMMITTEE  
ON THE BARRON REPORT INTO THE MURDER OF SEAMUS LUDLOW

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**Joint Committee on Justice, Equality, Defence and Women's Rights  
Sub-Committee on the Barron Report**

Dé Máirt, 24 Eanáir 2006 - Tuesday, 24 January 2006

Public Hearing on the Barron Report

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The Joint Committee met at 9.30 p.m.

**Sub Committee Members Present:**

Deputy Seán Ardagh (Fianna Fáil),  
Deputy Joe Costello (Labour)  
Senator Jim Walsh. (Fianna Fáil)  
Deputy Máire Hóctor (Fianna Fáil)  
Deputy Finian McGrath (Independent)  
Deputy Gerard Murphy (Fine Gael)

DEPUTY SEÁN ARDAGH IN THE CHAIR.

The joint committee met in private session until 10.20 a.m.

**Morning session:**

10.20 am - Members of the Ludlow Sharkey family. Sitting suspended at 12.30pm  
resumed at 2pm

**Afternoon Session:**

**Chairman:** We resume in session. The sub-committee will hear from two groups this afternoon, Justice for the Forgotten and the British Irish Rights Watch. I welcome the representatives of Justice for the Forgotten, Ms Margaret Urwin, its director, and Mr. Cormac Ó Dúlacháin, counsel for Justice for the Forgotten. I thank them for forwarding their written submission and invite them to make an oral presentation.

**Mr. Cormac O Dúlacháin:** I thank the Chairman. On behalf of myself, Ms Margaret Urwin and Justice for the Forgotten, we greatly appreciate the opportunity to appear

at this hearing. There is a continuation of issues arising through the various Barron reports, including matters arising out of these reports relating to the murder of Seamus Ludlow, that raise issues of concern to the families of the Monaghan and Dublin bombings of 1972 and 1973 and the victims of other atrocities. Mr. Greg O'Neill may join us shortly. He has been detained on a visit to the McEntee inquiry, which was established on foot of a recommendation of this committee and will conclude its work in the next few weeks. If Mr. O'Neill walks in, it is a fact that he has been delayed and he hopes to be here.

**Chairman:** We appreciate that. I thank Mr. O Dúlacháin.

**Mr. O Dúlacháin:** In relation to our submission, I do not intend to repeat what was put in writing but I want to highlight a number of key points, the whole area in respect of the availability of files, the non-accounting for files, missing files, missing exhibits and material no longer recoverable. That is a common trend emerging in relation to all the atrocities during the 1970s that Mr. Justice Barron has been asked to investigate. It begs a question that has not been addressed or answered in the latest Barron report, that whether what is missing is the result of general maladministration over the years or is particular to these atrocities. From the Barron report, we are not able to assess whether the documents, exhibits and files that are missing are part of a larger number of exhibits or investigation files that are in turn missing or someone has selectively gone through the archives and moved material particular to these inquiries.

It appears that this is not a question that Mr. Justice Barron can ask because from the report it appears that in so far as a search for documents has been conducted, the actual physical and manual search has been entrusted to the authorities who have those documents. In other words, as far as we know, no member of the Barron team has physically entered the Department of Justice, Equality and Law Reform or the headquarters of the Garda Síochána or the technical bureau to try to establish exactly in what context these exhibits and files are missing.

Members may have questions in relation to the issues surrounding files. The most important issue for us arising out of the Ludlow report, aside from issues that are very particular, personal and close to the family of Seamus Ludlow, is one of great public concern that relates to the events of January and February, and early 1979. It relates to the circumstances in which information provided by the RUC to the Garda and invitations to interview suspects in Northern Ireland were not taken up. The issue is broader than the investigation into the murder of Mr. Seamus Ludlow. The same matter arose in the report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings. Page 84 of that report refers to information received from CID:

On 12 January 1979, two Garda detectives from Dundalk had a meeting at Portadown RUC station with two CID officers. One of the latter said he had received information that Joseph Stewart Young, Samuel McCoo and James Somerville - all

members of the Mid-Ulster UVF - were involved in the bomb attacks on Dublin, Monaghan and Dundalk.

When we consider how the Garda Síochána responded to information about Mr. Ludlow that it received at the beginning of February 1979 and that information was also received on the Dublin, Monaghan and Dundalk bombings, the question arises once more of pursuing suspects in Northern Ireland identified by the RUC. In circumstances not explained or not yet known but on its own initiative, the RUC volunteered information in the early months of 1979. In the case of Mr. Ludlow, the RUC had this information in 1977 and in respect of the Dundalk and Dublin-Monaghan bombings, it may have had the information as early as 1976. The same issue arises from two separate communications from the RUC. In so far as the committee is to consider this aspect of the Barron report, it may be opportune to revert to Mr. Justice Barron and view documentation on correspondence in January 1979 and internal memos concerning other inquiries.

The report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings states:

There was some further discussion in internal Garda documents concerning the desirability of interviewing the above-mentioned - particularly Somerville, who had not previously been interrogated in relation to any of the above bombings. There are references to further discussions taking place between the RUC and Garda officers concerned regarding the interviewing of the above-named suspects. One of the Garda officers wrote that "The RUC appear to be much more co-operative now than they were in 1975". However, it seems that no interviews took place.

The general issue of pursuing suspects in Northern Ireland was one that had to be addressed by the Garda Síochána at a policy level in early 1979. Reference has been made to general Garda policy, possibly dating back many years, of not interviewing in the North and not allowing the RUC to interview in the South. From inquiries conducted by Ms Margaret Urwin on behalf of Justice for the Forgotten, a number of instances have been identified in which gardaí travelled North or the RUC travelled South to conduct interviews in Garda stations. If there was a general Garda policy, it appears to have been subject to exceptions in certain cases. Nothing has emerged from documents in the Department of Justice, Equality and Law Reform or any Department indicating such a policy existed.

Last week, Ms Urwin, Mr. O'Neill and I paid a visit to the national archives in London to examine state papers of the United Kingdom. With the assistance of the Pat Finucane Centre, Ms Urwin spent the week in London examining hundreds of files. We have asked for, but not yet received, a printed copy of one document from which it emerges discussions took place at an official level in early September 1975 between officials of the Irish Government and those of the British Government in which this specific issue arose and in which references were made to policy considerations. To put this in context, on page 129 of the Barron report into the Dublin and Monaghan bombings it is stated:

A meeting was held in London on 11 September 1974, at which the British side

comprised the Prime Minister, the Secretary of State for Northern Ireland, The British Ambassador to Dublin, the Permanent Secretary to the Northern Ireland Office, and other senior civil servants. The Irish side comprised An Taoiseach, the Minister for Local Government, the Minister for Foreign Affairs, the Irish Ambassador to London as well as senior civil servants of the Department of the Taoiseach and the Department of Foreign Affairs."

That was the formal meeting which took place but it was preceded the previous week by a meeting solely involving civil servants. The British memo of that earlier meeting contains refers to observations of staff from the Irish Office of the Attorney General to the difficulties of conducting interviews in Irish police stations. We hope to be able to obtain a copy of the British minute of that civil service meeting during the next week or two.

It should be possible to trace minutes of a meeting between Irish and British civil servants in early September 1974, either in the files of the Office of the Attorney General here or in associated Government Departments, to investigate whether a briefing paper or note was prepared or to examine a minute of the meeting. It certainly appears that, outside of the Garda Síochána, at a formal policy level, decisions were made on whether, and to what extent, interviews should be allowed to be conducted in this State by the RUC.

An alarming issue raised in the Ludlow report is that the question of whether the matter was being pursued bounced back and forth between various Garda sections. Ordinary crime, C1, under Assistant Commissioner Fleming, was in pursuit of this issue by way of correspondence for a year, from April 1979 to March 1980. As a matter of routine it asked on a bimonthly basis what progress had been made and it received no report back. We know from the Ludlow report that Superintendent John Courtney had been Border superintendent until July 1979 and he returned to C4, the murder squad.

We know C3, the crime security section, which was the critical liaison with the Northern Ireland Special Branch and the RUC, is the first section with which the RUC communicated. The communication came from the Chief Constable's office directly into C3. Questions were raised as to whether notification that there were four suspects went straight to C3 and whether C3 was then involved in distributing that information. It is not as if it ended there with C3. The matter was returned to C3 in subsequent communications. The ordinary crime branch does not appear to have been aware of whether there was a policy that such suspects not be interviewed in Northern Ireland because it was still asking whether it would happen.

In terms of the Barron report, there are conflicts between Superintendent John Courtney, who said he raised the issue, and the senior officer in that section, who said the issue was not raised with him. It is important to establish to what extent C3 was aware of the issue arising in the context of the investigations into the Dublin and Monaghan bombings or the Dundalk bombing. It is our understanding that by

1975 there was a direct link between the RUC special branch and the crime and security division. A dedicated telephone line was in place so as far as communication was concerned, it did not involve going through exchanges or dialling long telephone numbers; there was a direct line from one security service to the other. Therefore, there would have been no difficulty in communicating a decision to pursue a request to interview people, had such a decision been made. Similarly, there seems to have been no difficulty in terms of physical correspondence.

The main issue - despite whatever complaints we may have regarding the failure of the British Government to co-operate with inquests or with this committee - is the failure of the Irish State to pursue suspects identified in the Ludlow murder case and the Dublin, Monaghan and Dundalk bombings. No clear answer emerges as to why those matters were not pursued. We cannot see how that particular issue can be resolved unless it is submitted to the most intensive inquiry. This committee has been approached by various parties, including victims' groups, who have argued the case for a public inquiry. We believe that the issue is one of immense public concern which must be addressed and resolved and that the only effective way to do this is through the mechanism of a public inquiry. In that regard, the concerns the committee had 18 months ago do not arise because the Houses of the Oireachtas are involved in amending the legislation governing public inquiries, how they are conducted and the costs involved. We strongly support the Ludlow family in its submission that matters arising from the Barron report justify the setting up of a public inquiry.

The question arises as to whether there was a general policy in place of not allowing members of the RUC to conduct interviews in this State. In that context, our submission refers to the evidence of Mr. Patrick Livingstone, who was living in Dundalk in December 1975. He refers to circumstances in which he was arrested in Dundalk and interviewed in the local Garda station by three RUC special branch officers - a chief inspector, an inspector and a sergeant. We can supply further details on this matter to the committee if necessary. It certainly appears that from September 1976, officers in Dundalk Garda station were not aware of any prohibition on the RUC conducting interviews on that premises. Perhaps the gardaí felt they could provide this facility to the RUC but could not ask for the favour to be returned. Ms Urwin may wish to elaborate on some of the points.

**Ms Margaret Urwin:** The Garda explanation, as published in the Barron report, suggested that the suspects could not be pursued because the RUC may have sought reciprocity. Mr. Ó Dúlacháin outlined the case of Mr. Livingstone, who was interviewed by three RUC officers in Dundalk Garda station in December 1975, around the time of the Dundalk bombing, in the absence of a member of the Garda Síochána. The evidence he allegedly gave during that interview was the sole basis for his conviction in a Diplock court in Northern Ireland in May 1977. Two gardaí attended but were not called upon to give evidence at the trial, which lasted only a few hours.

On the other hand, the Barron report on the 1972 and 1973 bombings and other contemporaneous atrocities discussed the murders of an engaged couple from County Donegal, Oliver Boyce and Bríd Porter, the families of whom appeared before this sub-committee last year. At that time, gardaí appeared to have received co-operation from the RUC and went to Belfast on 14 March 1973 to interview three suspects in the presence, I believe, of the RUC. Apparently, they also took blood samples from the three Belfast suspects and on the following day interviewed a fourth suspect in Derry. Here are two cases of gardaí going to the North to interview suspects for crimes carried out in the Republic and of RUC officers travelling south to interview a suspect with regard to a crime committed in Northern Ireland.

**Chairman:** Thank you, Ms Urwin.

**Deputy G. Murphy:** Mr. Justice Barron came to the conclusion that the Garda inquiry was satisfactory in the circumstances of the day. He also concluded that a policy existed, either at Garda or political level, which considered that a dangerous precedent would be set by interviewing suspects in an RUC station and vice versa. However, the examples supplied to us indicate that there were exceptions to that policy. That is a difficulty for us because we cannot clearly say whether such a policy existed at that time and, if so, whether it was an internal Garda policy based on the security situation or as political one arising from wider implications. Is it the case, when the examples of the exceptions are examined, that police forces on both sides of the Border may have drawn distinctions between different types of crimes and that the policy or directive was in force for any matter associated with subversive situations but did not apply to ordinary circumstances?

**Mr. Ó Dúlacháin:** In the Livingstone case it was viewed as subversive. Bríd Porter and Oliver Boyce were also viewed as having subversive connections. Those are subversive examples as opposed to a murder inquiry, which would fall within ordinary branch business, for example, a murder by a family or neighbour or a dispute outside a pub. A footnote on page 79 of the Barron report refers to Garda practice and a directive issued in November 1953. It is dangerous to assume that this 1953 directive was in operation in 1976. By the end of 1974 formal procedures had been agreed on the exchange of intelligence and Garda-RUC co-operation, and these had arisen as a result of what were referred to as the Baldonnell panels. By the end of 1974 new procedures governed mutual co-operation on security and investigations and distinguished between co-operation at a Border level between local divisions on each side of the Border and the responsibilities of the various command structures whether C3 or elsewhere.

The Barron report does not refer to that formalisation of the manner of communications and it does not seem that Mr. Justice Barron has seen the fruits of whatever formal agreement was put in place at the end of 1974. Knowing that there were formal structures for regular review of security matters between the Garda and the RUC we are not aware whether at any of those meetings that may have taken

place from 1975 to 1977, the murder of Seamus Ludlow or any other atrocity were raised. While we know there was a structure for communication between the Garda and the RUC and for regular reviews and discussions on security matters, it is not referred to or exhibited in the Barron report.

**Ms Urwin:** I might add, co-operation existed not just between the Garda and the RUC but also between the Irish and British Governments, and the British Government pushed hard for the Irish Army to co-operate directly with the British army in 1974. The Irish Government, the Defence Forces and the Garda resisted this. There was a close and ongoing co-operation and we have seen the papers for this year and last year in the National Archives in London so we are aware that formal structures had been put in place before Seamus Ludlow was murdered.

**Deputy G. Murphy:** I accept there is no consistency between the examples, but one should consider the times people lived in and how the relationships between police forces and governments could change from day to day. Is it possible that there was a general policy of co-operation but that if tensions were high, if there was a perception that such co-operation could be seen in the wrong light in either of the jurisdictions, each side would pull back from co-operation?

**Mr. Ó Dúlacháin:** We have not seen the UK papers for 1977 or 1978. That emerged from our viewing of the papers for 1974 and 1975 and we have not had the benefit of seeing the UK papers for 1977 or 1978. Two things are apparent from the papers from 1974 and 1975. First, before the Dublin-Monaghan bombings the UK was upset at the attitude the Government took to co-operation in security matters. The coalition Government was of the firm view that co-operation should take place on a formal police force basis but our papers show that the British Government was livid because it wanted formal structures and communication on an army-to-army basis. That was a major source of conflict in the months preceding the Dublin-Monaghan bombings and throughout the summer of 1974.

Second, the British were aware that security issues raised delicate political issues in this jurisdiction. The Government discussed security meetings but the British Government sought to upgrade them to security conferences. The actions of the Garda and the way the relationships between the forces were managed raised political issues and were discussed at a political level. However, we do not know what political direction was given following the events of 1974 or whether it was the subject of any changes. In 1979 the then Minister for Justice, Mr. Collins, expressed the view that disclosures made early in that year may also have been politically motivated in the sense of being part of a bargaining game for security initiatives. We have seen neither the Irish diplomatic or intergovernmental papers nor the UK papers for 1978.

**Deputy G. Murphy:** In his opening remarks Mr. Ó Dúlacháin referred to missing files, exhibits and many other things central to progress in this matter. If a public inquiry were to be put in place, does he think something would emerge that is not

known at present?

**Mr. Ó Dúlacháin:** Our experience has been that information emerges the more formal an inquiry becomes. It will be interesting to learn from the report of Mr. MacEntee's commission of investigation if he has been able to recover documentation within the State that Mr. Justice Barron was neither able to identify nor obtain.

There are two elements to a public inquiry. Research is first undertaken for information that exists in the public domain and then that information is subjected to public scrutiny. Often in the course of that public scrutiny it becomes apparent that other documents have not yet appeared. For example, when we came before the joint committee to discuss the 1974 bombings, we were very critical of the then Fine Gael Government for effectively leaving the issue off the agenda from the end of 1974. The Sunday Business Post this Christmas, however, referred to further disclosures in British newspapers indicating that in April 1975, the then Taoiseach, Mr. Cosgrave, raised the matter with the British Government, a fact that did not emerge from a search of our own papers. It raises question of how thorough the search of departmental papers has been to date.

A formal inquiry, where people must swear on oath and where there are powers to trawl through departmental files and subject the findings to public scrutiny, is the only mechanism whereby we can at least guarantee to victims that all that could have been done was done. It is a public issue and concerns the public exercise of power. It is not related solely to the Garda, but to both how the Garda performs its functions and whether political decisions were made and whether they were justifiable.

**Deputy P. Power:** I thank Mr. Ó Dúlacháin and Ms Urwin for appearing again before us. I compliment Ms Urwin for her ongoing work on behalf of the Justice for the Forgotten group. I know she took over this onerous role from another person, and I wish her well with it. The week spent in London must have been interesting. The group has clearly spent time, money and resources in going to London to examine documents, and I wish to ask questions about this later. Have Irish State papers been examined from this period in so far as they are available? If so, have they thrown any light similar to the light shed today arising from the group's examination of documents in London?

**Ms Urwin:** My experience of examining Irish State papers is that the culture of secrecy here is far greater than in Britain. I have not yet had the chance to visit the National Archives on Bishop Street to look at the 1975 papers. I have been told by the senior archivist there that no files have been released by the security in Northern Ireland section of the Department of Justice, Equality and Law Reform. It appears strange that no files from 1975 have been released from that section of the Department. I believed that under the National Archives Act 1986, files either had to



be disclosed or accounted for with regard to what is being withheld. I have not yet had a chance to examine what has been made available by the Department of the Taoiseach or the Department of Foreign Affairs. I will do so as soon as possible.

**Deputy P. Power:** I thank Ms Urwin for that information. If what she says is the case, it is extraordinary. We as a committee could look into the matter, but that may be for our own private deliberations. If the 1974 meeting occurred, there may have been officials present from the Department of Foreign Affairs as well as the Department of Justice, Equality and Law Reform. Mr. Seán Donlon gave evidence before this committee with regard to the Dublin and Monaghan bombings, and his Department was very assiduous in keeping records. It may be an avenue for this committee to explore.

Mr. Ó Dúlacháin mentioned the common thread of missing files in his submission, to which we drew attention in the report on the Dublin and Monaghan bombings. Although there is a common thread, there is a difference here which might be commented on. In this case, it appears from the submissions of the Ludlow and Sharkey family earlier that there was virtually a complete fabrication or charade from the Garda to suggest that Séamus Ludlow was killed by the IRA because he was an informer. In this respect it is different from the Dublin and Monaghan bombings.

I know submissions have been made by this group to the commission of inquiry under Mr. Patrick McEntee SC. Although the outcome is not certain, are the witnesses satisfied with the efficacy of the inquiry? Has it been efficient and successful in getting at the relevant documents and information?

**Chairman:** That does not come within our terms of reference.

**Deputy P. Power:** I ask for some latitude. The reason I ask this is if the commission is successful, it may be an avenue to be considered by this committee. Mr. Ó Dúlacháin is in a position to answer that.

**Chairman:** We will have to leave that until Mr. McEntee reports.

**Deputy P. Power:** Very well. My main question relates to the policy considerations Mr. Ó Dúlacháin appears to have unearthed in his trawl through the English 1974-75 files and the possibility of a joint or agreed policy or mutual co-operation that I do not fully understand. Perhaps Mr. Ó Dúlacháin would articulate exactly what he discovered, the nature of the policy that may have been agreed at that meeting or series of meetings at official and political level? If those meetings took place, and if some form of protocol was agreed, that would be historically significant because it has not come to light before now. It would certainly be politically significant.

**Mr. Ó Dúlacháin:** What we have seen is a snapshot. We have not had the file giving us a complete view of what occurred after the meeting between the two

governments in September 1974.

**Deputy P. Power:** What about the meetings at Baldonnell?

**Mr. Ó Dúlacháin:** There were two meetings in Baldonnell, one early in 1974 and another in September 1974. What are referred to as the Baldonnell panels were established. Effectively they were expert groups trying to put in place procedures and protocols for mutual co-operation. They seem to have become operative some time in or about October 1974. There were meetings between the Garda Commissioner and the RUC Chief Constable which were police force only meetings at which the lines of communication between the two forces were clarified, in particular the lines at local divisional level and the lines at what might be regarded as a technical level in terms of direct communication between the ballistics and forensic departments North and South. In one respect that is obvious in the Ludlow report where there is communication from the data reference centre in Belfast straight back to the ballistics office in C4.

What we are not clear about is the exact detail of the protocols that were agreed. We are aware that they existed at different levels, that they related to matters such as communications, that for the purposes of ensuring secret communications the British Government supplied the Garda with the necessary equipment, and that it was willing to supply equipment to the Irish Army as well in terms of secure radio links and such matters. Quite an amount of detail was gone into. How that was put into practice from early 1975 onwards we do not know.

**Deputy P. Power:** If such a protocol or mutual co-operation policy was in place at that stage, how can that be reconciled with its non-implementation in the Ludlow case where there was no co-operation and no going North to interview people even though there was an invitation?

**Mr. Ó Dúlacháin:** We cannot reconcile it. That is the issue that arises out of the report. There is no reconciling it. If a decision or minute had been recorded, it would lead one to why a decision was or was not taken. That is the issue that requires consideration.

**Deputy P. Power:** We are talking about British state papers and the lack of availability of Irish State papers. Is there any evidence to suggest that such a protocol or agreed policy at governmental level and political level went somewhat beyond that, that it extended to a policy of non-prosecution of cases where the perpetrators of atrocities were in another jurisdiction, in other words, if they were north of the Border?

**Mr. Ó Dúlacháin:** What emerges from the discussions at what I call the civil servants' meeting in early September 1974 is that they were looking at the practicalities of all aspects from crime detection through to prosecution. The purpose of the entire exercise was to bring about prosecutions as if the Border were

no obstacle. The whole objective of the agreement between the Irish and British side was that one would not end up with circumstances as arose in January-February 1979 where witnesses were not interviewed and a prosecution was not proceeded with.

**Deputy P. Power:** Mr. Ó Dúlacháin concluded by saying that these matters require the fullest and most intensive inquiry and obviously he is carrying out his own inquiries in London. Since we are speaking essentially of documentation and having the power to obtain it from Departments, does the MacEntee inquiry established under the recently passed Commissions of Investigation Act provide an effective way of tracing this policy to find out if it existed and, if so, precisely what it was?

**Mr. Ó Dúlacháin:** No, documents often are a summary or a minute and are open to interpretation. The difficulty we have encountered with events in the early 1970s is that many of the people who could account for the documents, elaborate on them or discuss them are no longer with us. When one moves on to the Ludlow case in 1976 and particularly to 1979, many of the key players and those who can add to an inquiry in the matter are alive and are available. It is not simply a question of the collection of paper. It is the interpretation of that paper and establishing what has not been recorded on paper.

**Deputy P. Power:** I am aware the delegation was in the Visitors Gallery this morning when the Ludlow-Sharkey family was helpful to us. Mr. Ó Dúlacháin will recall that members of the family were unwilling to speculate as to the motivation of the Garda to enter into what I earlier called a charade and a fabrication. Can Mr. Ó Dúlacháin speculate as to the motivation or was it a political direction?

**Mr. Ó Dúlacháin:** I have no view on the matter.

**Chairman:** Deputy Costello has indicated that he has a brief question.

**Deputy Costello:** On the point raised by Deputy Power, the original protocol was arranged with C3 in 1953 approximately 23 years before the death of Seamus Ludlow. That required that any matter relating to a political investigation would be referred to C3. The conclusion by Mr. Justice Barron was that it was a decision made by the deputy commissioner charged with C3, Mr. Lawrence Wren. Would that not suggest that if he was following those protocols of 1953, as distinct from anything that might have arisen in 1974, that Mr. Justice Barron would be coming to what would be the logical conclusion, if following instructions?

**Mr. Ó Dúlacháin:** There is a logical conclusion which is that the matter in the first instance arose as a communication from what appears to be the special branch division within RUC headquarters and C3. The matter of disclosing the identify of suspects for the murder of Seamus Ludlow was raised in the first instance at that level. The issue was raised with C3 and it appears no instruction emerged from C1

not to pursue that line of inquiry. With regard to C1, eight or nine communications are from a distance. It is clear the local divisional office in Drogheda was not making any decisions about the matter and that either Superintendent Courtney went on a frolic or that a decision was made within C3. It is then a question of how large C3 was and what the process was at the time for making decisions. In that regard, Mr. Justice Barron's conclusion that a decision was made within C3 seems to be consistent with the structures after Baldonnel. It raises the question of whether the same decision was a general one which was then applied to the information emerging about those involved in the Dublin and Monaghan bombings and the bombings in Dundalk.

**Deputy Costello:** Would the conclusion still not be the same if, as stated on page 79 of the Barron report, Garda practice was outlined in a directive which no doubt would have been the directive that the person in charge of C3 would have been expected to have in the absence of any other? Unless there was another directive in place, the procedure would have been for the commissioner of the C3 section to make the decision on their own bat without reference to a higher authority.

**Mr. Ó Dúlacháin:** That is a matter that has to be investigated. It may have been entirely consistent with the protocol in place from 1975 onwards that a decision of this nature had to be made either within C3 or above. It is not clear from the Barron report. There is a reference to Superintendent Courtney as a Border superintendent. It is not clear whether that was a new innovation that was also part of the structure from 1974 onwards, it was part of cross-Border co-operation, the Border superintendent designation had a longer existence or whether it was part of a structure.

It also appears very unusual that the assistant commissioner in C1 would not have been discussing the matter at some stage with the commissioner or assistant commissioner in C3. It is not as if they are separate police forces or that at the top level they do not engage, meet or discuss.

**Chairman:** Does Mr. Ó Dúlacháin know if the directive was withdrawn at any time in the past 53 years?

**Mr. Ó Dúlacháin:** The formal 1953 directive.

**Chairman:** Yes.

**Mr. Ó Dúlacháin:** No. We do not know.

**Chairman:** There was a case in the DIRT inquiry where the Revenue Commissioners were operating under a directive which was analogous in so far as they did not do certain tests and follow up certain items because there was a directive in place. It will be interesting to hear from the Garda whether this directive

was rescinded or withdrawn at any time.

**Deputy Costello:** Or whether it is still in place.

**Chairman:** We will see.

**Deputy F. McGrath:** Did Mr. Ó Dúlacháin give an impression to Justice for the Forgotten that he felt the bombs on the streets of Dublin in 1974 were planted to influence Government policy on the North? Did I understand this from his earlier comments or would that be the view of Justice for the Forgotten?

**Mr. Ó Dúlacháin:** If one starts at the other end, Gerry Collins speculates on whether the revelations made by the RUC in 1979 were politically motivated to obtain an advance in mutual security measures. It is clear from the British documentation that in early 1974 they were very concerned that the level and the means of co-operation they had wanted were not being agreed to. There are certainly references at a political level to the Irish simply not understanding what was needed. There was also a reference in a later document in 1974 reverting to 1972. There are references to lessons having been learnt last May and in December 1972. However, all this is in the context of political documents, there is nothing in the nature of any particular document that would point to any conspiracy or any non-political activity.

**Deputy F. McGrath:** Not at-----

**Mr. Ó Dúlacháin:** Not in disclosed files.

**Chairman:** We will return to this matter in more detail next week. I thank the representatives-----

**Senator J. Walsh:** I would like to make a brief point. We have the examples the representatives gave us of Patrick Livingstone and the Boyce and Porter situation where gardaí went North and members of the RUC came South. If the representatives have other examples of that happening in either direction, it would be helpful if they would tabulate them for us, particularly in regard to their discussions with gardaí.

In this report by Mr. Justice Barron there is recognition of co-operation and contact between the Department of Justice, Equality and Law Reform and the Garda in regard to many ongoing issues on a fairly regular basis. That seems to be at variance with what we were told in relation to the Dublin and Monaghan bombings in that regard. Have the representatives any comments to make on that? It struck me as being significant. I wonder whether I am reading something into this that is not there or do the representatives consider there is something in that?

**Mr. Ó Dúlacháin:** Certainly the impression was given to us in regard to 1974 that a discreet distance was kept by the Department of Justice, Equality and Law Reform and that a very limited level of reporting was done to it. As we have looked at other incidents, it appears the reporting and exchange of information was far more regular, particularly in regard to events around or concerning the Border or Border security. There is a difference certainly in this report from the view given of the amount of information that was being communicated to the Department of Justice, Equality and Law Reform, although where that was recorded in the Department remains a mystery.

**Mr. Greg O'Neill:** I would like to add supplementary information concerning a matter. In minutes of the ministerial meetings between the British and Irish Governments of 11 September 1974, the then British Prime Minister informed the then Taoiseach, Mr. Cosgrave, that under custody interim orders the authorities in Northern Ireland had detained a number of individuals whom they suspected of having been involved in the bombings. That is referred to in the Barron report on the 1974 bombings but there appears to have been no follow up. From the documentation we have seen there does not appear to have been a reciprocal southern-based security response to that information.

**Chairman:** Thank you.

**Mr. Ó Dúlacháin:** I wish to make one final point. Issues arose at previous hearings in regard to whether cases could be brought to the European Court of Human Rights. Justice for the Forgotten was involved in two such recent cases arising in regard to 1974, and 1972 and 1973. As part of those complaints we raised issues relating to the non-co-operation with Mr. Justice Barron, the Oireachtas committee and inquests. Both cases did not proceed as the European Court held they were inadmissible. One aspect in particular it highlighted, and relied upon in structuring its judgment, was the fact that neither the Barron inquiry nor the Oireachtas committee hearings were effectively statutory inquiries. They were not inquiries being carried out in pursuit of a statutory function.

**Chairman:** I thank the representatives from Justice for the Forgotten for coming before the committee this afternoon. I am sure they will watch proceedings intently, as they have done previously, and we look forward to continuing to co-operate with them in the future.

I now welcome Ms Jane Winter, director of British Irish Rights Watch. Ms Winter has always co-operated with this committee and we are grateful to her for her submission. She came to Ireland especially for this meeting. I invite her to make her contribution.

**Ms Jane Winter:** It is always a great pleasure to be in Dublin. I am grateful to the sub-committee for allowing me to make the submission. I only intend to speak

briefly so members can pursue whatever questions they have. British Irish Rights Watch is an independent, non-governmental organisation which has been monitoring the human rights dimension of the conflict and the peace process in Northern Ireland since 1990. I have been involved in the organisation since then. It has been my misfortune to have had to study at close quarters the phenomenon of collusion which has, unfortunately, been a thread running throughout the conflict. It is also a thread that runs through the case of Seamus Ludlow. We have been advising his family since 1998 and we made a submission to Mr. Justice Barron in the course of his investigation.

We have three primary concerns about the murder of Seamus Ludlow, none of which has been fully satisfied by Mr. Justice Barron's report. The first and obvious concern is that nobody has been made amenable for his murder, although the identities of the alleged perpetrators have been known since at least 1977. Second, we are concerned that although the murder was ascribed to the loyalist paramilitary organisation, the Red Hand Commando, two of the alleged perpetrators, Fitzsimmons and Long, were both serving members of the Ulster Defence Regiment at the time. Clearly, that brings a large element of collusion into the murder.

Third, the murder seems to have been a serious cross-Border incursion but that does not appear to have been investigated or acted upon at the time. This, perhaps, feeds into some of the discussion that has just taken place about what policies were in place and what level of co-operation existed between the two jurisdictions.

It is our submission that the sub-committee should recommend a public inquiry under the 1921 Tribunals of Inquiry Act as the only way to get to the bottom of what happened to Seamus Ludlow. Although he worked hard and has produced a detailed report, Mr. Justice Barron had no powers to compel witnesses or the production of documents and he did not get many of the documents which he believed he needed. Seamus Ludlow's family had no opportunity, as they would have at a public inquiry, to scrutinise and challenge evidence that would be under consideration by such a tribunal. They did not have those opportunities in Mr. Justice Barron's investigation; they did not see what he saw and they were unable to comment on it or to ask him to ask for further documentation or further questions. It is a matter of regret that Mr. Justice Barron was unable to answer some of the relevant questions pertaining to Seamus Ludlow's murder. He says he cannot explain the delay by the RUC between July 1977 and January 1979 in passing the names of the alleged perpetrators to the Garda Síochána. He was also unable to explain what he describes as a key question for his inquiry, namely, why, when the information was passed to the Garda Síochána by the RUC, it was not pursued. He also could not say who was responsible for making the decision not to pursue that information. I do not find his surmise particularly compelling, namely, that the reason was to prevent An Garda Síochána from being forced into a reciprocal relationship with the RUC. Whether one is convinced by it or not, it seems to me that it cannot possibly have been any sort of justification for denying justice to Seamus Ludlow. When somebody has been murdered he or she is entitled to an

investigation in a democracy and, it seems to us, no consideration should stand in the way of that.

There are other matters that the judge could not explain. He was not able to say why Seamus Ludlow's family was not told about the information that was finally passed to the police. They had to find it out from a newspaper article many years later. He was not able to say why Kevin Ludlow was not informed about the inquest. He was not able to say why Kevin Donegan was forcibly abducted and questioned by the British army and questioned. Nor was he able to say what inquiries, if any, were made by the RUC about Fitzsimmons's car, which we believe was used in the attack.

Answers are also needed about the cross-Border incursion and about how it was possible for two serving members of the UDR to be, at the same time, members of the Red Hand Commando, and how common that was throughout the British army. Some of the papers that are coming to light now in the Public Record Office in London are beginning to suggest that this was a fairly frequent occurrence and something that was semi-tolerated by the British army, which is a shocking state of affairs. It was bound to lead to these sorts of incidents.

Nobody in authority has ever given the family of Seamus Ludlow the credit they deserve for having pursued this issue over the years. They did not involve us until 1998, as I said. They ploughed on on their own, doing their own detective work. If it were not for them there would have been no Barron report and this sub-committee would not be looking at the murder of Seamus Ludlow. They deserve to get the credit for having brought about that situation. It shows just how deeply his murder and its aftermath affected this family. I am sure this was demonstrated this morning, although I was not here. Their rights have been systematically ignored and they have been denied an effective investigation into Seamus Ludlow's murder, which they are entitled to under Article 2 of the European Convention on Human Rights.

In my written submission, I have laid out the benchmarks that the European Court has set down for what constitutes an effective investigation. In my view, a commission of inquiry would not suffice. It would not meet those benchmarks. In many ways, it would replicate the Barron investigation because it would take place behind closed doors without the proper involvement of the family. We believe there is only one step that can remedy the very long and dishonourable train of events that has flowed from the murder of this totally harmless and innocent man so many years ago, namely, to hold an open and transparent public inquiry under the 1921 Act, which will give the family the effective investigation they deserve and allow them perhaps to find some closure to the struggle they have been pursuing for so many years.

**Chairman:** Thank you, Ms Winter. I call on Deputy Finian McGrath and Senator Jim Walsh, who have questions to pose.



**Deputy F. McGrath:** I welcome Ms Winter and commend British Irish Rights Watch on its human rights work generally.

**Ms Winter:** Thank you.

**Deputy F. McGrath:** It has been an important aspect of the peace process since 1990. My first question concerns British Irish Rights Watch which, it is stated, is an independent, non-governmental body working on human rights during the peace process. Is it Ms Winter's considered view that the organs and policies of both states at that time let Seamus Ludlow and his family down? Ms Winter mentioned Article 2 of the European Convention on Human Rights in this regard.

**Ms Winter:** In our view it is certainly a breach of Article 2 in that, to this day, there has not been an effective investigation which has produced prosecutions and the whole truth about what happened. It is difficult to know whether what happened was the result of policy, as was discussed earlier. It is my guess that it probably was because of other cases in which I have been involved but they have tended to be later cases. For example, if I think about the case of Patrick Finucane, the lawyer who was murdered in 1989, it was clear there were policies in place which meant that even though threats against his life were known by the authorities, he was not warned and not protected in any way and eventually he was murdered. Those policies did not just affect him but affected many other people. It has certainly been my clear impression that those policies did not come out of thin air; they were the product of policies which have been developing all the way through the conflict and took different forms at different points in time. I would be surprised if there were not policy considerations that led particularly to the non-pursuing of the information when it was handed over. There may well have been policy reasons for handing that information over in the first place, as Mr. Justice Barron has suggested, but I strongly suspect the reason that information was not pursued was because of policies that were in place and because people in positions of high authority were involved in decisions. Mr. Justice Barron was not able to make clear to us who made those decisions.

**Deputy F. McGrath:** Basically Ms Winter is saying she suspects again the policy of 1999. She mentioned the Pat Finucane case and compared it with the Seamus Ludlow case in 1976. From her 15 years experience with British Irish Rights Watch and from her dealings with the different bodies, the statutory bodies and the community in the North, are Ms Winter's strong suspicions that it was a clear policy?

**Ms Winter:** That is certainly my suspicion but, unfortunately, the papers are not yet in the Public Record Office in relation to 1976. However, I would be surprised if we do not find rather similar documents to those from 1974 and 1975.

**Deputy F. McGrath:** Ms Winter said collusion was the common thread. Will she expand a little on this?

**Ms Winter:** Over the 15 years I have been researching human rights violations, particularly in Northern Ireland but also in the Republic, it has become increasingly apparent that in Northern Ireland, in particular, there was very deep infiltration of paramilitary groups of all factions and that the intelligence services, whether army intelligence, special branch for the police or MI5, had a pretty clear idea of who was doing what to whom and who was responsible because they were collecting intelligence of a very high order and they were not using it for the legitimate purposes of prevention or detection of crime. It seemed almost to be an end in itself to understand what was happening, to know what was going on and, to some extent, to control it. A lot of individuals, as we have seen in Seamus Ludlow's case, were riding two horses both in the army and in loyalist paramilitary groups. However, it was not just individuals who were involved, like rotten apples in the barrel.

**Deputy F. McGrath:** Ms Winter does not accept the rotten apple scenario which is often presented to parliamentarians and-----

**Ms Winter:** No. There were many such rotten apples around.

**Deputy F. McGrath:** There were so many, there must have been some co-ordinated plan.

**Ms Winter:** A great deal of information was being gathered but was not being used in a proper way which led to a number of unnecessary deaths and also deepened the length of the conflict which might well have been resolved much sooner had it not been for this primacy of intelligence which was apparently the policy of the day.

**Deputy F. McGrath:** From Ms Winter's inquiries and investigations into Seamus Ludlow's case, will she tell us a little about the relationship between the UDR, for example, and the darker side of the security forces and the paramilitary forces? What type of information has she discovered, has her brief been broadened or has she discovered other issues which are relevant to this case?

**Ms Winter:** In particular, as I said earlier, there seems to have been a toleration of members of the regular army also being members of paramilitary groups. They obviously had access to weaponry, know-how and explosives. Many were part-time soldiers and were obviously spending part of their time in the army and part in paramilitary groups. However, there seems to have been very little true concern about this or attempt to eradicate it. Attitudes today are perhaps very different but at the time there seems to have been a great deal of tolerance for that sort of thing. I believe there was also a degree of direction going on. I certainly think, in the case of the Dublin and Monaghan bombings, that the bombs in Dublin were very sophisticated for their day and that outside help must have been given to the people who planted those bombs in their manufacture.

**Deputy F. McGrath:** Ms Winter mentioned, in the section of her submission dealing with the Red Hand Commando - which, at the time, came under the umbrella of the UVF - that there was a strong link there between those two groups and the security forces in the North and that there was dual membership. Surely that has major implications, and is a major consideration, for people such as the Ludlows and for society in general.

**Ms Winter:** Indeed. We are finding, perhaps because we are moving further away from conflict and hopefully nearer to peace in Northern Ireland, that many loyalist families are coming to us and questioning the murders of their loved ones by other loyalists, whom they now believe may have been acting as informers for state agencies. This is an across the board problem. It goes very deep and affects many people.

**Deputy F. McGrath:** Ms Winter stated that no one in authority has ever given the family of Seamus Ludlow the credit they are due for having pursued the failure of the police investigation. In effect, she is saying that the determination, guts and vision of the Ludlow family have seen matters reach the point at which they currently stand, namely, these hearings. Does Ms Winter agree that it is not acceptable that citizens of any state should have to undergo a nightmare of that kind? What are the broader implications for other citizens?

**Ms Winter:** I agree with the Deputy that it is not acceptable. The European Court stated strongly, in the cases of Jordan and others in 1994, that families should not be obliged to instigate a proper investigation when somebody is murdered and that it is absolutely the duty of the state to ensure that, in each and every case, there is a proper investigation.

When people hear about cases such as that involving Seamus Ludlow, it makes them wonder, in circumstances where nobody was brought to justice for murdering a member of their family, whether a proper investigation took place. The latter undermines people's confidence in the police, in the law and in the rule thereof. In society, it is unhealthy not to carry out these duties properly because it makes people cynical and lack faith in their system and in their country.

**Deputy F. McGrath:** British Irish Rights Watch is an independent body. Who funds the body and how does it survive financially?

**Ms Winter:** We exist from hand to mouth. We are a registered charity and we are obliged to apply for grants to other charitable foundations that make such grants available. We receive money from a variety of different grant-making bodies.

**Deputy F. McGrath:** So, funding is not made available by either the Irish Government or its British counterpart.

**Ms Winter:** In the Seamus Ludlow case - this is the only example I can think of where we have ever received any government money - the Irish Government gave us a small grant towards the cost of the research work we were carrying out.

**Deputy F. McGrath:** The vast majority of funding comes from charitable and other sources.

**Ms Winter:** Yes. In addition, approximately 10% comes via individual donations from lawyers, etc.

**Senator J. Walsh:** I thank Ms Winter for attending and for her submission to the sub-committee. She mentioned that she studied the phenomenon of collusion and her contribution illustrated that. She also mentioned that she found elements of collusion in this case. Can she be more specific in that regard?

**Ms Winter:** The only evidence of collusion of which I am aware is the evidence Mr. Justice Barron included in his report. I read Ed Moloney's articles when they first came out and I spoke to him at length about what he had found out and how he had gone about it. He also gave me information he was not able to include in his articles because of problems with libel laws and so on. However, we passed the information on to Mr. Justice Barron so that he would be aware of everything we knew.

**Senator Walsh:** Is Ms Winter's experience, on the basis of other issues she has examined, that the RUC could or should have examined that car, given that it became aware of the information early in 1977?

**Ms Winter:** The RUC should have done so. It was quite unusual for somebody to use his car for one of these attacks. More often than not, they would hijack a car specifically for the purpose, which suggested a degree of confidence on the part of the perpetrators that they could act with impunity and nobody would come after them. It does not appear that anybody came after them to examine the car. Mr. Justice Barron leaves us in ignorance of what happened in that two-year gap when the RUC apparently knew the names of the perpetrators. We do not know what investigations, if any, it carried out during that time. That is something else a public inquiry would want to find out.

**Senator Walsh:** Ms Winter is dismissive of Mr. Justice Barron's conclusion about the reason for the non-pursuit of the investigation and she does not find the reciprocity argument compelling because she reckons it was a policy issue. On the basis of her experience of dealing with other events, would the policy have been written down or would it have been understood? She stated it would have evolved based on experience.

**Ms Winter:** It is difficult to know. Some policies turn up in writing and are extremely

detailed and explicit. Different organisations have different cultures. The Stevens III investigation into collusion in Northern Ireland said to me: "The Army writes everything down, Special Branch writes nothing down" and, therefore, it is difficult to know. If policies had been developed at governmental level, they would have been written down because they emerge eventually on the public record in one shape or form. I am not sure if there was an informal understanding between the RUC and the Garda. I would have expected, in the context of intelligence matters and high level officers, there would have been an agreed protocol but that does not appear to have emerged in Mr. Justice Barron's research.

**Senator Walsh:** In these circumstances, is it likely that such a policy would have been ring-fenced for the security forces or would it have involved the administrative strand?

**Ms Winter:** I am afraid I cannot answer that question. I would love to know the answer.

Senator Walsh: Ms Winter places significant emphasis in her submission to the sub-committee on the need for a public inquiry and she is dismissive of the possibility of a commission of inquiry. Why is that, given it would have powers of compellability?

**Ms Winter:** My main objection is that it would happen behind closed doors. The difficulty with that is if the person running such a commission is given false information but believes it to be true and it has been given to him or her in good faith, there is no possibility for somebody who knows different to challenge it. That is the value of a public inquiry and that is what we found with the Bloody Sunday inquiry, which has been much maligned. However, most of the relatives involved in the inquiry feel they understand what happened in a way they did not before the inquiry took place. This is because people had to give on oath evidence of their knowledge. Documents had to be not just disclosed to the tribunal but available publicly so that anyone who wanted to take issue with anything in the documents could do so and draw it to the attention of the tribunal. It is a much better fact-finding process than one that takes place behind closed doors. Mr. Justice Barron's report illustrates this because there are so many questions he was not able to answer.

**Senator J. Walsh:** The comparison with Mr. Justice Barron is probably not accurate because he did not have sworn evidence and powers to compel people. He depends on co-operation just as we do. I note the point Ms winter is making in this regard. The issue is the absence of cross-examination, which is crucial.

**Ms Winter:** It is that and the involvement of the family. The European Court said that the family has the right to be involved to the level necessary to protect its own interests. It is the case in this instance that Seamus Ludlow's family have been excluded from many of the processes involved. This is the first time they have been

able to attend and listen to any deliberation about their case other than the inquest. The first inquest was of no use and a second inquest had to be held. Even then the Barron report was withheld from the inquest. It was in the possession of the Government but it did not publish it until after the inquest, for reasons I do not understand. The Ludlow family have been lied to over the years in a very distressing and divisive way, which they did not deserve. Seamus Ludlow's reputation has been wrongly slurred. He was a completely harmless and innocent man to whom justice was never done. A process involving the family is crucial to put right the injustice they have suffered over all these years.

**Senator J. Walsh:** At the bottom of page 1 of her submission to the committee, Ms Winter pointed out that Mr. Justice Barron was deprived of crucial data which would have been fundamental to reaching conclusions, particularly the C3 and C4 files, exhibits, fingerprints and photographic records which were missing. The situation was similar in regard to the Dublin-Monaghan bombings. Given the other areas Ms Winter would have investigated, is it common to all such investigations or is it very unusual to find that crucial evidence goes missing?

**Ms Winter:** I regret to say it is fairly common. I agree with Cormac Ó Dúlacháin that the more formal an investigation, the more information that comes to light. It was interesting when Judge Cory was investigating the murder of Mr. Patrick Finucane that he found papers the Stevens III team had never seen, even though they had spent many years examining the same issues. If there is ever a public inquiry into Patrick Finucane's case, I would not be surprised if more documents come to light. I am not convinced that Judge Cory saw everything. The higher the level of formality, the more personally responsible witnesses feel for the evidence they give. They feel they must personally account for their actions because they may be at risk of being prosecuted for perjury if they do not tell the truth. In my experience, one can get further that way than with informal inquiries. Informal inquiries are often blocked by the disappearance of crucial documents. Many papers came to light in the Bloody Sunday inquiry, which had not seen the light of day for many years.

**Senator J. Walsh:** On page 10 of her report, Ms Winter refers to the PSNI establishing a historic inquiry team to examine the unsolved murders. She gave it as an example of where a public inquiry might be assisted by them. Perhaps she will amplify this a little. Given that it has challenged us in the past in regard to other issues, how can we overcome the failure to provide for compellability of witnesses?

**Ms Winter:** With regard to the historical inquiries team, it is unfortunate that I attend this committee today and that one on Thursday, because I might have more to tell this committee after Thursday's meeting. I have had a brief discussion with the team about the issue of murders that originated in the North but were carried out in the South and about how far its remit extends. Originally, they told me they did not think they had any remit with regard to murders carried out in the Republic but they are changing their thinking and now say they can investigate any part of it that took place in Northern Ireland. Therefore, they can look at the planning of a murder and

the manufacturing of a bomb or at the origin of a weapon etc. I think they may well be able to provide some information on the murder of Seamus Ludlow and I understand they would certainly be willing to do so if asked.

The historical inquiries are a new enterprise and the team only started work on cases on Monday, although it has been preparing since last April. The sense I get is that this stoical inquiries team, which is really the brainchild of the current Chief Constable Sir Hugh Orde, has been created to lay the ghost of all the unresolved murders - too many, over 3,000 - arising up until 1998 when the Good Friday Agreement was signed. There is a real desire to find out what happened, share information with families as far as possible and to close the door on the past. Whether this will work, I do not know, because it is not an independent process but is part of the police and many people are distrustful of it for that reason. The inquiries team will certainly try as far as I can see from my discussions with it and this is something new since this committee last looked at the Dublin-Monaghan bombings, when there was no such wind of change blowing in Northern Ireland. At the risk of repeating myself on the issue of compellability, when I appeared before the committee to talk about the Dublin-Monaghan bombings, I said I believed that if the Republic of Ireland set up a public inquiry, with all the powers that go with it, and made formal inquiries of the British Government rather than the informal inquiries Mr. Justice Barron was forced to make, the matter would become a government to government issue as to whether proper disclosure would be given to the public inquiry. A formal inquiry puts matters at a different level and makes it harder for people to refuse. Also, in the case of Seamus Ludlow, there is probably far less at stake politically than in the case of the Dublin-Monaghan bombings and therefore there is more chance that a formal inquiry for co-operation from one state to the other would succeed.

I am very cynical about these matters as my work has made me so over the years. It is more difficult for the British Government to run rings around the Irish Government than it is to run rings around a single judge. Therefore, if the Irish Government asked for full co-operation, it would be difficult for the British Government to justify a refusal.

**Senator J. Walsh:** If Ms Winter looks over this and previous Barron reports it can be seen that Mr. Justice Barron acknowledged that positive signals came from the RUC with regard to co-operation with his inquiry. However, when these requests were referred to the Northern Ireland Office, the co-operation was withdrawn, almost as if there was a political cover-up. How can we be confident that whatever inquiry we establish will have any co-operation from the Northern Ireland Office?

**Ms Winter:** I do not believe one can be confident, but if one does not try, one will never find out.

**Senator J. Walsh:** In her experience of dealing with matters relating to Northern Ireland, has she found the police more forthcoming than, for instance, the Northern

Ireland Office?

**Ms Winter:** Absolutely not in the past but only since Sir Hume Orde took over and the Patten recommendations have begun to be implemented. There is a new mind set among the police, particularly among the younger people joining the police service. There are now quite a number of police officers from outside Northern Ireland in senior posts within the police service and they have a very different attitude to that of their RUC predecessors. Ironically I can say that I now get more co-operation from the RUC than I do from the Northern Ireland Office but that certainly would not have been the case in the past.

**Chairman:** Ms Winter mentioned earlier that the British Army keeps good records. Is she surprised at the lack of records held by the British Army relating to the interview of Kevin Donegan?

**Ms Winter:** I am very surprised and I do not believe a record was not made; it may have been destroyed deliberately but I do not believe there was no record. Having gone to the trouble of lifting him up into a helicopter and interviewing him - because I believe they wanted to find out how much he knew, as Judge Barron also surmised - I am pretty certain that would have been written down and it would have been passed up the chain of command which is their usual way of doing things. It is interesting that the intelligence summary which Judge Barron quotes in his report for the period 26 April to 3 May 1976 and dated 4 May 1976, actually refers to Seamus Ludlow's murder, so they were taking an interest in it from the outset. I would be very surprised if there was not a contemporaneous record but I do not know whether it still exists.

**Chairman:** Which does Ms Winter surmise as being more likely, that it has been destroyed or that it is being withheld?

**Ms Winter:** I think it is probably being withheld. People say about the Germans during the war that they wrote everything down and never destroyed anything and my government is rather similar in that respect; if anything is ever written down, usually the document can be found. The things that never get written down in the first place are much harder to track down at the end of the day.

**Chairman:** Ms Winter has stated that the RUC is currently very co-operative with the HET, the Historic Enquiry Team. In her opinion is there a possibility for a more definitive conclusion to these horrendous crimes if an equivalent body were to be set up by the Garda Síochána and if the HET and such an equivalent body decided that as a unit they would examine crimes with cross-Border aspects, such as the murder of Seamus Ludlow?

**Ms Winter:** That would be extremely helpful. I understand from the HET that it has already met the Garda Commissioner and it is in the process of drawing up a



protocol for co-operation but it does not have an equivalent unit with which to co-operate. If such a unit were established it could prove to be very productive and could help to lay many ghosts on both sides of the Border.

**Deputy Costello:** I thank Ms Winter and compliment the good work being done by the British Irish Rights Watch.

On the question of a public inquiry, there was major deliberation in the case of the 1974 Dublin and Monaghan bombings. Given the fact that the perpetrators are declared north of the Border and no co-operation has been given regarding this committee's recommendations on the 1974 bombings, as well as the fact that neither army nor PSNI files or Northern Ireland Office files have been available to Judge Barron, does Ms Winter think a public inquiry in the Republic could be anything other than inconclusive? Are her recommendations limited to one inquiry? How would she see the situation north of the Border if we did not get the type of co-operation we would like?

**Ms Winter:** I meant to make this point in replying to Senator Walsh. Obviously, a public inquiry has the power to draw inferences if anybody refuses to give information which it feels it needs. It is not helpful if an inquiry's findings are ultimately inconclusive. As this case has many fewer political implications than the Dublin and Monaghan bombings had, it is my sense that it would be very embarrassing for the British Government if, asked directly for information that could help to solve the murder of a completely innocent man, it were to refuse. I believe international pressure might be brought to bear on the British as they are always telling other countries how to conduct themselves in a human rights compliant way. Those countries do not take kindly to it when the UK does not comply with those human rights standards. It might find itself criticised in the UN, Europe and perhaps also in America if it did not comply with a very formal request for co-operation in a case like this. If it did not, it would be open to an inquiry to draw inferences, as it were, from Britain's silence and refusal. The inquiry could report that it could only assume, since the British Government would not give it the document, there must have been such a document, policy or whatever.

In Seamus Ludlow's case many of the documents are missing from this side of the Border. I was quite shocked to hear that Mr. Justice Barron had not physically gone to see the archives and looked for these documents himself. It may well be that there is sufficient information in files that ought to be found in this jurisdiction to shed considerable light on the murder of Seamus Ludlow and that the information from the North may not be as crucial to getting a true picture of what happened. There may be some gaps left if the UK refuses to co-operate, but not as many, I suspect, as might appear from Mr. Justice Barron's report as so many of the documents that are at least theoretically missing should be in this jurisdiction.

**Deputy Costello:** If, hypothetically, such an inquiry were established and there was no co-operation, does Ms Winter believe that would give grounds to pursue the

matter in the European Court of Human Rights?

**Ms Winter:** In theory, it should be, but given the experience of the families of victims of the Dublin and Monaghan bombings, where the courts would simply not entertain their cases, unless it were a state to state action - I rather believe that the days of state to state action are past - I cannot see much hope of success; although in theory I can certainly see grounds for taking such a case. It is my gut feeling that in this particular case, a different wind is blowing regarding dealing with the past, laying ghosts and bringing closure to cases. If the Government had the courage to hold a public inquiry and call the UK's bluff on this issue, it might get much further than it might think.

**Deputy P. Power:** When speaking to Mr. O Dúlacháin I was unable to lay my hands on documents about which I wanted to ask him. The sub-committee received a submission from the Garda Commissioner, Mr. Noel Conroy, who will appear before it next week. In the section of his submission dealing with why the suspects in this case who were mentioned by the RUC were not followed up between 1979 and 1998, Mr. Conroy points out that it is worthy of note that no formal structure of exchange of intelligence between the Garda and the RUC was in place in 1979. It seems that Mr. Conroy's statement conflicts with the useful information that Mr. Ó Dúlacháin appeared to give the sub-committee earlier. Would Mr. Ó Dúlacháin like to comment on that?

**Mr. Ó Dúlacháin:** It may be the case that the Commissioner is making a distinction between "information" and "intelligence". The whole tenor of what was being planned at intergovernmental level in 1975 was that it would deal with cases which might arise, such as the murder of Mr. Seamus Ludlow. The whole purpose of the intergovernmental arrangement was that structures would be put in place. From what I have seen, I do not agree with the Commissioner's view about the exchange of intelligence.

We have learned more as a result of the investigation into the Dublin and Monaghan bombings. I refer in particular to the inquests which followed this sub-committee's hearings. Members of the Garda Síochána indicated at the inquests that intelligence was being exchanged across the Border in the summer of 1974. Most of the information that came to light in the 1974 investigation came to light on foot of intelligence. It was not evidential, it was not based on fingerprints and it was not the meat of prosecution, but it was intelligence. The structures involved police on one side of the Border formally exchanging information with police on the other side of the Border and attending meetings in Portadown and Belfast.

**Chairman:** Was it done informally rather than formally?

**Mr. Ó Dúlacháin:** No. The meetings which took place in 1974, for example, were formal. They were attended by superintendents from Dublin as part of the

investigation team and they were gathering intelligence. That was also the case much later in the process, in the late 1990s, when intelligence was exchanged as a follow-up to what was not done in 1979.

**Deputy P. Power:** If the sub-committee was to receive as much information as possible from the very helpful inquiries which took place in London, it could make that point to the Commissioner next week.

**Mr. O'Neill:** Can I add that the actual exchange of materials which could give rise to evidential matters took place in addition to the exchange of intelligence? We have anecdotal information to indicate that members of the RUC travelled south to see the Garda Commissioner in the years following the 1974 bombings and received information about terrorist suspects of a republican disposition operating in Northern Ireland. The State papers of the time suggest that the British side seemed to press on the Irish side the fact that they could operate the provisions of the Offences Against the Person Act 1861, which would have allowed people to be charged and indicted in Northern Ireland for offences of murder committed in the Republic. The only problem was that the 1861 Act was confined to murder. We are dealing with the 1974 bombings, which were acts of murder, and the Ludlow case, which was an act of murder. A great deal of policy and practice relates to the alleged legal constraints, which were in fact phantom. If the political will to take action existed, it would have been possible to do so because the supposed constraints were largely non-existent.

I would like to make a further point in support of what Ms Winter has said. It relates to the recent decision of the European Court of Human Rights on the complaints which were made by Justice for the Forgotten about the 1972 and 1974 bombings. The commission of the court largely exempted the Government of the United Kingdom from having to co-operate with inquiries. It largely laid the blame at the door of the Irish authorities - the Legislature and Executive of this State - for failing to establish a public statutory inquiry. The nature of the inquiries which the Irish Government and Legislature deigned to establish was regarded by the European court as not being of sufficient moment to require co-operation with the British Government in terms of discharging its Article 2 obligations. The ball has come right back into the court of the Legislature in this State in terms of its obligation to establish a proper statutory inquiry.

**Deputy P. Power:** This is important in the context of the Commissioner's statement as to why the Garda did not follow up the information from the RUC. He relied on the point. If Mr. O'Neill could let us have his points in writing, we could put them to the Commissioner. This issue goes right to the heart of the Commissioner's statement to the sub-committee that the matter could not be pursued because the structures to take such action did not exist. If structures were in place, we would like to know about them. It would be very helpful if Mr. O'Neill could assist us in that regard.

**Ms Unwin:** We understand the names of suspects, which the Garda had within approximately ten days of the bombings, constituted intelligence information which was received from the RUC. The Garda had the information even at that early stage after the Dublin and Monaghan bombings.

**Chairman:** I thank the witnesses very much. I thank Ms Winter for coming over to Dublin and I hope she catches her flight back. I am also very grateful to the witnesses from Justice for the Forgotten for their continued co-operation.

*The sub-committee adjourned at 4 p.m.  
until 10 a.m. on Tuesday, 31 January 2006.*

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