

The Rosemary Nelson Inquiry Report

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for*

The Rosemary Nelson Inquiry Report

Chairman: Sir Michael Morland

Panel: Dame Valerie Strachan DCB
Sir Anthony Burden O St J, QPM

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Sir Michael Morland



Dame Valerie Strachan DCB



Sir Anthony Burden O St J, QPM

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Foreword

We should at the outset make clear our approach to fulfilling our Terms of Reference. We have sought to establish the truth, insofar as it could be established. Where we are completely satisfied that something did or did not happen, we say so. Many of the issues we examined, however, are not capable of proof one way or the other. In those cases, we have weighed up what has been put on paper and what has been said to us in oral evidence and used our combined experience and judgment to reach a view on what is most likely to be the truth.

We should also say that we recognise that the context in which these events happened was extraordinarily difficult. We do not underestimate the problems and personal danger faced by the agencies and individuals whose work we have been examining. For example, during the Troubles, over 300 Royal Ulster Constabulary officers lost their lives and over 7,000 were injured; over 700 British military personnel were killed and over 6,000 were injured.

Partly for that reason, we have in general not named the members of these organisations, with the exception of those who were senior and public figures. Since what is of interest to us is the way in which they discharged their duties in the particular posts in which they were employed, we have considered it sufficient to refer to these individuals by the title of the post they held.

We would never have been able to complete our Inquiry without the cooperation and help that we received from the Full Participants, their Counsel and Solicitors, witnesses from all walks of life, and others. We wish to record our gratitude to those who gave us that cooperation and help.

Our especial thanks go to all our staff; some worked for us for years, others for shorter periods; all laboured with great assiduity, enthusiasm and good humour, often in stressful conditions and for long hours. The standard of research through the maze of the immense volume of documentation was of the highest.

The conduct of our Counsel in preparing for and during our oral hearings could not have been bettered. We are greatly indebted to them all.

We particularly wish to record our thanks to our three Secretaries: Hugh Burns who set up the administration of the Inquiry, oversaw the obtaining of documents and evidence and paved the way to our oral hearings; Celia Mainland who managed the smooth running of the oral hearings; and, last but by no means least, Stephen Myers who marshalled the material for the Report and got it into a state to be printed. Any errors or omissions are solely our responsibility.



Sir Michael Morland



Dame Valerie Strachan



Sir Anthony Burden

Chronology

<i>Date</i>	<i>Event</i>
12 February 1989	Murder of Patrick Finucane
March 1989	Rosemary Nelson sets up her own solicitor's practice in Lurgan
24 June 1993	Murder of John Lyness in Lurgan
June 1993	Rosemary Nelson instructed by Colin Duffy in Lyness case
7 July 1996	Orange Order parade from Drumcree Parish Church along Garvagh Road, Portadown
7 July 1996	Murder of Michael McGoldrick, a Catholic taxi driver, by Loyalist paramilitaries
24 September 1996	Colin Duffy's conviction for murder of John Lyness quashed
3 October 1996	Rosemary Nelson tells Jane Winter of British Irish Rights Watch (BIRW) that she has been the subject of abuse and threats from Royal Ulster Constabulary (RUC) officers interviewing her clients
4 November 1996	(Sir) Ronnie Flanagan appointed Chief Constable of the RUC
February 1997	Rosemary Nelson's Republican clients allege that interviewing RUC detectives made abusive and threatening comments about her
13 March 1997	Lawyers Alliance for Justice in Ireland (LAJI) letter to Sir Louis Blom-Cooper alleging that Rosemary Nelson threatened
9 April 1997	RUC Complaints and Discipline investigation into LAJI complaint begins
11 April 1997	Independent Commission for Police Complaints (ICPC) decides to supervise investigation into LAJI complaint
15 April 1997	Senator Torricelli's letter to British Ambassador in Washington alleging that Rosemary Nelson threatened
27 April 1997	Robert Hamill fatally injured by Loyalists in Portadown
3 May 1997	Dr Marjorie (Mo) Mowlam appointed Secretary of State for Northern Ireland (SOSNI)
6 May 1997	Rosemary Nelson writes letter of complaint to the RUC on behalf of the family of Robert Hamill
29 May 1997	Having spoken to Deputy Sub-Divisional Commander Lurgan, Superintendent with RUC Complaints and Discipline forwards copies of LAJI and Torricelli letters to Sub-Divisional Commander Lurgan
16 June 1997	Murder of Constables Johnston and Graham in Lurgan

<i>Date</i>	<i>Event</i>
23–25 June 1997	Colin Duffy arrested, detained at Gough Barracks and interviewed in respect of murders of Constables Johnston and Graham
25 June 1997	Colin Duffy charged with murders of Constables Johnston and Graham
6 July 1997	Rosemary Nelson allegedly assaulted and abused by members of the RUC on Garvaghy Road
15–18 July 1997	Trevor McKeown arrested, detained at Gough Barracks and interviewed in respect the murder of Bernadette Martin, a Catholic
19 July 1997	Provisional Irish Republican Army (PIRA) resumes ceasefire
2 October 1997	Director of Public Prosecutions for Northern Ireland (DPPNI) directs no prosecution of Colin Duffy for murders of Constables Johnston and Graham
9 October 1997	Colin Duffy arrested as a result of altercation with members of the Royal Irish Regiment
24 October 1997	UN Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy, has his first meeting with Sir Ronnie Flanagan
17 November 1997	Colin Duffy arrested and charged with causing grievous bodily harm to Lurgan police officers
27 December 1997	Murder of Billy Wright in the Maze prison
6 February 1998	UN Special Rapporteur sends his draft report to UK Ambassador in Geneva, stating allegations that <i>'Rosemary Nelson had been the victim of numerous death threats'</i>
18 February 1998	LAJI delegation meet Northern Ireland Office (NIO) officials, recording their <i>'deep concerns over the safety of Rosemary Nelson'</i>
19 February 1998	LAJI delegation meet Sir Ronnie Flanagan who is informed of threats against Rosemary Nelson's life
5 March 1998	Paul Mageean of the Committee for the Administration of Justice (CAJ) writes to Adam Ingram, Minister of State responsible for security in Northern Ireland, informing him that <i>'For at least a year Ms Nelson has been alleging that she has been subject to harassment and abuse at the hands of the police. She also claims that she has been subject to a number of death threats [...]'</i>
1 April 1998	UN Special Rapporteur's report as amended published
1 April 1998	Sir Ronnie Flanagan approves threat assessment on Rosemary Nelson
10 April 1998	Belfast (Good Friday) Agreement signed

<i>Date</i>	<i>Event</i>
24 April 1998	Investigating Officer's report on LAJI complaints submitted to ICPC
15 May 1998	Loyalist Volunteer Force (LVF) announces ceasefire
3 June 1998	Patten Commission set up by UK Government
3 June 1998	Rosemary Nelson receives 'death threat note' postmarked '3 JNE'
19 June 1998	Chairman of the ICPC informs Sir Ronnie Flanagan with regard to the complaints of alleged threats to Rosemary Nelson that <i>'for the first time in the history of the Commission, we are unable to confirm that the police investigation has been conducted to our satisfaction.'</i>
26 June 1998	Parades Commission prohibits Orange Order march, 5 July 1998, from proceeding along the Garvaghy Road
5 July 1998	Drumcree Church parade
7 July 1998	Private Secretary to Adam Ingram replies to CAJ letter of 5 March 1998
8 July 1998	ICPC Supervising Member agrees to appointment of Commander Mulvihill to investigate complaints
12 July 1998	Murder of the three young Catholic Quinn brothers by Loyalist paramilitaries
10 August 1998	Paul Mageean (CAJ) sends letter enclosing 'Man Without a Future' leaflet and 'death threat note' to Adam Ingram
15 August 1998	Omagh bomb
19 August 1998	ICPC Supervising Member agrees to Commander Mulvihill's Terms of Reference
5 September 1998	Constable Frank O'Reilly fatally injured by Loyalist blast-bomb in Portadown. Frank O'Reilly died on 6 October 1998
10 September 1998	Sir Ronnie Flanagan approves threat assessment on Rosemary Nelson
24 September 1998	Adam Ingram's Private Secretary replies to Paul Mageean's letter of 10 August 1998
29 September 1998	Rosemary Nelson addresses US House of Representatives sub-committee
18 January 1999	Garvaghy Road Residents' Coalition (GRRC) and Rosemary Nelson meet Prime Minister at 10 Downing Street
27 February 1999	LAJI delegation meet Sir Ronnie Flanagan. A particular issue was the ongoing harassment of Rosemary Nelson by members of the RUC
15 March 1999	Murder of Rosemary Nelson

<i>Date</i>	<i>Event</i>
22 March 1999	Commander Mulvihill's report on complaints investigation signed, accompanied by Statement of Satisfaction issued by ICPC Supervising Member
1 August 2001	Weston Park Agreement
1 October 2003	Justice Cory appointed by the British and Irish Governments to report on allegations of collusion in the murders of Patrick Finucane, Robert Hamill and Rosemary Nelson
16 November 2004	Rosemary Nelson Inquiry appointed
15 April 2008	Oral hearings begin
24 June 2009	Oral hearings conclude

Abbreviations

AAC	Army Air Corps
ACC	Assistant Chief Constable
ACPO	Association of Chief Police Officers
A/NIIR	Intelligence Assessment
AsGp	Assessments Group
ATC	Air Traffic Control
BIRW	British Irish Rights Watch
CAJ	Committee for the Administration of Justice
CHIS	Covert Human Intelligence Source(s)
CID	Criminal Investigation Department
CIO	Criminal Intelligence Officer
CIRA	Continuity Irish Republican Army
CLMC	Combined Loyalist Military Command
DCC	Deputy Chief Constable
DCI	Director and Coordinator of Intelligence (Security Service)
DERA	Defence Evaluation and Research Agency
DFA	Department of Foreign Affairs (Republic of Ireland)
DPPNI	Director of Public Prosecutions for Northern Ireland
DUP	Democratic Unionist Party
DVLA	Driver and Vehicle Licensing Agency
GOC	General Officer Commanding Northern Ireland
GRRC	Garvaghy Road Residents' Coalition
HAG	Head of Assessments Group (Security Service)
HMSU	Headquarters Mobile Support Unit
HSB	Head of Special Branch
HS	Home Service
ICPC	Independent Commission for Police Complaints
IMG	Intelligence Management Group
IMAGIR	Intelligence Management Group Intelligence Report
INLA	Irish National Liberation Army
IOCA	Interception of Communications Act 1985
IRA	Irish Republican Army
IRC	Intelligence Review Committee
JATOC	Joint Aviation Tasking and Operations Cell
JIC	Joint Intelligence Committee
JRCT	Joseph Rowntree Charitable Trust

KPPS	Key Persons Protection Scheme
LAJI	Lawyers Alliance for Justice in Ireland
LCHR	Lawyers Committee for Human Rights (now Human Rights First)
LOCC	Lower Ormeau Concerned Community
LVF	Loyalist Volunteer Force
MIR	Monthly Intelligence Report
MIR	Murder Incident Room
MIT	Murder Investigation Team
MLA	Member of the Legislative Assembly
MOD	Ministry of Defence
MSU	Mobile Support Unit
NCO	Non-Commissioned Officer
NGO	Non-Governmental Organisation
NIIR	Northern Ireland Intelligence Report
NIO	Northern Ireland Office
NIUP	Northern Ireland Unionist Party
OIOC	Officer in Overall Command
OUP	Official Unionist Party
PANI	Police Authority of Northern Ireland
PEC	Province Executive Committee
PIR	Priority Intelligence Requirement
PIRA	Provisional Irish Republican Army
PNC	Police National Computer
PONI	Police Ombudsman of Northern Ireland
PSNI	Police Service of Northern Ireland
PUS	Permanent Under-Secretary
QRF	Quick Reaction Force
RHD	Red Hand Defenders
RHSB(S)	Regional Head of Special Branch (South Region)
RIPA	Regulation of Investigatory Powers Act 2000
3 R IRISH	3rd Battalion of the Royal Irish Regiment
RIRA	Real Irish Republican Army
RMIO	Regional Military Intelligence Officer
RMP	Royal Military Police
RUC	Royal Ulster Constabulary
SB	Special Branch
SDLP	Social Democratic and Labour Party
SIDD	Secret Intelligence Disseminated Document

SIO	Senior Investigating Officer
SIR	Secret Intelligence Report
SOSNI	Secretary of State for Northern Ireland
SPM	Security Policy Meeting
SPOB	Security Policy and Operations Branch
TAOR	Tactical Area of Responsibility
TCG	Tasking and Coordination Group
TD	Teachta Dála (a member of the lower house of the Dáil)
UCBT	Under Car Booby Trap (see also UVIED)
UDA	Ulster Defence Association
UDF	Ulster Defence Force
UDP	Ulster Democratic Party
UDR	Ulster Defence Regiment
UFF	Ulster Freedom Fighters
UVIED	Under-Vehicle Improvised Explosive Device
UVF	Ulster Volunteer Force
UUP	Ulster Unionist Party
VCP	Vehicle Check Point
WBEF	West Belfast Economic Forum

Part A

The Murder of Rosemary Nelson

Monday 15 March 1999 should have been like any other Monday in the Nelson household, save for the fact that the two eldest children of the family were away on a school trip in France. The youngest child had left to walk to school with her friends at about 08.30, as she usually did. Paul Nelson left to go to work, perhaps a bit later than normal, by taxi, at about 09.30. Usually, Rosemary Nelson would leave for her office in William Street, in the town centre of Lurgan, a little later.

Rosemary Nelson had a slight cold and felt tired that morning and she had asked her husband to call at 10.30, letting the phone ring, to make sure that she was up. Later in the morning Rosemary Nelson's friend and secretary, Nuala McCann, called by the house, as she often did, and found that Rosemary Nelson was still upstairs getting ready for work. Rosemary Nelson asked her to go and buy *The Irish News* as there was to be a picture of her in it, together with an article about the Drumcree dispute. When Nuala McCann returned with the newspaper the two women sat in the kitchen and drank coffee, amused by the picture of Rosemary Nelson. After chatting for a while, at about 12.30 they stepped out of the house together intending to travel the short distance to the office in their separate cars. Nuala McCann's car was parked facing into Ashford Grange from Lake Street but she did not need to turn round. She drove to the bottom of Ashford Grange and then left and left again expecting to see Rosemary Nelson pass in her silver BMW heading up Lake Street on her way towards the town. But she did not see her pass. When Nuala McCann reached the junction with Lake Street she looked left and saw Rosemary Nelson's car in the hedge with its doors open. Nuala McCann had not heard the explosion and did not immediately realise that the car had been blown up by a terrorist bomb. But she realised what had happened when she reached the car. Rosemary Nelson had been blown back in the driver's seat, was covered in black dust and was very badly injured.

Nuala McCann ran to a neighbour's house and asked her to call 999. When she returned to the car another neighbour, a qualified nurse, was there. She had heard the explosion and run to the scene. The two women did what they could for Rosemary Nelson. Other neighbours arrived and Paul Nelson was summoned from work. Very shortly afterwards a local doctor arrived, then an ambulance, paramedics, the fire service and the police. The medics struggled to stabilise Rosemary Nelson and relieve her pain, and it was some time before she could be cut from the vehicle and lifted into the waiting ambulance. She was taken to Craigavon Hospital where she died at 15.06. Later that evening a telephone call was made to the BBC Newsroom in Belfast and a claim of responsibility for the killing made on behalf of the Red Hand Defenders.

1 The Genesis of the Inquiry

The security situation in 1999

1.1 At the time of Rosemary Nelson's death there was widespread hope that sectarian violence in Northern Ireland might cease. The signing of the Belfast Agreement or, as it was more commonly known, the Good Friday Agreement, on 10 April 1998 had been endorsed by 71.12 per cent of the population in the referendum on 22 May 1998, and on 25 June 1998 all the mainstream political parties had taken part in the elections for the new Northern Ireland Assembly. Rosemary Nelson herself had been in favour of the agreement.

1.2 The Good Friday Agreement had not brought an end to conflict. The stand-off which resulted from the decision of the Parades Commission in June 1998 to re-route the return march of the Portadown District Loyal Orange Lodge No 1 from Drumcree Church away from the Garvaghy Road was continuing. It was still the case, moreover, that paramilitary organisations, even those adhering to their own definitions of ceasefire, remained intact and continued to have access to significant quantities of explosives, firearms and munitions. There were violent groups who were implacably opposed to the Peace Process who were prepared to commit sectarian murder. On 12 July 1998 in Ballymoney three young Catholic brothers aged 9, 10 and 11 died when their home was petrol-bombed by members of the Ulster Volunteer Force (UVF); on 15 August 1998 29 people were killed when the Real Irish Republican Army (RIRA) exploded a car bomb in the centre of Omagh; and during the autumn and winter months of 1998 and early 1999, shadowy Loyalist terror groups had carried out a number of well-armed attacks. One such group, calling itself the Red Hand Defenders (RHD), had caused the death of two Catholic men: Constable Frank O'Reilly, fatally injured in a blast-bomb attack on 5 September 1998 in Portadown, and Brian Service, shot dead on 1 October 1998 in the Ardoyne area of Belfast. During a meeting with Prime Minister Tony Blair at Downing Street on 11 March 1999, David Trimble, the First Minister for Northern Ireland, commenting on the Drumcree issue, said that *'extremists from the Red Hand Defenders were increasing the level of violence and one day someone would get killed'*.

1.3 By early 1999 significant progress had been made. The political parties of Northern Ireland had reached agreement on the number and nature of cross-border implementation bodies and Ministerial Departments. Security measures had been relaxed in line with the reduced level of threat and numbers of military personnel were at their lowest since the 1970s. Prisoner releases were continuing in line with the maintenance of the unequivocal ceasefires by the mainstream paramilitaries. A Parades Commission had been established, as had an Equality Commission and a Human Rights Commission; and there was to be a Police Ombudsman for Northern Ireland (PONI). A review of policing and criminal justice headed by Chris Patten, to which Rosemary Nelson had contributed, was underway. Sir Ronnie Flanagan, Chief Constable of the Royal Ulster Constabulary (RUC), had stated publicly on a number of occasions that there would be changes to the RUC now that a new era of peace was emerging.

Reaction to the murder

1.4 Threats to this progress were ever present, however, and the murder of Rosemary Nelson was, in many quarters, interpreted in that context. Thus it was considered by some to be a calculated attack by paramilitaries on the Good Friday

Agreement and thus on the Peace Process. The response of leading figures, on the day of the murder, reflected this analysis. Prime Minister Tony Blair described it as a ‘*disgusting act of barbarity*’. He said: ‘*No effort will be spared in hunting down and bringing to justice those responsible for this senseless and despicable act of murder whose whole aim is to remove any chance of reconciliation. They will not be allowed to succeed.*’ Sinn Féin President Gerry Adams was quoted as saying, ‘*The attack on Rosemary Nelson is an attack on the Good Friday agreement which proclaims the right of citizens to live free from sectarian abuse.*’ He added: ‘*Like Pat Finucane before her, Rosemary Nelson has fought against state injustice and in particular the excess of the state police – the RUC. For this she has been threatened many times.*’¹

The suspicion of collusion

1.5 Rosemary Nelson was well known to be a thorn in the side of the security forces. She had successfully represented a prominent Republican, Colin Duffy, on murder charges; she represented the family of Robert Hamill, who died in May 1997 having been beaten by Loyalists in a main thoroughfare in Portadown while, it was alleged, the police stood by and did nothing; she had represented residents of the Garvagh Road in their attempts to bring an end to Loyalist marches in their locality (in the course of which Rosemary Nelson had allegedly been assaulted by police officers). She herself had called for an investigation of allegations of police collusion in respect of the murder of Sam Marshall, who was killed outside Lurgan police station in 1990 in controversial circumstances, and she had campaigned for reform of the RUC.

1.6 There were immediate concerns following the murder of Rosemary Nelson. Local residents reported that there had been a significant increase in police and Army activity during the weekend immediately before the murder and many reported that helicopters had been seen flying close to Rosemary Nelson’s home.

1.7 These concerns were encapsulated by graffiti which appeared on a wall in Lurgan on the evening of the murder which stated ‘*Rosemary Nelson – the people’s voice – murdered by the RUC-RIR.*’² It was reported that local Sinn Féin Councillor John O’Dowd said, to a protest of about 200 people outside Lurgan RUC station, ‘*If the media are looking for the murderers of Rosemary Nelson then they should look no further than here.*’³ A newspaper article published the next day conveyed again the extent of anger of some about the murder:

*‘At least two vehicles were set alight during disturbances in Lurgan and Portadown last night following the death of solicitor Rosemary Nelson. Earlier, in Lurgan around 300 people marched in black flag protest at the car bomb atrocity which killed the mother of three. As condemnation for the bombing came from all quarters, there were angry scenes when a crowd gathered at Lurgan RUC station. Graffiti were painted on the station gates and youths on the Kilwilkie estate hurled petrol bombs at the security forces. A bus was hijacked and set on fire in the Whiterock area of West Belfast last night.’*⁴

1.8 Following news that the Red Hand Defenders had claimed responsibility for the attack, it was suggested that such a group had neither the expertise nor resources to carry out such an attack unaided and that it must have received outside assistance from the security forces.⁵ In the weeks following the murder, representatives of the

¹*The Irish Times* 16 March 1999

²*The Independent* 16 March 1999; RUC and RIR refer to the Royal Ulster Constabulary and the Royal Irish Regiment.

³*Daily Telegraph* 16 March 1999

⁴*News Letter* 16 March 1999

⁵Martin McGuinness speaking on BBC Radio Ulster 15 March 1999.

Pat Finucane Centre, a Derry-based non-governmental organisation (NGO), spoke to local residents about their concerns regarding the circumstances surrounding the murder. In these interviews accounts of increased security force activity at the scene were repeated.

1.9 Unease about the murder gathered pace when on 19 March 1999 Dato' Param Kumaraswamy, the UN Special Rapporteur on the Independence of Judges and Lawyers, published a second report highlighting concerns he had expressed in 1998 regarding the intimidation of defence lawyers by the RUC. His earlier report had expressed concern that the RUC had identified solicitors with their clients or their clients' causes and had made specific, although anonymous, reference to Rosemary Nelson.⁶ It called upon the government to investigate allegations that threatening and derogatory remarks had been made by police officers to defence lawyers and *'to provide the necessary protection' 'irrespective from whom the threat emanates'*.⁷ His second report, which had been prepared before Rosemary Nelson's murder, criticised Sir Ronnie Flanagan for failing to open a dialogue with the lawyers who had made such allegations and allowing the situation to deteriorate.

1.10 The allegation that solicitors in Northern Ireland were subject to harassment and intimidation by the RUC had a history dating back to at least 1987. It was an issue that was of considerable concern to several local and internationally based NGOs. The issue had been raised in relation to Rosemary Nelson on a number of occasions since the end of March 1997. A number of these NGOs had made representations to the UK Government that remarks allegedly made by RUC officers constituted a threat to Rosemary Nelson's security. Rosemary Nelson herself had spoken privately but also publicly about these fears in the years and months before her death. On 29 September 1998, for example, Rosemary Nelson had reported to the hearing on Human Rights in Northern Ireland by the International Operations and Human Rights sub-committee of the US House of Representatives Committee on International Relations that *'my clients have reported an increasing number of incidents when I have been abused by RUC officers, including several death threats against myself and members of my family'* and she concluded that her complaints about RUC threats to her life received no satisfactory response. She also talked of the procedures regarding personal security assessment, stating *'your house or your premises are assessed by the RUC for these security installations. And I wouldn't have any great faith in the RUC coming in to assess that.'*

1.11 The second report of UN Special Rapporteur also drew attention to the concerns of the Independent Commission for Police Complaints (ICPC) regarding an investigation into complaints against officers who were alleged to have made comments about Rosemary Nelson. The report said: *'This once again illustrates the lack of confidence in the RUC investigation mechanism and demonstrates further why the lawyers concerned refused to complain to the RUC.'* At a press conference on 19 March 1999 the ICPC confirmed that a number of such complaints had been made by Rosemary Nelson and others on her behalf against the RUC. These involved allegations that Rosemary Nelson had been the subject of death threats and derogatory remarks made by RUC officers to a number of her clients. The ICPC had expressed serious concerns about the investigation with the result that Sir Ronnie Flanagan had appointed Commander Niall Mulvihill of the Metropolitan Police to review the earlier investigation and re-investigate the complaints. Details of the particular concerns raised by the ICPC were leaked to the press and appeared in

⁶Sir Ronnie Flanagan was reported in UN Special Rapporteur's report as saying that part of the political agenda in Northern Ireland was to portray the RUC as part of the Unionist tradition.

⁷Report of the Special Rapporteur on the Independence of Judges and Lawyers submitted pursuant to Commission on Human Rights resolution 1997/23: Report on the mission of the UN Special Rapporteur to the United Kingdom of Great Britain and Northern Ireland.

reporting on 24 March 1999. They included allegations that particular officers had behaved with *'general hostility, evasiveness and disinterest'* towards the investigation and that the RUC investigating officer had cast aspersions on Rosemary Nelson's moral character.⁸

1.12 Inevitably comparisons were drawn between Rosemary Nelson's murder and that of Belfast solicitor Pat Finucane in 1989. Pat Finucane was a high-profile lawyer, well known for defending Irish Republican Army (IRA) suspects, and had won several important human rights cases. It was suspected that an Army agent who had infiltrated the largest of the Loyalist paramilitary groups, the Ulster Defence Association (UDA), had assisted with targeting IRA suspects and was involved in the murder. It had also been alleged that a prominent UDA gunman was incited to kill Pat Finucane when he was in an interrogation room at Castlereagh Holding Centre. When the UDA man asked the officer why he was being asked to target Pat Finucane he was told it would be *'a bad blow for the Provos to have Finucane removed'*.

1.13 Collusion in the murder of Pat Finucane; the passing of information between security force members and Loyalist paramilitaries, which had been investigated by John Stevens, later Commissioner of the Metropolitan Police; allegations of the security forces' 'shoot to kill' policy for Republican paramilitaries in the 1980s; and intimidation of lawyers who represented suspected terrorists detained in Holding Centres – all had been in the minds of Republicans and Nationalists over a number of years. The murder of Rosemary Nelson appeared to fit into an established pattern.

1.14 Over the days and weeks following the murder, as each piece of information about Rosemary Nelson's dealings with the police (including their alleged hostility towards her) emerged, together with local accounts of suspicious security force activity over the previous weekend, credence was given to the possibility that there had been collusion in the murder. Journalists, politicians and national and international NGOs all expressed disquiet about the circumstances of the murder. Once present, without full inquiry, the suspicion of collusion could not be dispelled: it could only be fuelled.

More grounds for concern

1.15 Allegations were also made that Rosemary Nelson had been the subject of unfavourable treatment by the UK Government and the RUC when concerns had been raised about her safety in the months before her murder. In a radio interview on 16 March 1999 Breandán Mac Cionnaith, a local Councillor in Craigavon Borough and leading member of the Garvaghy Road Residents' Coalition (GRRC), alleged that he and others had raised the issue of special protection for Rosemary Nelson under the Key Persons Protection Scheme (KPPS) at a meeting in Downing Street. It further emerged that both the Northern Ireland Office (NIO) and the RUC had been made aware, in August 1998, that a menacing leaflet referring to Rosemary Nelson as *'a former bomber'*, one of a *'motley crew'* who planned to bring Protestants *'into conflict with the State'* had been distributed in Portadown in June 1998 in the lead-up to Drumcree, and that around the same time Rosemary Nelson had received, in an envelope addressed to *'Ms R Nelson 8A William Street'*, an anonymous note with the words *'WE HAVE YOU IN OUR SIGHTS YOU REPUBLICAN BASTARD WE WILL TEACH YOU A LESSON. RIP.'* The fact that this material had been in the possession of the authorities and that no action had apparently been taken was seen as a failure to protect Rosemary Nelson from the dangers she faced from terrorist groups operating in her local area.

⁸ *The Irish News* 24 March 1999

1.16 There was further controversy following the April meeting of the Police Authority of Northern Ireland (PANI). The minutes of the meeting reported that *'The Chief Constable [...] indicated that, prior to her murder, the RUC did not have information to suggest that she was the subject of a specific terrorist threat.'* This comment was seen to be inconsistent with the receipt by the NIO and the RUC of the death threat note and the menacing leaflet. The Director of the Committee for the Administration of Justice (CAJ), the Belfast-based NGO which had forwarded copies of the death threat note and the leaflet to the NIO in August 1998, wrote to the Chief Constable on 3 June 1999 asking for confirmation that the RUC had received copies of the two documents from the NIO and raising questions as to the extent and nature of the investigations and threat assessments that were carried out as a consequence. CAJ received no satisfactory response to this letter with the result that on 20 November 2000 it lodged a formal complaint against the Chief Constable with PONI.⁹

The response of the Northern Ireland Office and the Royal Ulster Constabulary

1.17 Within the NIO, the murder of Rosemary Nelson generated a flurry of activity. Mo Mowlam, the Secretary of State for Northern Ireland, was in America and was told of the murder. Ministers were briefed. 'Lines to take' were prepared to answer media queries. Advice was given to Ministers and senior officials for meetings with their counterparts in the Irish Government and with leading public figures such as the UN Special Rapporteur. They also had to deal with two reports relating to Rosemary Nelson that were, coincidentally, due to be published in days.¹⁰ And they could expect the NGOs, who had been expressing concern for Rosemary Nelson's safety for some time, to criticise the government severely for its perceived failure to protect her.

1.18 Through their advice and in their meetings officials sought to explain the reasons for the security force activity over the weekend immediately before the murder. The RUC had confirmed that over the weekend *'they had carried out rummage searches following telephone calls of a device in the area, the calls were later declared hoaxes'*. As for the Army, they had advised the NIO that on the day before the murder *'they increased their level of patrolling in the area: this was routine and part of their plan to deter activity in the area'*. The Army further advised that they too had *'responded to an anonymous bomb warning given at around 1700 hours'* on Sunday 14 March 1999. An Irish Government official was told that an RUC and Army operation had been mounted to check these calls *'including the use of helicopter overhead'*. Sir Ronnie Flanagan suggested to the same Irish official that *'if there were elements in the security forces who were colluding with Loyalist paramilitaries on this, they would hardly have regarded it as sensible to stage a high-profile operation in the area on the preceding day which would have the effect of drawing attention to, rather than masking, a possible security force involvement.'* It was noted that the Chief Constable believed *'that UDA dissidents who are unhappy with their ceasefire may either have defected to the RHD or supplied material and expertise on an unauthorised basis.'*

1.19 On the day of the murder, recognising the need for an independent element in the murder investigation, Sir Ronnie Flanagan sought assistance from HM Inspectorate of Constabulary and the Director of the Federal Bureau of Investigation. The eventual result was that Colin Port, the Deputy Chief Constable of Norfolk, was appointed to act as Officer in Overall Command (OIOC) of a

⁹The PONI report into the CAJ complaint was dated 17 September 2007.

¹⁰A follow-up report to the report by the UN Special Rapporteur, and the ICPC Statement on Commander Mulvihill's investigation into complaints made by or on behalf of Rosemary Nelson.

murder investigation which became the most extensive murder investigation in the history of Northern Ireland. However, to date, no-one has been charged with the murder of Rosemary Nelson. Many continued to press for a public inquiry to examine whether there had been collusion in the murder of Rosemary Nelson and in other cases.

The Weston Park Agreement

1.20 On 1 August 2001 a joint statement issued by the UK and Irish Governments at Weston Park accepted that certain cases giving rise to serious allegations of security force collusion ‘*remain a source of grave public concern*’ and in May 2002 a retired Canadian Supreme Court Judge, Justice Cory, was appointed to investigate these cases and report to the British and Irish Governments. On the basis of the documents which he had examined, Justice Cory recommended that there should be a public inquiry into Rosemary Nelson’s case.

The Inquiry and its Terms of Reference

1.21 On 1 April 2004 the Secretary of State for Northern Ireland, Paul Murphy, announced in Parliament the publication of the reports of Justice Cory and that a public inquiry would take place under the Police (Northern Ireland) Act 1998 into the circumstances surrounding Rosemary Nelson’s death. On 8 July 2004 Paul Murphy published a statement setting out the principles governing the Inquiry: (a) Independence; (b) Transparency, consistent with the interests of justice and national security; (c) Fairness with respect for individuals; (d) Power to seek to establish the facts; (e) Access to necessary resources and avoidance of unnecessary expenditure. On 16 November 2004 the Rosemary Nelson Inquiry was formally established with the following Terms of Reference:

‘To inquire into the death of Rosemary Nelson with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary or Northern Ireland Office facilitated her death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of her death was carried out with due diligence; and to make recommendations.’

Later, at our request, the Terms of Reference were expanded to the following:

*‘To inquire into the death of Rosemary Nelson with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary, Northern Ireland Office, **Army or other state agency** facilitated her death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of her death was carried out with due diligence; and to make recommendations.’*

2

The Course of the Inquiry

2.1 The Inquiry's public hearings began on 15 April 2008 and concluded on 24 June 2009 and were held in Belfast. These hearings represented the final stages of an evidence-gathering process which began soon after the appointment of the Inquiry Panel. In the course of our investigation we obtained and scrutinised documents from both public and official sources. This included a considerable quantity of material which had been gathered by the murder investigation team led by Deputy Chief Constable Colin Port, as well as intelligence material from Special Branch of the Royal Ulster Constabulary (RUC), the Security Service, and the Ministry of Defence (MoD). An Inquiry Bundle for use in the public hearings was compiled and in due course comprised 151 lever-arch files.

2.2 We had access to all the witness statements taken during the murder investigation and we commissioned and obtained, for the purposes of the Inquiry, written statements from 344 witnesses. Of these, 147 witnesses were called to give oral evidence to the Inquiry.

2.3 We granted Full Participant status to seven parties during the course of the Inquiry. These included Paul Nelson, the Magee family (Rosemary Nelson's mother, her brothers and sisters), the Police Service of Northern Ireland (PSNI, representing the interests of the RUC), the Northern Ireland Office (NIO), the Security Service and the MoD. Colin Port and the senior members of the Murder Investigation Team (MIT) were also granted, collectively, Full Participant status. Full Participants assisted the Inquiry during the course of the hearings by submitting questions to be put to witnesses by Inquiry Counsel and by making submissions. We appointed an expert, Robert Ayling, the former Acting Chief Constable of Kent Police, to examine the work of the MIT and to advise us on matters relating to due diligence. Robert Ayling was among the witnesses called to give oral evidence; we allowed Counsel representing Colin Port and his colleagues to ask questions of him directly.

2.4 Sir Ronnie Flanagan, the Chief Constable of the RUC at the time, was not granted Full Participant status but he was allowed representation separate from the PSNI and was afforded extensive access to the Inquiry Bundle and witness statements. His legal representatives assisted the Inquiry by submitting questions to Counsel for the Inquiry and with submissions at the close of the Inquiry hearings.

2.5 Every witness to the Inquiry was afforded access to legal representation for the purposes of obtaining advice during the course of making their witness statement. During the course of our work we received from witnesses 143 applications for anonymity. In all 124 applications were granted. Most witnesses who were granted anonymity gave evidence screened from members of the public but not from the legal representatives of the Full Participants.

2.6 The Inquiry Bundle was redacted to safeguard individuals and national security. Ciphers were applied to the names of those witnesses who were granted anonymity and these were used throughout the Inquiry hearings. The Inquiry Bundle was also redacted to eliminate irrelevant personal information.

2.7 During the course of the Inquiry hearings certain witnesses, in addition to giving evidence in public, gave evidence in closed sessions. Evidence received in this way was limited to that which concerned matters that were classified as 'Secret' or

'Top Secret'. During these sessions representatives of the government department or body responsible for the classification were invited to be present. If the witness was separately represented, his or her legal representative was also present.

2.8 Transcripts of the Inquiry's open sessions were published on the Inquiry's website, redacted in some instances to reflect anonymity decisions or to maintain consistency with the Inquiry Bundle.

2.9 The Cabinet Secretary wrote to all the state agencies concerned, requesting them to disclose all relevant material to the Inquiry. We have been assured that we have received full disclosure of RUC records still in existence relating to Rosemary Nelson from the PSNI and in particular from Special Branch. No 'file' relating exclusively to her, that is to say, a paper file, was disclosed, but Inquiry personnel were given unfettered access to the electronic databases maintained by the RUC and retained by the PSNI in the months before the public hearings were held. Later, when the possibility became apparent that those searches might not have covered all the material retained on the databases (for example, material held in a word-processing package annexed to the main systems and/or deleted material that was retained on the system), access was afforded to our staff by the PSNI at the earliest opportunity.

2.10 There were, however, gaps in the records. For example, we were told that all telephone transcripts made by the RUC prior to October 1998 were routinely destroyed and some police officers were allowed to destroy their personal journals when they retired. There may be many explanations for the loss or destruction of these records; but we consider that had they been available it would have helped the work of the Inquiry.

2.11 In our opinion, where an organ of the state can reasonably foresee that an event may become the subject of an official inquiry, criminal proceedings or inquest, strict instructions should be given, and those instructions scrupulously carried out, to ensure that all documentary material, in any medium, is securely preserved.

3 Rosemary Nelson's Background and Early Career

3.1 Rosemary Nelson grew up in Lurgan¹ in County Armagh in a close-knit Catholic family.

3.2 When she left school Rosemary Nelson went to Queen's University in Belfast to study law. She graduated in July 1981 and was apprenticed to a firm of solicitors in Portadown. She was admitted to the Roll of Solicitors in Northern Ireland on 16 November 1983. Between 1985 and 1988 she ran a community advice centre in Lurgan called the Shankill Help Centre and there gave advice to local people on issues such as social security benefits, housing rights, domestic problems and debt. For a time, she worked for a firm of solicitors in Lisburn. In March 1989, when she was 30 years old she set up her own practice in Lurgan.

3.3 While at university she met her future husband, Paul Nelson. They married in 1983 and had three children. They lived in Lurgan throughout their marriage. They moved to a new house in Ashford Grange in 1994 located on the Catholic side of Lurgan about five minutes' walk from the Kilwilkie Estate, a staunchly Nationalist area. Their neighbours were friendly and most of the people knew each other. Rosemary and Paul Nelson were not security conscious. The property had a house alarm that was rarely used and the back door to the house was usually left open as long as someone was in. The family car, usually driven only by Rosemary Nelson and occasionally by her secretary Nuala McCann, was never parked in the garage, which housed, among other things, the children's ping-pong table.

3.4 Rosemary Nelson was born with a strawberry coloured birthmark on one side of her face and surgical attempts during her childhood to remove it left her face scarred. Later some were to say, falsely, that the scarring on her face had been caused by an explosion.²

Lurgan: a divided town

3.5 The population of Lurgan was half Protestant and half Catholic. Over time the two communities had become physically divided into separate housing areas. A solicitor who had worked in another firm in Lurgan recalled staff in that office saying '*that they hadn't met a Protestant the whole of their time growing up in Lurgan*'. The centre of town reflected the divisions in the community. Business proprietors, whose livelihood depended on having customers from both sides of the community, tended not to take sides when it came to politics but the separation of the two communities was reflected in the high street with Catholic businesses on one side and Protestant businesses on the other.³

3.6 Lurgan lies close to the 'new' town of Craigavon, while a mere five miles from Lurgan town centre is Portadown, a town riven with sectarianism. During the Troubles the area suffered as much as, if not more than, many other parts of the province. The town of Lurgan often found itself on the knife edge of sectarian politics⁴ and on numerous occasions we came across references to it being described

¹See Appendix K

²A court official told a journalist who knew Rosemary Nelson that she had acquired the injury by walking into a PIRA bomb.

³*News Letter* 25 November 1997

⁴*News Letter* 25 November 1997

as ‘*a divided town*’ or ‘*the most divided town in Northern Ireland*’. According to one calculation, in the period from August 1969 to 31 August 1994, the date of the first Provisional Irish Republican Army (PIRA) ceasefire, a total of 69 deaths in the Lurgan area were attributable to the conflict.⁵ In 1992 the town centre was largely rebuilt after a massive car bomb, planted by PIRA, exploded in the main shopping area.⁶ Bomb scares in the town centre were not an uncommon occurrence in the early to mid-1990s.

3.7 Lurgan was a dangerous place for police officers during the Troubles, with paramilitaries from both sides active in the town and posing significant policing problems. One officer described the town as a ‘*hot spot*’ for the police. PIRA and the Loyalist Volunteer Force (LVF) were the most active terrorist groups in Lurgan, but following the signing of the Good Friday Agreement in April 1998, a significant threat was posed by dissident Republican and militant Loyalist organisations.

3.8 Relations between the police and the Nationalist community in particular were strained and involved elements of mutual distrust.⁷ Rosemary Nelson grew up against a background of entrenched sectarianism, with regular bouts of sectarian violence necessitating heavy and intrusive security force activity⁸ and uneasy relations between the security forces and her community.⁹

Rosemary Nelson the solicitor: the first years of practice

3.9 In March 1989 Rosemary Nelson established her business ‘Rosemary Nelson & Co’ in Lurgan in rented rooms above a hairdresser’s shop in William Street, a busy thoroughfare at the Catholic end of town. She announced the opening of the practice in local newspapers and other businesses placed advertisements offering their support.¹⁰ At the beginning the main areas of work for the practice were family law and conveyancing with some personal injury and road traffic accident claims.

3.10 We were told that during the first two years of practice business was slow but that gradually the volume of work increased. Rosemary Nelson was the first female practitioner to set up in practice on her own in Lurgan and many women sought her assistance in matrimonial matters. She developed a reputation, mainly by word of mouth (a powerful form of advertising in a small town like Lurgan), for being a real fighter in matrimonial cases. She was also regarded as an able conveyancing solicitor and a sizeable conveyancing practice developed. A local estate agent, whose clients were mainly Protestant, was a source of recommendation and many of his clients followed his advice. A number of Protestant clients also sought Rosemary Nelson’s advice and assistance in family and matrimonial matters. The firm also

⁵Lurgan Mail 27 November 1997

⁶Lurgan Mail 27 November 1997

⁷Dara O’Hagan, a friend of Rosemary Nelson, told us: ‘*for anyone in the Nationalist community, especially in Lurgan, the police were not an option in terms of requesting protection [...] one side of the community had no confidence in the police.*’

⁸Rosemary Nelson’s younger brother, Eunan Magee, told us: ‘*The mid-1990s [...] was a very tense time: cars were being bombed, roads were being blocked. It was hard for travel of any description.*’

⁹The Patten Report refers to its ‘*meetings in strongly Catholic/Nationalist areas where participants expressed strong criticism of the RUC and demanded a new police service*’. Joanne Tennyson, a member of the GRRC (See Chapter 6.12) told us: ‘*People did not trust the RUC, even for the most basic criminal matters. You would have to be really pushed in order to contact them. I would say that a good part of this community would feel the same way.*’

¹⁰Paul Nelson told us, ‘*her practice developed solely by word of mouth*’. He said ‘*she was not a great believer in advertising bringing in much work*’.

pursued employee claims against local factory owners. In one such case in 1992 she represented a very large number of employees who were made redundant when a local factory closed, and on their behalf succeeded in freezing the firm's assets.

Relations with the Royal Ulster Constabulary in the early years

3.11 Rosemary Nelson also represented clients charged with criminal offences. These cases were usually heard in the Magistrates' Court at Craigavon and brought her into contact with clients from Craigavon and Portadown. They also brought her into contact with the local Royal Ulster Constabulary (RUC). As the practice developed, she attended the police station in Lurgan, which was a very short distance from her office, encountering uniformed officers on a fairly regular basis.¹¹ She also came into contact with officers from the local Criminal Investigation Department (CID). These were detectives who were primarily involved in investigating serious offences. As the Lurgan RUC station was a designated station under the Police and Criminal Evidence Act 1984, an arrested person could be detained there for questioning. If the arrested person asked for a solicitor, the police would contact either the solicitor nominated by the arrested person or one on a list kept for that purpose. Once it became known that Rosemary Nelson was a solicitor willing to attend the police station at inconvenient hours, she was introduced to new clients as a result of referrals from the police. In early 1993 she began to represent clients who had been detained at the Holding Centre at Gough Barracks in Armagh on suspicion of having committed terrorist offences, but these visits were few and far between and do not appear, at first, to have impinged greatly upon her time.

3.12 In the early years of her practice her relations with the RUC were cordial, even friendly.¹² In 1990 or 1991 she was invited, in recognition of earlier work she had done in the context of domestic violence and family issues, to participate in an RUC pilot study into court attendance by female victims of domestic violence. Some police officers recommended her to women who had suffered domestic violence. A number of police officers themselves became clients in matrimonial and conveyancing matters. Rosemary Nelson was regarded in these early years as any other solicitor, treated no differently and dealt with in the same way. She was considered to be courteous and professional. Some would say hello to her on the street or have a tea or coffee with her in her office. Some officers called her 'Rosemary' and found her to be chatty and easy to deal with. One officer told us he talked to her about his daughter's plans to study law and she offered to arrange work experience for her in the office. An officer told us how he sent over a bottle of wine to Rosemary and Paul Nelson when they were dining in the same restaurant. Apparently the gift was accepted with goodwill. We were told how on one occasion Rosemary Nelson shared a joke with a detective, offering to represent him in a claim against the RUC after he fell off a defective chair in the interview room.

¹¹A CID officer in Lurgan told us: *'It was a regular occurrence for Rosemary Nelson to be in the station to do with those suspected of ordinary crime.'*

¹²A solicitor who worked for Rosemary Nelson between 1991 and 1995 said, *'I do not think that the Lyness case and subsequent appeal affected the police's attitude towards Rosemary. [...] The police officers would still ask after Rosemary';* He said, *'Historically, Rosemary would be approached with a "hello, how are you" etc. and the police would pass the time of day with Rosemary whilst she waited to see her clients'.* A witness who had worked for Rosemary Nelson as a receptionist in the early 1990s told us: *'I do not recall any particular attitude from the police during those phone calls';* The officer who served as Deputy Sub-Divisional Commander in Lurgan during the 1990s told us: *'To begin with I believe that Mrs Nelson's relationship with the police was friendly and she was on good terms with them.'*

The development of the practice

3.13 In April 1991 Rosemary Nelson employed her first assistant solicitor, a Protestant. He stayed in the position until January 1995 working on criminal and civil litigation cases. From that time on there was always an assistant solicitor, working alongside Rosemary Nelson as principal of the firm. The practice continued to develop and towards the end of 1993 the shop below the office was vacated and Rosemary Nelson acquired the building. The waiting room/reception area was relocated downstairs and office space for secretarial staff was established. The entrance to the office was a glass-fronted door and next to it was a large window with 'Rosemary Nelson' embossed on it. In or around September 1994 an additional solicitor was employed to assist with the matrimonial side of the practice. The practice now employed two assistant solicitors, five secretaries, a receptionist and a bookkeeper. Staff were generally left to deal with their work. They were kept busy and there was little spare capacity for upsurges in work.¹³ This created some problems in the office from time to time when Rosemary Nelson needed assistance from staff on a big case.

3.14 By 1994 Rosemary Nelson was running a typical high-street provincial law firm, of comparable size to the other established law firms in Lurgan. We have no doubt that the success of the business was due in large part to Rosemary Nelson's personality. She had a good memory for people and, being a local, she already knew the names of a large number of Lurgan residents, including many of the residents on the Kilwilkie Estate.¹⁴ She was naturally personable and accommodating to clients, often seeing them in their own homes. We were told that she had the knack of making clients feel that their case was important to her.¹⁵ This was, evidently, no pretence: she represented all her clients to the best of her ability. Generally, whether the client was Protestant or Catholic they would ask to see Rosemary Nelson¹⁶ and sometimes clients would move from other solicitors to be represented by her. One of her assistants told us that she was '*a brilliant publicist and drew in a lot of work for the firm [...] She was a business woman who was out there in the community generating work.*'

3.15 We were told that, from time to time, Rosemary Nelson acted for some clients who were aggrieved at the behaviour of the security forces and those with such complaints could expect a sympathetic hearing from her.¹⁷ We were also told that she would take responsibility for such cases herself rather than allocate them to other members of staff. She also undertook an amount of *pro bono* work. She was approached by a number of community-based groups to assist in a voluntary capacity. She did not accept all these approaches, but those that she did accept

¹³A member of Rosemary Nelson's staff told us, '*We were generally left to get on with the work ourselves, but as it was a small office, we often got involved in the big cases.*'

¹⁴One of her solicitors told us, '*she was very interested in people and knew the names and families of a vast number of Lurgan residents.*'

¹⁵A solicitor who worked for Rosemary Nelson in 1996 and 1997 told us: '*Her popularity, I think, sprung from the fact that she was able to converse with the regular Joe and they felt very at ease with her, and she could empathise greatly.*'

¹⁶'*When people came in off the street Protestant or Catholic, they always wanted to see Rosemary Nelson [...]. They had usually seen her on the news and they wanted her to represent them because people believed in her.*'

¹⁷Rosemary Nelson took on cases which ranged '*from criminal damage [...] or complaints against the police themselves*'; '[Rosemary Nelson's] reputation in Lurgan [was she] would go to hell and back for any of her clients'. A member of staff who joined the practice in 1996 told us: '*Clients who would have come to her with cases that maybe nobody else would have been interested in.*' A Legal Secretary who joined the firm in 1994 said: '*It seemed from the point that she represented Colin Duffy, anyone with a complaint against the authorities started to come to Rosemary's practice.*'

included a travellers' committee, a group representing the elderly and the local Irish language school, the Naíscoil. She became known locally for her work for the voluntary sector.¹⁸

Rosemary Nelson's political views

3.16 We were told that Rosemary Nelson had a keen interest in current affairs but that she was not someone who liked to talk of politics at work or socially. She was described to us as a '*Nationalist*', and coming from the Nationalist community she was no doubt sympathetic to the grievances of that community. But she was not portrayed to us as being dogmatic or sectarian. She had Protestant friends, Protestant staff and Protestant clients. We were told that on one occasion she voted for an Ulster Unionist candidate because of a pledge to cut electricity costs. When asked in a newspaper interview in February 1999 what she would like to change in Northern Ireland, she said: '*I just wish people would speak to each other and recognise that most solutions can be achieved by simple dialogue and negotiation.*'¹⁹

3.17 On the question of Rosemary Nelson's political views, those who knew her best – her family, friends and colleagues – all provided almost uniform evidence to the Inquiry: she was not interested in politics. According to her brother, Eunan Magee, when the Good Friday Agreement was signed in 1998 Rosemary Nelson, like others of her generation who had never experienced anything which resembled peace, was excited and very interested in developments and pleased to see change. But we were told that she never expressed an affiliation to a political group.²⁰ The type of language we saw used in her correspondence, of which we have seen a considerable amount, and her comments published in the media, is not political. Rather issues are addressed through the language of rights and the law.

3.18 There were some, however, who formed an entirely different opinion about this aspect of Rosemary Nelson's life. We believe that she came to be regarded by some as a Republican and by militant Loyalists as an '*enemy of Ulster*'.²¹

3.19 We have considered both these opposing views. Our Terms of Reference do not require us to decide which was correct. What is relevant is how she was perceived politically and personally and how this dictated behaviour towards her.

3.20 Significantly, as regards our Terms of Reference, as a consequence of her legal work she came to be regarded within the RUC in Lurgan, and in certain parts beyond, as either a member of PIRA, or a very close ally of it.

3.21 We believe this view of Rosemary Nelson developed as a result of publicised aspects of her legal work including:

- her representation of suspected members of PIRA;

¹⁸*Lurgan Mail* 18 March 1999

¹⁹*Lurgan Mail* 11 February 1999

²⁰Witnesses told us: '*Rosemary Nelson was not a republican*'; '*She held no candle for sectarianism whatsoever*'; '*People thought [Rosemary Nelson] was a Nationalist and [...] interested in political matters which wasn't the case*'; '*She liked the Irish language*'. We were told that Rosemary Nelson was '*a supporter of the Good Friday Agreement*' and that she '*did not approve of the use of violence for political ends*.' A witness told us that she '*would have considered herself to be a Nationalist and made no apologies for it*.' Another said that, '*She did not strike me as someone who would do something simply for the cause*'. Another that, '*Rosemary Nelson did not discuss politics with me*'.

²¹Statement made by The Orange Volunteers on 14 October 1998 in which they declare war on the '*enemies of Ulster*'.

- her association with Colin Duffy, a Lurgan man who was widely regarded as a PIRA leader;
- her involvement from 1996 in the Garvaghy Road Residents' Coalition (GRRC), the body which opposed the annual return march of the Orange Order from Drumcree Church to Portadown along the Garvaghy Road;
- and her representation of the family of Robert Hamill, a Catholic man who was fatally injured in Portadown in April 1997.

3.22 In the chapters that follow, we describe Rosemary Nelson's involvement in each of these matters; how each brought Rosemary Nelson into conflict with state agencies and how each affected the views of those within state agencies towards her; and whether the existence of such views caused any agency of the state to be involved in the death of Rosemary Nelson or contributed to any failure to prevent it.

4

Solicitor for Colin Duffy

4.1 Before 1993 there was nothing in Rosemary Nelson's life, professional or otherwise, that would have brought her to the attention of any state agency, or the wider public, in anything other than a routine and unremarkable way. In 1993, however, she was instructed by Colin Duffy, a Republican who had been arrested for the murder of John Lyness, a former member of the Ulster Defence Regiment (UDR). Colin Duffy was subsequently charged with the murder and Rosemary Nelson represented him during the course of his detention, trial and conviction, and later secured the quashing of his conviction on appeal. In 1997 she represented Colin Duffy again when he was charged with murder, and again secured his release. The apparent closeness of her relationship with Colin Duffy was observed by Special Branch (SB) of the Royal Ulster Constabulary (RUC) and became known at the highest levels of the RUC and the Northern Ireland Office (NIO).

4.2 Colin Duffy lived in Lurgan on the Kilwilkie Estate. He had long been regarded within the RUC as a member of the Provisional Irish Republican Army (PIRA) and an active terrorist. In March 1990 he survived a Loyalist assassination attempt in controversial circumstances that later Rosemary Nelson was to investigate. He and two others had been remanded on bail charged with offences of possessing weapons. The conditions of their bail required that they report to Lurgan police station at times that should have been known only to the police and to those charged and their solicitors. On 7 March 1990, minutes after the trio had left the police station, they were attacked by Loyalist gunmen. One of the three, a man named Sam Marshall, was killed; Colin Duffy and the third man narrowly escaped. Collusion was alleged almost immediately. The allegation received some impetus when, in extradition proceedings in the USA in 1994, an RUC inspector testified that a vehicle seen close to the scene on the evening of the murder was carrying officers who were conducting surveillance on Colin Duffy and his associates. No inquest into the murder of Sam Marshall was ever held but two men, members of the Ulster Volunteer Force (UVF), were convicted of offences connected with his murder.

4.3 The charges against Colin Duffy concerning the possession of weapons were dropped but he remained in the police eye. In March 1991, May 1992 and March 1993 he was arrested on suspicion of having committed terrorist offences but none of these arrests led to his conviction for any offence. He did not remain at liberty for long. In June 1993 he was arrested and charged with the murder of John Lyness.

The murder of John Lyness

The murder

4.4 John Lyness was murdered as he walked to his home in Lurgan in the late afternoon of 24 June 1993. He was approached by the killer and was shot at close quarters. The murderer and an accomplice fled the scene on bicycles which were later abandoned close to the Kilwilkie Estate. The killing was witnessed from a distance by a member of the Royal Irish Regiment whose evidence was that he recognised the gunman to be Colin Duffy. The murder was claimed by the North Armagh Brigade of PIRA using a recognised code word. Some days later, a man called Lindsay Robb provided a witness statement to the police in which he said he had seen two men, one of whom he recognised to be Colin Duffy, riding bicycles close to the scene soon after the murder took place.

4.5 Colin Duffy was arrested on 28 June 1993 and charged with murder on 1 July 1993. He was represented by Rosemary Nelson from the early stages of his detention. It was her first major terrorist case and it brought her into contact with a number of local Criminal Investigation Department (CID) officers whom she would encounter on a number of occasions in the coming years. At this time, her dealings with the RUC appear to have been unaffected by the fact that she represented someone who was regarded as a terrorist killer. A colleague who worked on the case with her told us that relations with the RUC during the investigation were amicable. He told us, for example, that Rosemary Nelson and the Investigating Officer, a local detective sergeant, would, on occasion, discuss the case over a cup of tea. A comment made on the Investigation File by the Supervising Officer probably reflected the attitude of the local RUC towards Colin Duffy; the note reads: *'Duffy is a very active terrorist and is suspected of involvement in a number of murders.'*

4.6 While we received a number of differing accounts as to why Colin Duffy approached Rosemary Nelson to represent him, what is common to them all is that Rosemary Nelson did not actively seek this type of work. Colin Duffy himself told us: *'I chose Rosemary to represent me because I wanted a solicitor to represent me with passion. I do not mean this in the sense that I wanted her to share my politics but I wanted someone who would do a good job representing me from a legal aspect. I am a Republican and I was coming into conflict with the legal system on a regular basis. I wanted someone to act for me who I was confident would do the job properly.'* She may not in fact have been his first choice. A member of Rosemary Nelson's staff told us that another firm had previously acted for him but refused to do so on this occasion because they no longer wished to be involved in *'politically sensitive cases'*.

4.7 It is evident that her representation of Colin Duffy brought unwelcome attention from some quarters. We were told that after she accepted the case Rosemary Nelson began to receive threatening telephone messages and we heard details of two of these.¹ On each of these occasions Rosemary Nelson contacted the police. After the first call a police officer visited the office and interviewed the receptionist who took the call. After the second, a detective inspector from Craigavon spoke to Rosemary Nelson about it and offered her the services of a crime prevention officer who visited the next day. Evidently, there was no reluctance on the part of Rosemary Nelson at that time to seek assistance from the RUC when she was threatened.

The trial and conviction of Colin Duffy

4.8 The trial of Colin Duffy lasted six weeks. The case was heard by a Diplock court, that is to say by a Judge sitting alone, without a jury.² The two witnesses who had identified Colin Duffy as the gunman who killed John Lyness gave evidence with the benefit of anonymity. Colin Duffy maintained his innocence throughout the proceedings and put forward alibi evidence. It was to no avail. On 5 July 1995 Colin Duffy was found guilty and sentenced to life imprisonment.

4.9 After the trial Rosemary Nelson spoke to another solicitor about the verdict when the two met at Crumlin Road Court House. He told us: *'She said it was a very bad decision, that the judge had gone against the weight of the evidence. They were all surprised. They had expected him to be acquitted and they were going to appeal and she thought they had a good appeal, good grounds for appeal.'* He continued: *'She seemed to be annoyed about the verdict, more so than maybe you would find in other lawyers.'*

¹ In the first of these calls, which was probably received in the Autumn of 1993, a man claimed to be calling on behalf of the UVF and threatened to send a black wreath to Rosemary Nelson's office.

² In accordance with the recommendations of the Diplock Commission: Report of the Commission to consider legal procedures to deal with terrorist activities in Northern Ireland: December 1972. Cmd 5185. The Diplock courts continue to operate in Northern Ireland in relation to terrorist offences.

The campaign to free Colin Duffy

4.10 There were many in the Nationalist community who believed that there had been a miscarriage of justice and a group calling themselves the ‘Friends of Colin Duffy’ began a campaign to protest his innocence and to secure his release from prison. His case was likened to those of a number of other miscarriage of justice cases which were receiving publicity at the time. As the campaign gathered momentum, various human rights organisations such as Amnesty International began to express interest, as did political figures such as Garret Fitzgerald,³ Albert Reynolds⁴ and Tony Benn.⁵ Rosemary Nelson also helped to raise the profile of the case. She contacted a number of non-governmental organisations (NGOs), journalists and officials from the Irish Government and she built up a list of contacts to whom she would periodically write or fax material in relation to the case.

Lawyers Alliance for Justice in Ireland

4.11 One of the organisations which became interested in Colin Duffy’s case was the Lawyers Alliance for Justice in Ireland (LAJI). This had been founded in 1992 by Edmund Lynch, a New Jersey lawyer. It was described to us as a loose confederation of North American lawyers (approximately 25 at the outset) who were dedicated to the promotion of the rule of law in Northern Ireland. Members undertook visits to Northern Ireland, attending Diplock trials, conducting prison visits and meeting officials as well as ordinary citizens. They were also involved in lobbying members of Congress and the US State Department to promote what they considered to be desirable changes to the justice system in Northern Ireland. One member, John Foley, had been contacted by the ‘Friends of Colin Duffy’ campaign in early 1996. He was an American lawyer who had worked as a news editor of *The Lawyer*, a London-based weekly newspaper for the legal community in the UK, in which capacity he had published articles that were critical of the Diplock court system. When he responded to the ‘Friends of Colin Duffy’, he was urged to contact Rosemary Nelson and he did so. He visited her in Lurgan and she allowed him to review several boxes of material relating to the case. He became convinced that there had been a miscarriage of justice and he encouraged colleagues in the USA to rally political support for Colin Duffy. In the lead-up to the appeal hearing John Foley visited Northern Ireland on a number of occasions, as a guest of the Nelson family, and assisted Rosemary Nelson with the case.

4.12 During one of these visits he was told by both Rosemary Nelson and Paul Nelson that they had received unpleasant threatening telephone messages at their home. Rosemary Nelson also told him of an occasion when she found an envelope under the windscreen wiper of her car containing a photograph of her on which a ringed target had been drawn on her face. Rosemary Nelson had told him that it contained the message ‘*We can get you any time*’.

4.13 John Foley also observed at first hand that the attitude of at least some local police officers towards Rosemary Nelson had become very far from cordial. He described an occasion when he went with her to Lurgan police station early one morning. When they drove into the police station the lights in the car park were extinguished (he believed that this may have been done deliberately). And when they entered the police station the police officer behind the counter, upon seeing Rosemary Nelson, shouted to whoever was in charge ‘*scarface is here*’. John Foley told us that he believed this to be a vulgar reference to Rosemary

³ Irish Taoiseach June 1981 to March 1982 and December 1982 to March 1987

⁴ Irish Taoiseach February 1992 to December 1994

⁵ Former Labour Cabinet Minister

Nelson's facial disfigurement and he was very surprised to observe that the senior officer present, having heard the comment, did not remonstrate with the officer who had made it.

British Irish Rights Watch and the Committee for the Administration of Justice

4.14 Another organisation that was to play a pivotal role in Rosemary Nelson's affairs was British Irish Rights Watch (BIRW). BIRW is a London-based independent NGO and a registered charity whose stated aim is to monitor the human rights dimension of the conflict in Northern Ireland.⁶ Since its creation in 1990, BIRW had worked closely with the Belfast-based Committee for the Administration of Justice (CAJ), an organisation with similar objectives. The two organisations, CAJ and BIRW, over time sought to coordinate their approach to issues of mutual concern to avoid duplication of effort. BIRW was pursuing the issue of the alleged intimidation of defence lawyers by the RUC, which had been a matter of some controversy in Northern Ireland since at least 1987 and particularly so since the murder of the solicitor Pat Finucane on 12 February 1989.⁷ Jane Winter, the Director of BIRW, had over a number of years spoken to virtually all of the solicitors in Northern Ireland undertaking work in the Diplock courts. The first BIRW report on the issue was published in 1992.

4.15 As the date for Colin Duffy's appeal hearing was getting closer Rosemary Nelson contacted Jane Winter and asked whether an observer could attend the appeal hearing, stating that she believed Colin Duffy's original conviction was a miscarriage of justice. Jane Winter agreed and attended the appeal hearing herself on 16 and 17 September 1996. Also present were representatives of Amnesty International, CAJ, LAJI and another organisation known as US Voice for Human Rights in Northern Ireland (previously Voice of the Innocent, USA). It was probably on this occasion that the two women met in person for the first time and they developed a close working relationship in relation to issues of mutual concern. Jane Winter was one of the first people to whom Rosemary Nelson reported a steady deterioration in the behaviour of the RUC towards her.

A journalist

4.16 Rosemary Nelson had an instinctive understanding of the influence of the media and she became a trusted source of a number of journalists. In 1996 she was contacted by a journalist, Anne Cadwallader, who had encountered the 'Friends of Colin Duffy' campaign in Dublin and they had suggested she contact Rosemary Nelson. The two women met. Anne Cadwallader described the meeting to us:

'I contacted Rosemary Nelson and introduced myself. I mentioned that [redacted] had suggested I call and I indicated that I wanted to talk with her with a view to preparing an article about the case of her client, Colin Duffy. I proposed a time and date for us to meet at her Lurgan office to discuss this matter and suggested that I bring along a photographer, [redacted], who could take photos whilst we spoke. I had expected that, like many other solicitors, Rosemary Nelson may be reluctant to speak with me. However, it was like pushing at an open door, and I was pleased to find that Rosemary was willing to speak with me.'

⁶ It does not have a membership and is funded by donations and charitable grants. It has a management committee of seven individuals and a small staff consisting of a director, two researcher/caseworkers and an administrator.

⁷ Paul Mageean of CAJ confirmed in his oral evidence that it was BIRW who were most involved in the issue of threats against lawyers.

4.17 Anne Cadwallader told us that Rosemary Nelson made out a convincing case that Colin Duffy had suffered a miscarriage of justice, and the two women cooperated in making a radio feature about the case which was broadcast on RTÉ⁸ in the Republic of Ireland. The relationship continued and later Rosemary Nelson was to be a source of information to Anne Cadwallader during the summer of 1997 when critical events were to occur on the Garvaghy Road in Portadown. In October 1997, by which time Anne Cadwallader had joined the Belfast-based newspaper *Ireland on Sunday*, she wrote a feature article about Rosemary Nelson which was published in the newspaper.

Irish Government

4.18 Rosemary Nelson also made contact with officials in the Irish Department of Foreign Affairs (DFA) and provided details of the case, with the result that on a number of occasions it was the subject of discussion through official channels between representatives of the Irish Government and their British counterparts.⁹ We were told that this was not a unique occurrence. Over the years, solicitors from Northern Ireland had, from time to time, engaged with the Irish Government about particular cases. It was explained to us by Irish officials who gave evidence to the Inquiry that under the 1985 Anglo-Irish Agreement confidence in the administration of justice was an intergovernmental item for discussion between the British and Irish Governments. We were told that it was the belief of the Irish Government at the time that part of the instability in Northern Ireland arose from a lack of confidence in the administration of justice. The purpose of taking an interest in a case such as this, and others which Rosemary Nelson would draw to the attention of the Irish Government subsequently, was to enhance confidence in the administration of justice by seeking to resolve issues of concern before they came to a head and became politically controversial. We were told that matters were not raised lightly. A case would be subjected to a degree of scrutiny before it was raised as a matter for discussion. But it was clear to us that Rosemary Nelson was considered to be a reliable and trusted interlocutor by the Irish officials who dealt with her.

4.19 The Irish Government politely refused a request from Rosemary Nelson for them to send a representative to the appeal hearings. However, the former Taoiseach Albert Reynolds attended part of the appeal hearing, apparently in response to a personal request from Colin Duffy's mother.

The appeal

4.20 Leave to appeal against the conviction was granted in or about August 1995 and that year the campaign received a boost when Lindsay Robb appeared before a court in Scotland charged with terrorist-related offences linked to the UVF. The trial of Lindsay Robb and five others began in Glasgow High Court in November 1995. The court heard that, as a consequence of having to give evidence in the Colin Duffy trial, Lindsay Robb had been given £2,000 to start a new life in Scotland.¹⁰ On 20 December 1995 he was sentenced to ten years' imprisonment after being convicted of conspiring to smuggle guns. The proceedings were watched with understandable interest by Rosemary Nelson who instructed Counsel with a watching brief to observe the proceedings and report to her at the end of every day. During the proceedings and afterwards, it became evident that in the Colin Duffy case the prosecution had failed to make full disclosure of relevant material. In July 1996 the Crown advised that it no longer intended to rely on the evidence of Lindsay Robb for the purposes of the Colin Duffy appeal proceedings. The case

⁸ Raidió Teilifís Éireann; Radio [and] Television of Ireland, a public service broadcaster in the Republic of Ireland.

⁹ *Lurgan Mail* 12 September 1996

¹⁰ *Lurgan Mail* 7 December 1995

thus relied on the evidence of a single witness who was some distance from the incident, and on 24 September 1996 Colin Duffy's appeal was upheld by the Court of Appeal and the conviction was quashed.

4.21 In a statement to the Murder Investigation Team (MIT), signed and dated 7 October 1999, a part-time receptionist working in Rosemary Nelson's office said:

'It was the day that Colin Duffy was released from Prison for the Murder of Mr Lynas [sic]. When I answered the telephone a male voice sounding to by [sic] about 30's or 40's [sic] years of age in a Lurgan accent and sounding angry said the following to me. He didn't ask for Mrs Nelson, "Have yous no conscience up there". "Yous have got a murderer out of jail after killing innocent people. All Rosemary does is support IRA members". This man went on to say other things. "Rosemary's in the IRA herself". "Yous are all scummy bastards". He said other things but I can't remember what. He also said, "We'll get Rosemary and we'll kill her". I kept asking him who he was, but he didn't say. [...] When this call ended I went straight upstairs to Rosemary's office. As she was with a client I knocked her door and she came out of the office. I gave her details of the call. She told me to write it all down and to get it into a statement. I did this and got my statement typed. I made the statement that day and I signed the typed statement. I gave it to Rosemary and it was kept in a file in Nelsons [sic] Solicitors [sic] Office. After telling Rosemary about the call I rang Lurgan Police Station I didn't use "999" but rang the Station number. A man answered the phone. I told him what had happened. He told me to hold. I then passed the call on to Rosemary and I wasn't talking to anybody else after this man in the Police Station. [...] I made the call to the Police about 10 minutes after I had received the threatening phone call.'

4.22 The outcome of the appeal received considerable media attention in Northern Ireland. Colin Duffy gave a number of press interviews. He claimed to have been framed because of his political beliefs. In one interview he spoke of the broader issues surrounding the case: *'I'm the one who spent three years and three months in jail. This system isn't a good system by the mere fact that I was left in prison. It has to be changed.'*¹¹ A Sinn Féin spokesman called for the abolition of the Diplock court system saying, *'This case was another travesty of justice perpetrated in this corrupt system which passes as a judicial system in the North of Ireland.'*¹² Rosemary Nelson herself was reported in *The Irish News* on 25 September 1996 as saying that Colin Duffy *'would consider making a claim for compensation for wrongful arrest and false imprisonment'*. The *News Letter* of 25 September 1996 reported: *'A cavalcade of cars, some bedecked with tricolours, paraded through Lurgan town centre yesterday afternoon blowing their horns to announce the homecoming of Colin Duffy.'* A member of Rosemary Nelson's staff told us that *'the procession passed right outside the local police station'*. Rosemary Nelson had driven Colin Duffy from the court to his home in Lurgan, but did not participate in the cavalcade. In the words of another member of her staff, *'Rosemary was not like that, she came straight back to the office to carry on with her work.'*

Allegations of collusion

4.23 Rosemary Nelson had spoken to an Irish Government contact about the possibility of bringing a civil action should the appeal be successful. The note of the conversation reveals that Rosemary Nelson hoped that civil proceedings represented more than just a means of getting some compensation for her client. The note states: *'While this will be pursued as a matter of compensation, she hopes that it will uncover what she regards as a very murky case whose trail leads back to the shoot-to-kill policy and shady dealings between the security forces and the mid-Ulster UVF.'* On 21 October

¹¹ *News Letter* 25 September 1996

¹² *News Letter* 25 September 1996

1996 Rosemary Nelson wrote to the Chief Constable of the RUC, in connection with a potential claim by Colin Duffy for malicious prosecution, wrongful arrest and false imprisonment. In February 1997, she informed the Crown solicitors, who were representing the RUC, that she was ready to issue proceedings in respect of the claim. They replied on 27 February 1997, denying liability and stating that any proceedings would be strenuously resisted. A writ was eventually issued on 24 October 2000.

4.24 Anne Cadwallader spoke to Rosemary Nelson before the appeal and sensed that she felt that, by scrutinising the background to Lindsay Robb's involvement in the Lyness case, she had exposed herself to danger. Anne Cadwallader thought that at the time there existed an *'undercurrent of people being killed in unexplained circumstances, with regular suggestions of collusion, and a link between the RUC and Loyalists. I felt that if you dug too deeply you were likely to annoy people.'*

Human Rights Watch/Helsinki

4.25 In November 1996 Rosemary Nelson met Julia Hall, a representative of an NGO called Human Rights Watch/Helsinki. Human Rights Watch was based in the USA and had offices in cities around the world including Moscow, Geneva, Brussels and London. Julia Hall was conducting research into post-ceasefire policing in Northern Ireland. Two days later Rosemary Nelson met Julia Hall in Belfast to discuss the Colin Duffy case, with Colin Duffy in attendance. The meeting focused almost entirely on Colin Duffy's complaints against the RUC. These featured in a report published in May 1997 entitled 'To Serve Without Favor: Policing, Human Rights and Accountability in Northern Ireland'.¹³ A section entitled 'Allegations of Collusion Between Members of the Security Forces and Loyalist Paramilitary Organisations' included a detailed discussion about the murders of Pat Finucane and Sam Marshall and the criminal prosecution of Colin Duffy for the murder of John Lyness. The report said that this latter case added fuel to *'allegations of official collusion between Loyalist paramilitary groups and the police'*. Rosemary Nelson was quoted on a number of occasions, in one instance saying, *'Lindsay Robb was dishonest. He denied any knowledge of the UVF. The RUC knew about his ties to paramilitary groups and yet they gave him money and a safe house.'*¹⁴

4.26 Julia Hall told us that it was during her meeting with Colin Duffy that she had first been made aware that police officers had made personal and insulting remarks to him about Rosemary Nelson. In March 1997, having discussed the issue with colleagues, including Jane Winter of BIRW, she contacted Rosemary Nelson in order to record details of the comments by which time, as will be seen in Chapter 8, a number of other individuals represented by Rosemary Nelson had made similar allegations.

NGO reports critical of the Royal Ulster Constabulary

4.27 Both the Sam Marshall murder and the charges brought against Colin Duffy for the John Lyness murder featured in a report published by the BIRW in October 1996 entitled 'Alleged Collusion and the RUC'. It was one of a number of reports published by NGOs at that time criticising the RUC and the behaviour of RUC officers towards defendants and those who represented them.

¹³ 'To Serve Without Favor', May 1997, <http://www.hrw.org/legacy/reports/1997/uk1>

¹⁴ On 13 February 2000 an article appeared in the *Sunday Tribune* in which Lindsay Robb was reported as saying that he gave evidence against Colin Duffy after RUC SB officers contacted the UVF and asked Loyalist terrorists to come up with a witness who would help put Duffy in Maze Prison for the killing of John Lyness. It said UVF sources had confirmed that the deal involving Lindsay Robb was struck with the RUC and that one former UVF commander had claimed: *'The implication from the RUC was that if we did this for them, they would go easy on investigating any UVF operations by the mid-Ulster unit.'*

Reaction to Colin Duffy's successful appeal

4.28 It became evident during the course of our work that, notwithstanding his acquittal, local police officers continued to believe that Colin Duffy had murdered John Lyness and that he had therefore escaped justice. As if to rub salt into this wound, Rosemary Nelson and others had, in the media and through contacts with NGOs, suggested that the arrest and prosecution of Colin Duffy was tainted by impropriety and collusion. To make matters worse, Colin Duffy was now at liberty and once again a perceived threat by those who worked in the security forces and particularly those who worked in Lurgan. All the officers who were questioned about this during our oral hearings, including officers from Lurgan CID, were certain there was no resentment at the role Rosemary Nelson had played in securing Colin Duffy's release. We were told that Rosemary Nelson was not perceived in any way differently to any other lawyer. One of these officers told us: *'A policeman's job is to bring the matters to court. What happens there is out of his hands. There's not a thing he can do about it.'* This is, of course, true but that does not mean that officers do always remain impassive and detached under any circumstances. As will be seen below at Chapter 4.44 to 4.49, officers in Lurgan were tested in the most tragic and extreme circumstances during the summer of 1997, when two of their number were shot in a Lurgan street. It would have been very difficult to remain impassive in the face of this atrocity.

4.29 We consider in fact that very few of the officers from Lurgan who gave evidence to the Inquiry were candid about their attitude towards Rosemary Nelson and we consider that the evidence of John Foley provided a telling glimpse of the real feelings of officers towards her.

Special Branch reporting concerning the Lyness case

4.30 In this chapter we cite a number of SB intelligence reports. We were told that reports such as these represented a sanitised version of the original information that had been gathered. The reports contained a source identification number and an assessment of the reliability of the information and of the source. However, the original notes or contact sheets on which the intelligence had first been recorded were routinely destroyed for security purposes. It should be noted therefore that, although the source, whether human or technical, of any particular piece of intelligence to which we refer in this Report has been disclosed to us, we were unable to test the source or to examine the original notes from which the sanitised script was prepared.

4.31 There were SB officers based at Lurgan, Portadown and Craigavon and, although they never met Rosemary Nelson, they knew of her and were interested in her movements.

4.32 A Lurgan SB report in December 1994 stated:

'[Redacted] a leading PIRA member and ROSEMARY NELSON (Solicitor) are attempting to construct a false alibi for COLLIE DUFFY who is presently remanded in custody for the murder of JOHN LYNESS at [redacted] on 24 June 1993.'

We consider it very likely that Lurgan SB rightly passed on the gist of this intelligence to the Senior Investigating Officer (SIO) leading the CID investigation of the John Lyness murder.

4.33 A Lurgan SB report based on information received in November 1995 but recorded in January 1996 stated:

'Rosemary NELSON, solicitor with premises in William Street, Lurgan is monitoring the Lindsay ROBB arms procurement case in Scotland.

She has had a colleague sit in on the first day of the case [redacted].

NELSON herself intends to go to Scotland and listen to ROBB's evidence when he is called.

COMMENT

This monitoring would be part of the ongoing campaign to have Colin DUFFY released. ROBB was a key witness against DUFFY in the murder case of Johnny LYNESS on 24 June 1993.'

We would be surprised if Lurgan SB did not pass on the gist of this intelligence to the SIO in view of Colin Duffy's forthcoming appeal.

4.34 A Lurgan SB report in April 1996 entitled '*Local Solicitor with keen interest in Sinn Fein affairs*' recorded that Rosemary Nelson had been in contact with a number of individuals who were believed to be members of PIRA and that she '*would appraise them of all Sinn Fein legal affairs*'. It was said that she '*would take a very keen interest both in the Republican movement and especially Sinn Fein whom she would legally represent*'.

4.35 A Portadown SB report in April 1996 stated:

'ROSEMARY NELSON, Lurgan is using her position as a Solicitor to gather information for PIRA in Lurgan. [...] this includes details of RUC members who she comes into contact with.'

Because of the possible implications for the safety of RUC members, we consider it highly probable that this intelligence was discussed with senior uniformed and CID Divisional and Sub-Divisional Commanders in order to consider what action should be taken.

4.36 It is not relevant to our Terms of Reference to determine whether the intelligence reports that we have cited were accurate. We have no reason to suspect that any of the intelligence was concocted. We would, however, have expected to see some evidence of analysis and evaluation of the material contained in the reports. No such evidence was disclosed to us.

4.37 What is relevant to our Terms of Reference is to consider the attitudes of those submitting the reports, and the likely effect of the content of the reports on the perceptions of those reading them and on their resulting attitudes, actions and inactions.

4.38 In their evidence to us, SB officers told us that Rosemary Nelson was of interest to them only because of her association with her clients. For example, many surveillance reports about her deal with sightings of her with Colin Duffy; many other reports are in the context of her involvement with the GRRC or with other Nationalist groups, which undoubtedly were of interest, and properly so, to the customers of SB reporting. Nevertheless, the cumulative impression left is of someone who was of interest in her own right. We could not see any other convincing reason, for example, for the production of pen pictures of her father and her husband to which we refer at Chapter 4.135 below, or the reporting of her visits to the USA. In our view, in the latter part of her life Rosemary Nelson was indeed regarded by SB as being a person of interest.

4.39 About Rosemary Nelson herself, SB officers indicated that they felt quite neutral – they simply reported what their sources had told them. The wording of an abortive application for an intercept on Rosemary Nelson’s business telephone, however, suggests a definite and unfavourable opinion of her (see Chapter 11.24). And some of the comments made in reports, where the facts were capable of alternative interpretations, in the conditions of that time in Northern Ireland indicate a more rather than less sinister interpretation was picked.

4.40 Even if we accepted that SB officers were simply reporting neutrally what they had been told, they had no control over how their reports were read. Sir Ronnie Flanagan told us that he would not have taken any adverse view of Rosemary Nelson based on the reports we showed him. Other senior RUC officers, however, did take an adverse view.¹⁵ Nor could SB, given the fact that many reports were widely disseminated, ensure that the content did not leak out and affect attitudes, both within the RUC and in the wider community.

Special Branch’s continuing interest in Colin Duffy: reports concerning Rosemary Nelson

4.41 Even before his release from prison in October 1996 Colin Duffy was again of interest to SB. In September 1996 a Lurgan SB report stated: *‘If COLIN DUFFY is released from prison on his Appeal then he will probably become a member of Brigade Staff PIRA.’* A Lurgan SB report dated November 1996 stated: *‘COLIN DUFFY has been appointed OC [Officer Commanding] Lurgan PIRA.’*

4.42 In early June 1997 SB gathered intelligence indicating that Lurgan PIRA intended to carry out an operation in the area. Colin Duffy was believed to be behind whatever it was that was being planned and an SB surveillance team with a Mobile Support Unit was mobilised in response.

4.43 During the second week of June 1997 the team kept watch on Colin Duffy and they observed that he maintained frequent contact with Rosemary Nelson. On one day the team noted that *‘DUFFY, usually accompanied by his wife carried out what appeared to be routine domestic activities, with possibly a visit to his Solicitor’s Office (ROSEMARY NELSON), 8 William Street.’* A report of the surveillance carried out stated that two days later he was seen getting into Rosemary Nelson’s car in Lake Street and the two were then followed as they travelled in her car until they crossed the border into the Republic of Ireland. They were both seen separately in Lurgan later that evening. The following afternoon it was noted that Colin Duffy parked his car *‘in William Street convenient to the solicitors (Rosemary Nelson)’*. A sighting of Rosemary Nelson’s car a few days later *‘mobile in North Street and then Church Place. COMMENT: Two on board, with a male aged approx 28 years driving’* was considered worthy of recording in a surveillance log. An officer explained to us in evidence:

‘We would perform surveillance on her when she was not in the company of Colin Duffy if we were looking for him, in the hope that she would take us to him. We could not specifically target her given her profession but she was certainly of interest given her associations with PIRA in the local area and her close relationship with Duffy. However, I should point out that E3¹⁶ wanted to establish the exact nature of her connections so that we could prove her innocence as well as to inform us of any terrorist associations she may have had.’

¹⁵ See Chapters 11 and 26

¹⁶ See Appendix C

The murders of Constables Johnston and Graham

The murders

4.44 At 11.45 on 16 June 1997 two police officers based at Lurgan RUC station, Constables David Johnston and John Graham, were murdered in Church Walk, Lurgan, within earshot of the police station. Both officers had young families and between them they were survived by five children. An eyewitness at the scene described the attack as follows: *'They just shot them at close range and then walked over and shot more bullets into them as they lay on the ground.'*¹⁷ The murders were later claimed by North Armagh PIRA. Even by the standards of the Troubles, this was a shocking attack. The impact of the murders was all the more profound as the crime occurred at a moment when hopes were raised that the security situation was improving and there was a real prospect of a renewal of the PIRA ceasefire. These were the first police officers murdered by PIRA for three years.

4.45 Before 12.30 on 16 June 1997, Rosemary Nelson telephoned an official in the Irish Government in Dublin notifying him of the shootings. The official recorded *'from her comments, it was evident that local opinion holds republican paramilitaries responsible (and expect LVF – which is very strong in the area – retaliation)'*.

4.46 The reverberations of the killings were extensive. Those who condemned the murders included President Bill Clinton, Prime Minister Tony Blair and outgoing Taoiseach John Bruton. There were real fears that the Combined Loyalist Military Command (CLMC) ceasefire – in operation since 1994¹⁸ – would crumble. On 17 July 1997, the day after the murders, *The Irish News* reported: *'For the 100,000 nationalists living in Mid Ulster there is today a deep sense of foreboding. They hope the area may not once more live up to its name of the murder triangle.'*

4.47 For the RUC the murders were a bitter blow. Sir Ronnie Flanagan said: *'No twisted logic can justify such acts. No words can put gloss on cold-blooded murder.'*¹⁹ The Police Federation Chairman, Les Rodgers, said: *'I had hoped, when I took office, that I would be the first Federation Chairman who would not have to follow the cortege of a colleague murdered by terrorists. For almost two years it looked as if I would have that comfort. It was not to be.'*²⁰ The Regional Commander of South Region described to us the reaction to the murders locally in these terms:

'The loss of a police officer, in this case two, is first and foremost a family tragedy, like all other murders and deaths that have occurred in the Province. It is impactful on the colleagues who work or had worked closely with the deceased, given that they were servants of the Crown going about their duties, in this case on neighbourhood policing work, endeavouring to protect the wider community and enhance community relations and affairs and to prevent crime. So there is an immediate and human and personal impact on those who are nearest and dearest, including work colleagues. Equally, it reinforces a determination by the organisation to protect others and to try to ensure that such callous murders in daylight on the street, the open street, are not repeated.'

4.48 The level of sympathy for the bereaved families was reflected in the estimated 10,000 people who signed the books of condolence in Lurgan RUC station in the three days following the murders. During an interview for a local newspaper the Sub-Divisional Commander of Lurgan commented on the public response, *'We*

¹⁷ *Belfast Telegraph* 16 June 1997

¹⁸ 'The CLMC will universally cease all operational hostilities as from 12 midnight on Thursday 13th October 1994.' CLMC Ceasefire Statement, 13 October 1994.

¹⁹ *The Irish News* 17 July 1997

²⁰ Speech to 1997 Police Federation of Northern Ireland Annual Conference cited at page 55, *Policing Northern Ireland: Conflict, legitimacy and reform*. Aogán Mulcahy. Willan Publishing. (2006).

have had 14 officers murdered in Lurgan before this and even those who have been at the station for a number of years and sadly seen all of these tragic events cannot recall such grief in Lurgan. [...] There is so much talk of reform or doing away with the RUC that in moments of despair we thought no one cares – even though surveys have shown the support that does exist.’ As to the mood in the Lurgan RUC station he said: ‘Naturally we’re devastated because we feel that so often we are stuck in the middle between two communities.’ He referred to how before the murders ‘we had begun to fear the worst’ and listed ‘rockets discovered in February’, ‘improvised grenades fired at my officers’ and the continual targeting of officers ‘as they patrol and as they leave the station’ by elements in the town as cause for concern. Referring to recent talk of a *de facto* ceasefire, he stated: ‘The community at large needs to realise it wouldn’t matter how long the peace train sat at Lurgan station there are elements in this town who would never want to join it. Sadly that’s the reality.’²¹

4.49 While the reaction to the murders was generally one of surprise, the police were well aware that PIRA was not on ceasefire. Two weeks before the shootings, a PIRA bomb had been found in a car on a country road and, a week before, a PIRA sniper had opened fire on an Army car.²² These murders, however, were committed right under the nose of the RUC in Lurgan and suspicion soon fell upon Colin Duffy. Once again Rosemary Nelson was brought into direct conflict with the RUC at a local level.

The criminal investigation

4.50 A murder incident room was established in Lurgan and a detective inspector was appointed to act as SIO. He had not been involved in earlier cases concerning Colin Duffy, having served in Lurgan for only six months.

4.51 Almost immediately a Portadown SB report stated: ‘*Collie DUFFY was one of the gunmen involved in the murder of the two RUC members in Church Walk, Lurgan on 16 6 97.*’

4.52 As in the case of the murder of John Lyness there were a number of witnesses to the murders. One witness (Witness D) came forward who claimed to have recognised Colin Duffy as one of the gunmen.

4.53 When interviewed by CID officers Witness D gave an account of events claiming to have recognised Colin Duffy and to have seen him shoot the Constables. Witness D claimed to have known Colin Duffy for more than ten years.

The arrest and questioning of Colin Duffy

4.54 Colin Duffy was arrested on 23 June 1997 and taken to the Holding Centre at Gough Barracks in Armagh for questioning.²³

4.55 He was interviewed twice during the first day of his detention: the first interview was conducted by officers from the Regional Crime Squad South; the second, by CID officers based in Lurgan one of whom had dealt with Colin Duffy when he had been arrested for the murder of John Lyness.

²¹ *Lurgan Mail* 26 June 1997

²² On 31 May 1997, PIRA was forced to abandon a bomb in the Poleglass area of Belfast; on 10 June 1997 PIRA admitted responsibility for a gun attack on a British Army patrol in Derry. *The Trouble With Guns: Republican Strategy and the Provisional IRA* Malachi O’Doherty (1998) Blackstaff Press Limited (Extract published on CAIN).

²³ The Holding Centres are discussed in more detail later in this report at Chapter 8.2.

4.56 The next day, 24 June 1997, he was interviewed on five occasions by the same two pairs of detectives. At an evening conference that day it was decided to introduce the evidence of Witness D, and two further interviews were then conducted during which this evidence was put to him. Colin Duffy did not reply to any questions.

4.57 Having spoken to Colin Duffy at the conclusion of the second day's interviews Rosemary Nelson raised a number of complaints. The Custody Sergeant made a note of these matters in the Custody Record. She said that she had not been allowed access to her client; that there had been irregularities in the recording of the interview notes of the last interview that day; and that during one of the first interviews that day, one of the officers had said to Colin Duffy: *'I'm sure your mother's proud of you and I'm sure your wife's proud of you, and I'm sure Rosemary is proud of you as well.'* These allegations became the subject of formal complaints by Rosemary Nelson and Colin Duffy. (See Chapter 17 for more detail.)

4.58 The following morning Rosemary Nelson wrote to the Custody Sergeant at the Holding Centre at Gough Barracks as follows:

'I refer to my above named client on whose behalf you will be aware I attended Gough Barracks last night.

I made a complaint regarding irregularities in interview tactics and denial of Legal access to my client. I further expressed concern that interviewing detectives sought to link me with acts of terrorism by indicating that I approved of same. A detailed statement regarding these complaints will be furnished to you in the very near future.

As a result of the foregoing I hereby formally request that I be permitted to be present during all future interviews of my client relating to the alleged murder of 2 police officers in Lurgan.

Please append this correspondence to my client's custody record.'

4.59 On 25 June 1997 Rosemary Nelson telephoned the Irish Government in Dublin, raising concerns about the arrest, detention and interviewing of Colin Duffy, and asking that the Irish Side raise her concerns with the British Side at the Anglo-Irish Secretariat.²⁴ They appear to have done so that day.

4.60 Rosemary Nelson was not permitted to attend the one interview which was conducted on 25 June 1997. Before the interview Colin Duffy made a statement of complaint in which he specified the details of the complaints raised by Rosemary Nelson the previous day as follows: i) disparaging comments made about Rosemary Nelson by interviewing detectives; ii) interviewed before a consultation with his solicitor despite having requested a solicitor; iii) irregularity in the recording of interview notes; iv) delay in obtaining access to Rosemary Nelson on her arrival at the police office that night. At the end of the interview he was permitted to see Rosemary Nelson and more complaints were made. Colin Duffy made a statement in which he alleged that officers had fabricated a conversation that he was alleged to have had with one of the officers during the previous evening.

4.61 Rosemary Nelson alleged in a statement of complaint dated 25 June 1997 that Colin Duffy was interviewed even though a request for a consultation with her had been made and that, during the interview, detectives were fabricating statements.

²⁴ The Anglo-Irish Secretariat was the body established as a result of the Anglo-Irish Agreement in 1985, through which liaison between the UK and Irish governments in respect of matters relating to Northern Ireland was formalised.

Her statement included this passage: *'I have never come across a police investigation conducted in so atrocious a manner and as a result would have to advise my client to remain silent unless I am allowed to be present during interviews.'*

4.62 These complaints were recorded on a complaints form by the Custody Sergeant. They were forwarded, as the procedure required, to the RUC Complaints and Discipline Department, Belfast, on 3 July 1997 and to the Sub-Divisional Commander, Armagh, on 4 July 1997. The complaints were directed at the four interviewing detectives, the senior officers who authorised interviews in the absence of a solicitor's conference, and the custody officers responsible for facilitating conferences between the solicitor and the terrorist suspect. A formal complaints procedure had been triggered against each of these officers who, in due course, would be interviewed under caution about the allegations by officers from the Complaints and Discipline Branch in Armagh. The complaints would be supervised by the Independent Commission for Police Complaints (ICPC) and a member of the commission would be present during the interviews.

The charging of Colin Duffy

4.63 On the afternoon of 25 June 1997 Colin Duffy was taken from Gough Barracks to Lurgan police station in order to be charged with the murders of the two police officers. Rosemary Nelson had asked to be present when Colin Duffy was charged but arrived at the police station shortly after the formal process was complete and this apparent refusal to wait for her to be present also became the subject of formal complaint.

4.64 Another aspect of these events drew comment. According to the Duty Inspector present at Lurgan RUC station that day, when Rosemary Nelson returned to the custody suite she was clearly upset that Colin Duffy had been charged in her absence and she cried at this point. He told us that he had never seen a solicitor react in this way. At the Inquiry hearings he said that he could not say anything further about Rosemary Nelson's reaction other than that *'the lady was crying, she was physically upset as a result of the charges process and her client was now away to the court'*.

4.65 One of the officers told us that after Colin Duffy was charged the atmosphere in the police station was solemn. He said that there *'was a grieving process taking place within the station, and shock as well'*. He said that, as far as everyone working in the police station was concerned, Colin Duffy was *'the person who pulled the trigger'*, a view which he believed was shared by much of the wider population of Lurgan.

4.66 Colin Duffy appeared in Craigavon Court later that day and was remanded in custody. Following the court hearing Rosemary Nelson delivered a statement before television and newspaper journalists. The statement was as follows:

'Mr. Duffy strenuously denies involvement in these matters. He was not there and knows nothing about it. You may be aware that in the recent past he successfully appealed a conviction which was based on totally discredited identification evidence.'

*We are firmly of the belief that a similar situation pertains to these matters and we sincerely hope that Mr Duffy need not languish in prison for 3½ years before his innocence is ultimately established.'*²⁵

4.67 An internal RUC memorandum dated 4 July 1997 concerning the complaints made by Rosemary Nelson and Colin Duffy noted:

²⁵ Quoted in *The Irish News* 26 June 1997

‘Colin Francis Duffy was detained at the Police office, Gough, by virtue of Section 14(1)(b) Prevention of Terrorism (TP) Act 1989, from 1618 hours on 23 6 97 to 1352 hours on 25 6 97 when he was transferred to Lurgan RUC Station where he was charged with the murder of two police Constables. He later appeared in court and was remanded in custody. After the Court hearing Mrs Nelson made a highly charged statement to the assembled news media the content of which relates to the allegations included in these four complaint files.’

4.68 The same memorandum contained the following comment: *‘During the period Duffy was detained at the Police Office, Gough he, supported by Mrs Nelson, used every method possible to disrupt the CID interviews and to record ammunition which can later be used at his trial.’*

4.69 Rosemary Nelson made a number of separate complaints in respect of matters occurring during Colin Duffy’s detention and questioning. During the months that followed she acted on behalf of a number of others whose complaints concerned the conduct of the investigation.

The media campaign

4.70 The murders received widespread coverage in the local press, on television and on radio, as did the arrest and charging of Colin Duffy. Much of the reporting focused on the tragedy which had befallen the families of the murdered Constables and the impact of the murders on the Peace Process. Reports with a different flavour, however, soon began to emerge, particularly in *The Irish News*.

4.71 On 27 June 1997, two days after Colin Duffy was charged, an article appeared in *The Irish News* under the headline *‘Lawyer’s fury at RUC over Duffy arrest’*. The article described how the main prosecution witness against Colin Duffy had been taken into protective custody the previous night but said that another unnamed witness, who claimed to have heard the shots and saw the two gunmen running towards him, had commented that no-one could have recognised the men because they were disguised. Rosemary Nelson was quoted as saying, *‘I can confirm that it was only after this time that any suggestion of eyewitness evidence was put to my client. The detective sergeant who gave evidence in court refused to divulge whether or not a statement had been made by the identifying witness.’* She was also said to have revealed that she had lodged two complaints with the RUC over what she termed *“irregularities in police interviewing tactics” and the alleged denial of legal access to her client when he was held in Gough Barracks’*. Representatives of the NGOs, CAJ and US Voice, whose Director, Jean Forest, Rosemary Nelson had contacted, were also reported to have *‘expressed concerns’* about the case.

4.72 According to Brendan Anderson, the journalist who wrote most of the articles in *The Irish News* about the case, Rosemary Nelson was an acquaintance of his who did from time to time suggest to him that he write articles *‘to try to keep the pressure on and to highlight points of law she was pursuing’*. He told us that on occasions she faxed him material when there was a development in the case. He said: *‘Rosemary would say [...] we need to do something on this, there is a good story, you know, whatever. It wasn’t sort of as if reporters were part of her campaign or anything like that. She was another person among the many who used journalists to, you know – in a way that she seen was right. Everyone uses journalists if they can and that was one way of pursuing – doing her job basically.’* He did not believe he was being manipulated. He said that he respected Rosemary Nelson *‘as a person of integrity and honesty’* and he felt that she genuinely believed her client was innocent.

4.73 The case also received regular coverage in the *Lurgan Mail*. Clint Aiken, a journalist employed by that newspaper at the time, recalled that in relation to this case *‘with Rosemary there would have been occasions where [...] she would have been*

in touch with my colleague'. He agreed that it *'would be fair to say'* that in relation to this case *'she was [...] more forthcoming [...] than solicitors generally tend to be'*. Just as Brendan Anderson had done, he had formed the impression that she believed that her client was innocent.

4.74 On 4 July 1997 a bail application was made at the High Court in Belfast. The application was unsuccessful but in the course of the hearing Counsel for Colin Duffy told the court that there were many witnesses who had seen Colin Duffy on the Kilwilkie Estate at the time of the murders; and that at the same time other witnesses had been with Witness D casting doubt on whether the murders could have been witnessed as alleged by the Crown. After the hearing Rosemary Nelson made the following statement to the press: *'Never, ever, have I come across a situation where such overwhelming numbers of witnesses have voluntarily come forward to offer not only an alibi for the defendant but also to call into question the credibility of the witness statement taken by the police. Lurgan, in general, is outraged.'* The statement was reported in *The Irish News* and the *Lurgan Mail*.²⁶

4.75 There was a further bail application at the High Court on 29 July 1997 and again bail was refused. Afterwards, both Rosemary Nelson and Paul Mageean of CAJ made statements to the press. In an article in *The Irish News* on the same day, Rosemary Nelson was quoted as saying, *'I trust that this matter will be dealt with expeditiously. The police have at least a dozen alibi statements given voluntarily on Mr. Duffy's behalf, including one that was taken in Scotland from a witness on holiday. It has come to our attention that police video recordings from the police station will confirm events as underlined by the witnesses who have attested that witness D could not have been there.'* The article also revealed that human rights groups had lobbied the Secretary of State for Northern Ireland, Mo Mowlam, who had asked to be kept informed of developments in the case.

A dangerous strategy

4.76 A solicitor from Derry told us:

'I remember that when Colin Duffy was charged in relation to the murder of two policemen in Lurgan, Rosemary Nelson again came to prominence. This was in 1997. I remember that Rosemary Nelson came out of Court in Lisburn following Colin Duffy being charged. Immediately, Rosemary Nelson was on television complaining about the charges and stating that Colin Duffy had been stitched up or framed. I remember at the time I thought this was unusual. I certainly would not have spoken to the cameras about the police in that way at that stage.'

4.77 Most of the solicitor's colleagues with whom he had discussed the matter agreed that her appearance outside the court after Colin Duffy was charged was *'not the wisest thing to do'*. The solicitor, who knew Rosemary Nelson and encountered her in court in Belfast from time to time, told us that he remembered her being on television on a number of occasions in June and July 1997. He considered it to be fairly common for a solicitor to appear in the media at the end of a case but it was unusual to appear at the very beginning of one saying, for example, *'this was a bad charge to be brought and this shouldn't have happened'*. He told us that at the time he had reservations about the wisdom of Rosemary Nelson's utterances about the Colin Duffy case in the media. He said *'in the climate at the time I didn't think it was wise to be so closely associated with Colin Duffy at that time outside a court arena in view of the amount of anger that had been generated within the Unionist community about the killings'*. He recognised that by these actions there was a risk created *'that certain people may have associated her with somebody who is accused of the killings and that she may have become a target if they could not get at the person they perceived had carried*

²⁶ *The Irish News* 5 July 1997 and *Lurgan Mail* 10 July 1997

out the killings'. He told us that the danger he perceived was heightened by the area in which she lived, which he described as not being a safe place for someone in her position to be working or living in. He was also worried that from a professional view she could have been open to censure by the trial judge or by the Law Society given that the case was *sub judice*. He recognised that she was annoyed by the case and he summed up her attitude as follows: *'I think she took the view that the police were out to get Colin Duffy and they would use any means to imprison him, and I think she took the view that they felt aggrieved at him being released on appeal from the first case, and if anything happened in that area they were going to blame him for it and they basically charged him without there being any evidence to charge him.'*

4.78 A similar view about the dangers of Rosemary Nelson having a profile as a campaigning lawyer was expressed by journalist Brendan Anderson. He said:

'It wouldn't really have mattered to the Nationalist or Republican community; they would have seen her as a fine lawyer who wasn't just interested in collecting a fee but would do her utmost to represent them. On the Loyalist Unionist side, they had seen that as an indication that she was maybe biased and maybe indeed some would even say that she must have been a Republican herself. This sort of perception did arise all too easily.'

He was aware that there had been other instances in relation to other solicitors who were perceived as being favourable to Republicans and this had resulted in them being threatened. During the course of the Inquiry we received evidence from a number of lawyers who experienced precisely this. We are clear that Rosemary Nelson did nothing wrong in adopting a high profile, but it inevitably placed her in greater danger.

More personal threats

4.79 In fact the dangers were brought home to Rosemary Nelson directly. On 7 July 1997 Rosemary Nelson spoke to Paul Mageean of CAJ about these and on the same day he recorded what she told him in a statement as follows:

'After the charging of Colin Duffy when it became public that I was acting for him there have been four death threats to my office and home.

1. A young girl at my office who was here on work experience received one. The caller said that we were nothing but IRA bastards and fuckers. He also said that he would "get her". (reference to me)

2. One caller asked to speak to me, and when he got through, he again asked for Rosemary Nelson and when I said, "speaking" he said, "you're dead IRA fucker" and hung up.

3. [Redacted], one of the secretaries, took this call. The caller said you are IRA bastards and you're going to get shot.

4. There was also a call to my house, which was taken by my son [redacted] who is ten. The caller asked to speak to his mother. When I came on they said "you're dead, you'll be shot".'

Further press coverage of the case

4.80 The Colin Duffy case received further press coverage in *The Irish News* during August 1997. On 9 August 1997 an article appeared under the headline *'Lawyer defends "wrongly accused"'*. It referred to how, in two previous bail applications, Colin Duffy's legal team had submitted that Colin Duffy was arrested on the word of a

witness who was 'unreliable' and 'of limited and low intellectual capacity'. It referred to a statement made by the campaigning English lawyer Gareth Peirce, during a visit to Maze Prison the previous day, who was quoted as saying, *'It is crystal clear that Mr Duffy is wrongly accused and it is equally crystal clear why. Every ingredient that has led to wrongful convictions in the past seems to be present in this case. But what is not clear is how long it will take before anyone of conscience steps in and puts a stop to it. I hope that will be immediate. There is a momentum to charging and prosecuting, and there needs to be an equal momentum in putting a wrongful prosecution into reverse.'*

4.81 In the same article Rosemary Nelson was quoted as saying she was 'very concerned' about an incident involving a Lurgan woman who lived near the scene of the murder and had called for an ambulance immediately after the shooting. She was reported as saying, *'They asked me if I was sure I did not know who had carried out the shooting. An English policeman left the interview room and the Irish policeman said, "do you know Colin Duffy?"'* On 19 August 1997 Rosemary Nelson made a formal complaint about the incident. A similar incident involving a local man was also subject to a complaint and formal investigation.

4.82 *The Irish News* published an article on 14 August 1997 in which reference was made to CAJ having requested the European Commission to use procedures reserved for emergency cases to secure the immediate release of Colin Duffy. Mr Mageean is quoted extensively in an interview detailing the background to Colin Duffy's previous cases. When asked about these types of articles in the Inquiry hearings he told us that *'one of the appropriate responses to this sort of incident was to try to ventilate the matter in the press. So I think we did that in relation to the Duffy matter'* and that *'this was our sort of modus operandi as a human rights campaigning organisation'*. Rosemary Nelson was quoted in the article: *'It has been said in court that if forensic evidence against Colin Duffy proves to be negative, the only evidence will be that of Witness D. I would point out that charges against Colin Duffy's brother were dropped recently and he was released after five or six months in jail. There are a considerable number of matters which I have raised with the DPP [Director of Public Prosecutions] and which have caused me grave concerns.'*

4.83 Colin Duffy himself wrote to *The Irish News* and his letter was published on 20 August 1997. He said: *'I have spent substantial periods of time in custody since I was a teenager and no charge against me has ever been sustained. Even despite the fact that my innocence has always been ultimately established, there appears to be no redress inbuilt within the system. I feel my case highlights all that is wrong with the current system and gives rise to serious questions regarding the behaviour of the RUC which must be addressed.'* On 28 August 1997 an article made reference to how Jane Winter of BIRW had consulted with the UN about irregularities in the case. Rosemary Nelson was quoted as saying, *'It is clear that this is a one-witness case and police are in possession of a volume of evidence which points to Mr. Duffy's innocence and they appear to be reluctant to deal with the evidence accordingly.'*

The observations of members of Rosemary Nelson's staff

4.84 In the days following Colin Duffy's arrest, a number of witnesses came forward to say that they had seen him at times and places incompatible with his alleged presence at the murder scene. Rosemary Nelson gathered witness statements that purported to provide him with an alibi and collected evidence that would discredit Witness D.

4.85 One of Rosemary Nelson's assistant solicitors told us that he had interviewed some of these witnesses. He told us that he had been greatly affected by the murders of the two Constables and had signed one of the six books of condolence at the Lurgan RUC station. In his view *'whoever had defended Colin Duffy was going to be*

tainted' in the opinion of 'one side of the community, perhaps'. He remembered that the case involved 'constant confrontation with the police even though we weren't doing anything wrong'. He said: 'Confrontation arose when we would take witnesses to the police station and we were overburdening them, as they saw it, with witnesses at one particular stage without any forewarning.' He said that he recognised that ordinarily 'you had to stand up for your client' but in this case 'it was a constant sort of battle'.

4.86 He described how he attended the police station with witnesses who wished to volunteer witness statements to the police and how, on one occasion, he had been told by an officer that the witness statements that he and his clients sought to submit were described as 'useless' by the police because they had not been presented on the *pro forma* police witness statement form. He also complained that a number of juvenile witnesses who had attended to give statements had been made to wait in what he interpreted as an apparent attempt to 'deter' them from giving voluntary statements. He wrote a letter of complaint regarding these incidents on 2 July 1997. His letter concluded: 'I would like it registered that I feel these delays were of an unacceptable and purely obstructive nature used solely to discourage further witnesses coming forward to provide statements accompanied by their Solicitor. The Superintendent made reference to me that he felt that it was unusual that a Solicitor would be in attendance at all these interviews.' According to a later RUC report, once contact was made with the parents of the juveniles, the parents of three of the juveniles stated they did not want them involved in the investigation.

4.87 The same assistant solicitor observed that Rosemary Nelson was convinced that Colin Duffy was not involved in the murders. He told us that she 'would have been personally driven to, you know, to defend her client to the last – you know, there would have been no question of relenting to any degree. She had, you know, just a drive, a sensational drive to answer every demand of her in that regard. It was her practice after all as well. She had the vested interest.' He observed that the police were antagonised by these actions, although he said this was not the point of the exercise.

4.88 There was some evidence that the police themselves felt under pressure. The same assistant solicitor was present when the police interviewed a man who was alleged to have intimidated Witness D. He described an exchange with the officer as follows:

I remember that I was in a room with two police officers and a wee fellow who I was representing. One of the officers was trying to connect my client to Colin Duffy in a very tenuous way and I said that I felt that the line of questioning was tenuous. The officer reacted very badly and cursed and shouted at me. This was amazing, particularly given that I did not think that I was extraordinarily out of line with my remark. Maybe I just interrupted his flow. [...] I remember thinking that this was crazy. It was like being in South Africa and it really wasn't for me.²⁷

An observation by Colin Duffy

4.89 Colin Duffy also provided us with a glimpse of the difficulties experienced by the officers who were involved in the investigation of the murders. In his witness statement to the Inquiry he told us that the RUC had launched a campaign to get evidence against him and 'they trailed round the Kikwilkie Estate looking for evidence'. He said that, in response, his family and friends followed the police around and each time the police went to someone's front door, his family 'would go up behind them to make sure they were not putting pressure on people to give false evidence'. Regardless

²⁷ The incident is also referred to contemporaneously in a letter from Jane Winter: 'The firm also asked to be present during the RUC interviews and [redacted] was permitted to be present. He made a complaint about one of the interviewing detectives shouting at his client and pointing at him aggressively.'

of the intent of those who did this, we have no doubt that the police officers would have regarded this as an interference with their work and as making their task more difficult.

The campaign on behalf of Colin Duffy

4.90 As in the Lyness case, Rosemary Nelson now worked actively to generate interest in the case against Colin Duffy. In early July 1997 she met Mo Mowlam in Portadown when the Secretary of State attempted to broker an agreement on the Garvaghy Road issue, and a letter of 14 July 1997 from Mo Mowlam to Rosemary Nelson indicates that they had spoken about the Colin Duffy case. The Secretary of State wrote: *'We spoke about the case of Colin Duffy and I undertook to write to the Chief Constable about it. I have now done so and also copied Jane Winter's papers to [redacted], the Director of Public Prosecutions. I have asked to be kept informed of developments in this case.'* Rosemary Nelson also wrote to a number of NGOs and to the Irish Government. As will be seen, her lobbying was successful in that it generated further interest in Colin Duffy's case.

The involvement of British Irish Rights Watch

4.91 One of the first people with whom Rosemary Nelson made contact was Jane Winter of BIRW. She told us that Rosemary Nelson seemed very certain that Colin Duffy had not been involved in the murders and she was afraid that there was going to be a miscarriage of justice. Jane Winter said that she shared Rosemary Nelson's view that the RUC did not believe Colin Duffy was innocent of the John Lyness murder. She said that Rosemary Nelson had *'so many reasons for why she felt that Colin Duffy had not been involved'* in the double murder. Having considered the papers provided by Rosemary Nelson, Jane Winter concluded that there were a number of issues to be concerned about, in particular the inherent unreliability of the main identification witness and the fact that the eye-witness accounts of the stature of the perpetrators did not match that of Colin Duffy.

4.92 She told us that it was not unusual for BIRW to receive complaints about miscarriages of justice. Ordinarily these submissions would be compiled by prisoners who had already been convicted or sometimes from a lawyer who thought there might be something going wrong with the case from the beginning. The only evidence in support of these contentions would be a statement from the accused. Unusually, Rosemary Nelson was approaching BIRW at a very early stage in the case and was able to provide evidence in the form of witness statements that purported to discredit the police case against her client. They discussed the credibility of the witnesses who had come forward in support of Colin Duffy and Jane Winter told us that she was prepared to help because *'we knew, because of the way that the system worked in Northern Ireland, that he [i.e. Colin Duffy] was likely to spend many, many, many months on remand, but in our judgment the case would probably collapse'*. She told us that she didn't feel that Rosemary Nelson was doing anything other than her professional best to defend her client's interests. She told us that she *'had no reason to think that Rosemary Nelson would lie to me about any of this. She was as honest as the day is long and a very transparent person, and I had absolutely no reason to think that she would be making any of this up'*. She said that Rosemary Nelson came across as *'alarmed and disturbed and very concerned that one of her clients was being fitted up, if I can use the vernacular, but I am not sure that she was angry. I think she was on a determined professional trajectory to try and stop this from happening, if she could.'*

4.93 Jane Winter suggested that BIRW should submit a report to the UN and she asked Rosemary Nelson to give her *'chapter and verse'* as to what had happened. On 3 July 1997, the day before Colin Duffy's bail hearing was scheduled to take place, she submitted an application with supporting material to the UN Working Group on Arbitrary Detention requesting urgent intervention in the case of Colin Duffy.

The supporting material included a tabulated summary of 23 witness statements containing evidence in support of Colin Duffy's innocence and a document entitled 'Details of Colin Duffy's Arrest and Interrogation' which summarised the various complaints made in relation to this aspect of the murder investigation. On the same day she wrote to the Secretary of State enclosing this material. In her letter she expressed hope that *'you will do all in your power to have this matter scrutinised at the highest level'*. Jane Winter agreed that the letter to Mo Mowlam was sent *'more in hope than expectation'*.

4.94 No response was ever received from the UN Working Group on Arbitrary Detention but on 14 July 1997 she received a reply from Mo Mowlam's office advising that it was not appropriate for the Secretary of State to comment on the case as it was currently the subject of criminal proceedings. She was told that a copy of her letter had been sent to the Chief Constable and the Director of Prosecutions for Northern Ireland (DPPNI) *'for whatever action they consider necessary'* and *'while the matter rests with them, I have asked that the Secretary of State be kept in touch with developments on this'*. Jane Winter told us that she wrote directly to the DPPNI about the case. Although we have not seen this correspondence, reference is made to a letter sent 'last June' in a letter from BIRW to the DPPNI of 1 December 1997.

4.95 The NIO Senior Director Belfast could not recall whether he had seen Jane Winter's letter of 3 July 1997 but he told us that if the Secretary of State had asked him about it he *'would have said, "This is something you want to pass on to Ronnie Flanagan because it is a police operational decision to arrest him [i.e. Colin Duffy]. The safe guard is a decision by the Director of Public Prosecutions. You are not involved. Don't get involved"'*. Commenting on the Secretary of State's reply to this letter and to the letter of the same date addressed directly to Rosemary Nelson, he said: *'What Ministers do very well is give the appearance of activity when actually nothing has happened.'*

Representations from the USA

4.96 Rosemary Nelson was in contact with Jean Forest of US Voice who, according to Edmund Lynch, was leading the campaign in the USA. On 7 and 10 July 1997 she wrote letters to the Secretary of State, Mo Mowlam, and to the Home Secretary respectively regarding allegations of serious misconduct by police officers in relation to Colin Duffy. In each, she said:

'I pull no punches with you when I tell you that after years of dealing with the situation of Colin Duffy, I say, without hesitation, that the RUC in Lurgan [sic] have targeted him since 1990 without let up. This also applies to his solicitor, Rosemary Nelson, whom they have threatened with the same fate as Patrick Finucane. Having failed to murder Colin Duffy in 1990, this is the second miscarriage of justice imprisonment directed at him and his family within three years. I am asking you to please make official inquiries into the serious police misconduct in this situation.'

A follow-up letter sent later in the month mentioned that Rosemary Nelson had presented over 20 depositions attesting to Colin Duffy being somewhere else at the time of the murder of the two police officers and that there were other testimonies confirming the instability of Witness D who the *'community believes'* *'is being used by the police for their own ends'*. The letter concluded by stating that *'Colin Duffy is clearly a target and this bogus arrest which is creating great suffering for his pregnant wife, [redacted], and his child, is the latest manifestation of this officially sanctioned conspiracy.'*

Amnesty International

4.97 Amnesty International was also contacted by Rosemary Nelson. The Secretary General wrote on 21 August 1997 to both the Secretary of State and the DPPNI. The letters, after referring to the case of Lyness as a miscarriage of justice, rehearsed the details of the complaints made by Rosemary Nelson about the interrogation, charging and detention of Colin Duffy in June 1997, observing that they highlighted *'the problems associated with the longstanding practice in Northern Ireland of denying people detained under emergency legislation the right to have counsel present during interrogation'*. It expressed concerns about the alleged weakness of the identification evidence against Colin Duffy. A very similar letter was sent to Sir Ronnie Flanagan on 18 September 1997.

A letter from Chris Mullin MP

4.98 Rosemary Nelson engaged the support of politicians on behalf of Colin Duffy. On 4 September 1997 Chris Mullin MP wrote to the Secretary of State about the Colin Duffy case, relying on material which was enclosed from Rosemary Nelson. In his letter he said, *'It appears to indicate that those responsible for this investigation have little or no interest in discovering who is responsible for the murder of their colleagues, but are instead wholly pre-occupied with avenging themselves on Mr. Duffy for previously escaping their clutches. [...] It appears to be a classic illustration of a deep sickness within the police and judicial system of Northern Ireland.'* The letter was copied to Lord Chief Justice Carswell, Sir Ronnie Flanagan, Seamus Mallon MP and David Trimble MP.

Irish Government

4.99 Rosemary Nelson made use of her contacts in the Irish Government. As a result, Irish civil servants, trusting Rosemary Nelson's judgment, made representations to the UK Government about aspects of the case, the tenor of which was conveyed to the RUC. A note of 28 July 1997 is a record of a telephone conversation between Rosemary Nelson and an official within the DFA. Points raised included a claim that there were a dozen witness statements which provided Colin Duffy with an alibi for the killing and another dozen statements having been taken which placed Witness D away from the immediate scene of the murders. Also that Rosemary Nelson had spoken to the family of Witness D who said that Witness D was a *'psychiatric case'*. It recorded that Rosemary Nelson had raised the case with the Secretary of State in person who had confirmed in writing that she had asked the Chief Constable and the DPPNI to keep her apprised of developments.

4.100 Matters raised through the Anglo-Irish Secretariat were passed on to the RUC. A letter of 2 September 1997 from the Security Policy and Operations Division of the NIO to RUC Command Secretariat²⁸ was, for example, headed *'MATTER RAISED BY THE IRISH SIDE: COLIN DUFFY'*. In this it was said that Rosemary Nelson *"strenuously" denies any responsibility of Duffy's involvement, and has expressed concern about the reliability of [Witness D]. Ms Nelson has also indicated that Mr Duffy is unhappy about some aspects of his interrogation alleging that not all of the interviewing was recorded, as requested by him, and some taunting went on, eg he was allegedly told by the police that they were sure that Rosemary (his solicitor) and wife would be happy with "what he had done". Ms Nelson has also complained to the Irish that she was not present when Colin Duffy was charged. I am under some pressure to respond to [sic] on this matter raised and would be grateful for your urgent advice on how to reply to the Irish side.'*

²⁸The position of Command Secretariat in relation to the command structure of the RUC is illustrated in Appendix A. The organisation of the unit and its functions are described at Chapter 18.5.

4.101 NGOs also made contact with the Irish Government with regard to the case and their representations were passed through the Anglo-Irish Secretariat to the British Side. A note which stated: *'The Committee on the Administration of Justice continues to have the deepest concerns about this case'* and *'Amnesty International has also expressed its concerns regarding the safety of the charges against, and the detainment of, Mr Duffy'* was sent by an official within Police Division²⁹ of the NIO to RUC Command Secretariat on 12 September 1997.³⁰

Responses to the non-governmental organisation involvement

4.102 There were, of course, limits to what the executive arm of government should do in Northern Ireland in relation to the conduct of those proceedings. Generally speaking the response of the DPPNI, the RUC and the Secretary of State to all the correspondence and representations was not to comment as the matter was currently under investigation and it would be inappropriate for comment to be made. Within the RUC, answers to questions about the murder investigation were coordinated by the RUC Command Secretariat which sought advice from the Assistant Chief Constable (Complaints and Discipline), the Assistant Chief Constable (Crime) and the Head of CID (South Region).³¹

The Royal Ulster Constabulary report to the Director of Public Prosecutions for Northern Ireland

4.103 On 10 September 1997, the SIO submitted his report to the DPPNI regarding the case against Colin Duffy. He recommended that Colin Duffy be prosecuted for the murders.

4.104 The report referred to Rosemary Nelson's conduct of Colin Duffy's defence. The officer commented:

'Police enquiries into the double murder are ongoing and from the outset it has been evident that there is considerable fear within the Community of becoming involved in the investigation. There has also been a campaign of intimidation and disinformation waged by associates of Duffy in an attempt to gain support for his early release. It is against that background that this file, containing the evidence gathered to date, is now produced.'

4.105 He also said:

'The charging of Colin Duffy with the murders of the 2 Constables brought about a flurry of activity from Mrs Nelson's office with the production or naming of a number of witnesses, some of which police were already aware of. The majority of these witnesses were interviewed in the presence of solicitors from Mrs Nelson's office. The nature of the evidence produced was two fold. Firstly witnesses who claimed that Witness "D" could not have been in Church Walk and was lying and secondly witnesses who claimed that Colin Duffy was in Kilwilke [sic] Housing Estate at the time of the shooting and could not therefore have been involved in the murders.'

4.106 There is also reference to the campaigns in the media and by NGOs:

'A campaign of considerable pressure and lobbying of various human rights agencies has been engaged on Duffy's behalf by Mrs Nelson. This has included the constant

²⁹ For the structure of Police Division and its position in relation to the overall structure of the NIO see Appendices G and H.

³⁰ This note also referred to the fact that Chris Mullin MP had written to the Secretary of State about the case.

³¹ See Appendix A

submission of letters of complaint to RUC, DPP and any other department which she feels will take an interest in the case. Whilst not criticising her actions, some of these [sic] correspondence have boarded [sic] on the ridiculous. [...] In my opinion Mrs Nelson's behaviour has been questionable and is not consistent with that which one would associate with a member of the legal profession. Her constant requests, demands and allegations have somewhat hindered an investigation which was already very difficult.'

4.107 We compared the SIO's comments regarding Rosemary Nelson's professional behaviour with three items of intelligence that were recorded by Lurgan SB officers during the period of Colin Duffy's detention. The first of these was submitted in August 1997 and stated of Witness D that '*ROSEMARY NELSON is using [redacted] as an intermediary to contact [Witness D], a witness for the prosecution of COLIN DUFFY, in the murder of two RUC Constables. NELSON is very discreet about this matter and is concerned that she may be "found out" trying to contact this witness.*' Another report filed by Lurgan SB in September 1997 stated that Rosemary Nelson had taken a statement from a witness '*discrediting the character of [Witness D]*' and that she had '*pressurised [the witness] into making the statement by threatening to put his father, [redacted], into the witness box during the trial of COLIN DUFFY*'.

4.108 A further Lurgan SB report in September 1997 described part of an overheard conversation:

"Everybody thinks you're just an ordinary solicitor." NELSON laughed and replied, "I am, sure", giving [redacted] the impression she was very close to PIRA.

[SB] COMMENT

ROSEMARY NELSON is a Solicitor who represents most of the PIRA members in the Greater Craigavon area and is known to be sympathetic to the Republican cause.'

4.109 These reports could be taken to imply misbehaviour on the part of Rosemary Nelson. It was submitted by leading Counsel on behalf of the Police Service of Northern Ireland (PSNI), for example, that a defendant's lawyer was not entitled, without permission of the prosecution, to approach a prosecution witness whose statement had been served as part of a prosecution case. The DPPNI confirmed to the Inquiry that this was not the case. The rules in relation to this are as elsewhere in the UK: there is no property in a witness. In fact, we considered each of the reports to be ambiguous. The information they convey might easily be taken to mean that Rosemary Nelson was, or was considered, an exceptionally diligent solicitor. Whatever the true meaning of what was said, it was not in our view, capable of confident interpretation. The intelligence should have been regarded as 'raw' intelligence and endorsed accordingly.

4.110 The SIO who had investigated the murders of the two Constables told us that he was unaware of any intelligence suggesting that Rosemary Nelson was acting either unlawfully or improperly as a solicitor, but he appears to have formed the latter view in any event, at least with respect to her work in this murder investigation. He said that he believed personally that Rosemary Nelson '*had taken on a remit [in the murder investigation] which wasn't proper for a solicitor*', although he claimed not to have seen anything that would suggest that she was '*facilitating a terrorist organisation to go about their business*'.

4.111 The SIO explained to us that the reference in his report to the DPPNI about Rosemary Nelson's '*questionable behaviour*' referred in particular, to approaches made to prosecution witnesses by Rosemary Nelson and her staff. He told us:

'There were witnesses who the police had interviewed who were then brought forward by Mrs Nelson's office with information that had no bearing on the statement that had initially been recorded. The information was simply inconsistent. I also recall an occasion where four juveniles were brought into the police station to provide alibi statements. I wanted to notify their parents that they were there, because they were only 14 years old. This was strenuously objected to by the attending solicitor. Ultimately, three of the parents did not want their children to be involved. I would have thought a solicitor would have contacted the children's parents before putting them forward as an alibi. I was happy to record their statements but strongly believed that their parents should be present.'

We consider this last point is a fair one, but the comments about Rosemary Nelson in the report show clearly the frustration and hostility that this officer felt towards her and, as we shall discuss in Chapter 10, they reflected sentiments that were held in common with a number of officers in South Region, particularly among those based in Lurgan.

The decision of the Director of Public Prosecutions for Northern Ireland: no prosecution

4.112 On 2 October 1997 the DPPNI issued the following direction in respect of the case: *'I direct no prosecution. Following careful consideration of all the facts and information reported, it is considered that the evidence is insufficient to afford a reasonable prospect of a conviction. The charges against Colin Duffy will be withdrawn.'* Colin Duffy was released at a hearing at Lisburn courthouse the next day.

The immediate aftermath

4.113 The release of Colin Duffy received widespread media attention on 3 October 1997. All the major papers of Northern Ireland published front page articles about the case. In a lengthy statement from Rosemary Nelson published in *The Irish News* she was quoted as saying, *'In any democracy the right to liberty is sacrosanct. Mr Duffy feels frustrated and angry that on two occasions this right has been denied. From his arrest and during his detention in Gough Barracks, both he and I complained about the manner of the police investigation.'* The statement concludes: *'I have very firm instructions to seek compensation in the civil courts and a case is currently pending in Europe. This matter has caused the gravest concern in legal circles, amongst international civil rights bodies [sic] public representatives.'* An extract from this statement was also published in the *News Letter* and later in the *Lurgan Mail*.

4.114 An editorial published in *The Irish News* on 3 October 1997 was entitled *'Duffy scandal exposes law'*. It began as follows: *'The circumstances surrounding the two separate prosecutions brought against Colin Duffy over the last four years are deeply alarming.'* There followed an account of the two murder cases which warranted, it was suggested, the following action: *'In the first place, Mr Duffy is entitled to receive a significant compensation payment without further delay. Secondly, the authorities should explain how he came to be the victim of two different defective prosecutions within such a short space of time. If appropriate answers are not forthcoming in the near future, Mo Mowlam will have little option other than to announce a full public inquiry into the affair.'*

4.115 Colin Duffy himself gave credit to Rosemary Nelson for her efforts in the case. An article published in the *Belfast Telegraph* on 3 October 1997 described how, when he was asked which living person he most admired, *'the Lurgan Republican forsook the more predictable answers of mother, father and Nelson Mandela. Instead his response was "my solicitor"'*. The following day *The Irish News* included an article carrying an interview with Colin Duffy. He was quoted as saying, *'Under no circumstances had I any part whatever to play in the killing of these two RUC men. You don't need to have*

played a part for them to treat you this way. [...] I was fortunate that there was a good squad of people here, seasoned from the last case. And my solicitor, Rosemary Nelson, was unbelievable, she is brilliant.'

4.116 Local police officers continued to regard the identification of Colin Duffy as one of the killers as reliable, notwithstanding the decision of the DPPNI that there was insufficient evidence on which to found a prosecution. The SIO told us:

'I believed and continue to believe the account given by Witness D to the police for several reasons. First, the statement is in clear and unequivocal terms. It contained [sic] detailed information which only someone who had actually been present could have known. Secondly, this is a recognition case as distinct from an identification case. Thirdly, the contradictory evidence was flawed and in my opinion fabricated. Fourthly, there are no medical issues whereby the evidence might be undermined.'

4.117 The Duty Inspector at Lurgan RUC station at the time told us that as far as everyone at the station was concerned Colin Duffy was the *'person who pulled the trigger'*. The CID officers involved in the investigation were also satisfied that Colin Duffy was responsible. One of the officers who interviewed Colin Duffy in the Holding Centre at Gough Barracks described how all the officers working on the case were in no doubt that Colin Duffy was responsible for the murders of the two police officers in Lurgan. He also believed that *'there was a hindrance to our investigation'* and if witnesses had been interviewed on their own, as opposed to with legal representation, Colin Duffy would have been prosecuted for the murders.

4.118 We have no doubt that the discharge of Colin Duffy on 3 October 1997 at the direction of the DPPNI represented a bitter disappointment to local officers whose colleagues had been murdered in cold blood. We also believe that some of them held Rosemary Nelson responsible for what they saw as a denial of justice.

4.119 We were told that the media coverage of the decision not to prosecute Colin Duffy made Rosemary Nelson very unpopular at a time when paramilitaries remained active in mid-Ulster.

Further incidents involving Colin Duffy and a fresh complaint

4.120 Colin Duffy was again arrested on 9 October 1997 as a result of an altercation with a member of the Royal Irish Regiment, and again on 17 November 1997. On the latter occasion he was accused of causing grievous bodily harm and actual bodily harm to local police officers, offences of which he was eventually convicted.³² The incident occurred when police officers stopped a car in which Colin Duffy was a passenger in Edward Street, Lurgan, in the early hours of the morning. When he got out of the car he attacked the officers injuring several of them. One of the officers, a witness in the John Lyness murder case, was badly hurt. Colin Duffy was arrested later that day but while he was in custody Rosemary Nelson arranged for the other occupants who were in the car with Colin Duffy to attend the police station in order to make witness statements. They had undoubtedly been present at the scene of the crime and had witnessed the events at close quarters. Nonetheless, a decision was made within the police station that no statements would be taken that evening. Instead, Colin Duffy was charged and the following morning he was taken before Lisburn Magistrates' Court.

³² Colin Duffy was convicted of assault occasioning actual bodily harm and common assault on 1 April 1999 and was sentenced to a total of 4 months imprisonment. On appeal the prison sentence was suspended for two years.

4.121 Within days Rosemary Nelson had lodged a formal complaint on Colin Duffy's behalf. She also contacted the Irish Government. As a result of the information she and others provided, a message was sent from Dublin to the Irish Side of the Anglo-Irish Secretariat in Belfast advising:

'We are concerned that there is strong evidence of a pattern of harassment by the police against Mr. Duffy and other leading republican figures. This is the third time in five months that Duffy has been arrested. We have also had recent reports of general harassment in nationalist estates in Lurgan and Portadown.

While last night's disturbances in Lurgan and Armagh cannot be condoned under any circumstances, the feeling among local moderate nationalists is that these actions reflect local anger and frustration over Monday morning's incident. [...]

Grateful if this matter could be raised in the strongest possible terms. You should also highlight our concern at possible further disturbances in the Lurgan area if the perception of police harassment and unfair treatment is not seriously addressed.'

4.122 In *The Irish News* on 18 November 1997, Rosemary Nelson was quoted as saying that Colin Duffy was a victim of *'unprovoked gratuitous violence. Mr Duffy has cause for concern in the light of the harassment that he has been suffering.'* The article also said that *'because of recent incidents involving the security forces, she [i.e. Rosemary Nelson] was to seek an injunction'*. *The Irish News* also reported that a complaint had been lodged by Rosemary Nelson regarding the failure of the RUC to take statements from eye-witnesses.

4.123 Colin Duffy had been remanded in custody when he appeared at the Magistrates' Court but on appeal was granted bail subject to stringent conditions. On 20 November 1997 Rosemary Nelson provided the Irish Department of Foreign Affairs (DFA) with the details. Again the information was passed to the Irish Side of the Anglo-Irish Secretariat in Belfast. A note disclosed to the Inquiry expresses concern that *'while it is appreciated that the setting of bail conditions is a matter for the Courts, they are influenced by the prosecution's views on this issue. In view of the legitimate concerns as to Duffy's personal safety, and of the serious doubts which exist surrounding the basis for the charges against him, we would ask that strong representations be made to the British side to, at the very least, support a relaxation of the bail conditions imposed.'*

4.124 The issue was duly raised and subsequent notes indicate that the Chief Constable was consulted. On 21 November 1997, the Assistant Chief Constable (South Region) sent a single-page memorandum to the Chief Constable enclosing two reports about the incident (also dated 21 November 1997). The first of the enclosed reports was produced by the Lurgan Sub-Divisional Commander for his Divisional Commander. It comprised a detailed description of the incident together with two appendices setting out the injuries sustained by the individual police officers and other incidents that month. It contained the following: *'They (PIRA) saw the charging/remand of Duffy as an excuse to gain maximum publicity coverage in relation to their ongoing campaign of alleged harassment of Nationalists/Republicans, by Security Forces in general.'* It concluded:

'As a result of Duffy's actions, nine police officers were injured – one Constable [redacted] sustained in my opinion Grievous Harm this being a combination of both physical and mental injury.

He and two others remain on Sick Leave, one having had a tooth knocked out and bucal injury, the other losing a considerable amount of [redacted] head hair.

Despite Rosemary Nelson's PR machine going into overdrive in relation to the "ongoing harassment" of Colin Duffy, we must not lose sight of the fact that all officers involved carried out sterling work in the face of overwhelming odds.'

4.125 The second report, a shorter document of only two pages, was produced by the Divisional Commander of J Division³³ and sent to the Assistant Chief Constable (South Region). It stated:

'The history, background and activities of Colin Duffy are well known and documented.

Since his recent release from Custody on murder charges involving our 2 colleagues in Lurgan he has been pro-active, provocative and indeed confrontational in both Lurgan and Portadown, ably supported by a vociferous Solicitor, Mrs Rosemary Nelson. [...]

The security threat in Lurgan is high and is 3 fold, namely – PIRA, CIRA [Continuity Irish Republican Army] and INLA [Irish National Liberation Army].

Command responsibility in the light of intelligence and the need to provide an effective Police service is good planning, briefing-de-briefing with common sense and sensitivity being the watchword.

Clearly there is a strategy by Colin Duffy and his associates to counteract this and maintain a propaganda war against the Security Forces.

I am presently with the SDC [Sub-Divisional Commander], Lurgan, SB and CID looking at ways in which we as Police, supported by Military, can monitor Colin Duffy and his associates without being drawn into incidents which are controversial.

However, it is difficult to monitor and restrain an individual so determined, belligerent and violent as the said person.

In the final analysis I propose to continue with the present patrolling policy in the light of present SB intelligence in support of the wider community, providing the necessary leadership of officers under my command and the maintenance of morale in the Division, particularly Lurgan Sub Division, which has suffered so much over the years through terrorism.

In conclusion it is interesting to note that Police have had no complaints from the greater general public, community leaders and public representatives in respect of the Security Force profile or actions in Lurgan Sub Division in recent weeks.'

4.126 In due course, files concerning each of the two incidents, of 9 October and 17 November 1997, were submitted to the DPPNI. A comment on the file, dated 13 February 1998, relating to the attack on the police officers illustrates the degree to which Rosemary Nelson was associated with the frustration felt in respect of Colin Duffy. The reporting officer noted: *'Rosemary Nelson has orchestrated a campaign of alleged harassment by the security forces on behalf of Colin Duffy and further has contrived to use the legal system and the Courts specifically in order to minimise any control mechanisms the Court can impose on Duffy.'*³⁴ Colin Duffy was referred to in the report: *'He is sourced as I/C Lurgan PIRA.'* There is also a reference in the report

³³ The RUC was organised into three regions: Belfast, North and South. South Region was divided into 'Divisions' G, H, J and K. See Appendices B and L.

³⁴ Police Report to the DPPNI 13 February 1998

to how *'house-to-house enquiries in the area of the affray reveals that potential witnesses had already been "approached by persons unknown" with a view to providing statements about the event to Rosemary Nelson, Solicitor'*.

Further Special Branch reporting

4.127 In October 1997 an added strand of SB reporting began which linked Rosemary Nelson with Colin Duffy. For example, regarding the suggestion that Rosemary Nelson had orchestrated a campaign, a Lurgan SB report in October 1997 stated: *'[Redacted] (USA) has invited COLIN DUFFY and ROSEMARY NELSON to take part in a live radio/phone programme which reaches an extended Irish community in New York, New Jersey and Connecticut on Saturday 11 October 1997, to express their views on DUFFY'S detention in the Maze Prison.'* A Lurgan SB report in November 1997 stated: *'It is believed that ROSEMARY NELSON is making plans for COLIN DUFFY to take part in a Channel 4 documentary which will investigate police harassment of Republicans in the Lurgan area.'* A Lurgan SB report in December 1997 stated that *'the Channel 4 documentary programme "Dispatches" is currently interviewing well known Republicans in the Lurgan area in relation to a forthcoming programme about alleged Security Force harassment. [...] COLIN DUFFY was recently interviewed in ROSEMARY NELSON'S office.'*

4.128 An SB report in November 1997 stated: *'Republicans have been informing residents in Edward Street, where a disturbance between Police and COLIN DUFFY and his friends took place approximately 2 weeks ago, not to make any statements to the RUC but only to ROSEMARY NELSON or her staff.'*

4.129 A Lurgan SB report in November 1997 stated: *'COLIN DUFFY and his Solicitor, ROSEMARY NELSON have a very close relationship which is more than a client/brief relationship. Both are trying to keep this relationship secret due to the fact that DUFFY'S wife is pregnant and his high profile at being released from prison.'*

4.130 A Lurgan SB report in November 1997 stated that *'COLIN DUFFY and ROSEMARY NELSON both travelled to Dublin on Wednesday 12 November 1997 and returned the following day.'* A Lurgan SB report in February 1998 stated: *'COLIN DUFFY and ROSEMARY NELSON continue to have a close intimate relationship. They meet discreetly almost daily both driving their own vehicles to pre-planned secret locations in the Greater Craigavon area.'*

4.131 Events in Lurgan that month prompted further reporting. On 17 February 1998 Kevin Conway was abducted from his home on the Kilwilkie Estate. His body was found two days later in a disused farmhouse at Aghalee in County Antrim. He had been shot. Within days SB had received intelligence that *'COLIN DUFFY organised and participated in the abduction and murder'*. The same report indicated that *'CONWAY was working for PIRA in the importation/distribution of cigarettes'* and had *'recently double crossed DUFFY over profits gained from these ventures'*.

4.132 On 21 February 1998 a man was arrested in connection with the Kevin Conway murder and taken to Castlereagh Holding Centre. He asked to be represented by Rosemary Nelson. He was held until 27 February 1998 whereupon he was released without charge. During his detention he was interviewed several times a day by CID officers from Lurgan and from Portadown. This client, who gave evidence to the Inquiry, made allegations that interviewing officers had made abusive and threatening comments concerning Rosemary Nelson during the course of his detention. We shall return to these later in this Report (see Chapter 8.4). We mention it here as Rosemary Nelson's representation of the man gave rise to

further reporting of intelligence that suggested that Rosemary Nelson was behaving improperly and was now doing so at the behest of Colin Duffy. The relevant Lurgan SB report stated:

'ROSEMARY NELSON continues to have a close association with Lurgan PIRA, in particular COLIN DUFFY. Following [redacted]'s arrest and detention for the murder of KEVIN CONWAY she regularly briefs COLIN DUFFY on the CID investigation and actively assists him in creating alibis for PIRA members.'

4.133 Almost all the pre-1998 intelligence reports that we examined were concerned with Rosemary Nelson's representation of PIRA suspects, of whom Colin Duffy featured most prominently, or with Rosemary Nelson's involvement with the GRRC, to which we will refer in Chapters 6 and 7 of this Report. We noted, however, that in December 1997 and in the early months of 1998 there were reports which appeared to be concerned with Rosemary Nelson personally.

4.134 It was reported in December 1997, for example, that she was *'to address an audience on the newly formed Cearte [sic] (Justice) grouping at Queens University on 10 December 1997'*. In the same month, another report said that *'CEARTA Movement (a political pressure grouping) had been formed by Rosemary NELSON with the guidance of [redacted] in the Mid Ulster area. [Redacted] the grouping are looking to recruit members from the nationalist business class and also academical minded nationalists.'* It was reported in January 1998 that *'ROSEMARY NELSON has been invited to a seminar at Westminster in relation to the "prisoners issue".'* In early February 1998 it was recorded that *'ROSEMARY NELSON travelled to Londonderry on Saturday 31 January 1998 and stayed overnight with leading Republicans. She then attended the Bloody Sunday parade the following day.'*

4.135 Some reports were more intrusive. A report in January 1998 had noted that Rosemary Nelson *'is considering having security devices fitted to her home'*; intelligence received in February 1998 noted that *'NUALA McCANN, [redacted] is an associate of ROSEMARY NELSON and possibly works for her in her capacity as a Solicitor'*; that *'ROSEMARY NELSON's husband, whose first name is PAUL works for [redacted] and is described as a stout man with a baldy head'³⁵ and that 'ROSEMARY NELSON (nee MAGEE) is originally from the Shore Road area of Lurgan. Her father is TOMMY MAGEE who is currently residing at [redacted]. TOMMY drives a minibus which collects OAP's [sic] and ferries them from place to place.'*

4.136 A great deal of SB's interest in Rosemary Nelson was driven by her association with Colin Duffy. He continued to be regarded with intense suspicion and this was fuelled by periodic intelligence reports that suggested he was an active terrorist. A report in March 1998, warning that *'a significant number of PIRA members'* had *'recently moved across to the CAC'³⁶, described Duffy as remaining 'actively involved with PIRA'. A report in May 1998, originating from Lurgan, recorded that 'it is common knowledge that COLIN DUFFY is now the OC [Officer Commanding] of North Armagh Brigade PIRA'. Intelligence indicated that he maintained contacts with other known PIRA members.*

4.137 A Lurgan SB report in May 1998 stated: *'COLIN DUFFY meet [sic] up with ROSEMARY NELSON on a number of occasions. On one such occasion [redacted] Duffy park his car in the Demesne Avenue area of Lurgan. Duffy then got into Nelson's car and the two drove off. [Redacted] they are having an affair.'*

³⁵ This report also observed that: *'He (Nelson) would not be much of a drinker/socialiser but is known to frequent the Ashburn Hotel, Lurgan from time to time with business contacts.'*

³⁶ CAC – Continuity Arms Council, synonymous with CIRA, the Continuity Irish Republican Army

4.138 In June 1998 information was gathered by SB indicating that explosives were being stored at an address in Lurgan.

4.139 On 29 June 1998 the police and Army entered the Kilwilkie Estate in force and carried out extensive searches. These searches, which according to press reports began at 04.00 and continued until the evening, resulted in the seizure of 4lbs of Semtex found in a coal bunker at the rear of a house in the Kilwilkie Estate and 80 rounds of ammunition.³⁷ A search carried out in Victoria Street resulted in the seizure of *'nine coffee jar bombs with six-inch nails wrapped round them, a fully armed 'PRIG-type' warhead, eight improvised detonators and a magazine holding 29 rounds of ammunition'*.³⁸

4.140 The *Lurgan Mail* on 2 July 1998 described the public disorder which occurred while the searches were underway as follows:

'Sporadic stone-throwing began breaking out around lunchtime and Landrovers closed ranks along the Levin Road. As the afternoon wore on, the rioting increased in intensity with masked youths throwing a number of petrol bombs and police firing baton rounds. [...] Rioters hijacked a car at one point and drove it towards police lines before abandoning and setting fire to the vehicle.'

4.141 A Lurgan SB report in June 1998 on this incident stated:

'[Redacted] COLIN DUFFY orchestrated the rioting in Kilwilkie [sic] Estate on Monday 29 June 1998 against the Security Forces but took a low profile once it had commenced.

[Redacted] BRENDAN McKENNA was present during the rioting and took on the role of co-ordinating the Press which arrived in the area.

[Redacted] ROSEMARY NELSON, who had brought McKENNA³⁹ to Lurgan, was also present during the rioting.'

4.142 The *Lurgan Mail* on 2 July 1998 reported that *'local solicitor Rosemary Nelson said her office had been asked to help and also instructed to compile a dossier for submission to the Independent Commission on Policing headed by Chris Patton [sic]'*.

4.143 Further Lurgan SB intelligence gathered before the press report stated:

'[Redacted] after the rioting in Lurgan on 29 06 1998 ROSEMARY NELSON instructed Lurgan PIRA members to open an incident room in Kilwilkie [sic] Community Centre to record all complaints about the Police. It is NELSON's intention to submit this report to the Policing Commission.'

4.144 Another Lurgan SB report stated that the explosives and coffee jar devices had been held under Colin Duffy's control and that he and other PIRA members *'were planning to use these devices against the Security Forces in public order situations over the Drumcree period. [...] Lurgan RUC Station was another target for these devices.'*

4.145 SB's view that Rosemary Nelson was a supporter of PIRA continued throughout 1998. In March 1998 intelligence was received that *'Rosemary Nelson permits member[s] of Lurgan PIRA to read confidential legal case note documents in the secrecy of her office.'* A Lurgan SB report in March 1998 read:

³⁷ *Lurgan Mail* 2 July 1998

³⁸ *Lurgan Mail* 2 July 1998

³⁹ Alternative spelling of Breandán Mac Cionnaith

'Lurgan solicitor, ROSEMARY NELSON, is aware she is known by certain politicians and solicitors and also the Security Forces to be a close associate of members of Lurgan PIRA and wonders how long she can continue to be in this position and not be reprimanded by the Law Society.'

4.146 It was disclosed to us that Colin Duffy was targeted in surveillance operations in March, May, June and July 1998 and during these it was observed that he was a frequent visitor to Rosemary Nelson's office in William Street and that they spent a significant amount of time together. A pattern was observed whereby they would each drive to a location and the two would then leave in Rosemary Nelson's car, and return some time later. On occasions Colin Duffy was seen driving her car, sometimes with Rosemary Nelson as a passenger. The surveillance was by no means constant but in every case sightings of Rosemary Nelson were incidental to the surveillance carried out on Colin Duffy. An officer who served as a Superintendent in SB in South Region until May 1998 and who was thereafter the Detective Chief Superintendent in charge of E4, the section of SB that carried out surveillance operations, explained:

'Surveillance was intelligence driven. Only if there was something the intelligence people wanted, or we had an inkling that something was going to happen, would we put surveillance out. TCG would decide this with those reporting on the intelligence.'

4.147 As regards Colin Duffy, he told us:

'There were surveillance operations on Colin Duffy fairly regularly because he was very active and known to be unhappy with the negotiations that were going on behind the scenes between PIRA and Sinn Fein. He was uncomfortable and felt that PIRA was being sold out. Colin Duffy would have been classed as a dissident, although PIRA tried to keep him in the fold.'

4.148 A Lurgan SB report of June 1998 said: *'COLIN and [his wife] DUFFY have split up and COLIN intends moving into a house in the Kilwilke [sic] area which ROSEMARY NELSON has recently purchased and furnished.'* Paul Nelson told us in his statement that they *'decided to purchase the house to try to get in to the property market. [...] Before the ink was dry on the contract, Colin Duffy had told Rosemary that he needed somewhere to live. [...] He therefore moved in as tenant.'*

4.149 The Regional Head of SB South Region (RHSB(S)) told us: *'The intelligence was that, following the break up of Colin and [redacted] Duffy's marriage, Mrs Nelson was going to purchase a house in the Kilwilkie area for Colin Duffy to reside.'*

4.150 It appears that consideration was given very soon after the receipt of this intelligence to the possibility of inserting a listening device within the property at Deeny Drive. As legislation required at that time that application be made to the Secretary of State for a warrant authorising entry to a property for the purposes of planting a device,⁴⁰ an application, was drafted by the Detective Sergeant in Lurgan.

⁴⁰ Before 22 February 1999 a warrant from the Secretary of State was required for surveillance which entailed an *'interference with property'* (Section 5 Intelligence Services Act 1994). Responsibility for the execution of a warrant of either type lay with the Security Service, the functions of which included *'support of the activities of police forces'* (Section 1(4) Security Service Act 1989 as amended by the Security Service Act 1996).

4.151 The proposal was noted by a member of the Security Service, who attended the weekly Tasking and Coordination Group South Region (TCG(S))⁴¹ meeting held on 6 August 1998, in the following way:

Forthcoming Jobs

New Requirement – Colin DUFFY, [redacted] Deeney Drive, Kikwilke [sic] Estate, Lurgan [redaction]. This is DUFFY's new permanent address that he has been installed in by Rosemary NELSON.'

The plan to install a listening device in the house owned by Rosemary Nelson in Deeny Drive was in due course allocated the operational name 'Indus'. At Chapter 11.27 to 11.29, we set out observations recorded by SB officers in the application. At Chapter 14.70 to 14.78 we describe how, in early September 1998, the application for the warrant authorising entry to the premises was processed and how it brought Rosemary Nelson's association with Colin Duffy to the attention of the Director and Coordinator of Intelligence (DCI), the most senior Security Service official in Northern Ireland and, in turn, to the attention of the Chief Constable and the Secretary of State.

4.152 An intelligence report in October 1998 recorded that '*COLIN DUFFY and ROSEMARY NELSON continue to meet clandestinely at evening times in the Lurgan area*' and they were observed briefly together on two occasions during that month in William Street.

4.153 A warrant authorising entry to the premises was first signed by the Secretary of State on 4 September 1998 and a modified warrant was signed on 3 November 1998 but no device was ever placed within it. The warrant was renewed on 23 February 1999; by that time, however, the utility of the operation was being questioned by security officials.

4.154 On 2 February 1999 it was noted:

'INDUS – We will be unwilling to deploy resources on this until a clear picture has arisen over DUFFY's relationship with wife and girlfriend. If there is a reconciliation between DUFFY and Wife, but he continues to see girlfriend we would want firm proof that the INDUS target is being used as a meeting house [...]. Unless meetings are taking place at INDUS then it is suggested that the value of DUFFY's conversations with NELSON would not be worth the risk of compromise/resources.'

4.155 A note recorded by a Security Service official on 5 March 1999 indicates that SB remained interested in the property although it was evident that Colin Duffy was no longer living in it. Information regarding Colin Duffy's court case was also recorded.

'Colin DUFFY's court case is still on-going and a verdict is now expected w/b 8 March. If he is found guilty he could be looking a [sic] 3-4 month sentence, ie out in 6 weeks. [...] [Redacted] said that since he moved back in with [redacted], DUFFY has continued to use INDUS on a regular basis for meetings with PIRA associates. I said that we would like to see some evidence of this.'

4.156 In fact the trial of Colin Duffy took place at a special sitting of the Crown Court at Craigavon. By 13 March 1999 evidence and submissions in the case were complete and judgment was reserved. The verdict – guilty – was not returned until after Rosemary Nelson's death.

⁴¹ A unit of SB which coordinated intelligence operations and whose members carried out support functions.

Conclusion

4.157 Rosemary Nelson acted publicly, proactively and successfully for a high-profile Republican – Colin Duffy – who was convicted and then acquitted on appeal of the murder of a soldier, and who was subsequently charged but not prosecuted for the murder of two police officers. As a consequence, she became identified with Republican terrorism in the eyes of some RUC police officers and, as we indicate later in this Report (see Chapter 13), in the eyes of Loyalist extremists and paramilitaries.

5 Solicitor for the Hamill Family

5.1 On 27 April 1997 at about 01.45, Robert Hamill, a 25-year-old Catholic, was attacked and beaten in the centre of Portadown. He and members of his family had spent the evening at a local club and as they were walking home at the end of the night out they encountered a larger group of Protestant youths and a fight ensued. Robert Hamill was beaten unconscious. He was taken to Craigavon Area Hospital and later transferred to the Royal Victoria Hospital, Belfast, where he died, without having regained consciousness, on 8 May 1997.

5.2 Soon after the attack Rosemary Nelson was instructed by members of the Hamill family and on 6 May 1997 she wrote a letter of complaint to the Royal Ulster Constabulary (RUC) on the family's behalf. It read as follows:

*'My client instructs me that her brother was seriously injured in an assault which occurred at the junction of Thomas Street/Market Street, Portadown. On that date [i.e. 27 April 1997] my client instructs me further she has been informed that certain police officers witnessed this assault and did not intervene as promptly as possible. Our client would therefore wish to make a formal complaint in respect of the actions of the Police Officers involved.'*¹

Before this letter was dealt with by the RUC, the Chief Constable, Sir Ronnie Flanagan, had himself referred the case to the Independent Commission for Police Complaints (ICPC) for investigation.²

5.3 On 13 May 1997 a press conference was held at the Drumcree Community Centre. Robert Hamill's sister Diane conducted the conference, along with the three cousins who were with Robert Hamill on the night of the attack. Rosemary Nelson, who had already been reported in the media as acting as the family's solicitor, was also present. The family announced that they wanted a fully independent inquiry into the RUC role in Robert Hamill's death. A report in *The Irish News* described the press conference as follows:

*'Flanked by other family members including witnesses to the fatal beating and the family's solicitor Rosemary Nelson, she [i.e. Diane Hamill] said at the press conference that her brother died because police officers did not intervene and disperse the 30 strong crowd.'*³

5.4 The death of Robert Hamill is the subject of a separate public inquiry which has examined both the circumstances of the murder and the adequacy of the RUC response to it. Our interest in the case was, necessarily, limited to its impact on Rosemary Nelson and how she was perceived.

¹On 10 May 1997 Rosemary Nelson was quoted in the press as having said that she had '*instructed counsel to draft the appropriate documents to initiate High Court proceedings*'. In fact, although a writ was issued against the Chief Constable later that year on behalf of Robert Hamill's partner and mother of his three children, another firm of solicitors acted on behalf of the plaintiff.

²Sir Ronnie Flanagan voluntarily referred the case to the ICPC under Article 8(1) of the Police (Northern Ireland) Order 1987. Article 8(1) provided that: '*The appropriate authority [i.e. in this case the Chief Constable] may refer to the Commission any matter which (a) appears to the appropriate authority to indicate that a member of the police force may have committed a criminal offence or an offence against discipline; and (b) is not the subject of a complaint. If it appears to the appropriate authority that it ought to be referred by reason (i) of its gravity and (ii) of exceptional circumstances.*'

³*The Irish News* 14 May 1997

5.5 Very soon after Robert Hamill's death Rosemary Nelson's involvement in the case was noted by Special Branch (SB) of the RUC. A Lurgan SB report in early May 1997 recorded:

'A member of the Hamill Family has approached Sinn Fein for any assistance they can give. Sinn Fein, although sympathetic to their plight, do not want to appear overtly involved as this may detract from the controversy, instead they have put the family in contact with ROSEMARY NELSON, Solicitor, who will assist them.'

5.6 Another SB report in May 1997 recorded that 'ROSEMARY NELSON contacted JOHN BRUTON⁴ to issue a statement criticising the RUC's action in the murder of ROBERT HAMILL in Portadown.'

5.7 We were told that Rosemary Nelson introduced Diane Hamill to journalists such as Susan McKay, Beatrix Campbell and Moya St Leger. She also spoke to journalists herself about the case and from time to time she was quoted in the press in relation to it.⁵ Following a decision of the Director of Public Prosecutions for Northern Ireland (DPPNI) on 31 October 1997 not to proceed with charges against three individuals, for example, Rosemary Nelson was quoted in *The Irish News* on 1 November 1997 as saying: *'The Chief Constable said last night it was his prime duty to protect people's lives, but the signal failure to do so in this case does not bode well for the people of Portadown. To say that faith in the RUC has been substantially eroded by this is an understatement.'*

5.8 A Lurgan SB report dated December 1997 stated: *'MARTIN McGUINNESS attended ROSEMARY NELSON's Solicitor's office on 21 November 1997 to be advised on the cases of the HAMILL murder in Woodhouse Street, Portadown on 8 May 1997 and the alleged harassment of COLIN DUFFY by the Security Forces. Members of the Hamill family and COLIN DUFFY also attended.'*

5.9 In the same month a report circulated from the SB Republican Desk at RUC Headquarters stated: *'[Redacted] will be attending a meeting in the Europa Hotel. [...] The meeting has been arranged to discuss the Martin [sic] Hamill and Colin Duffy cases. As well as the relatives being present, [redaction] [redaction] and Rosemary Nelson will attend. It is probable that Rosemary Nelson arranged the meeting.'*

5.10 In February 1998 a public appeal was launched to raise funds for the Robert Hamill Campaign, the object of which was to bring a private prosecution against those suspected of the murder.⁶ The campaign and Rosemary Nelson's support for it was noted in an SB report that month: *'A number of influential Americans who recently visited Northern Ireland and who met with ROSEMARY NELSON, have pledged #10,000 [sic] aid for the ROBERT HAMILL case.'*

5.11 Rosemary Nelson's involvement in the case was known to Northern Ireland Office (NIO) officials, who told us that it generated a great deal of correspondence and was one of the three cases dealt with by the Police Division in 1998 with the highest profile (the others being Colin Duffy and that of Rosemary Nelson herself).

5.12 A number of witnesses to our Inquiry believed that Rosemary Nelson's involvement with the Robert Hamill case raised her profile in the area. The journalist Anne Cadwallader told us that she believed that the *'three main ones [...] Colin Duffy, Garvaghy Road and Robert Hamill [...] they were the ones that got her into trouble'*.

⁴John Bruton was Taoiseach from December 1994 to May 1997.

⁵For example, Frank Connolly (a Dublin-based journalist who worked with the *Sunday Business Post* from 1993 to 2002) said that he and Rosemary Nelson discussed the Robert Hamill case 'at length'.

⁶*An Phoblact/Republican News* 2 April 1998

Paul Nelson also told us that his wife had noticed a change in the attitude of the police in '1997/1998' and she linked this to *'either the terrorist work or the Garvaghy Road. But later on, she thought there may be a connection to the Robert Hamill case.'*

Conclusion

5.13 Robert Hamill was one of the highest profile cases with which Rosemary Nelson's name was associated. Her work in this case would undoubtedly have generated hostility towards her among extreme Loyalists, particularly in Portadown. And, because she was making serious and public criticisms of the RUC's role in Robert Hamill's death and of the subsequent investigation, we believe that it would have contributed to the antagonism felt towards her by some RUC officers.⁷

⁷See also Chapter 27 dealing with Rosemary Nelson's statement to the US House of Representatives sub-committee.

6 Solicitor for the Garvaghy Road Residents' Coalition 1996–1997

6.1 In 1996 Rosemary Nelson was appointed to act as legal adviser to the Garvaghy Road Residents' Coalition (GRRC), an alliance of residents' groups and associations whose principal object was to oppose Orange Order processions through what had become a predominantly Nationalist part of Portadown.¹

6.2 Her involvement with this group brought her into direct conflict with the Royal Ulster Constabulary (RUC). She was to allege in 1997 that she had been physically assaulted and verbally abused by officers on the Garvaghy Road as they prepared a way for the return march of the Portadown District Loyal Orange Lodge No 1 after the annual service to commemorate the Battle of the Boyne at Drumcree Parish Church. A formal complaint was investigated by the Complaints and Discipline Department of the RUC under the supervision of the Independent Commission for Police Complaints (ICPC) but it resulted in no disciplinary or criminal proceedings against any officer. The Director of Public Prosecutions for Northern Ireland (DPPNI) directed that there should be no prosecution because there was insufficient evidence *'to identify a police assailant or afford a reasonable prospect of conviction of any police officer for a criminal offence'*.²

6.3 The DPPNI was not deciding whether or not Rosemary Nelson was assaulted or abused, solely whether there was sufficient evidence against individual officers to justify criminal proceedings against them. We, on the other hand, sought to establish whether she was in fact assaulted and abused as this might throw light on the attitude of RUC officers towards her.

6.4 We describe below Rosemary Nelson's involvement with the GRRC and we review the evidence concerning the alleged assault together with the conclusions that we have drawn from it. We consider also whether her involvement with the GRRC was such as to generate within the RUC, or elsewhere, any special hostility towards her.

Orange Order parades in Portadown

6.5 There are over 3,000 parades and marches in Northern Ireland each year. Half of these take place in July and August in what many call the marching season. Most of these parades attract little or no controversy. A small number that pass through or close by neighbourhoods that do not welcome them are the subject of dispute. One such march is that organised by Portadown District Loyal Orange Lodge No 1 after its annual commemorative service at Drumcree Parish Church on the Sunday before 12 July ('the Drumcree Church parade'). While there is a long history of disputes over parades in Portadown, between 1995 and 1999 this particular dispute developed into one of the most momentous and violent events in the recent history of Northern Ireland.

6.6 The most direct route from Drumcree to the Orange Hall in Carleton Street in Portadown is along the Garvaghy Road. This is regarded by Orangemen as the traditional route of their annual parade. From Drumcree the route passes along lanes

¹See the map of Portadown at Appendix N on which are indicated the key locations discussed in this Chapter and Chapter 7.

²Letter from DPPNI to Chief Constable via Police Ombudsman for Northern Ireland 19 January 2001.

with fields on either side and then through the Garvaghy Road, lined with relatively modern housing developments which, by the 1990s, were occupied predominantly by Catholic families.

6.7 By the mid-1990s the population of Portadown was around 30,000, approximately 30% Catholic and 70% Protestant. There were 3 Orange Halls in the town and, according to one estimate, as many as 40 Loyalist parades during the summer. One witness from the Nationalist side told us that in Portadown there was considered to be *'an utter excess in the Orange Order's celebrations of "Britishness" with a simultaneous virtual ban of the celebration of Nationalist culture'*. Sam Kinkaid, the RUC officer who played a leading role in the investigation of Rosemary Nelson's murder, described the area as *'second only to North Belfast in terms of sectarianism'*. It was a town with a highly segregated population with virtually no neutral space; pockets of social, physical and economic deprivation were confined mainly to the Catholic population, and there was a legacy of violence, including commercial bombings and intercommunity strife.

The Drumcree Faith and Justice Group

6.8 There had been organised protests against the return route of the Drumcree Church parade by the Nationalist community for many years. From the mid-1980s until 1994 the opposition to the parade was mainly through the medium of the Drumcree Faith and Justice Group. Throughout this period the parade returned from the church along its preferred route via the Garvaghy Road. There would be disorder on the Saturday night before and the Sunday morning afterwards but, due to the deployment of large police numbers, the disorder was limited and random in nature.³ Community resentment against the march simmered on and residents' associations were formed, such as the Drumcree Faith and Justice Group, to express this resentment. They attracted between 50 and 150 protesters and were known for holding a tea party on the day of the march. Political parties such as the Social Democratic and Labour Party (SDLP) and Sinn Féin stated their objections; but the opposition was not coordinated.

6.9 On the Nationalist side, the residents wanted the marchers to change their return route so as to avoid the Garvaghy Road, where they were not wanted, by, for example, going back along the same route as they had taken on their way to Drumcree. The Orangemen maintained that the route was of historical significance and they were respectful of the local residents when they passed. They considered it a cultural right to march along that route and to deny them that right meant that their culture was not given parity with other cultures. Embedded in these two positions were the contending rights of the Orangemen to march through Catholic areas and the rights of residents of those areas to stop them. From 1995 onwards the two sides were unable to reach an accommodation on the issue. Voluntary mediation was tried and failed. The UK Government, for its part, tried mediation via proximity talks and then set up the Parades Commission to take decisions on parades throughout Northern Ireland.

Formation of the Garvaghy Road Residents' Coalition

6.10 We were told that the Nationalist community in Portadown contained both moderate and militant elements, but after the Provisional Irish Republican Army (PIRA) ceasefire of 31 August 1994 it was possible to reconcile the two ends of the spectrum in a coalition which involved no advocacy of violence. In May 1995

³Eamon Stack described the position before 1995 as follows: *'Each year some members of the Nationalist community tried a different, more violent approach, which resulted in rioting before or after the Parade.'*

a Garvaghy Road Residents' Committee was formed comprising representatives of residents' associations and Nationalist groups based in and around the Garvaghy Road. The principal objective of this 'Coalition', as it was later to be named, was to divert such Orange Order marches away from the Garvaghy Road.

6.11 The Secretary and original spokesman of the GRRRC was Eamon Stack, a Jesuit priest. He had lived with the Jesuit community in Portadown since September 1993 and had been a member of the Drumcree Faith and Justice Group. He described the GRRRC as *'a small ad hoc group representing the Nationalist community with very, very limited resources. We didn't have connections with any political parties, we didn't have any funds.'* He continued that their objective was to *'ground our campaign on reasons that were equally applicable to everybody in society, and to that purpose we went to political philosophers to try and use language that was applicable to everybody, to ground it in such a way that we weren't taking a sectarian position'*. These sentiments were expressed in an article which was published in *The Irish Times* on 27 May 1997 in which he wrote: *'Many are deeply offended by this unbridled and insensitive expression of Ulster Protestant identity in the neighbourhood, given that our right to comparable self-expression is severely restricted. We would hold that peaceful opposition to such injustice is in order, morally and legally.'* Following Drumcree 1997, Eamon Stack relinquished his position as Secretary and in September 1997 he left Portadown in order to work in community development in Mexico. By the time of his departure a local man, Breandán Mac Cionnaith, had become the leader and spokesman of the GRRRC.

6.12 Another member of the GRRRC, Joanne Tennyson, told us that representatives of the tenants' associations for each of the estates in the vicinity of the Garvaghy Road were invited to join the GRRRC following a public meeting in 1995. They then participated in the GRRRC decision-making process. By this system there were usually about 12 representatives on the GRRRC at any one time. She described the objectives of the GRRRC as follows: *'In 1995, perhaps because of the cease fire, people felt strongly that we wanted a new start which meant that we did not want the Orange march to come down the Garvaghy Road.'* The nature of the GRRRC and its relationship with the Garvaghy Road residents meant that meetings had to be convened on a regular basis, for example if the GRRRC needed to say something, answer a question posed by the community or respond to something from the government. According to Joanne Tennyson, *'Although the GRRRC could speak to anyone they wanted, at the end of the day no-one in the Committee had the right to say we would do anything, not even Breandán Mac Cionnaith as the Committee's spokesman. The community had to agree as a whole and that was the purpose of holding public meetings.'*

The role of the Royal Ulster Constabulary in disputed marches

6.13 Until 1998 when the Parades Commission assumed its role, public processions were governed by the Public Order (Northern Ireland) Order 1987. The organiser of a parade was required to give notification to the RUC of the details of the proposed parade. The RUC, while not empowered to authorise or prohibit public processions, could impose conditions on a parade if it was considered that it *'may result in serious public disorder, serious damage to property or serious disruption to the life of the community'*, or in circumstances in which it was considered that *'the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do'*.⁴

⁴Public Order (Northern Ireland) Order 1987, Articles 4(1) (a) & (b)

6.14 The Patten Report published in September 1999, based on research and observation conducted mainly in 1998, said the following about this aspect of policing in Northern Ireland:

*'A major and controversial feature of policing in Northern Ireland has been public order policing. Failings in public order policing in the 1960s were partly responsible for the Troubles of the following thirty years, and for deepening nationalist estrangement from the RUC. There have been changes for the better in public order policing since then, and we have ourselves witnessed skilful police handling of potentially difficult public order events. But the problem remains one of the greatest challenges in the policing of Northern Ireland, particularly during the so-called marching season. It is hugely demanding of police resources, and draws heavily on army support. It presents the unwelcome spectacle of police in riot gear and armoured vehicles, and involves the use of a controversial weapon – plastic baton rounds (PBRs). It pits the police against people from both the nationalist/republican and the unionist/loyalist communities.'*⁵

Perceptions of the Garvaghy Road Residents' Coalition

6.15 Breandán Mac Cionnaith had been convicted of offences in 1981 when he had taken part in a PIRA operation to detonate a car bomb in the centre of Portadown. He was sentenced to seven years' imprisonment and was released in 1984. His involvement in the GRRC and the involvement of others with suspected links to the Republican movement was perceived by many to signal that it was being controlled by Sinn Féin or, even worse, by PIRA. RUC intelligence reflected a similar view. Sir Ronnie Flanagan told us that *'in terms of the range of residents' groups, the Orange Order, for example, had made it clear that their policy would not be to engage in dialogue with convicted terrorists. So suddenly, in virtually all of the residents' groups, you have people centrally involved who it is public knowledge had previous terrorist convictions, and I held the belief that that was possibly a part of a strategy so that the Orange Order wouldn't engage them in dialogue.'* He added that *'it doesn't mean that that makes those residents' groups in any way subversive'*, however, he was certain that *'Sinn Féin would have had a very big influence and could exert very big influence on the steps taken by those residents' groups.'* In respect of the GRRC he said: *'Breandán Mac Cionnaith and the others were doing the organising, although I did hold the view that they were under the control of Sinn Féin.'* In his Inquiry statement he said that he was made aware in July 1998 that *'there was evidence to suggest that senior members of Sinn Féin intended to attend the protests to make sure that the GRRC was doing what they wanted'*. Illustrative of this view is an RUC letter written in 1998 which described Breandán Mac Cionnaith as *'a convicted IRA terrorist and principal Republican protagonist in the Drumcree stand-off'*.

6.16 The view that the GRRC was working to a wider agenda, dictated by Sinn Féin and/or PIRA, seems to have been widely accepted within the RUC,⁶ government agencies and the Loyalist community. It is not within our Terms of Reference to determine whether this view was soundly based or otherwise but we regard the perception itself as important because it may have affected attitudes towards Rosemary Nelson.

⁵ Patten Report paragraph 9.1 page 51

⁶ An SB officer told us, for example, *'Sinn Féin saw the Drumcree parade and the GRRC role as a vehicle for them to put political pressure on Unionists and Loyalists, and a way to mobilise Nationalist support in their favour. The same then happened in the Ormeau Road and elsewhere, thus elevating the Drumcree and Ormeau Road marches into international events attracting press coverage from overseas. When this happened, the police were in a very difficult position....'*

Events in 1995

6.17 The newly formed GRRC gave notice of their intention to parade from the Garvagh Road through the centre of Portadown to Carleton Street Orange Hall at 10.00 on 9 July 1995, to coincide with the start of the Orange parade.⁷ As the Assistant Chief Constable (South Region) put it in his evidence to us, *'so that was an additional policing issue: not just the Orange parade, but also the counter parade'*.

6.18 On the morning of 9 July Breandán Mac Cionnaith led the residents' parade along the Garvagh Road and the march dispersed as instructed by the RUC. Shortly after noon, however, a group of between 300 and 400 people assembled and sat down on the Garvagh Road, blocking the entire width of the road. Those on the road were warned that they were committing a criminal offence and they were directed to disperse. In the event, the Orange Order parade was halted by the police and prevented from entering the Garvagh Road. When the protesters learnt of this they dispersed voluntarily.

6.19 That evening a large number of supporters of the Orange Order, including the Reverend Ian Paisley MP, joined the marchers where they had been halted by the RUC. During the next two days, intensive discussions occurred between the GRRC and mediators who acted as go-betweens for the residents, the RUC and the Orange Order. On the second evening, there was an Orange rally and an unruly element made an appearance in the crowds and there were running battles with police. The impasse was resolved on the morning of 11 July 1995 when, having received assurances from the then Acting Deputy Chief Constable, Sir Ronnie Flanagan, the residents agreed to limit their protest to turning their backs on the marchers as they passed along the road. Some controversy was generated by the perceived triumphalist behaviour of David Trimble MP and Ian Paisley MP on the morning of 11 July 1995. These events, which became known as the Siege of Drumcree, received widespread press coverage at home and abroad.

6.20 Eamon Stack told us that he and other members of the GRRC were extremely surprised by the reaction of the Orange Order to their protest in 1995. He said that *'within a few hours there were 15,000 Orangemen in Drumcree very, very angry at this decision'* to halt the march. He also noticed that this stand-off in 1995 had attracted Loyalist paramilitaries including Billy Wright and Mark Fulton who were seen at the top of the Garvagh Road. He also described how members of the GRRC were also targeted by militants. He said the GRRC policy was to focus on the issues, whereas the response from the Orange Order was *'very, very strong personalisation from 1995. [...] You know, in front of 15,000 people on Drumcree Hill, I was condemned and, therefore, that put me in danger.'* He said he witnessed the same type of thing happen to Breandán Mac Cionnaith.

6.21 The dispute seemed to have become the focus of wide-ranging discontent. The *Belfast Telegraph* on 10 July 1995 reported that *'Orangemen and their supporters have been working to break discipline on police lines by "appealing to consciences" of officers. At times this process takes the form of reasoned argument, but often they resort to taunts and explicit threats. Constant references are made to policemen's salaries and officers living in loyalist areas who supposedly receive Protestant protection from the IRA.'*

6.22 From now on the Drumcree Church parade would pose a serious threat to public order, whether or not the parade was allowed to return from the church down the Garvagh Road. Writing in 1998 the Parades Commission said that the

⁷ Determination in relation to Portadown District Loyal Orange Lodge No 1 Church Parade on 5 July 1998.

parade had hugely disrupted the life of the community and beyond, both at the time of the parade and more generally throughout the year. It said that fear and tension was endemic in Portadown.⁸

6.23 The Assistant Chief Constable (South Region) at the time told us how the events of 1995 were viewed from the perspective of the RUC. He said that it *'was difficult but probably achieved the best result in that there was some involvement by mediation people and there was an agreed solution found after a couple of days of stand-off. There was no deployment of the military bearing in mind that we were meant to be in a ceasefire situation at that time, and so it was handled by the police as a massive operation with an acceptable result for all sides.'* He went on to say, *'Regrettably, that wasn't to be repeated in subsequent years for a variety of external reasons, and subsequent years saw extreme violence and regrettably some people killed and murdered in parts of the Province. There was a taxi driver murdered during the 1996 situation, there were threats to many, many others, the homes of police officers were attacked, officers were subjected to extreme intimidation.'*

Rosemary Nelson's appointment as legal adviser to the Garvagh Road Residents' Coalition

6.24 Some months after the events of Drumcree 1995 the police called at Breandán Mac Cionnaith's home. They told him they were investigating the events on 9 July 1995 and cautioned him and asked if he wished to make a statement which he refused to do in the absence of a solicitor. He and four other members of the coalition including Eamon Stack were later served with summonses charging them with obstructing the public highway contrary to Article 20(1) of the Public Order (Northern Ireland) Order 1987. Breandán Mac Cionnaith had known Rosemary Nelson since childhood as they had lived in the same street in Lurgan and went to the same school.⁹ She had also undertaken some legal work for other members of his family. By this time, April 1996, Rosemary Nelson had established her reputation as an able and tenacious solicitor. Now she was instructed to defend four of the five members of the GRRC who faced prosecution. Eamon Stack told us that he instructed a solicitor through the Jesuit Community but he described Rosemary Nelson as *'lead solicitor [...] for us all'*. The charges against the group were dismissed on 25 June 1996 at the Craigavon Magistrates' Court. It was as a result of her involvement in this case that she came to be appointed as legal adviser to the GRRC.

6.25 We sought to establish what role, or perceived role, was played by Rosemary Nelson in the affairs of the GRRC. Her first formal involvement with the GRRC, as legal adviser, seems to have been her attendance at a public meeting of the GRRC and local residents on 2 May 1996. Eamon Stack told us that Rosemary Nelson attended these meetings because there were issues regarding the enforcement of the law and because the GRRC wanted to use legal means to challenge certain interpretations of the law and they needed her advice on that. Joanne Tennyson said of Rosemary Nelson's role: *'Essentially she was there for anything legal but she was not on the GRRC itself.'* She said that Rosemary Nelson *'never talked about strategy or tactics to me, only about legal issues, for example, how to protest on the Garvagh Road legally'* and that *'Rosemary was involved in the Garvagh Road all year round. She would not be at the GRRC meetings but we would meet up with her if issues arose.'* Rosemary Nelson was also regarded as someone capable of translating the words of bureaucrats into

⁸ The Parades Commission noted in their determination: *'As the time of the parade approaches, the fears and tensions which are now sadly endemic in Portadown grow and become palpable.'*

⁹ A witness said: *'I think that Rosemary went to school with Breandan Mac Cionnaith'*; We were told also: Breandán Mac Cionnaith was *'born and raised in Lurgan'*.

language which the residents could relate to. Joanne Tennyson said: *‘Although some of the GRRC members might have understood NIO [Northern Ireland Office] speak, I did not have the education to understand the twists and turns.’*

6.26 Rosemary Nelson’s presence at the meeting of 2 May 1996 was noted by Special Branch (SB) officers based in Portadown:

‘A public meeting took place in Ashgrove Community Centre on 2 5 96. The meeting was called by the committee in order to assemble all members of the Nationalist community who were interested in preventing the Orange Order parading along Garvagh Road on the Sunday prior to the 12th July.

The Community Centre was packed to capacity by residents from Garvagh Road/ Park, Churchill Park, Ballyoran Park and surrounding area.

The mood was extremely militant and all present was [sic] determined that they would do all in their power to achieve their objective.

Rosemary NELSON, Solicitor, Lurgan, was present in her capacity as legal adviser.

The Judicial Review procedure was outlined and several local residents indicated their willingness to let their names to [sic] go forward to have the parade re-routed away from Garvagh Road by way of Private Court Action independent of the Government Committee.’

6.27 In his evidence to the Inquiry Sir Ronnie Flanagan told us that he did not regard Rosemary Nelson as performing a strategic role within the GRRC. He summarised his views in his Inquiry statement:

‘I never got the impression that Mrs Nelson was an organising figure on their behalf at all. [...] There was certainly no suggestion at this time (or indeed later on) that she was a big player in terms of influencing the GRRC and its thinking. [...] My impressions at that time were that Rosemary Nelson was a lawyer who was doing her job. I suspected that she was being manipulated by the GRRC, although, as I have stated, she was not a major figure in terms of marshalling and organising the residents. I think that the GRRC were capable of doing their own organising and they were simply using Rosemary Nelson as a legitimate front. There was nothing untoward said about her that came to my ears in any briefing I received from SB or local police on her role in representing the GRRC.’

6.28 When questioned by Counsel to the Inquiry as to what he meant by *‘legitimate front’*, he explained, *‘What I’m saying is if they need to be represented or whatever, that’s the role that I would have seen Mrs Nelson playing: a legitimate front for the organisation, not the sort of role that has been suggested, that she in any way was directing their activity, planning their activities or engaging in anything untoward on their behalf.’* He told us that references in his Inquiry witness statement to Rosemary Nelson being a *‘legitimate front’* and *‘being manipulated’* were *‘not necessarily a belief (he) held at the time’* but were rather *‘based on knowledge now’*.

Events in July 1996

6.29 In July 1996 there was again a stand-off between the members and supporters of the Orange Order and the RUC. There had been a series of meetings between senior police officers and the GRRC but these negotiations, in which Rosemary Nelson played no part, did not result in an agreement. The Chief Constable at the time, Sir Hugh Annesley, at first sought to prevent the march from entering the

Garvaghy Road. A police line was established at a narrow bridge about 200 yards from the Drumcree Parish Church. Soldiers and police officers occupied fields close to the church, sealing them off with double rolls of barbed wire. Additional troops were flown in, increasing the total number in Northern Ireland to 18,500. Between 10,000 and 15,000 Orange Order protesters gathered on Drumcree Hill, and at the bridge police and protesters faced each other almost within touching distance.

6.30 With the stand-off continuing, violence and civil disorder erupted across Northern Ireland in Unionist areas. There were clashes with security forces, acts of sectarian intimidation and wildcat blockades. For five days the police and Army were in the middle of province-wide violence. The targets of the violence included the houses of police officers many of whom were on duty at Drumcree. On 8 July 1996 a Catholic taxi driver, Michael McGoldrick, was found shot dead in a country lane north of Craigavon. His murder was associated with the Drumcree stand-off.¹⁰ Later it was proved to have been carried out by a member of a breakaway group of the Ulster Volunteer Force (UVF), which later became the Loyalist Volunteer Force (LVF) led by Billy Wright.

6.31 After five days of violence the decision of the RUC to halt the march was reversed. Sir Ronnie Flanagan explained the basis for this decision to the Inquiry as follows:

'[In halting the parade] it was thought that the police would be able to cope with the anticipated level of trouble. There was also a belief that there would be such revulsion in the community at extreme protest activity, that any escalation of violence could be dealt with by the police. However, 'middle Ulster' did not in fact turn against the protesters and concern grew that the police and the Army would be overrun as over 10,000 people gathered on the hill by Drumcree Church. For this reason the final decision was taken to allow the march down in 1996 after a five-day stand-off. I do not doubt that the RUC's reputation was damaged by allowing the march to take place after such a long stand-off, but I do believe that the consequences of not allowing the march down the road would have been much more severe.'

6.32 Now under new orders, the RUC cleared a way for the marchers of the Orange Lodge to pass along the Garvaghy Road. An RUC superintendent, a Bronze Commander, described this operation:

'On arrival at Garvaghy Road I saw that the road was already blocked by protesters, who I estimated to number about 150-200, at the junction of Ashgrove Road. Some MSUs¹¹ were already deployed, with others arriving. Two MSUs were deployed across the Garvaghy Road, one on the Drumcree side of the protesters and one on the Portadown side. At this stage the protesters, with posters and placards, were sitting and standing on the Garvaghy Road. There was considerable noise and shouting from the protesters, but to my knowledge no violence. [...] I was in charge of the removal of the protesters. [...] Before beginning lifting any protesters it was necessary to deploy a cordon of MSUs around the protesters, and along the length of the Ashgrove Road junction, both to prevent new protesters getting onto the road, and to put lifted protesters beyond so that they could not return to the road. [...] As I was standing just behind the cordon across the Garvaghy Road on the Portadown side, the crowd surged at the

¹⁰ Report on BBC website of 20 March 2003. On 20 March 2003 Clifford McKeown was convicted on the basis of evidence given by a journalist to whom he confessed to the murder. It was reported that the journalist had given evidence that he was told by Clifford McKeown that 'Mr McGoldrick was murdered after plans to kidnap three priests from a parochial house in County Armagh were aborted. McKeown [...] was said to have told the journalist that he, along with Billy Wright and another man, Mark Fulton, discussed the plan to kidnap three Catholic priests and shoot them if Orangemen were not allowed to walk down the Garvaghy Road.'

¹¹ MSU – Mobile Support Unit – an RUC unit available for quick response to any incident.

cordon, attacking the Officers on the cordon with feet, fists and sticks. I ordered the cordon to move forward, pushing the crowd with their shields towards the cordon across the Ashgrove Road junction. This was successful in moving a substantial proportion of the protesters off the road and beyond the cordon, and the protesters were no longer organised. The remainder of the protesters were reasonably quickly moved beyond the cordon and the road cleared. This action resulted in a situation where the Garvagh Road was clear, a line of landrovers cordoned the mouth of the estate, MSUs were lined between the landrovers and the estate, and a large crowd numbering hundreds was in the estate. [...]

Just as the head of the parade reached the mouth of the estate I signalled to the MSU Inspectors who I could see observing me. On my signal they moved through the line of landrovers to their units out of my sight. I initially remained on the Garvagh Road with the unit escorting the head of the parade and therefore could not see what was occurring beyond the line of landrovers. When satisfied that no missiles were landing on the parade and that its passage was uninterrupted, I moved through the landrovers to the Police lines. I could see that the MSUs had succeeded in moving the crowd back into the estate as instructed, and were coming under missile and petrol bomb attack. I saw baton rounds being fired at identifiable petrol bombers who were attacking the lines from entries between the houses. To my knowledge no missiles or petrol bombs reached anywhere near the parade. After the tail of the parade had safely passed, I instructed the MSU Inspectors to move their units back to the landrovers and to withdraw along the Garvagh Road towards Portadown as quickly as possible. As Police withdrew the crowd moved forward continuing to throw missiles. I went with the last MSU to leave the area, with the crowd pursuing us along the Garvagh Road.'

6.33 In the aftermath of the 1996 march, as a consequence of her representation of many residents who had been affected by the July events, Rosemary Nelson was almost immediately in conflict with the RUC. Through her office 48 formal complaints were lodged with the RUC. Some residents alleged that officers had assaulted them, others that they had been verbally abused. There was a common difficulty with all of these, however, which was to recur in the following year: none of the officers could be identified. Many service numbers were not displayed and the officers had all been wearing full riot gear which made identification impossible. In the event, none of these formal complaints was pursued. However, Rosemary Nelson initiated a number of civil claims. In one case, a plaintiff was awarded damages in February 1999. In a report of this case in the *Belfast Telegraph Extra* on 13 March 1999, Joe Duffy, a member of the GRRC and a local Councillor, was quoted as saying that there were 200 cases pending from Nationalists arising from the 1996, 1997 and 1998 Drumcree protests.

6.34 SB reported in November 1996 that:

'ROSEMARY NELSON, Solicitor, Lurgan, is co-ordinating the Garvagh Road Concerned Residents Association's legal matters and is forwarding details of police prosecutions of Nationalists from Drumcree '96 to the Committee for the Administration of Justice. Under her guidance, the Garvagh Road Residents Association has arranged for approximately 120 people to make complaints to the RUC regarding Drumcree. They hope to do this in "blocks" of ten people at a time in an effort to waste police time.'

6.35 There was evidence that Rosemary Nelson was instrumental in publicising the GRRC's case. In November 1996 she introduced a number of members to Julia Hall of Human Rights Watch who was in due course to include reference to their grievances in the May 1997 report entitled 'To Serve Without Favor: Policing, Human Rights and Accountability in Northern Ireland'. In her evidence to the Inquiry, Julia Hall remembered that the GRRC members were wary of speaking to

strangers but Rosemary Nelson had persuaded them to meet her. The final report said that the events on the Garvaghy Road during the 1996 marching season raised ‘*profound questions about the force’s [i.e. the RUC’s] impartiality and professionalism*’ and the ‘*residents who had sought RUC protection from sectarian violence at the hands of Orange Order marchers were ultimately brutalized by the RUC itself*’. It suggested that these events in 1996 demonstrated that the ‘*RUC was not up to the task conferred upon it by the government*’.

6.36 In 1996 and 1997 the work involved in representing the GRRC was mainly confined to the period of a month or so before the marching was due to take place¹² and in the aftermath when complaints and civil claims were recorded, compiled and lodged. We were told that in the run-up to the marching season each year Rosemary Nelson worked 14- or 16-hour days and spent more time away from the office at meetings. Although the work undertaken for the GRRC has been described as spasmodic, witnesses told us that Rosemary Nelson worked long hours to fulfil her obligations.¹³

Events leading up to Drumcree 1997

6.37 It was later reported that on 10 July 1996, while the stand-off at Drumcree was continuing, Mo Mowlam, who was then shadow spokesperson for Northern Ireland visited Portadown and there met members of the GRRC.¹⁴ There may have been as many as half a dozen such meetings before the May 1997 election which resulted in a Labour victory and Mo Mowlam’s appointment as Secretary of State for Northern Ireland (SOSNI). There were further meetings, following the election, on 21 May 1997 and again on 17 June 1997.¹⁵ Portadown SB noted that:

‘Rosemary NELSON, Solicitor, Lurgan was present in a legal capacity for the Garvaghy Road Residents Coalition at their meeting with the Secretary of State, Mo MOWLAM on 17 6 97.

COMMENT: NELSON has firm PIRA sympathies.’

6.38 Adam Ingram, who was appointed to the NIO by the new government as Minister of State with responsibility for security in Northern Ireland, told us that at the time ‘*the scale of it and the intensity of the language and the depth of the animosity*’ associated with the Drumcree dispute made him realise ‘*just how far we had to go*’. In her autobiography Mo Mowlam said the feeling before Drumcree 1997 was that ‘*No one wanted a repeat of the social “meltdown” of 1996.*’¹⁶

6.39 There is no evidence that Rosemary Nelson attended any of the pre-election meetings and it would appear that her role in those after the election was low-key. The NIO’s Senior Director Belfast who was also the Director of Policing and Security¹⁷ attended these talks to give input on ‘*the security side of things*’. He remembered that on the GRRC side Breandán Mac Cionnaith ‘*did most of the talking*’, Rosemary

¹² We were told that: ‘*it [the work] was seasonal*’.

¹³ Staff told us there were ‘*flurries of activity*’ and said ‘*maybe a month or so running up to Garvaghy Road there could have been meetings*’.

¹⁴ *The Irish News* 7 May 1997

¹⁵ *The Irish News* 7 May 1997; *Belfast Telegraph* 21 May 1997; *Irish News* 18 June 1997

¹⁶ Mo Mowlam, *Momentum: The Struggle for Peace, Politics and the People* (Hodder & Stoughton, 2002), page 94

¹⁷ The Senior Director Belfast was also Director of Policing and Security and was responsible for two divisions, namely Security Policy and Operations Division and Police Division. The heads of each division reported to him. In our Report, he is always referred to as the Senior Director Belfast, however, note the change of personnel in August 1998.

Nelson was involved as the legal adviser to the GRRC and as far as he could recall *'she did not say anything at the meetings or make any other contribution to the meetings'*. As to how he regarded Rosemary Nelson he said: *'I did not regard Ms Nelson as a trouble maker. I was entirely pragmatic in these things [...] I would have liked to have had a friendlier relationship than I did with all the Garvaghy Road residents, but Breandán Mac Cionnaith was not keen for this to happen.'*

6.40 During the first week of July 1997 Mo Mowlam attempted to negotiate a settlement between the GRRC and the Orange Order. The talks involved Sir Ronnie Flanagan (by then Chief Constable of the RUC) and officials from the NIO. They ended without agreement. As they were underway it was reported that the LVF had issued a threat that they would mount terrorist attacks in the Irish Republic if the march was re-routed.¹⁸

6.41 The journalist Anne Cadwallader was one of the large number of media representatives who stayed at Portadown to report on tensions preceding the march and the aftermath. She was there for three weeks. She regarded Rosemary Nelson as a reliable source of information about the dispute although she felt that at times Rosemary Nelson was constrained by confidentiality in what she could say to her. She told us that she remembered thinking at the time: *'How on earth does Rosemary pack it all into 24 hours?'* Another journalist present, Susan McKay, told us that she spoke to Rosemary Nelson on 5 July 1997 about judicial proceedings that she understood Rosemary Nelson was planning on initiating. She remembered that: *'It was the year that Mo Mowlam had told the Garvaghy Road Residents' Coalition that she would personally inform them if there was any intention for that march to go ahead. So there was a lot of sort of debate [...] about, you know, could people be trusted or what was going to happen.'*

6.42 The GRRC also invited a team of international observers who would be present on 6 July 1997. These groups included the Coalition for Peace in Ireland, a Republican support group based in Montreal Quebec, the Brehon Law Society, a group of Irish-American lawyers founded in New York, and the Information on Ireland Campaign, a group formed in the early 1990s in Toronto. In some instances individuals from these organisations acting as international observers stayed with Rosemary Nelson, and it is clear that she appreciated delegations attending Drumcree. She was also involved in the Irish Parades Emergency Committee in the United States. Trevor Sargent Teachta Dála (TD) who was present at the time as an independent observer told us that the situation was very tense and he too remembered that there had been some type of assurance given by Mo Mowlam to the GRRC. His impression of Rosemary Nelson was that she was *'very aware that we were dealing with an issue of negotiated agreement and that one had to be extremely careful in terms of words and actions not to jeopardise that agreement'*. He observed that *'she regularly found herself of being in a position of having to challenge people to remain reasonable and not to lose their temper when provoked'*. He observed that Rosemary Nelson was a *'feisty woman'* but from what he saw at the time *'she was trying to avoid chaos and was acting as a coherent spokesperson'*.

6.43 Before midnight on Saturday 5 July 1997 Rosemary Nelson telephoned Mo Mowlam's office to ask whether the decision had been made as to whether the Orange Order would be allowed to march down the Garvaghy Road. According to one account, Rosemary Nelson *'pointed out that the residents may still wish to contemplate legal action, depending on the decision taken. She was told that she would be called back, but she never was called.'* A Portadown SB report in July noted: *'Rosemary NELSON contacted the Secretary of State's office late on Saturday night. She was pushing to get a decision on the parade for Sunday, stating that they needed to know in time to get*

¹⁸ *Belfast Telegraph* 2 July 1997

legal actions started if necessary.' In the event no warning was given. The decision as to whether the march would be allowed to return down the Garvaghy Road was taken in the early hours of the morning of 6 July 1997. Sir Ronnie Flanagan told us that he made the decision to allow the march through after being advised by the Assistant Chief Constable (South Region) that *'he believed that he could, at that time, hold the road clear and get the march down quickly the following morning. It was obviously an important decision that had Province-wide implications.'* He said: *'We had received intelligence to suggest that Loyalists intended, amongst other things, to abduct and murder innocent Catholics. I recall that it was quite vague intelligence, for example not giving the location for such attacks, the people to be involved, or the victims who would be attacked.'*

6.44 According to her Principal Private Secretary,¹⁹ Mo Mowlam was *'very frustrated and upset'* about the decision. He told us: *'It wasn't an outcome she had hoped would materialise and she referred at that point to having made a promise to somebody on the Garvaghy Road [...] that she would give an advance warning on the decision [...] I think Mo must have been referring to Rosemary Nelson.'* Sir Ronnie Flanagan told us that he was aware that the Secretary of State had promised the Garvaghy Road residents that when a formal decision was made she would communicate it personally to them. He said that when Mo Mowlam expressed her intention of communicating the decision personally with the residents she was advised not to do so as there was *'intelligence to suggest that if she went to the road there was a risk that she would be held hostage by the residents'*. Sir Ronnie Flanagan made the following observations about the Secretary of State's role in the dispute: *'Whereas certain comments were made publicly by the SOS that she had a role to play in this decision, the fact was that it was a decision for the Chief Constable alone to make.'*

6.45 In fact, within the RUC, a contingency plan had been prepared which contemplated the return of the march along the Garvaghy Road without the agreement of the residents. This Operational Order entitled 'Scenario One' recited as its main objective: *'To ensure the parade is permitted to process along its traditional route unhindered'*. Once the decision had been taken to force the march through, its provisions were put into effect.

Operational Order Scenario One

6.46 The police plan under Operational Order Scenario One was to create a sterile area using vehicles and officers along the entire length of the Garvaghy Road so that the march could pass unmolested. Officers and vehicles were to enter from three directions: from opposite ends of the Garvaghy Road and from the intersecting Ashgrove Road. It was intended that they should establish a number of cordons through which residents would not be allowed to pass. Once these were in place the police lines would be pressed outwards forcing objectors back away from the Garvaghy Road to beyond stone-throwing distance from the march.

6.47 In accordance with the Operational Order some 34 Mobile Support Units comprising typically 25 officers, each commanded by an inspector, were directed to a pre-designated location along the Garvaghy Road and its environs. Each unit was allocated a unique call sign by which officers were later identified.

6.48 The instructions given to Unit J1, for example, were as follows: *'Deploy with 1 x CD3 Coy on the Ashgrove Road. Prevent protestors attacking Police or the Parade on the Garvaghy Road'*; those to Unit L3, assigned to the main entrance to Ballyoran

¹⁹See Appendix F for an illustration of the Senior Structure of the Northern Ireland Office.

Park, included the instruction: *‘Persons opposed to the parade must be kept well back to prevent missiles being thrown. You should ensure that missiles are not thrown over the roof tops.’* Many of the units, J1 for example, were to have military support.

6.49 A Technical Support Unit was to provide video coverage suitable for evidential purposes from strategically placed camera towers. There was also to be helicopter support capable of providing aerial video film. At least three Evidence Gathering Teams were to be deployed at any one time. A number of Vehicle Check Points were to be established in order to insulate the entire area. It was anticipated that there would be complaints. The plan provided for a Complaints Officer to be nominated. *‘An Inspector from Complaints and Discipline Branch will be based at Portadown Police Station 24 hours a day, in order to process any complaints. All complaints from whatever medium received should be channelled to this person.’*

6.50 Overall command operated through three levels: Gold Command at headquarters, and Silver and Bronze on the ground at Portadown. In overall charge of the operation at ground level was the Silver Commander. Immediate control of specific locations along the Garvaghy Road was allocated to officers who were designated Bronze Commanders.

6.51 In a witness statement dated 7 August 1997 the Silver Commander described his instructions as follows: *‘The police objective was to enter the Garvaghy Road at 0330 hours from the north side (Dungannon Road) from the south (Castle Street) and from a central location (Ashgrove Road) under the command of respective Bronze Commanders. The plan was to insert 2 lines of police vehicles, one on each footpath on either side of the Garvaghy Road.’* Bronze Commander 5 described his instructions in a witness statement dated 31 July 1997 as follows: *‘To enter the Garvaghy Road at 0330 hours from the Dungannon Road roundabout end with nine MSU’s and proceed to the Ashgrove Road junction inserting two lines of police vehicles, one on each footpath on either side of the Garvaghy Road. Other police were to meet us at Ashgrove Road having entered the Garvaghy Road from the opposite direction.’* We were able to reconstruct the course of events immediately following the beginning of the operation from accounts that were recorded soon afterwards.

6.52 As regards officers approaching from the Portadown end of the Garvaghy Road, the plan was executed without difficulty. One officer described his deployment as follows:

‘At 3 30 am on 6 July 1997 I, along with other Police, moved onto Garvaghy Road, Portadown. The party of Police Officers I travelled with approached the Garvaghy Road from Shillington’s Bridge direction. We moved in a convoy of Landrovers towards the Ashgrove Road junction to secure the road. Another group of Police Officers, also in Landrovers, were to approach the Garvaghy Road from the Dungannon Road Roundabout direction and join us at the Ashgrove Road junction and secure the Garvaghy Road from their direction to the point they met with the group I travelled with. Simultaneous with the deployment of Police onto the Garvaghy Road, other Police, supported by Military, moved into the Ashgrove Road and various estates adjoining the Garvaghy Road to provide protection for Police Officers on the main road. I travelled in the front Landrover in our convoy along with members of J2 Mobile Support Unit based at Mahon Road, Portadown. As we moved along Garvaghy Road towards Ashgrove Road, at a steady speed, we moved onto the Ashgrove Road side of the Garvaghy Road onto the footpath, to secure the road with vehicles. There were a number of people present who sat on the road. There was no resistance to us at this point.’

6.53 The approach of the police convoy from the Drumcree end of the Garvaghy Road was not so uneventful. The Silver Commander described the approach as follows:

'On travelling down the Garvaghy Road just past the junction with the Drumcree Road we were confronted by a large crowd of people blocking the road, police in the front vehicles dismounting. Front-line police took up positions forming a line of shields at the front of vehicles and also on the left and right hand sides of the road. Almost immediately the large crowd on the road started to attack the police. Petrol bombs, missiles including rocks, paving stones and wood were fired at police. Fires to include bedding were lit on the Garvaghy Road. Police continued to proceed along the Garvaghy Road moving the protestors back in a restrained, disciplined manner despite the vicious and sustained attack on them. [...] The objective of inserting the 2 lines of police vehicles on the Garvaghy Road from the Dungannon Road and from the Castle Street direction with a secure holding line by other police and military on the Ashgrove Road was achieved at approximately 0355 hours. At this point there remained approximately 150 protestors sitting on the roadway at the Ashgrove Road junction. After a settling down period these protestors were removed from the road in an organised and disciplined manner by police officers under the command of Superintendent [redacted]. The Garvaghy Road then remained a sterile area until the parade passed through the Garvaghy Road at approximately 1300 hrs on the same date.'

6.54 A member of Belfast Mobile Support Unit (No 2 MSU) in this deployment said:

'As we advanced down the road, a few minutes later the first of a number of petrol bombs was thrown at Police lines from both ahead of the Police and to ground on their left. I saw six petrol bombs landing in or around police lines. One of these hit a police officer directly and the flames were extinguished by officers around him. Fearing for the lives of officers on the line at approximately 0340 hours I instructed the Unit baton gunners to load their baton guns and fire on identified petrol bombers throwing at police lines. The barrage of missiles and petrol bombs continued until we reached the junction of Ashgrove Road.'

6.55 Another officer who approached the junction of the Garvaghy Road and Ashgrove Road from this direction described briefly the events at the junction:

'At 0355 hours my mobile support unit had reached on foot the junction of Garvaghy Road and Ashgrove Road where we met up with other units that had been deployed countrywards. At this point we were deployed to form a shield line between the Garvaghy estate and sit down protestors that were still on the road. At 0530 hours Superintendent [redacted] gave the verbal order to the sit down protestors to remove themselves from the road as they were causing an obstruction.'

6.56 Officers approaching the junction from Ashgrove Road may have been the first to arrive. A superintendent described the approach of officers from that direction and events at the junction:

'From 3 30 am on 6 July 1997, my area of supervision was confined to Ashgrove Road, Portadown. I accompanied other Police along the Ashgrove Road to its junction with Garvaghy Road. A strong military presence was in the area of Ashgrove Road and Churchill Park. On our arrival at the junction between 100 and 200 people sat down on the Garvaghy Road at the junction. The Police Officers whom I accompanied formed a line across the Ashgrove Road using their vehicles to prevent the movement of people to join the protestors sitting on the road. Other Police on foot approached the protestors from either end of the Garvaghy Road and formed cordons around the protestors on three sides. After a period of time Police Officers commenced to lift protestors

off the road, carrying them through the cordon on Ashgrove Road side and release them. [...] When about 50 protestors had been moved through the cordon they were then forced through a second cordon which consisted of Police Officers and landrovers parked across Ashgrove Road. Eventually a situation was arrived at where Garvaghy Road was clear of protestors and protestors were being confined to Ashgrove Road outside stone throwing range of Garvaghy Road.'

6.57 It was almost certainly at the junction of Ashgrove Road and the Garvaghy Road, immediately following the start of the sit-down protest, that the incident about which Rosemary Nelson was to complain occurred. An RUC officer in charge of one of the units involved gave this account of the manner in which the road was cleared:

'I had to read the protestors a warning that they would be physically removed if they did not move themselves. [...] I had formed a square around the protestors and I lined my men up in threes, with each group of three men taking it in turns to pass one of the protestors out through what was effectively a funnel towards the housing estate. Some of the protestors simply moved themselves [...] [other] protestors linked arms to try and avoid being moved and there was a certain amount of kicking and struggling as the protestors were carried out by my men.'

6.58 The actions of the RUC were being filmed live by television crews. Later there would be allegations that the more volatile protesters were treated by the police with excessive force and that the residents and protesters were sealed into side streets to make way for the Orangemen. The parade proceeded down the Garvaghy Road after the completion of the Drumcree Parish Church service at midday. According to this RUC officer, when the parade eventually came down the road there *'was no trouble really due to the fact that the rioters and those trying to cause trouble had been kept away from the road. They were shouting and protesting but they could not reach the parade as it went down.'* However, serious violence began as the security forces retreated from the area.

6.59 One of the officers involved in the day's events, who was a member of a Mobile Support Unit, described some of his experiences that night as follows: *'You would have been there until you were told you were relieved, and even on being relieved you might only be confined back to the station where you would lie down in the station to be available again if required.'* He continued: *'It obviously isn't pleasant. You are obviously in full public order protective gear and you are preventing – on this particular occasion, preventing people coming from the estate on to the road to interfere with other police that were dealing with protestors on the road. There would have been stoning. They would have stoned you, various missile attacks, you know, stones, bottles et cetera. A lot of verbal abuse would have been, you know, shouted at you and directed towards you. And just really hostility, the way I would put it.'*

6.60 This officer recorded comments made by the protesters in his notebook. These included: *'See you in Lurgan with the other two bastards'* (a clear reference to the murder of the two Constables on 16 June 1997); *'SS RUC'* and *'up the IRA'*. The officer was asked by the Inquiry to describe the reaction of local officers to the murder of these Constables. He said, *'It wasn't very good. We lost two colleagues, very upsetting time [...] I can't speak for my colleagues but I was sick to the stomach at the thought of it. It certainly wasn't a good day.'* He was asked whether Colin Duffy was regarded as the murderer, to which he answered: *'Again, I can't speak for my colleagues, but I certainly would have had that belief, yes.'* When asked what he knew about Rosemary Nelson he told us that he *'knew that Rosemary Nelson was a solicitor in Lurgan. She would have appeared on TV representing a number of high-profile cases'* and that *'she was a spokesperson for them [i.e. the GRRC]'*. We are sure that a number of officers would have made a direct connection between her and Colin Duffy.

Alleged assault and abuse of Rosemary Nelson

6.61 In the aftermath of the RUC operation to remove protesters from the Garvaghy Road, allegations emerged that at some time in the early hours of the morning Rosemary Nelson had been physically assaulted and verbally abused by RUC officers.

6.62 The assault was described in a statement taken from Rosemary Nelson by Paul Mageean from the Committee for the Administration of Justice (CAJ) on 7 July 1997:

*'Some time later, maybe more than an hour, I heard the siren again. I ran to the road again. I went straight to the police lines. They were standing with their shields in front of them. I explained to them who I was and asked to speak to the officer in charge. I told them my name and that I was representing the residents' coalition. I said that no decision had been communicated and I would like to know what decision had been taken because we had a right to go to court to review such a decision. I was on my own as most of the residents were sitting down in the road. One officer grabbed my right arm and pulled me into the middle of the police. [...] I was surrounded by police officers. One said "Rosemary you Fenian fucker." I said could I have your number and he told me to "fuck of" [sic] and he spat at me on my face. I am not sure of [sic] the police were touching me during this but other people who witnessed the incident said that I was being pushed by the officers. I have bruises to my right shoulder and to my legs. I am also extremely stiff and sore. I saw some reaction from the crowd and I shouted to them not to react. The police then let me walk away.'*²⁰

6.63 Paul Mageean told us that he had seen the bruising referred to in this statement and in fact the statement contained a note to this effect. We also watched a video recording of Rosemary Nelson made very soon after the events in which she described the incident herself.²¹ Her account was corroborated by two Canadian observers, Niall O'Hegarty and Alan McConnell, who had seen her in a state of distress very shortly after she had been assaulted. Susan McKay, a journalist, accompanied Rosemary Nelson when she returned to the police lines at Ashgrove Road, where the incident had taken place, meaning to identify her assailants. Susan McKay was with Rosemary Nelson when she spoke to an officer in the police lines and noted the precise time of the conversation as 04.20. This officer was wearing his warrant number on his shoulder and later made a witness statement setting out the detail of the conversation. He gave evidence to us in person. He had witnessed Rosemary Nelson's distressed state and heard her refer to the fact that she had been assaulted.

6.64 In his witness statement to the Inquiry Paul Nelson said that he had received a telephone call from his wife on the day of the march and that she had told him that she had been pushed around by police officers. He also told us during his evidence that he had seen bruising *'over most of her upper shoulder down to the elbow [...] there was a wee bit just past her shoulder on to her upper back'*. Soon after these events Rosemary Nelson had described them to her friend and secretary, Nuala McCann. Nuala McCann described the injuries she had seen in a witness statement made in 1999 as being *'numerous bruises to her legs arms and one of her shoulders'*.

6.65 By reference to the police Command Log maintained that day we are able to fix the time of the first incident described by Rosemary Nelson as having occurred shortly after 03.30. It was at this time that the siren sounded for the second time that morning alerting the residents to the movement of teams of officers from each

²⁰At that time Paul Mageean was employed by CAJ as a legal officer.

²¹*Policing the Police*, a documentary produced by CAJ.

end of the Garvaghy Road and from the outermost end of Ashgrove Road.²² This, when compared with the time recorded by Susan McKay, which we believe to be accurate, and by the observations of Niall O’Hegarty and Alan McConnell, indicates that the assault occurred very early in the morning, soon after RUC officers moved into position at the junction of the Garvaghy Road and Ashgrove Road.

6.66 A relatively small number of residents, about a hundred in all, had been able to get on to the road at this junction before the police lines were in place and begin a sit-down protest that continued until they were physically removed by the police, an exercise which, according to the Command Log, was complete by 06.15 that morning. Joanne Tennyson, in her witness statement to the Inquiry said:

‘I recall sitting on the road with RUC Land Rovers surrounding us. There were not that many of us there. A group of us had got onto the road at Ashgrove and the RUC had made a ring around us with their Land Rovers so that no-one else could get in to the ring. I heard someone shouting that Rosemary Nelson was being jostled. I jumped up and I could see her head. [...] People were shouting for the observers to go to see what was going on. [...] I could see that the RUC were surrounding her. It was half light and we had also been up for days and nights waiting to hear what would happen so it was a difficult situation. [...] I could see that she was being pushed by the RUC who had her surrounded. It certainly was not a case of one policeman just saying to her “you are not allowed here”. I do not know what she was doing there at the time but perhaps she came to see if we were all ok. She was definitely being pushed by them, there would not have been shouts for observers otherwise.’²³

6.67 In her statement of 7 July 1997 Rosemary Nelson referred to a second incident which occurred later in the morning, and other witnesses saw Rosemary Nelson being manhandled and verbally abused again later on that morning. In our view there was at least one other incident which occurred when Rosemary Nelson attempted to negotiate a path through the police lines for residents wishing to attend Mass. The altercation appears to have been less serious than the first described by Rosemary Nelson in the statement taken by Paul Mageean. Nonetheless, we believe it to have occurred, and the fact that it did occur reflects, in our opinion, the considerable animosity felt towards Rosemary Nelson in some quarters of the RUC.

6.68 We also examined evidence concerning the investigation of the formal complaint made by Rosemary Nelson regarding the assault. It was evident from her witness statement that the first assault may have been witnessed by a number of residents who took part in the sit-down protest immediately after the siren sounded. Not a single witness statement was taken by the investigating officer from those who took part in this protest. Nor did any officers say that they had even seen Rosemary Nelson at the place or at the time of the alleged assault although we have no doubt that there were many police witnesses to this incident.

6.69 The complaints investigation did, however, identify the Mobile Support Units which were first to arrive at the scene of the assault. It is significant that a number of these comprised local officers. It is likely in our view that the assailants belonged to one of these units and that Rosemary Nelson was well known to them.

²² The Command Log recorded the siren as having been first sounded at 02.33. This was perceived by residents to be a false alarm but was probably triggered as officers had been seen measuring the width of certain roads and alleyways on the estates bordering the Garvaghy Road.

²³ Note Joanne Tennyson’s recollection that these events occurred in 1998 as opposed to 1997 was evidently incorrect.

Conclusions regarding the alleged assault on 6 July 1997

6.70 We are sure that Rosemary Nelson was abused and assaulted by RUC officers on the Garvaghy Road in the early hours of 6 July 1997 and that her statement made to Paul Mageean the following day was honest and truthful. We are also sure that the then-current perception of her within the RUC continued to affect police behaviour towards her thereafter.

6.71 By July 1997 Rosemary Nelson was perceived by many local RUC officers to be a close associate of Colin Duffy and of other PIRA members. Immediately before the events on the Garvaghy Road in 1997 she had been instructed by Colin Duffy following his arrest for the murder of Constables Johnston and Graham; she had also been instructed by the family of Robert Hamill who were criticising the RUC regarding the alleged failure to prevent his death; she was the solicitor for the GRRC and was perceived to be proactively involved in it. In its turn, the GRRC was perceived to be influenced by PIRA and its public face, Sinn Féin. These perceptions, we believe, caused some RUC officers to feel hatred towards her which they displayed by verbally abusing her and physically assaulting her. In respect of the RUC officers present at the Garvaghy Road who gave oral evidence before us, we are satisfied that they took no part in abusing or assaulting Rosemary Nelson.

Aftermath of Drumcree 1997

6.72 Violence erupted across Northern Ireland as news spread that the decision had been made to let the parade down the Garvaghy Road. There were riots in Nationalist areas in Portadown, West Belfast and Lurgan. A policewoman was shot and injured in a gun attack on an RUC patrol in County Tyrone and there was another gun attack on a police officer in Portadown. Plastic bullets, the focus of much criticism from human rights campaigners, were fired in great numbers against rioters. A train was hijacked and set alight in Lurgan causing an estimated £6 million of damage. There was a night of gun battles and fierce fighting. Further rioting in Nationalist areas took place the next day. By one estimate 1,444 petrol bombs were thrown and 60 RUC officers and 49 civilians had been injured in the 72 hours following the parade.²⁴

6.73 The apparent breach of promise by Mo Mowlam to the GRRC disappointed the Nationalist community. *The Irish News* on 7 July 1997 quoted her as saying, 'I know many in the Nationalist community will be angered by this decision. It has been dictated by circumstances. I would have preferred it otherwise.' *The Irish News* reported SDLP representative Brid Rodgers as saying, 'It's an outrage – it's a double betrayal because of the manner in which it was carried out.' From the Unionist perspective there was ill-feeling too. *The Belfast Telegraph* of 7 July 1997 reported David Trimble as saying, 'I must say I am very angry – and there is a lot of anger in the community – about the way the Chief Constable presented his decision.'

6.74 The following weekend the Orangemen agreed to waive four other parades including their parade down the Ormeau Road, Belfast, on 12 July so as to ease tensions in Northern Ireland. Further adverse comment was sparked when an NIO document was leaked to the press which indicated that apparently all along it was the government's intention to 'find a way of getting some Orange feet on the Garvaghy

²⁴ *The Irish News* 9 July 1997

Road'.²⁵ Sir Ronnie Flanagan, quoted in *The Irish News*, described the dilemma in the following terms: 'A simple stark choice in terms of balancing two evils: each evil bound to bring violence.'

6.75 On 6 July 1997 Rosemary Nelson gave a video interview to the New York-based Lawyers Committee for Human Rights regarding the events that had just taken place in which she described being assaulted on the Garvaghy Road. She also spoke to representatives of British Irish Rights Watch (BIRW), Amnesty International, Human Rights Watch and CAJ about it. Trevor Sargent TD remembered that after the march Rosemary Nelson thanked the observers for attending and monitoring the situation. He said that she seemed 'outraged by it all'.

6.76 On 10 July 1997 a number of international observers met Sir Ronnie Flanagan to express concerns about policing at Drumcree. Having been invited to formalise their complaint, they submitted various affidavits and statements and a formal investigation was undertaken by the Complaints and Discipline Department under the supervision of the ICPC.

6.77 Some time after the Drumcree march a special meeting was convened at the community centre on the Garvaghy Road in Portadown so that protesters who wished to make a complaint or pursue a civil action could do so through Rosemary Nelson's office. A number of members of staff attended the community centre to take witness statements and collate information.

6.78 A member of Rosemary Nelson's staff told us:

'The residents from whom we took statements were making complaints against the police about being hit or shoved, but each had their own complaint. We took statements specifically in order to lodge complaints against the RUC. Most of the staff from Rosemary's practice were involved [...]. Joe Duffy and Brendan McKenna were both there. [...] Some were serious complaints, some less so. We took the names and details and pushed things forward from there. Each resident had a file opened and each [...] was represented by Rosemary. [...] Letters of claim were drafted against the RUC with supporting medical evidence [obtained] at a later stage.'

6.79 Another staff member confirmed that there was 'a filing cabinet full of files' relating to these complaints. An SB report of July 1997 stated:

'Brendan McKENNA is getting people to go to the Community Centre to make statements regarding injuries sustained on 6 7 97 on the Garvaghy Road. Rosemary NELSON has every member of her staff available to deal with this issue and has prepared statements and dossiers to send to the European Courts. McKENNA and NELSON are not happy with the Irish Government's attitudes to the situation and intend to meet them on 9 7 97 in Dublin to put forward their viewpoints.'

6.80 In all 96 formal complaints were lodged with the RUC and civil proceedings arising from the events on 6 July 1997 were initiated through Rosemary Nelson's office on behalf of four clients.

6.81 There was a good deal of interest in these cases shown by the observers who had been present on the Garvaghy Road, particularly those from North America. The following SB report stated:

'Rosemary NELSON has received an invitation from a firm of New York lawyers to fly her out within the next few days to review material concerning the RUC'S handling of civilians on the Garvaghy Road on 6 7 97.'

²⁵ *The Irish News* 15 July 1997

'With reference to [the material referred to in the previous paragraph], Joanne TENNYSON has been put in charge of collecting and copying all such material and Brendan McKENNA will attempt to get this material available to Rosemary NELSON before she goes. NELSON is keen to keep American pressure on the situation and stated that the lawyers had represented Nelson MANDELA and had contacts with many US Senators.'

6.82 On 15 September 1997 Rosemary Nelson herself wrote to Sir Ronnie Flanagan with regard to the alleged assault on her. The letter states: *'I believe the cause of such injuries lies with yourself and as it is my intention to claim for all personal injuries, loss and damage sustained I would advise you to pass this letter of claim onto your legal department.'* Civil proceedings were not initiated by Rosemary Nelson until 29 January 1999.

6.83 Sir Ronnie Flanagan told us: *'It was not unusual for a large number of complaints to be made after the marching season.'* He added that although he was not aware that Rosemary Nelson was acting for these complainants, *'this was not an unusual thing for a local solicitor to do'*. The Sub-Divisional Commander of Portadown told us he expected the complaints and he believed that the total number was approximately 120. He said the receipt of these complaints necessitated him taking steps to try to identify the officers involved and, if possible, the nature of the complaint. He also prepared a long covering statement. He said the whole process was the same for each complaint and they would then be referred to the Complaints and Discipline Department. He said that *'given the events of the operation, it didn't come as any surprise. People were physically lifted from the road. There was a major police operation.'*

7

Solicitor for the Garvaghy Road Residents' Coalition 1998–1999

7.1 On 16 February 1998 the Public Processions (Northern Ireland) Act 1998 came into force and the power to decide whether a march should be allowed to proceed was transferred from the Chief Constable of the Royal Ulster Constabulary (RUC) to the newly established Parades Commission (the Commission). The Commission was set up in 1997 as an independent, quasi-judicial body under the chairmanship of Alistair Graham. Whereas previously decisions had been made on public order grounds alone, the Commission was given powers to consider broad criteria when determining whether a particular march should be allowed and under what conditions. The Secretary of State for Northern Ireland (SOSNI) had the authority to amend, revoke or uphold a determination of the Commission when it was in the public interest to do so.¹ Although it was possible for the RUC to act otherwise if there were compelling operational reasons for doing so,² it was expected that the role of the RUC was now to be restricted to enforcing the decisions made by the Commission.

7.2 In preparation for its statutory role with respect to the Drumcree Church parade, the Commission carried out a two-day evidence-gathering exercise in Craigavon on 27 and 28 January 1998. Oral evidence was given by 39 people and the confidential transcripts of that evidence were retained by the Commission. Written evidence was also received including a submission from the RUC.

7.3 We did not actively gather evidence about the activities of the Garvaghy Road Residents' Coalition (GRRC), but from the material we have received, it is clear that in the months before the Commission reached its final determination regarding the Drumcree Church parade, the leadership of the GRRC was lobbying parties perceived to be sympathetic to its desire to prevent Orange Order parades along the Garvaghy Road in Portadown. In January 1998 the Irish Minister of Foreign Affairs met representatives of the GRRC and Lower Ormeau Concerned Community (LOCC). Rosemary Nelson actively supported the GRRC in this work. In February 1998 Breandán Mac Cionnaith was invited to speak to a visiting delegation from the Lawyers Alliance for Justice in Ireland (LAJI) at an event in Lurgan organised, principally, by Rosemary Nelson referred to at Chapter 20.1 below. She and Dianne Hamill also addressed the delegation. In the same month the Committee for the Administration of Justice (CAJ) released a video and report entitled 'Policing the Police' which assessed the RUC's handling of contentious parades in 1997. The video contained footage from contentious Loyalist marches, including Drumcree. It included instances when police allegedly assaulted and intimidated demonstrators and one clip featured Rosemary Nelson alleging she had been physically and verbally abused by the police.

7.4 Rosemary Nelson was not present when the Taoiseach and Irish Minister of Foreign Affairs met representatives of the GRRC and LOCC in Dublin on 26 May 1998. She did, however, attend a meeting on 25 June 1998 with Breandán Mac Cionnaith and an Irish Government official, Eamonn McKee, during which there was a discussion as to whether legal proceedings might be initiated to obtain the Commission's unpublished preliminary determination, so as to compare it with the final decision.

¹ Section 11, Public Processions (Northern Ireland) Act 1998

² Sir Ronnie Flanagan had made similar comments to a US television crew several months before Drumcree 1998.

7.5 The activities of the GRRC were closely monitored by RUC Special Branch (SB) and the reporting presented Rosemary Nelson as a key figure in the coalition. According to an SB report in March 1998, for example, Rosemary Nelson and Breandán Mac Cionnaith met the LOCC group to discuss concerns about the potential leakage to *'Loyalist Death Squads'* of documents provided by the residents' groups to the Commission.³ The report said that it was decided that *'An initial request will be made to the Parades Commission for the return of documents within seven days and if this is not carried out the Residents' Groups will apply through NELSON for an injunction to be taken out against the Parades Commission for the return of said documents.'* In April 1998 an intelligence report recorded that *'ROSEMARY NELSON, Solicitor, Lurgan, advises the GRRC on all legal matters'*; another *'that ROSEMARY NELSON has a list of [redacted] Priests who are assessed as sympathetic to the GRRC'*. Intelligence reports in June 1998, all submitted by SB Portadown, recorded that *'Rosemary NELSON will be staying with [redacted] over the Drumcree period'*; that on a particular night *'Brendan McKENNA is to meet with Rosemary NELSON'*; and on another occasion, that she was to *'introduce Brendan McKenna to a Kurdish Film Crew interested in making a programme about Drumcree'*. It was also reported that month that Breandán Mac Cionnaith had met a Labour backbencher and secured an agreement for a matter relating to Drumcree to be raised in the House of Commons.

7.6 The existence of such reporting reflects the importance that the UK Government attached to the Drumcree issue. There were fears that Drumcree had the potential to derail the Peace Process. One senior Northern Ireland Office (NIO) official told us: *'Drumcree had become a microcosm for political and other issues in Northern Ireland. If we were unable to resolve this issue, then a lot of other things could fall apart. Drumcree had shown its potential to act like a septic sore, poisoning Northern Ireland and damaging the political settlement process, with the risk of de-stabilising the Good Friday Agreement.'* The Prime Minister was advised on 25 June 1998 that it was *'not impossible that Drumcree could lead to the collapse of the whole [Good Friday] Agreement'*. That there were high stakes involved in Drumcree 1998 was a matter of public record.

7.7 As the year progressed SB responded to increasing demands for intelligence concerning Drumcree. As regards the GRRC it was evident to us that most of the intelligence gathering was directed at anticipating the tactics that would be adopted by the residents. A report of 6 April 1998 is typical. It was reported that Sinn Féin was *'in frequent contact with BRENDAN McKENNA, Portadown in relation to the GRRC demonstration being organised for Drumcree '98 on 5 7 98'*. The report continued: *'Sinn Fein are concerned that the event remains under its control and is not going to be hijacked by elements sympathetic to INLA [Irish National Liberation Army] or CIRA [Continuity Irish Republican Army] and used to gain support for those organisations. To this end the GRRC, through McKENNA, have been instructed to draw up a list of local personalities who are likely to be sympathetic to INLA/CIRA and forward the list to Sinn Fein.'*

The decision of the Commission

7.8 On 29 June 1998 the Commission announced the result of its determination regarding the parade proposed by the Portadown District Loyal Orange Lodge No 1 for 5 July 1998. It ruled that *'Given the absence of any positive movement towards accommodation, we cannot see at this stage how a parade could proceed again this year down the Garvagh Road without having a very serious adverse impact on community*

³This concern probably relates to the two members appointed to the Commission in February 1998, one was a member of the Apprentice Boys in Belfast and the other a former *'influential UDA figure'*.

relationships both locally and more widely across Northern Ireland'. The parade would not be permitted to proceed along the route proposed by the Loyal Orange Lodge No 1. The restrictions that had been observed by agreement since the mid-1980s on the outward route were re-imposed, and, with respect to the return route, the Commission ruled that *'The parade is also prohibited from proceeding beyond Drumcree Parish Church, Drumcree Road, or entering that part of the notified route which includes the entire length of the Garvagh Road'*.

Events on the Garvagh Road

7.9 For the third year in succession Rosemary Nelson was present at the place of confrontation on the Garvagh Road on the weekend of the Drumcree Church parade. She gave briefings to the international observers who had assembled once again at the invitation of the GRRC and others. We heard evidence from a solicitor, attending as an observer, who encountered Rosemary Nelson at the community centre on the Garvagh Road on 4 July 1998. He told us that there was a feeling that, because there were enough observers on the ground with a legal background, it might have the effect of dissuading the authorities from 'countermanding' the Commission's decision. He remembered that Rosemary Nelson seemed to be very busy and knew everybody present. She was in 'good spirits' and encouraged by the presence of a large contingent from the media and foreigners.

7.10 On 5 July 1998, in defiance of the Commission decision, members of the Orange Order and their supporters attempted to parade down the Garvagh Road following the Drumcree Church service. A short distance from the Drumcree Parish Church the parade was met with a line of security force personnel blocking the route to the Garvagh Road and just as in previous years a stand-off between the security forces on one side and the Orange Order on the other ensued.

A letter to the Attorney General

7.11 Fearing the security forces would capitulate, on 9 July 1998 Rosemary Nelson wrote a letter to the Attorney General on behalf on the GRRC requesting that he apply for an injunction restraining the officers of the Portadown District Loyal Orange Lodge No 1 and others from acting in breach of the Commission's decision.⁴ Her letter read as follows:

'I have been instructed to write to you on behalf of the Garvagh Road Residents Coalition in respect of the "stand-off" currently taking place at Drumcree, Co Armagh.

As you know, the background to this matter is that a notice of a proposal to organise a public procession along the Garvagh Road, Portadown on July 5, 1998 was served on the Police on behalf of Portadown LOL [Loyal Orange Lodge] Number 1 District in accordance with Section 6 of the Public Processions (NI) Act 1998. By a determination dated June 30, 1998 and made under section B of the Act, the Parades Commission imposed a condition on the parade prohibiting it from entering the Garvagh Road and requiring it either to disperse at Drumcree Parish Church or to return to Portadown by a different route. A copy of the determination is enclosed herewith.

⁴ She also wrote to the Sub-Divisional Commander of the Portadown RUC station requesting the names of those responsible for the Drumcree Church parade. She also wrote to the Crown Solicitor's Office with the same request advising 'Portadown Police are not being helpful'. Requests for this information were also made to the RUC Force Command by Dara O'Hagan, then a Sinn Féin member of the Northern Ireland Assembly, on behalf of the GRRC and Rosemary Nelson.

Since the Commission's determination, leading members of the Orange Order, including officers of the Lodge in question, have repeatedly stated their intention not to comply with the re-routing condition and have incited to others not to comply with the same. The officers of the Lodge and participants in the parade have refused to disperse or return to Portadown via a different route but continue to insist on their "right" to return to Portadown via Garvaghy Road.

In anticipation of an attempt by marchers to parade along the Garvaghy Road following the Church service on Sunday, July 5 the Army erected security barriers blocking access to the Garvaghy Road estate and there has now been a "stand-off" for nearly four days. During this time my clients, as well as other residents in the Garvaghy Road estate, have suffered considerable anxiety, apprehension, inconvenience and general disruption of their lives in various respects. The organisers of the march have repeatedly stated that they intend to stay at Drumcree for as long as it takes to enforce their "right" to march along the Garvaghy Road.

Not only is there no sign that the situation will resolve itself in the near future, but there is every indication that the situation will become worse. Indeed, we note that Rev. Ian Paisley has recently visited the area and has been quoted as saying that July 12 will be "the settling day" and that one way or another this parade will proceed down Garvaghy Road.

Mr [redacted] has this morning been reported as saying that if the Orangemen don't get what they want at this morning's meeting with the Prime Minister they can "paralyse the country".

The plight of residents, including our client, has recently been aggravated by the concerted attempts of loyalist protestors to block the Dungannon Road end of the estate. While the police have been partially successful in moving these protestors, the fact is that the residents increasingly feel that they are effectively imprisoned in their own estate.

Last night, approximately ten thousand Orangemen and their supporters gathered at the security cordon at the Drumcree end of the estate and there was a concerted effort to break through. Plastic baton rounds were fired and for several hours the residents were subjected to an extremely tense and frightening situation, with the prospect of an imminent invasion of their estate by hostile and violent crowds of Orangemen and their supporters.

In these circumstances, it appears that:

- (i) The organisers of this march are guilty of a clear and obvious breach of the criminal law, in that they have committed offences under either section 8(7) or 8(8) of the Act or both;*
- (ii) There has been a deliberate and flagrant disregard of the law;*
- (iii) There is clear evidence that the organisers are not going to observe the law in this regard and that they intend to continue the illegal conduct in question unless restrained from doing so;*
- (iv) The criminal sanctions provided by the Public Processions Act are inadequate to deter the organisers from continuing to engage in the illegal conduct in that, in particular, there will be delays in the prosecution process which will result in widespread disregard of the law and enable the organisers and their supporters to continue breaking the law pending the resolution of the criminal proceedings;*
- (v) There is considerable harm to the public interest in that, apart from the continuing restrictions and damage suffered by the residents of the Garvaghy*

Road estate, including our clients, the stand-off has become the catalyst for serious and widespread damage and disorder throughout the jurisdiction;

- (vi) The problem needs to be addressed as a matter of urgency, in the light of the veiled threats of even greater protests and disturbances to take place on July 12 and 13;*
- (vii) One of the purposes of the Public Processions Act was to protect communities such as the Garvaghy Road community from the kind of disorder and disruption which processions of this kind may cause;*
- (viii) Criminal proceedings are likely to prove ineffective to achieve the public interest purposes for which the Act has been enacted;*
- (ix) The march organisers' unlawful operations will continue unless and until effectively restrained by law and nothing short of an injunction will be effective to restrain them.*

For these reasons I wish to make a formal request on behalf of my clients that, as a matter of urgency, you apply for an injunction restraining the officers of the Portadown LOL District No 1 and any other known organisers of the Drumcree Parade from acting in breach of the conditions imposed by the Parades Commission in respect of the parade. Alternatively, my clients formally request that you consent to an action being brought in your name at their relation. In this connection, we note that the Prime Minister has recently reaffirmed the Government's intention to enforce the Parades Commission's decision and the proposed course of action is in our respectful view the only effective legal remedy currently available to achieve this end.'

7.12 Having requested their urgent advice, the Attorney General was told by both the Chief Constable and the Secretary of State that the injunction sought '*would not be of assistance*'. The response from the Secretary of State's Private Secretary to the Attorney General's office stated that '*the Secretary of State does not believe that it would be either appropriate or sensible to take a step which would be seen as short-circuiting normal legal processes and limiting the operational discretion of the Chief Constable*'. Accordingly, the official within the Attorney General's Chambers wrote to Rosemary Nelson the same day in the following terms:

'The Attorney General has now considered your request that he apply for an injunction restraining the officers of the Portadown LOL [Loyal Orange lodge] District No 1 and others from acting in breach of the conditions imposed by the Parades Commission. In the alternative, you asked that he consent to you commencing such proceedings on behalf of your clients, the Garvaghy Road Residents Coalition.

After appropriate consultation, the Attorney General has concluded that having regard to all aspects of the Drumcree situation, including the substantial RUC and Army presence, an injunction in the terms you suggest would not materially assist the RUC and Army in their task in upholding the law and maintaining public order. In the circumstances, he does not consider that the public interest would be served by seeking an injunction. He does not propose to take or authorise any action.'

A court appearance

7.13 It seems Rosemary Nelson initiated court proceedings despite the rebuff from the Attorney General and this was reported on by SB Portadown in the following terms:

'Rosemary NELSON, on behalf of the GRRC is preparing to take the Chief Constable to the High Court in order to force him into enforcing the Parades Commission's decision

to have the Orangemen moved from Drumcree. NELSON has asked the GRRC to have affidavits taken from people who were denied access to their work or who were suffering because of the siege. NELSON hopes to go to the High Court on Wednesday or Thursday.'

7.14 Another report read:

'Rosemary NELSON is trying to get Brendan McKENNA to get [redacted] statements of complaint regarding the residents of Garvaghy Road civil rights' abused by the Orange Order in an attempt to get an injunction against the Orange Order to the High Court.'

7.15 There was a brief hearing in the High Court on 11 July 1998 of an 'emergency application' by a named resident of the Garvaghy Road. On the same day, an article in the *Belfast Telegraph* under the headline 'Orangemen facing a High Court action' reported: 'The brief hearing went ahead after solicitor Rosemary Nelson said the Attorney-General had been asked to take the proceedings, but had declined on the ground [sic] of public interest.' Although leave was granted by the judge for there to be a hearing on the matter later in the day, it does not seem to have progressed any further.

Early July onwards

7.16 In the week following 5 July 1998 there was escalating violence in Northern Ireland.⁵ The Prime Minister, Tony Blair, met delegations from the Orange Order on 9 July 1998. Ahead of this meeting he was advised by NIO officials to leave the Orange Order in no doubt about the 'unwavering determination of the Government to support the police and Army in upholding the Parades Commission's Drumcree determination'. He was further briefed that 'there may be scope next week to look more actively for an exit strategy which would allow the Order to withdraw with honour'.

7.17 On the same date an SB officer in Lurgan was preparing an application for permission to install an intercept on Rosemary Nelson's office telephone. This is dealt with at Chapter 11.24 and 11.26. Here we note that the last paragraph stated:

Nelson is undoubtedly a significant personality in the Drumcree situation where she is readily available to offer her expert advice to Brendan McKenna and Colin Duffy, two of her closest associates at this time. She also prepares statements on McKenna's behalf for issuing to the media.'

The application did not proceed but the fact that it was considered may well reflect Rosemary Nelson's perceived involvement in formulating the policy and tactics of the GRRC.

⁵ A list compiled by the NIO of incidents which occurred following the Parades Commission decision regarding the routing of the Drumcree march included: 8 July 1998: 'Protest group rose to 3000 – 4000 strong. A number of protesters breached the wire obstacle and the RUC fired PBRs [plastic baton rounds]. Blast bombs were thrown at the Security forces. One high velocity shot was fired at a joint patrol.' 9 July 1998: 'Five RUC personnel received minor leg and arm injuries when nail bombs were thrown at the baseline at Drumcree.' 10 July 1998: '4 – 5 shots fired at the Security forces. The Security forces fired over 500 PBRs. Two civilians reported to have serious head injuries.' 11 July 1998: '4 shots fired at the Security forces. Two civilians hurt when they fell from the obstacle. 89 PBRs fired.' 12 July 1998: 'One petrol bomb thrown at Security forces at Drumcree.' There were several other incidents in Northern Ireland that week.

7.18 Similarly, a Lurgan SB report in July 1998 stated:

‘Both COLLIE DUFFY and ROSEMARY NELSON are advising BRENDAN McKENNA on how to deal with the pressure being applied from all quarters to compromise to allow some form of parade down the Garvaghy Road. [Redacted] both DUFFY and NELSON attended the meeting of GRRC last night, after [redacted] had left and supported MCKENNA on the strong “No Compromise” stance.’

7.19 A Craigavon SB report also in July 1998 stated that *‘COLLIE DUFFY was running the show on the Garvaghy Road. [Redacted] ROSEMARY NELSON was assisting DUFFY in any way possible’* and *‘both COLLIE DUFFY and ROSEMARY NELSON are bolstering up BRENDAN McKENNA’S position.’*

Proximity talks in July 1998

7.20 The Prime Minister asked his Chief of Staff, Jonathan Powell, to mediate proximity talks between the sides in July (and again later in December) 1998. He told the Inquiry that the Prime Minister was keen to see the issue resolved.

7.21 On 10 July 1998 the Prime Minister wrote to both sides proposing the immediate establishment of indirect contact talks between the residents of Garvaghy Road and the Orange Order. Each side was to nominate four representatives. Proximity talks, along the lines proposed by the Prime Minister, began on 11 July 1998 in Armagh with Jonathan Powell as chairman supported by key strategists from the NIO. There was no direct contact between the two sides; facilitators were to shuttle between them.

7.22 The main speaker on behalf of the GRRC at the talks was Breandán Mac Cionnaith. The Associate Director of Security and Policing at the NIO, who played a principal role in the negotiations, told us that *‘Breandán was clearly, you know, the leader of that organisation and the spokesman for it; not just the spokesman, he was actually leading the – leading what it did and deciding its tactics.’*

7.23 We heard differing accounts of Rosemary Nelson’s involvement in these talks and those that followed later in 1998. The facilitator from the Nationalist side told us she was one of the *‘main players’* for the GRRC. Writing in April 1999 one NIO official present at the talks said with respect to Rosemary Nelson’s role: *‘There is no doubt that she was a v[ery] important (if not the most important) contributor of the Coalition’s negotia[tions]⁶ in the various talks and negotiations.’* In contrast, the Associate Director of Security and Policing told us that he did not remember her speaking and pointed out that she was not a resident of Garvaghy Road. The Senior Director Belfast said in his Inquiry statement that his *‘impression was that she was the legal adviser to the GRRC rather than one of its members.’* The Director of Politics and Coordination told us that there were very few occasions when Rosemary Nelson attended meetings and that she *‘was just there as a presence in support of the group and I assume was there to offer them legal advice as and when it was needed.’* As we have already said, members of the coalition told us that she was not a member of the GRRC, but was simply its legal adviser.

7.24 Eamonn McKee, an official from the Irish Government who was present at these talks had met Rosemary Nelson and Breandán Mac Cionnaith on 25 June 1998. He told us: *‘I was always very struck by the fact that she was very professional in the way that she acquitted herself. She didn’t engage in any of the conversations about strategy or tactics that I was aware of. [...] Her main function, as I understood it, was to proceed with applications for judicial review, but she, certainly in my presence and conversations I had*

⁶ Some text obscured

with her, very much acquitted herself as a legal adviser to the group rather than a member of the group, sharing its agenda.' Eamonn McKee added that he suspected that this distinction between being a member of the coalition and acting for it as a legal adviser may not have been appreciated by Loyalists and perhaps by members of the public. On 30 March 1999 the Irish Foreign Minister described Rosemary Nelson's role in the Drumcree talks over the previous nine months as follows: *'Throughout all these talks and at virtually all their meetings with political leaders, the representatives of the Garvaghy Road were accompanied by Ms Rosemary Nelson. She acted as their legal advisor. Deeply humanitarian and fundamentally committed to the rule of law, Ms Nelson brought to the Garvaghy delegation both legal expertise and her own inimitable human qualities.'*

7.25 The first round of talks concluded without agreement against a background of violent disturbances mainly in Loyalist areas of Northern Ireland. The murder of the three young Catholic Quinn brothers in an arson attack by Loyalist paramilitaries at Ballymoney on 12 July 1998 led to a de-escalation of the violence and had the effect of breaking the resolve of mainstream Orange Order supporters. On 17 July 1998 the Portadown District Master of the Orange Order confirmed that a token presence was to be maintained at Drumcree. Opposition thereafter dwindled to a Portadown-based vigil and a protest at Drumcree. The Orange Order maintained that the Drumcree Church parade of 1998 was not yet completed and the banner of Portadown District Loyal Orange Lodge No 1 had not yet returned to its lodge via its traditional route. Both the banner and leader of the lodge remained at Drumcree Parish Church.

7.26 The talks reconvened on 18 July 1998. Discussions centred on the formation of a civic forum, social and economic issues in Portadown and the completion of the Orange march. The difficulties faced by those seeking to facilitate a compromise were highlighted in a note of a conversation with the editor of a local newspaper on 17 July 1998 prepared by an official within the NIO Political Affairs Division. It had been reported that, while the majority of Orange Order members and a significant majority of the Protestant population, including the residents of Portadown, felt that the Drumcree protest should end and the Orangemen leave Drumcree, *'the Portadown Orangemen themselves, however, continue to reject this view'*. It was reported that they were supported by *'the Spirit of Drumcree Group, and by elements of the anti-Agreement campaign'*. There was said to be an expectation from the wider Protestant community that an accommodation would be reached as in previous years and *'there remained widespread support that the Orange Order should be permitted to walk the Garvaghy Road'*.⁷

7.27 In the course of the 18 July 1998 talks Breandán Mac Cionnaith, referring to an incident that had occurred on 10 July 1998 when an anonymous letter threatening his life had been received at the ITV Newsroom purporting to have been sent by the Protestant Action Force, raised the question of him meeting with the RUC to discuss his personal protection. The proximity talks reconvened again on 21 July 1998. Jonathan Powell and the facilitators decided to postpone further talks after an impasse was reached on the question of the completion of the Orange march. On this occasion, Breandán Mac Cionnaith asked that an NIO official contact him the following day to discuss the personal security of all the members of the coalition. The official NIO minutes referred to there being a request for *'the NIO to sit down with the GRRC to discuss its personal protection'* (See Chapters 22 and 23 where this is covered in more detail). Around this time Rosemary Nelson applied on behalf of Breandán Mac Cionnaith and Joe Duffy for a personal protection weapon for each of them.

⁷ NIO memorandum dated 17 July 1998

7.28 From the internal NIO documents received by the Inquiry it is clear that, from the GRRC's perspective, two related issues were of critical importance with respect to the Drumcree dispute: (1) the provision of protection by the State to GRRC members and Rosemary Nelson; and (2) the adequacy of policing by the RUC in Portadown of Drumcree-related disorder and harassment coming from the Unionist/Loyalist side.

Bilateral talks

7.29 Although the indirect contact talks broke off inconclusively, with the government's agreement the facilitators and NIO representatives decided to hold meetings subsequently to assess the situation and try to make progress. Contact continued with the Orange Order and the GRRC which led to meetings occurring on a bilateral basis in the following months.

7.30 It should not be forgotten that at this time it was not only the credibility of the newly established Parades Commission that was at stake. There were justified fears that the reputation of the RUC, Nationalist confidence in the Good Friday Agreement and arguably the Republican ceasefire were all in jeopardy. The security forces held the ground in July against what was, at least initially, a violent and concerted campaign by Loyalists to break through the police lines. Thereafter, while there was continuing violence surrounding the stand-off at Drumcree, it was, with a small number of exceptions, limited to intermittent episodes involving several hundred protesters and sporadic attacks against police who maintained the barriers against the parade. This was to remain the position until the murder of Rosemary Nelson and beyond.

7.31 The first bilateral meetings were held on 12 August 1998. According to the NIO minutes, in the course of those meetings the Orange Order predicted dire consequences if the parade was not allowed down the road the next month before the nights lengthened. In the background, the District Master and his supporters maintained their vigil on Drumcree Hill and Loyalist demonstrations were taking place regularly on the fringes of the Garvaghy Road estate during the evenings. An NIO official wrote on 13 August 1998 that *'Portadown is something of a pressure-cooker at the moment, and intensive efforts will be needed over the next few weeks if the situation is not to worsen.'* The position had not improved by 3 September 1998 when, in a submission to the Secretary of State, an NIO official concluded his advice by observing that *'there is a real substantive distance between the two sides accompanied by considerable mutual distrust. The residents in particular are difficult to hold to a fixed position (and the background influence of Sinn Fein should not be underestimated).'*

Public disorder: the death of a Royal Ulster Constabulary officer

7.32 On 5 September 1998 the RUC attempted to separate large groups of rival factions that were facing each other in Portadown town centre, and the police came under attack from a crowd of Loyalist youths. The situation developed into a running riot when stones, bottles and fireworks were thrown by a crowd of between 400 and 500 people. During the night the RUC recovered five crates of bottles and a container of petrol. Two businesses owned by Nationalists were attacked with petrol bombs; one was totally gutted in the fire resulting from this attack. An attempt was made to hijack a bus. Later in the evening during a Loyalist parade crowds gathered close to the Nationalist area and at about 23.00 ten petrol bombs and nine blast-bombs were thrown at police officers who had successfully kept Loyalist supporters within a Loyalist area. The RUC fired seven plastic baton rounds to restore order. During the violence two RUC officers were injured by an exploding blast-bomb.

One officer, Constable O'Reilly, was critically injured and died in hospital a month later. At the time there were claims of involvement by the Loyalist Volunteer Force (LVF) but this was denied. In Parliament, Lord Dubs⁸ condemned the rioters and supported the RUC. He said: *'I am appalled that police officers have come under such vicious attack. Once again the RUC finds itself bearing the brunt of thuggish behaviour on the streets of Northern Ireland.'*

7.33 NIO officials recognised that escalating Loyalist violence and attacks on businesses and the police were hampering the negotiation process. In a note dated 7 September 1998 the Associate Director of Security and Policing, at the request of the Secretary of State, advised Ministers of State Adam Ingram and Paul Murphy that Portadown was *'in a febrile state, with increasing tension (scarcely touched by the post-Omagh mood of reconciliation), serious loyalist violence, continuing unwillingness to move by the Portadown Orange District leadership'*. His note also advised that the GRRC was pressing its concern that the RUC was not doing enough to protect the Garvaghy Road community from the Loyalist violence. He observed *'the residents [are] becoming more fixed in their stance as a result of the loyalist harassment and what they saw (unrealistically) as an inadequate policing response'*. Stressing the constitutional independence of the RUC he had offered to facilitate a meeting with the Assistant Chief Constable (South Region) so that such issues could be discussed.

7.34 On 18 September 1998 the bilateral talks with the GRRC resumed but no progress was made on reaching an accommodation with the Orange Order. Other topics discussed at this meeting were the ongoing concerns of the GRRC: their contention that the RUC was still not taking sufficient action against hard-line Loyalist groups; the proposed economic initiatives; and the residents' personal security.

Rosemary Nelson in the press

7.35 Rosemary Nelson featured in press coverage concerning the plight of the Garvaghy Road residents and was reported to be critical of the RUC. On 13 September 1998 an article appeared in the *Sunday Tribune* under the headline *'Sectarianism running rampant: Portadown is a hot-bed of sectarianism'*. The article included a number of lengthy quotes attributed to Rosemary Nelson who was described as *'the prominent nationalist solicitor'*. One section of the report read as follows:

'It is not uncommon, she says, for clients and complainants to report RUC men threatening, "You'll end up like Robert Hamill," a reference to the Catholic man kicked to death by a loyalist mob just yards from an RUC van last year.

"So it's clear that what the police didn't do on that night they didn't do with impunity," Nelson says. "The common denominator in so many of these incidents is the police." One of a number of leaflets circulating since July makes threats against both Nelson and Breandán Mac Cionnaith "The Man Without a Future", and publishes their addresses and phone numbers, but, she says, "The RUC have yet to get in touch with me to warn me, or Breandán either."

Another leaflet identifies a prominent republican and calls upon citizens to notify either an RUC officer or a prominent loyalist if they spot him in their area: "The clear suggestion is that they are interchangeable," says Nelson.'

⁸ Lord Dubs, Parliamentary Under-Secretary of State in the NIO (Minister for Environment and Agriculture) 1997–1999

7.36 In relation to Portadown the article stated:

‘Rosemary Nelson believes it is a misnomer to “dignify that behaviour [Loyalist gangs causing disturbances] with the term sectarianism – it’s racism, reminiscent of the American Deep South in the 1950s and ’60s. It’s a matter of supremacy and dominance. It’s not about marching down a road, it’s about the symbolism of trampling on the Catholics. Portadown is a township, things are worse now than they’ve ever been. I’m not sure what sets Portadown apart, but it is unique probably because this problem has never been tackled and was allowed to grow over the years. There’s no deterrent to this kind of behaviour: If you had a firm and impartial police force that would be a deterrent, but at the moment the behaviour of the RUC is a tacit encouragement to them.’”

It also described how each night since 5 July 1998 there had been disturbances in the centre of Portadown. Again, Rosemary Nelson was quoted, *“The mob gathers at Market Street, facing Woodhouse Street, hurling abuse and missiles, that’s the usual form,” says Rosemary Nelson. “They love to taunt the Catholics by shouting ‘We got Robert Hamill’.”*

7.37 *The Irish News* on 4 December 1998 reported, under the headline ‘Residents of Garvaghy “live in fear”’, that ‘Solicitor representing Garvaghy Road residents Rosemary Nelson said her clients were “absolutely petrified”. [...] “The decision not to permit the parade was made as long ago as July but protests are still continuing” [...] residents were “entitled to proper policing”.’

7.38 During this period a senior NIO official involved in the negotiations described the Drumcree dispute as a ‘highly destabilising element in the current political scene’ which ‘increasingly provides a focus for rejectionist loyalism’.⁹

Resumption of proximity talks on 16 December 1998

7.39 In the final weeks of 1998 NIO officials sought again to bring the GRRC and the Orange Order into negotiations in the hope that the stand-off might be resolved by the end of the year. There was a belief among NIO officials that the GRRC was reluctant to participate in further talks. A memorandum dated 1 December 1998, for example, stated: *‘On the residents’ side, there are good grounds for thinking that Mac Cionnaith is indeed looking for a pretext to avoid early engagement, to remove any risk that he might be asked to concede a march in this calendar year. He has raised a number of diversionary issues, including RUC effectiveness in policing loyalist demonstrations on the fringes of the estate and, more recently, personal protection.’* We refer to the issue of personal protection as far as Rosemary Nelson was concerned in Chapters 22 and 23.

7.40 A memorandum from the British Side of the Anglo-Irish Secretariat, following a meeting with the Irish Side on 2 December 1998, records that the Irish Side were told by the NIO’s Senior Director Belfast that *‘the current position was that the Residents had manufactured pretexts for not re-engaging this side of the New Year citing the security of the Committee, diary dates and a litany of various other reasons for their non-engagement’*. He added that *‘if the Residents continued to avoid re-engagement until the end of the year they will have achieved one of their major objectives without negotiation (i.e. no march in 1998).’* According to the minutes, the Irish Government representatives countered this interpretation of events by saying that the residents’ *‘security concerns were legitimate’*. They highlighted a recent complaint by residents

⁹ In a memorandum dated 26 October 1998

who claimed that masked men were stopping vehicles from the Garvaghy Road area near Drumcree Church Road. The note states that the *'Irish side were given reassurance on the Resident's [sic] security concerns'*.

7.41 The GRRC attended further proximity talks on 16 December 1998 and Rosemary Nelson was probably in attendance. No agreement was reached.

1999: the stalemate continues

7.42 In January 1999 the Senior Director Belfast wrote a bleak summary of the position. He said that the Drumcree problem retained *'the capacity to provoke very serious difficulties and dangers – e.g. a nasty incident during a parade, a poisoning of the political atmosphere conceivably imposing intolerable strains on a newly-formed Executive Committee over the summer and serious danger to the image of the RUC at a very sensitive time of the formulation and public reception of the Patten Review.'*

7.43 The Drumcree impasse continued. The vigil at the church continued. Nightly disturbances continued. A report written by officials in the Irish Government dated 18 January 1999 gave, we believe, an accurate analysis of the situation. From the Orange Order's perspective, it referred to how *'the issue of contentious parades has been a lightning rod for a perception that unionist culture is under siege and has suffered serious erosion over the years'*. It may well have been this aspect of the Drumcree Church parade dispute which was fuelling much of the Loyalist paramilitary activity surrounding the dispute. From the residents' side the report referred to how their faith in Breandán Mac Cionnaith remained unshaken. It stated that *'they are aware that his prominence, and that of his fellow committee members, involves a serious risk to personal safety. They have remained adamant over the years that he remains their choice as spokesman and leader. This issue of his leadership has tended at times to occlude the reality of feelings on the ground in and around the Garvaghy Road. The residents have endured considerable pain and suffering for what they believe in and they are unlikely to have done this over the years solely at the behest of any one individual or, for that matter, an outside group.'* This did not accord with the view evident from SB reporting which portrayed residents as being the subject of manipulation by their leadership who were in turn manipulated by the Republican leadership. In terms of their interaction with external parties it was noted: *'The residents' interests are guarded (passively but passionately) by the wider nationalist community. Their fate is seen as a barometer of nationalist status within the state and the meaning of the aspirations to equality and parity in the Good Friday Agreement.'*

Meeting with the Prime Minister 18 January 1999

7.44 The Prime Minister met representatives from the GRRC, including Rosemary Nelson, at Downing Street on 18 January 1999. Rosemary Nelson spoke to Eamonn McKee about the meeting subsequently. In a note of their conversation he said that she expressed the view that the meeting was *'perfunctory'* but she *'detected a subliminal message from the British side that the cycle had been broken and that it was now the turn of the residents to yield'*. She said that *'she had asked Blair why the law on parades was not being enforced. He replied to the effect that not everything could be sorted out by law. She felt patronised by his parting remark that "I must go and sort out Kosovo".'* This account by Rosemary Nelson is supported by a letter from Jonathan Powell to the NIO. He refers to an exchange in the meeting as follows:

'The residents responded by listing occasions when the police had not enforced the law against gangs of Loyalists in recent weeks. The Prime Minister said that we would look into this but often the police had to make a decision on whether or not intervention

would simply create a greater disturbance. He could only imagine what it was like living in these conditions. A solution would only however come as part of dialogue. In the end it was up to the residents to decide what they want to do, but he was not sure how the long-term problems could be solved without solving the short-term. He needed to know what the residents' bottom line was to see what he could do.'

7.45 On 3 February 1999 there were further clashes between Loyalists and the RUC in Portadown. On 18 February 1999 the RUC revealed that the cost of policing the Drumcree dispute was £10,000 per day. On 19 February 1999 a rally in support of the Orange Order's Drumcree protest took place. The situation remained intractable. It was against this grim background that preparations were being made to murder Rosemary Nelson who would have been seen by Loyalist extremists as a prominent supporter of the GRRC position.

7.46 On 12 March 1999 Rosemary Nelson met a reporter from *The Irish News*, Stephen McCaffery, with whom she had contact on a number of occasions in the two years before her death. He told us that by this time *'it was common knowledge at that time that Rosemary Nelson had received a number of death threats'*. Previous contact had been by telephone and this was their first meeting in person. Stephen McCaffery told us that the meeting was prompted by a telephone call from Rosemary Nelson made to the Editor of *The Irish News*, regarding concerns she held in relation to Loyalist and Orange Order activity in the Drumcree area. The Editor, Noel Doran, told us that it was *'unusual for Mrs Nelson to call the Irish News directly. Normally, it would be the other way round – the paper would contact her for a comment on an issue which we were reporting on.'* Following the interview Stephen McCaffery contacted Rosemary Nelson on 14 March 1999 to advise her that the story would be running the next day and to check a number of facts.

7.47 The front page of the 15 March 1999 edition of *The Irish News* contained the headline *'United: Hamill and Lawrence justice crusade'*. The article by Stephen McCaffery detailed how the families of Robert Hamill and *'black teenager Stephen Lawrence are to forge firmer links in their fight for justice'*. The article referred to the *'Solicitor for the Hamill family, Rosemary Nelson'*, saying *'the nature of Mr Hamill's death is a stark demonstration of "how human rights operate in Portadown"'. "He was targeted because he was a Catholic. We are seeing racism here, racism dressed up as sectarianism."* Another article by Stephen McCaffery in the same edition, under the headline *'Orange Order "flouting the law"'*, featured more comment by Rosemary Nelson accompanied by a photograph, this time about the policing of Loyalist protests in Portadown. She was quoted as claiming: *'We do not have "two sides equally intransigent", as is often said. "We have a nationalist community trapped, living in a village on the edge of a town. It is not about conflicting rights here, it is about the rule of law."* These are the last publicly recorded words of Rosemary Nelson before her murder.

8

Reports of Abuse and Threats

8.1 It was against the background of the events that we have described in preceding chapters that Rosemary Nelson received reports from her clients claiming that, while they were held in custody, police officers had allegedly made remarks about her to them. As regards the earliest of these reports it appears Rosemary Nelson herself attached no great significance to it. Rosemary Nelson had been present when Colin Duffy told Julia Hall of Human Rights Watch in November 1996 that police officers who questioned him while he was in custody in connection with the murder of John Lyness had made obscene and derogatory remarks about Rosemary Nelson's appearance, and she had not exhibited any great concern about this. Comments that were reported by a number of clients who had been detained at Gough Barracks in February and October 1997, in Lurgan in December 1997, and in Castlereagh in February and June 1998, however, went beyond rudeness and were of a different order entirely.

The Holding Centres

8.2 There were three Holding Centres to which suspects in Northern Ireland were taken for questioning following their arrest for terrorist offences: Gough Barracks in Armagh, Castlereagh and Strand Road in Londonderry. The physical conditions within these specially adapted facilities were described by Sir Louis Blom-Cooper, the Independent Commissioner for the Holding Centres, in his 1994 report as '*austere and forbidding*'. The rights usually afforded to criminal suspects held under arrest for questioning were restricted by the emergency legislation so that a terrorist suspect could be held without charge for 48 hours with the potential for detention for a further five days. Access to a solicitor might be denied during the first 48 hours of detention and solicitors could not be present during interviews. The interviews were not recorded but were relayed on a silent television monitor for observation by a uniformed officer in a separate room. Silent video recording of interviews was not introduced until March 1998, and audio recording not until January 1999. Typically, suspects were interviewed by two or three teams of two officers in as many as six two-hour sessions throughout the day. Between interviews the suspect was held in solitary confinement except for brief periods of exercise and for legal consultations when allowed. A record of interviews was created in the form of Interview Notes comprising either, we were told, a verbatim record of what was said or, failing this, '*an account [of the interview] which adequately and accurately summarises it*'. In practice, immediately before the interview began, an interviewing booklet would be issued by the custody sergeant to the interviewing officers and notes of the interview would be recorded in this booklet. We were told that if the suspect was not speaking, which was very often the case, and questions were simply being repeated, they would not be written down continually. The interviewing officer might attempt to engage the suspect in general conversation not related to the alleged crime and the details of these conversations would not generally be recorded verbatim but noted as 'general conversation'. At the end of the interview, the notes would be read to the suspect who would be given the opportunity to read and sign them. Most suspects declined to do so but it was very rare for a suspect to object to the content of the notes.

8.3 In February 1997 a dozen or so individuals, all from Lurgan, were arrested and detained for questioning at the Holding Centre at Gough Barracks in Armagh following an upsurge in suspected Provisional Irish Republican Army (PIRA) activity, including a rocket attack on a police patrol. They included some individuals who were regarded by the Royal Ulster Constabulary (RUC) as being, like Colin

Duffy, central figures in North Armagh PIRA, but also others who might well have been regarded as more peripheral to PIRA activities. They were all represented by Rosemary Nelson and after their release a number of them told her that interviewing police officers had made abusive and threatening remarks about her.

- a. A client detained on suspicion of possessing a mortar bomb said in a statement made on 27 October 1997:

‘They said she was a “money grabbing bitch” – “she is only in it for the money” – “she got him off” (Colin Duffy) – “he is a provo bastard”; and suggesting Rosemary Nelson was as bad as Colin Duffy – saying that she was a provo solicitor. They told me I would have got out a lot sooner if I had not requested Rosemary Nelson because of her firm and that the only people who requested Rosemary Nelson are the provos.

They also made fun of the marks on Rosemary’s face – saying “How did that happen” – “Is that a fucking birth mark?” They called her a bastard, fucker and said I wouldn’t “be in this place only for the fucking bastard” – meaning Rosemary. Each time I was questioned they seemed more interested in Rosemary Nelson – they stated that [another Solicitor in the firm] was not too bad but Rosemary, she was the bastard of the lot. They kept going on to me about Rosemary getting Colin Duffy off – they said they knew Duffy shot Lyness and she knew it too.’

- b. A client detained on suspicion of having a pipe-hide¹ said in a statement made on 27 May 1997:

‘I confirm that during these interrogations the Police frequently referred to my solicitor Mrs Rosemary Nelson as “a terrorist bastard” and someone who “enjoys shielding terrorist bastards like us”. The Police also made explicit remarks linking Mrs Nelson and myself in a sexual capacity.’

And in a subsequent statement made on 6 November 1997:

‘At the subsequent interviews Rosemary Nelson’s name [was] frequently brought up by the CID during the second day. They said she was a terrorist with a deformed face. They asked was I “seeing” Rosemary. They said I was a game bastard as she had a face on her like a man’s ball bag.’

- c. Clients detained on suspicion of a rocket attack on an RUC Land Rover said in undated statements, but taken by Paul Mageean on 28 February 1997:

‘They said Rosemary knows a lot about rockets and started laughing. You and Rosemary and [redacted] shot the rocket. [...] They [...] said “he’s hiding something, we need to get it out of him, the fine bastard, you’re dead. Tell Rosemary she’s going to die too.” [...] They told me to ask Rosemary about explosives because they were going to match this rocket to me.

They said she was a friend of the Provos and of Colin Duffy’s. They said she’s not that good, she won’t get you off.’

8.4 During later months, and in the following year, further instances of abusive and threatening remarks were reported by clients of Rosemary Nelson who were detained by the police. These were generally of the same character but they became increasingly hostile.

- a. On 16 October 1997 a client was arrested and taken to the Holding Centre at Gough Barracks. He described comments which had been made to him by

¹ Pipes were often stored/concealed for use as bomb-containers or components.

interviewing officers in a statement prepared at Rosemary Nelson's office on 6 November 1997. In the statement he said:

'I was lifted by the police about 2 weeks ago and taken to Gough Barracks. Two special branch men interviewed me and one said that Rosemary got a bad deal out of life. She must have been hit with an ugly stick about ten times. He then said it was as well I had not been lifted during Halloween as Rosemary would have been out on her broom stick and I wouldn't have got her down.'

- b. A client was arrested on 15 December 1997 and alleged in a statement made on 27 February 1998 that while he was being taken in a police car to Lurgan police station an officer said to him:

"Nelson won't help you this time". Another officer who was driving the car and who I know to be called [redacted] said "She won't be here that long – she will be dead". They kept me in the barracks overnight and had a special Court in Lisburn the next day.'

- c. On 21 February 1998, a client was arrested on suspicion of murder and detained in custody at Castlereagh Holding Centre. In a statement to Paul Mageean made on or before 5 March 1998 he said:

Wednesday

[...] Then on Wednesday evening they served [me] with a written caution. I asked to see my solicitor and [redacted] came with a copy of the statement I had given typed out. After he had left I was taken back to my cell and then taken for interview. I think this was after 10pm. They started questioning me about the caution and I gave them the statement. One of them started to laugh and said that he didn't know I had a typewriter in my cell. Then they asked me in detail about the statement and I didn't reply.

Thursday

There was detailed questioning about the statement on the Thursday morning. I asked to see Rosemary and she came down at lunchtime. After she left they told me that they knew where I worked and that some day I could be set up by the LVF [Loyalist Volunteer Force]. They said that Swinger Fulton and [redacted] would get me. They then told me that they had got another extension for two days. They asked me for addresses of the people I had named in the statement but I stayed silent.

Friday

[...] Then they started talking about Rosemary. In the first interview on the Friday morning they said that the IRA had given her the statement which I had given them. They said that the IRA were pulling her strings. They also said that there was a new law passed in 1989 which meant they could do away with solicitors who concocted stories.² [...] He said that this has been going on for thirty years and it was not going to change now. He said to tell half face that. They said I made the statement and Rosemary got the witnesses and told them what to say.'

The client was released without charge on the evening of Sunday 27 February 1998.

² Rosemary Nelson believed this comment was a reference to the murder of solicitor Pat Finucane by Loyalist paramilitaries in February 1989. If it was, we consider it to be most sinister. It was brought to the attention of Adam Ingram, the Minister of State responsible for security in Northern Ireland, by the Committee on the Administration of Justice in a letter dated 5 March 1998: See Chapter 16.54.

8.5 In April 1998 Rosemary Nelson represented a husband and wife from Lurgan who were charged with possession of terrorist weapons. The *Lurgan Mail* reported that on 24 April Rosemary Nelson appeared for the two defendants at the Craigavon Magistrates' Court. Under the headline '*Solicitor accuses RUC*', *An Phoblact/Republican News* reported about the case on 30 April 1998: '*While being held in Castlereagh Interrogation Centre in Belfast [the detained wife] requested her solicitor, while on five separate occasions Ms Nelson was in contact with the RUC asking to see her client. The RUC told [the wife] that they couldn't make contact with her lawyer, neither did they acknowledge Ms Nelson's request to see her client. It was not until Ms Nelson sought a judicial review seeking access to her client that she was able to get past the RUC.*' The article quoted Rosemary Nelson as saying, '*Despite the criticisms of the RUC they are intent on harassing lawyers and denying detainees their rights. I have made complaints about this incident to the Law Society.*' A Special Branch (SB) report regarding this case stated: '*PIRA have briefed ROSEMARY NELSON, who is acting as their Solicitor, to instruct [one of the pair] to take responsibility for these weapons.*'³

8.6 On 29 June 1998 a client was arrested and detained in custody at Castlereagh as a suspected member of the Irish National Liberation Army (INLA) and on suspicion of throwing two blast-bombs near the Garvaghy Road, Portadown. He alleged that during interviews by RUC officers he was told that '*my details could be given to Mark "Swinger" Fulton. Locally Fulton is believed to be a member of the LVF and a thug.*' He alleged that other comments made included: '*All taigs are Targets*'; '*I see you're having the provi solicitor, Rosemary Nelson*' and '*Rosemary has got well trained [sic], we've had harder men than you in here.*' He was released without charge on 30 June 1998. On the same day Rosemary Nelson sent two faxes to the Investigating Officer at Castlereagh Holding Centre:

- i. '*I have been made aware of the derogatory remarks made by RUC officers to my above named client. This is part of an ongoing situation which quite frankly is unacceptable.*

I shall be reporting the full text of remarks to the appropriate authorities in due course and should be obliged if such completely unacceptable behaviour on the part of RUC officers would cease.'

- ii. '*I understand threats have been made to my client that his name will be disclosed to members of paramilitary groups. This represents a very serious threat to my client's life. These remarks have been conveyed to various Human Rights bodies who no doubt will be in touch with you in due course. A formal complaint will be made to the appropriate authorities and a copy of all correspondence in relation to my client will be forwarded to the Independent Commission recently established to deal with the issue of policing.'*

8.7 Particularly telling points regarding the wider context of this client's allegations are that he was a resident of Portadown and not the Kilwilkie Estate, Lurgan, and that he was a suspected member of the INLA and not PIRA. These points, in our view, tend to invalidate the argument that the complaints of the Lurgan individuals described above were part of a concerted campaign to discredit the RUC.

8.8 In due course many of these allegations were reported to the RUC; those arising in February 1997 by virtue of the intervention of the Committee for the Administration of Justice (CAJ) and Edmund Lynch of the Lawyers Alliance for Justice in Ireland (LAJI); those arising later, by Rosemary Nelson's clients themselves, albeit through her office. They were examined in the course of

³ An article in the *Lurgan Mail* on 30 April 1998 reported on the couple's appearance at Craigavon Magistrates' Court on 24 April 1998 and that subsequently the High Court granted bail to the individual who had denied knowledge of the weapons.

complaints investigations undertaken under the supervision of the Independent Commission for Police Complaints (ICPC) and latterly by Commander Mulvihill of the Metropolitan Police.⁴ They were also scrutinised by Colin Port's Murder Investigation Team (MIT). We set out in detail in Chapter 17 our examination of the way in which they were investigated.

8.9 It was our view, however, that these matters should also be examined by us. The focus of the RUC and ICPC investigations was limited to criminal and disciplinary matters and doubts had been expressed in any event about the adequacy of the work undertaken.⁵ None of the officers had been interviewed by the Port team and we considered it was possible that some vital piece of information had been missed which might come to light if the allegations were reviewed, particularly in the light of our examination of wider events relevant to Rosemary Nelson's death. We were also interested in whether anything might be learnt from the officers themselves about the attitudes of local officers towards Rosemary Nelson.

8.10 We did not consider it appropriate to embark on a series of mini-trials in respect of each of the allegations. Each allegation concerned words spoken during interviews under caution when the only persons present were the complainant and the two officers who were conducting the interview. None of the interviews were tape-recorded and although a written record was made during each interview it was inherently unlikely that such a record would include references to offensive, derogatory or threatening remarks. During the course of the ICPC and Mulvihill enquiries the officers against whom the allegations were made had all consistently denied uttering any offensive remarks concerning Rosemary Nelson. We were aware that many of the complainants were suspected either to be close associates of PIRA terrorists or themselves to have been involved in PIRA-organised activities. We were therefore mindful of the possibility that their complaints might have been driven by an orchestrated desire to undermine, destabilise or simply burden the RUC with the obligation of conducting formal investigations.

8.11 We therefore examined the origin of the complaints, gathered documents relating to them and heard evidence both from complainants and from officers against whom the complaints were made.⁶ We also heard evidence from officers who had conducted complaints investigations, from former members of the ICPC and from Commander Mulvihill. We did this, however, with a view to drawing general conclusions about the allegations as a whole, as opposed to specific conclusions regarding each individual allegation.

8.12 As indicated above, we were able to examine these matters in a much wider context than had previously been attempted. The complaints investigations undertaken by the RUC and by Commander Mulvihill were constrained by the complaints system and the standard of proof. We have not been so constrained and have been able to consider the evidence in the round.

8.13 Although we were faced in every case with individually unsupported allegations that were denied by the officers against whom the allegations were made, we had the opportunity to test by questioning the statements of those complainants who gave oral evidence to us. For the most part we found their answers and demeanour convincing.

⁴ Three complaints were not investigated by Commander Mulvihill. Details of these are referred to at Chapter 17.61 to 17.65.

⁵ See Chapter 17.34 to 17.35

⁶ Of the nine complainants identified by the Inquiry seven provided witness statements and six gave evidence in person (Colin Duffy provided a witness statement but refused to give evidence to the Inquiry in person). Not all the officers against whom complaints were made gave evidence. Two were deceased, one was suffering from ill health and three refused to cooperate.

8.14 We also gleaned much from the evidence of the interviewing officers who, when questioned by Counsel to the Inquiry, invariably went further than denying the allegations made by Rosemary Nelson's clients. They uniformly denied ever making offensive or threatening comments about Rosemary Nelson during any interview, or ever hearing other officers making such comments, or being told that other officers had made them. With mounting implausibility they all denied hearing any rumours, gossip or briefing that Rosemary Nelson was a supporter of PIRA, or had acted in any way unprofessionally or had been guilty of any form of 'sexual misconduct'. They all denied having ever discussed Rosemary Nelson with any other officers and maintained consistently that they regarded Rosemary Nelson as they would any other solicitor, that is to say, as a professional, doing a professional job. In the light of what we have been told by other police witnesses and in the light of other matters to which we have referred above, although we do not find it possible to adjudicate on individual complaints, we are nevertheless satisfied that they should not be disregarded. It is very likely that some, at least, were founded in truth and that they reflected an attitude towards Rosemary Nelson that was in existence by February 1997 and which continued and festered until her death.

Experiences of other lawyers

8.15 We found the protestations of the officers all the more implausible in the light of evidence from other lawyers who had represented clients in similar circumstances to Rosemary Nelson. They told us that they too had been told by their clients that interviewing officers had made threatening or offensive remarks about them, including sexual innuendos. We were told of occasions when officers were alleged to have said that the solicitor was '*only in it for the money*'; was '*a runner*' for a terrorist organisation; was a '*provo lawyer*'; '*a provo bastard*'; '*the IRA's solicitor*'; or '*a member of the IRA*'; that the solicitor's '*details would be passed to the local hit squad (either the UVF or UDA) [Ulster Volunteer Force or Ulster Defence Association]*' and that he would be '*bumped off*'; that the solicitor '*will soon be dead*'.

8.16 It was evident from what we heard that such comments were not only reported by Republican detainees. One solicitor told us that Loyalist clients had told them that the police said the solicitor was a member of the IRA. The accounts we received from solicitors to whom such reports had been made related to periods both before and during the time when Rosemary Nelson was a visitor to the Holding Centres, although one solicitor observed that they became more common after the killing of Pat Finucane in 1989. When asked about their reactions to these reports, they invariably said that they regarded the police behaviour as tactical. One solicitor, a regular visitor to Castlereagh Holding Centre, who said that the making of such comments was commonplace, suggested that their purpose was to make the client '*more vulnerable, [...] more pliable to interrogation*'. Another described this process as '*the battle of wills for "control" of the detainee*' and suggested that police officers deliberately tried to alienate the detainee from his solicitor by means of derogatory remarks calculated to undermine the solicitor's professionalism.

8.17 Alleged police misbehaviour towards the relatively small number of solicitors who defended terrorist suspects was a long-standing issue. An article in *The Irish Times* on 27 May 1987 endorsed by 14 solicitors who practised in Northern Ireland accused the RUC of '*regularly harassing lawyers acting on behalf of clients being detained at interrogation centres*'. In the article it was said that the lawyers '*maintain that their willingness to defend such cases is resented by the security forces who smear them as "IRA men" and tell people asking for them that it confirms their guilt*'. A 'recent' example of this behaviour was cited in the article involving a Protestant client telling his lawyer that when he asked for him, '*he was told by the RUC: "What, are you asking for a Provo?" and they gave him the name of another solicitor*'. The lawyer involved was

quoted as saying, 'We are not primarily concerned about the effect of this harassment on us but on the people being held in these centres. [...] Their [i.e. the RUC's] aim is to make these people as isolated as possible and discourage lawyers from taking up their defence.'

8.18 These concerns became more acute as a result of the murder of Pat Finucane. He had received reports of threats via clients whom he represented.⁷ Barra McGrory⁸ told us:

'Our view of it at the time – this is in the late 1980s – would have been that this was perhaps more directed at the client than it was at us, in that we felt it was probably a way of destabilising the client and of attempting to disrupt the client's feeling that you as a lawyer were acting in their best interests and would look after them. It was part of the interrogation technique that was going on in Castlereagh and in other Holding Centres at the time. That was how we viewed it. I actually don't think at the time that we originally seriously thought that it was an attempt to threaten us or to harass us. But as time went on, the remarks that were being made began to increase in intensity and in the nature of their hostility. Particularly after Pat was murdered, when they began to say that, "Oh, well, we got Finucane and we will get McGrory" and so forth. And there was all the usual stuff that they would say to their client, that "Oh, well, he is only there for the money" and "You know how much he earns" and all of that sort of thing, which we took with a pinch of salt. But once Pat had been murdered, it began to dawn on us that there might have been a much more sinister reason for this conduct and that these people actually believed these things and this was how they actually saw us, as opposed to just being an interrogation technique. And we began to take it much more seriously then.'

An early sign of the problem

8.19 Alleged misbehaviour by police officers towards defence solicitors was one of a number of matters about which international non-governmental organisations (NGOs) voiced concern. Michael Posner, the President and former Executive Director of the Lawyers Committee on Human Rights (LCHR), later Human Rights First, an organisation originally founded to promote civil rights and freedoms in the USA, told us that his organisation became involved in Northern Ireland after the murder of Pat Finucane. In 1993 it published a report, based on conversations with various Northern Ireland lawyers (some of whom gave evidence to our Inquiry), entitled 'Human Rights and Legal Defense in Northern Ireland: The Intimidation of Defense Lawyers: The Murder of Patrick Finucane' in which it stated:

'Most allegations of lawyer abuse focus on activity said to occur in detention centers. Such centers have been set up in Castlereagh (Belfast), Gough Barracks (Armagh), and Strand Road, (London/Derry). In the typical story, detectives conducting "interviews" will bully and threaten the detainee, and make bullying and threatening remarks about the solicitor the detainee has requested. Some comments amount to outright threats. Others interfere with the attorney/client relationship. Still others interfere with a detainee's right to counsel of one's choice.'

8.20 The report advocated that there should be an independent inquiry into allegations of threats and abuse of defence solicitors and the proper investigation of complaints of intimidation. The report also suggested a number of other reforms which have since been introduced including, for example, the tape-recording of all

⁷ In 1994 Amnesty International published a report on political killings in Northern Ireland which included a chapter on collusion between security forces and armed groups.

⁸ Barra McGrory QC, then a solicitor, made a QC on 1 June 2007.

interviews under caution and the establishment of an investigatory body independent of the police, Army or Security Service. The report also argued that solicitors who reported death threats should receive police protection.

8.21 Both the Northern Ireland Office (NIO) and the RUC were sent copies of the draft report and their responses were appended to it. In its response, the NIO commented that the report was *'in places, lacking in balance and excessively dependent on uncorroborated allegations and anecdotal material'*. In the response from the RUC it was observed that *'there is a repetition of unsubstantiated allegations, as if these constituted evidence of Security Forces or official misconduct. One is left with the distinct impression of a mass of allegations resting on a limited, unrepresentative base of sources'*.

UN Special Rapporteur on the Independence of Judges and Lawyers

8.22 The safety and professional freedom of legal practitioners who defend those accused of crimes against the state had long been a matter of international concern. A paper published by the UN High Commissioner for Human Rights entitled 'Basic Principles on the Role of Lawyers' was adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in 1990. Paragraphs 16 to 22 dealt with *'Guarantees for the functioning of lawyers'*, stating that governments should ensure that lawyers could perform their professional functions without intimidation, and that where the security of lawyers was threatened as a result of discharging their functions, they should be adequately safeguarded by the authorities.

8.23 In 1994 a resolution of the UN Commission on Human Rights appointed a Special Rapporteur on the Independence of Judges and Lawyers with the mandate that the independence and impartiality of judges and lawyers in member states of the UN should be monitored. The UN Special Rapporteur's remit was to investigate allegations, to make recommendations and, where necessary, to provide standards for the protection of the independence of judges and lawyers. Between 1994 and 2003 the mandate was held by the Malaysian lawyer, Dato' Param Cumaraswamy.⁹ In October 1997, largely as a result of encouragement from NGOs, he visited Northern Ireland in his formal capacity. High among his concerns was the treatment of defence lawyers.

8.24 We refer in more detail to his visit, certain events in February 1998 which preceded the publication of his report and the report itself which was published in April 1998, in Chapter 19 of this Report.

To complain or not to complain?

8.25 The solicitors from whom we took evidence were agreed that there was little to be gained by complaining about police misbehaviour in general and about abuse and threats directed towards defence solicitors in particular. In every case the questioning had taken place at a Holding Centre in the absence of the solicitor, as was permitted under the emergency legislation, and the interview had not been tape-recorded. In 1991 cameras had been installed in interview rooms so that custody officers might observe what was happening within the interview rooms but no sound was transmitted from the interview room and no recording was made of

⁹ Dato' Param Cumaraswamy was Chair of the Malaysian Bar Council from 1986 to 1988 and a founding member of the Council's Human Rights Committee and Legal Aid Committee. In 1994 he was appointed the UN Special Rapporteur on the Independence of Judges and Lawyers by the UN Commission on Human Rights, and served on that mandate until 2003.

what was said in it. If therefore a complaint was made, the only evidence to support it would be an account given by a detainee. It would be entirely uncorroborated and was always denied.

8.26 A number of witnesses described Rosemary Nelson's attitude to the RUC complaints process. Paul Nelson said that she *'always encouraged her clients to make complaints, even if she and her clients were of the view that no action would be taken, on the basis that she would be failing her clients if she didn't advise them to follow the system'*. In his oral evidence to us he said, *'she had no faith in, you know, reporting police to police'* and *'she probably didn't honestly believe they [her complaints of RUC harassment] would go anywhere, and in a sense she might have felt they were a waste of time'*. Rosemary Nelson expressed an opinion about the RUC complaints system in an interview with a journalist on 2 March 1998. She was recorded as saying, *'I think there's a great problem with [RUC] accountability. It's simply not acceptable that a body investigates itself in relation to these incidents [i.e. alleged intimidation of defence lawyers]'*. She referred to how nothing happened following her complaint that she was assaulted on the Garvaghy Road by RUC officers and *'nor did I expect it to'*.

8.27 Some solicitors indicated that they had attempted without success to register complaints about this behaviour but they were generally agreed that the prospect of a successful complaint being brought in these circumstances was such that there was little point in pursuing it and it is likely that Rosemary Nelson shared this view in early 1997. According to figures later published by the UN Special Rapporteur, reported statistics tend to support this view: of approximately 400 complaints concerning the behaviour of police officers in the Holding Centres in the years 1988 to 1995 not a single one was upheld.

9 Other Sources of Conflict with the Royal Ulster Constabulary

Complaints against the Royal Ulster Constabulary

9.1 We have described at Chapter 8.3 to 8.8 how in 1997 a number of formal complaints were lodged against the Royal Ulster Constabulary (RUC) concerning the behaviour of police officers towards Rosemary Nelson.

9.2 These were not the only complaints against the RUC with which she was involved.

9.3 The Police Service of Northern Ireland (PSNI) told us that *'Rosemary Nelson made 115 complaints on behalf of others between 1996 and 1999 totalling 155 allegations.'*¹ An audit of her legal practice carried out two months after Rosemary Nelson's death revealed that there were in total some 700 litigation files of which 243 were claims against the Chief Constable, the Ministry of Defence (MoD), or both. Of these, 126 claims related to incidents on the Garvaghy Road in 1996 and 1997.²

9.4 We also heard a great deal of anecdotal evidence from RUC officers regarding complaints and claims lodged by Rosemary Nelson.

9.5 We received less evidence from the Army, although an indication of the position was given to us by the commanding officer of the 3rd Battalion of the Royal Irish Regiment (3 R IRISH) from July 1998 who told us that Rosemary Nelson *'would have been someone who, not infrequently, would register some sort of complaint with us on behalf of her clients'*.

9.6 The Commander of RUC South Region until January 1998 told us that he was aware at the time he was in post that *'Rosemary Nelson had made a significant number of complaints about the RUC'*. While he had no operational role with respect to the investigation of these complaints, he said that he *'had an overview position'* consistent with the *'corporate force policy to try and reduce, minimise, the number of complaints, to learn from complaints, where that was appropriate and possible, and to improve the quality of our service to the community'*. He said that based on *'the summaries and from the analysis'* he received he was aware that Rosemary Nelson was *'well up that table'* of solicitors who brought complaints against the police. He told us that her practice was *'more prevalent than other solicitor firms in terms of lodging complaints'*. However, he also said, *'I might have had a perception of the high degree of her involvement in the complaints process, but it was not uncommon for a certain volume of this type of "business" to go to certain "specialists". Rosemary Nelson was clearly the representative for the GRRC [Garvaghy Road Residents' Coalition] and I recall seeing her on TV in relation to various other events of this nature. She did a lot of work in connection with the marches on behalf of Republican clients. I was aware of a view that Mrs Nelson might have had more involvement in terms of lodging complaints on behalf of her clients than other solicitors, but I cannot comment on this – I do not know if this was correct.'*

¹ A letter dated 12 April 2006. According to the RUC Chief Constable's annual reports, the RUC recorded a total of 3,498 complaints cases in 1996, 4,037 in 1997/98 and 3,355 in 1998/99.

² A solicitor who managed the practice after the murder told us: *'Rosemary's practice mirror-imaged many general practices in Northern Ireland with one exception. I would suspect that a substantial number of people wanting to pursue a claim against the Army or the police in the Lurgan/Portadown area would have gone to her.'*

9.7 The Sub-Divisional Commander at Lurgan between 1994 and October 1997 told us how the number of complaints being made by Rosemary Nelson was raised as an issue during his time in this post. He said: *'The number of complaints – my recollection was that they started to come in from Rosemary Nelson on behalf of clients. They, I don't know, doubled, tripled or whatever. But certainly we got probably more complaints in Lurgan police station from Rosemary Nelson's solicitor's practice on behalf of clients – and I mean complaints against the police; I mean, the formal process – than probably all the other solicitors' practices put together. [...] I remember my sub-divisional office manager [...] drawing my attention to the amount of paper coming from that office. It seemed to be tantamount to some sort of campaign that just about every interaction between a police officer and any of her clients led to a formal complaint against the police.'* He expressed the view that *'the campaign of complaints was driven by the Republican community, [one,] sort of bogged the system and, two, in some sense to identify officers who were particularly effective in complaining against them, as it were, to try and single them out for specific attention'*. He continued: *'My perception was that there was a campaign, a Republican campaign that was being orchestrated through Rosemary Nelson's office [...] I'm not saying Rosemary Nelson orchestrated it. It was through her office and I'm sure just as a lot of things went through my office that I didn't know, I'm sure a lot of things went through hers that she didn't know either. [...] She had another solicitor working in her office [...] and there may have been others.'*

9.8 The Deputy Sub-Divisional Commander in Lurgan, while supporting the view that complaints were lodged by Rosemary Nelson for propaganda purposes, suggested that perhaps there was another motive behind the complaints and claims. In his evidence he told us: *'Say if there was an incident with the Army or with the police and three or four or five or six people complained, there would be six separate letters would arrive altogether. Why did she [i.e. Rosemary Nelson] send six separate letters about the one case? Was that to generate money? I don't know, but whatever she was doing I didn't know.'*

9.9 At least one officer, a Detective Constable within Special Branch (SB) in Portadown, believed that complaints were calculated to denigrate the police. Speaking of the complaints made on behalf of Garvaghy Road residents he said, *'I certainly did have the impression that the GRRC as a whole were looking for various ways in which to denigrate the police and the police officers on the ground at the time as part of their overall campaign over the Drumcree issue.'*

9.10 In accordance with the procedures of the time, any complaints lodged with the RUC were passed to the Complaints and Discipline Department in Belfast. Complaints from the South Region would usually be allocated for investigation to an investigating officer based at the Gough Barracks in Armagh.

9.11 It was evident to us that officers in this section were sceptical of complaints lodged by Rosemary Nelson. One Investigating Officer's report relating to a complaint made on behalf of a client in September 1998 observed that the letter of complaint simply stated: *'Our client [redacted] wishes to lodge a complaint in relation to an incident on 29 June last in the Kilwilke [sic] Estate of Lurgan.'* When the complainant was invited to attend for interview Rosemary Nelson responded by letter stating *'endeavours are being made to contact [the client] – bear with us'*. No further communication was received by the RUC and two weeks later, on 16 November 1998, the Investigating Officer prepared his report with a view to applying to the Independent Commission for Police Complaints (ICPC) for permission to terminate the investigation without interviewing any police officers. The report contained this passage: *'History shows that Rosemary Nelson rarely co-operates with a Police investigation. This makes an investigation virtually impossible. Letters of complaint of this type, typical of this Solicitor are nonsense and a waste of valuable resources.'*

9.12 In his oral evidence to the Inquiry, the Investigating Officer told us that at the time of writing he had only been working at Complaints and Discipline for about two months. He said: *'I was dealing with the position as I understood it from my colleagues in Complaints and Discipline in Armagh. [...] It was something that I became aware of through conversations in the early stages of my time in Gough, from their experiences.'* He told us that *'whilst initial letters of complaint were lodged, as I understood it, rarely were those followed up with face-to-face interviews with complainants'*. He said that he did not use the word *'nonsense'* to pre-judge the complaint as worthless, rather *'what I mean is that the manner in which she has approached the complaint process is nonsense'*.

9.13 In another case the same officer had cause to again seek permission from the ICPC to terminate an investigation of a complaint due to the non-cooperation of the complainant, who in this case was Rosemary Nelson herself. A complaint, such as this case and the June 1997 Colin Duffy complaints, where a solicitor complains on his or her own behalf was, we were told, highly unusual at the time. In this case, the original letter of complaint alleged that a local police constable had refused to supply information to Rosemary Nelson about a client who was in custody, despite three requests being made over the telephone. Rosemary Nelson declined an invitation to attend an interview with the Investigating Officer, stating in correspondence that she did not wish to elaborate on her original letter. In his report dated 20 November 1998 the Investigating Officer wrote: *'On that basis it would be unfair and arguably unwarranted to interview Constable [the officer against whom the complaint had been made] on such a nebulous complaint, lacking in elementary but pertinent detail. Such is this solicitor's wont. The complaint in my view therefore lacks credibility and prima facie is incapable of meaningful [sic] investigation.'* The Investigating Officer told us that again the sentiments conveyed about Rosemary Nelson's approach to complaints were based on a view expressed by colleagues. In his written evidence he suggested that Rosemary Nelson was not unique in this regard, citing *'a couple of firms of solicitors who, from my experience, did not always co-operate with the investigation after writing an initial letter of complaint'*. The same officer confirmed there was never an example, in his experience, of cooperation in a complaints investigation with Rosemary Nelson's firm.

9.14 It is true that in each of these cases, as well as in many other case files we examined, the complainants rarely attended interviews. We were told this was true of a very substantial number of complaints. We also heard evidence that many solicitors advised that a complaint should be made in cases where civil proceedings were being considered as it was believed that the proceedings, if taken, might in some way be jeopardised by the fact that no complaint had been made to the police; it was also considered unwise by some for a client to undergo a complaints investigation interview before the civil proceedings were concluded.

9.15 In another case, Rosemary Nelson's letter of complaint alleged that an Army Land Rover deliberately swerved in front of a vehicle in which the complainant was the passenger. This particular aspect of the matter was not amenable to an RUC complaints investigation but a further allegation that the attitude of the RUC officers on the scene *'left a lot to be desired'* was. The Complaints and Discipline Department requested some information about the incident from Lurgan Sub-Division and in response the acting Inspector provided the following report:

'As discussed with C & D [Complaints and Discipline], I have spoken with R/Constable [redacted] who informs me of [sic] the circumstances in relation to this complaint are that she was accompanying a Military Patrol carrying out a warrant check in Deeny Drive and Kilwilke [sic] Estate.

A white van had been noticed circulating around the patrol on 2 occasions and this was subsequently stopped in Deeny Drive.

There were no Police Landrovers involved and no Landrover swerved in front of the vehicle as alleged in the complaint.

The driver was spoken to by R/Constable [redacted] and a number of motoring offences were detected, these being dealt with and that [sic] this stage the passenger became abusive to the Police, eventually aggressive and assaulted the R/Constable and was subsequently arrested and charged with Disorderly Behaviour and Assault on Police.

[The complainant] was in fact the passenger in the rear of the van at the time with another individual and very little contact was made with [the complainant] and members of the patrol, including Police.

There is no likelihood of this complaint being informally resolved given the attitude by Mrs Nelson to security forces in general and indeed the attitude of [the complainant] to security forces in general in the area.'

9.16 The officer who wrote this report told us that his final remarks were made because *'my impression was that Mrs Nelson would have been keen to represent individuals who wanted to make complaints about the police'*.

9.17 This perception appears to have been widely held within the police ranks in Lurgan and Portadown and within the Complaints and Discipline Branch of the RUC in Armagh. Some officers assured us that this did not affect their attitude towards Rosemary Nelson. The Investigating Officer referred to above told us that he had *'no particular view of her personally'*. The acting Inspector said, in respect of his dealings with Rosemary Nelson in the Lurgan custody suite, that they had *'a good working relationship'*. Another officer, a Detective Inspector in SB Lurgan, expressed the view that the complaints in which Rosemary Nelson was involved would not have caused the police to *'have viewed her any differently'*. He said: *'When you join the police you learn that you have to be impartial. It is not personal, it is simply part of her job.'*

9.18 We believe, however, that her complaints against the RUC and her representation of others who complained of misbehaviour by police officers added fuel to the antagonism felt towards her within the RUC.

Involvement in allegations of collusion

9.19 Rosemary Nelson was also involved in a number of cases in which allegations were made that police officers had been involved in conspiracy to murder. One such case was that of Sam Marshall to which we have referred at Chapter 4.2 above. On 21 May 1998 a decision not to hold an inquest in his case was made by the Armagh Coroner. On 22 May 1998 *The Irish News*, under the headline *'No inquest on murder. Family of slain republican dismayed at ruling'*, reported: *'Rosemary Nelson said she intends to challenge the coroner's decision in the high court next week. Mrs Nelson said she had instructed senior legal counsel to lodge an application for a judicial review of the coroner's decision [...] CAJ [Committee for the Administration of Justice] spokesman Paul Mageean said: "There is significant evidence of collusion in this case and there has as yet been no public investigation into it."* According to one press report, at the time of her death Rosemary Nelson was beginning a process to seek a judicial review of the failure to hold an inquest into Sam Marshall's death and she had been in correspondence with the coroner and the RUC about the matter.³

9.20 We received evidence from two other former clients of Rosemary Nelson who described how they had instructed Rosemary Nelson in cases involving suspected

³ *Ireland on Sunday* article by Anne Cadwallader 11 June 2000

collusion. The first of these was Joe Campbell, whose father, a Catholic but also a Sergeant in the RUC, was murdered in February 1977⁴; the second was Eamon Cairns whose two sons were murdered in October 1993.⁵ Joe Campbell told us that he met Rosemary Nelson on four occasions to discuss his case and it was after the third meeting that she indicated she would take on the case. He told us that he thought that a factor in her arriving at this decision was her realisation that the case *'was not about giving the RUC a kicking but that the family just wanted to know the truth about my father's murder'*. Rosemary Nelson represented Eamon Cairns and his family at the inquest into his sons' murders after a number of solicitors declined to become involved. He described Rosemary Nelson as follows: *'To me, Rosemary was a solicitor for the people – she had a real passion for her job and ultimately believed in the law, its protection and the force that they had.'* He expressed the opinion that *'She confronted the evil forces of the police and the Army with integrity and honesty. Rosemary was one of the people who got a bit of education, decided that she would take on the establishment and saw justice and the law as being on her side.'*

9.21 Dara O'Hagan⁶ told us that Rosemary Nelson spoke to her *'a couple of times about the collusion cases that she was taking'* but that she did not divulge any details other than that the cases involved *'raising issues of active state involvement and the agencies of the state and the murder of citizens'*. She told us that in the latter part of her life Rosemary Nelson *'described it to me as the murky underworld of collusion where nothing was what it seemed, and it disturbed her'*.

Campaigning

9.22 Rosemary Nelson was not only critical of the RUC in the context of her clients. In the late 1990s there was a growing debate concerning the RUC's future, to which Rosemary Nelson made a number of public contributions.

9.23 An article published in the *Lurgan Mail* on 11 December 1997 reported the local launch of *'Cearta – A Charter for Change'* in which it was described as *'a new Nationalist grouping'*. The article said: *'The meeting at 7.30pm in The Stables will be chaired by Fr Joe McVeigh and attended by representatives of both the SDLP [Social Democratic and Labour Party] and Sinn Fein, say the organisers, while guest speakers include solicitor Rosemary Nelson and Cearta's Caitriona Ruane.'*

9.24 A week later the newspaper published a report of the meeting. According to the article, *'Solicitor Rosemary Nelson spoke on the issue of legislative reform and the need for an end to emergency legislation if basic human rights were to be respected. She also responded to a number of comments from the floor about the alleged harassment by the Army and police, confirming there had been a dramatic rise in the number of complaints being received.'* SB intelligence obtained in December 1997 stated:

'Rosemary NELSON is to address an audience on the newly formed Cearte [sic] (Justice) grouping at Queens University on 10 December 1997.'

CEARTA Movement (a political pressure grouping) had been formed by Rosemary NELSON with the guidance of [redacted] in the Mid Ulster area. [Redacted] the grouping are looking to recruit members from the nationalist business class and also academical minded nationalists.'

⁴This case is presently under investigation by the Police Ombudsman of Northern Ireland (PONI).

⁵ PONI conducted a full investigation into Eamon Cairns' concerns about the RUC's actions in the case. The report is available on the PONI website: http://www.policeombudsman.org/modules/investigation_reports/index.cfm/reportId/154

⁶ Dara O'Hagan was a close friend of Rosemary Nelson's. She had been elected the Member of the Legislative Assembly (MLA) for Sinn Féin in the Northern Ireland Assembly on 20 June 1998, representing the constituency of Upper Bann which included Lurgan, Portadown and Craigavon.

9.25 *An Phoblact/Republican News* advertised another Cearta meeting scheduled for 12 February 1998 in Lisnaskea, County Fermanagh. The advertised speakers were Breandán Mac Cionnaith, Rosemary Nelson, Gerry McHugh (Sinn Féin) and Tommy Gallagher (SDLP). An SB intelligence report dated February 1998 entitled ‘Sinn Féin Activity’ stated:

‘*CEARTA (Rights)*

The above is a recently formed lobbying group to push forward the Equality of Esteem agenda. The group is receiving advice from Sinn Fein who have appointed [redacted], [redacted] to liaise with it. The group is meant to represent the broad nationalist community and is headed by a steering group, the members of which are: [four names redacted, and] ROSEMARY NELSON.’

9.26 A Lurgan SB intelligence report dated December 1997 stated: ‘*ROSEMARY NELSON is to become a member of the Committee of Administration of Justice [sic] (CAJ) acting as the legal Representative.’*

9.27 Rosemary Nelson was one of 33 lawyers who signed a petition submitted to the Secretary of State for Northern Ireland (SOSNI) in January 1998.⁷ The petition was entitled ‘Equal Protection under the Law’. The statement to which the petition was attached included this passage: ‘*We, the undersigned members of the legal profession in Northern Ireland, wish to express our grave concern at the failure of the rule of law and the relative immunity from prosecution of members of the security forces who have violated basic human rights and contravened national and international laws.*’ Referring to the murder of Pat Finucane it said: ‘*Serious allegations of collusion between members of illegal loyalist organisations and members of the security forces have yet to be properly investigated. Similarly no action has been taken about the continuing intimidation and abuse of solicitors by police officers via their clients in detention centres.*’ The petition called for the Secretary of State to ‘*repeal emergency legislation*’, to ‘*ban plastic bullets*’ and to order an ‘*immediate inquiry into the death of Pat Finucane*’. According to Jane Winter of British Irish Rights Watch (BIRW), Rosemary Nelson prepared the first draft of the petition and it was then modified by a number of the signatories. That Rosemary Nelson was a leading light in relation to the creation and circulation of the document was confirmed by a number of the lawyers from whom we received evidence.

9.28 The petition attracted some press interest. An article in *The Sunday Business Post* on 18 January 1998 reported that the petition came at a time ‘*when a number of prosecutions are being taken against the RUC*’. It said: ‘*Up to 900 people a year make official complaints against the force, and in a third of those cases settlements are made totalling stg£500,000 a year. In 17 years, only two RUC men have been sacked due to complaints brought against them.*’ A report in *The Irish News* on 16 January 1998 concerning the petition was noticed within SB and a report commenting on the article was submitted in February 1998 which named the 33 signatories to the petition in alphabetical order.

9.29 Another statement by lawyers was published in August 1998.⁸ Its signatories expressed concerns about planned changes to the emergency legislation prompted by the Omagh bombing. Rosemary Nelson was quoted in *The Irish News* on 29 August 1998 as saying, ‘*It is ironic that the new legislation being prepared for enactment comes in the year of the 50th anniversary of the United Nations declaration which sought to guarantee human rights.*’⁹

⁷ *The Sunday Business Post* 18 January 1998

⁸ *The Irish News* 29 August 1998, the day after the statement was signed

⁹ Rosemary Nelson’s opposition was also reported in the *Lurgan Mail* on 3 September 1998.

9.30 Rosemary Nelson had also established links with individuals and groups in the USA who were lobbying for the reform of the RUC. An article in *The Irish News* on 30 March 1998 said: *'Rosemary Nelson last night welcomed news that a declaration by the US Congress has called on the British government "unilaterally to address human rights abuses" in Northern Ireland. And she applauded a call by the declaration's architect, New Jersey congressman Chris Smith for an independent inquiry into the death of Robert Hamill.'*

9.31 In April 1998 she travelled to the USA reportedly to *'begin a series of meetings and lectures and broadcasts on human rights in the North'*. In a press release issued by Jean Forest of US Voice for Human Rights in Northern Ireland (previously Voice of the Innocent, USA) regarding Colin Duffy it was said: *'Rosemary Nelson will be in the U.S. from approximately April 1 to April 9 meeting with groups in the New York, New Jersey, Boston areas. She will be officially meeting with the Human Rights Commission of the United Nations, speaking on behalf of the Charter for Change effort, and on behalf of the safety of her clients.'*

9.32 Lurgan SB reports dated April and May 1998 respectively stated:

'Rosemary Nelson is to travel to the USA on 1 April 1998 for one week to meet with Lawyers and Congressmen regarding a United Nation's [sic] Report on RUC Detectives allegedly threatening Solicitors in NI.'

'ROSEMARY NELSON earned #750 [sic] per lecture when in the USA at the beginning of April 1998. She was on average lecturing seven times per day over a 5 day period.'

9.33 Rosemary Nelson returned to the USA in October 1998 to give evidence on the continuing problems facing solicitors in Northern Ireland to the International Operations and Human Rights sub-committee of the US House of Representatives Committee on International Relations (see Chapter 27.11 to 27.14 for more detail regarding this evidence). Lurgan SB in an intelligence report dated October 1998 stated:

'ROSEMARY NELSON has recently visited the USA in her capacity as a Solicitor to address members of Congress on alleged harassment by the Security Forces on Nationalist members of the legal profession.'

9.34 Rosemary Nelson visited London on 10 December 1998 and spoke at a public meeting entitled *'Making the Good Friday Agreement Work: Policing for the Future'* in the Committee Room at the House of Commons on 10 December 1998.¹⁰ Whilst in London she spoke to the Socialist Campaign Group. In an article published in the *Socialist Campaign Group News* in January 1999 she is quoted as calling for root and branch reform of the RUC. The article gave details of her career and described her involvement in the cases of Colin Duffy, the GRRRC, Robert Hamill and Sam Marshall. It quoted Rosemary Nelson as saying, *'Under the terms of the Good Friday Agreement there has to be an ethos of human rights. But I have been shocked to find that to argue for human rights means you are classified as a republican. In spite of thousands of complaints by the public, no RUC officer has ever been convicted of anything done while on duty. Cosmetic changes won't work. We need a new police service permeated from top to bottom by an ethos of respect for human rights.'*

9.35 On 12 February 1999 she delivered the Pat Finucane lecture in Derry on the tenth anniversary of the murder of Pat Finucane.

¹⁰The event was organised by Britain and Ireland Human Rights Committee, the Labour Committee on Ireland and the Connolly Association.

Engagement with the Patten Commission

9.36 The Patten Commission was established on 3 June 1998 by the UK Government. It was established under the terms of the Good Friday Agreement signed on 10 April 1998. Its remit was to make recommendations for the future policing arrangements in Northern Ireland. In November 1998 Rosemary Nelson attended a Patten Commission meeting in South Armagh where, according to one press report, she *'made a series of criticisms about the scrutiny of the emergency legislation giving examples from her work as a representative of GRRC'*.¹¹ A Lurgan SB report entitled *'PIRA – North Armagh – Lurgan'* and dated October 1998 stated:

'ROSEMARY NELSON recently met with a representative of the Patton [sic] Commission on Policing and forwarded to him a dossier on the alleged 'Shoot to Kill Policy' by the Security Forces.

It includes alleged new evidence on collusion between the RUC and Loyalist Paramilitaries in the murder of SAMMY MARSHALL in Lurgan in 1990 which they believe is substantial enough to re-open the investigation.'

9.37 There was no Patten Commission meeting in Lurgan, a decision criticised by Rosemary Nelson in the press,¹² which reported her as representing some of the families who were hoping to attend, including the relatives of Sam Marshall and three men killed by security forces in 1982, in the context of the alleged 'shoot to kill' policy.¹³

Conclusion

9.38 By taking the position that she did there is no doubt that Rosemary Nelson would have been seen by some within the RUC as persistently hostile to them; and we believe that in turn that accentuated hostility towards her among some members of the RUC. The publicity given to her comments would have been likely to cause Loyalist extremists and paramilitaries to judge her to be a legitimate target, even a trophy target.

¹¹ *The Irish News* 20 November 1998

¹² *The Irish News* 5 December 1998 and *Lurgan Mail* 10 December 1998

¹³ *The Irish News* 19 October 1998

10 Royal Ulster Constabulary Views of Rosemary Nelson: Lurgan Criminal Investigation Department and Senior Uniformed Officers

View of Rosemary Nelson: Criminal Investigation Department officers

10.1 The evidence of two of the officers against whom Rosemary Nelson had made complaints was typical of that given by officers from Lurgan Criminal Investigation Department (CID). They had both been involved in the interviews of clients detained in February 1997 and had both been involved in interviewing Colin Duffy in June 1997 following his arrest for the murder of Constables Johnston and Graham. One of the officers told us, for example:

'My personal perception of Mrs Nelson was that she was a professional carrying out her job. I would probably have known Mrs Nelson through her clients before the complaints in question were made but I cannot recall clearly. Although Mrs Nelson worked for some high-profile Republican clients, I felt no resentment or animosity towards her. She had a job to do and was employed by her clients. She carried out her job efficiently. I am not aware that any of my colleagues had any other opinions of her contrary to my own.'

10.2 His interviewing partner, also a detective constable from Lurgan against whom Rosemary Nelson brought complaints, described her in the following terms:

'Rosemary Nelson was a solicitor working in Lurgan, and that is about the extent of it really. I would not describe her as having a "reputation," either good or bad, as such. She represented all sorts of clients such as burglars, or people who had been injured in a fall on a footpath. She was just like any other solicitor even though some of her clients were members of the Provisional IRA. I had next to no contact with her. In those days I do not think solicitors attended police stations for interviews of suspects involved in ordinary crime. I would have seen her in court or about the town, but that is about the extent of it.'

10.3 As we have indicated in Chapter 8.14, it appeared to us that, in general, CID officers were less than candid in their evidence when describing their attitude towards Rosemary Nelson in mid-1997 and later. In some instances we have no doubt that strong feelings and suspicions which might have then existed have simply passed and healed with time. However, evidence concerning an incident that occurred soon after the shooting of the two constables and the arrest and questioning of Colin Duffy casts considerable doubt on whether the officers accurately described their true feelings towards Rosemary Nelson in their evidence to us.

A Loyalist's allegations

10.4 On 25 May 2003, an article appeared in the Northern Ireland edition of the *News of the World*, under the headline '*COPS TOLD ME TO KILL NELSON*'. The newspaper reported that Trevor McKeown had '*claimed RUC [Royal Ulster Constabulary] detectives urged him to murder Catholic human rights lawyer Rosemary Nelson*'.

10.5 Trevor McKeown had been arrested on 15 July 1997 and held in custody at the Holding Centre at Gough Barracks until 18 July in connection with the shooting of Bernadette Martin, an 18-year-old Catholic. She died while he was in custody and in due course Trevor McKeown was convicted of her murder.

10.6 Trevor McKeown is the brother of Clifford McKeown who was a close associate of Billy Wright and a member of the Loyalist Volunteer Force (LVF). Clifford McKeown was convicted of the murder of Catholic taxi driver Michael McGoldrick who was shot dead near Lurgan on 6 July 1996.

10.7 In the newspaper article Trevor McKeown alleged that, in one of the many interviews under caution that were conducted while he was in custody, an officer told him that he should have shot Rosemary Nelson instead of Bernadette Martin and goaded him as to whether he would be prepared to do so. He identified two officers as being responsible. Of these, he alleged that one had uttered the offensive words while the other made notes of the interview.

10.8 The allegations were investigated by the Rosemary Nelson Murder Investigation Team (MIT) as a suspected offence of incitement to murder. They took witness statements from Trevor McKeown, from the journalist to whom Trevor McKeown first made the allegations, and from Trevor McKeown's solicitor. They interviewed the detectives named by Trevor McKeown as those responsible.

10.9 In his witness statement to the MIT dated 16 June 2003 Trevor McKeown said:

'Both officers were known to me. During either the first or second interview which these officers had with me, Rosemary Nelson was introduced into the conversation. I had never had any dealings with Mrs Nelson but I knew of her from the TV and newspapers. I knew she represented the Garvaghy Road Residents and some leading Republicans. It would be true to say that she was regarded as a "hate figure" within Loyalist circles. During the interview in which Mrs Nelson was referred to, [the note-taker] did not join in the conversation, he appeared to be taking notes. For the whole of the interview, roughly one hour fifteen minutes to one hour thirty minutes, [the other officer] kept talking about Rosemary Nelson and suggesting she should have been targeted instead of Bernadette Martin. I can't remember after all this time the exact words that [the other officer] used but to the best of my recollection it was something like; "Why the fuck Trevor did you not shoot Rosemary Nelson instead of an eighteen year old girl. Sure you know where she parks her car, down William Street." Intermittently he, [the other officer], also said, "would you shoot her Trevor, would you?" This was again a reference to Mrs Nelson. These phrases and similar ones were used throughout the interview. There was constant repetition of these suggestions by [the other officer]. At no stage did [the note-taker] intervene or protest. I am absolutely certain these suggestions by [the other officer] were said in all seriousness. Having been shown a copy of the News of the World article by [the journalist], I can also say that [the other officer] said words to the effect "It would be easy for me or other Loyalists to shoot her". Again this was a serious suggestion by [the other officer]. It was not said in a jokey or casual manner. I declined to comment throughout the interview. I believe I signed the Interview Notes when they were presented to me but I knew there would be nothing in the notes about Rosemary Nelson. Immediately following that interview I was allowed a legal visit. I told my Solicitor, [redacted], exactly what [the other officer] had suggested to me.'

10.10 We were conscious of the need to view these allegations with great caution. Trevor McKeown had not raised the matter until May 2003, almost six years after the event, and did so when attempting to persuade a journalist that he had been wrongly convicted of Bernadette Martin's murder, and when his brother was

seeking to overturn his conviction for the murder of Michael McGoldrick. Although he provided a witness statement to the Inquiry he refused to give oral evidence even though arrangements were made for him to do so via video link from HMP Maghaberry. The officers he named, both of whom gave evidence to the Inquiry in person, emphatically and consistently denied his allegations.

10.11 There were, however, features of the allegation that were not easily dismissed. The account of the journalist to whom it was first made was particularly interesting. He had been telephoned by a contact who told him that Trevor McKeown wanted to speak to a journalist about the murder of Bernadette Martin. He went to see him on 6 May 2003 and Trevor McKeown had spoken about the murder of Bernadette Martin. It was only while waiting to leave the visiting area ‘*during a desultory conversation about informers working with the Special Branch*’¹ that the name of Rosemary Nelson was mentioned.

10.12 In his witness statement the journalist described the conversation as follows:

‘Two days prior to our meeting I had run a story about a UVF [Ulster Volunteer Force] informer working for Special Branch. We discussed this article and then without prompting he said something along the lines of “People shouldn’t be surprised about this, it’s been happening for years.” He then went on to talk about Rosemary Nelson but not what I would describe in a dramatic fashion. He said that whilst being interviewed for the murder, one of the policemen — Detective Constable [redacted] — said, “Why did you kill that innocent 18 year old girl Bernadette Martin when you should kill Rosemary Nelson. Sure she parks her car in William Street just below her offices and it would be easy to shoot her there.”’

10.13 We could see no reason why Trevor McKeown would have believed that he would benefit from the telling of this story, and the journalist’s description of how Trevor McKeown pursued the matter indicates that he did not believe he would benefit. The journalist’s account was as follows:

‘I had subsequent telephone conversations with him [i.e. Trevor McKeown] and at my instigation I brought up the Nelson conversation. He repeated only what he had already told me. [...] Prior to publication I told him I was going to run two stories, one about Nelson and the other about protesting his innocence. He didn’t seem overly keen on running the Nelson story but nevertheless agreed. I said I would publish the second story once I had seen the documents. The story appeared in the News of the World on Sunday 25th May 2003. I spoke to him the following Tuesday (27/5). He’d obviously seen the story and he seemed quite happy with it. Also he said he would speak to anyone if it required further investigation.’

10.14 There were some details in the account that Trevor McKeown gave that did not tie up. He told the MIT officer who investigated his allegations, for example, that he had signed the notes made during the interview when Rosemary Nelson was mentioned even though he had not expected them to contain references to Rosemary Nelson. He did not complain of the omission at the time although he had complained that notes of an interview conducted by the same two officers on 16 July 1997 were inaccurate and that he had been assaulted during the interview.² His explanation for this, however, was as follows:

¹ This is the wording used by Arthur Provoost, the investigating officer, in his report to the DPPNI.

² A witness statement was recorded on 17 July 1997 in which he raised complaints regarding an interview on 16 July 1997.

'I made a Complaint Against Police whilst I was in custody and being questioned about the Martin Murder. It was actually against [the two identified officers]. My complaint was of minor assault and failure to record the Interview Notes properly. I did not mention [redacted]'s comments concerning Rosemary Nelson. I did not consider that to be worthy of making a Police Complaint. Although the comments were "out of order" I did not have any particular admiration for Rosemary Nelson or the people she represented.'

10.15 He also maintained that he had told his solicitor about the comments in a consultation which took place immediately after the conclusion of the interview and he believed that his solicitor had made a note of them. Although his solicitor provided a witness statement to the police in which he stated he had no recollection of any reference to Rosemary Nelson during any of his consultations, and his notes contained no such reference, he refused to cooperate with the Inquiry, leaving us in some doubt as to whether he feared further questioning on this issue.³

10.16 Moreover, there was the troubling coincidence that, at the time that Trevor McKeown's allegations relate to, Rosemary Nelson was representing Colin Duffy who was evidently believed by every police officer in Lurgan to be an active and dangerous terrorist, responsible for the murder of Constables Johnston and Graham and of earlier killings of members of the security forces. As we have seen at Chapter 4.107 to 4.108, at that time intelligence recorded by Special Branch (SB) suggested that Rosemary Nelson herself was actively assisting the Provisional Irish Republican Army (PIRA), and as will be seen at Chapter 12.47 to 12.49, we believe that at least some of that intelligence would have been disclosed to CID officers during the course of the investigation into the murder of the two Constables. Indeed, some of the officers who interviewed Trevor McKeown had interviewed Colin Duffy three weeks earlier.

10.17 As noted in Chapter 8, it had been represented to us very strongly that the witnesses who appeared before us concerning the complaints made by Rosemary Nelson's clients were Republicans from the Kilwilkie Estate, and that the complaints were a concerted effort to discredit the RUC. Significantly, Trevor McKeown was not a Republican from the Kilwilkie Estate, but a Loyalist from Aghalee, a rural community north of Lurgan.

10.18 It would not be surprising if, after six years, Trevor McKeown was mistaken as regards the precise details of his allegations, the precise words used or the particular identity of the officers who uttered them, but we are unable to dismiss his allegations, and consider that they accurately reflect the sentiments of CID officers in South Region, and perhaps in Lurgan in particular, towards Rosemary Nelson. They did not regard her as '*an ordinary solicitor*' – far from it. From what we have read and heard, local CID officers harboured considerable resentment towards Rosemary Nelson and they were prepared to voice that in the most unacceptable circumstances.

View of Rosemary Nelson: senior uniformed officers

10.19 Senior officers at Lurgan police station maintained in their evidence to the Inquiry that they had heard none of the officers under their command talking about Rosemary Nelson, and that the relationship between Rosemary Nelson and police officers in Lurgan was the same as that with many other solicitors.

³ According to the custody record Trevor McKeown consulted with his solicitor on seven occasions during his detention and with an assistant solicitor on one occasion. The solicitor's notes refer to each of the consultations referred to in the Custody Record. No notes were recovered in respect of a consultation with the assistant solicitor which took place between 13.35 and 14.37 on 18 July 1997.

10.20 We questioned the Superintendent who served as Sub-Divisional Commander in Lurgan between October 1997 and March 2001, for example, as to whether the attitude of police officers towards Rosemary Nelson might have been affected by the discontinuance of the case against Colin Duffy for the murder of Constables Johnston and Graham and his subsequent release from custody in October 1997, or his assault on officers from Lurgan police station very soon afterwards. We asked him whether it might be supposed that there was no love lost between the RUC and Rosemary Nelson. He told us:

‘Well, from – personally speaking, I wouldn’t have seen it in those negative terms, but I can understand how police officers in the station at the time may well have seen it in those – the relationship or her role in those negative terms.’

10.21 He said, however:

‘I wouldn’t have put it as strong as no love lost. I mean, the role of a solicitor is to represent his or her client, and sometimes there is tension then between police and defence lawyers and defence solicitors because of that. So – I mean, Rosemary Nelson would not have been seen as a hate figure or anything like that amongst local police. She would have been viewed as someone who was a solicitor who represented Colin Duffy. And, yes, police officers then would have been, I suppose, aware of the – of the fact that she was a professional lawyer for him, but I wouldn’t have seen it in really any stronger terms than that.’

10.22 Commenting on the number of complaints pursued by Rosemary Nelson on behalf of clients, he said:

‘I do not know if Mrs Nelson made more complaints than any other solicitor. It was a common occurrence for police suspects from both traditions to make complaints. I would not say that Republicans were more inclined to make a complaint than anyone else. Nor could I say that the police were brassed off with Mrs Nelson for making complaints. From time to time there would be friction between the police and lawyers representing suspects. The relationship Mrs Nelson had with the police was the same as any other solicitor representing police suspects. There were certain lawyers who had a higher profile than others and some lawyers were identified with certain types of clients. Over time Mrs Nelson would have been identified as representing those from a Republican tradition, just as other lawyers would have been identified as representing those from a Loyalist tradition. I do not know when I reached this view of her.’

10.23 The Chief Inspector who served as Deputy Sub-Divisional Commander in Lurgan between 1993 and 1999 did, however, notice a deterioration in Rosemary Nelson’s relationship with the RUC. He described it as follows:

‘I was aware of who Mrs Nelson was although I did not know her personally. I must have been the prosecuting officer in court in relation to some of the same cases she was dealing with at one time or another. To begin with, I believe that Mrs Nelson’s relationship with police generally was friendly and she was on good terms with them. My recollection is that some police officers recommended her as a solicitor to use in relation to domestic violence cases.’

‘At some later stage, Mrs Nelson’s relationship with the police changed. I recall that I became aware of this change after it had already taken place. I believe that Mrs Nelson became very anti police and was instead the type of solicitor who did not communicate freely with the police. She communicated by letter as referred to earlier in this statement. I think that this may have begun after Rosemary Nelson undertook a number of high-profile cases. These included her representation of Colin Duffy although I am sure there are plenty more cases she was involved with.’

10.24 He said, for example, *‘Other solicitors seemed to have no difficulty in lifting the phone and ringing me to ask me about something, but she never rang me to ask me about anything. Anything ever I got from her was by letter.’*

10.25 His attitude towards Rosemary Nelson was evident from a report he submitted in the Sub-Divisional Commander’s name on 21 November 1997, concerning the fracas four days earlier between Colin Duffy and police officers in Lurgan which occurred when a car in which Colin Duffy was a passenger had been stopped. The report noted: *‘Despite Rosemary Nelson’s PR machine going into overdrive in relation to the “ongoing harassment” of Colin Duffy, we must not lose sight of the fact that all officers involved carried out sterling work in the face of overwhelming odds.’* In his evidence to us, the Sub-Divisional Commander observed: *‘I would surmise that Mrs Nelson’s was an effective PR machine because of her high profile and involvement in Drumcree. I am sure she would have made some comment to the press about it [i.e. the vehicle incident], but I do not recall what that was.’*

10.26 That he regarded Rosemary Nelson as a problem was evident from a memorandum he wrote on 17 February 1998 seeking guidance as to how he should deal with a threat against a client of Rosemary Nelson’s that had been received through SB and passed to him for action. He wrote:

‘In view of the involvement Rosemary Nelson has with republican elements in the Lurgan area and her involvement in publicity on behalf of a number of individuals alleging harassment by security forces, I would appreciate guidance on what information should be revealed to her.’

10.27 He told us that he had sought advice in these terms because *‘Mrs Nelson would take every opportunity to use what was said to her in publicity which was negative to the RUC. I therefore wanted to ensure that the RUC’s position was stated correctly.’* He told us that he felt that there was *‘a distinct possibility’* that she would use the opportunity to create negative publicity for the police force.

10.28 This officer was questioned during his evidence as to what he meant by *‘involvement [...] with Republican elements’* and he told us that he had not intended to suggest anything other than a purely professional role. We gained the distinct impression from his answers, however, that he disapproved of the manner in which Rosemary Nelson performed that role. He told us, for example:

‘Well, that – I recall sitting at my desk thinking about this. What is she doing? As I have said before, my aims and objectives – my whole life and business there was to protect people and keep people safe, and here was a huge danger. This type of publicity, in my view, is what gets people killed.’

Now, she was a solicitor. Now, not many – very few solicitors would be standing out on the Garvagh Road with protesters with their clients. It is unusual. Why was she there? All sorts of things can run through your mind of why she was there. One of them that I didn’t mention yesterday was: is it to generate business? It could well have been.’

On occasions, letters came in in relation to complaints, for example. Say if there was an incident with the Army or with the police and three or four or five or six people complained, there would be six separate letters would arrive altogether. Why did she send six separate letters about the one case? Was that to generate money? I don’t know, but whatever she was doing I didn’t know. What I did know was this was dangerous with the potential to get people killed. In my position, it was my duty and responsibility to keep people alive and I was the officer who had to go and speak with families after murders and deaths, police and civilians, and the horror and the disaster and the cataclysmic consequences for families are beyond description. One must be

extremely careful about what one says and does to make sure that there are no further controversies, murders, injuries.

That was my aim in all this and in my dealing with it, that was uppermost in my mind.'

10.29 In describing his perception of Rosemary Nelson, he said: *'The honest answer is I didn't know what she was doing, but what I did know was that whatever it is, it is dangerous.'*

10.30 In March 1998 he sought advice in regard to the poster containing a photograph of Colin Duffy displayed in Tandragee, County Armagh. In a memorandum dated 26 March 1998 to the Superintendent C2⁴ he wrote: *'Colin Duffy and his Solicitor, Rosemary Nelson, have been vocal in making allegations of Military and Police harassment and seize every opportunity of making political capital for their cause.'*

10.31 He told us that his concerns had been raised by media reporting rather than anything said by colleagues. He explained his reference to the 'cause' as follows:

'Oh, yes. Well, their cause, whatever it was, in relation to all the allegations of misconduct of police officers. Whatever that cause was, why were they doing it; whatever that cause was, the purpose of it. The cause may well have been to discredit police officers, to discredit the police in general, whatever.'

10.32 There is nothing in these remarks that is overtly hostile to Rosemary Nelson. However, these officers obviously regarded her activities as representing a danger to their officers. We do not believe the question of whether she might herself be in danger entered their minds. They were also irritated by her use of the media. Their reservations and antipathy seem clear to us.

⁴ C2 was a unit of Crime Department (see Appendix A) which dealt with reports of threats made against individuals.

11 Royal Ulster Constabulary Views of Rosemary Nelson: Special Branch

View of Rosemary Nelson: Special Branch

11.1 As we shall see below, Special Branch (SB) officers did not regard Rosemary Nelson as *'any other solicitor working in Lurgan'*. Among the intelligence that they recorded were reports that suggested that she was in league with the Provisional Irish Republican Army (PIRA); that she was passing information to PIRA members; and that she was helping to fabricate alibis and suborn prosecution witnesses. SB intelligence reports also suggested that Rosemary Nelson and Colin Duffy were lovers.

11.2 A Detective Constable who served in SB in Lurgan¹ between 1996 and 2004 told us: *'I came to the opinion through intelligence that was put to me, that she was – her activities legally were far and beyond – her relationship with leading Provisional IRA members was far and beyond her legal responsibilities.'*

11.3 Asked whether he regarded her activities as criminal he said: *'Well, if someone was going about, as it was put – the intelligence provided us was put forward that she was creating alibis for people who were involved in acts of terrorism. That would be deemed as criminal.'*

11.4 He told us: *'I regarded her as a person who had a very, very close associate – I regarded terrorists as really someone who probably goes out and carries out acts of terrorism. So in that form, I wouldn't have termed her a terrorist, but somebody who had a very, very close relationship with terrorists.'*

11.5 When asked whether he regarded her as an active supporter of terrorists he told us that he did, and that this was a view shared by his colleagues in Lurgan.

11.6 Another Detective Constable from Lurgan SB told us that the whole office would have been aware of the intelligence report filed in August 1997 that suggested that Rosemary Nelson was attempting to contact *'a witness for the prosecution of COLIN DUFFY'*. In relation to this he told us: *'Certainly in relation to this one, it convinced me that she was actively involved in assisting the IRA [Irish Republican Army], ergo members of the IRA, certainly.'*²

11.7 The Detective Sergeant from Lurgan SB also held the view that, in respect of Colin Duffy and PIRA in Lurgan, Rosemary Nelson had acted *'above and beyond her role as a solicitor by creating false alibis to assist them'*. Furthermore, he described her as having an *'unhealthy relationship with members of the Provisional IRA'*.

11.8 The Detective Inspector J Division SB was rather more circumspect. Commenting on the intelligence report claiming that Rosemary Nelson was attempting to contact the witness to the murder of Constables Johnston and Graham he said: *'She was acting in support of her client, but I think she was perhaps being overzealous. I believe this is where the relationship really started to form, at this stage here, which perhaps maybe encouraged her to work a bit harder for them.'*

¹ The organisation of SB reflected that of the RUC generally. Lurgan formed part of J Division. See Appendix D.

² The officer told us that this intelligence *'would certainly not have been given per se to the station party as a matter of course'*.

11.9 He commented also on the intelligence report concerning the conversation regarding Rosemary Nelson being thought of as ‘*an ordinary solicitor*’,³ saying:

‘I think probably the fact that she was – you know, she was seen in other – at that particular time she was very much involved with the Garvaghy Road Residents’ Coalition and that whole issue there, and she was very much the voice for the Republican people and would have appeared publicly, you know, particularly by Drumcree and giving statements and things like that there. This is where you are starting to form the opinion that she does have sympathies lying in that direction. But we never at any stage were saying she was a member of any organisation, anything like that, but she certainly was leaning towards that way.’

11.10 The Detective Inspector expanded a little further in relation to the intelligence concerning the murder of Kevin Conway obtained in February 1998 that Rosemary Nelson ‘*regularly briefs COLIN DUFFY on the CID investigation and actively assists him in creating alibis for PIRA members*’.⁴ In respect of this, he said:

‘It didn’t really come as any great shock to us about that piece of intelligence because, you know, we realised and knew at that stage there was starting to be quite a close relationship and this is where she may have had misguided loyalties in many ways and in which she passed on what she was learning from her interviews. Now, while – she is breaching the trust of a client or what, but she certainly was, according to – it appeared to us that she was discussing these things with Collie Duffy, and it could only be for one reason: to keep him up to speed on everything, you know.’

View of Rosemary Nelson: Special Branch Regional Headquarters South

11.11 The officer who, until May 1998, served as Superintendent SB South West (with responsibility for Dungannon, Cookstown, Portadown and Lurgan) and who thereafter was the Chief Superintendent in charge of SB Operations South Region (E4) based at Mahon Road Portadown, was somewhat more forthright in expressing his view of Rosemary Nelson’s activities and how they were viewed within SB in South Region. He told us:

‘She would have been seen as a PIRA personality because of her association with Colin Duffy. She was active on the legal side of things for PIRA, but not operationally active. She would help PIRA on the evidential side of things if PIRA was doing something and provide them with legal advice. I believed Mrs Nelson would do PIRA’s bidding. She was a person PIRA went to, to represent them. That was my assessment of it.’

11.12 During his oral evidence to the Inquiry he told us:

‘She would have been very much hand in glove with the IRA and certainly pinned her colours to their mast very much, and I don’t think it was – it was an open secret almost. [...] I wouldn’t have been inclined to say that she would have been involved in any operations, but certainly from a legal point of view, I would have said that she would have helped them whenever it came to operations, if they’re involved in, making sure that, from an evidence point of view, they left nothing behind at scenes, that type of thing. Certainly she would have been associated with them. Post-events, I certainly would have said that she was – she would have helped them in providing alibis, that type of thing. So she was maybe not a terrorist per se in that she went out to commit

³Referred to at Chapter 4.108

⁴Referred to at Chapter 4.132

murder, but by association she was there and was very much part of their – the terrorist process.’

11.13 He told us: *‘I have no doubt in my mind that she had crossed the line in my mind, yes, very much so. But I would have classified her – I mean, an IRA – a member of the IRA in all but name.’*

11.14 The Regional Head of SB South Region (RHSB(S)) also regarded Rosemary Nelson as culpable. He told us that: *‘The dogs on the street knew that Mrs Nelson was sympathetic to PIRA.’* Commenting on the intelligence reports that referred to her he said:

‘If Mrs Nelson had continued moving along the same vein as we have seen in the [intelligence reports], then the matter would have been taken through the appropriate channels for her to be investigated for prosecution. The Regional Detective Superintendent and I would have decided this. However, it was all about priorities, and she was not one at that time. We were not considering the [intelligence reports] with her in mind. Having now read the exhibited intelligence reports [...], and with the benefit of hindsight, perhaps we should have done something about her conduct, but again there were other major priorities.’

View of Rosemary Nelson: Special Branch Police Headquarters

11.15 It was evident that senior SB officers based at Police Headquarters at Knock also believed, as a result of these intelligence reports, that Rosemary Nelson had ‘crossed the line’ and had abused her role as a solicitor by assisting PIRA members. Commenting on the intelligence report from April 1996 that Rosemary Nelson was ‘using her position as a solicitor to gather information for PIRA in Lurgan’, the Chief Superintendent who became the Head of the Intelligence Management Group (IMG) when it was formed in September 1997 and who continued in that role until May 1998 said:

‘As far as I was concerned, when I became aware of intelligence of this nature I believed that Rosemary Nelson was committing an offence under the Emergency Legislation that was in force at the time, on the basis that she was gathering information to assist terrorist conduct. However, this was a personal view that I held at the time, and I would not have been concerned about this intelligence in terms of any operational implications or impact. It would be for the Regional Head Special Branch [...] to decide whether any follow up action was required on receipt of such intelligence.’

11.16 His successor as Head of IMG told us:

‘My perception of her was that she was very sympathetic to PIRA and would have compromised her responsibilities as a solicitor to assist PIRA and especially Colin Duffy. This perception was based on intelligence reports I had read about her and briefings I had listened to from South Region. These reports and conversations were both pre and post her murder. There was a feeling within Special Branch that Mrs Nelson abused her role as a solicitor by assisting PIRA members with false alibis.’

11.17 In his oral evidence to the Inquiry he said:

‘I certainly think the position that we held was that she had a very close association with terrorists in the Lurgan area and that she helped them to achieve their objectives. And if one can sort of make the conclusion that by those actions she then makes herself a terrorist, then perhaps, yes, that’s the conclusion one would come to.’

11.18 In his witness statement to the Inquiry, the Head of SB (HSB) was circumspect:

'I have been asked if I had any perception or view as to whether Rosemary Nelson was a member or a close associate of PIRA. Rosemary Nelson had a professional job to do, but in addition, she associated with those who had a role in PIRA. As I have stated, to my knowledge, there were no operations against her. It is also important to point out that there are many Republicans who do not resort to violence or get involved in terrorism. Having a Republican aspiration does not necessarily mean that you support violence.'

11.19 When pressed during questioning before the Inquiry he said:

'Well, I was brought up not to speak ill of the dead but on the basis of what I have been shown and what I knew, it was clear to me that she certainly had crossed the line in relation to the solicitor/client relationship in at least one prominent case.'

11.20 The case to which he was referring was that of Colin Duffy. He added:

'I would not have been saying that I had evidence that she was a member of a proscribed organisation, but it appeared to me that she was associating with and working closely with those who were, in at least that one high-profile case. No doubt the Inquiry will hear from other witnesses, including her staff and family, et cetera, et cetera, but on the basis of what came before me, regrettably I cannot draw any other conclusion than the one I have just described.'

11.21 We observed that among SB officers who gave evidence to the Inquiry there was an unquestioning acceptance of the truth of the intelligence reports that they prepared or to which they had access. Officers at every level within SB in South Region and at Police Headquarters regarded Rosemary Nelson as an active supporter of PIRA. It appeared to us important to establish whether or not this belief, or the information upon which it was based, might have reached the uniformed or CID sections of the force. Such information was potentially highly prejudicial, and if it spilled beyond the boundaries of SB, as we believe it did, it would no doubt have coloured the attitude of officers who learned of it.

View of Rosemary Nelson from within Special Branch Lurgan: July and August 1998

11.22 Two documents were disclosed to the Inquiry which were prepared for potential application to the Secretary of State for Northern Ireland (SOSNI) for warrants authorising surveillance. They provide a clear picture of the way in which Rosemary Nelson was viewed within SB in South Region and in particular within SB in Lurgan during the summer and autumn of 1998.

11.23 As is the case today, telecommunications within the UK could only be lawfully intercepted under the authority of a warrant granted by the Secretary of State.⁵ Before 22 February 1999, however, a warrant from the Secretary of State

⁵ Section 2 of the Interception of Communications Act 1985. On one or more of the following grounds: (a) in the interests of national security; (b) for the purpose of preventing or detecting serious crime; or (c) for the purpose of safeguarding the economic well-being of the United Kingdom.

was also required for surveillance which entailed an *'interference with property'*.⁶ Responsibility for the execution of a warrant of either type lay with the Security Service, the functions of which included *'support of the activities of police forces'*.⁷

11.24 The first of these documents dated 9 July 1998 and entitled 'Application for Telephone Intercept – Rosemary Nelson, c/o 8A William Street, Lurgan' described Rosemary Nelson in the following way:

'Rosemary Nelson is a practising Solicitor with the majority of her work advising the Republican movement including PIRA, Sinn Fein and Resident groups, in particular the Garvaghy Road Residents Coalition [of which] she is their legal adviser.

A close confidante of Colin Duffy, Lurgan PIRA, with whom she is in regular daily contact. She openly supports their cause and intelligence states she has "flouted the law" by creating alibis and orchestrating "witness evidence" for PIRA members arrested for terrorist offences including murder.

Nelson's solicitors business success had been due to her commitment to the Republican cause where she has since achieved status by meeting United Nations representatives, invited to the USA to meet Congressmen sympathetic to Irish Nationalists and in regular contact with the Irish Government over the issues of Drumcree, the Hamill murder in Portadown in 1997 and the alleged Security Force harassment of Colin Duffy.

Nelson is undoubtedly a significant personality in the Drumcree situation where she is readily available to offer her expert advice to Brendan McKenna and Colin Duffy, two of her closest associates at this time. She also prepares statements on McKenna's behalf for issuing to the media.'

11.25 Neither the SB Detective Sergeant who drafted the application for the telephone intercept nor the SB Detective Inspector could remember on whose initiative it had been written. When questioned about the application, the SB Detective Inspector said: *'Whilst I do not specifically recall seeing this application I suspect that [the Detective Sergeant] prepared the application [redacted] and then ran it past me.'* He told us, however, that *'this would not have got past me, let alone [the RHSB(S)].'* The RHSB(S) told us: *'I believe it would not have met the threshold for a telephone intercept on a solicitor. I can see how the application came to be drafted. There was tremendous pressure on Special Branch from the Government to provide it with as much intelligence as possible on Drumcree and its key players. Detective Sergeant [redacted]'s role would have been to identify possible targets for telephone intercepts to give us as much coverage [...] as possible. He would probably have prepared this application with a batch of others.'*

11.26 No records were produced to the Inquiry to show that an application for the interception of Rosemary Nelson's telephone was ever passed to the Security Service whose function it would have been to prepare any application to the Secretary of State for a warrant. The Security Service member who at that time was responsible for the branch of the Security Service which processed such applications told us:

'To the best of my knowledge, neither I nor any of my staff were ever aware that this application was considered, and I'm quite clear having read the document this morning that if it had reached us, it would not have reached the threshold [...] for a national security warrant under the then legislation, which requires the warrant to be necessary and proportionate.'

⁶ Section 5 Intelligence Services Act 1994

⁷ Section 1(4) Security Service Act 1989 as amended by the Security Service Act 1996

11.27 The second document was compiled somewhat later, probably in August 1998. It is entitled 'Application for Technical Attack on the New Home of Colin Francis Duffy, [...] Deeny Drive, Lurgan'. This was to be known as Operation Indus (see Chapter 14.70 to 14.78 where we discuss the processing of this application in detail).

11.28 As the title suggests Colin Duffy was the main focus of the document and the purpose of the surveillance that was proposed was to *'provide high grade intelligence on the activities of PIRA and the Dissident Republicans in North Armagh and surrounding areas'*.⁸ Colin Duffy was described as being responsible for several murders including those of the two Constables on 16 June 1997 and it was said that during the Drumcree stand-off that year he *'had overall control of the PIRA operation'*. Rosemary Nelson was listed in the application among *'those republicans closest to Duffy who would be regular callers to his home'*. The document referred specifically to *'false alibis that PIRA, assisted by their Solicitor, Rosemary Nelson, were preparing for a married couple when arrested for Possession of a PIRA arsenal of weapons in their home'* and stated that *'Duffy and Rosemary Nelson' were 'having a sexual relationship'*.

11.29 Annexed to the application were pen pictures of the various individuals named in the document. Of Rosemary Nelson it was said:

'Little is known about Nelson's past other than she originates from Lake Street, Lurgan.

Nelson attended Queens University, Belfast between 1977 and 1982 during which time she showed no interest in student politics.

Nelson has an extremely disfigured face which is a result of laser treatment on a "Port Wine" stain.

Nelson has come to the notice of this office through her association with leading PIRA members in the North Armagh area. She is also a legal advisor to the Garvaghy Road Residents Association.

Nelson uses her legal training to assist PIRA in any way she can and it is clear Nelson is a dedicated Republican.'

11.30 We consider that paragraphs 11.28 and 11.29 above encapsulate the views held by SB of Rosemary Nelson.

⁸ Memorandum Detective Superintendent 'E' South West to Regional Head of 'E' Department South Region

12 The Use and Dissemination of Intelligence About Rosemary Nelson

The organisation of Special Branch of the Royal Ulster Constabulary

12.1 During the entire period with which we were concerned the organisation of Special Branch (SB) reflected that of the rest of the Royal Ulster Constabulary (RUC). The three regions, Belfast, North and South, enjoyed a considerable degree of autonomy. Regional Heads at the rank of Chief Superintendent were based at each of the Regional Headquarters; in South Region this was housed at Mahon Road in Portadown. Although a number of SB officers operated from here, notably those within what was called the Source Unit, those attached to the Tasking Coordination Group (TCG) and those who carried out surveillance in the region, the remainder were based within police stations in the Sub-Divisions. It was within these units, based in Lurgan, Portadown and Craigavon police stations, that the intelligence reports to which we have referred in the Report were, for the most part, compiled and processed.

12.2 The information contained in these intelligence reports came from a number of sources. These included informants (referred to, post-Regulation of Investigatory Powers Act 2000, as Covert Human Intelligence Sources or CHIS), the product of eavesdropping and telephone interceptions, and surveillance. The reports disclosed to the Inquiry were in a uniform style and were sanitised to conceal the identity of the CHIS (if the information came from a human source) or the means by which the information was gathered. We were told that very little material that might be described as 'original' had been retained, no original recorded material existed and nor were there any original contact notes made by agent handlers in respect of their meetings with CHIS. These, we were told, were destroyed as a matter of routine.¹

Sources of intelligence: Covert Human Intelligence Source(s)

12.3 Agent handlers who gave evidence to the Inquiry told us that CHIS were motivated by a number of factors. Some provided information in return for money; others felt that they had done wrong in the past and wanted to clear their conscience; some simply did not like what was happening in Northern Ireland; while others were motivated by the excitement. An officer based in East Belfast, for example, described one of his sources as '*a bit of an adrenalin junky*'. The Detective Sergeant from Lurgan told us: '*Sometimes it was simply that they were at a low point in their life; we used to turn them into good friends.*'

12.4 A Detective Constable who was based in Lurgan told us that sometimes it was possible to persuade a person to become a source by '*helping them get out of a difficult position, for example, if someone was caught drunk in charge*'.

12.5 We were told that such informants were recruited with great care and that their reliability was not taken for granted. For example, an officer who was based in Antrim indicated that information from newly recruited CHIS was eyed with caution. He told us: '*You knew very quickly how reliable a source was. Some just told*

¹ We established in correspondence with the Police Service of Northern Ireland (PSNI) that some SB officers had retained and destroyed their journals themselves at the end of their service.

you what they wanted you to hear. If a source wasn't reliable or we were already getting intelligence on that group or in that area, we would decide not to continue using the source.'

12.6 A Lurgan officer told us that, because sources were paid for the information which they provided, there was a degree of pressure on them to meet their handlers and provide information. He explained: *'The onus was on the handler and controller of the source to constantly monitor the situation and take into consideration the quality of the ongoing product supplied by the source.'* He observed that better systems had been introduced since those days, and that the officers' roles were now more clearly defined. Requests for incentive payments would be passed up the line from the handlers, ultimately to the relevant Regional Head of SB. Once the bids had been considered at Regional Headquarters, the Security Service would then decide whether the incentive payments were justified.

The system of handling CHIS intelligence

12.7 We were told that, typically, CHIS were managed by a number of handlers.² The handlers worked under the direction of a controller. After a meeting with a CHIS, the handler would discuss the content of the meeting with the controller and undertake the task of *'prioritising the intelligence'*. Threats to life or other intelligence which required immediate action were telephoned through to the Source Unit so that it could be submitted out to the Regions as quickly as possible. Using a combination of memory and notes taken during the meeting, the handler and the controller would jointly produce a handwritten intelligence document or debrief, setting out all the intelligence received during the meeting with the CHIS. The intelligence document would then be sent to the Regional Source Unit. The Source Unit, in conjunction with the handler and controller, would create individual intelligence reports for every item of intelligence produced by the CHIS. These reports could then be shared with other Regional Source Units and Headquarters where they would be filed in Registry.

Sources of intelligence: eavesdropping technical devices

12.8 With regard to the use of eavesdropping equipment, SB was heavily dependent on the support of the Security Service. The Assistant Director Counter-Terrorism told us that the RUC did not have any independent capability to install technical devices in properties in respect of the terrorist threat. However, all requests for devices installed by the Security Service stemmed from the RUC – the Security Service did not carry out installations on its own behalf in Northern Ireland. The Assistant Director Counter-Terrorism told us that *'As intelligence lead in Northern Ireland at this time, the RUC owned the product and undertook all transcription of devices.'*

12.9 We were told that targets were identified at a very local level. The Detective Inspector told us that in South Region he was well placed to determine who the targets might be as he had access to *'all the intelligence across J division'*. The Regional Head of SB South Region (RHSB(S)) described the application process as follows:

'The Detective Sergeant in the local office would write the intelligence case supporting the application for a warrant for a technical on someone. They would pass it up to their Detective Inspector. He would then send it up to the Regional Detective Superintendent,

² We were told that in Portadown where there were only three CHIS handlers they all had to be involved and ready to go to a meet if necessary and the identity of every CHIS who reported to that office was known to each of the officers.

who would bring it up to me to submit to the Head of 'E' Department for him to submit to the Head of IMG [Intelligence Management Group]. The warrant would then be processed through the appropriate channels in IMG. From there the warrantry application would have been put in to a different format and sent to the DCI [the Security Service's Director and Coordinator of Intelligence] representative at Headquarters. The DCI representative would then have sent it to the DCI office [redacted] and from there it went up to the Secretary of State. There were no exceptions to this rule.'

12.10 During the course of our work we had the benefit of examining one such application in detail, namely that in relation to Operation Indus (see Chapter 14.70 to 14.78 where the processing of this application is dealt in detail). With regard to that application, the DCI's representative at RUC Headquarters, known as DCI Rep (Knock), explained:

'We would have taken this application at face value. We may have questioned parts of it, but we would not have attempted independently to verify its content either from our own intelligence or from looking at the RUC database. If anything was unclear we would go back to the RUC. We were always reluctant to put forward a warrant application which would fail, so we would challenge applications particularly if there was only one source of intelligence. We would want to find out why the RUC was so certain of the intelligence in these circumstances. However, it would not be for the Security Service to question the RUC's operational judgments.'

12.11 The Detective Superintendent of South West in South Region emphasised that, *'If there was no quality intelligence coming from a technical, then we could not justify having it, and the technical would lapse.'*

Sources of intelligence: telephone interception

12.12 The application process for a warrant to intercept a telephone line was similar to that described above for technical devices. Again, it was necessary to justify the application. The Superintendent SB South Region told us: *'It was all about justifying the request and being clear as to why the actions that you were taking were proportionate to what you were trying to investigate.'*

12.13 The Superintendent SB South Region summarised the process as follows:

'The application would have gone through local line management first; from there it would have gone to the Chief Superintendent Head of IMG, who would have passed it to the Head of E9 [...] who would have dealt with it on behalf of the ACC E Department [the Assistant Chief Constable who was the Head of SB]. [...] From there it would have gone to one of the Detective Constables who dealt with warrantry. They would have reviewed it before passing it up to me for approval, before being given to the DCI representative [...] for onward transmission to Stormont and one of the ministers for authorisation.'

12.14 The DCI pointed out that the role of the Security Service in applications for telephone interceptions was somewhat different from the process for technical devices, in that the Security Service became involved at a much later stage. The applications were *'prepared and generated'* by the RUC, and did not come to the attention of the Security Service until they reached the DCI Rep (Knock).

Transcription of product from eavesdropping devices and telephone interception

12.15 A Detective Constable who from November 1998 was involved in the process of transcription at the Support Unit based in Mahon Road described the process of transcription as follows:

'We worked shifts and transcribed what came along. We listened to the recordings and decided what was of interest. Anything of no interest was deleted and the rest transcribed. I did not assess any of them. My transcripts were put in a folder for people from the various offices to look at. If we got something that was particularly urgent, we would ring the local office and get them to come over immediately and read the transcript or listen to the recording.'

12.16 We were told that eavesdropping devices were not switched on all the time and not all of the material recorded would always have been fully transcribed. SB officers decided what, if anything, was to be transcribed.

12.17 The Superintendent SB, in his oral evidence, agreed that there were limitations with technical devices, the principal difficulty being that you could only listen to what was said, and could not go back to ask questions. He also acknowledged the risk that the person transcribing the product might misinterpret what was actually said. However, he was of the view that this risk was minimised by the experience of the transcribers.

12.18 He told us that the reports which went on to the system from technical sources or interception would have been produced by a single officer, and that therefore the system relied on that officer correctly summarising, or glossing, the conversations which had been overheard. However, he explained that for both types of intelligence, the system did provide for checks and balances.

'There were two types of technical intelligence. Obviously there is eavesdropping intelligence. There is a sort of a fail-safe, in that the first listen would be carried out by officers in the local area from which the information is obtained. There would then be a transcription process that was carried out at Headquarters. So that ensured, in a way, that there were actually two sets of people listening to that information. In relation to telephone information, if there was any doubt about the veracity of what had been recorded, it was always easy to ask another officer to re-listen and, indeed, if the officer that was doing the transcription had any difficulty, on occasions they would ask someone else would they also listen to it just to make sure they were accurate in what they were recording.'

12.19 The Detective Sergeant SB from Portadown told us that he was responsible for producing intelligence reports from the transcripts in his area. He told us that the people who decided whether or not a particular conversation was transcribed were those who listened to the recording. He told us:

'The people who listened to it transcribed a script in which I would have went in and I would have reviewed it. And the potential existed then to go in and listen to it, to see if anything had been missed or if I could add value to the transcript, and then it would have been my decision to report that [...] through the computerised system.'

12.20 He was asked to comment on the risk that intelligence reports might present a distorted picture of the information received. He said:

'I suppose in the whole dealings of it, yes, you had occasions where you could have misjudged or put too much emphasis in to a statement or a word or ... but in general,

you know, you erred with caution around all of it. These were guarded conversations. The people were aware that telephones were being monitored, so you were doing your best in trying to interpret what was being said and the context behind it.'

Sources of intelligence: surveillance

12.21 Surveillance operations were carried out by teams operating from Mahon Road in Portadown and by Army units. We were told that there were limited resources and that as there were usually a number of operations underway at any particular time these resources were *'like gold dust'*.

12.22 Surveillance logs were maintained during every operation. We were told that these were not contemporaneous records but comprised a summary of the key transmissions and were completed as soon after the event as possible. They were not maintained to evidential standards and we noticed marked differences in the amount of detail recorded during different operations. We were told that, after every operation, all the surveillance officers involved would have gone back to Mahon Road for a debrief with the Detective Sergeant. He stated that the surveillance log would have been discussed in detail during this debriefing, and suggested that *'every single entry of the log would have been read out or, at the very least, significant sections'*.

12.23 In addition to surveillance logs, at the end of every day, a Debrief Form, also called a precis, would be produced, which would *'detail all of the [redacted] Team's deployments that day'*. We were told that the Debrief Form was sent to E4³ at RUC Headquarters, to keep the line managers up to speed on their work, and to TCG which was then responsible for distributing it onwards. The Head of SB (HSB) told us that the product of surveillance operations was disseminated, via TCG, back to the relevant Regional Head of SB, or to IMG, depending on where the request had come from.

12.24 Intelligence gathered in the course of a surveillance operation was recorded and maintained by the intelligence officer, who was attached to the surveillance team.

Sightings of Rosemary Nelson

12.25 A number of sightings of Rosemary Nelson were reported by surveillance teams operating in South Region in 1997 and 1998. Surveillance was not, in the main, directed towards her and the types of observation made were passing sightings of her in the company of Colin Duffy, sometimes in her car, generally in mundane circumstances.

12.26 In May 1998, however, an operation was mounted *'To target the location where Duffy [redacted] meeting Rosemary Nelson'*, the objective being to *'Identify meeting point of Duffy and Nelson and subsequent location where they travel to for the purpose of their affair. If possible record activities for use by S.B.'* The result was that Rosemary Nelson and Colin Duffy were seen walking away from her office at 18.01 on 16 June 1998 whereupon Rosemary Nelson went home. It was noted also that at lunchtime on 25 June 1998 Colin Duffy went into the office in William Street. Sightings in the late evenings of 2 and 3 July and 8 October 1998, however, no doubt reinforced the suspicions of SB officers about the relationship, although we found the information recorded on these occasions and the evidence of the officers who recorded them to be inconclusive.

³ See Appendices A and C

The Regional Source Units

12.27 The Regional Source Units comprised relatively small teams of individuals varying in rank from Detective Constable to Detective Inspector. In South Region they worked out of the Army base at Mahon Road. The Source Unit's responsibility was to collate intelligence and task intelligence officers. The Head of IMG told us that the Source Units were effective in picking up on intelligence gaps, so much so that it was rarely necessary for IMG to contact the regions directly for further information. All intelligence gathered by the Local and Divisional SB offices was fed into the corresponding Regional Source Unit, from where decisions regarding dissemination would be taken.

Registry

12.28 In 1970, following a recommendation in the Hunt Report⁴ that all SB records should be centralised, SB Registry was established at RUC Headquarters. Records were transferred from local and regional offices⁵ and stored using a paper system which was a replica of the Security Service Registry. Prior to May 1990 RUC SB relied on this paper system to record and disseminate the intelligence it gathered.

SB50s and the paper system

12.29 SB50s were forms which contained the single handwritten items of slightly sanitised intelligence created by the Regions. The RHSB(S) told us that five copies of each piece of intelligence would be made. One would be held locally, another would stay at Mahon Road (the location of South Region Source Unit) and the rest were sent to Headquarters. The SB50 would then be filed in the records at Registry.

12.30 Once received by Registry, annotations would be made against names mentioned in the SB50 which would indicate the amount of records held on that individual. If Registry were unable to identify the individual, 'UI' would be used for unidentified. If they could identify the individual but there were no records on that person they would mark it with 'NT' – No Trace. An individual who had come to the attention of SB but was not of particular significance would be marked with 'WS' – White Slip. An 'SB' number would indicate that there was an SB file on that person. The annotated SB50 would then be sent to the relevant Desk Officer at E3 and eventually filed away by the staff of E3C. SB50s were later phased out with the introduction of the computer systems.

PRISM

12.31 In May 1990 a computer system known as PRISM (Police Related Intelligence Systems Management) was introduced into RUC SB. The system was intended to act as an electronic repository for intelligence which had previously been held on paper files and until mid-April 2003 was the day-to-day operational intelligence system of RUC SB.

12.32 Initially PRISM was used exclusively in Regional Source Units. Officers did not have access to PRISM at a local level and until April 2000 agent debriefs

⁴ Report of the Advisory Committee on Police in Northern Ireland Cmd 535 (October 1969)

⁵ The Royal Ulster Constabulary Special Branch Information Handling Procedures: An Independent Scrutiny. April 2000: page 58

were still written in a manuscript form and conveyed to the Source Unit either on paper, by telephone or in person. Thereafter, the policy was that debriefs were to be emailed by the officers to their Regional Source Units.

12.33 Once entered onto PRISM, intelligence could be 'shared' with other Regions and Headquarters using the 'share command'. This command triggered the printing of five copies of the document at a designated printer in Headquarters and once 'shared' it was viewable on screen by the intended recipient or others with appropriate privileges.

12.34 Access to stored intelligence was controlled by assigning each user account to a specific group or groups depending upon their role within the organisation. There were three types of group: Geographical, Operational and Global. The groups enabled staff at each Divisional Source Unit, TCG and Headquarters to access and share intelligence within their group in keeping with the 'need to know' principle. For example, intelligence entered onto PRISM by South Region Source Unit could not be viewed by North Region Source Unit unless the specific piece of intelligence had been 'shared' to North Region. Headquarters comprised a 'group', as did each of the Regional TCGs and E9.

12.35 Additionally, users of the system were assigned one of a number of 'roles' which further defined their ability to access, create and edit information stored within it. There was also a further function which applied a level-based security number to each document. However, it was explained to us that this system was never fully functional with the result that a user assigned with a lower security access level could view the same intelligence as a user with a higher security access level.

12.36 PRISM was replaced in 2003 by an updated system for storing intelligence and one for managing intelligence resources (a task which had previously been conducted on paper).

CAISTER/MACER

12.37 In 1991 a joint study was conducted by the RUC and Ministry of Defence (MoD) to assess the feasibility of adapting an existing computer system used by the MoD which would allow the transfer of intelligence between the RUC, MoD and Security Service. Approval for the project, codenamed CAISTER, was announced in May 1992 and the system was installed in all RUC SB offices by the end of November 1995. In November 1999 CAISTER was re-deployed on a Windows-based client platform and renamed MACER. There were three types of data storage areas within CAISTER/MACER: RUC access only; MoD access only; Joint RUC/MoD access.

12.38 Access within MACER was controlled using a combination of access levels and dissemination controls. There were a number of levels within CAISTER/MACER some of which were for RUC use only. But there was a level through which Secret Intelligence Disseminated Documents (SIDDs) were passed from SB to a limited number of senior MoD personnel and vice versa. There was also a level used by troops on the ground through which they could pass intelligence to the police.

12.39 Unlike PRISM, which was a regional tool, CAISTER/MACER became a widely used intelligence database. Its introduction represented a significant change in the way intelligence was managed. SB officers at local level were able to input reports directly onto the system in the form of a Secret Intelligence Report (SIR)

for approval by the controller who could send the intelligence back to the handler if amendments were required. The approved wording would then be saved as a SIR at an SB-only access level. Documents stored at this level were viewable by those with this access level at the Regional Source Unit and Headquarters subject to any restrictions placed upon it.

CAISTER/MACER and PRISM together

12.40 An SB Policy document of 1 October 2000 described PRISM as the internal day-to-day SB operational system for the management of all agent intelligence, and MACER as the central intelligence database for storing shared intelligence from all sources. In practice, MACER was a tool for research and analysis and was used by those with an interest in strategic intelligence, while PRISM was seen as a live intelligence repository and was used for operational and tactical intelligence by the Regions and TCG.

12.41 We were told that when PRISM and CAISTER/MACER were introduced there began a process of entering historical intelligence on to and between these systems. At first, a limited number of records held at Registry were inputted onto PRISM. When CAISTER/MACER was introduced, selected debriefs were exported from PRISM and imported to CAISTER/MACER. When Sir Gerry Warner carried out his review in late 1996,⁶ all material on CAISTER had already been entered onto PRISM, in both cases typed by clerical staff and not by the handler, who would write reports in longhand. He expressed concern that information could have been inadvertently left off one or other of the systems in the process and he observed that the *'considerable duplication of effort in feeding the two main databases'* was causing a delay in the circulation of intelligence to a wider audience.⁷ He found that it was not unusual for there to be as long as a month between an agent debrief and the inputting of the information onto CAISTER.⁸

Pre-2000 procedures for recording intelligence on CAISTER/MACER and PRISM

12.42 Following the introduction of PRISM and CAISTER/MACER and until April 2000 the procedures for recording agent intelligence were as follows:

- Immediately after an agent meeting, the handler, in consultation with their line management, prepared a handwritten draft debrief using a specific template.
- Each recorded debrief was to consist of a single item of intelligence.
- Following consultation with line management the handwritten debrief was to be sent to the respective Regional Support Unit.
- Once an agent debrief had been recorded onto PRISM and the regional management had considered its content and directed any appropriate action, the originating officer prepared a SIR on CAISTER/MACER.
- When preparing the SIR, due regard would be given to the agent's protection consistent with the level of dissemination.
- Each SIR was to consist of a single item of intelligence.
- The SIR would then be transmitted to and examined by the Detective Inspector or Detective Sergeant who, prior to release, would consider: whether the content

⁶ The Warner Report: A Review of Special Branch 1997

⁷ Warner Report

⁸ Warner Report

of the SIR accurately reflected the original debrief; that the dissemination level was correct; that any appropriate action had been taken and recorded on the SIR; that current review procedures were incorporated; and that the grading of the source and intelligence were accurately reflected.

Secret Intelligence Reports and Secret Intelligence Disseminated Documents

12.43 In order to disseminate intelligence on CAISTER/MACER, a SIDD would be produced from the SIR. SIDDs could contain further sanitisation depending on its intended readership/access level and could then be read by those with a lower access level. It was through the use of SIDDs and access levels that SB disseminated intelligence to the Army. We were told that, due to the high volume of reporting, some SIDDs would be a complete copy of the SIR and contain no further sanitisation at all.

Did Special Branch maintain a file on Rosemary Nelson?

12.44 We were told that SB did not maintain a paper file on Rosemary Nelson. Rosemary Nelson was first mentioned in an SB intelligence report in December 1994. She featured in a further report dated October 1995 referring to intelligence from August 1995 and another dated January 1996 referring to intelligence from November 1995. None of these reports make reference to an 'SB number' or 'nominal' indicating that there was a file in Registry. The first use of such a number appeared in a report originating from Portadown office, dated April 1996, by which time CAISTER had been in use in all SB offices for at least five months.

12.45 When we probed the question '*Was there a file on Rosemary Nelson?*', we heard differing explanations of what constituted '*a file*', '*a personal file*', and '*a target file*', and also differing explanations of where files were kept. This may reflect nothing more sinister than the fact that the system was in transition, that the organisation of material was far from systematic, and that it was not well understood by its users. It is possible also that their recollection of how the system worked had faded by the time they gave evidence to us.

12.46 When Colin Port, who led the police investigation into the murder of Rosemary Nelson, asked the question, we believe that he was given an incomplete answer and, as regards whether Rosemary Nelson had an SB number, an incorrect one. She had not one number but two. We were told by more than one SB officer that if Rosemary Nelson had an SB number, an SB file would have been created. We cannot exclude the possibility that a paper file on Rosemary Nelson did at one time exist, but was lost or destroyed.

Was intelligence concerning Rosemary Nelson disclosed to Criminal Investigation Department and uniformed officers?

12.47 We were told that intelligence gathered by SB was disclosed according to the 'need to know' principle, as assessed by SB. Intelligence would not be disclosed beyond SB, or indeed within SB, unless it was perceived by those who had collected and processed the information that others needed to be informed of it.

12.48 We questioned officers who gave evidence to the Inquiry as to the possibility that items of intelligence that indicated that Rosemary Nelson was actively assisting the Provisional Irish Republican Army (PIRA) might have been disclosed to CID

or uniformed members of the force who worked within Lurgan police station. It appeared to us, for example, that the Senior Investigating Officer (SIO) in charge of the investigation of the murders of Constables Johnston and Graham would have had a legitimate interest in knowing that SB believed that witnesses from whom his team had taken witness statements were being suborned. We considered also that the intelligence indicating that Rosemary Nelson was helping to identify police officers to PIRA members (see Chapter 4.35) should have resulted in some action on the part of the RUC to ensure that officers' lives were not put at greater risk than they already were.

12.49 In respect of this latter item one officer told us that he remembered that some action was taken in this regard but he could not remember the details. None of the SB officers who gave evidence to the Inquiry confirmed that this information had been disclosed and none of the CID officers who gave evidence accepted that such details had been disclosed to them.

Special Branch contact with uniformed officers within J Division and Lurgan Sub-Division

12.50 We were told that SB officers had regular contact with senior uniformed officers based in the Lurgan Sub-Division. Formally, this contact took place at fortnightly meetings on a Divisional and Sub-Divisional basis, attended by representatives of CID and the 3rd Battalion of the Royal Irish Regiment (3 R IRISH).

12.51 Both the Sub-Divisional Commander Lurgan and his deputy told us that, as well as formal briefings by SB during these meetings, there were also occasional informal briefings. He said: *'I could have consulted them if there was any particular issue that I wanted their views on or I needed some guidance in any particular part of policing.'*

Special Branch contact with Criminal Investigation Department within J Division and Lurgan Sub-Division

12.52 The Detective Inspector SB J Division told us that there were circumstances in which information was disclosed to the local CID and to uniformed branches. He told us, for example, when a murder or other serious offence had been committed and was under investigation, that:

'I, myself, or my sergeants, one of my sergeants responsible for that particular area, would go straight to the CID and we would have a discussion as to what had happened. And if we had any what we would have called a steer – if we could steer them in a certain direction for a quick follow-up, that is the type of thing we would discuss at that very early stage. Then it would move into set conferences, which I would attend. Initially, I attended all the set conferences.'

12.53 He told us that there were circumstances when items of specific intelligence might also be disclosed. He said that it *'would be passed across by way of action sheet or a briefing sheet – mainly an action sheet. It would have been passed to the murder inquiry team, the MIT.'*

12.54 He indicated also that the sense at least of intelligence might be disclosed in a less formal manner to an SIO:

'If you had that good relationship, then it was easy then to work. So in the case that you are talking about, I would have taken my action sheet and I would have went along after the meeting and had a private discussion with the SIO. And I would have said, "Listen, this is what we are saying", but there is a wee bit more meat on the bones for them, to give them better direction as to what our belief was.'

12.55 As regards Lurgan and Portadown he told us:

'No matter what division I was in I made a point of having that relationship. In particular in F Division I had a very good relationship both with the Head of CID and his two subordinates. And you know, our aim was – as is the number one principle of a police officer – and that is the protection of life and that was our aim and if we couldn't protect life, we would try and solve it, solve these murders and get the people responsible behind bars. So it was in our interests as much as everybody else's.'

12.56 In relation to the report suggesting that Rosemary Nelson was helping to construct a false alibi for Colin Duffy for the murder of John Lyness, he said:

'I don't think I actually dealt with this piece of intelligence. I think probably I came in – it was possibly dealt with by my sergeant but I don't recall. But what you would normally do in a case like that, I would indicate to the – probably indicate to the SIO that there is a possibility that they are creating a false alibi.'

12.57 He told us also that he would probably have spoken to the SIO in the case of the murders of Constables Johnston and Graham. He said:

'I may have spoken with the SIO off the record. I wouldn't publicly have spoken to him directly. I would have been concerned probably for the safety of that witness and – as well. So, yes, probably I would have, off the record, had a conversation but not on the record.'

12.58 Regarding the intelligence concerning the murder of Kevin Conway on 18 February 1998, he said:

'I think I probably discussed the – in relation to alibis, possibly. I may have said that – they were possibly looking to try and get some alibis sorted out. I can't really remember. I would suspect that I would have had an off-the-record conversation with the SIO.'

12.59 The Detective Inspector CID Lurgan (the SIO in the murder investigation concerning the deaths of Constables Johnston and Graham, and that of Kevin Conway) confirmed that intelligence was, from time to time, disclosed to him by SB. He told us:

'Intelligence could come from Special Branch. Special Branch colleagues might have been contacted prior to the arrest, or in fact the arrest could have been part of an intelligence-led investigation. Special Branch officers may have been present at the briefing and provide the latest information as to what the intelligence was in relation to the offence. It is quite possible that going forward through the interview process that there would be regular further briefings from Special Branch and information would be passed to either myself or the four senior investigating officers. I cannot recall how they produced their intelligence, but there were definitely ways in which the information was given to me regularly and also shared. I in turn would decide whether to share the information we received with the interviewing officers, either at this stage or subsequently. We would not be told what the origins were of the intelligence but there was a grading system as to the quality of the information.'

12.60 He said: *'The Detective Inspector in Special Branch's office was perhaps two doors away from mine, so it wouldn't be unusual for us to have daily contact.'*

12.61 He confirmed also that he would, on occasion, pass intelligence on to an officer working under him. He said:

'If I felt it was relevant to tell the detectives, I would pass it to them. It was a thought process. I had to make up my mind. I can think of occasions when I didn't give intelligence immediately to CID officers. It was given to them subsequently. I can think of occasions when I never gave the intelligence to the interviewing officers. It is a thought process that an investigator must go through or a manager must go through as to how it is best dealt with.'

12.62 Asked who would decide if it should be passed to officers working on the case, he said:

'That would be my sole decision. If I had the intelligence, that would have been my decision and my decision – we might have had a discussion about it, yes, but the decision whether the intelligence was to be passed on to interviewers or to anybody else within CID would have been my decision.'

12.63 He told us also that there were occasions when during interviews intelligence would be passed to interviewing officers.

12.64 Commenting on the intelligence report of September 1997, which asserted that Rosemary Nelson had taken a *'statement off [redacted] discrediting the character of [redacted] who is the key witness to the murder'* and that she had *'pressurised [redacted] into making the statement'*, he said:

'We had a very close working relationship with our Special Branch colleagues and we did not sit down and have a formalised briefing on a regular basis. We worked daily, hourly and, indeed, minutely depending on what's going on. So the flow of information, our interaction, was constant, okay? So I just want to make clear that we just didn't decide because a piece of intelligence came in that we had a formalised meeting or that we waited for a week until all material was there and was discussed.'

12.65 On the other hand, he had not been shown the intelligence obtained in February 1998 suggesting that Rosemary Nelson continued to have a close relationship with Lurgan PIRA, in particular Colin Duffy and *'she regularly briefs Colin Duffy on the CID investigation and actively assists him in creating alibis for PIRA members'*.

12.66 The Detective Inspector told us that he did not know of the alleged affair between Rosemary Nelson and Colin Duffy until after her death and heard no gossip or rumour to that effect.

'I never was aware that there was intelligence that Rosemary Nelson and Colin Duffy were having an affair. The information has come into the public domain in this Inquiry. I would have perceived that they were friends, and close friends, but my thoughts never went beyond that, I have to say.'

12.67 He said:

'There was a lot of speculation after her death that they were having an extramarital affair and it was reported in the newspapers. My clear recollection is that until after her murder, I did not know or ever consider that she was having an affair with Colin Duffy.'

12.68 An incident was brought to our attention indicating that the Detective Inspector's recollection may have been at fault in this instance (see Chapter 12.78 to 12.90). Before dealing with that, however, we must note that we examined some intelligence records concerning Rosemary Nelson which were not compiled by SB and were held not on CAISTER/MACER or PRISM but on computer systems that were intended for much more general use within the RUC.

PACIFIC/ICIS: The role of the Criminal Intelligence Officer

12.69 We were told that two other computer systems were used to store and disseminate intelligence within the RUC during the 1990s. The first of these systems was known as 'PACIFIC' (Photographic and Criminal Intelligence Force Information Computer). In 1998 data held on PACIFIC was transferred to a new system known as ICIS (Integrated Criminal Intelligence System).

12.70 These two systems were designed to record and disseminate low-level intelligence: typically, details relating to individuals, addresses, vehicles and incidents. They were designed so that photographs and other documents could be linked to entries. We were advised that access to this system was allowed to authorised officers and was gained by way of log-in and password. Entry of data was managed by non-SB officers known as Criminal Intelligence Officers (CIOs) whose job was to *'supervise the collation, recording, analysis and dissemination of information about crime, criminals and suspects; to be a focal point of all Police activity within their area; regularly take part in conferences and briefings; liaise with Uniform, CID, SB, Specialist Squads, Military Intelligence adjoining CIOs and FIB/RIU [Force Intelligence Bureau/Regional Intelligence Unit] to promote a healthy flow of information.'*⁹ It is suggested in the 1999 handbook from which this description was taken that the CIO should attend Divisional and Sub-Divisional Meetings as part of his duties.¹⁰

12.71 Data recovered from ICIS indicates that 'sightings' of Rosemary Nelson had been noted by the CIO in Lurgan as early as October and November 1993. A 'C11'¹¹ sighting report by a local officer noted that she had been seen driving her car in High Street, Lurgan at 15.25 on 7 October 1993. She was accompanied by a suspected PIRA member who may well have been a client at that time. Another report was submitted to the CIO by a local officer on 5 November 1993 when Rosemary Nelson's car was seen parked close to houses in which suspected PIRA members lived. A further sighting by military personnel was recorded on 24 May 1994. On that occasion the observer noted: *'New car for her. Defends all the PIRA Kikwilkie.'*

12.72 An incident on 6 April 1997 when Rosemary Nelson was stopped in her car by an Army patrol when Colin Duffy was a passenger was recorded on the system. Police sightings of Colin Duffy in the vicinity of Rosemary Nelson's office were recorded on 12 December 1997 and 19 December 1997. A military sighting recorded them together near the office on 23 March 1998.

12.73 On 14 August 1998 a further military sighting of both Colin Duffy and Rosemary Nelson was recorded. They were seen leaving her office at 17.46 and getting into their separate vehicles and driving away. In that part of the computer record reserved for comments, Colin Duffy was described as *'Suspect PIRA'*, Rosemary Nelson as *'Solicitor of Colin'*. A police sighting of the two, again in William Street, was recorded on 10 September 1998. On this occasion, however, Rosemary

⁹ Description taken from the Criminal Intelligence Officers' Handbook of November 1999.

¹⁰ We observed that a CIO was in attendance at the Lurgan Sub-Divisional Action Committee meeting on 9 December 1998.

¹¹ A reference we believe to the type of Form on which such information was recorded.

Nelson was described as '*NELSON [...] PIRA ASSOCIATE*'. Each of these reports was marked for distribution to SB, Lurgan; CID, Lurgan; and SB Operations South Region. By that date, and possibly earlier, Rosemary Nelson had been allocated a reference number or 'nominal' on the system and her parents' names and home address had been recorded.

12.74 We were careful not to attach too much significance to the fact that sightings of Rosemary Nelson were recorded in this way; in each instance, for example, she had been in the company of a suspected PIRA member, whose movements would no doubt have been the principal interest of the CIO. The entries, however, are not without significance. The CIO had made a conscious decision to share them with SB. There is every possibility, in our view, that the CIO was aware that surveillance had been carried out on Rosemary Nelson and Colin Duffy together and that the entry '*PIRA ASSOCIATE*' reflected a view held by at least a number of officers within Lurgan Sub-Division of SB.

A complaint by a Continuity Irish Republican Army suspect

12.75 In December 1998 and January 1999 a suspected CIRA member was held on remand at HMP Maghaberry on terrorist offences. He later pleaded guilty to possession of weapons and ammunition and was sentenced to three years' imprisonment. On 16 February 1999 his solicitors submitted a formal complaint on his behalf to the Complaints and Discipline Department of the RUC.

12.76 Although the suspect was acquainted with Rosemary Nelson, she did not represent him and she was not involved in the making of the complaint. Nor is there any evidence that she was aware of it. The essence of the complaint, as set out in the letter from the suspect's solicitors, concerned '*the unauthorised approach to him by police officers*'.

12.77 A witness statement was taken from the suspect in April 1999. He alleged that police officers had spoken to him while he was in custody and that they had told him that Colin Duffy was having an affair with his solicitor, Rosemary Nelson, and that she gave him money and took him away on holidays.

The investigation of the complaint

12.78 There was never any dispute as to whether this man had been visited by police officers from Lurgan during December 1998 and January 1999. Documents gathered during the investigation of the complaint show that there were three such visits. The first took place on 16 December 1998 when a Detective Constable from Lurgan SB was accompanied by the Detective Inspector from Lurgan (SIO of the Johnston and Graham murder investigation). The same Detective Constable visited again on 21 December 1998, on that occasion accompanied by the Detective Sergeant from Lurgan SB. He made a third visit on 21 January 1999 accompanied by an SB Detective Constable from Lurgan.

12.79 The suspect described the first visit in the statement he made to the Complaints and Discipline Department. He said he was visited by two officers, one older, perhaps a Detective Inspector, the other younger. He said that the younger officer spoke to him about '*doing a deal*' on his charges. He said:

'They mentioned several names, one of which was Colin Duffy from Lurgan and suggested that these people had set me up. They also mentioned the relationship Colin Duffy had with his solicitor and they were going through his character. They were

teasing about Colin Duffy having an affair with his solicitor and about her giving him money and taking him away on holidays.'

12.80 The suspect stated that he was visited again by the younger of these two officers and another officer in the week before Christmas. Again, the officers made overtures towards him with regard to giving information to the police. He said that further overtures were made during the third visit which occurred in January 1999 (on this occasion, by the 'younger officer' who was accompanied by a female officer).

12.81 In their statements to the Complaints and Discipline Department, the officers disputed the allegations made by the suspect. In his statement dated 14 December 1999, the Detective Inspector Lurgan CID said:

'We spoke in general terms about the Continuity IRA. We did not speak about Rosemary Nelson or about Colin Duffy. At no time was he offered any inducement to pass information in return for a lighter sentence or an easier time in prison.'

12.82 The SB Detective Constable, in his statement, also dated 14 December 1999, stated:

'I went to the prison and spoke to [redacted] on the 16 12 98, the 21 12 98 and the 27 1 99. [...] At no time did I offer to arrange to get his sentence reduced or make his time in prison any easier if he gave me information. I would also like to add that at no time during each of the three interviews did I mention Rosemary Nelson or Colin Duffy to him. I had no reason to do so as I was speaking to him about his involvement in the CIRA.'

12.83 The Detective Sergeant from Lurgan SB confirmed in his statement, also dated 14 December 1999, that he had accompanied the Detective Constable on the visit on 21 December 1998 and stated:

'We spoke to him about him giving information about terrorist crime in the Lurgan area. There was no pressure put upon him to talk to us. No promise was made concerning him receiving a lighter sentence of imprisonment or an easier time in prison. There was never any mention made about a person called Colin Duffy or the late solicitor, Rosemary Nelson. We knew that [redacted] was connected with Continuity IRA and had no links to the PIRA. Therefore the name of Colin Duffy was not mentioned to him.'

12.84 During his oral evidence to the Inquiry the Detective Inspector from CID Lurgan denied the suggestion that there had been any reference to the relationship between Rosemary Nelson and Colin Duffy during the visit. He stated that he was unaware of the existence of intelligence suggesting that there had been such a relationship and that he was not aware of a rumour to that effect until after Rosemary Nelson's death.

12.85 In his statement to the Inquiry the SB Detective Constable again confirmed that he met the suspect 'on a number of occasions with different officers' and that he was aware that there were 'intelligence reports about Rosemary Nelson having a relationship with Colin Duffy and that she was giving him money and taking him away on holiday'.

12.86 In his statement to the Complaints and Discipline Department, he denied the suggestion that he might have referred to Rosemary Nelson or Colin Duffy during the meeting with the suspect. But when giving oral evidence to the Inquiry, having been reminded of the contents of the suspect's witness statement setting out the complaint, he appeared to be uncertain.

12.87 In short, although he denied doing so, he did not so readily reject the suggestion that there would have been some sense in speaking to the suspect about Colin Duffy, even though they were members of separate paramilitary organisations. He also revealed that he was aware that the two men had been associates and he conceded that as both the suspect and Colin Duffy lived within the Republican community in Lurgan the former would have known something of the latter.

12.88 It has not been possible to locate the suspect's earliest instructions to his solicitor or any other contemporaneous documents which might contain details of what was allegedly said to the suspect during each of the visits. The earliest record available to the Inquiry in which this allegation is made is the witness statement taken by the investigating officer appointed by the Complaints and Discipline Department in April 1999, a month after Rosemary Nelson was killed. No records relating to meetings with the suspect, other than the Complaints and Discipline Branch's file arising from his complaint, were disclosed to the Inquiry by the Police Service of Northern Ireland (PSNI).

12.89 The Lurgan-based CID officers who gave evidence to the Inquiry consistently maintained that they were unaware of intelligence, rumours or gossip that Rosemary Nelson was having an affair with Colin Duffy. An officer who between 1993 and 2000 worked with the Regional Crime Squad based at Gough Barracks in Armagh, against whom Rosemary Nelson had pursued a complaint arising from the detention of her clients in February 1997, and who had also been involved in the questioning of Colin Duffy in June 1997, with the result that a further complaint was made against him, told us:

'I have been asked about my view of Rosemary Nelson. She was not mentioned in our briefings other [than] to identify her as a detainee's solicitor when that was the case. That was a standard part of the briefing in any investigation irrespective of the identity of the solicitor. My perception of her did not change when she made the complaints regarding Colin Duffy. I have been asked whether I know what the general view of the police was regarding Mrs Nelson. I am not aware what the general view was but there was a rumour that she had a personal relationship with Colin Duffy. I didn't pay much attention to it. So far as I was concerned she was just another solicitor doing her job.'

12.90 During questioning this officer told us that he could not be sure when he first heard the rumour that Rosemary Nelson was having an affair with Colin Duffy but he considered that it was after Colin Duffy's arrest for the murder of the two Constables. He could not remember the context in which it was discussed but said that *'it was just in general conversation [...] within police circles'*. He could not remember from whom he had heard the rumour. He told us: *'It wouldn't have been anything that was discussed in any great detail. It may have been something that was mentioned in passing basically.'*

12.91 Another Regional Crime Squad officer who had served in CID in both Lurgan and Portadown and who had also been involved in the questioning of Colin Duffy told us that:

'There was a general feeling in the Lurgan area that Rosemary Nelson had a relationship which was more than a client/solicitor relationship with Colin Duffy. This was only general talk and I can provide no evidence to verify this. I cannot recall who raised this suspicion with me but when it was discussed, one would recognise the potential truth in it. There was just something more to their relationship which appeared to be some sort of special bond. This could have been because he was a number one terrorist in the area but, a personal relationship may well have been the reason why Rosemary was trying so hard to stop Colin Duffy from going to prison for the murder of the two police officers.'

If you were Rosemary and you had a lover facing imprisonment, you might overstep the mark in order to prevent it.'

12.92 On 14 February 1999 an article appeared in the *Sunday World* entitled the '*SEXPLOITS OF RANDY IRA CHIEF*'. The article referred to a PIRA Commander from Lurgan who was alleged to have conducted many affairs including one with a local businesswoman. The article quoted a local security force source. It is possible that the officers referred to in paragraphs 12.78 to 12.91 above might have been referring to gossip generated by this article but we consider it unlikely. The article did not name Rosemary Nelson and by the time it was published the view within SB was that the relationship between Rosemary Nelson and Colin Duffy had come to an end.

Conclusion

12.93 It seems to us likely that the view fixed in SB that there was a relationship between Rosemary Nelson and Colin Duffy spilled into other sections of the force, at least in South Region; and that intelligence concerning Rosemary Nelson's supposed links with PIRA also spilled beyond SB. As will be seen in Chapter 13 we would not discount the possibility that it may have gone further.

13 Loyalist Perception of Rosemary Nelson

13.1 We have no doubt that the publicity given to Rosemary Nelson's successful representation of Colin Duffy, her representation of the Hamill family and her involvement with the Garvaghy Road Residents' Coalition (GRRC) brought her to the attention of militant Loyalists in Mid-Ulster.

13.2 The most dangerous and dominant group from August 1996 was the Loyalist Volunteer Force (LVF), the leader of which was Billy Wright. Billy Wright was described as a charismatic man and a political thinker and capable strategist.¹ Security force witnesses familiar with this organisation told us that the LVF maintained a political stance opposed to the Peace Process. Under the leadership of Billy Wright, its members remained committed to tactical and sectarian violence. It was commonly believed that the group was responsible for a number of sectarian killings and, as it emerged as the dominant Loyalist terrorist group in Portadown, it attracted support from disenchanted members of both the Ulster Defence Association (UDA) and the Ulster Volunteer Force (UVF) in other parts of Northern Ireland.

13.3 There was no love lost between Billy Wright and Colin Duffy and there is reason to believe that each had contemplated the elimination of the other from time to time. Rosemary Nelson was said to be in possession of a card sent by Billy Wright to Colin Duffy in 1996 wishing him a *'warm welcome'* when he was released following the successful appeal against his conviction for the murder of John Lyness. Rosemary Nelson had spoken of two unsettling encounters she had had with Billy Wright. On one occasion she had described being approached by Billy Wright who *'whispered in her ear that she would need to watch herself and her children and he knew where she lived'*. Another time she had described *'Billy Wright opening the door for her in what was apparently a courteous way and then saying something to her which on the surface was not a threatening thing but which she perceived, I think rightly, as being a threat.'*²

13.4 On 7 May 2000 the *Sunday Mirror* ran a story about Billy Wright, who had been murdered in Maze Prison on 27 December 1997 by the Irish National Liberation Army (INLA). The story included a photograph of one of the pages of his prison diary.³ Jane Winter forwarded some pages copied from the diary to Colin Port of the Murder Investigation Team (MIT) in November 2000 and these pages also appeared in material she supplied to this Inquiry. Billy Wright, it seems, did not keep a regular diary but occasionally recorded his thoughts on paper. Those reproduced below were probably written while Colin Duffy was held accused of the murder of Constables Johnston and Graham between June and September 1997.

'Isn't it sickening to see saint Colin crying about a bit of verbal and to watch as the usual faithful rally round to protest his innocence.'

One can't forget how Albert Reynolds turned up at his appeal and dear old Rose, the solicitor poured out her heart to the media, how her client was hard done by, You reckon Rose?

¹ His successors were judged to be of a lesser calibre.

² Another witness told us: *'I also recall Rosemary meeting Billy Wright at Lisburn Police station and he held the door open for her and said like "there you go Mrs Nelson". I really can't say when this was. I remember saying to her that she ought to watch herself.'*

³ The provenance of the diary extract is not clear and we have not seen the original document, although we were provided with a copy of the extract.

Now here's a bit of the hard done by, let's see can old Albert or concerned Rose do anything for these victims of Colin Duffy injustice.

One garage owner (Portadown) One young protestant (Lough Neagh) Four wild fowlers (Castor Bay) One off duty police officer (Warrinstown) One protestant business man (Maralin) One off duty UDR [Ulster Defence Regiment] man (Portadown) One Protestant man (Lurgan) Two community police officers (Lurgan).

Now Rose and Albert I'd call that a real injustice, and since saint Colin was the gunman on all the above, he's hardly expecting a pat on the back from the protestant community or indeed the security forces.

But worry not Albert and Rose, for while Billy Hutcheson and Co, may wish to make peace with your client, the loyalists of Mid Ulster have a different sort of peace for him, it's called an AK 47.

Duffy be sure of this, we will send you to a court of judgement were [sic] Rose's lips will hold no weight, for the LVF unlike the PUP shall always seek real justice for our people.

As news breaks of trouble throughout North Armagh and as republicans paint on their hard done by faces, spar[e] a thought for at least twelve Protestant families to whom Colin Duffy brought republican justice (Death).

Oh yes Rose! your client has gunned down at least twelve human beings – but then Protestants as seen through Rose's eyes and indeed Albert Reynolds, are but mere problems.

Of course there'll be no television documentaries into these injustices, no foreign dignitaries to lament their violent deaths, just salt rubbed into Protestant wounds.

No doubt Albert's career would of ended even earlier had he have identified himself with any well known mass murderer in the South. And as for you Rose, solicitor you may be by profession, but human being you are by birth, to acquiesce in murder is a very dangerous occupation.

No doubt Colin you'll cry your way out of this present charge, but worry not Duffy, for no matter what Billy Hutcheson, Davy and Gusto say to your SF/IRA [Sinn Féin/ Irish Republican Army] friends real justice for you will come from the end of a loyalist Volunteer gun – God speed the day!

13.5 Sam Kinkaid, who was at that time the Deputy Head of South Region CID, said that it was inevitable that Rosemary Nelson's profile as a legal defender of prominent Mid-Ulster Republican terrorists and the Nationalist GRRC 'was always going to make her a figure of hate and interest' to Loyalist terrorists like Billy Wright and his second-in-command, Mark Fulton. One journalist told us that 'the result of that case [...] was what had been resented' and 'in the Loyalist community and Unionist community, that would have increased the feeling against Mrs Nelson', especially as she was clearly given a lot of credit publicly by Colin Duffy. This journalist also thought that the statement by Colin Duffy that Rosemary Nelson was 'brilliant'⁴ was a 'mixed blessing' for her and that 'it added to the outrage of the Loyalist/Unionist community who would have perceived Mr. Duffy as the aforementioned hate figure'.

⁴ *The Irish News* 4 October 1997

13.6 In our view this extract demonstrates that Rosemary Nelson was, in fact, in great danger from the LVF. The death of Billy Wright inside Maze prison in December 1997 at the hands of an INLA assassin would not have diminished this danger.

13.7 Moreover, the evidence we examined concerning the allegations made by Trevor McKeown (see Chapter 10.4 to 10.18) provided a chilling example of how the attitude of the local Royal Ulster Constabulary (RUC) officers towards Rosemary Nelson could be communicated to Loyalist extremists, placing Rosemary Nelson in ever greater peril.

13.8 Rosemary Nelson's representation of the family of Robert Hamill would not have escaped the attention of Loyalist terrorists. Among those arrested on 10 May 1997 in respect of the attack on Robert Hamill were men who were later observed in the company of individuals who were believed to be members of the LVF. Two of those arrested were observed, after the murder of Rosemary Nelson, in the company of one of the main suspects in that murder investigation.

13.9 The officer who served as Sub-Divisional Commander in Lurgan until October 1997 identified Rosemary Nelson's involvement with the GRRC as being a major factor in the way she was perceived within the Protestant and Loyalist community locally. He said:

'Rosemary Nelson became involved as the legal representative of the GRRC and that was a very public position. In the context of policing, she became involved, whether directly or unwittingly, but somewhere or other with Sinn Fein in terms of the parading issue in Lurgan. Having got involved with those issues, it pitched her into the public limelight, and to me that was a watershed in terms of the appearance and the views of Rosemary Nelson in the wider community.'

13.10 He told us that he encountered some disturbing 'views' of Rosemary Nelson in the course of his work in the community. He explained:

'I worked at a strategic level, working with the senior command, working with the community, with the councillors in the local council, working with the business organisation in Lurgan, working with the football club, working with the political parties, working at that sort of strategic overview. [...] Around that time, Rosemary Nelson's name would have come to the fore in the wider community as the GRRC solicitor and, indeed, some very disparaging and damaging comments were made by people in the Unionist community about her. So her profile raised significantly and, of course, she was very vociferous at that time in the media about the parading issue in Garvaghy Road.'

13.11 Commenting on Drumcree 1996, he told us:

'At that time tensions in the community were running very high [...] it was the whole year, so it was. It was every week, every month, that issue was a poison, it was a carbuncle, as it were, in the community. And while it slipped off the national headlines and slipped out of the Northern Ireland issue as such, it was still a very live issue in Lurgan and Portadown. And people, ordinary people who should have known better, had a very jaundiced view of Rosemary Nelson.'

13.12 When asked about local comment which associated Rosemary Nelson with the Provisional Irish Republican Army (PIRA), he said:

'Essentially it was saying that she wasn't just a solicitor, she was a Republican and she was an activist in the Republican cause, and that she was taking her work much

further beyond the normal course of a solicitor/client relationship. You know, there were damaging comments about her and Duffy as well at that time.'

13.13 The journalist Susan McKay, who was present in Portadown in the summer of 1998 and who had contact with both sides of the community, observed the hostility felt towards Rosemary Nelson by Loyalists. She told us that she heard comments such as *'fucking whore'*, *'Fenian bitch'*, *'sleeping with Colin Duffy'* and *'sleeping with McKenna'* used with respect to Rosemary Nelson. She also heard the false rumour that Rosemary Nelson's face was scarred from her planting a bomb as a teenager which had gone off prematurely.

13.14 She would not divulge the names of people who had made these comments but she described them as *'people who were involved in the Orange Order who were also involved in the UDA and in other Loyalist organisations, or who were close to people who were involved in these organisations'*. She said that these individuals, who she would speak to *'over and again [...] would have said very violent things about Rosemary and about Breandán Mac Cionnaith and they would have – they would have said that they would want to watch themselves and that kind of thing'*. She added: *'They would say things like, "She will be killed" [...] but they wouldn't say "I'm going to kill her".'*

13.15 The hatred felt towards her in extremist quarters was again illustrated in a leaflet distributed in the Portadown area in mid-1998, which revealed the extent to which Rosemary Nelson was reviled by Loyalist extremists. It was entitled *'The Man Without a Future'*⁵ and was concerned principally with *'Brendan McKenna IRA gunman and bomber, now a so-called independent councillor.'* A copy of the leaflet is reproduced at page 159 opposite.

13.16 A leaflet circulated in Portadown after Rosemary Nelson's death and entitled *'Monster Mashed'*, probably published by the same individuals who had circulated *'The Man Without a Future'* leaflet, offered further insight into the way Rosemary Nelson was viewed in extremist circles. This document, a copy of which is reproduced at page 160 overleaf, celebrated the death of Rosemary Nelson whom it described as *'IRA lawyer Rosemary Nelson'*.

13.17 We were particularly troubled by the references in this document to Rosemary Nelson being the *'Provos house lawyer for the area'*, the assertion that she invented complaints, and that her access to court files allowed her to *'identify members of the security forces, IRA informers and loyalists for the Provo death squads'*. We suspect that the contents of this leaflet were inspired, at least in part, by leakage of information from within the RUC or military.

⁵ There were two versions of the leaflet in circulation at the time with this one being the more detailed.

THE MAN WITHOUT A FUTURE



Brendan McKenna IRA gunman and bomber, now a so-called independent controller

Brendan McKenna was dragged up in Lurgan along with other well known catholic murdering scum, like the Duffys. Contrary to the wholesome image the media and Rome would have you believe McKenna's past is not one of choir practice and Gaelic football it is one of shooting bombing and murder. McKenna joined the IRA while still at school. It was at St. Michael's Grammar School Lurgan that he learn to trade in death ,spurred on by the priests and nuns. In 1982 he was sentenced to six years prison sentence for hijacking, possession of a firearm and false imprisonment. While in the Maze he became close friends with the now IRA's chief of staff Bob Story and his 2IC Spike Murray these two men have been pulling McKenna's strings since he left jail. Under the command of Bob Story and Emond Stack a Jesuit priest and the advice of a Lurgan solicitor Rosemary Nelson (8a William St. Lurgan Tel.) who just happened to blow her self up while planting a bomb. This motley crew have for the past six years been trying to put into place a plan that the Jesuit Philip Muller first used. His plan destroying and undermining the rights and religious freedom's of Hungarian Protestants and thus bringing them into conflict with the state. McKenna your plan has been found out. Your time is running out.

Ask not for whom the bell tolls, it tolls for you McKenna.

If you do not like what McKenna is trying to do give him a ring and let him know what you think of him and his friends, Joe Duffy and Colin Duffy.

[telephone numbers redacted]

MONSTER MASHED

In the famous film, "The Wizard of Oz", there is a point where the Munchkins dance around singing the "The Wicked Witch is Dead".

Throughout Ulster similar scenes of joy were repeated as loyalists heard of the death of civil rights abuser Rosemary Nelson. *Red Hand* has never, of course, taken any satisfaction from the death of anyone as we regard all Her Majesty's subjects in Ulster as having the potential to become loyalists.

In the aftermath of her untimely demise the liberal media has sought to portray Nelson as a "human rights lawyer" - nothing could be further from the truth. She was in fact a human rights abuser.

Nelson was a prominent player in the IRA's murder machine by acting as their "house lawyer", providing vital services to the Provo death squads.

Her first brush with the law was in 1973 when she narrowly escaped death and a court case when, as a 14-year-old member of the IRA's youth wing she was assisting in a bombing attempt.

Her close friend blew herself into a thousand pieces when priming a bomb in a toilet prior to placing it in its intended target.

So powerful was the bomb that it demolished the toilet and led to schoolchildren making sick "jokes" that the coffin contained only the bomber's head, a shoe, a toilet seat and parts of Rosemary Nelson's face (which was badly disfigured as she stood watch outside the toilet and was caught in the blast).

This experience seemed to have twisted more than Rosemary's evil-looking countenance and it seems the behaviour of friends and schoolmates may have left her with deep psychological scars which drove her deeper into the twilight world of republican terrorism. Roman Catholic children in Lurgan were said to have faked the symptoms of a cold whenever Rosemary approached. After coughing and sneezing they would cruelly ask her if she had "anything for the coffin?"



IRA lawyer Rosemary Nelson

Setting up her legal base in Lurgan she quickly became a vital cog in the Mid-Ulster Provo death machine. She became the Provos' house lawyer for the area - constantly on call to visit arrested scum and seeking to undermine cases by inventing complaints against RUC and UDR men. In addition, her access to confidential court files allowed her to identify members of the security forces, IRA informers and loyalists for the Provo death squads.

More sinister still was her participation in IRA anti-interrogation techniques where she advised scum on how to act whilst in police custody. Whatever else she may have been, Nelson was intelligent and knew how to prepare her clients both before and after the murders they committed. Since 1984 nobody has been successfully prosecuted for the 14 murders committed by republicans in Lurgan town - that is the 'success' Rosemary Nelson helped secure for her clients.

Her most high profile client was Lurgan mass murderer Colin Duffy (pictured, right) - the main IRA killer in the town.

Sharing a physical disability (one of Duffy's legs is an inch shorter than the other) brought the Gruesome Twosome closer together than is normal for client and lawyer. Indeed, Duffy was often ridiculed in republican circles for his love of "giving the dog a bone".

In doing so he displayed rather more courage than he did in performing his cowardly murders of innocent Protestants.



In the last two years Nelson had also begun to appear more and more frequently in the neighbouring town of Portadown advising Brendan McKenna and his crew on how best to ethnically cleanse Protestants from the town.

It is of course sad that anyone has to die, especially when the prospects for peace have been so good in recent years. While we would never gloat about anyone's death, no loyalist can but feel that in this instance justice has been done.

COLLUSION?

A startling three-in-four republican murders remain unsolved while almost 50 per cent of all killings attributed to loyalists over the last 30 years have resulted in charges.

14 The Security Service

14.1 During the early stages of our Inquiry we sought and obtained from the Security Service the disclosure of documents relevant to our Terms of Reference. As the Inquiry continued we received evidence in the form of witness statements from members of the Security Service, some of whom gave oral evidence during the public hearings.

14.2 The Security Service did not apply for Full Participant status at the beginning of the Inquiry's work – it was not referred to by name in our Terms of Reference, unlike the Army, the Royal Ulster Constabulary (RUC) and the Northern Ireland Office (NIO). It had, moreover, no direct involvement or connection with Rosemary Nelson.

14.3 On 4 September 2006, however, the Security Service applied for Full Participant status in the Rosemary Nelson Inquiry. The grounds upon which that application was made were as follows:

'First, by the time the Inquiry comes to make its recommendations, the Service will have assumed the lead responsibility for national security intelligence work in Northern Ireland. The Inquiry's recommendations may well be relevant to such work. It will therefore be important for the Service to be represented during the Inquiry, both to make such representations as might be required during the Inquiry proceedings and to understand fully the evidence behind and the reasons for the Inquiry's recommendations.

*Second, at such times as the Inquiry may wish to consider intelligence material in the course of its proceedings, the Service would in any event wish to be represented.'*¹

14.4 We announced our decision to grant this application on 20 September 2006.

The role of the Security Service in Northern Ireland

14.5 The Security Service is responsible for *'protecting the UK against threats to national security from espionage, terrorism and sabotage, from the activities of agents of foreign powers, and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means'*² but until October 2007 its formal role in Northern Ireland, as regards terrorism, was secondary to that of Special Branch (SB) of the RUC, although in practice it was highly influential. Whereas in other parts of the UK the Security Service had lead responsibility for gathering intelligence on threats to national security from Republican and Loyalist terrorists and for directing intelligence operations to counter those threats, in Northern Ireland this was not the case. Primacy lay with the RUC and, in particular, with SB.³ The Security Service, nonetheless, maintained a highly significant presence in Northern Ireland.

The Director and Coordinator of Intelligence

14.6 The most senior Security Service officer in Northern Ireland was the Director and Coordinator of Intelligence (DCI). He was responsible, under the Permanent

¹ Security Service Application for Full Participant Status in the Inquiry 4 September 2006

² www.mi5.gov.uk S1.(2) Security Service Act 1989. See also SS (4) *'It shall also be the function of the Service to act in support of the activities of police forces the National Criminal Intelligence Service, the National Crime Squad and other law enforcement agencies in the prevention and detection of serious crime.'*

³ Both the Security Service and the Army were subordinate to SB.

Under-Secretary of the NIO, for providing an effective intelligence reporting service to Ministers and officials both within the NIO and in Whitehall more generally, and for imparting high-level policy direction, coordination and advice relating to intelligence activity in Northern Ireland.

14.7 The DCI was the Secretary of State for Northern Ireland's principal security adviser and provided support on intelligence matters to the Secretary of State's two other principal security advisers: the Chief Constable of the RUC and the General Officer Commanding Northern Ireland (GOC).

14.8 He described his most important personal responsibilities as follows:

'My concern was to provide ministers, Secretary of State, the Prime Minister, officials in London and Northern Ireland, with the best possible judgments that we could make based on all available sources of intelligence about what was actually happening in the Province, which they could put alongside information that they had from their dialogues, their political contacts, their relationships with bodies and individuals and groups in Northern Ireland and with what was reported in the media, to reach their judgment of the political steps necessary to bring, or to maintain the momentum of that Peace Process. That was probably my first and most important responsibility.

Secondly, I was in a position to influence but not direct all the intelligence agencies that operated in Northern Ireland: to ensure firstly that they produced relevant and important and necessary intelligence to meet the criteria that I have already discussed; secondly, that they did so in a way which would not of itself cause damage or disruption to the Peace Process.'

14.9 The DCI was responsible for the management and performance of a number of staff working in Northern Ireland. In terms of coordination, the DCI in post at the relevant time told us that his role *'was to ensure that all intelligence resources were tasked to the best possible effect to produce intelligence to meet the government intelligence requirements and priorities'*.

14.10 The DCI was also responsible for advising the Secretary of State in relation to the authorisation of warrants under the Interception of Communications Act 1985 and the Intelligence Services Act 1994 (and subsequently, the Regulation of Investigatory Powers Act 2000). For this purpose he met the Secretary of State weekly, and such meetings provided an opportunity for the Secretary of State to ask questions regarding current intelligence operations.

14.11 He also played a role in relation to the funding of RUC Covert Human Intelligence Sources (CHIS) from the Northern Ireland Intelligence Account, which provided funding for covert activity carried out by the three intelligence gathering agencies. The Permanent Under-Secretary was the accounting officer for the funding of RUC CHIS, and he relied upon the DCI for advice on whether the funding for CHIS was being properly spent by the RUC. To this end, the DCI reviewed agent payments with the RUC on a regular basis. He was assisted in this exercise by a summary provided to him by the Deputy Head of SB as well as advice received from his representative at the RUC and the Head of the Security Service's Assessments Group (AsGp). CHIS were assessed on the basis of the quality, quantity and relevance of the intelligence they were providing.⁴

⁴ It might be said that through the DCI advisory role regarding warrants and CHIS funding, the Security Service had a measure of control over SB. The DCI said: *'I had some blunt instruments, and we have referred to some of those: I could withhold payment to agents; I could probably refuse to put forward an application for a technical operation or a warrant, if I chose to do so. These were things that I used rarely.'*

14.12 The DCI was in contact with the Chief Constable at least once a month. He spoke to the Head of SB (HSB) on a daily basis and met him at least once a week, at Intelligence Review Committee meetings. The purpose of this contact was to ensure that the Chief Constable and SB had an understanding of the issues which concerned the Secretary of State and the NIO.

DCI Rep (Knock) and DCI Rep (HQNI)

14.13 The DCI had representatives at both RUC and Army Headquarters – the DCI Rep (Knock) and the DCI Rep (HQNI) respectively. The role of the DCI Rep (Knock) included the processing of all national security warrants on behalf of the RUC, whether for telephone interception or to enable the Service to undertake technical operations on behalf of and in support of the RUC. Once processing was completed, the DCI sought authorisation from the Secretary of State.

14.14 The DCI Rep (Knock) was also responsible for scrutinising RUC requests for funding from the Northern Ireland Intelligence Account. More generally, he was the Security Service's representative to the RUC. He liaised principally with the HSB, the Head of the Intelligence Management Group (IMG) and the Head of E9.⁵ He spoke regularly to the three Regional Heads of SB. His liaison role included facilitating contact between desk officers in London and E3.⁶

14.15 The DCI Rep (HQNI) ensured that the DCI's views were represented within Army Headquarters, and conversely that the DCI was kept informed of developments in Army policy relating to intelligence operations. He had monthly meetings or conversations with the GOC and more frequent contact with other senior Army officers involved in military intelligence.

14.16 Compared with his relationship with the RUC, there was much less contact or liaison between the Security Service and the Army in Northern Ireland. The DCI explained that due to *'the very different roles of the Security Service and the Army in NI, it would be unusual for the Service to obtain much tactical or operational intelligence of interest to the Army or for the Army to obtain strategic intelligence of interest to the Service, although there were of course exceptions'*.

Assessments Group

14.17 The hub of the Security Service operations in Northern Ireland was the AsGp. It consisted of a small team of intelligence analysts led by an Assistant Director, known as the Head of Assessments Group (HAG), who reported to the DCI. This group was divided into two structural units, one dealing with intelligence connected with Republican organisations and the other with intelligence connected to Loyalists.

14.18 The principal aim of the AsGp was to service the intelligence requirements of the Secretary of State, the NIO and Whitehall. It provided a wide range of strategic intelligence reports and assessments for government readership and policy makers outside the intelligence community. It acted as a focus for strategic intelligence and ensured that the Northern Ireland intelligence community produced shared and agreed assessments for government.

⁵ See Appendix C. E9 was an RUC SB Headquarters Department. It was responsible for assessing the strategic roles of terrorist organisations and performed a quality control function. Some of its functions were transferred to IMG when it was established in 1997.

⁶ See Appendix C

14.19 The tactical exploitation of intelligence to prevent terrorism was not within the remit of AsGp.⁷ Although, as we observed ourselves, some SB intelligence was shared with the Security Service it tended to be that which was deemed to be of strategic, rather than of tactical value. We were told that the principal source of intelligence to AsGp desk officers therefore was the Security Service itself. The Security Service ran its own sources, sometimes in conjunction with SB, and AsGp analysis drew heavily on Security Service Source Reports. Intelligence collated by the military was generally deemed to be of a tactical nature, and not of interest to the Security Service.

14.20 Although the NIO was one of AsGp's main customers there was little direct contact between the two organisations. The HAG provided the direct point of contact between the two organisations. We were told, however, that in order to shape and direct intelligence-gathering effectively, AsGp was copied into a good deal of the written communication within the NIO on political developments and security policy issues. A close relationship with the customer base within the NIO was maintained through the Political Intelligence Liaison Group and the Security Intelligence Liaison Group. These met roughly every four to six weeks and provided a forum for discussion of intelligence reports and assessments, as well as for the identification of priorities and requirements.

Liaison with Special Branch

14.21 AsGp officers worked in close proximity to the SB officers who manned the E3A (Republican) and E3B (Loyalist) Desks⁸ at RUC Headquarters and they were well acquainted with them. Security Service desk officers in London were also in frequent contact with E3 and with SB officers in the RUC's regional headquarters.

14.22 From 1997 AsGp analysts seconded to the IMG were based at RUC Headquarters and worked to RUC management. One seconded Security Service officer described the purpose of their presence as follows:

'Because not all of the RUC's intelligence made it as far as Assessments Group, for the reason that the RUC officers traditionally approached the intelligence with an eye to responding tactically to the intelligence, which is what they were there for and what they did very well. But the strategic aspect was something which wouldn't have been foremost in their minds. So there is an idea, which I think was probably wholly appropriate, that if we inserted some of our culture into their organisation, it may help the strategic thinking.'

14.23 Security Service personnel had less contact with SB officers in the regions. We were told that the RUC, for example, required requests for clarification on items of key intelligence to be made via the DCI Rep (Knock). He told us that while he spoke to the three Regional Heads of SB 'on a reasonably regular basis', other AsGp personnel did not speak directly to officers based within the regions.

14.24 An AsGp officer explained that SB would have known what the Security Service's interest was anyway, as a result of their daily contact. He said, for example,

⁷ Intelligence concerning a threat against an individual, for example, was understood implicitly to have been acted upon by the RUC. One AsGp officer explained: *'I am aware that one thing that was done fastidiously was that victims of reported alleged threats were warned of the alleged threat. [...] This would be done by the RUC, not by the headquarters people I liaised with but by the people on the ground.'* One example given concerned the Security Service intelligence in 1996 of a threat by Billy Wright against Colin Duffy.

⁸ See Appendix C

SB would have considered it self-evident that officials and Ministers would have wanted to be aware of the emergence of new organisations and that the Security Service shared this interest. But AsGp were, to some extent, able to task SB to obtain further intelligence. The Security Service could follow up on intelligence received from the RUC by indicating that they would like further intelligence on a particular subject. This process was described as being *'quite delicate'*. One Security Service officer felt *'that we could discuss – we couldn't demand intelligence and we had to be somewhat circumspect in how sort of forceful we asked for things'*. If the Security Service felt strongly that it needed something, then the HAG would have had discussions with his counterpart in the RUC at a higher level, and from that level of discussion the impetus to direct the targeting of intelligence would come about.

14.25 There was a degree of circumspection on the part of SB with regard to sharing specific SB reports with the Security Service. The sharing of CHIS intelligence was selective and sanitised to protect the identity of the CHIS. It was provided through the IMG only when SB considered it was necessary. It usually would be in the form of strategic reporting, in accordance with the Security Service's general requirements. Intelligence reporting from SB could also include information from technical operations, such as eavesdropping devices, *'quite often'* in transcript form.⁹

14.26 We were told that since much of the RUC's material was focused on operational activities on the ground, it was generally not relevant to AsGp's areas of interest. One AsGp officer said, for example, it would not be necessary to see the detail of what the Loyalists were getting up to: *'That was very much the sort of tactical day-to-day type of intelligence which didn't have any bearing on our role in Assessments Group and was of no interest to our customers of our reports, which were Northern Ireland officials and Whitehall officials.'*

14.27 The detachment of AsGp from operational matters was conveyed to us by a manuscript note from an AsGp officer, which appeared on a Source Report in April 1997 which reported *inter alia* that *'the LVF intend to mount an attack on Colin Duffy'*. The report recorded that this intelligence had been passed to the RUC. The note stated: *'Thanks. As discussed, we are unable to do anything with this except watch from the sidelines. It would be sad if the RUC was unable to warn Duffy in time.'* The writer of the note gave us this explanation for it: *'It was possibly a slightly glib comment and, as such, not appropriate really to have written on a document such as this and – but nonetheless, sort of the fact that we are – we were a sort of – not empowered to do anything from, my point of view, in the Security Service, that sort of remains the fact.'*

Northern Ireland Intelligence Reports

14.28 The HAG was responsible for managing the AsGp, for overseeing the process of setting annual and monthly intelligence requirements, and for overseeing the production and dissemination of Northern Ireland Intelligence Reports (NIIRs), Intelligence Assessments (A/NIIRs) and Monthly Intelligence Reports (MIRs). He also deputised for the DCI when necessary. Assessments by AsGp on, for example, the capability of the terrorist groups were independent of any assessments being offered by the other intelligence-collecting agencies. The intelligence reports and assessments it produced facilitated the establishment of the Northern Ireland intelligence requirements and political and security policy development. We were

⁹ The HAG told us: *'Where raw transcript was received, it was the role of desk officers to read it and decide which parts constituted intelligence of interest and were therefore worth reporting to our customer base. Any useful intelligence would subsequently be issued as Northern Ireland Intelligence Reports (NIIRs). As for the transcript material, it was to the best of my knowledge never filed and preserved; the volume of material was often significant.'*

told that an NIIR would be created if an AsGp officer received a piece of intelligence which they considered to be of interest to a particular official or Minister. NIIRs comprised the raw intelligence which had been received which was almost invariably reproduced verbatim and comments added by AsGp to qualify the intelligence and provide the customer with the relevant context.

14.29 The A/NIIRs produced by AsGp were in the same format as the NIIRs, but consisted of a large number of disparate pieces of intelligence and worked on developing a particular theme. These more analytical documents were produced by AsGp about once a month, sometimes in response to particular requests, but at other times on their own initiative. AsGp had no role in producing threat assessments.

14.30 Security Service intelligence which reached the reporting thresholds of policy-makers was issued to a wide readership in Whitehall including in the NIO. NIIRs were also widely circulated within the RUC to, for example, the Chief Constable, the Head of IMG, the Republican or Loyalist Desks in E3, the Head of E9 and the three Regional Heads of SB.¹⁰ We were told that AsGp officers discussed their own reporting with SB colleagues. For example, tactical intelligence from Security Service sources, such as threats to life, would be communicated directly into the RUC regions or to RUC Headquarters.

The Joint Intelligence Committee and Joint Intelligence Group

14.31 AsGp contributed to the drafting of papers used to brief the Joint Intelligence Committee (JIC). The JIC sat at Cabinet level and was in effect the pinnacle of the government's intelligence machinery. The JIC had a role in setting the overall requirements and priorities for intelligence collection for the UK intelligence agencies. The Director General of the Security Service was a member of the JIC. The DCI briefed his senior managers on issues in Northern Ireland in order for them to brief the JIC.

14.32 Another committee, the Joint Intelligence Group (JIG), was a forum to discuss general headlines or intelligence issues, the assessments AsGp were working on, and the requirements for further assessments needed by the customers of the strategic intelligence. Again, we were told that the focus was strategic, looking at Republican and Loyalist thinking and strategy, *'particularly towards the political process and their ceasefires'*. The meetings, which occurred monthly, were chaired by the HAG and attended by representatives of AsGp, SB and military intelligence. The JIG played a role in tasking intelligence: by sending requirements to the Source Units asking specific questions and asking if the sources could provide answers to the strategic questions that the JIG was interested in.

14.33 The Security Service discharged its role in directing and coordinating strategic intelligence-gathering in Northern Ireland by having senior officials in attendance at, and speaking to, the most important strategic committee meetings in Northern Ireland. These committees were the Security Policy Meetings (SPM), the Intelligence Review Committee (IRC) meetings and the Province Executive Committee (PEC) meetings.

Security Policy Meetings

14.34 SPMs were formal meetings conducted on more or less a monthly basis. They were chaired by the Secretary of State and attended by the Minister of State, the Permanent Under-Secretary, the Chief Constable, the DCI, the GOC

¹⁰ See Appendices B and C

and a number of senior officials from the NIO, the RUC and the Army. The HSB produced a written brief for the meeting. The DCI provided an assessment of the security situation based upon consultation with the RUC and the Army. The Chief Constable and the GOC then added their own comments at the Secretary of State's request.

14.35 SPMs brought together Ministers and their officials, the police, the Army and the Security Service to review the overall security situation, the effectiveness of security policy generally, particular policy initiatives and specific operational issues with a high political profile or on which political decisions were required. These meetings also enabled the Secretary of State to brief the security advisers on political developments.

Intelligence Review Committee

14.36 The IRC was the forum in which specific decisions were taken on priorities and requirements for the various intelligence agencies in Northern Ireland. It met weekly with meetings following roughly the same agenda but in addition to the standard agenda, the committee would each week focus on a particular theme. It was chaired by the DCI, and was attended by senior representatives from SB, the Army and the Security Service. This committee was responsible for setting the monthly intelligence requirements. Draft Priority Intelligence Requirements (PIRs) were produced by AsGp for consideration by the IRC. The agreement would be drafted with representatives of the Army and SB. Thus the strategic requirements set by the JIC, the government's short- and medium-term requirements and the intelligence community's requirements as articulated through the IRC would all be taken into account. For example, the requirements agreed on 24 March 1999 for the 31 March 1999 meeting were prefaced with the following: *'These requirements are designed to reflect the key themes which it is anticipated will develop over the coming month. There remains a continuing requirement for tactical intelligence on republican and loyalist paramilitary activity (in NI, GB and Europe) and for reporting on attitudes at all levels to the ceasefires and the political settlement.'* There then followed a list of topics. These included the headings *'Republican'*, *'Civil Administration and PIRA [Provisional Irish Republican Army] involvement in anti-RUC activity'*, *'Parades'* and *'Loyalist'*.

14.37 There was a degree of fluidity to the process of setting the PIRs. The first Head of IMG explained the process as follows:

'Technically you would say more they [i.e. the IRC] were approved because, as in many organisations, the groundwork had been done, an agreement reached at a sort of a middle level, if you like, and the IRC would then satisfy itself that the middle-ranking officers in each of the three organisations had actually got it right. Perhaps meld in some new information which was available since the report had been drafted.'

14.38 Once endorsed by the IRC, the Head of IMG was responsible for disseminating PIRs to other intelligence collection agencies on behalf of the IRC. Requirements were filtered down the SB hierarchy through the ranks in each region with the detective inspectors driving it along at the regional level. The briefing of SB sources was meant to be in accordance with the PIRs fed down to the Source Unit from the Regional Heads of SB, and then passed on to the handlers in the division. Intelligence also flowed naturally from sources and agents who were supplying it. They did not always work in accordance with a strategic plan. Similar dissemination of PIRs took place in the Army and the Security Service.

14.39 These meetings also considered the performance of the intelligence-gathering agencies in terms of intelligence obtained against requirements. The meetings provided the DCI and the HSB with a forum to review and discuss the value of technical operations. The HAG explained the political context and made sure that all intelligence providers were aware of the strategic intelligence requirements.

Province Executive Committee

14.40 We were told that the PEC was created as a result of a desire by the Army to have a formal strategic body looking at security issues across Northern Ireland. Meetings were held at RUC Headquarters. Attendees included senior RUC officers (the Chief Constable, Deputy Chief Constable (Operations), the HSB, the Regional Assistant Chief Constables and the Head of the IMG), senior representatives from the Army (including the GOC) and the Security Service (DCI and HAG). The DCI gave an update on issues from the political side. This provided both the RUC Deputy Chief Constable (Operations) and the GOC with an insider's understanding of some of the political imperatives that were going ahead at the time. Conversely, the other agencies briefed the DCI about any proposed covert operations so that he could in turn brief the Secretary of State.

14.41 The purpose of the PEC meetings was to ensure that all of the key players had full cooperation and an understanding of all overt and covert intelligence activities being conducted. It also gave senior personnel from the Security Service and the Army the opportunity to consider the division of labour in terms of the intelligence requirements throughout Northern Ireland. The PEC meetings served to coordinate the relationship between overt and covert operations, the agencies conducting these operations, and procurement activities, seeking to ensure that the different agencies had compatible equipment. The PEC also had responsibility for coordination of the presentation of security matters which had become known to the public due to leaks or observation of security force activity.

Security Service 'A' Branch

14.42 A significant amount of the intelligence disclosed to the Inquiry was gathered by SB by means of technical surveillance. The RUC, however, had no independent capability to install technical devices. This work was undertaken by A Branch of the Security Service. It was based in London, with an outstation in Northern Ireland and carried out the installation and security of all technical devices in Northern Ireland. Targets were selected by SB who consulted A Branch with regard to feasibility, planning and risk assessment. SB was responsible for the recording of any relevant product and its secure onward transmission to RUC transcription centres. We were told that the product from devices was transcribed selectively because of resource demands.

14.43 We were told that Security Service officers from A Branch's outpost in Northern Ireland became involved in the warrant application process at a very early stage. Their job was to ensure that any proposal had crossed the legal threshold of proportionality and necessity and to form an initial view on whether the installation of a device was technically feasible.

14.44 The decision as to whether or not an application ‘reached the threshold’ was made by the Security Service.¹¹ The Head of Operational Planning in the Security Service between 1997 and 1999 explained that:

‘My role was to receive bids for technical operations and to review those bids. In so doing, I would have asked the following questions: did the intelligence case justify the operation; was it proportionate to the objectives sought; did we have the skills to do it; could we carry out the operation securely; did we have the resources available within the timeframe; was there a warrant in place or being applied for and was the product likely to be used evidentially (although this was never the case in Northern Ireland)?’

14.45 Increasingly the Security Service looked for a tangible demonstration that the devices they were operating in Northern Ireland were worth the effort and risk that their deployment entailed. It was therefore necessary to keep the product from technical devices under regular review, to ensure that use of the device was still justified. If little quality intelligence came from a technical source, then the RUC could not justify having it and it would lapse. A process of warrant revalidation provided the opportunity for a six-monthly audit of technical devices.

14.46 It was explained to us that the product of the eavesdropping was fed to a listening post, and was transcribed in the regional Source Units. It was then kept and disseminated in hard copy form. The Security Service liaison team were aware of the relative productivity and value of each device through weekly discussions with the RUC regions. There was thus close cooperation between the team of Security Service officers from A Branch who were based in Northern Ireland and local SB. In South Region there were weekly or fortnightly meetings with officers from Tasking and Co-ordination Group (TCG) and SB. At these meetings they discussed prospective and existing operations. At a more senior level there was regular liaison with the Regional Heads of SB.

The role of T8

14.47 T8 was the Security Service’s agent-running section. It was divided into subsections responsible for agent running, source or agent recruitment and operational support. It was based in London, with an outstation in Northern Ireland. Although the source or agent handlers worked closely with the RUC and the Army, they reported to a manager in London and their intelligence requirements were set by T Branch¹² and AsGp. These operations were small when compared to those managed by SB. T8 sought the authorisation of RUC SB whenever it planned to recruit and run agents based in Northern Ireland.

14.48 The work of T8 in Northern Ireland was focused on strategic intelligence relating to the leadership of the paramilitary groups and intelligence relating to threats to targets outside Northern Ireland. Unlike the RUC, which had an executive role and in this connection sought tactical intelligence to protect the public and their own personnel, the Security Service concentrated on obtaining intelligence on high-level strategic issues from its agents.

14.49 Agents run by the Security Service were mainly Republican, but we were told that there were some Loyalist agents. Loyalist agents provided intelligence on the strategic thinking of the Ulster Volunteer Force (UVF), the Ulster Defence

¹¹ The decision as to whether it was safe for an operation to proceed was for the Head of Operational Planning in the Security Service to decide, and he did, on occasions, refuse to accept an operational requirement. His decisions could be challenged, but were never overruled.

¹² T Branch was that section of the Security Service responsible for countering the terrorist threat outside Northern Ireland.

Association (UDA) and, to a much lesser extent, the LVF (Loyalist Volunteer Force) and other groupings. Intelligence obtained was distributed to internal Security Service customers including AsGp and the RUC. Intelligence with major policy implications was released to the government and the NIO. We were told that tactical intelligence, if it were received, was passed to SB.

14.50 In relation to agent handling, the Security Service and the RUC were responsible for their respective agents. In the case of joint agents, the lead would depend on individual circumstances and a process of consultation that could involve senior management.¹³

14.51 The Assistant Director in charge of T8 made regular visits to Northern Ireland. He had regular personal contact with the Deputy Head of SB and, less frequently, with the HSB. The Security Service agent-running section divided its areas of responsibility along the same lines as the different RUC regions. This meant that if there were any issues, cases or potential recruitment leads that came up relating to a particular region, a Security Service handler would have been the point of contact for T Branch within the region.

Recruitment and tasking of agents

14.52 The Security Service's role in Northern Ireland as a provider of strategic (rather than tactical) intelligence determined its approach to the recruitment and tasking of agents. Agents selected by the Security Service were chosen with regard to their potential for reporting on the intentions and capabilities of the main terrorist organisations, both Republican and Loyalist. If they were operating at a tactical level they would have been jointly handled with RUC SB.

14.53 It was the role of personnel in T8 to analyse the issues that were important to the government, to highlight the gaps in the Security Services' information in relation to those issues and to identify the most appropriate person to provide the missing information. We were told that in the period 1997 to 1999 T8's main interest was in PIRA's involvement in the Peace Process and the activities of any offshoot groups of PIRA. There was not the same level of interest in the Loyalist groups.

14.54 Security Service agent handlers worked to a set of requirements set by AsGp. From the handlers' perspective AsGp staff had an overall picture of all intelligence received by the Security Service. Agent handlers did not have the same access to this intelligence. This was in order to protect the handler from inadvertently passing information to the agent that the agent would not otherwise have known.¹⁴

14.55 We were told that, generally speaking, AsGp would not have tasked agent handlers to ask agents to report tactical intelligence on, for example, the capability of a paramilitary group to access munitions, as these agents would not have had access to this sort of information. One handler explained that AsGp would be aware of the level of access of their agents:

'These customers and the requirements they set, they would be wasting their time if they asked about specific terrorist incidents and details of these because they knew – they would have known that the agents that we were dealing with wouldn't have

¹³ In most cases it was obvious as to whose remit an operation fell under. However, there were some cases where the boundaries were hazy. This was normally resolved through discussions.

¹⁴ It was explained as follows: 'We didn't want the agent or agents to be suspected of being a source, and therefore they had to only know what they would know in real life, through their identity. This was the purpose of the firewall: to make sure that they didn't know too much as a result of a slip of the tongue from me, the handler.'

been themselves privy to any details of terrorist planning or bombs. [...] Any of these issues would have been answered by tactical agents, agents who could report on tactical intelligence.'

14.56 It was also explained to us that redeployment of an agent to report on tactical intelligence was problematic as it might compromise the individual concerned.

'It would have been, you know, unusual and life threatening for our agents to start asking the questions about specific terrorist incidents because the people they were asking questions to – they were putting the questions to, would have found it very unusual for them to be asking these questions.'

Reporting

14.57 We were told that agents would be met and tasked as frequently as necessary. Notes would be taken by the handler at a meeting, which would later be typed up as a Contact Note. The handwritten notes were shredded. The Contact Note included all the information relevant to handling of the source and the circumstances surrounding the meeting or conversation. The intelligence obtained from the agent would then be extracted from the Contact Note and would be written up by the handler as a Source Report. The Source Report was for the customer's use only. These reports were designed to conceal the identity of the source and to separate factual information from the source and comment from the source or handler. They were divided into four sections: (i) Intelligence, (ii) Source Comment, (iii) Field Comment (Agent runner) and (iv) Consumer Comments.

14.58 The front page of a Source Report contained a heading 'Source Reliability' under which would appear an assessment of the agent's reliability using a standard form of words completed by the handler. Agents who had been working with them for a long period of time and who had produced intelligence of a high calibre would be regarded as more reliable than someone who had been recruited fairly recently.

14.59 Customers of intelligence were encouraged to assess the value of agent reporting and to provide supplementary questions for future agent meetings. The purpose of the 'Consumer Comments' section of the Source Report was to provide customers with the opportunity to respond to the handler, for instance to request further information, or to comment on the usefulness of the intelligence. It could also be used to pass on collateral intelligence to the handler, thereby '*effectively closing the loop to add to the material he had given me*'.

14.60 In contrast to the manner in which SB source reporting was prepared, all the intelligence would have been recorded in the Source Report, and all reporting would go to AsGp. Urgent tactical intelligence, which might, for example, indicate a threat to life, was telephoned directly to the RUC. A member of the Security Service who was an agent handler between November 1996 and December 1999 told us, for example, '*I do have to emphasise that, [...] threat to life reporting was regarded very, very highly in terms of the importance of putting it through to the proper channels. And if anything had been received on a threat to life to Mrs Nelson or anybody else, it would have been passed to the police immediately.*'

Assessment of intelligence

14.61 AsGp assessed the intelligence in a given report by according to it '*a usefulness grade*' on a '*5-point scale*'. The process of assessment was a continuous

one. Even when an agent had been given a designation as to their reliability, there was an ongoing assessment of whether the agent was providing valuable and reliable intelligence.

Security Service awareness of Rosemary Nelson

14.62 As far as we have been able to ascertain, Rosemary Nelson did not feature in any pre-murder intelligence gathered or reported on by the Security Service, nor was she mentioned in any IMG Intelligence Report (IMAGIR), NIIR or report produced by AsGp. There is no reference to her in any briefing notes prepared by AsGp for the various committee meetings mentioned above nor in any of the minutes recording the discussions which occurred during those meetings. She did not feature in any of the pre-murder intelligence requirements set by the IRC.

14.63 That is not to say, however, that members of the Security Service were unaware of her existence – some SB intelligence in which she was named was disclosed to the Security Service. In 1997, for example, intelligence reports which referred to Rosemary Nelson's contact with Irish politicians and American lawyers in the context of Drumcree were marked for disclosure to the Security Service. In 1998, reports were disclosed concerning Rosemary Nelson's involvement in a Channel 4 *Dispatches* programme (January); a weapons find in Lurgan (April);¹⁵ and meetings between Colin Duffy and an American lawyer (September).¹⁶

14.64 An AsGp officer told us that Rosemary Nelson *'was quite a well known public figure at the time, through her involvement in the GRRC [Garvagh Road Residents' Coalition] and her association with known members of PIRA, and her name would also have appeared in intelligence reports. Because of this, her name would have come up in discussion within Assessments Group.'* Another said: *'She was a prominent figure in the way that we were all aware of her'* and *'She was a prominent member on one side of that divide.'* He said it was *'universally known'* that Rosemary Nelson was acting as the lawyer for the GRRC. He said: *'You would see Rosemary Nelson there at the frontlines [...] she would be the one who would be negotiating with the police.'* He stated: *'She was known to us because of her association with Duffy and she was known to us because she was a prominent figure anyway, but I wasn't aware of any interest in her in her own right.'*

14.65 However, in their evidence to the Inquiry, members of the Security Service maintained consistently that she was of no intelligence interest to the Security Service. A Security Service agent handler told us: *'For us, Rosemary Nelson was of – was not a person or a subject with whom, I imagine, we had been given tasking or were interested in. She was not a Republican target, for want of a better word, or someone who would have been of interest to the Security Service.'*

14.66 It was clear that the allegation of the affair was well known within Security Service staff. An AsGp analyst who was seconded to the IMG told us that the

¹⁵ In April 1998 Lurgan SB produced a PRISM report relating to some weapons recovered from a property in Lurgan connected to PIRA (See Chapter 8.4.d). The report contained the following passage: *'PIRA have briefed ROSEMARY NELSON who is acting as their Solicitor, to instruct [redacted] to take responsibility for these weapons'*. The subsequent SIR of the intelligence indicated that it was also passed to the Security Service.

¹⁶ In September and October 1998, two SB reports were disseminated by Lurgan SB to the Security Service which mentioned Rosemary Nelson. One of these reported that *'COLIN DUFFY will be meeting an American lawyer in Lurgan on Sunday 20 September 1998. [...] ROSEMARY NELSON arranged the meeting'*. The other stated: *'An American called EDDIE LYNCH visited the Enniskillen area on 20 9 98, the purpose of his visit is not known'*. The report referred to how Mr Lynch would visit Colin Duffy, the Mulvihill team and that he was in contact with Rosemary Nelson.

Security Service's Republican desk officers were aware that Rosemary Nelson and Colin Duffy were thought to be having a sexual relationship, and he thought that this was well known *'within my immediate colleagues'*.

14.67 The same witness told us: *'But it seemed to be quite well known from round and about and just general conversations that were going on at the time'*; and *'Her name would have been talked about, amongst others, in the room as we were discussing assessments and our own views on intelligence.'* He also said: *'I think there had been a range of things. I can't remember anything specific, but I believe there would have been some secret reporting that would mention the fact that this relationship was going on. But I think it was quite well known across the general community, not just from intelligence sources.'*

14.68 Staff within A Branch were also aware of the allegation. It was referred to in a Loose Minute dated 29 May 1998 from an A Branch officer to a colleague in the following terms: *'DCI [redacted] told me today that [redacted] Colin DUFFY has been put out of the family home by his wife. As you are aware he has been having a long standing affair with his solicitor Rosemary Nelson; [redacted] did not know whether this was the specific reason.'*

14.69 The allegation was also known within T Branch. A minute dated 26 October 1998 between two T Branch officers refers to an RUC report (which the Inquiry has not seen) as follows: *'The attached RUC report suggests that DUFFY's partner [redacted] is ROSEMARY NELSON whom they describe as a solicitor with strong Republican sympathies.'*¹⁷

Operation Indus

14.70 We have referred to Operation Indus in earlier chapters of this Report (Chapter 4.150 and 4.151; Chapter 11.27 and 11.29) but we consider here the processing of the application for the operation by the Security Service.

14.71 The DCI told us that prior to his consideration of the Indus application he *'was not aware of Rosemary Nelson as a person'*. He told us that her representation of Colin Duffy in relation to the murder of security force members *'was not a matter of intelligence interest'*. He said: *'We took no interest in the legal representation of people who might be facing terrorist charges.'* He told us, however, that as a result of the Indus application he *'became aware in general terms that she was making complaints against the RUC'* and *'she was – a known public figure and I was obviously briefed on concerns about – or possible issues that might be raised about her relationship with Colin Duffy'*.

14.72 As we have seen at Chapter 11.28 and 11.29 the application drafted by SB officers in Lurgan had quoted intelligence (also drafted within SB Lurgan) indicating that Rosemary Nelson was a dedicated Republican; that she had been involved in preparing false alibis; and that she and Colin Duffy were *'having a sexual relationship'*. These assertions were, however, omitted from the re-drafted application that was prepared within A Branch and which was ultimately put before the Secretary of State.

14.73 Contemporaneous documentation indicates that, from the very start, the DCI expressed two serious concerns about Operation Indus. Firstly, that, if compromised, the operation would be presented as evidence of further harassment of Colin Duffy by the RUC; and secondly, that any interception of Rosemary Nelson's conversations had the potential to infringe legal professional privilege.

¹⁷ This minute also contains a handwritten annotation recording a conversation between a Security Service agent handler and the Regional Head of SB South Region in which the latter was said to have *'described DUFFY and NELSON as "the nightmare team"'*.

His concerns were recorded in an email dated 28 August 1998 written by a senior officer from A Branch to various colleagues in the Security Service. The email reads as follows:

'You will wish to be aware that DCI has expressed some concern about the sensitivities of this operation because:

- a) *the INDUS property is owned by Rosemary Nelson. Nelson is the solicitor and lover of Colin DUFFY, the target of the operation. She recently won an harassment case against the RUC.¹⁸ DCI Rep has reported that SOSNI [Secretary of State for Northern Ireland] has taken a particular interest in the case and similar claims of harassment by Duffy himself. According to RHSB (S) [Regional Head of SB South Region] DUFFY has a rental agreement with Nelson. Nonetheless DCI is concerned that a compromise on target could be presented as further harassment by the RUC. DCI therefore plans to speak to HSB and the Chief Constable before the warrant is submitted to SOSNI to ensure that they are fully signed up. The warrant submission will make explicit Nelson's ownership of the property. DCI's consultations will delay the submission until early next week but this should have no practical impact for us.'*
- b) *issues of legal privilege [sic] might arise if there is a successful installation. [...] I understand from DCI Rep Knock that on this occasion DCI is minded to include [sic] some reference to the issue in the warrant submission.'*

14.74 These concerns were evidently conveyed to SB by the DCI Rep (Knock). A note for file, dated 2 September 1998, records that the DCI Rep (Knock) had discussed the Indus application with the RHSB(S) and was concerned that the operational sensitivities were appreciated at the highest levels within SB and the RUC:

'I told RHSB(S) that DCI was not questioning the strength of the intelligence case. However, the original application had not referred to the fact that Rosemary NELSON owned the target property. Given NELSON's outstanding complaints against the RUC, her ownership of the house heightened the sensitivity of the operation. It was therefore important that HSB and the Chief Constable were fully aware of the operation. There would also be a need to include in the application specific guidelines for dissemination of the product to cover any legally privileged conversations that might take place between DUFFY and NELSON.'

14.75 On 4 September 1998, the DCI discussed the Indus application with the Secretary of State, Mo Mowlam, at a meeting also attended by DCI Rep (Knock). The DCI's minute of the meeting, which was widely circulated within the Security Service, stated the following:

'[The Secretary of State] recognised the strength of the intelligence case against DUFFY. But she was anxious about the operation, and the extra mileage which could be extracted from any compromise including allegations of RUC harassment and of interference with lawyer/client relations. She was less concerned by the risks of compromise of entry.'

14.76 The minute explained that the Secretary of State signed the warrant for the operation on condition that she was shown guidance on the handling of legally privileged material and would be kept informed of any entries to the property. It was also recorded that the DCI had spoken personally to the HSB and he intended to mention the case to the Chief Constable *'in recognition of the sensitivities'*. The minute refers to how *'Particular sensitivities arise because the property is owned by Duffy's*

¹⁸No record of any such case was produced to the Inquiry.

solicitor Rosemary Nelson. Whilst he is renting it on what appears to be a commercial basis, there arises nevertheless the possibility that the operation might produce material covered by legal privilege. There are also complaints outstanding from Nelson against the RUC. The initial RUC application made no mention of the Nelson connection.'

14.77 The DCI spoke to the Chief Constable about the operation in the same afternoon as he spoke to the Secretary of State. The relevant section of the Note for File is as follows:

'iii) Sensitivity of operations. I drew the Chief Constable's attention to a number of current property warranted operations which served to emphasise the extent to which the consequences of compromise were changing. In each case the Secretary of State had signed the warrant (though in one case reluctantly); but there were particular issues for the RUC in two of them. [Redacted]; the second [redacted] DUFFY warrant and the NELSON connection; [redacted]. The Chief Constable recognised both the general point about increasing sensitivities and the particular in respect of [redacted] and Duffy. Whilst he may have known about [redacted] he did not appear to have been warned about DUFFY (though I mentioned to HSB my intention to raise it). The Chief Constable intended to talk to Regional SB Heads when he saw them that evening.'

14.78 As will be seen later in this Report, these meetings between the DCI and the Secretary of State, and the DCI and the Chief Constable concerning Operation Indus took place at a time when the NIO and the RUC had been requested formally by the Committee for the Administration of Justice (CAJ) and the Irish Government to review Rosemary Nelson's safety.

The signing of the Operation Indus Property Warrant and subsequent events

14.79 A modified 'Property Warrant Application' for Operation Indus, dated 9 September 1998, was drafted by Security Service staff and signed by a detective superintendent in SB. This modified warrant was signed by the Secretary of State on 3 November 1998. On 27 November 1998 the DCI formally wrote to the HSB regarding the government's new guidelines for dealing with material produced by warrants obtained under the Interception of Communications Act (IOCA) 1985, judged to be subject to legal professional privilege. The DCI's letter referred to the concerns raised by the Secretary of State when authorising the Indus application.

14.80 Operation Indus was still listed as one of SB's '*jobs in planning*' in a Note for File arising from a TCG (South) meeting on 22 January 1999. Rosemary Nelson continued to feature in deliberations. It was noted that '*Despite the on-going reconciliation with his wife, Colin DUFFY is also seeing Rosemary NELSON*'. An exchange of internal Security Service emails about Operation Indus on 2 February 1999 stated: '*INDUS - We will be unwilling to deploy resources on this until a clear picture has arisen over DUFFY's relationship with wife and girlfriend. [...] Unless meetings are taking place at INDUS, then it is suggested that the value of DUFFY's conversations with NELSON would not be worth the risk of compromise/resources.*'

14.81 However, the RUC continued to regard Operation Indus as a priority. In the report submitted in support of revalidation of the warrant dated 1 February 1999 it is stated by SB that '*The RUC, [redacted] are able to confirm, however, that he [i.e. Duffy] continues to use the house owned by a girlfriend, Rosemary Nelson, who is also his solicitor, as a PIRA meeting place.*' A Security Service minute of the next weekly TCG South Region meeting on 4 February 1999 recorded that the SB representative was '*very keen to see INDUS installed as soon as possible*'. He advised

that *'DUFFY has been active very recently, travelling widely throughout the Province. [...] If the ceasefire broke down, DUFFY would be one of those spearheading the return to violence. Maximum coverage of his plans is therefore crucial.'*

14.82 On 22 February 1999 the HSB formally applied for revalidation of the warrant for a period of six months until 2 September 1999. The application said in respect of Colin Duffy that *'During the review period, Colin Duffy remained active within the Provisional Irish Republican Army (PIRA), both as Officer Commanding North Armagh PIRA and as a member of the Army Executive'*. The only reference to Rosemary Nelson is as follows: *'Duffy is renting this property from his solicitor, Rosemary Nelson.'* On 23 February 1999, the Secretary of State met the DCI to discuss the operation and sign the revalidation of the warrant. The DCI's Note for File states *'SOSNI asked about the relationship with Nelson; was satisfied with the intelligence case.'*

14.83 On 5 March 1999 the operation was the subject of an email exchange between A Branch officers. One email states that the status of Operation Indus had been discussed with the Detective Inspector for SB J Division and it was reported that *'since he moved back with [redacted], DUFFY has continued to use INDUS on a regular basis for meetings with PIRA associates. I said that we would like to see some evidence of this.'* Another states: *'[Duffy's] affair with NELSON was supposed to be over when he moved back in with [redacted], although they remained in contact and she has been content for him to use INDUS for meetings (and I'm pretty sure they stole the occasional shag). [Redacted] is not moving in with DUFFY (would cramp his style surely?!) so I expect DUFFY reckons he can get away with seeing her (pres at Shankill) without NELSON knowing. Even if she [Rosemary Nelson] does find out I don't think she's under any illusions that she was/is the only woman in DUFFY's life. I'll raise your queries with the RUC idc [i.e. in due course].'*

14.84 The author of this email told us that the comments about Rosemary Nelson and Colin Duffy's relationship were *'based wholly on what I have been told by Special Branch, probably DI [the Detective Inspector for SB J Division] when I had met him the day before or I might have picked this information up from [the Detective Chief Inspector SB South West Region].'* This gossip attributed to SB was not based on any intelligence reports and, moreover, was inconsistent with intelligence received by SB that the alleged affair between Colin Duffy and Rosemary Nelson had ended in November 1998.

14.85 Three weeks after the Secretary of State signed the revalidation of the warrant, Rosemary Nelson was murdered, prompting a series of discussions as to what would happen to the property. A Security Service minute of 22 March 1999, for example, records a discussion with a TCG (South) officer about the fate of Operation Indus after the murder of Rosemary Nelson. It said: *'DUFFY has been living in INDUS since [redacted] threw him out. However, this house was bought by NELSON for DUFFY without Mr NELSON's knowledge. It is likely that DUFFY will not be allowed to continue living there once Mr NELSON realises this.'* The discussions culminated with a decision on 29 July 1999 to drop the operation, on the basis that the house was likely to be sold. It is clear that Operation Indus never advanced beyond the planning stage. Its intended focus was Colin Duffy and not Rosemary Nelson.

Conclusion

14.86 We are satisfied that neither the Security Service nor any member of it facilitated in any way the murder of Rosemary Nelson. Security Service personnel were aware of her relationship with Colin Duffy as a result of intelligence disclosed

by SB and as a result of SB gossip concerning her, but her activities appear to have been of no real interest to the Security Service and she was not regarded as a significant intelligence target.

15 The Army

The Army's presence in Northern Ireland

15.1 British troops were deployed in Northern Ireland in August 1969 in response to serious public disorder and rioting. The Army was initially welcomed as restoring order and separating communities from the mobs. Some viewed the development with suspicion, but they were in the minority. The 'honeymoon period', however, did not last. Relations between the Army and the Nationalist population worsened.

15.2 At the time of Rosemary Nelson's murder 15,500 military personnel were stationed in Northern Ireland.¹ Between 1969 and 2003, 709 members of the British armed forces lost their lives there. Of these, 503 were regular Army and 206 came from the Home Service (HS) force.² A further 6,262 military personnel were injured as a result of the security situation.³ Such statistics demonstrate the very real dangers faced by members of the armed forces as they carried out their duties.

15.3 Mahon Road Barracks, Portadown, housed the headquarters of 3 Infantry Brigade and the 3rd Battalion of the Royal Irish Regiment (3 R IRISH). The Royal Irish Regiment was formed in July 1992 by the merger of the Ulster Defence Regiment (UDR) and the Royal Irish Rangers. The UDR provided the initial HS element of the new regiment.

15.4 The UDR had been raised in April 1970 following the Hunt Committee's recommendation that police and military functions be split and the controversial 'B Specials' be disbanded. There were 4,350 soldiers serving in the Royal Irish Regiment (HS) in 1999.⁴ Catholic recruitment to the UDR was low, standing at around 2% by the late 1970s.⁵

15.5 By virtue of its location in 1999, covering Lurgan, Portadown and Banbridge Royal Ulster Constabulary (RUC) sub-divisions, 3 R IRISH is of particular relevance to the Inquiry's work. One of the five battalions of 3 Brigade, 3 R IRISH consisted of about 1,200 soldiers divided into ten companies. As an HS battalion it drew its soldiers from within Northern Ireland. Our understanding is that the vast majority of its soldiers came from and lived in Protestant communities. Half of the battalion were full-time soldiers and half were part time.

15.6 Personnel drawn from the communities provided local knowledge and also a degree of continuity when a large proportion of the troops based in Northern Ireland were brought in from elsewhere in the UK. The very fact that 3 R IRISH was local, however, raised important issues both for the soldiers themselves and the attitudes which they displayed or were perceived to hold.

15.7 Firstly – and particularly true of part-time members – being resident in the local communities exposed the soldiers to the possibility of intimidation and

¹ Conflict Archive on the Internet (CAIN) Web Service, Table NI-SEC-03: British Army personnel (number) in Northern Ireland, 1965–2005, <http://cain.ulst.ac.uk/ni/security.htm>

² Figures taken from *Lost Lives*, eds. D. McKittrick, S. Kelters, B. Feeney, V. McVea (Edinburgh, 2004), page 1,526

³ CAIN Web Service, Table NI-SEC-05: Persons injured (number) due to the security situation in Northern Ireland (only), 1969–2003, <http://cain.ulst.ac.uk/ni/security.htm>

⁴ Operation Banner, p. 3–6; CAIN Web Service, Table NI-SEC-03: British Army personnel (number) in Northern Ireland, 1965–2005, <http://cain.ulst.ac.uk/ni/security.htm>

⁵ Operation Banner, p. 3–6

attacks upon themselves and their families. A large proportion of those killed were murdered while off duty.⁶ Consequently, such members of the Royal Irish Regiment often could not disclose their occupation. A private in the Royal Irish Regiment in 1999 told us that he chose to make a two-hour commute to and from his barracks in order to keep his home and work lives separate. We acknowledge the courage displayed by these soldiers and the tragic losses which they sustained.

15.8 The Commanding Officer of 3 R IRISH told us that there were no problems during his period of command (July 1998 to July 2000) with his troops' relationship with the community and no instances of them associating with paramilitaries. Rather, he believed, the fact that his battalion was an HS made his job easier as the soldiers understood the dynamics of the community. His Intelligence Officer similarly was unaware of instances of intelligence leaking into the community through soldiers or police.

15.9 However, the Army itself acknowledges that there are problems inherent in deploying a local force:

*'Locally recruited forces normally know the ground well and can understand the local population. They can also, however, be partisan and can present a security risk. All these aspects could be seen in the UDR and, latterly, the HSF [sic]. Nonetheless, security breaches by members of the UDR and HSF [sic] were rare. The UDR and HSF [sic] chains of command were generally able to assess the reliability of individual members of the Regiments, and acted accordingly.'*⁷

The attitude and behaviour of soldiers in the Royal Irish Regiment are relevant to the question as to whether they posed a risk to Rosemary Nelson and as to whether they passed information about her, which either directly or indirectly coloured the attitude of Loyalist paramilitaries towards her.

15.10 The Inquiry received evidence which established that some soldiers of 3 R IRISH lived either as neighbours or in the same streets as Loyalist paramilitaries, or frequented pubs also used by them and that some were related to members of such groups. The RUC Sub-Divisional Commander for Lurgan Sub-Division from October 1997 and March 2001 told us that in his opinion the Royal Irish Regiment would have a higher proportion of its personnel living in what he termed '*more strongly Loyalist areas*' than did the police.

15.11 A member of Special Branch (SB) in South Region informed us that it was his understanding that '*there was concern that some of the part-time UDR members were directly related to or associates of Loyalist paramilitaries. We were therefore concerned about leaks that may not only compromise operations but may result in the identity of surveillance officers being leaked.*'

15.12 The Regional Military Intelligence Officer (RMIO) for 3 Brigade was asked whether part-time soldiers may have been sympathetic towards certain sections of the local community and replied, '*Yes, but that was the reality of Mid-Ulster.*' In the context of intelligence leaks and the effect of soldiers living in the community he told us that:

'The RUC or human sources on the ground were picking up comment about military intention or things that were going to go on in the future, and our concern was that that was leaking from units and, I have to say, from Royal Irish units who lived within the community, back on to the ground [...] because they lived within these communities,

⁶ Operation Banner, p. 3–6

⁷ Operation Banner, p. 3–5

within Mid-Ulster especially, whereas the units that were doing short tours lived in barracks and didn't have the sort of social interaction with the community that existed for Royal Irish soldiers.'

Furthermore, an officer who was involved in gathering army intelligence told us:

'Because of where the Royal Irish Regiment was recruited from and the fact that it operated in a divided community where one side was more likely to be sympathetic to the British Military than the other, it was quite possible that information was passed to Loyalist paramilitaries.'

He added, however, that he *'was never aware of any organised collusion and if it had been organised I simply do not see how it could have been kept a secret'* and was of the belief that if any information was available on such activity it would have been kept on file.

The role of the Army

15.13 Initially introduced to restore order, the Army came to support the RUC in their policing operations and the two organisations worked closely together in Northern Ireland. The RUC formally reassumed operational primacy in security matters from the Army in 1976.⁸ Thereafter the situation was explained to us as being that *'the Army was in direct support of the PSNI [Police Service of Northern Ireland] and this was reflected in all levels of command and in all operational activity – save force protection'*. The Commanding Officer of 3 R IRISH told us that the purpose of the Army's presence in Northern Ireland was *'to support the RUC in the suppression of terrorism and in the restoration of normality'*. This was manifested in a number of important roles, including: the provision of patrols, either alongside the police or operating independently; covering police changeovers; conducting Vehicle Check Points (VCPs); responding to public order incidents; and the provision of specialist skills and equipment, such as bomb disposal, the use of aircraft, and intelligence gathering.

Patrols

15.14 Army patrols were tasked and coordinated by the battalion's Operations Officer and planned in conjunction with the RUC. The Operations Officer attended fortnightly planning meetings with the police at which patrol plans were agreed. A degree of flexibility was incorporated into the resulting Operational Tasks Forecasts to allow for reaction to events. We were told that operations were dictated by terrorist activity and the level of current threat. Troops were given approximately one week's notice of future duties.

15.15 Patrols were under the overall command of a senior non-commissioned officer (NCO) or an officer responsible for the movements of teams within that patrol. Each patrol team or 'call sign' would be under a team commander at the rank of junior NCO, either a corporal or a lance corporal.

15.16 Before a patrol went out, a 'trace' was prepared which contained information relevant to its task: the personnel in the patrol, the routes the patrol was to take, and a description of the task to be undertaken during the time the patrol was on the ground. This would be submitted to the Operations Room for approval 24 hours before the patrol. This gave the Operations Room notice of what patrol commanders had planned as it was its responsibility to monitor all patrols and have an overview of the position. Any deviation from the trace would be reported following the patrol

⁸ Operation Banner, p. 2–13

by an 'honesty trace'. According to the 3 R IRISH Operations Officer this would often be a photocopied map with the patrol's actual route and location of any VCPs noted on it. While its accuracy could be checked against certain other records, it depended to a large degree on the honesty of its author.

15.17 Military patrols were generally accompanied by an RUC officer whenever possible. A patrol team commander told us, '*We would usually be accompanied by a member of the RUC, or at least be able to contact one of them quickly in the event we needed their presence, for example, to make an arrest.*' Another soldier offered his view that '*we were not allowed out without one [RUC officer]*' and expressed the opinion that they were very useful to have with a patrol, as they dealt with any un-cooperative behaviour by members of the public.

15.18 However, it was observed that police presence was dependent on availability at the time. A corporal in the Royal Irish Regiment explained:

'I rarely had an RUC officer with me on patrol. It was more common in Lurgan (which was regarded as a 'hard area') than it was in Portadown and Banbridge (which were 'soft areas'). Even if I was in Lurgan and wanted an RUC officer to come with my team on patrol, it was often not possible due to staff shortages on the RUC's part.'

15.19 The inclusion of RUC officers on military patrols illustrates how closely the police and Army worked together. Soldiers and police officers shared facilities such as canteens in RUC stations including Lurgan. At Mahon Road where 3 R IRISH was stationed and where 3 Infantry Brigade headquarters was sited, there was a substantial RUC presence.

15.20 Army patrols would also on occasion be accompanied by members of the Royal Military Police (RMP), deployed as '*spotters*' owing to their knowledge of local '*persons of interest*'.

Vehicle Check Points

15.21 VCPs were manned by at least eight people, divided into teams of four at each end. A 'Stop' sign was placed on the road along with a device to deter vehicles from driving through the VCP. There would be one person in charge of the device, someone at the sign, a '*road man or chatter upper*' who stopped the cars and someone operating the radio. One soldier told us that usually an RUC officer would be with the patrol and would carry out the stopping.

15.22 The locations of the VCPs within a designated area were determined by the commander on patrol and were usually on both sides of a road, covering both directions of traffic. Sometimes split VCPs would be conducted to check vehicles leaving or entering a certain area. We were told that the level of discretion allowed in conducting VCPs '*depended on the area you were in. The higher the threat, the more precisely it would be planned and the more rigidly it would be kept to.*' A trace would be submitted to the Operations Room prior to the patrol with the proposed locations of the VCPs based on the ground knowledge of the junior NCO. One such team leader, a corporal, however, told us that:

'Occasionally if I did not know the area where the Ops Planner required the VCP to take place I might mistakenly specify that the VCP should take place on a bad stretch of road or I might arrive at my proposed location to find that there were youths causing trouble in the vicinity. In those circumstances (and others) it would not be appropriate to undertake the VCP as planned. The VCP may have been undertaken in a different location or not at all.'

He added that upon arrival at a VCP site he would radio through to the Operations Room, confirming the location, and again when on the move. VCPs were carried out for between 10 and 30 minutes, as any longer period increased the risk to the soldiers present.

15.23 Who was stopped was often determined by prior briefings. One witness explained that they were either looking for certain people in connection with a particular offence or tracking the movements of *'known'* people around the area. Another soldier told us that suspects were not necessarily stopped, but would be if the car contained a person not known to the patrol in order to ascertain who they were. Details would subsequently be radioed in. Sightings and vehicle information would also be recorded manually on a 'Charlie One' form. The soldiers had a link to the Driver and Vehicle Licensing Agency (DVLA) which allowed details to be checked. Notes taken were passed on up the chain of command to the Intelligence Unit.

15.24 A number of soldiers told us that, as well as stopping known individuals or suspicious vehicles, a random approach was adopted and, for example, on a particular day vehicles were stopped according to a chosen colour for that day. One soldier told us that so random was the search process that once he stopped and searched his own mother.

15.25 The searches conducted could range from a quick look around a car while talking to the driver to a full search of the vehicle and its occupants. A corporal in 3 R IRISH said that it was possible to stop between 1,000 and 2,000 vehicles in a week.

15.26 A number of witnesses who gave evidence to the Inquiry said that there had been a VCP close to Rosemary Nelson's home during the evening before her murder. As will be seen at Chapter 30 and 32 those who undertook the Murder Investigation Team (MIT) were never able to account for these sightings.

15.27 The Operations Officer for 3 R IRISH told us that when patrols went out they were authorised to set up VCPs as long as they were not located in an out-of-bounds area⁹ or contrary to police wishes. A section commander in the regiment told us that *'in a nutshell'* the checks possible on the activities of a patrol were very much reliant on the honesty of its members. He said that it would have been possible for a patrol to set up a VCP unknown to those above them, but this would not have been easy if they were accompanied by an RUC officer or an RMP NCO. It would have therefore been possible for a patrol to have set up a VCP which was not made known to anyone outside the patrol, although the longer the VCP lasted the greater the chance of it being discovered.

Intelligence briefings to patrols

15.28 It was vital that patrols had a set purpose and were well-prepared in terms of their knowledge of recent terrorist activity and the individual terrorist suspects they might expect to meet on the street. As a result, all patrols received briefings of varying complexity, depending on their task, before they commenced.

15.29 The Operations Officer for 3 R IRISH told us how each morning he, the battalion's Intelligence Officer, the Commanding Officer and the company commanders would meet for a formal briefing. If circumstances changed then the Intelligence Cell would brief the Operations Room staff as required.

⁹ An area temporarily designated out of bounds for security personnel: For further explanation regarding the operation of out of bounds areas, see Chapter 34 'Operation Fagotto'.

15.30 Patrol commanders would receive a briefing covering recent terrorist events and an assessment of future events. This would be imparted to members of a patrol, often via patrol team commanders/leaders who would in turn brief members of their team. In addition, patrols might also receive weekly or daily briefings from the Intelligence Cell. Further to this, we were told that as the Army were acting in support of the RUC, patrols would receive a police briefing at the RUC station which could differ from the Army briefing.

15.31 The intelligence briefing room at 3 R IRISH displayed maps and photographs of suspects on the walls, later replaced with slide projections. The photographs were in two categories: convicted or suspected terrorists, and individuals believed to be associates of them. All the evidence we received confirmed that no photograph of Rosemary Nelson was displayed. Briefings followed a set format, which confirmed the background to the patrol, provided any new material, briefed the patrol on any action sheets that had been received and recapped on suspect recognition.

15.32 We were told that patrols were not briefed about particular lawyers, but might be informed of their representation of suspected terrorists. It was suggested that Rosemary Nelson may have been mentioned in briefings, certainly after the two police constables were murdered in Lurgan in June 1997, but this was not in order to *'finger her out'* but rather was with reference to Colin Duffy and her likely contact with him. Similarly, another soldier recalled that she was mentioned in an Operations Room briefing prior to an occasion when Colin Duffy was released from custody in order to raise the possibility that she might drive him back to Lurgan. We note that in contrast other soldiers were of the view that there was never any mention in briefings of Rosemary Nelson's association with Colin Duffy.

The Army's intelligence role

15.33 Intelligence was gathered by the military primarily for two purposes: to support the RUC in combating terrorism and preserving national security, and to protect its own troops. At Mahon Road Barracks, 3 Brigade had its own Intelligence Unit, and 3 R IRISH its own Intelligence Cell.¹⁰

15.34 The military personnel involved in intelligence work, from whom we heard, were clear that the RUC took the lead. As shown above, several of the witnesses spoke of their liaison with RUC officers. A Colonel in headquarters responsible to the General Officer Commanding Northern Ireland (GOC) for intelligence matters described how:

'The focal point for all intelligence was the PSNI [Police Service of Northern Ireland]. They decided the intelligence requirement, the collection agencies and how to exploit it [...] the PSNI would make all the key operational decisions.'

Some were clear that the Army units *'worked for the Regional Heads of Special Branch. We made assets available to them.'* We were told that:

'Ultimately they [the special units] worked for Special Branch. They were tasked by and reported to Special Branch. Chief G2 was keen to receive their intelligence, but he didn't get it. The army worked in support of the RUC. We were assets to them. Only the crumbs from Special Branch's table came to us.'

A specialist unit from Army headquarters in Lisburn carried out covert surveillance operations on behalf of the RUC. Although it reported to the GOC, covert operations were directed by SB and coordinated by the regional Tasking and Coordination

¹⁰ For the overall structure of Army intelligence and its relation to the RUC see Appendix E.

Groups (TCGs). It was confirmed to us that *'the military did not undertake any unilateral operations'*. Tasking took place through TCG. Ownership of the product of surveillance and human intelligence resided with SB and dissemination was determined by them.

15.35 However, the Army did develop its own intelligence picture, *'primarily for situational awareness and force protection'*, and this was disseminated through the military structure.

15.36 The majority of the intelligence was gathered overtly and was formed primarily of sightings by patrols and details of vehicles and their occupants stopped at VCPs. Details were processed by battalion Intelligence Cells before being passed to the RUC and to the brigade. The Intelligence Officer for 3 R IRISH told us that every patrol which went out was given intelligence tasks, a focus on which to report back to the Intelligence Cell which then gathered and filtered the data with *'a certain amount of analysis'* performed. Interestingly, this type of data was viewed not as intelligence but as *'information, which we would then have hoped to turn into intelligence'*.

15.37 At the battalion level the Assistant Intelligence Officer for 3 R IRISH told us that the role of his team was to pass the information gathered to the brigade and the police.

15.38 The Commanding Officer of 3 R IRISH explained that his intelligence staff would work to produce a *'pattern of life picture'* in order to determine *'whether anything abnormal sprang out of the normal'*. The Intelligence Cell would also undertake projects such as over-usage of routes or identifying vulnerable points. In the main, however, the office dealt reactively with intelligence coming in.

15.39 We heard differing views as to the amount of intelligence which the Army received from the RUC. We were told that *'extensive communication'* took place between all agencies, either in person or by phone. On the other hand, an officer who worked in the Joint Support Group¹¹ was of the opinion that *'the Army had no idea at all what other agencies were doing'* and likened the situation to a one-way mirror.

15.40 The RMIO for 3 Brigade accepted that he did not receive all of SB's intelligence and did not expect to. However, he also indicated that he enjoyed a very good relationship with the Regional Head of SB *'which meant I was privy to information [which] others in my position might not have been'*. He confirmed that the quality of the relationships he formed with the Regional Head of SB and the Divisional Heads of SB influenced the level of intelligence to which he was granted access. It was observed by other witnesses that *'some RIR G2 [Intelligence Officers] were very close to their local Special Branch'*.

15.41 The Army and the RUC also had shared access to the computer database, later called MACER. Access to the database was restricted by access levels in accordance with the *'need to know'* principle and individuals' roles in the intelligence structure. This, we were told, *'allowed the RUC to control who could see the intelligence'*. An SB officer told us that *'the Army only had access to their intelligence and appropriate intelligence from the police on MACER'*.

¹¹ The unit responsible for military agent handling in Northern Ireland. We were told that this unit reported with intelligence direct to Special Branch at a Regional level. Special Branch had access to all intelligence gathered by Joint Support Group but Joint Support Group did not have access to Special Branch intelligence unless Special Branch disclosed it.

15.42 The Army also maintained a separate database (VENGEFUL) which contained sightings by military personnel and could include information gathered at VCPs, from operations and from casual sightings.

Specific Army intelligence

15.43 Nothing we have seen or heard suggests to us that a file on Rosemary Nelson was ever kept by the military. It is certainly true, however, that she appeared in Army intelligence documents.

15.44 Army intelligence reports recorded the following relating to Rosemary Nelson:

a. On 31 May 1995:

'[Redacted] (PIRA [Provisional Irish Republican Army]) and [redacted] (PIRA) sighted heading east on William St, LURGAN and entered Rosemary NELSON's solicitors office. Subsequently at 2127 hrs they left the office and headed north on North St. COMMENT: It is not known why they were visiting the solicitors office at this but [sic] Rosemary NELSON's have ben [sic] used to represent PIRA suspects in the past. COMMENT ENDS.'

b. On 2 November 1995, under the heading 'Significant Sightings (Republican)':

'02 Nov at 1017 hrs, [redacted] (PIRA) [redacted] sighted on foot, he came from North Street headed down William Street and entered Rosemary Nelsons Solicitor.

02 Nov at 1030 Hrs, [redacted] (PIRA ASSOC) [redacted] sighted on foot, he came from North Street headed down William Street and entered Rosemary Nelsons Solicitor. COMMENT: These sightings of [redacted] and [redacted] at Nelson's Solicitors are probably linked to their recent arrests at illegal PSF [Provisional Sinn Fein] protests in LURGAN. Rosemary Nelson is normally used as a solicitor by Republican suspects in LURGAN. COMMENT ENDS.'

c. On 31 January 1996, under the heading 'Significant Sightings (Republican)':

'29 Jan at 1821 Hrs, [redacted] (FAM PIRA) sighted on foot. She came from Rosemary Nelson Solicitors in William Street walked along Church Place and headed down Edward Street, LURGAN. COMMENT: This activity could be in relation to the "Free Colin Duffy" campaign. COMMENT ENDS.'

d. On 13 March 1996, under the heading 'General Review':

'Rosemary NELSON, solicitor for the convicted Colin Duffy has announced that the appeal for this trial will call on the intelligence services to give evidence to the appeal hearing, thereby exercising the law on disclosure.'

e. On 24 July 1996, under the heading 'Significant Sightings':

'23 Jul at 1445 hrs: [redacted] (PIRA) was sighted on foot coming from North Street and going to William Street, LURGAN to Rosemary NELSON solicitors. COMMENT: This activity is possibly linked to the forthcoming PSF protest, and NELSON processes all the documentation for these protests. COMMENT ENDS.'

f. On 6 April 1997, under the heading 'North Armagh PIRA':

'062015hrs Colin DUFFY (LGN [Lurgan] PIRA) was stopped as [sic] in a red Honda Civic VRM [redacted] which was being driven by Rosemary NELSON (NST) [No Subversive Trace] from LGN, on the Annesborough Rd, LGN. They

stated that they were travelling from PDN [Portadown] and going to DUFFY's home address. COMMENT: NELSON is a solicitor and when questioned by the patrol commander she said that the patrol was interrupting a legal meeting which she was having in the car with DUFFY. NELSON has represented LGN PIRA members in the past and this could have been a meeting with reference to DUFFY's conviction and release on appeal after the LYNASS [sic] murder 24/06/93. COMMENT ENDS.'

g. On 30 June 1997:

'COMMENT. Recent visits by [redacted] (LGN PIRA) and [redacted] (LGN PIRA) to Rosemary NELSON Solicitors, William Street, LGN are believed to be connected to the Colin DUFFY case. It is assessed as possible that the [redacted] and other PIRA/PSF in conjunction with Rosemary NELSON are attempting to establish witness evidence in support of DUFFY.'

The RMIO for 3 Brigade suggested that this information was reported by off-duty members of the Royal Irish Regiment to the battalion Intelligence Cell. He viewed the 'C3' grading on this particular intelligence report as indicating that not too much weight was to be attached to it. The report does show, however, that Royal Irish Regiment soldiers were aware of Rosemary Nelson's relevance. Many soldiers are likely to have been privates or young junior NCOs who may have had a Loyalist background.

h. On 9 October 1997, following the arrest of Colin Duffy in Lurgan for assault:

'During the subsequent search of Colin DUFFY, the searcher, L/Cpl [redacted] was assaulted by DUFFY in an unprovoked attack, causing him an injury to the left eye which included a cut above the eye. DUFFY, as a result was arrested by Sgt [redacted]. [...]

[Redacted] (LGN PSF) was at the scene fairly soon after and attempted to intervene in support of DUFFY. DUFFY told [redacted] to "go and get Rosemary". [...]

[Redacted] (LGN PIRA) also arrived on the scene after a short period and proceeded to shout "[nickname redacted]" at L/Cpl [the assaulted]. He also said to Colin DUFFY, "That's the one I told you about".

COMMENT: [nickname redacted] is L/Cpl [redacted]'s nickname. He and [redacted] had previously come into contact during a patrol in the Kilwilke [sic] estate, LGN.'

i. On 2 November 1997, after the Army stopped a civilian in William Street and during the altercation which followed, a shop window was broken:

'Some of those involved were also observed entering Rosemary NELSON's Solicitors office, William St LGN immediately afterwards. COMMENT: [Redacted] had previously come to notice as one of those involved in crowd disturbances and verbal abuse against military patrols in LGN. The attendance of persons involved in this incident at NELSON's solicitors strongly points to complaints being recorded by NELSON on behalf of PSF. COMMENT ENDS.'

The RMIO commented during the Inquiry's oral hearings that while this was relatively low-grade intelligence, and not of use to an intelligence officer, reporting that complaints were likely to be forthcoming after an incident '*put the system one step in front of any process that falls out of this*'.

j. On 20 February 1998:

'Cearta is a new "civil rights" group launched recently to press for wholly nationalist demands. Among those involved are known PIRA members.

Ceartha (Rights) claims partition has failed and demands Irish unity as the only guarantee of lasting peace.

The group's charter demands an end to emergency legislation, reform of the legal system, the establishment of a new police force, and [sic] end to discrimination, equality for the Irish language and culture, and the release of political prisoners.

Among Ceartha's founders are solicitors Rosemary NELSON and [redacted], and Fermanagh priest [redacted].

Ceartha means to lobby in the United States and Great Britain; the group is urging nationalists and human rights activists to sign up to its "charter for change".'

k. On 5 July 1998:

'Local talk is that Colin DUFFY has bought a house in [redacted] and that Rosemary NELSON has organised the legalities and payment, pending a compensation claim by DUFFY. The house is believed to be close to where Kevin CONWAY lived at [redacted].'

l. On 11 October 1998:

'112343hrs, Colin DUFFY (LGN PIRA) was stopped at Kinnego Embankment, LGN driving Rosemary NELSON's silver BMW. COMMENT: Rosemary NELSON is DUFFY's solicitor, the reason for him being in the Kinnego area may have been an attempt to move back to LGN from ETN [East Tyrone] or AMA [Armagh] without detection from the security Forces in a clean vehicle, however this is unconfirmed at present. COMMENT ENDS.'

The RMIO confirmed that the content of this report would have been of concern in that an individual in which they had an interest was seen driving a car which might afford him a degree of anonymity. He agreed that he would draw an inference that Rosemary Nelson had deliberately allowed Duffy to use a clean car in order to move with less note through a particular area. He suggested that it was *'quite a close relationship for a solicitor and client'*, particularly in light of the rumours of which he was aware that a personal relationship may also have existed. He could not, however, identify exactly how he came to be aware of these but thought that it may have been through general discussions or might have been inferred from military sightings of the two together (see below). He told us that, given his knowledge of the rumours and these examples of reporting, he might consider that there was something less than straightforward about her position as a solicitor and that he would *'question everything I subsequently saw in slightly more detail or with a slightly different light'*.

m. On 10 December 1998, in relation to Rosemary Nelson speaking at a meeting in the House of Commons:

'In the issue of An Phoblacht (Republican News) dated Thursday [sic] 03 Dec 98 a public meeting entitled "Making the Good Friday agreement work – policing for the future" is highlighted in the future events column. The meeting is advertised for 7.30pm on Thursday 10 Dec 98 in Committee Room 9, House of Commons, LONDON, with the speaker named as "Rosemary NELSON (Lurgan Solicitor)".'

The text also names the organisers as the Britain and Ireland Human Rights Centre, the Labour Committee on Ireland and the Connolly Association.

The above-mentioned refers to:

Rosemary NELSON, [redacted], LGN. NELSON runs a solicitors practise [sic] at 8 William Street, LGN.

COMMENT. NELSON is the main legal representative for Republicans in the LGN area, and has been prominent in past appeal cases of Colin DUFFY (LGN PIRA). She is also known to be active in anti-SF [security forces] pressure groups. COMMENT ENDS.'

15.45 We have set out the RMIO's comments given to us in his oral evidence. However, we consider that the individuals furnishing the information in the reports and other soldiers may have viewed its significance differently.

15.46 A private in 3 R IRISH explained that he formed the view that Rosemary Nelson and Colin Duffy were friends on the strength of the number of times he saw them together which he considered to be more than was required for a solicitor and client. He added that two of these sightings were at *'places where people would have been known to go for other than things in friendship'*. He clarified that it was the locations which might be considered *'compromising'* and not necessarily the situations. He confirmed that sightings of the two together did prompt gossip within the RUC and the Royal Irish Regiment, but denied that this contributed to a hardening of attitudes towards Rosemary Nelson.

Specific dealings of Army personnel with Rosemary Nelson

15.47 On 24 October 1997 a disturbance occurred in William Street close to Rosemary Nelson's office. She and a client with whom she was consulting went into the street to investigate. An altercation was taking place in which it appeared that a soldier had pushed a civilian, a man on whose behalf Rosemary Nelson had acted in the past, through a plate glass window.

15.48 Rosemary Nelson approached the soldier, saying that she had heard him threaten her client. In response it is alleged that the soldier said to her words to the effect of *'you know what we are going to do to you'* or *'you know what we've got in store for you'*. Rosemary Nelson asked if he was threatening her, to which he replied in a similar vein. The client described the scene as very tense, with Rosemary Nelson and the soldier inches apart. He added that the alleged threat was delivered *'in a quiet voice. It wasn't a rage or a shout, it was quiet.'*

15.49 In his statement to the MIT on 28 March 2000, the client also described how the soldier had abused Rosemary Nelson about her appearance and said that she was *'a Provi bastard for getting them out of prison'*. However, in his evidence to us he accepted that there were variations in his account and was unsure as to whether this additional abuse had taken place. He did maintain, however, that *'it was clear to me that she was used to that kind of abuse'*.

15.50 We heard oral evidence from the soldier who was alleged to have made these remarks to Rosemary Nelson. He maintained that, although he held firm and unsympathetic views of Rosemary Nelson, he was professional enough to detach these from his dealings with her, did not make the comments and did not threaten any person during his time in the Army.

15.51 On 7 October 1997 another of Rosemary Nelson's clients filed a complaint against a Royal Irish Regiment patrol after she was stopped at a VCP in Portadown Road in Lurgan. The client alleged that a number of members of the patrol had mentioned Rosemary Nelson's name in a derogatory manner. The incident was reported in the 23 October 1997 edition of *An Phoblact/Republican News*:

“Where’s fucking Rosemary Nelson now? [...] She’ll not fucking get you out of this.” These words were spoken by a member of the RIR as he dragged Lurgan woman [redacted] from her car late at night on 7 October.

She was driving home when she was stopped at the RIR checkpoint. “It was a frenzied attack,” she said. “One of the RIR dragged me from the car. He was screaming, he kept going on about my solicitor Rosemary Nelson.”

15.52 On 8 October 1997 officials at the Anglo-Irish Secretariat were asked by the Irish Department of Foreign Affairs (DFA) to register concerns regarding the incident:

‘We are particularly alarmed at further reports that members of the security forces in the Lurgan area have made threats about Mr. Duffy’s solicitor, Ms Rosemary Nelson. We understand that members of an RIR unit (bearing 3RIR insignia) [3rd Battalion of the Royal Irish Regiment] at a checkpoint on the Portadown Road (Lurgan) at 10.30 pm yesterday (7 October) made abusive and threatening remarks about Ms Nelson while carrying on what appears to have [been] a very aggressive interview of a [name redacted]. We understand that Ms Nelson reported this to the RUC duty officer at Lurgan and that complaints will be lodged with the ICPC.’

15.53 A note to the British Side of the Anglo-Irish Secretariat dated 9 October 1997 stated: *‘We would like to register our ongoing concern at the threats directed at Ms Nelson and would be grateful for reassurance that steps are being taken to deal with this matter, including offering some form of reassurance to Ms Nelson.’*

15.54 The Irish Government's interest in the incident was conveyed to the RUC. On 13 October 1997, an official from the British Side wrote to Command Secretariat raising the issue and asking for advice as to how to reply to the Irish Side's query.

15.55 On 14 October 1997, Rosemary Nelson wrote to the Chief Superintendent of Lurgan RUC saying:

‘I refer to the above [Royal Irish Regiment] and to my telephone conversation with the duty inspector on the evening of Tuesday, October 7.

I was contacted by a client who instructed me that during the course of a search carried out on her by a [sic] three members of the RIR, my name was mentioned on a number of occasions in derogatory terms.

You will appreciate that intimidation of defence solicitors in this fashion is most certainly not acceptable and indeed the entire incident is most disturbing.

I can confirm that I logged a complaint with the duty inspector in Lurgan RUC Station on that night.’

15.56 Although the Irish Side were informed on 13 November 1997 that the RUC had referred Rosemary Nelson's complaint to the military for investigation no records relating to any such investigation were produced to the Inquiry and we conclude that none was undertaken.

Army attitudes expressed towards Rosemary Nelson

15.57 In their evidence to the Inquiry a number of soldiers denied that Rosemary Nelson was ever discussed informally or that unpleasant remarks were made about her. However, it is clear to us that members of the Army were aware of Rosemary Nelson's position as a solicitor and of some of the clients she represented.

15.58 The Commanding Officer of 3 R IRISH said that he knew that Rosemary Nelson was a solicitor through the media and from living in the community and conversations with *'local opinion-formers'*. He was also aware of her representation of the Garvaghy Road Residents' Coalition (GRRC) and *'some high-profile local Nationalists such as Colin Duffy'*. He added that *'there would have been discussions around these topics at the time'* but could not recall any specific information about such discussions.

15.59 It has been seen that she may have been mentioned in the briefing room in the context of being Colin Duffy's solicitor.

15.60 A corporal told us that the majority of people in the battalion knew that she worked on behalf of *'I think you could say the Kilkilkie Estate'* and added that mention was made of her in *'general talk'* and while chatting with colleagues.

15.61 A private told us that a number of what he described as members of the Irish Republican Army (IRA) often made tiresome, irritating and unfounded complaints about being searched. A number of these were apparently represented by Rosemary Nelson.

15.62 It was of interest to us as to whether this awareness of Rosemary Nelson's profile and clients led to a particular perception of her among members of the security forces.

15.63 A corporal in the Royal Irish Regiment told us with reference to the Lyness case that he knew that Colin Duffy had been had been in jail and had *'got off as a result of legal loop holes'* and that Rosemary Nelson had represented him. He added: *'I think that was why a number of people might have had something against her. I think there may not have been a lot of sympathy for her as a result of what happened due to the fact that she had been representing Colin Duffy.'* He stated that he was not aware of a negative perception of Rosemary Nelson more generally, did not hear negative comments being made about her and was not aware of further negative perceptions.

15.64 Another corporal offered a not dissimilar view. He told us that although he had not heard colleagues make negative comments about Rosemary Nelson, *'that is not to say there was not a negative perception about her. Colin Duffy is not a nice person after all.'* Again, however, he could not recall specific examples.

15.65 Significantly, we also heard from a private who served for five years in the Royal Irish Regiment. Following the death of his uncle at the hands of the IRA he described honestly how he had been bitter when he joined the Army. Joining up, however, allowed him to see both sides of the divide and realise that, *'a normal Catholic person was just the same as a normal Protestant person'*.

15.66 The witness expressed to us views both on solicitors in general and Rosemary Nelson in particular which were frank and striking. He felt that lawyers acting for terrorists or suspects were *'no better than them'* and gave an example of Rosemary Nelson representing Colin Duffy and another individual for killing a friend of his when, as he put it, she had, *'got them off the charges'*.

15.67 His view was that ultimately Rosemary Nelson had paid the price for making herself *'part of the war'*. In his statement to the Inquiry he was asked about his reaction to her death and said, *'I don't think I was sad, but I wasn't happy either. I felt that it was just another one of our enemies who been taken out of the picture. It perhaps sounds wrong to say this, but that was how I felt.'* He explained that it had nothing to do with her being a Catholic and that it was a matter of *'an eye for an eye and a tooth for a tooth'*, she having brought it on her own head, having *'made her choices'*.

15.68 In his statement he also said that: *'I have been asked what the reaction [to her death] was in the barracks. I think that most people felt the same way as me, although I cannot speak for all of the barracks. We were involved in a war and the ultimate price to pay for that was death.'* However, when asked about this view during his oral evidence he told us that this had been an incorrect assumption on his part. The sentence as expressed was wrong and was an assumption without foundation. Although he could not recollect any comments by his fellow soldiers about her, he did remember in his statement, *'the army saying [...] things like "there is Rosie Nelson"'* and that *'everyone wanted to stop her and we used to look out for her'*. In his evidence he qualified this by saying they had not so much been interested in her, but more in her associates or who she might have in the car with her.

15.69 This witness also told us of an occasion in Lurgan police station, close to the time he had first joined the Army when he walked past Rosemary Nelson on the back stairs. He noticed her facial disfigurement and, although he denied reacting to it, she apparently made a complaint against him which led to him being informally interviewed shortly afterwards by a Criminal Investigation Department (CID) officer. He heard nothing further about it after the interview and the incident had not, he said, changed his view of her one way or another.

15.70 Despite some lack of clarity, the soldier gave evidence that in the course of this interview the CID officer told him that the disfigurement had been caused by Rosemary Nelson throwing a petrol bomb.

15.71 He also related an occasion not long afterwards when he had been in the back of a Land Rover and a uniformed police officer had told him that Rosemary Nelson's facial disfigurement had been caused by, *'instead of dunking for apples in a bucket of water, she done it in a chip pan'*.

15.72 While these comments primarily reflect possible RUC attitudes towards Rosemary Nelson, the fact that the soldier continued to believe that her facial marking had been caused by a petrol bomb until the process of giving evidence to this Inquiry perhaps indicates a certain receptiveness in at least one member of the military to such falsities.

15.73 It was stressed by the Ministry of Defence (MoD) that this private was atypical in the evidence that he gave and the opinions which he expressed. We acknowledge that the evidence we heard was limited. However, we would be surprised if there were not other soldiers in the Royal Irish Regiment who shared similar experiences and backgrounds. We would also be surprised if ordinary members of the Royal Irish Regiment did not, on occasion, express negative views or make abusive comments about Rosemary Nelson in conversation.

Conclusion

15.74 We are satisfied that the Army did not keep an intelligence file on Rosemary Nelson. The references to her in Army intelligence reports were almost always

incidental to observations on Colin Duffy, members of PIRA and their associates by members of the Army. The Army did not commission intelligence-gathering. Its intelligence activity was either in support of the RUC or to protect its own troops.

15.75 As this chapter has shown, however, members of the Army did have some interactions with Rosemary Nelson. They stopped her car and spoke to her on a number of occasions; members of a patrol had a confrontation with one of her clients and then with her outside her office; another patrol stopped one of her friends and allegedly made derogatory remarks about Rosemary Nelson; off-duty members of the Royal Irish Regiment reported visits by Lurgan PIRA members to her office and speculated as to the purpose of those visits; another report originating from 3 R IRISH spoke of *local talk* that Rosemary Nelson had organised the legalities and payment for a house for Colin Duffy; and there were a number of military sightings of Rosemary Nelson with Colin Duffy, which prompted gossip within the RUC and the Royal Irish Regiment. The questions for us are: how widespread was the gossip; how far did it lead to a negative perception of Rosemary Nelson; and how far were the gossip and any negative perception shared with Loyalist terrorists?

15.76 The soldiers in 3 R IRISH were in a different position from members of the RUC SB. SB officers received much of their information about Rosemary Nelson from covert sources and, as they told us, were very conscious of the need to protect their sources (although, as we record in Chapters 11 and 13, we believe that some of that intelligence did leak out). Soldiers spotting Rosemary Nelson in the normal course of their work or off duty would have felt no such constraints. It is clear that they did talk to each other and to their colleagues in the RUC, and we think that in all probability they would have talked to their families and friends, some of whom were Loyalists.

15.77 Although most of the Army witnesses denied any negative feelings towards Rosemary Nelson, some were prepared to admit that other soldiers might have felt negatively about her. As we have described, one former private spoke very frankly about his own feelings.

15.78 We believe that within the Army there were both gossip and negative views about Rosemary Nelson and we think that it is likely that, either directly or indirectly, the gossip and negative views reached the ears of Loyalist terrorists and that they would have coloured or reinforced their negative or malevolent attitudes towards her, legitimising her in their eyes as a target for an act of terrorism.

16 The Role of Non-Governmental Organisations

16.1 Through her representation of Colin Duffy for the murder of John Lyness and his subsequent appeal against conviction, Rosemary Nelson came into contact with representatives of a number of human rights organisations. Each of these groups was instrumental, in varying degrees, in drawing the attention of the UK Government and the Royal Ulster Constabulary (RUC) to the abusive and threatening comments allegedly made by police officers about the solicitor to her clients. They also raised questions regarding Rosemary Nelson's safety.

British Irish Rights Watch

16.2 The Director of British Irish Rights Watch (BIRW), Jane Winter, told us that she met Rosemary Nelson through her interest in the case of Colin Duffy. On 3 October 1996, when they met shortly after the conclusion of Colin Duffy's successful appeal, Rosemary Nelson told her of the growing difficulties she had experienced with the RUC. Jane Winter made a note of their conversation as follows:

'She [i.e. Rosemary Nelson] does not have many clients arrested under the PTA,¹ and when she does they are usually taken to Gough Barracks.

On those occasions, she comes in for the usual kinds of abuse and threats. RUC officers will say things like "You don't want her, she's a provie." One client was told, "We'll tell Billy Wright your solicitor's address. We'll bring him to the house." When she was visiting a client at the Maze prison recently, a prison officer announced loudly, "She's for [name of prisoner]. She was organising the protest at the Garvaghy Road" – she has in fact given legal advice to the Garvaghy Road residents concerning loyalists marches.

She resents these slurs on her professionalism as a lawyer. She found what happened to Patrick Finucane horrifying, and it has given her pause to think especially as she is the mother of three young children, although she has concluded that she cannot allow this type of threatening abuse to prevent her from doing her job properly. She recognises that other lawyers have refused to take on contentious work. She says that she was feeling quite worried about her own safety just before the ceasefires.'

16.3 Jane Winter wrote to Rosemary Nelson on 7 October 1996. In her letter she drew attention to the work of BIRW in respect of attempted intimidation of defence lawyers in Northern Ireland through their engagement with the UN Special Rapporteur on the Independence of Judges and Lawyers and with the Lawyers Committee for Human Rights (LCHR) and suggested to Rosemary Nelson that she should *'consider making a note of any future abuse you may encounter, and perhaps letting us have a copy in strictest confidence. We would not make any use of such material without first obtaining your express permission, and would only ever do so anonymously even then.'*

16.4 The behaviour of police officers towards defence lawyers in Northern Ireland was a matter of particular interest to BIRW. It had published a report on the issue in 1996 describing 191 instances in which abusive or threatening comments were alleged to have been made between September 1992 and November 1995. In

¹The Prevention of Terrorism (Temporary Provisions) Act 1989 was the Act in force at that time.

December 1996 BIRW submitted a further report on the subject to the UN Special Rapporteur. A copy was sent to the RUC. The response from the RUC Command Secretariat dated 19 March 1997 was as follows:

'The attached papers have been carefully examined and it has been concluded that they contain a catalogue of unsubstantiated allegations which are deemed to be fact. In the absence of any detail of those involved it is not possible to make any other comment.'

'You will be aware that all complaints against the police are investigated thoroughly. We would urge that you should encourage any person, whether Solicitor or otherwise, who feels that they have been improperly treated by the police to make a formal complaint.'

16.5 Jane Winter was contacted by Rosemary Nelson again on 18 February 1997 by telephone. She made a note of their conversation:

'Lurgan has been under siege for the past week, with 500 troops searching a single estate. Rosemary Nelson has had six clients in Gough Barracks last week.'

'Her clients have been reporting an escalating amount of abuse and threats made against her by RUC officers at Gough. Recently, these have included threats to get her shot. They also include sexual innuendo regarding supposed activity between herself and her clients during consultations at Gough, which she finds particularly disgusting.'

'She will be taking statements from her clients about all this. Some dozen clients have reported such remarks to her recently.'

16.6 Jane Winter told us that Rosemary Nelson was *'extremely irritated and insulted, because, as she saw it, she was simply doing her job and she could not understand how she had found herself the subject of such abusive comments.'* Rosemary Nelson had referred to the sexual innuendo in the comments that were being made to her clients and *'she really found those very personally upsetting because they were so wide of the mark and so demeaning of her as a professional'*. Jane Winter described Rosemary Nelson's reaction as one of *'incredulity'* as she *'couldn't think what she had done to provoke these kind of remarks. She was just going about doing her job.'*

16.7 Jane Winter wrote a detailed and supportive letter to Rosemary Nelson that same day. She made a number of points. First she noted that the intention of the threats was to *'demoralise and if possible frighten you'*. She went on to stress that Rosemary Nelson was not alone in receiving such threats and abuse: *'Every single defence lawyer I have ever spoken to who has had clients in any of the holding centres has come in for this sort of abuse and threats. [...] You are not being singled out.'* Jane Winter also expressed the view that it was the RUC officers not Loyalist paramilitaries that were the problem and that *'Generally speaking, so long as the loyalist ceasefire holds, I do not think lawyers are at risk.'*²

16.8 Jane Winter advised Rosemary Nelson to *'record each and every instance of abuse'*, *'make a formal complaint to the RUC every time it happens'*, and to *'keep copies of all instructions from clients and all letters of complaint, together with any replies you get, in a separate file'*. She also suggested that any letters of complaint should be copied to BIRW and Amnesty International and marked as such.

²Despite this, it should be noted that the solicitor Oliver Kelly was informed that he was being targeted by Loyalist paramilitaries who had been told by the security forces that he was a member of the Irish Republican Army (IRA). His concern was sufficient to cause him to move, both house and office, but in his evidence he said: *'It didn't occur to me to apply to the RUC for protection. I wouldn't have wanted them to know about the detail of my personal security. They were not to be trusted.'* Other lawyers who told us they took safety precautions, including checking under cars and having home safety devices installed, were Frank McManus, Patrick Fahy, Barra McGrory and Ciaran Steele.

16.9 On 5 March 1997 Jane Winter wrote to Dato' Param Kumaraswamy, the UN Special Rapporteur, reporting what she had been told by Rosemary Nelson. She wrote, *'It saddens me to report that we have recently received a complaint from a female solicitor in Northern Ireland concerning very serious death threats and other abuse, some of it sexual in content, levelled at her by RUC officers via the medium of her clients. So serious were these threats that I made a special journey to visit her in order to offer my advice and support.'* The UN Special Rapporteur had written to the UK Government on 21 February 1997 expressing his wish to undertake a fact-finding mission to the UK, including Northern Ireland, and in his response to Jane Winter he asked for further details *'to enable me to consider intervening'*.

16.10 Jane Winter replied the same day saying RUC detectives at Gough Barracks had made *'death threats'* against the solicitor which had become *'increasingly more violent'*. Without naming Rosemary Nelson, she referred to there being a link between the threats and the solicitor's involvement in the Lyness and Sam Marshall cases, which were said to involve *'indications of state collusion'*. She also informed the UN Special Rapporteur that *'Paul Mageean at the Committee on the Administration of Justice has interviewed some of the solicitor's clients and taken statements from them, and is in the process of gathering further evidence. [...] He will contact you direct to put you more firmly in the picture.'*

16.11 Jane Winter wrote again to the UN Special Rapporteur on 10 July 1997 enclosing two recent reports she had written concerning Rosemary Nelson. One of these concerned the alleged assault of Rosemary Nelson on the Garvaghy Road on 6 July 1997. The other described the arrest and detention of Colin Duffy for the murders of Constables Johnston and Graham and detailed the allegation that an officer was alleged to have said to him, *'You murdered these people. I'm sure your mother and your wife are proud of you and I'm sure Rosemary is very proud of you.'* The report also noted that *'Since Colin Duffy was charged, Rosemary Nelson has appeared on television and given newspaper interviews relaying her client's affirmation of his innocence. As a result telephoned death threats against her have been delivered to her office.'*

16.12 Jane Winter had written to Mo Mowlam, the Secretary of State for Northern Ireland (SOSNI), on 3 July 1997 enclosing a copy of her report concerning Colin Duffy's arrest and detention which had included reference to these comments having been made. On 14 July 1997 Mo Mowlam's Private Secretary wrote to Jane Winter regarding this letter. She was advised that the letter and attachments had been forwarded to the Chief Constable of the RUC, Sir Ronnie Flanagan. The reference to Rosemary Nelson having received death threats appears to have escaped the attention of both the Northern Ireland Office (NIO) and the RUC as no action was taken by either in respect of it.

16.13 In a further letter to Mo Mowlam dated 10 July 1997 Jane Winter wrote:

'Ms Nelson is the unwilling possessor of a high profile because of the work that she does and the cases that she has undertaken. Like many other defence lawyers in Northern Ireland, working on all sides of the community, she lives with the reality, made all the more stark by the murder of Patrick Finucane, that her daily work makes her vulnerable to unwelcome attention from paramilitaries. Nevertheless, she courageously and professionally carries on representing the interests of all her clients, whatever their background. It is intolerable that RUC officers should feel free to insult her and, worse still, assault her as she goes about her work.'

I hope that you will respond to this letter by ordering an urgent inquiry into these allegations, designed to discover and discipline those RUC officers responsible. I also hope that you will give a personal guarantee that Ms Nelson will suffer no further

abuse of harm, and that you will take steps to see that such a guarantee is actually delivered.'

16.14 In Jane Winter's report concerning Colin Duffy, the reference to Rosemary Nelson having received death threats appeared late in the text and was not central to the report's theme, but in this further letter the issue of her vulnerability was the key point. However, we cannot be sure that it was ever seen by Mo Mowlam, or anyone in her office. Jane Winter received no acknowledgement or reply and there is no record of a copy having been forwarded to the RUC as one would have expected if the letter had found its way into the machinery of the NIO. No reference was made to it in the letter from Mo Mowlam's Private Secretary dated 14 July 1997 and no copy of it was included among the many thousands of documents disclosed to the Inquiry by the NIO. If this letter had been seen by Mo Mowlam we are confident that she would have required some action to be taken in respect of it. We are equally confident therefore that it did not reach her attention: we cannot even be sure that it was received by the NIO.

16.15 On 28 October 1997 Jane Winter submitted a further BIRW report regarding the intimidation of defence lawyers to the UN Special Rapporteur. She sent copies to Mo Mowlam and to the Chief Constable of the RUC. In her response of 20 November 1997 Mo Mowlam wrote: *'I am very concerned by the allegations you outline and I can assure you that where they are substantiated they will be dealt with through appropriate mechanisms.'*

16.16 This was very much in contrast to the RUC response to the same document. In a letter dated 21 November 1997, the Superintendent in Command Secretariat wrote: *'The content and tenor of this report are consistent with those of your previous report, published in December 1996. I would refer you to my response to that document dated 19 March 1997. The comments therein remain valid.'*

16.17 On 27 November 1997, Jane Winter sent Mo Mowlam a copy of a statement taken from one of Rosemary Nelson's clients which included the allegation that RUC officers had said to him that Rosemary Nelson was *'a terrorist with a deformed face'* and *'had a face on her like a man's ball bag'*. In her oral evidence Jane Winter told us that the contents of the statement *'seemed to me a very immediate and shocking example of the sorts of abuse that some solicitors were being subjected to and I think I hoped that it would be a bit of a wake-up call to her [i.e. Mo Mowlam] that our reports were not just routine, they were talking about a real issue, that had a real effect on people.'*

16.18 The accompanying letter referred in clear terms to the inability of the police complaints system to deal with the problem:

'We are sorry to see that you have echoed the previous administration's stance of only addressing these allegations where there [sic] are substantiated. While on the face of it that sounds like a perfectly reasonable approach, as we have explained at length in correspondence with the Northern Ireland Office in the past, it is very difficult to substantiate such allegations precisely because of the circumstances in which they arise. Clients inform lawyers of abusive remarks made about them by RUC officers during interviews from which the lawyers are excluded and where there are usually at least two police officers present to contradict anything the client may say. As the Special Rapporteur pointed out during the press conference at the end of his recent visit to the UK, the authorities need to take more notice of the persistent pattern of complaints from independent NGOs [non-governmental organisations] – including Amnesty International, the Lawyers Committee for Human Rights, and Human Rights Watch/Helsinki – and to take steps to remove the conditions that make such complaints possible.'

16.19 The reply, dated 18 December 1997 from Adam Ingram, the Minister of State responsible for security in Northern Ireland, was as follows:

'You expressed sorrow at the view taken by the Government on unsubstantiated allegations against members of the RUC during interviews at the Holding Centres. To a certain extent you seem to misinterpret the point about allegations not being substantiated. While allegations of misconduct and abusive remarks are made to NGOs such as you they tend not to be made to the proper authorities who could investigate them. If these were made to the Police Complaints Authority they could be investigated but if they are made only to the press and NGOs there is very little the Government or the investigating authorities can do.'

'The statement attached to your letter alleges entirely unacceptable conduct. It should be passed to the proper authorities so that it can be investigated and appropriate action can be taken.'

16.20 Jane Winter wrote to Adam Ingram on 22 January 1998. She enclosed two further statements from clients of Rosemary Nelson detailing comments made by police officers and advised the Minister that all three had been sent to the RUC in November 1997. She also raised the issue of Rosemary Nelson's personal safety. She wrote:

'With the situation in Northern Ireland as grave as it is at the moment, we are seriously concerned for Ms Nelson's safety. I fear that in asking you to pursue her complaints more rigorously we may be drawing yet more unwelcome attention to her. I hope that you will acknowledge that there is a genuine cause for concern here and you will make it absolutely clear to the RUC that further abuse of Ms Nelson will not be tolerated.'

16.21 Adam Ingram did not reply to this letter until 5 March 1998. His letter confirmed that the three statements were being considered 'as evidence towards an ongoing investigation into complaints which she [i.e. Rosemary Nelson] has made against the police'. The letter continued:

'I want to deal with two other points you make in your letter. The first is the sensitivity of the case. The first thing I would say is that intimidation of anyone, but perhaps particularly a solicitor, in the way alleged, is an extremely serious matter. The police are aware of this and of the concerns expressed about Ms Nelson's safety.'

The second point I would like to make is about the police complaints system itself. I readily acknowledge, as indeed does the Chairman of the ICPC [Independent Commission for Police Complaints], that the current system is not perfect and does not inspire confidence. That is why we are seeking to introduce, through the Police Bill which is currently in Parliament, a new complaints regime. The proposal for a new police ombudsman which is built on recommendations by Dr Maurice Hayes has been welcomed by virtually everyone.'

For the time being, however, we must make the most of the system we have. We can only do this if complainants use the system in place. I hope and believe Rosemary Nelson has recognised this.'

16.22 Jane Winter wrote again to the Secretary of State on 10 March 1998. The letter dealt mainly with comments allegedly made by the Chief Constable to the UN Special Rapporteur in a meeting which occurred in the course of his visit to Northern Ireland in October 1997 (see Chapter 19.23). But it also included a reference to a new incident involving alleged abuse of Rosemary Nelson by RUC officers. The letter stated:

'As recently as 27th February she [i.e. Rosemary Nelson] again complained to us about comments made to a client by an RUC officer who alleged that she had concocted an alibi statement for a client on the say-so of the IRA. Her client also reported that after he had complained about these comments an RUC officer referred to her as 'half-face' and boasted that the matters her client had complained of had been going on for 30 years and were not about to change.'

16.23 Jane Winter proposed in her letter that the following should happen:

'It is high time that the Chief Constable issued clear instructions to all his officers to stop making derogatory remarks about any lawyers and told them in no uncertain terms that any further reports will lead to disciplinary action. If he cannot be made to appreciate that it is fundamentally wrong to confuse lawyers with their client's alleged acts or affiliations, then he should resign.'

16.24 The intervention of BIRW on Rosemary Nelson's behalf was significant. It not only served to interest the UN Special Rapporteur in Rosemary Nelson's case (which as we shall see below was in itself a significant factor in alerting the UK Government to her dilemma). It succeeded also in bringing Rosemary Nelson's case directly to the attention of the Secretary of State and the Security Minister. Thus Ministers were made aware of allegations of serious police misbehaviour and of the inadequacy of the mechanism for dealing with it.

16.25 On 5 November 1998 Jane Winter submitted BIRW's ninth report on intimidation of defence lawyers, entitled 'Mistaken Identity: Attempted Intimidation of Defence Lawyers in Northern Ireland, The Murder of Patrick Finucane, and Other Issues' to the UN Special Rapporteur. She also sent copies of the report to the Secretary of State, the Chief Constable, the Police Authority of Northern Ireland (PANI) and the ICPC.

16.26 This report made specific reference to Rosemary Nelson being '*subjected to a campaign of death threats and vile abuse, some of it sexual in character, by RUC officers*'. It also quoted from the evidence given by Rosemary Nelson to the US House of Representatives sub-committee on International Operations and Human Rights (see Chapter 27.11 to 27.14) in which she referred to having received '*threatening telephone calls and letters*'. If these references were noticed by the RUC they were not followed up. On 11 November 1998 Sir Ronnie Flanagan wrote to Jane Winter in the following terms:

'I have received the documents forwarded with your letter of 5 November 1998.

I suppose by now I should really have learned to expect, and not be surprised by, the total absence of balance in reports produced by your organisation. This latest report continues your now well established practice in that regard.'

Human Rights Watch/Helsinki

16.27 In November 1996 Rosemary Nelson had met Julia Hall, a representative of Human Rights Watch/Helsinki. Julia Hall told us that it was when speaking to Colin Duffy that she first became aware that police officers had made personal and insulting remarks to him about Rosemary Nelson. In March 1997, having discussed the issue with colleagues, including Jane Winter of BIRW, she contacted Rosemary Nelson in order to record details of the comments by which time a number of other individuals represented by Rosemary Nelson had made similar allegations. As a consequence, in May 1997 Human Rights Watch/Helsinki published a report entitled 'To Serve Without Favor: Policing, Human Rights and Accountability in

Northern Ireland'. It included a detailed discussion of the Sam Marshall case and the prosecution of Colin Duffy for the murder of John Lyness. A further section was devoted to Rosemary Nelson and the abuse that was directed towards her through clients held at Gough Barracks in February 1997 including the allegation that an officer had said that Rosemary Nelson would die.³

16.28 Julia Hall described the publication of 'To Serve Without Favor' as follows:

'I travelled to Northern Ireland with [redacted], who is the Executive Director of Human Rights Watch, to release the report at the Europa Hotel. The report was distributed widely to the media. It was sent to every government actor that we had interviewed who would have an interest in this, including the Chief Constable of the RUC, Ronnie Flanagan, to NGOs, to the relatives of any of the people that we referenced in the report. It was broadly, broadly distributed, hundreds of copies. [...] The entire human rights community in Northern Ireland and various and sundry others did support the launch of this report and I would have assumed that Rosemary would have been one of those persons.'

16.29 The report was released at a press conference which received coverage in the local media. Newspapers published the official RUC response in full as follows:

*'This is a lengthy and detailed document which the RUC will need time to study in depth. However, our initial response is that several of the report's recommendations fail to address the practical alternatives and displays a degree of naivety of the very real difficulties in policing a deeply divided society. At the authors' request they were given considerable high level access and co-operation. It is a matter of great sadness, if not actual concern, that the evidence they were given had not in any way influenced the accuracy or balance of this report.'*⁴

16.30 The report was an influential document. It was quoted in many subsequent publications and was referred to during later proceedings before the US House of Representatives sub-committee on International Operations and Human Rights. The full text of the section dealing with Rosemary Nelson is as follows:

'The Case of Rosemary Nelson

Rosemary Nelson's representation of Colin Duffy resulted in a pattern of intimidation against both her and her clients in the aftermath of Duffy's acquittal. The intimidation of defense lawyers by the RUC has been well-documented, but the nature of the threats recently leveled against Rosemary Nelson, especially in light of Colin Duffy's acquittal, have made her fear that some sort of reprisal is imminent. Rosemary Nelson reported that over a three to four week period in early 1997, twelve of her clients who had been arrested came out of detention at Gough Barracks in Armagh saying that RUC officers had threatened that she was going to be killed:

When they [the clients] requested me, immediately things were said about me, "she's a terrorist, that makes you a terrorist." RUC detectives were making these statements. Any time that I arrived down, any time the clients were told I was there, they would say, "she's an IRA woman, she's going to be shot" or "she's going to be taken out soon." They also said that I was down there supplying sex to my clients or I must be good in bed and that is why they were requesting me. It's so demeaning, it's incredible. It's difficult to face a client when they're making comments like that. You can usually tolerate it, but it got too heavy. There's one particular RUC officer there who was involved with

³This report also commented, for example, on such iniquities as expulsions and punishment beatings carried out by paramilitary organisations.

⁴See, for example, *The Irish News*, 29 May 1997

the Duffy case in relation to the prosecution and he detests me. He's one of the officers making these threats.

Two of Rosemary Nelson's clients offered written accounts of the threats leveled against them, Colin Duffy, and Rosemary Nelson:

Client #1: They asked, "What's Rosemary telling you?" . . . They said I got the wrong advice—look at how many people she put away. They said she was the one who touted and I'm going to be shot. They put my family under threat, they said, "we'll shoot all of you." They went out of the room and came back in and said, "he's hiding something, we need to get it out of him, the fine bastard. You're dead. Tell Rosemary she's going to die, too." They threatened to pass my photo and details to loyalists.

Client #2: They said, "You're a target, your family's a target. The last person I said that to is in a wooden box." . . . They said, "You're number five down in the estate. Colin Duffy's number one." They . . . said they would get Colin Duffy. They said they would do whatever it took to get rid of "you Provo bastards." They said they would give details to loyalists. They said [Rosemary] was a friend of the Provos and of Colin Duffy's. They said, "she's not that good, she won't get you off."

Rosemary Nelson has lodged a complaint with the RUC concerning the death threats and the inappropriate sexual innuendos made against her.

Despite well-documented claims of threats and harassment of defense lawyers, neither the Law Society of Northern Ireland nor the Bar Council of Northern Ireland have publicly campaigned against lawyer intimidation. Michael Davey, secretary of the Law Society, the professional association of solicitors, stated that the society is against lawyer intimidation, "but there has been no request for the Law Society to take any action with respect to it." Davey added that intimidation is used as an interrogation tool by police forces all over the world. Richard Montieth, chairperson of the Law Society's Human Rights Committee, told Human Rights Watch/Helsinki that "intimidation happens to Protestant solicitors as well as Catholic solicitors. Any defense lawyer is liable to opprobrious comments." Eugene Grant, chairman of the Bar Council of Northern Ireland, which represents barristers, told us that while "solicitors are under attack, . . . they withstand the vilification. Solicitors are extremely strong in dealing with intimidation. They get on with it. The intimidation of solicitors has no great effect on the justice system; clients don't lose any confidence."

While it is true that criminal defense lawyers worldwide are subject to contemptuous responses from law enforcement officials, death threats against lawyers in Northern Ireland — particularly since the murder of Patrick Finucane in 1989 — raise the stakes significantly for those lawyers under threat. By casting the intimidation of defense lawyers merely as an occupational hazard, the Law Society and Bar Council fail in their responsibility to assist members of the legal profession to counsel their clients without undue interference from state authorities.

Human Rights Watch/Helsinki calls on the RUC to investigate adequately Rosemary Nelson's claims of lawyer intimidation. We also urge the government of the United Kingdom to take measures to ensure the independence of lawyers so that they can carry out their duties without undue interference from law enforcement officials. Furthermore, we encourage the Bar Council and Law Society of Northern Ireland to advocate on behalf of and support efforts to change the current ethos of threat and degradation that characterizes the practice of criminal defense work in Northern Ireland.'

Lawyers Alliance for Justice in Ireland

16.31 We have referred to the interest shown by some members of this group of North American lawyers at Chapter 4.11 to 4.13 of this Report. There we describe how one member of the group, John Foley, had visited Northern Ireland on a number of occasions, as a guest of the Nelson family, and assisted Rosemary Nelson with Colin Duffy's appeal. He raised the interest of other members of the group in Colin Duffy's case. As a result, Rosemary Nelson was introduced to the founder and Chairman of Lawyers Alliance for Justice in Ireland (LAJI), Edmund Lynch, in November 1996.

16.32 In March 1997 Rosemary Nelson told Edmund Lynch about the spate of remarks made by police officers to clients held at Gough Barracks in February 1997. He wrote to Sir Louis Blom-Cooper QC, the Independent Commissioner for the Holding Centres, on 13 March. His letter read as follows:

During a recent visit to Ireland, I received some very disturbing information upon which your assistance is required.

A very effective solicitor, Ms. Rosemary Nelson, has been subject to death threats emanating from an RUC detective stationed at Gough Interrogation Centre.

These threats have been communicated to Ms. Nelson through several clients during the course of their interrogation.

This information is communicated to you in the strictest confidence.

Initially, Ms. Nelson considered the threats to be attempts at intimidation for her work on behalf of various clients, including Colin Duffy of Lurgan. She did not believe they would be acted upon. However, the threats have become more insistent and ominous of late.

Would you kindly turn this information over to the Attorney General's office for an appropriate criminal investigation. Please do not rely upon the RUC to investigate one of its own members.

Witnesses will come forward and testify under oath provided they have some assurance of protection from reprisal.

I would appreciate hearing from you at your earliest convenience as to the identity of the individual in the Attorney General's office to whom evidence may be submitted.

Sadly, there seems to be a repeat pattern of the events which led to the killing of solicitor Patrick Finucane in 1989.'

In Chapter 17 we describe how this letter was passed to the RUC with the result that a formal complaints investigation was undertaken.

16.33 Edmund Lynch also caused a letter drafted in similar terms to that he had sent to Sir Louis Blom-Cooper to be sent by US Senator Robert Torricelli of New Jersey to the UK's Ambassador in Washington DC. The letter was forwarded to the NIO and thus in April 1997 officials were alerted to the fact that allegations had been made that police officers had behaved in a questionable manner towards Rosemary Nelson. We consider the letter from Senator Torricelli and whether the NIO response was adequate in Chapter 18.

16.34 On 17 July 1997 Edmund Lynch wrote to Jack Straw⁵ as follows:

I write to you concerning a matter of imminent concern.

Mrs. Rosemary Nelson, a distinguished and courageous solicitor from Lurgan, Northern Ireland, reports receipt of threats against her personal safety emanating from the Royal Ulster Constabulary.

It is my understanding that this force is under your direct jurisdiction.

I enclose copies of correspondence which document the situation.

Please do not refer this matter to the RUC for investigation since they are incapable and/or unwilling to conduct a thorough and impartial review of the conduct of members of their own organization.

The Independent Commission for Police Complaints for Northern Ireland is restricted in that it must rely upon investigation conducted by the RUC.

Certainly you have the authority, as the person responsible for the security of all citizens of the United Kingdom, to take prompt action to get to the bottom of this matter. If you do not, the miscreants within the RUC will be emboldened to carry out their threats. If these threats have been perpetrated by a few "rotten apples," then they should be removed from the barrel before they spoil the good apples remaining therein.

If the situation is more extreme, as some suggest, and the RUC no longer is capable of serving as a responsible police force, more radical surgery is required.

My immediate concern is the safety of Mrs Nelson.'

16.35 The NIO Police Division's letter to LAJI, dated 9 September 1997 acknowledged that *'the allegations about harassment, threats and intimidation of Mrs Nelson are extremely serious ones'*. It was pointed out, however, that the complaint investigation into the allegations was being frustrated by Rosemary Nelson's failure to cooperate and therefore the investigation *'is likely to be dispensed with'*. The letter highlights the efforts by the RUC to engage with Rosemary Nelson, the role of the ICPC, and notes that a new complaints system would be introduced in the future. The letter concludes by stating, *'I am afraid, however, that if she is not prepared to cooperate with the investigation then there is little else that the police can do to ensure that they get to the truth of the matter.'*⁶

The LAJI delegation to Northern Ireland

16.36 In February 1998 a LAJI delegation, mainly of lawyers, travelled to Northern Ireland. A group of delegates met officials from the NIO on 18 February 1998 and Sir Ronnie Flanagan on 19 February 1998. We discuss the LAJI delegation meetings in Chapter 20.

Amnesty International ('Amnesty')

16.37 Amnesty wrote to both Mo Mowlam and in almost identical terms to the Director of Public Prosecutions for Northern Ireland (DPPNI) on 21 August 1997.

⁵The Home Secretary May 1997 to June 2001

⁶The issue was dealt with in similar terms in the reply sent by the NIO to Jean Forest of US Voice for Human Rights in Northern Ireland (previously Voice of the Innocent, USA), who had alluded to threats having been made to Rosemary Nelson in her letters to Mo Mowlam and Jack Straw of 7 and 10 July 1997: see Chapter 4.96.

The letters were principally concerned with aspects of the interrogation, charging and detention of Colin Duffy following his arrest for the murders of Constables Johnston and Graham in June 1997 but they also referred to the allegation that during the questioning of Colin Duffy an officer had made offensive remarks about Rosemary Nelson and to the earlier abusive and threatening remarks made about her to other clients. The parts of the letter to the Secretary of State dealing with these points read as follows:

‘Amnesty International is also deeply concerned about reports that, during the course of interviews on the night of 24 June 1997 which focused on the murders of Constable Graham and reserve Constable Johnston, a member of the RUC made disparaging remarks about Colin Duffy’s Solicitor. Specifically, reports indicate that a Detective Constable of the RUC remarked that Rosemary Nelson would be proud of Colin Duffy’s involvement in these murders. We would be grateful if you would inform us of what measures have been and are being taken to investigate complaints made by both Colin Duffy and his Solicitor about this incident.

[...] As you may be aware, since Colin Duffy’s acquittal in July 1996, Rosemary Nelson has been informed by other clients that while detained under emergency legislation and questioned in Gough Barracks, they heard police refer to her in derogatory terms, accuse her of holding republican political sympathies and utter death threats against her. The organization considers that such comments against Rosemary Nelson and other defence counsel made by members of the police violate international standards which specifically prohibit this type of conduct.’

16.38 The letter drew attention to the UK’s international commitments regarding the role and security of lawyers:

‘Principle 18 of the Basic Principles on the Role of Lawyers provides “[l]awyers shall not be identified with their clients or their client’s [sic] causes as a result of discharging their functions”. Principles 16 and 17 place a duty on governments to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference and to adequately safeguard the security of lawyers who have been threatened as a result of discharging their functions. We request that you inform us of whether the alleged threats have been investigated and of the outcome of such investigations. We also request that you provide us with information about the measures being taken to inform all members of the RUC and others that come in contact with detainees that disparaging comments about a detainee’s lawyer are forbidden and to ensure that such incidents do not happen in the future.’

16.39 Significantly, the letter also referred to the fact that Rosemary Nelson had received other death threats:

‘Amnesty International is also disturbed to learn about reports that Rosemary Nelson has received death threats, relating to her current representation of Colin Duffy. The organization requests that you provide us with information about what measures are being taken to protect Rosemary Nelson.’

16.40 The NIO wrote to Command Secretariat of the RUC on 1 September 1997. The letter asked specifically for ‘a line on the comment that officers who come in contact with detainees should be told that disparaging comments about a detainee’s lawyer are forbidden’.

16.41 The response, written by the Superintendent on behalf of Sir Ronnie Flanagan, was as follows:

'The lines used viz "disparaging comments about a detainee's lawyer are forbidden and to ensure that such incidents do not happen in the future" reveal an assumption of guilt. This is in stark contrast to the calls for justice and fairness so frequently voiced by Amnesty International.

Police behaviour is guided by the RUC's Professional Policing Ethics and Disciplinary Regulations. Members who engage in any activity which contravenes either will be subjected to the full rigours of the disciplinary regulations.'

16.42 In other words, unless and until allegations of misconduct by police officers were proved beyond reasonable doubt, they were considered unfounded and no action would be taken by RUC management to ensure that any such misconduct was not repeated.

16.43 At the NIO, the Private Secretary to Adam Ingram replied to the Amnesty letter on 18 September 1997. The reply wrongly stated that it was likely that the complaint would be dispensed with because Rosemary Nelson had failed to attend for an interview. In fact she had been interviewed in respect of the complaint at Craigavon police station on 16 September 1997. It did not address the issue of offering protection to Rosemary Nelson. Nor did the response dated 26 September 1997 from Sir Ronnie Flanagan's office. It simply stated that as investigations were ongoing it would be inappropriate to comment on the matters raised. It did not address the question of investigating the death threats.

Lawyers Committee for Human Rights

16.44 Michael Posner, the President and former Executive Director of Lawyers Committee for Human Rights (LCHR), was introduced to Rosemary Nelson in 1995 and spoke to her from time to time on the telephone. He was aware that her relations with the RUC were 'tense' and that through her representation of the Garvaghy Road Residents' Coalition (GRRC) she was at odds with the Orange Order. Rosemary Nelson also told him about threats that she had received:

'In respect of the type of information Rosemary gave me concerning the threats that she received, she would say, for example, that someone had telephoned her but had not identified themselves and said things similar to "you will be a dead woman" or "be careful where you walk". She never named specific individuals, and the threats that she received were either notes or anonymous telephone calls, usually the latter.

Rosemary told me that she thought that the threats were from paramilitary groups. Rosemary believed that the government authorities regarded her as a vehicle to enable the Drumcree community to assert their rights and become more organised and effective. She thought they saw her giving the Drumcree community greater capacity to challenge permits for the annual Orange Order marches, marches which often led to violent confrontations.'

16.45 Michael Posner told us that Rosemary Nelson showed him some examples of threatening notes that she had received and he referred to threats in a letter to Mo Mowlam dated 23 October 1997:

'We are writing to express our continuing concern about the reports of threats against lawyers in Northern Ireland. We are writing specifically about the case of Rosemary Nelson, a solicitor from Lurgan. We also are making this information available to Mr. Dato Param Kumaraswamy, the UN Special Rapporteur on the Independence of Lawyers and Judges. As you know Mr. Kumaraswamy is visiting Northern Ireland this week to examine the environment in which lawyers practice in Northern Ireland.

For the last six years Rosemary Nelson has represented a number of individuals who are detained and in some cases have been prosecuted under Northern Ireland's emergency laws. During this period she has been subjected to repeated direct and indirect threats. Such threats recently have intensified. In the past six months Ms. Nelson has received four telephone threats in her office and one at her home. She has also received a number of calls where the caller hangs up when she answers the phone. The callers have used threatening phrases such as "you are dead" and "you will be killed". Several of the callers have called her derogatory names. In one call, she was warned to clear out of her office because "the UVF (Ulster Volunteer Forces) was coming." Last week there was a loud explosion just outside her office window, which, she subsequently learned was caused by fireworks. She and her clients report that numerous derogatory comments and threats have been made to her by police officers in the course of interrogating her clients.

While serving as a legal advisor to residents of the Garvaghy Road during the Marching season in July Ms. Nelson was beaten and verbally abused by members of the Royal Ulster Constabulary.

These incidents are particularly troubling because they come in the context of a longstanding pattern of harassment of and attacks against lawyers in Northern Ireland who represent clients detained under emergency legislation. Since 1992 the Lawyers Committee has sent a series of delegations to Northern Ireland to examine the situation of these lawyers. In 1992 we issued a Report, entitled Human Rights and Legal Defense in Northern Ireland, a copy of which is enclosed. One of the report's central conclusions was that lawyers representing persons suspected of engaging in paramilitary activities are routinely targets of official threats and intimidation, which undermine their ability and effectiveness in representing clients. We reiterated these concerns in a report we published in 1996, entitled At the Crossroads — Human Rights and the Northern Ireland Peace Process, a copy of which also is enclosed.

In that report we also looked closely at the murder of Solicitor Patrick Finucane in 1989. Based on our preliminary examination of that case we found credible evidence that Mr. Finucane's effective legal advocacy in politically sensitive cases resulted in his harassment and ultimately led to his killing. We also found credible evidence suggesting collusion between elements within the security forces and loyalist paramilitaries in Mr. Finucane's murder. Based on those findings we urged that there should be an independent public inquiry into Patrick Finucane's murder. We wish to take this opportunity to renew this request to you and your government.

With respect to Rosemary Nelson we request that you investigate the threats against her and take all appropriate measures to protect her and other solicitors who represent people in politically sensitive cases. International standards protecting both lawyers and their clients are most clearly and authoritatively set forth in the United Nations Basic Principles on the Role of Lawyers. Article 16 of these principles states in short, "Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference." These principles are the basis for Mr. Cumaraswamy's UN mandate and for his visit to Northern Ireland. We urge that you give him your full cooperation, and that you take immediate steps to investigate the harassment against Rosemary Nelson. We eagerly await hearing from you on the steps you are taking to address this serious, long-term problem.'

16.46 He received no response to this letter. A copy of the letter was disclosed to the Inquiry by the NIO. Date stamps reveal that it was received by the Secretary of State on 28 October 1997 and that a copy was sent to the Security Policy and Operations Division that day 'for action'. There is no evidence that it was ever passed to the RUC, or anything else done about it.

16.47 On 18 June 1998 Michael Posner wrote to Sir Ronnie Flanagan advising him that he would be in Belfast on 23 June. He asked whether, notwithstanding the short notice, he could meet with Sir Ronnie Flanagan to explore with him LCHR's 'ongoing concerns, including in particular the follow-up you are taking with respect to Mr Cumaraswamy's report to the UN'. He said he would 'welcome an opportunity to discuss the RUC's role' in the 'implementation of the peace agreement'.

16.48 Michael Posner met Sir Ronnie Flanagan in June 1998. He told us that in the meeting 'I specifically raised Rosemary's situation and the fact that she needed RUC or other government protection. [...] I do recall that Mr. Flanagan's response was to say that if Rosemary required protection she would have to ask for it. He said that once she had made the request, assuming she needed protection, it would be given to her by the RUC.'

16.49 Michael Posner told us that in conversations he had with Rosemary Nelson about her security, she expressed 'reservations about requesting protection from the RUC. In particular she did not want to be subject to questioning by RUC officers. She was very clear that the police were in an adverse position to the people whom Rosemary represented. As such, Rosemary was reluctant to engage with the RUC herself.'

Committee for the Administration of Justice

16.50 Committee for the Administration of Justice (CAJ) is a Belfast-based organisation. It was originally established to campaign for the repeal of the emergency legislation but over the years it has developed a broad human rights agenda. In the late 1990s, it worked closely with BIRW and shared information with it and with other NGOs. It maintained contact with Congressman Chris Smith, who was the Chairman of the US House of Representatives sub-committee on International Operations and Human Rights, and it was one of the organisations with which the UN Special Rapporteur maintained frequent contact and was, according to the UN Special Rapporteur, one of the organisations which were the 'eyes and ears' of the Special Rapporteurs. CAJ helped to organise a number of meetings for the UN Special Rapporteur during his visit to Northern Ireland in October 1997, including a meeting with Rosemary Nelson on 26 October 1997.⁷

16.51 CAJ maintained an interest in the harassment and intimidation of defence solicitors. We were told by a former legal officer of CAJ, Paul Mageean, that many solicitors reported such matters to them and that Rosemary Nelson's first contact with the organisation was to report incidents concerning her clients and comments made about her.

16.52 On 28 February 1997 Paul Mageean visited Rosemary Nelson's office at her invitation in order to record allegations by clients who had recently been released from Gough Barracks. He told us:

'I am not entirely clear now about what we agreed to do following this meeting. Rosemary clearly wanted threats to be recorded but I don't think she expected or even asked us to take any action at this stage. At this point in time I think that it was both her view and the view of CAJ that these were just more in a long line of threats against defence solicitors.'

16.53 Copies of these statements were later sent to the UN Special Rapporteur. As Paul Mageean explained: 'I think we felt as an organisation that she probably needed a degree of support from the organisation and that this was us, you know, saying to her that

⁷ Dato' Param Cumaraswamy met Sir Ronnie Flanagan on 24 and again, briefly on 27 October 1997. We refer to these meetings, particularly that of 24 October 1997, and their aftermath in Chapter 19.

we recognised that her situation was serious. In addition, of course, probably in early 1997 we were conscious of the fact that there was a possibility of persuading Mr Cumaraswamy to visit Northern Ireland to look into this matter.'

16.54 On 5 March 1998 Paul Mageean wrote to Adam Ingram. The purpose of the letter was to report a new allegation that a police officer had made threatening comments to one of Rosemary Nelson's clients who had recently been detained at Castlereagh Holding Centre.⁸ The letter opened with a reference to earlier allegations and to other threats that Rosemary Nelson had received.

'For at least a year Ms Nelson has been alleging that she has been subject to harassment and abuse at the hands of the police. She also claims that she has been subject to a number of death threats, some of which have been telephoned to her office, and others which reportedly have been made by police officers to her clients while in detention. Ms Nelson's allegations are of course not unique. Credible evidence has existed for many years of systematic and ongoing intimidation stretching back over ten years. Indeed this and the murder of Patrick Finucane have been the subject of a number of reports published by reputable international human rights groups. [...] Such was his concern at ongoing reports of police harassment of defence lawyers that the United Nations Special Rapporteur on the Independence of Judges and Lawyers visited Northern Ireland in October last year to investigate the matter. His report will soon be published. One of the cases he looked into was that of Rosemary Nelson.

Ms Nelson and a number of her clients have lodged complaints against the police which are being dealt with through the Independent Commission for Police Complaints. These involve death threats and allegations that Ms Nelson is involved in paramilitary activity. Ms Nelson also claims that she was physically assaulted by members of the police on Garvaghy Road in July.

Ms Nelson recently contacted this office to express her concern that further death threats and allegations of involvement with a paramilitary group were made to a clients [sic] of hers detained at Castlereagh last week. We have since interviewed the client in question, Mr [redacted]. He was arrested on Saturday 21st February and held for over six days, finally being released on Friday 27th February. No adverse mention was made of his solicitor until the first interview on the morning of Friday 27th. [...] The relevant excerpt from the statement of [redacted] is as follows:

Then they started talking about Rosemary. In the first interview on the Friday morning they said that the IRA had given her the statement which I had given them. They said that the IRA were pulling her strings. They also said that there was a new law passed in 1989 which meant they could do away with solicitors who concocted stories.

Ms Nelson took the comment in relation to the law in 1989 to be a reference to the murder of Patrick Finucane who was killed in 1989.⁹ After these comments were made Ms Nelson consulted with her client and advised him to make a complaint. He tried to do this with a uniformed officer who initially advised him that his complaint was not a matter for the police in Castlereagh and that the solicitor should make any complaint. Eventually Mr [redacted] believes that he took note that a complaint was being made although he did not record the detail. As a result of the consultation Ms Nelson faxed the police asking that as comments of this nature had been made about her, she should be allowed to attend the rest of the interviews with her client. Her client was in fact released later that afternoon and when the police responded to Ms Nelson's fax, they

⁸The same comments are referred to in Jane Winter's letter to Mo Mowlam of 10 March 1998. See Chapter 16.22 above.

⁹We describe the making of this allegation at Chapter 8.4(c) above.

simply stated that her request was no longer relevant as her client had been released. No comment was made on the serious allegation which had been made.

Although Mr [redacted] was released later that day, he was also interviewed again after lunch. Again comments were made about Ms Nelson:

There was then another interview after lunchtime. It was the same two detectives and the tall one said to me that he heard I had been making complaints. He said that this has been going on for thirty years and it was not going to change now. He said to tell half face that. They said I made the statement and Rosemary got the witnesses and told them what to say.

We are sure you agree that it would be completely unacceptable for police officers to behave in this way. We believe that the government and you, as the relevant minister, have an obligation to ensure that behaviour of this nature is punished and not allowed to recur. Unfortunately, it appears that while the authorities have had notice of this problem for a considerable number of years, little has been done to prevent its repetition. If the police are unable to deal effectively with this problem, then it becomes the responsibility of government to ensure that the UK does not continue to breach its international obligations. We look forward to receiving confirmation as to how you intend to deal with this particular problem and the pattern of police harassment of defence lawyers in general.'

16.55 A response was received dated 7 July 1998 from Adam Ingram's Private Secretary:

'Thank you for your letter of 5 March to Mr Ingram about Rosemary Nelson. The Minister has asked me to reply on his behalf and to apologise for the lengthy delay in so doing.

In your letter you set out some very serious points and concerns about the alleged treatment of Ms Nelson and Mr [redacted] by the police. You also note that Ms Nelson and other clients have lodged complaints against the RUC.

The Minister has asked me to say that the Government regards all these complaints as extremely serious and it has made it clear, as indeed has the Chief Constable, that it will not tolerate harassment or intimidation of lawyers. Where allegations are made, such as those you refer to, then they are investigated. In the case of [redacted] there are three complaints currently under investigation, two also being investigated. Most of them are being investigated. Most of them are being supervised by the Independent Commission for Police Complaints.

Obviously I cannot go into the detail of the investigations. However, the Minister has asked me to point out that there are safeguards in the existing system. For example, the role of the ICPC. Its oversight, or supervision, is important. The members of the Commission are independent of Government and of the police.

In addition, the Director of Public Prosecutions will examine the files in due course. He too, as you are aware, is independent of the Government and of the police.

The Government has encouraged those who have concerns in this area to make complaints so that they can be investigated. It does, however, acknowledge that there is a lack of confidence in the current system. That is why it is taking legislation through Parliament at present which will introduce a new Police Ombudsman arrangement. It hopes that the new arrangement will win confidence, whether from solicitors or others.

On the more general issue that you refer to, of an alleged pattern of police harassment of defence lawyers, I have to say that the Government is not aware of evidence of this. It believes that the systems in place are capable of identifying the facts and, until the new Police Ombudsman is in place, it has encouraged solicitors to lodge complaints where they have concerns. Mr Cumaraswamy also made this point in his report.'

This tardy reply completely ignored the vital issue of Rosemary Nelson's safety.

16.56 In June 1998 Paul Mageean had taken a copy of the anonymous death threat note that had been delivered to Rosemary Nelson's office on 3 June 1998. His concern for Rosemary Nelson was raised further when CAJ members, observing events on the Garvaghy Road, came into possession of copies of 'The Man Without a Future' leaflet which was circulated in early July 1998 (see Chapter 13.15). He told us that he spoke to Rosemary Nelson and she agreed that he should write to the NIO raising the issue of her safety. Paul Mageean explained to us:

'It was a combination of the letter and the pamphlet that led us to agree with Rosemary that something needed to be done. I can't recall what Rosemary said but I do remember that she was particularly concerned about her staff as her office address was on the pamphlet. She was worried that most of her staff sat downstairs and that they would take the brunt of anything that was thrown in.'

16.57 On 10 August 1998 Paul Mageean wrote to Adam Ingram enclosing copies of the leaflet entitled 'The Man Without a Future' and the anonymous death threat note. In his letter he said:

'We believe that these documents are very definite threats against the personal safety of Rosemary Nelson. She has received a number of such threats in the past. It is incumbent on the government to investigate these matters but also to provide the necessary protection for Ms Nelson.'

We understand that the government has in the past installed security apparatus in the homes of threatened individuals at the state's expense. In addition advice has been offered as to steps which can be taken to minimise personal risk. There is also the matter of a personal protection firearm. We of course are not expert in this area but we presume that the government will be making proposals to Ms Nelson and we look forward to receiving them as soon as possible given the obvious urgency of this matter.'

16.58 The reply of 24 September 1998 indicated that the documents had been passed to the police:

'Obviously the documents enclosed must be of concern to Ms Nelson and the others mentioned. The Minister has asked me to say that he hopes that those who produced them can be brought to justice for their threatening behaviour.'

We passed the documents immediately to the Chief Constable's office for investigation. They would obviously, given the nature of the material assess the security risk against Ms Nelson.'

16.59 Paul Mageean's letter and its enclosures had been passed by the NIO to Command Secretariat of the RUC and the letter and the leaflet but not the death threat note were then passed from Command Secretariat to Regional Headquarters in Portadown and to Special Branch in order that a threat assessment might be carried out. We report on how this correspondence was processed and how an assessment was carried out without the death threat note being considered in Chapter 22. There is no doubt in our mind that the failure to process this correspondence

effectively was significant. As will be seen, Ministers and officials within the NIO, CAJ and, no doubt, Rosemary Nelson herself were under the impression that the matter had been properly considered. In the event it had not been.

Conclusion

16.60 As this chapter shows, the NGOs gave many prompts to both the RUC and the NIO to consider Rosemary Nelson's safety. It seems to us that the NIO regarded these letters as, essentially, correspondence to be managed. We have seen no evidence of any discussion within the NIO, either about Rosemary Nelson's vulnerability, or about the treatment of defence lawyers more generally. The RUC, for its part, clearly felt irritated by what it saw as the partisan nature of the NGOs' interventions. But a campaigning NGO, by its very nature, must have an agenda to pursue. It is not the business of an NGO to be detached and objective. Its business is to raise concerns. That is exactly what the NGOs did in respect of Rosemary Nelson. The role of a government department or other state agency is to think about those concerns, evaluate them, and take appropriate action. Even if those putting them forward are pursuing an agenda, the concerns may be real, and in this case they were. In our view, neither the NIO nor the RUC dealt with the NGOs' concerns thoughtfully and effectively, with the result that no action was taken to safeguard Rosemary Nelson.

17 The Investigation of Complaints

Client reports of threats and abuse in February 1997

17.1 In early February 1997, Rosemary Nelson represented a number of Lurgan men who were arrested and detained for questioning at the Holding Centre at Gough Barracks in Armagh. After their release, some of them told her that while they were in custody police officers had made offensive and threatening comments to them about her. Details of these allegations are set out at Chapter 8.3.

17.2 None of the clients had registered complaints about these comments while they were under arrest or when they were formally asked by the Custody Officer whether they wished to complain about anything at the time of their release. Some of the clients who gave evidence to the Inquiry told us that it was only later that they had reported the comments to Rosemary Nelson. One of them said he was too embarrassed to relate the details of what had been said to her directly. None of them asked Rosemary Nelson to register complaints and she did not do so on her own behalf. She did, however, persuade two of the clients to give accounts of what was said to them to the Committee for the Administration of Justice (CAJ), which had a continuing interest in the treatment of defence solicitors by the Royal Ulster Constabulary (RUC). They did so in late February 1997.

Complaint by Lawyers Alliance for Justice in Ireland

17.3 In March 1997 Rosemary Nelson also told Edmund Lynch, of the US-based organisation Lawyers Alliance for Justice in Ireland (LAJI), about the comments that had been made. He knew that she was unlikely to do anything about it. In his evidence to us he said: *'She was busy about her business, attending to clients, and it was probably in an offhanded manner that she told me about this and I was perhaps more alarmed at that stage than she was.'*

17.4 Edmund Lynch was not content, however, to let the matter rest. On 13 March 1997 he wrote on behalf of LAJI to Sir Louis Blom-Cooper QC, the Independent Commissioner for the Holding Centres with whom he had previously had dealings in relation to the treatment of prisoners. His letter, a copy of which he sent to Rosemary Nelson, now raised the issue of threats against Rosemary Nelson in a formal manner. In this letter, which we set out in full at Chapter 16.32, he referred to *'death threats emanating from an RUC detective stationed at Gough Interrogation Centre'*, drew a comparison with the murder of Pat Finucane and asked that the matter be referred to the Attorney General for an independent investigation. He implored the Attorney General not to rely on the RUC to investigate one of its own members.

17.5 Clearly, a letter alleging that a serious offence had been committed by a police officer demanded immediate attention and the reference to the murder of Pat Finucane was apposite. Moreover, this letter alleged that the offence had been committed by a particular officer at a particular place. It was, and continues to be, an offence in the UK to make *'to another a threat, intending that that other would fear that it be carried out, to kill that other or a third person'*.¹ As will be seen, however, no

¹Section 16 Offences Against the Person Act 1861. *'A person who without lawful excuse makes to another a threat, intending that other would fear it would be carried out, to kill that other or a third person shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding ten years.'*

separate criminal investigation of this allegation was ever undertaken, there was no urgent approach to Rosemary Nelson to identify the officer or her clients referred to in the letter or confirm that Edmund Lynch's assertion that there was such an officer was correct. Although Edmund Lynch had expressly asked that the case should not be investigated by the RUC, in reality only the RUC could carry out the investigation.

17.6 On 14 March 1997 Sir Louis Blom-Cooper promptly sent a copy of the LAJI letter to the Attorney General, Sir Nicholas Lyell QC, MP and his office forwarded copies of Edmund Lynch's letter on 20 March 1997 to the Assistant Chief Constable (Crime) at RUC Headquarters and to the body charged with the responsibility for supervising complaints against the police in Northern Ireland, namely the Independent Commission for Police Complaints (ICPC). The letter to the Assistant Chief Constable (Crime) stated:

I enclose a copy of Mr Lynch's letter in which he alleges that Ms Rosemary Nelson, a solicitor, has been subject to death threats emanating from a detective stationed at Gough holding centre.

The Attorney General has seen Mr Lynch's letter and has directed me to write to you so that the RUC may take the necessary steps as are considered appropriate in order to investigate these allegations. In addition you will wish to consider such steps as are appropriate in relation to Ms Nelson's security.'

This letter emphasises the seriousness of the allegations and the need to consider Rosemary Nelson's security.

17.7 Once notified of the allegations it was the duty of the RUC to take action. Although the LAJI letter did not contain details of the remarks that were alleged to have been made, it contained sufficient information to suggest that a serious criminal offence had been committed. There was a clear duty on the part of the RUC to investigate the alleged offence promptly and thoroughly and, as the Attorney General's office pointed out, to take appropriate steps in relation to Rosemary Nelson's security. Quite apart from these obligations, it appears to us that the maintenance of good order and discipline within the RUC required that those in authority consider whether the allegations might be true and, if so, whether any managerial action was required to intervene or prevent further behaviour of this kind.

The Lawyers Alliance for Justice in Ireland complaint: supervision by the Independent Commission for Police Complaints

17.8 On 4 April 1997 the RUC formally accepted the letter of Edmund Lynch as a complaint requiring investigation under a system established by the Police (Northern Ireland) Act 1970 and the Police (Northern Ireland) Order 1987.² Under this system the ICPC was empowered to supervise complaint investigations carried out by an investigating officer appointed by the Chief Constable, or in the case of complaints against more senior officers, by the Police Authority.³ Such investigations were in fact undertaken by the Complaints and Discipline Department of the RUC.⁴

²The system was refined by additional delegated legislation including the RUC (Complaints etc.) Regulations 1988; the RUC (Complaints) (Informal) Resolution Regulations 1988; the RUC (Discipline and Disciplinary) Appeals Regulations 1988; and the RUC (Complaints etc.) Regulations 1990. We have set out a description of the complaints procedure in Appendix O.

³Articles 5 & 6 Police (Northern Ireland) Order 1987.

⁴Regulation 15 of the RUC (Complaints etc.) Regulations 1988 permitted the Chief Constable to delegate all or any of his functions or duties under Articles 4 to 14 of the Police (Northern Ireland) Order 1987.

17.9 Once an officer was appointed to investigate a complaint, the Chief Constable or the Police Authority in the case of senior officers, was obliged to refer the matter to the ICPC. The ICPC was not obliged to supervise every investigation but it did so in respect of almost all the complaints that we examined.⁵

17.10 In a letter addressed to the Chief Executive of the ICPC dated 26 March 1997, written on behalf of the Assistant Chief Constable (Complaints and Discipline) of the RUC, a Superintendent wrote:

'The matter is not being recorded as an Article 2 complaint.⁶ An officer is being appointed to investigate the matter from a criminal point of view and our internal Discipline Office is appointing a Complaints & Discipline Officer to shadow the criminal investigation for Discipline purposes.'

17.11 Had this approach been followed there could have been no supervision of the investigation by the ICPC and the decision whether to refer a file to the Director of Public Prosecutions for Northern Ireland (DPPNI) would have remained with the investigating officer. This was not acceptable to the ICPC. In a file note dated 4 April 1997, the Deputy Chief Executive of the ICPC recorded a telephone conversation with the Superintendent *'informing him that the Commission would be objecting to the decision not to regard this matter as an Article 2 complaint. I asked the Superintendent to review the papers again and assured him that if he was not prepared to have a change of opinion the Commission would be writing to the Assistant Chief Constable in the strongest possible terms.'*

17.12 Within 15 minutes of this telephone call the RUC decision was reversed. On 9 April 1997 an officer from within the Complaints and Discipline Department was appointed to investigate; on 10 April 1997 the complaint was referred formally to the ICPC; and on 11 April 1997, the ICPC decided to supervise the investigation and wrote to Edmund Lynch informing him of the decision.

17.13 In fact, the choice was not between a criminal investigation or a complaints investigation. Procedures in place at the time would have allowed for a criminal investigation and an investigation by the Complaints and Discipline Department supervised by the ICPC to run in parallel.

17.14 A complaint investigation now began. It continued throughout the remainder of 1997, through 1998 and into 1999. While it was underway further allegations were made by clients of Rosemary Nelson that officers had made comments about her and these too were investigated. Rosemary Nelson herself also complained that she had been assaulted on the Garvaghy Road on 6 July 1997 and this too was the subject of a formal investigation. During the course of the Inquiry we examined evidence relating to all of these allegations and we received evidence from many of the police officers who were affected by them. We have already set out our own conclusions as regards these various allegations – we are satisfied that at least some abusive comments, and some death threats, were made about Rosemary Nelson by some officers (see Chapter 8.3 to 8.14) and we have no doubt whatsoever that she was assaulted and abused on the Garvaghy Road (see Chapter 6.61 to 6.71). Yet none of these investigations resulted in any criminal or disciplinary proceedings

⁵Article 9 Police (Northern Ireland) Order 1987 (Article 9(3)): The ICPC was obliged to supervise investigations into all cases where it was alleged that the conduct of a member of the police force had resulted in the death or serious injury of some other person. The ICPC had a discretion in respect of all other complaints if it considered that it was desirable and *'in the public interest that it should supervise the investigation'*.

⁶Probably a reference to the definition of 'complaint' in Article 2 Police (Northern Ireland) Order 1987 where it is defined as *'any complaint about the conduct of a member of the police force which is submitted by, or on behalf of, a member of the public'*.

being taken against any police officer, nor did they prompt any consideration within the RUC of the question as to whether Rosemary Nelson might actually be under threat.

The Lawyers Alliance for Justice in Ireland complaint investigation

17.15 The LAJI letter of 13 March 1997, of which Rosemary Nelson had received a copy, contained no clue as to the identity of the individuals to whom the alleged threats had been made or the date of their making, and no precise details of what had been said. Clearly, unless Rosemary Nelson cooperated with the investigation it could not proceed. The Investigating Officer therefore wrote to her on 21 April 1997 informing her that the LAJI complaint was to be investigated and that the investigation was to be supervised by the ICPC. In this letter he proposed a meeting. He wrote: *'Please arrange to be present at Lurgan RUC Station at 2 00 pm on Tuesday 13 May 1997. [...] If the time does not suit, please telephone me at the above number or write immediately so that an alternative can be arranged.'*

17.16 Rosemary Nelson did not attend the meeting scheduled on 13 May 1997 nor did she, or anyone from her office, contact the Investigating Officer to tell him that she could not do so. He wrote to her again on 21 May 1997, asking that she contact him by 13 June 1997. On that day, and not before, she wrote to him asking whether arrangements could be made for him to attend her office *'in order to discuss the matter on a preliminary basis?'*

17.17 We suspect that Rosemary Nelson's apparent reluctance to cooperate with the investigation led some within the RUC to view the complaints sceptically. We do not, however, attach any significance to Rosemary Nelson's apparent unwillingness to pursue the LAJI complaint. We questioned a number of lawyers regarding their attitude towards the complaints system in Northern Ireland at that time and they consistently expressed the view that it was ineffective and a waste of time. Some considered that it might be necessary to register a complaint for tactical purposes if, for example, civil proceedings were to be taken. The complaints system itself was not viewed as an effective means of obtaining redress. Moreover, it appears that it was only as a result of Edmund Lynch's intervention that the issue was raised in this way at all. Rosemary Nelson had asked two of her clients to make statements to CAJ as it was interested in the treatment of defence lawyers generally, but these statements were not taken with a view to making a complaint, indeed Rosemary Nelson was not involved in taking the statements herself: that was done by Paul Mageean from whom the witness statements were later obtained by the Investigating Officer. It should be noted also that Rosemary Nelson was not at liberty to use information without the consent of her clients, many of whom preferred to have as little to do with the RUC as possible.

17.18 The Investigating Officer told us that security considerations prevented him from visiting Rosemary Nelson's office. He said that in general he would make two attempts to contact a complainant after which he would apply to the ICPC for a dispensation under Regulation 17 of the Royal Ulster Constabulary (Complaints etc.) Regulations 1988. This provision allowed a complaint to be dismissed summarily on the basis that it was impractical or impossible to investigate if, for example, as was often the case with complaints in Northern Ireland, the complainant did not cooperate with the investigation. In this case, however, to his credit, the officer persevered. Following receipt of Rosemary Nelson's letter of 13 June 1997 he contacted her office and made an arrangement to meet her at Craigavon police

station on 25 June 1997. That meeting was postponed, probably as a consequence of the arrest of Colin Duffy on 23 June 1997, and an arrangement was made for a meeting on 30 June 1997. Yet again, Rosemary Nelson failed to attend.

The Royal Ulster Constabulary application for dispensation

17.19 The Investigating Officer wrote to Rosemary Nelson again on 3 July 1997 and in this letter he warned that if she did not cooperate with the investigation an application could be made to the ICPC for a dispensation. Again, she did not respond. On 28 July 1997 the Investigating Officer submitted a report to the Assistant Chief Constable (Complaints and Discipline) suggesting that a formal application should be made. By letter of 6 August 1997, in which the efforts of the RUC to enlist Rosemary Nelson's cooperation were set out, the Assistant Chief Constable (Complaints and Discipline) formally requested a dispensation from the ICPC.

The Colin Duffy/Rosemary Nelson complaints

17.20 In view of Rosemary Nelson's failure to cooperate with the investigation it would not have been unreasonable for the ICPC to have acceded to the RUC application. Geralyn McNally, the member of the ICPC to whom the case had been allocated, told us that in these circumstances their approach was to consider whether there was a reasonable prospect of cooperation with the complainant, or in this case, the essential witnesses. In the light of the history that was presented to them it would not have been unreasonable to conclude that there was no such prospect in this case. The investigation had been active since April and no progress had been made.

17.21 Events had intervened, however, resulting in the ICPC requiring the continuation of the investigation. On 23 June 1997 Colin Duffy had been arrested for the murder of Constables Johnston and Graham. He had been taken to the Holding Centre at Gough Barracks in Armagh where he was held for questioning. In the course of his detention both he and Rosemary Nelson on his behalf made a number of formal complaints about his treatment in custody. He complained, for example, that handcuffs had been placed too tightly on his wrists; that he was denied timely access to his solicitor; and that officers fabricated comments that were attributed to him. Another complaint, however, which Rosemary Nelson made both on his account and hers, concerned comments made about her to Colin Duffy by interviewing officers. The essence of this complaint was set out in the letter from Rosemary Nelson to the Custody Sergeant at Gough Barracks dated 25 June 1997 to which we have referred at Chapter 4.58.

17.22 The letter of 25 June 1997 included a request to be present during further interviews of Colin Duffy. We saw no documents to indicate that Rosemary Nelson received any response to this request and she was not permitted to attend such interviews. A further issue arose regarding a telephone request made the same day asking that she be told if he was to be charged as it was her intention to put on record details of Colin Duffy's alibi at that time. In the event the investigating officers did not wait for her arrival at Lurgan police station before charging Colin Duffy with the murders of Constables Johnston and Graham, and this opportunity, which might have had some evidential value later on, was lost. The alleged failure on the part of the police to wait for her attendance at the police station now also became the subject of a complaint. Rosemary Nelson wrote about this on 26 June 1997 and all these matters now became formal complaints. Edmund Lynch was soon made aware of all these matters and he wrote to the ICPC and to the Investigating Officer on 30 June 1997 asking that all the matters be investigated.

17.23 The custody records showed that a Detective Superintendent had authorised the questioning of Colin Duffy after he had asked for access to his solicitor and therefore in this regard the complaint was concerned with the rightness or wrongness of the Detective Superintendent's decision. According to the regulations, this required that a more senior officer be appointed as investigating officer. An Assistant Chief Constable was therefore appointed to oversee all the Duffy/Nelson complaints. A Superintendent was nominated to assist and the Investigating Officer in respect of the LAJI complaint was appointed his deputy. The case was accepted by the ICPC and supervision of it was allocated to Geralyn McNally who was already dealing with the LAJI complaint.

17.24 We have no doubt that Rosemary Nelson's apparent unwillingness to support the LAJI complaints caused a degree of frustration both within the RUC and at the Northern Ireland Office (NIO). The Head of Police Division at the NIO told us that she regarded the complaints arising from Colin Duffy's detention as an opportunity to 'nail' the allegations because they were 'relatively recent and well documented', a view which she recorded contemporaneously. In his letter to the NIO Police Division of 22 August 1997 a Chief Superintendent within Command Secretariat wrote:

'Mrs Nelson has not made herself available for interview, despite the strenuous efforts of the Investigating Officer. On two occasions arrangements had been agreed for Mrs Nelson to come to Craigavon Station for interview. On both occasions Mrs Nelson indicated, on the day via her secretary, that the appointments did not then suit. On one occasion the Investigating Officer and the ICPC supervisor were present in the Station, awaiting Mrs Nelson's arrival, when Mrs Nelson's secretary rang to say the appointment did not suit. The Investigating Officer wrote to Mrs Nelson indicating that failure to have contact by 24 July 1997 would lead to an application being made to the ICPC for a Regulation 17 Disposition. No reply has been received.'

17.25 We think it unlikely, however, that Rosemary Nelson's earlier engagement in the complaints process would have resulted in steps being taken to remind all officers of their duty to fulfil their obligations in an impartial and courteous manner; or consideration being given to whether Rosemary Nelson was in danger as the threats implied. No such steps were taken at any stage during the complaints investigations and we believe that this was a serious omission on the part of the RUC.

September 1997: investigations get underway

17.26 Arrangements were made for Rosemary Nelson to be interviewed at Craigavon police station on 16 September 1997 and for Colin Duffy to be seen at Maze Prison on 15 October 1997. These interviews did take place. Rosemary Nelson made a witness statement which contained enough information about both her own complaint and that which had been lodged earlier by LAJI for both to proceed. On this basis Geralyn McNally declined to grant the dispensation. She explained in correspondence that Rosemary Nelson had provided sufficient information 'on which to base an investigation into the subject matter of this complaint'.

17.27 In her witness statement of 16 September 1997 Rosemary Nelson referred to the fact that witnesses to the February 1997 threats on which the LAJI complaint was based had provided witness statements to Paul Mageean of CAJ. On 20 October 1997 the Investigating Officer met Paul Mageean of CAJ who provided him with statements on behalf of two of Rosemary Nelson's clients. These statements were not signed but had been compiled as a result of interviews undertaken soon after the

clients' release from custody. In late October and early November 1997 Rosemary Nelson herself obtained statements from two further clients who had been detained in February 1997.

17.28 From the information that he now had the Investigating Officer was able to identify all those officers who had been involved in the arrest and questioning of the February detainees and all those who were involved in the detention and questioning of Colin Duffy. In all, 22 officers were served with notices requiring them to attend for interview: 4 as a result of both the February and June complaints; 12 as a result of the February complaint alone; and a further 6 in respect of the June complaint. Three of the officers interviewed as a result of the February complaints were from Special Branch (SB). He gathered together the documents relating to the custody of each of the detainees and copies of the interview records that had been made. During the weeks that followed interviews under caution were conducted with all the officers, all of whom denied the allegations.

The Lawyers Alliance for Justice in Ireland complaint: the Investigating Officer's report

17.29 The Investigating Officer's report in respect of the LAJI complaint was submitted to the ICPC on 24 April 1998. His conclusions were as follows:

'Serious allegations have been made against Detectives and these must be seen in the context of what was happening in the Lurgan area in the first half of 1997. At the beginning of the year there was an upsurge in Provisional IRA activity in this part of the Province. Incidents included a rocket attack on a police vehicle. In February of that year [redacted] were arrested and questioned about this offence. [Redacted] and [redacted] were also arrested and questioned about terrorist activity [sic] in the area. The following points are worthy of note:

- 1. The Interview Records contain nothing which would support the allegations of misconduct by interviewing detectives.*
- 2. The Custody Records indicate that no complaint was made by any of the four prisoners regarding any matter whatsoever. Furthermore, it is clear that they had regular access to their solicitor. That being the case, it is somewhat surprising that Mrs Neslon [sic] did not lodge a complaint at the time.*
- [3.] Its [sic] beggars belief that Detectives would jeopardise interviews by stating the outrageous things attributed to them. Such entries would serve no useful purpose in that complaints could be anticipated with the resultant disruption in interviews.*
- 4. Mrs Nelson's failure to co-operate in the early stages of the investigation and the failure of her clients to attend for interview casts serious doubts on their commitment to a thorough and searching investigation. At this stage their "evidence" remains very much open to question and the manner in which statements were forwarded gives serious cause for concern. I would expect a solicitor to be more professional in putting her case.*
- 5. Leading on from the previous point, the volume and timing of the voluminous correspondence from various international groups on Mrs Nelson's behalf gives rise to the reasonable suspicion that these complaints are more to do with generating propoganda [sic] against the RUC than establishing the truth. Certainly, the most serious allegation that police officers made death threats against Mrs Neslon [sic] has not been clearly stated by her clients in their tendered statements.*

In conclusion, much has been said by international bodies and human rights groups on behalf of Rosemary Nelson but very little has been produced by way of factual evidence. The failure of clients to attend for interview creates a major weakness in her case as do the late complaints. There remains no convincing evidence to proceed against any police officer.⁷

The Duffy/Nelson complaint investigation and report

17.30 The investigation of the Duffy/Nelson complaints involved an examination of a decision made on 24 June 1997 by a Detective Superintendent to authorise the continued questioning of Colin Duffy after he had asked to see his solicitor. As we have indicated the investigation was supervised, and the final report submitted, by an officer of the rank of Assistant Chief Constable.

17.31 The investigation relied on two statements made by Rosemary Nelson. The first of these was taken by the Custody Officer at the Holding Centre on 25 June 1997. A second statement was taken by the Investigating Officer who dealt with the LAJI complaint. Colin Duffy made three witness statements. In all, ten police officers were interviewed under caution. The most senior officer under investigation submitted pre-prepared witness statements but he and each of the other nine officers implicated in the various allegations made by Colin Duffy and Rosemary Nelson were also interviewed under caution. The officers investigating the complaints each prepared a witness statement outlining their role in the investigation. A number of witness statements were taken from officers involved in the detention of Colin Duffy against whom no complaint was made.

17.32 No other information concerning the officers under investigation featured in the final report. In contrast, in respect of Colin Duffy, in a section of the standard form concerned with ‘Complainant Details’ the Assistant Chief Constable included the following information: *‘Mr Duffy has previous convictions which include robbery, common assault, false imprisonment, hi-jacking and obstructing police. He is the leader of North Armagh PIRA [Provisional Irish Republican Army] and regularly associates with known subversives and criminal elements in the Lurgan area. His reliability as a witness is therefore open to question.’*

17.33 Our interest in the Duffy/Nelson complaints lay, principally, in the allegation that comments were made to Colin Duffy during an interview by two named officers which implied that Rosemary Nelson would have approved of the murder of the two constables.⁷ In his report the Assistant Chief Constable dealt with this allegation as follows:

‘The two Detectives did interview Mr Duffy on the 24th but only after lunchtime. There is no record on their interview notes of that date that they introduced the word “proud”.

⁷According to the Custody Record Rosemary Nelson visited Colin Duffy between 18.27 and 19.20 on 24 June 1997. He was interviewed by the named officers between 19.23 and 21.04. Colin Duffy asked to see his solicitor again at 21.06. Two other officers interviewed Colin Duffy between 21.32 and 22.43. At or about 22.45 Colin Duffy saw Rosemary Nelson again. A note on the Custody Record states: *‘Spoke to Rosemary Nelson (solicitor) in Solicitors Room PO Gough at her request. She wished to complain that she had not been permitted immediate access to her client on her arrival at PO and she further complained on behalf of her client that he was alleging irregularities in the notes recorded by CID during the last interview.* A further consultation is recorded between 23.59 and 00.02 and at 00.05 the Custody Officer recorded details of the complaint including the following allegation: *‘During an interview, probably the first interview of 24.6.97 Dt Con [redacted] told her client, “I’m sure your mother’s proud of you, I’m sure your wife’s proud of you, and I’m sure Rosemary is proud of you as well.”*

However, both Detectives were involved in an interview with Mr Duffy on the evening of 23rd June between 9 17 pm and 10 59 pm. During that interview (Book 2, Page 6) one of the Detectives is recorded as asking “Are you proud of yourselves for being involved in these killings”. There is no reference to Mr Duffy’s solicitor (or indeed his wife and mother as alleged much later during interview with Chief Inspector [redacted] on 15 October 1997). It is recorded that Mr Duffy made no reply. Neither Detective can recall who mentioned the word “proud” but both state that the interview notes are a true record of what was said. They deny making any disparaging reference about Mrs Nelson during any of the interviews.

Whether such comments about the solicitor were made on the 23rd or early on the 24th it is strange indeed that such unacceptable comments were not brought to the attention of the Custody Sergeant, by either Mr Duffy or Mrs Nelson, at the earliest opportunity. Mrs Nelson had a lengthy consultation with her client from 6 26 pm to 7 20 pm on 24th June but no complaint was made at that time. It appears from her statement of 16 September that Mr Duffy did not tell her of the comments until 10 50 pm on that date.

Of course, it is quite possible that Mr Duffy’s allegations are true and that the Detectives said things to him that are not recorded in the notes. It is equally possible that Mr Duffy vaguely recalled being asked if he was proud of what he had done and later decided to add a little fiction to the fact of that situation in order to discredit the Detectives and the investigation. During interview on 15 October his evidence of the alleged comments and his reasons for not reporting them at the time, were unconvincing.

It is the Investigating Officer’s opinion that there is no convincing evidence to support the allegation.’

Geralyn McNally’s concerns regarding the investigations

17.34 Geralyn McNally was present on 16 September 1997 when the Investigating Officer took a witness statement from Rosemary Nelson and on 15 October 1997 when a statement was taken from Colin Duffy. As the investigation progressed she attended the interviews of the officers against whom the complaints were made and she became increasingly dissatisfied with the way it was being conducted. Among Geralyn McNally’s concerns was the fact that some officers had been allowed to submit pre-prepared statements at interviews.⁸ She considered that questioning was less than tenacious and there was also an instance when both the Investigating Officer and the officer under investigation arrived late to the interview and it appeared to Geralyn McNally that the latter had been drinking alcohol. Her misgivings were compounded with the receipt of the Investigating Officer’s report in respect of the LAJI complaint which, in her view, exhibited a bias against Rosemary Nelson.

⁸The RUC Manual of Guidance for Investigating Officers and Team Superintendents (‘the Manual’) provided that Form 17/3 be served on the officer under investigation. This included a statutory caution as follows: ‘You do not have to say anything but I must caution you that if you do not mention when questioned something which you later rely on in any consequent disciplinary proceedings, it may harm your defence. You may, if you so desire, make a written or oral statement to the Investigating Officer or the Chief Constable or the Police Authority, as appropriate. Anything you mention when questioned or any written or oral statements you make may be given in evidence in any such disciplinary proceedings.’ Section 6, 1.2 (ii) of the Manual stated: ‘Where the officer(s) concerned makes a statement to the Investigating Officer or hands in a prepared statement, further questions should be put as necessary so as to ensure that all allegations are adequately dealt with and the investigations can be seen to have been thorough.’

17.35 The receipt by the ICPC of the Investigating Officer's reports in respect of the LAJI complaint and Duffy/Nelson complaints caused a good deal of debate among members of ICPC. Geralyn McNally did not intend to issue a Statement of Satisfaction in relation to any of the investigations, a situation which had never arisen during the short history of the ICPC. Geralyn McNally told us:

'There was certainly a sense that some members of the ICPC would view this step as an outrageously revolutionary step. However, I did take on board advice and guidance from other members and the Chairman. As a result I back tracked from issuing a statement of non-satisfaction at that stage. It was instead agreed that a 17(2) report would be prepared for the Secretary of State for Northern Ireland. It would be fair to say that for some ICPC members, this was moving far too quickly and they wanted to try and stall matters if possible.'

The compromise: the Independent Commission for Police Complaints letter of 19 June 1998

17.36 A compromise was thus reached within the ICPC. Article 17 (2) of the Police (Northern Ireland) Order 1987 empowered the ICPC to make *'a report to the Secretary of State on any matters coming to its notice [...] which it considers that his attention should be drawn by reason of their gravity or of other exceptional circumstances'*. On 19 June 1998, pursuant to this power, the Chairman of the ICPC, Paul Donnelly, wrote to both Mo Mowlam and Sir Ronnie Flanagan, the Chief Constable. His letter emphasised the gravity of the allegations, listed a number of criticisms and expressed the view that the investigation was far from satisfactory. *'In spite of numerous efforts on the part of the Commission representatives to challenge and redress the situation,'* he wrote, *'the investigation has been obstructed and obscured to an extent that leads us to conclude that the final outcome is irretrievably flawed.'*

17.37 It is hardly surprising that this letter caused a certain amount of consternation. The NIO Senior Director Belfast told us that he remembered *'receiving a copy of the letter and hot footing it down to Mo Mowlam to discuss'*. He said: *'This was a serious issue. Complaints by solicitors against the police had already been highlighted as a concern by the UN and various organisations in America. Now the ICPC was saying that it wasn't satisfied with an investigation into one of these complaints.'*

The reaction of Sir Ronnie Flanagan to the letter of 19 June 1998

17.38 During the evening of 24 June 1998 the Senior Director Belfast and the Head of Police Division visited Sir Ronnie Flanagan at Police Headquarters. The Head of Police Division had learnt that the ICPC intended to write to Rosemary Nelson and Colin Duffy on 26 June 1998 informing them that a Statement of Satisfaction had been refused.

17.39 The Senior Director Belfast described Sir Ronnie Flanagan as *'furious'* and stated he became *'more furious'* when he discovered that the Chairman of the ICPC had *'sprung this trap and then gone on holiday'*. His dismay was evident from the letter he now wrote to the Deputy Chairman of the ICPC:

'COMPLAINTS AGAINST OFFICERS OF THE RUC IN RESPECT OF ALLEGED THREATS TO ROSEMARY NELSON, SOLICITOR

On 22 June 1998 I received a letter from your Chairman boldly titled and referred to in the body of the letter as being "IN CONFIDENCE".

Despite taking a most serious view of the content of the letter I felt constrained by the indicated confidentiality from taking any action other than arranging an appointment with the Chairman to discuss the letter's contents. The Chairman being currently abroad, this appointment has been arranged for, what I am told by your office is the earliest opportunity, on Wednesday 1 July.

On the early evening of 24 June 1998 I was visited by [the Senior Director Belfast] of the NIO who had what appeared to be an exactly similar letter addressed, I believe, to the Secretary of State. Beyond the contents of the letter, [the Senior Director Belfast] intimated to me that the ICPC intended, on Friday 26 June 1998, to issue letters to Rosemary Nelson, Solicitor and to Mr Colin Duffy indicating that the ICPC would not be issuing a statement indicating their satisfaction with the conduct of the investigation under the terms of Article 8 of the Police (NI) Order 1987. I would be astounded if this should happen before my meeting with the Chairman. There has certainly been no such indication given to me either in the letter or by any other means.

The idea that such an outcome should arise, of course, gives me the greatest cause for concern. So too must the question of how we arrived at this point without the matter being brought to my earlier attention, or to my Head of Complaints and Discipline Department.

I would like, in my meeting with the Chairman, to address a number of issues including:

- 1. Was any objection to the Investigating Officer expressed by the Commission either on his appointment or subsequently?*
- 2. If not, is this a departure from the course taken by the Commission in thankfully a very small number of earlier cases where objection was taken to an investigating officer?*
- 3. Were any directions given in writing to the investigating officer as has been the case in other investigations?*
- 4. I will also want to discuss the appointment of an appropriate officer to investigate what I interpret as a complaint by the Commission. I will have to consider further what supervisory mechanisms are put in place in relation to such an investigation, the ICPC being the actual complainant.*
- 5. In relation to the ongoing investigation which is the specific subject of this correspondence I will want to discuss further investigative steps, including the possible appointment of an "external" officer to conclude this investigation.*

The matters raised in the letter received by me certainly mean we are not "at the end of an investigation" within the terms of Article 7 of the Police (NI) Order 1987. I therefore request that the file be returned to me for completion and that no statement be issued until I have been given the opportunity of a meeting with the Chairman. In the public interest I feel we must discuss this matter in detail including how best the investigation can be completed so that the DPP can give due consideration to the criminal dimension of the matter and subsequently how proper consideration can be given to the disciplinary dimension.'

The appointment of Commander Niall Mulvihill

17.40 When the Senior Director Belfast met Sir Ronnie Flanagan on 24 June 1998 and in the exchanges that followed, a solution to the potential impasse occasioned by the ICPC's refusal to issue a Statement of Satisfaction in respect of the complaints concerning Rosemary Nelson was agreed. This was presented by Sir

Ronnie Flanagan to the Chairman of the ICPC and Geralyn McNally at a meeting on 1 July 1998. Although the investigation had been signed off by the Investigating Officer and his supervising officer, Sir Ronnie Flanagan said that he did not regard the investigation as complete. He therefore proposed that further investigations would be carried out under the supervision of the ICPC by an officer appointed from outside the RUC, who would also review the conduct of earlier investigations and conduct further investigation into a complaint made in June 1998 by another of Rosemary Nelson's clients. Both Paul Donnelly and Geralyn McNally agreed to this course. Arrangements were immediately put in hand and a senior officer from the Metropolitan Police, Commander Mulvihill, was nominated. His appointment was approved by the ICPC on 9 July 1998. His Terms of Reference were set out in a letter from Sir Ronnie Flanagan dated 13 August 1998 and were agreed on 19 August 1998 by Geralyn McNally. The material parts were as follows:

'You will be aware that my request to the Commissioner to nominate an investigating officer arose as a result of concerns expressed by Ms Geralyn McNally [...] and drawn to my attention by the Chairman [of the ICPC] in a letter dated 19 June 1998. You have received a copy of this correspondence and you will be aware that these concerns relate to an investigation by my Complaints and Discipline Department into complaints made in 1997 by or on behalf of Mrs Nelson.

You have also kindly agreed to investigate 2 further, separate complaints made by or on Mrs Nelson's behalf in 1998.

Please now find hereunder the terms of reference for your investigations:

- 1. You are to investigate a complaint made by the "Lawyers Alliance for Justice in Ireland" on behalf of Rosemary Nelson [...].*
- 2. You are to investigate complaints by Rosemary Nelson and Colin Duffy [...].*
- 3. You are to investigate a complaint by Rosemary Nelson on behalf of Colin Duffy [...].*
- 4. You are to investigate a complaint by [a client of Rosemary Nelson] [...].*
- 5. You are to investigate a complaint by Mrs Rosemary Nelson [...].*
- 6. These investigations will be supervised by Ms Geralyn McNally of the ICPC under the terms of Article 9(3)(a) of the Police (NI) Order 1987. Ms McNally has approved your appointment as Investigating Officer in these matters.*
- 7. You will review the original RUC investigations into matters, 1, 2 and 3 above. If at any stage you conclude that this aspect requires separate or independent investigation or should be investigated by another officer you will draw this to my immediate attention. Alternatively you will report with any recommendations you feel are appropriate in this regard.*
- 8. You will provide a report via the ICPC for consideration by the Director of Public Prosecutions to consider whether any criminal offences have been disclosed.*
- 9. You will provide a report for consideration as to whether any disciplinary offences have been disclosed.*
- 10. You will provide a report if there are recommendations you wish to make regarding any aspect of policy or procedure in this area.*
- 11. Nothing in these terms of reference should be construed as any constraint upon you investigating any matter coming to your attention as a result of your enquiries.'*

17.41 Apart from the fact that the investigation was to be supervised by the ICPC, these Terms of Reference placed no express direction or limitation on Commander Mulvihill as to how he went about his work.

Northern Ireland Office response to Independent Commission for Police Complaints dissatisfaction with Royal Ulster Constabulary complaints investigation

17.42 Meanwhile on 24 June 1998, the day that the Senior Director Belfast and the Head of Police Division met the Chief Constable to discuss the letter of 19 June 1998, the Principal of the Police Complaints Branch of Police Division of the NIO drew up a *'table of options on the handling of this case'*. According to the table the Secretary of State for Northern Ireland (SOSNI) had no power to interfere with the complaints investigation but could intervene in respect of the ICPC criticisms of the Investigating Officer and any wider issues which arose from the case. The wider issues were: *'Until now we have relied on the fact the allegations are being investigated. We have a body of criticism of RUC treatment of defence lawyers eg Mr Cumaraswamy. The ICPC letter adds to this.'* Three options for action were identified as: *'to seek a report from the Chief Constable [...]; to call in HMI [...]; to hold a local inquiry'*. In a covering note it was said that consideration needed to be given to *'the need, or otherwise, to act on the cumulative total of material suggesting problems in the RUC handling of defence lawyers. The fact that the latest piece of material is from our "own" Independent Commission for Police Complaints cannot be discounted lightly.'* A draft submission to the Secretary of State, it was said, would not be issued until after the Chief Constable had been consulted.

17.43 The issues were addressed in a submission from the Head of Police Division to the Secretary of State the following day, which was copied to other Ministers and Senior NIO officials. By way of background it explained the nature of the complaints referred to in the letter of 19 June 1998 as well as three others which were under investigation. These included the alleged assault of Rosemary Nelson on the Garvaghy Road and an allegation from December 1997 that a uniformed officer had said to a client that Rosemary Nelson *'won't help you this time, she won't be here much longer'*. Ministers were informed that NIO *'officials wrote to the police asking them to confirm they had considered the issue of her [i.e. Rosemary Nelson's] safety and were doing what they thought appropriate. The police replied saying that there was no specific threat.'* It was noted that *'bearing in mind the numerous claims of harassment of Ms Nelson, Ministers will have to consider carefully what action can be taken'*.

17.44 The submission informed Ministers that the Chief Constable had asked the ICPC to defer issuing the statement until 1 July 1998 and had offered to order another investigation by an officer appointed from outside the RUC. It said: *'If the ICPC agree to defer issuing their statement to Wednesday, and then agree to the Chief Constable's proposed handling, the issue becomes manageable. If not, the bald circumstances could become public, possibly over the weekend; and handling will be more difficult.'* The advice given, said to be in light of conversations between the Senior Director Belfast and the Head of Police Division on the one hand, the Director of Public Prosecutions for Northern Ireland (DPPNI) and the Chief Constable on the other, was for the Secretary of State to leave the handling of the original complaints to the Chief Constable, seek his comments on the ICPC letter and leave any wider decisions until those comments had been received and studied. A letter from the Secretary of State written in accordance with this advice was sent to the Chief Constable on 28 June 1998 enclosing approved lines to take. The Secretary of State also wrote to the ICPC indicating that she had asked the Chief Constable for a report on the case so that she could decide if she should *'exercise any of the other powers at my disposal'*.

17.45 The Senior Director Belfast described the 28 June 1998 letter to the Chief Constable as *'quite an unusual thing to do'*. He told us that officials were concerned that Sir Ronnie Flanagan *'was going too hard at it'* and the Secretary of State wanted to give him *'a steer'* on what his response to the ICPC should be. This letter was, he told us, as far as the NIO could go without crossing the boundary which divided appropriate and inappropriate interference.

17.46 Arrangements were put in place by the NIO to brief the Police Authority of Northern Ireland (PANI), the Irish Government, the Patten Commission, the CAJ, overseas posts in the USA and Geneva, the Legal Secretariat to the Law Officers and the press, in the event that the ICPC issued a statement of dissatisfaction. In the event, no statement was issued and agreement was reached between the RUC and the ICPC on 1 July 1998, as set out at Chapter 17.40 above, that the Chief Constable would appoint Commander Mulvihill to further investigate the complaints. The Chief Constable wrote to the Secretary of State on 7 July 1998 to inform her of this and to reply to her letter of 28 June 1998. In his letter he told her that he saw *'no real role for your office while investigations are extant'* – language which the Permanent Under-Secretary told us was not unprecedented but was *'pretty close to nuclear in relations between Secretaries of State and Chief Constables'*.

17.47 On 10 July 1998 the Senior Director Belfast and the Head of Police Division from the NIO met Irish officials and the Chairman and Chief Executive of the ICPC to discuss developments in the investigation of the complaints brought by Rosemary Nelson and her clients.

17.48 The Secretary of State met the Chief Constable at a Security Policy Meeting on 14 July 1998. According to a note taken by her private secretary, Mo Mowlam took the opportunity to discuss the latest developments. The note recorded that the Secretary of State had told the Chief Constable that *'she needed to have some assurance that everything necessary was being done'*. The Head of Police Division, reflecting on this note, wrote two days later that the Chief Constable was *'understandably'* very sensitive about the issue. She cautioned, however, that although she had *'every sympathy with the Chief Constable's sensitivity'* the position of the government *'must be considered and safeguarded'*. To this end she proposed that there should be independent supervision of the part of the Mulvihill investigation which involved reviewing the conduct of the RUC Complaints and Discipline Department.

17.49 On 16 July 1998 the Senior Director Belfast endorsed the proposal in a note to the Permanent Under-Secretary. He said: *'Like [the Head of Police Division], I believe that this is going to be a very hot potato politically. Only an independent investigation of the conduct of the investigation is likely to meet the case and I believe the Chief Constable would be wise to get in first before the pressure builds up.'*⁹

17.50 The letter dated 19 June 1998 departed from the long-standing government position regarding the alleged intimidation of defence lawyers by the RUC, which was that the proper mechanism to deal with these allegations was RUC complaints investigations, case by case, without outside interference. In the case of Rosemary Nelson, an impartial body – the ICPC – had judged that the mechanism had failed. The Head of Police Division acknowledged that the episode was made significant by the fact that concerns were raised from within the complaints system: *'It wasn't, you know, the Lawyers Alliance for Justice or whatever from across the pond; it was people who were here on the ground'*.

⁹It was shortly after this that the Secretary of State and the Permanent Under-Secretary became aware that SB were seeking to plant a listening device in a residence owned by Rosemary Nelson and rented out to Colin Duffy.

17.51 Despite the high level of concern generated by this episode no consideration was given as to whether the RUC was equipped to deal with concerns about Rosemary Nelson's safety or whether there should be a renewed assessment of her vulnerability. There is no evidence that anyone, other than the Secretary of State, harboured doubts over the RUC's capacity to handle matters properly with regard to Rosemary Nelson. No-one within the NIO, it seems, considered the question of Rosemary Nelson's security. The focus was on supporting the RUC and 'managing' the crisis.¹⁰ It was evident from a letter by Adam Ingram, the Minister of State responsible for security, to Jane Winter of British Irish Rights Watch (BIRW) dated 12 August 1998 that no immediate action was proposed with regard to Rosemary Nelson's safety:

'I can also say that I know from my frequent discussions with the Chief Constable that he would not tolerate intimidation of defence lawyers and would act were evidence available. The recent appointment of Commander Mulvihill to the Rosemary Nelson case [...] demonstrates that he will take decisive action where appropriate.'

The case also highlights the important role of the Independent Commission for Police Complaints. The ICPC, having met him, has approved the appointment of Commander Mulvihill and will be supervising his investigation. Obviously, we must now await the outcome of that investigation.'

17.52 Although a solution to the immediate dilemma had been found, two fundamental issues were overlooked. No consideration had been given to the question of whether Rosemary Nelson might be in danger and whether interim measures were needed to protect her, and nothing was done to ensure that behaviour of the kind alleged did not occur.

The June 1998 complaint

17.53 Commander Mulvihill examined one additional case that was reported while the debate concerning what was to be done in relation to the LAJI and Duffy/Nelson complaints was continuing. This concerned the allegations made by a client who had been detained at Castlereagh Holding Centre in June 1998, the details of which are set out at Chapter 8.6. He described his detention and questioning in a witness statement taken by a member of Commander Mulvihill's team on 1 September 1998.

Commander Mulvihill's investigation and conclusions

17.54 Commander Mulvihill and his team began their work towards the end of August 1998 and in the weeks that followed they completed their investigation into the LAJI and Duffy/Nelson complaints and they carried out a review of those matters with which the ICPC had been dissatisfied. They also investigated the further complaint arising from the detention of a client at Castlereagh Holding

¹⁰In his Inquiry statement Paul Donnelly, the ICPC Chairman, referred to a conversation he had with the Senior Director Belfast who, although by then retired, had been asked to review a grievance lodged with the NIO by the RUC Chief Inspector against Geralyn McNally. According to Paul Donnelly, when he and the Senior Director Belfast met in relation to this matter, the Senior Director Belfast asked him *'if Geralyn McNally realised that her job was "to help the police?"'* Paul Donnelly surmised that the Senior Director Belfast was implying that Geralyn McNally should not have *'rocked the boat'*. When asked about this conversation during the Inquiry hearings the Senior Director Belfast said: *'It is not something I would have said at all. Certainly I felt that the ICPC had a dual role to protect the public and to protect the police, and I might have said that. But I certainly would not have said she shouldn't have rocked the boat.'*

Centre in June 1998. By January 1999 they had taken further and more detailed statements from Rosemary Nelson and Colin Duffy and they had re-interviewed 21 of the 22 officers who were originally affected by the LAJI and Duffy/Nelson complaints (one officer refused to be interviewed). They also interviewed a further officer who had been overlooked in the course of the earlier investigations. They engaged the services of an analyst.

17.55 For the purposes of one aspect of the Duffy/Nelson complaint, concerning the decision to allow officers to continue to interview Colin Duffy on 24 June 1997 after he had asked to see his solicitor, telephone records were obtained that demonstrated that assertions made by Rosemary Nelson as to the time of her arrival at the Holding Centre during the evening of 24 June 1997 were incorrect. In her witness statement she stated that she had arrived at 21.42 whereas in fact she was not told of Colin Duffy's request until that time. Evidence from the Gatekeeper, originally obtained by the Investigating Officer, that she had arrived at 22.20, was therefore deemed to be correct and when this evidence was shown to Rosemary Nelson she accepted that she had been mistaken.

17.56 Commander Mulvihill delivered reports in respect of each of the complaints that he had been asked to investigate. In every case his advice was that there was insufficient evidence to justify criminal or disciplinary proceedings against any officer. Each of the files was in due course sent to the DPPNI who endorsed that view. The ICPC issued Statements of Satisfaction in respect of both the LAJI and the Duffy/Nelson complaints on 23 March 1999. A Statement was issued in respect of the June 1998 complaint on 19 February 1999.

17.57 We do not consider it necessary to review Commander Mulvihill's detailed findings. His investigations and the RUC investigations which preceded them were not aimed at establishing the truth or otherwise of the allegations made by Rosemary Nelson and her clients. The object of those investigations was to establish whether there was sufficient evidence to justify disciplinary or criminal proceedings against individual officers. That evidence had to be sufficient to discharge the criminal burden of proof and that was so in respect of both criminal and disciplinary proceedings. In circumstances in which the choice fell between an account given by a detainee and that given by at least two police officers who denied the allegation it was unlikely that the burden could ever be discharged, a fact appreciated by many lawyers who gave evidence to the Inquiry. The formal rules of evidence which applied at that time meant that hearsay statements such as those made by detainees to others after their release from custody were inadmissible and, in keeping with the well-established principle of criminal law, each charge was to be considered separately: patterns of behaviour carried no weight for the purposes of either criminal or disciplinary proceedings.

17.58 In our examination of the investigations of these complaints, all of which were carried out under the same disciplinary regime, we were struck by the formulaic approach adopted by the officers. Making threats to kill is a very serious offence. In his letter to Sir Ronnie Flanagan and Mo Mowlam the Chairman of the ICPC described the matters under consideration as 'grave'. Yet in our view this was not reflected in the way the investigations were undertaken. Once a statement was taken from a complainant the investigations involved the gathering of custody and interview records and the carrying out of interviews under caution which comprised, in the case of those interviews carried out by the RUC, simply putting the allegation to the officer under investigation. No attempt was made to explore the officers' attitude towards the detainees or towards Rosemary Nelson. No officer, for example, was asked whether he had been involved in the investigation of the murder

of John Lyness and, in respect of the Duffy/Nelson complaints, none was asked whether they were personally acquainted with either of the two constables who had been murdered.

17.59 The superficial nature of the RUC investigations is emphasised in our view by the fact that no consideration appears to have been given to the possibility that the alleged comments, those for example which asserted that Rosemary Nelson was a supporter of PIRA, might have reflected a genuine belief on the part of the officers against whom the complaints were made. This possibility was not explored at all. None of the officers was asked if they had been informed of intelligence that had been gathered relating to Rosemary Nelson. Nor were any supervisory officers questioned to determine whether individuals under their command had expressed resentment towards Rosemary Nelson or had grounds to hold a grudge against her.

17.60 Commander Mulvihill's conclusions did not cover three other complaints.

The October 1997 complaint

17.61 This complaint was made on behalf of a client who was arrested and taken to the Holding Centre at Gough Barracks on 16 October 1997. Details of the allegation are set out in Chapter 8.4(a). An investigation was carried out by the same Investigating Officer assigned to the LAJI and Duffy/Nelson complaints but the investigation was not supervised by the ICPC. The officer submitted his report on 27 March 1998 and on 17 May 1998 the investigation was closed with no action being taken against any officer. The ICPC wrote to the complainant on 17 June 1998 informing him of the outcome of the investigation.

The December 1997 complaint

17.62 Details of this complaint which concerned comments allegedly made to a client by uniformed officers while he was being taken by car to Lurgan police station following his arrest in December 1997 are set out at Chapter 8.4(b).

17.63 The complainant in this case had originally provided a statement to a member of Rosemary Nelson's staff on 27 February 1998 and this was submitted to the RUC on 6 April 1998. An officer was appointed to investigate and Geralyn McNally was nominated by the ICPC to supervise. The complainant did not cooperate with the investigation and on 4 November 1998 the investigation was closed and a Statement of Satisfaction was issued by the ICPC.

The February 1998 complaint

17.64 Details of this complaint which was made on behalf of a client who was arrested on 21 February 1998 are referred to at Chapter 8.4(c).

17.65 The client failed to answer correspondence from RUC Complaints and Discipline Department and the investigation was concluded with no disciplinary action being taken. The ICPC wrote to Rosemary Nelson on 4 November 1998 indicating that it agreed with the RUC's decision.

Geralyn McNally's experience after Rosemary Nelson's murder

17.66 On 22 March 1999 the ICPC wrote to the Assistant Chief Constable (Complaints and Discipline) enclosing a formal Statement confirming its view that the investigation into the LAJI and the Duffy/Nelson complaints had been conducted satisfactorily. Referring to the pre-Mulvihill stage of the investigation, however, it stated:

‘Throughout the investigation the Supervising Member consistently raised concerns about its conduct and the behaviours 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.’

Details of Geralyn McNally’s particular concerns were listed in a two-page appendix attached to the Statement. These included, for example, ‘*general hostility, evasiveness and disinterest*’ exhibited by the officers under investigation; the late attendance of an interviewee who ‘*smelled of alcohol*’ during the interview; and the presentation, without prior knowledge of the Supervising Member, of pre-prepared witness statements by the officers under investigation. Some items in the schedule alluded to a perceived bias on the part of the Investigating Officer against Rosemary Nelson.

17.67 The Statement of Satisfaction was published in full in *The Irish News* on 24 March 1999 and was the subject of comment in the media for a number of days. On 28 March 1999 – less than two weeks after Rosemary Nelson’s murder, but before the results of Commander Mulvihill’s review were published on 30 March 1999¹¹ – an article appeared in *The Sunday Times*, under the headline ‘*A prison record will see you right in the North*’. The article contained the following passage:

‘Didn’t anyone think it strange that the person chosen by the Independent Commission on Police Complaints (ICPC) to investigate allegations that the RUC had threatened Rosemary Nelson and Colin Duffy was Geralyn McNally?’

In one sense she was an obvious choice: an up-and-coming barrister with an interest in civil liberties and a long record of public service. In the past those eminent qualifications might not have been enough to outweigh the fact that she is also a woman, a Catholic and an Irish-language enthusiast.

That was prejudice, but in most societies a line might have been drawn at the fact that she is vice-chairman of the Northern Ireland lawyers group of Amnesty International.’

17.68 The next day, Geralyn McNally wrote to Paul Donnelly, Chairman of the ICPC. She highlighted three matters of concern: the fact that one of her fellow members of the ICPC had said to the Chief Executive that Geralyn McNally was ‘*working to a political and personal agenda*’; that ‘*during a PANI gathering on Wednesday evening last, members of this Authority made a number of disparaging and damaging comments about me to their guests, including a substantial number of journalists*’; and *The Sunday Times* article. On 24 April 1999 *The Irish Times* reported that she had claimed that she ‘*was the subject of a campaign to depict her as a “neurotic, republican nut”*’.

17.69 There had been earlier instances when disrespectful and hostile comments had been directed towards Geralyn McNally by RUC officers. A note recorded by an Irish Government official following a meeting attended by both the Chairman and Chief Executive of the ICPC on 17 June 1998 recorded the following:

‘In a confidential aside, he [i.e. Paul Donnelly] expressed concern that McNally, the supervising member, was coming under a degree of pressure; receiving a number of “silent” phone-calls, the subject of offensive remarks by RUC officers she encountered in the course of her work e.g. “did you come from the dole queue to this job etc”.’

¹¹ Commander Mulvihill completed his review on 5 March 1999 and it was then submitted to the ICPC and the Chief Constable. A joint statement on the investigations was issued by the ICPC and the Chief Constable on 30 March 1999.

Paul Donnelly told us that he could recall two other instances when GERALYN McNALLY had reported similar comments to him. But with the release of the Statement of Satisfaction he told us that she became the subject of what he described as an *'orchestrated, very personal and venomous campaign'*. He said: *'It was coming from several sources, and I remember the News Letter contacting us, obviously having been quite extensively briefed [...] rather than the usual sort of passive giveaway critical comments, this was actively being engaged with, there were people who were actively seeking to undermine the case by undermining the Commission member'*.

17.70 In parallel, and in a manner reminiscent of Rosemary Nelson's experience, GERALYN McNALLY received an anonymous death threat. The threat and the NIO response was described in a Submission to the Secretary of State dated 14 May 1999.

'Steps were taken almost immediately after the death of Rosemary Nelson to put appropriate security measures in place for Ms McNALLY. This process became even more urgent when she received a threat, through a telephone call to her husband at the Bar Library. The police are investigating this and security measures have been provided for her car and home.'

17.71 In some ways GERALYN McNALLY's experience was very similar to that of Rosemary Nelson. Once she put on record her concerns about police attitudes there were three consequences: disparaging comments were made about her; a negative press article appeared; she was threatened. But in her case, possibly learning from Rosemary Nelson's murder, the NIO and RUC promptly provided security measures for her.

Conclusion

17.72 The system for investigating complaints had obvious flaws: the burden of proof was such that complaints had a negligible chance of succeeding; moreover, the standard of proof was beyond reasonable doubt; and the absence of audio recording meant that in effect there was only the complainant's word for it, set against the word of two officers. The fact that an allegation of misbehaviour does not reach the criminal standard of proof does not mean that the misbehaviour did not occur. The weakness of the system was well understood: by Ministers; by Sir Ronnie Flanagan, who instituted audio recording; and, in his evidence to us, by Commander Mulvihill.

17.73 However, the almost inevitable finding that complaints were not proved did not absolve senior officers from the responsibility to take management action to ensure that such misbehaviour by officers did not occur. We have found no evidence of any such action in any of the documents we have seen.

17.74 We also believe that, just as damagingly, the fact that complaints were made was resented, and thus increased the hostility felt towards Rosemary Nelson by some officers within Lurgan RUC. This may partly explain the lack of any positive steps to warn Rosemary Nelson of her vulnerability.

17.75 Because the complaints were regarded as unfounded, as distinct from 'not proved', they were not taken into consideration in any threat assessment and were completely discounted.

17.76 But the words allegedly used by officers, as set out in the complaints, were highly relevant to the risk facing Rosemary Nelson; and not recognising their relevance amounted to a serious failure by the RUC.

18 Senator Torricelli's Letter

18.1 Not very long after Edmund Lynch of the Lawyers Alliance for Justice in Ireland (LAJI) sent a letter to Sir Louis Blom-Cooper QC on 13 March 1997 (see Chapter 16.32), a letter with much the same message was received by the British Ambassador in Washington DC from New Jersey Senator Robert Torricelli. His letter read as follows:

I would like to draw your attention to the case of Ms. Rosemary Nelson, a solicitor in Northern Ireland. Ms. Nelson, and a number of other solicitors who represent Catholic clients, have been the victims of discrimination and harassment during the past several months. I urge you to consider the charges made by Ms. Nelson and request Sir Nicholas Lyell, Attorney General of Great Britain, to investigate this situation.

Ms. Nelson has indicated that she has received several threats against her life from an officer of the Royal Ulster Constabulary (RUC) stationed at the Gough Interrogation Station. Several clients have stated that, during the course of their interrogations, Ms. Nelson's life was threatened. Although these threats were not made directly to Ms. Nelson, they have been terrifying nonetheless.

Initially, Ms. Nelson believed these threats to be an attempt to intimidate her from working on behalf of various clients. As a result, she dismissed them as trivial matters which would not be acted upon. However, these threats have recently become more insistent and ominous, causing Ms. Nelson to fear for her safety.

In the interests of serving justice in Northern Ireland, I hope that the Attorney General will consider instituting a criminal investigation of Ms. Nelson's charges, as well as the threats received by other solicitors in similar situations. In this case, it may not be appropriate to rely upon the RUC to investigate one of its own members.'

18.2 Senator Torricelli did not recall sending this letter. He told us that he had links with a number of Irish-American groups and that it was very likely through his contact with one of these that this letter was sent. The letter would have been prepared by a member of his staff and his signature added mechanically. He had no recollection of ever meeting Rosemary Nelson.

18.3 This letter was not forwarded to the Attorney General but was passed directly to the Northern Ireland Office (NIO) which was thus alerted to the same allegations which had been brought to the attention of the Complaints and Discipline Department of the RUC by the LAJI letter of 13 March 1997. Copies of Senator Torricelli's letter were sent to the Heads of both Security Policy and Operations Division, and Police Division. Security Policy and Operations Division was responsible for a number of areas of policy and certain aspects of security including decommissioning and cross-border security. Police Division supported Ministers in the provision of the police service and had branches responsible for police resources, the Independent Commission for Police Complaints (ICPC) and later the Police Ombudsman, and the Key Persons Protection Scheme (KPPS), which is the protocol by which individuals who were deemed to be at significant risk from terrorist attack were provided with security measures at the government's expense.

18.4 The Head of Police Division explained to us that the letter from Senator Torricelli would have been regarded as an 'important letter'. She believed that it would have been discussed with the Senior Director Belfast and the Head of Security Policy and Operations Division at a weekly meeting. Both divisions, however, forwarded

the letter to RUC Command Secretariat. Police Division did so on 30 April 1997, with a request for background information and an *'update on events'*; Security Policy and Operations Division on 1 May 1997. Police Division also sent a copy of the letter to the ICPC.

18.5 We were told that Command Secretariat was effectively split into two parts. One part comprised the Chief Constable's personal staff. It managed the diaries of the Chief Constable and dealt with personal correspondence. The other side processed the more 'official' correspondence received by the RUC. This latter section was described to us as *'a clearing house for all the correspondence that came into the RUC through the Chief Constable's office'*. Its function was to direct correspondence to whichever part of the RUC was best able to deal with it or to provide briefing so that a response could be written *'topped and tailed'* by Command Secretariat.¹ It was this section which formulated the RUC response to the NIO's request for information with which to respond to the Senator's letter. It read as follows:

'I refer to your faxed correspondence of 1 May 1997 and can confirm that a complaint against Police has been made by Ms Nelson and is presently under investigation by police supervised by the ICPC.'

Accordingly it would be [sic] not be appropriate to comment further at this stage.'

18.6 We have no doubt that this letter was written by a very busy police officer and was intended to provide a means by which a definitive response could be given to Senator Torricelli's letter. It may also have been somewhat typical: the Principal of the Police Complaints Branch of Police Division of the NIO told us that experience of working with the police had taught Police Division that they would receive *'the very minimum or minimal answer to a question that we put to them'*.

18.7 In our view the letter also reflected what we believe to have been a widespread assumption within the RUC that the Complaints Procedure provided the only means by which an officer's misconduct could be reviewed and that once that procedure was engaged no other managerial action could be taken. We also found it significant that the letter failed to address the arguably more important concern raised by Senator Torricelli, namely Rosemary Nelson's safety. It was almost as though the suggestion that police officers might actually be a threat to Rosemary Nelson was not something capable of being recognised within the force.²

18.8 There was, in fact, an established procedure applicable when information regarding death threats came to light. It was contained in Force Order 60/91, which was entitled *'Threats against the Lives of Members of the Security Forces, VIPs or Other Individuals'*, to which every officer in the RUC would have had access.³ The Order stipulated that upon learning of a threat, *'details of the threat will be passed forthwith to the local Special Branch'*. With regard to the *'other persons'* category into which Rosemary Nelson would have fallen, the Force Order required that local Special Branch (SB) inform the Sub-Divisional Commander in whose area the subject lived or worked in order that he should *'take whatever action he considers necessary'*. Local SB would also inform SB Headquarters.

18.9 Where it was considered appropriate by the Sub-Divisional Commander, after consultation with the Divisional Head of SB, the Force Order prescribed

¹See Appendix A for the position of Command Secretariat in the command structure of the RUC.

²The Command Secretariat response was also factually incorrect: Rosemary Nelson had not made a complaint against the RUC in May 1997. It is assumed that the officer had been informed of and was referring to the LAJI complaint concerning threats to Rosemary Nelson which had been accepted by the RUC on 20 April 1997.

³Force Order 60/91 which was replaced on 20 March 1998 by Force Order 21/98.

that crime prevention officers were to be tasked with providing those under threat, via the approval of the Sub-Divisional Commander, with written advice on their personal security and/or surveys of their homes or businesses. Service of the written guidance was to be in person, unless security considerations dictated otherwise, and with a witness if necessary. A refusal to accept the advice was to be recorded in writing for the Sub-Divisional Commander or the Crime Prevention Officer.

18.10 Sub-Divisional Commanders were required to maintain a threat log to contain *'brief details of any threat to individuals in their areas passed to them by local Special Branch together with any action taken as a consequence'*.

18.11 When the Command Secretariat response was received by the NIO, the Executive Officer within the Complaints Branch of Police Division who had asked for the briefing noticed that the issue of Rosemary Nelson's safety had not been addressed. She telephoned Command Secretariat and then, on 22 May 1997, sent a memorandum asking whether *'the police have discussed with Ms Nelson anything to do with her personal protection in light of what the Senator refers to as threats which "have recently become more insistent and ominous, causing Ms Nelson to fear for her safety".'* Again, we found the reaction of Command Secretariat to be revealing – the Superintendent forwarded the letter, under cover of the heading *'Ms Rosemary Nelson – alleged death threats by RUC'*, to the Assistant Chief Constable (Complaints and Discipline) for advice.

18.12 The Superintendent told us that he could not recall why he had not followed Force Orders on this occasion. If he erred in not doing so, however, he was not the only officer at fault. The Complaints and Discipline Department had received notice of the allegations via the LAJI letter as early as 24 March 1997 and, although an investigation had been opened, no effort had been made to inform SB as required by the Order.

18.13 The failure to follow the official procedure was rectified, in part, on 28 May 1997 when a Superintendent within the Complaints and Discipline Department spoke about the matter with the Deputy Sub-Divisional Commander in Lurgan on the telephone. The following day he forwarded copies of the correspondence, the letters from LAJI and Senator Torricelli and the NIO memorandum of 22 May 1997, to the Sub-Divisional Commander in Lurgan so that he could *'consider what action, if any, is required regarding the security or safety of Ms Nelson'*. He also wrote, on the same day, to Command Secretariat again, enclosing copies of the letters. In his memorandum he wrote:

'Given that Ms Nelson has not yet come forward for interview by our Investigating Officer or to the best of D/Sub-Divisional Commander, Lurgan's knowledge made no representations to Lurgan RUC (her office is in Lurgan) it would appear that the authors of the letters seem to be reading more into the alleged threats than Ms Nelson or ourselves. We would hope that whoever has the information to support the Senator's contention that "these threats have recently become more insistent and ominous" will come forward for interview by the Investigating Officer.

I would suggest that the Northern Ireland Office be made aware of the fact that Ms Nelson has to date ignored requests to come forward for interview in this ICPC supervised investigation. They should, perhaps, be informed that apart from what has been stated in the USA Senator's letter we have presently no evidence to support the contention that the threats "have recently become more insistent and ominous, causing Ms Nelson to fear for her safety".'

18.14 Again, we consider the comment that *'the authors of the letters seem to be reading more into the alleged threats than Ms Nelson or ourselves'* reflected a state of mind

that was widespread within the RUC. No-one was surprised that these allegations had been made, even less alarmed by them. There was no recognition here of the possibility that threats, if in fact they were made, might have been intended to cause alarm and terror or that they might have indicated that Rosemary Nelson was in fact in danger.

18.15 Command Secretariat responded to the NIO's further request for briefing in a letter of 6 June 1997 without the benefit of any information from the Sub-Division and without SB having been alerted as required by the Force Order. According to this response, consideration of the issue of Rosemary Nelson's safety was contingent upon her cooperation with the LAJI complaint. The response read as follows:

'I can now advise you that Ms Nelson has to date ignored requests to come forward for interview in this ICPC supervised investigation. Apart from what has been stated in the USA Senator's letter we have presently no evidence to support the contention that the threats "have recently become more consistent [sic] and ominous, causing Ms Nelson to fear for her safety".'

'Perhaps Senator Torricelli would ask Ms Nelson to make contact with the Investigating Officer at Complaints and Discipline, Gough Barracks, Armagh [...] to enable her complaints [to] be fully investigated.'

18.16 The Executive Officer in the Complaints Branch of Police Division of the NIO told us: *'I was primarily responsible for complaints against the police and not for dealing with issues relating to personal protection. That was dealt with by the KPPS branch of the Police Division. My role was only in complaints and disciplinary matters and I would have focused on that.'* She told us that *'personal protection was definitely not something for our branch. [...] Within the NIO the Key Persons Protection Scheme would have been the natural home for that.'*

18.17 In line with this approach she wrote a note, on 8 July 1997, to enable the International and Planning Division of the NIO to brief the British Embassy in Washington DC. Her note read as follows:

'Police Division provided part-input to your minute of 22 April requesting a line to take in relation to Senator Torricelli's letter. At the time I said that I had asked the RUC to detail any action they might have taken in relation to Ms Nelson's personal protection in light of the alleged threats against her life.'

2. *They have only recently provided a response. You may at this very late stage think that the issue is "dead in the water". Or alternatively you may well take the view that it is still worth providing a follow-up reply on this single issue.*
3. *The police line is that Ms Nelson has to date ignored requests to come forward for interview in the ICPC supervised investigation. They have no evidence to support the Senator's contention that the threats "have recently become more consistent [sic] and ominous, causing Ms Nelson to fear for her safety".'*
4. *They suggest that Senator Torricelli should ask Ms Nelson to make contact with the Investigating Officer at Complaints and Discipline, Gough Barracks, Armagh [...] to enable her complaints to be fully investigated.*
5. *It is highly unlikely that Ms Nelson will co-operate [with the Complaints and Discipline investigation] but at least from the point of view of informing the Senator we can take the line that the police are taking the issue seriously and the onus is on Ms Nelson to co-operate.'*

18.18 A formal reply to Senator Torricelli's letter was sent to the Senator on 24 July 1997.

18.19 Although this correspondence had been handled by an Executive Officer in the Complaints Branch of Police Division of the NIO, this was not undertaken in isolation. It is clear that the Heads of both Police Division and Security Policy and Operations Division were aware of and supported the approach being taken.

Conclusion

18.20 The letter from Senator Torricelli, having entered the NIO as a case involving the personal protection of Rosemary Nelson had been handled thereafter as a case of possible misconduct by an RUC officer. NIO officials accepted the RUC position that there was no evidence to support the contention that threats had *'become more insistent and ominous, causing Ms Nelson to fear for her safety'*. There was, apparently, no recognition at this time that Rosemary Nelson might actually be in danger and in need of protection.

19 The UN Special Rapporteur's Visit to Northern Ireland

19.1 The Chief Constable, Sir Ronnie Flanagan, told us that until he was asked to make a witness statement for the purposes of the Inquiry he had not seen any Special Branch (SB) reports concerning Rosemary Nelson. He was not aware of reports that suggested in 1994 that she had been involved in the creation of false alibis for her clients; that in April 1996 she was gathering information for the Provisional Irish Republican Army (PIRA); that in August and September 1997 she was interfering with witnesses.

19.2 We accept that he did not see the reports; however, we discuss at Chapter 26.3 to 26.12 how far he might have been aware of their gist. Nevertheless, Rosemary Nelson may well not have been in the forefront of his mind in October 1997, when a discussion took place about the treatment of defence lawyers in Northern Ireland. That discussion, and its aftermath, throws some light on the view held by the Royal Ulster Constabulary (RUC) of defence solicitors, and we have therefore examined it in some depth.

19.3 The discussion took place during the visit to Northern Ireland, in October 1997, by the UN Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy. On 24 October 1997, during the course of this visit, the UN Special Rapporteur and his Secretary Alan Parra met the Chief Constable, the Assistant Chief Constable (Crime) and the Chief Superintendent from RUC Command Secretariat. They met again, briefly, on 27 October 1997.

19.4 The UN Special Rapporteur had indicated his desire to visit the UK in a letter to the UK's Ambassador to the UN dated 21 February 1997. This was a significant issue for the Northern Ireland Office (NIO) and for the UK Government as a whole. The UN Special Rapporteur would report directly to the UN and there was concern that criticism of domestic arrangements could undermine the position taken by the UK in relation to other states that were considered to be less cognisant of human rights.

19.5 In the correspondence that followed in April 1997, the UN Special Rapporteur identified the following issues as being of concern to him. He wrote:

- (1) There have been consistent reports of alleged systematic abuse of defence lawyers in Northern Ireland by certain police officers since 1992. There have also been reports of similar abuse, although to a lesser degree, in England. More recently, there has been reported increase of such abuses in Northern Ireland, associated with an increase in arrests under the emergency laws;*
- (2) There has been concern expressed over a number of provisions that restrict access to legal advice. These include: (a) deferrals of access to a solicitor for periods of up to 48 hours under emergency laws; (b) refusal to allow solicitors to remain present during police interviews in Northern Ireland; (c) closed visits for the purpose of legal consultations for certain prisoners in England.*
- (3) There is concern about the absence of safeguards to prevent abuse of lawyers, such as video and audio-recording of police interviews;*
- (4) There have been serious allegations received concerning the unresolved murder of Belfast solicitor Patrick Finucane, which claim that there was official collusion in his death;*

(5) *There have been concerns expressed that certain provisions in the emergency legislation (e.g., absence of jury, lower threshold [sic] for admissibility of confession evidence) and in the ordinary criminal law (e.g., the abrogation of the right to silence) impinge on the ability of the judiciary to function impartially and independently;*

(6) *There have been concerns expressed that the provisions of the Police Act which do not exempt lawyers' offices from bugging undermine the lawyer/client privileges.'*

19.6 The visit was confirmed in principle on 4 April 1997 and in due course firm dates in October and a schedule of meetings and visits were agreed. A meeting with Sir Ronnie Flanagan was scheduled for 24 October 1997.

19.7 Earlier in this Report we described how non-governmental organisations (NGOs) such as the Committee for the Administration of Justice (CAJ) and British Irish Rights Watch (BIRW) had lobbied the UN Special Rapporteur and encouraged him to pay particular attention to Northern Ireland (see Chapter 16.9 to 16.10; 16.52 to 16.53). In his evidence to us the UN Special Rapporteur confirmed that his decision to visit had been prompted by their reports.

19.8 During his visit the harassment of defence lawyers was high on his agenda. On 5 March 1997 he had received a letter from BIRW telling of a complaint from a female solicitor in Northern Ireland who had experienced *'very serious death threats and other abuse, some of it sexual in content, levelled at her by RUC officers via the medium of her clients'*. Although Rosemary Nelson was not named, the UN Special Rapporteur learned in due course that she was the solicitor referred to. He responded to BIRW's letter the following day, requesting further information in order to be able to consider intervening.

19.9 On 10 July 1997 BIRW sent him the two reports regarding Rosemary Nelson that they had prepared and sent to the Secretary of State for Northern Ireland; the first detailing the difficulties she had experienced in representing Colin Duffy and the alleged comments made about her during police interviews of him; the second dealing with the alleged assault on her on Garvaghy Road. The paper on the background to Duffy's case informed the UN Special Rapporteur that, as a result of her appearance in print and broadcast media, Rosemary Nelson had been in receipt of telephone death threats. It was on the basis of these that he wrote to the UK's Ambassador to the UN on 1 August 1997 and expressed his concern that, if true, the allegations would *'substantially impinge'* on her independence as a lawyer.

'1) According to information which I recently received, it is alleged that lawyer Rosemary Nelson has been the victim of numerous death threats due to her activities as a lawyer. Ms. Nelson represents Colin Duffy who is charged with the murder of two Royal Ulster Constabulary (RUC) officers. In connection with her representation of Colin Duffy, Ms. Nelson has reportedly been denied the opportunity to be present when her client was being interviewed and interrogated by the police and the opportunity to present to the RUC her clients [sic] alibi statement at the time that he was charged. It is further alleged that Colin Duffy was charged without the presence of Ms. Nelson, despite her request to be present. In addition, the source also reported that [a Detective Constable] had stated to Colin Duffy that he was guilty of committing the crime and that Rosemary Nelson was very proud of him for committing those crimes. Concerns were expressed by the source that Ms. Nelson is being associated with the cause attributed to her client by the RUC.

2) I have also received further information concerning Ms. Nelson in relation to her representation of the Garvaghy Road Residents [sic] Coalition, a residents group from Portadown who oppose triumphalist marching by the Orange Order through their nationalist housing estate. According to the source, at approximately 3:30 am

on 6 July 1997, Ms. Nelson was summoned to Garvaghy Road after the RUC had amassed officers to seal off that area. The source alleges that Ms. Nelson attempted to communicate with an RUC officer but was verbally and physically abused. The source further alleges that an RUC officer spat on Ms. Nelson's face and accused her of being a "Fenian" sympathizer. Ms. Nelson was also allegedly struck on the back of her head with a police riot shield when she intervened on the behalf of a boy who was being ill-treated by an RUC officer. Following these assaults, Ms Nelson was reportedly bruised throughout her body. According to the source, the RUC's ill-treatment of Ms. Nelson stems from her legal representation of the Garvaghy Road Residents Coalition and her public affirmation of Colin Duffy's innocence.'

19.10 His letter was forwarded by the NIO to RUC Command Secretariat on 26 August 1997. The reply, which purported to deal with both the UN Special Rapporteur's letter and a letter from the NIO seeking advice for a response to questions raised by the Irish Side, also concerning Colin Duffy, was sent to the NIO on 10 September 1997 signed by the Chief Superintendent. It was this reply, it appears, that was used by the NIO to provide a briefing on which the UK's Ambassador to the UN based his response to the UN Special Rapporteur of 6 October 1997. So far as we can ascertain, neither the UN Special Rapporteur's letter nor the reply was seen by Sir Ronnie Flanagan. They certainly should have been brought to his attention.

19.11 The UN Special Rapporteur's visit took place between 18 and 30 October 1997. He and Alan Parra, himself a lawyer, spent three days in London and then flew to Northern Ireland. During their visit they met Paul Murphy, the Minister of State for Political Development, and a number of other government representatives including the Senior Director Belfast and the Head of Police Division, as well as the Independent Commissioner for the Holding Centres, the Lord Chief Justice of Northern Ireland, representatives of the Independent Commission for Police Complaints (ICPC), members of NGOs, and representatives of the Bar Council of Northern Ireland and the Law Society of Northern Ireland. They also met 'a large number of solicitors and barristers'. They met Pat Finucane's widow and, on 26 October 1997, the day before a second brief meeting with Sir Ronnie Flanagan, they met Rosemary Nelson.

Meeting with Rosemary Nelson

19.12 The UN Special Rapporteur told us that he met Rosemary Nelson at the CAJ office in Belfast, at her request, on her own. She told him about her clients' reports of insults and 'messages that her life was at risk' which had been passed on during interviews, of the assault on the Garvaghy Road and of her sense that she was being targeted and followed by the police. He also told us that Rosemary Nelson showed him anonymous threats which she had received through the post. He said:

'From the kind of problems she had been encountering with regard to her practice and with regard to the threats and intimidations on her. She had no trust in the police, though all she wanted was – I recall that she wanted to continue with her practice without fear or favour and to serve her clients in the most professional way. But there was no – she never, if I recall – she never asked for any sympathies from anyone, including myself. And if I recall, when we started off, it was more she started off talking about the problems that defence lawyers were encountering and then zeroed down to her own situation.'

19.13 He also told us that he felt that Rosemary Nelson's case was more serious than those of the other solicitors he met on his visit. He stated: 'From what she said, it appeared that the RUC were really gunning for her. The kind of remarks made by the

RUC via her clients as repeated to me were the worst examples I heard from listening to the evidence of solicitors out there [i.e. in Northern Ireland].’ He said that she was the only solicitor whom he asked whether she was concerned for her safety. He said:

‘I remember that I asked her if she was married and had any children and she replied “yes”. Although Rosemary Nelson was clearly troubled by the threats that she was receiving, she was an extremely courageous lady. Towards the end of the meeting, when I asked her if she was concerned about the safety of her and her family, she replied “no”; she said she had a greater duty to her clients and her profession. She made it quite clear that she was not going to be dissuaded from carrying on with the work that she did. I said that it was great to hear such conviction from a lawyer but I told her to take care. I really admired her courage.’

Sir Ronnie Flanagan’s role in the reform of Northern Ireland policing

19.14 In this chapter and elsewhere we make some criticisms of Sir Ronnie Flanagan. However, it is right that we should acknowledge and emphasise his outstanding contribution to the reform of policing in Northern Ireland which was a vital element in the success of the Peace Process.

19.15 As Deputy Chief Constable, he had undertaken the Fundamental Review of Policing from 1995 to 1997.¹ The Review was completed January 1997. It anticipated many of the changes that were to occur within Northern Ireland policing in the years that followed. Sir Ronnie Flanagan told us: *‘When the review was completed, with a series of more than 100 recommendations, each one representing actually a major programme of change, we mapped those recommendations against the number of possible security scenarios.’*

19.16 Making the RUC as a police force more acceptable to the wider community was one of the Sir Ronnie Flanagan’s main priorities. He told us that, when he was promoted to the position of Chief Constable in late 1996 after a summer of great unrest over Drumcree, he saw one of his key roles as repairing the relationship between the RUC and the Nationalist community, which had suffered *‘tremendous upheaval’* during the dispute of that year. To achieve this improvement in relations he sought to move towards normalisation of the RUC’s interface with the community at every opportunity.

19.17 Steps were taken in 1997 to relax security measures in line with the broader security situation, including a reduced military presence on police patrols, the removal of the majority of vehicle control zones, restrictions on the carrying of long arms, and the use of body armour becoming non-mandatory.² Sir Ronnie Flanagan told us that the transition was intended, *‘amongst other things, to change the culture of the organisation, to remove all unwanted barriers not of our making, but certainly of great necessity, which we saw as barriers between us and the communities we wanted to serve’*. He noted that *‘such change was of course being implemented against a backdrop of enormous political tension’*.

19.18 He often engaged with representatives of NGOs which were known critics of the RUC and the emergency legislation. He met representatives from Human Rights Watch, Lawyers Committee for Human Rights (LCHR), CAJ and Lawyers

¹Royal Ulster Constabulary, A Fundamental Review of Policing: Summary and Key Findings (Belfast: RUC, January 1997)

²Mo Mowlam, Steps along the road to Normality – the Secretary of State details the security response, 28 November 1997. Available on CAIN (Conflict Archive on the Internet).

Alliance for Justice in Ireland (LAJI). Mike Posner from LCHR told us: *‘During many visits to Northern Ireland, I met with the RUC’s Chief Constable, Mr Ronnie Flanagan. To his credit Mr Flanagan was always willing to meet with me and other representatives of LCHR.’*

19.19 He also supported reforms being made by the Government. For example, he presided over the implementation of most of the recommendations made in the Warner Report (1996–1997) which was established, under the leadership of Sir Gerry Warner, the Cabinet Office Intelligence Coordinator, to look into the broader effectiveness of RUC SB as an intelligence organisation and make recommendations.³ He commissioned the Security Service to conduct a further review of SB in 1999. He supported the introduction of audio and video recording during the interview of terrorist suspects detained in the Holding Centres and the introduction of a new Ombudsman system for investigating police complaints.

19.20 Sir Ronnie Flanagan recognised the need to address the culture and attitude of the police force. He explained his philosophy in an interview published in the *Belfast Telegraph* on 1 November 1997 in which it was reported:

‘He also strongly favours squeezing intolerance or sectarian prejudice from the “canteen culture” of the force. Policing tended to be a white, male preserve internationally, and in Northern Ireland a white male Protestant preserve. But attitudes can change, the Chief Constable said. “When I joined the force, girlie calendars abounded in many offices and locker rooms. Nobody actually thought they were offensive to our female colleagues. We had to learn that that was the case, so it is possible to change the culture. And of course we are of Northern Ireland, we were raised in Northern Ireland and I would be dishonest if I pretended that there weren’t instances of the improper, inappropriate use of language and gestures.”’

19.21 In a *Dispatches* television programme in which Rosemary Nelson also featured, broadcast on 15 January 1998, he said that he would prefer it if members of his force were not members of the loyal orders such as the Orange Orders or Apprentice Boys. He said: *‘I think they [i.e. RUC officers] should think very carefully, in terms of perceptions within Northern Ireland whether membership of such organisations [is] actually compatible with people who view people’s perception as to how they might perform their duty.’*⁴ It was reported in July 1998 that leading Unionist politicians were contemplating a legal challenge to any such ban including one politician stating that the RUC could become unacceptable to the Unionist community if its anti-Orange stance continues.⁵

19.22 It should be borne in mind that the issue of RUC attitudes and behaviour towards Rosemary Nelson, and her security, was one of many important and sensitive problems which Sir Ronnie Flanagan had to confront.

Meetings with Sir Ronnie Flanagan

19.23 The UN Special Rapporteur met Sir Ronnie Flanagan twice during his visit. The first meeting, which took place on 24 October 1997 at RUC Headquarters, lasted for over an hour, possibly an hour and a half; the second appears to have been

³The Warner Report’s Terms of Reference included: *‘The methods of operation; with particular emphasis on securing, analysing and acting on intelligence; the methods and effectiveness of liaison within the Force and with other bodies, eg the Security Service, HQNI, [ie the Army], and NYS [New Scotland Yard]; use of information technology and the appropriateness and value of interchanges between RUC SB and the Security Service.’*

⁴*Irish News* 14 January 1998

⁵*Irish News* 28 July 1998, *Lurgan Mail* 30 July 1998

a follow-up visit in which primarily the case of Pat Finucane was further discussed.⁶ We gathered that the meetings were cordial and informal. At the first, Sir Ronnie Flanagan was accompanied by his Assistant Chief Constable (Crime) and the Chief Superintendent from Command Secretariat. Both the Chief Superintendent and Alan Parra took notes during the meeting. The discussion appears to have been in general terms. The criticisms made of the RUC by BIRW, the issue of the treatment of defence solicitors and the restriction of access to legal advice under the emergency legislation were discussed and the RUC put forward a robust defence against the criticisms. It was the detail of this discussion which was later to become a matter of some dispute and remained so during the course of our hearings.

The draft report of the UN Special Rapporteur

19.24 On 6 February 1998 the UN Special Rapporteur sent a copy of his draft report to the UK's Ambassador to the UN. He explained to us that this was customary and it was done so that the government concerned could identify any inaccuracies in it *'without any question of them trying to interfere or influence as to how I should conclude my report, but just [...] to enable them to respond within a short period of time before the report is finalised.'* A copy of the draft had also been given *'in strictest confidence'* to CAJ.⁷

19.25 The draft report covered a range of issues concerning the criminal justice system in Northern Ireland and included a section entitled 'Intimidation and Harassment of Lawyers' in which the UN Special Rapporteur referred to *'allegations concerning the pattern of abusive remarks made against defense solicitors in Northern Ireland, particularly against those who represent individuals accused of terrorist related offences'*. At paragraph 16 of the draft report, he stated that these reports were generally based on instructions from clients and referred by way of example to Rosemary Nelson who, *'according to the source', 'had been the victim of numerous death threats owing to her representation of Mr. Colin Duffy, who had been charged with the murder of two RUC officers'*. He referred also to the allegation that Rosemary Nelson had been assaulted and abused by RUC officers on the Garvaghy Road in Portadown. Further examples of alleged police behaviour were given in respect of two other named solicitors. At paragraph 21 of the draft report he summarised the RUC position as follows:

'The RUC categorically denies the allegations. In his meeting with the Special Rapporteur, the Chief Constable noted that there is a lack of evidence to substantiate the allegations, and further, there were hardly any complaints made by lawyers. He also pointed out that, in his view, it is significant that the solicitors have not sought judicial review of detentions on grounds of harassment and intimidation. He emphasized that the greatest degree of respect is shown to lawyers and questioned what possible benefit could there be for a police officer to make a disparaging comment or a threat. He also mentioned that numerous safeguards have been put in place to prevent such abuse, including the use of closed circuit televisions which must be monitored during the entire interrogation by a uniformed officer, the presence of a doctor who is available upon the request of the detainee and the appointment of the Independent Commissioner. However, the Chief Constable did express the view that some solicitors may in fact be working for the paramilitaries. In this regard, he stated that this is more than a suspicion. He explained that one agenda of the paramilitary organizations is to ensure that detainees remain silent, and thus, one role of a solicitor is to convey this message to the detainee. Further, he stated that there is in fact a political divide in Northern Ireland and part of the political agenda is to portray the RUC as part of the unionist

⁶As noted by the Chief Superintendent from Command Secretariat.

⁷Letter 12 February 1998 from Human Rights Policy Department of the Home Office to NIO

tradition. These allegations concerning police intimidation and harassment of solicitors is [sic] part and parcel of this political agenda. The Assistant Chief Constable also admitted that during the course of an interrogation an officer may express the view that the solicitor is providing bad advice to the client and not acting in his interests, for instance, by advising the client to remain silent.'

19.26 We have underlined the sentences which became the subject of dispute and which Sir Ronnie Flanagan maintained in his evidence to the Inquiry that he did not utter.

19.27 The UN Special Rapporteur described the events that followed his sending of the report to the UK's Ambassador to the UN as follows:

'I recall that shortly after forwarding the draft report to the UK government, I received a call at home from the British High Commission in Kuala Lumpur. Steve Bridges, a Senior Staff, urged me to remove Rosemary Nelson's name from paragraph 16 of the draft report. He said that if we mentioned solicitors' names in the report, people's lives would be at risk. He specifically mentioned Rosemary Nelson's name and requested I took this out for her protection.'

19.28 The UN Special Rapporteur told us that shortly afterwards he received a telephone call from his secretary, Alan Parra, who had also been telephoned. The UN Special Rapporteur told us:

'The clear message from both of these calls was that the RUC wanted me to remove Rosemary Nelson's name from the report on the basis that her life would be in danger if it was not removed. I found this strange because, as I have stated, the main focus of the Mission had not been on Rosemary Nelson and I remember that throughout the Mission and even at our meetings with the Chief Constable, Rosemary Nelson was not the main focus as she was simply one of a group of lawyers who were being threatened, albeit that her case was slightly more concerning than the others. Whilst she was the name discussed, I was of the opinion that other solicitors' names had to be removed too, if I agreed to taking out reference to Rosemary Nelson.'

19.29 In his witness statement to the Inquiry, Alan Parra described the call he had received thus:

'I recall that I received a call from someone who I am 99% certain was Assistant Chief Constable [Crime] asking me to remove Rosemary's name from the report on the basis that by naming her, the situation would be inflamed and there was a risk that Rosemary would be specifically targeted. I have absolutely no doubts that I received a call from [the Assistant Chief Constable].

I remember thinking that I was troubled that the RUC would feel so strongly that Rosemary would be at risk if she was named in the report. I think that it was at this time that I asked [the Assistant Chief Constable] what steps the RUC was taking to protect her. He told me that they had offered her protection but she had refused it.

I think that it is most likely that the Assistant Chief Constable called me directly because I am sure that I remember having a conversation with Mr Colin Wells from the UK Ambassador's office in Geneva whereby he stated that it was inappropriate for the Assistant Chief Constable to have called me directly. I would have left my card behind at the meeting with my direct number on it. In any event, it was made clear to me that the RUC did not want us to name Rosemary Nelson in the report. There was no mention in this conversation of other aspects of the draft report. The specific conversation relating to the naming of Rosemary Nelson was at draft paragraph 16.'

19.30 Alan Parra said the following:

'A short time later (I cannot specifically recall when), I received a further call on this matter; I think it was a direct call from the Chief Constable, Ronnie Flanagan. My recollection is that the call came through to me on my direct line at the UN. I am aware that Mr Flanagan has denied making this call. However, I am sure that I recall being extremely surprised to pick up the phone to find the Chief Constable of the RUC on the other end. He again may have had my direct line number if I had left my business card behind at the meeting, as I think I had. Certainly at the time I believe I told Mr Cumaraswamy that I had received a call from the Chief Constable. However, I am also certain that I had a phone conversation with Colin Wells. I have given a lot of thought to this and have questioned whether the Chief Constable conveyed his concerns to the Permanent Mission of the UK in Geneva and then Mr Wells conveyed those concerns to me. As I have stated, my recollection is that the Chief Constable called me directly because I recall my surprise. Moreover, I am certain that Mr Wells would have told me if my recollection was wrong at a later date. However, I do believe it is irrelevant whether the Chief Constable spoke to me directly or whether he spoke to the Permanent Mission. The point I wish to emphasise is that there is absolutely no doubt that the Chief Constable was denying the comments attributed to him in the initial draft.'

19.31 Sir Ronnie Flanagan denied making a telephone call to Alan Parra. His evidence on this was as follows:

'A number of allegations were then made to the effect that I called Mr Cumaraswamy to discuss my concerns about his draft report when he had gone back to his home. If I had made the call to him I would have no difficulty in confirming that I had. If there was something that I wanted to say to him I would have picked up the phone to him without hesitation if I thought that that was the best course of action. However, I did not personally make such a call. I think I passed on my concerns about Mr Cumaraswamy's report to [the Head of Police Division] at the NIO. During the conversation I probably said to her that I would contact Mr Cumaraswamy directly to discuss my concerns and she informed me that there were protocols in place in terms of dealing with the Special Rapporteur. She said she would ensure that my concerns were addressed with Mr Cumaraswamy.'

19.32 He also denied making the comments attributed to him in paragraph 21 of the draft report (underlined above at Chapter 19.25). He told us:

'I never expressed "the view that some solicitors may be working for paramilitaries" and that this was "more than a suspicion". I am not only saying that I categorically did not make such remarks, but more importantly I did not hold such a belief, so there was no reason for me to say it. In terms of Rosemary Nelson, I had no information and had not been briefed on any intelligence to suggest that she had behaved improperly in representing Republican clients so would have had no basis to impute any inappropriate behaviour on her behalf.'

He also stated:

'In relation to the comment also attributed to me that paramilitaries were using solicitors to pass a message on to those in custody to ensure they remained silent, I did not say that either and, in any event, it is my belief that paramilitary groups have such control over their members that they would not need to use solicitors to pass such a message. This was something that would be clear and understood by all members of such organisations. Further, I had no reason at all to believe that lawyers would take an active part in taking steps to cement the divide in Northern Ireland. I had no knowledge of any inappropriate links between defence lawyers and paramilitaries.'

Mr Cumaraswamy was the first person to suggest to me that this may be an issue. If I had believed such things I would, of course, have raised it with the Law Society.'

19.33 There were therefore two areas of dispute. First, whether Sir Ronnie Flanagan or anyone from the RUC had telephoned Alan Parra. Secondly, what was said at the meeting on 24 October 1997 and by whom.

The telephone calls

19.34 As regards the making of the telephone calls we examined a number of contemporaneous or near-contemporaneous documents that helped us to reconstruct the order of events. While we cannot exclude the possibility that either the Chief Constable or the Assistant Chief Constable might have made a call to Alan Parra, the documents make clear that the substantive calls to the UN Special Rapporteur and to Alan Parra were made by Foreign and Commonwealth Office (FCO) officials, not by anyone in the RUC.⁸ In any event, we would not attribute any special significance to the matter.

Who said what at the October meeting?

19.35 The dispute regarding who made or initiated these telephone calls is of secondary importance to the question of what was said and by whom. We were concerned to establish whether in fact the disputed comments were made, and if they were whether this indicated that Sir Ronnie Flanagan and the other senior officers who were present at the meeting suspected or believed that defence lawyers generally, and possibly Rosemary Nelson in particular, worked to the 'agenda of the paramilitary organizations'.

19.36 Both the UN Special Rapporteur and Alan Parra were sure that the comments had been made during the meeting. The UN Special Rapporteur believed that they had been made by Sir Ronnie Flanagan. He told us:

'I was immediately alarmed by this comment. If the Chief Constable could hold such an impression, then I could barely imagine what the police officers lower down the rung thought of the defence lawyers they encountered on a daily basis at the Holding Centres.'

19.37 Alan Parra was equally certain as to his recollection. He said:

'I vividly recall discussing the comment that the Chief Constable had made with Mr Cumaraswamy in the car immediately after the meeting. We were both extremely surprised that Mr Flanagan had been so candid with us and I think that we both couldn't believe that he had actually made such a remark. I distinctly remember discussing the comment with Mr Cumaraswamy as we were in the car on our way to a further meeting at the CAJ. I remember that we arrived at the CAJ and immediately informed them of what we had just heard because we were so shocked at what had happened.'

19.38 Alan Parra lost his original notes of the meeting when he left his employment with the UN, but the UN Special Rapporteur had sent a copy of the two pages in which the disputed comments were noted to the Police Authority of Northern Ireland (PANI) in August 1999. A section of them reads as follows:

⁸A telex to the UK Mission in Geneva and the British High Commission in Kuala Lumpur dated 27 February 1998, for example, refers to FCO officials having contacted 'Cumaraswamy's assistant in Geneva, Alan Parra, who agreed to our contacting Cumaraswamy direct'.

'Paramilitary organizations have an influence

Sir Louis⁹ has commented upon corruption of solicitors and there are those who working for a paramilitary agenda & part of that agenda is to make sure that detainee does not speak – stifling any means of communicating info.

Paramilitaries want to learn from the Holding Centre which is deduced is from questions put to detainees.

Use legal people to inhibit provision of info.

More than a suspicion on role of lawyers – have [reams] of documented evidence from detainees where that has come out.'

19.39 On the RUC side, Sir Ronnie Flanagan had been accompanied by the Assistant Chief Constable (Crime) and the Chief Superintendent from Command Secretariat. The Chief Superintendent had also made notes and a section of them reads as follows:

'Sir Louis BC – some patently corrupt.

A nucleus work to a paramilitary agenda – stop people giving any information – the must stop information being passed.

stifle any info.

– great weight from

– H Centres — use legal

– people — an agenda item

[Assistant Chief Constable (Crime)]

Cumara – on to it

Not suggest any terrorist

Involvement – philosophically

– nationalist tradition

– discredit that

large level of normal living'

19.40 The two sets of notes leave little room for doubt in our view that the comments reported in paragraph 21 of the UN Special Rapporteur's draft report (underlined at Chapter 19.25 above), or comments very similar to them, were made during the meeting. A further document, disclosed to the Inquiry by the Assistant Chief Constable (Crime) who recovered it from among personal papers he retained when he retired from the RUC, supports our conclusion. This document is entitled 'Briefing Paper – UN Special Rapporteur 24 October 1997'. In his evidence to the Inquiry, the Assistant Chief Constable told us that it was prepared by a member of his staff in advance of the meeting with the UN Special Rapporteur. It covered issues such as the exclusion of solicitors from interviews under caution and alleged intimidation of solicitors via their clients, all of which had, we were told, been prompted by reading a 1996 report to the UN Special Rapporteur published by BIRW.

⁹Sir Louis Blom-Cooper QC, Independent Commissioner for the Holding Centres.

19.41 The Briefing Paper offered, in essence, ‘lines to take’ in respect of the repeal of the emergency legislation, the deferral of solicitors’ access to their clients, and the exclusion of solicitors from interviews under caution. In respect of this last issue it noted:

‘Intelligence indicates that there exists a body of solicitors who are unduly sympathetic to paramilitaries.’

19.42 It contained additional comments which resonate with what was alleged to have been said at the meeting:

‘Paragraph 5.6 of the BIRW Report 1996 states, “The Commissioner (ICHC) [Independent Commissioner for the Holding Centres] believes that some solicitors who regularly attend Castlereagh are corrupt.”

ICHC has in the past criticised the Northern Ireland Law Society for not seriously considering the possibility of impropriety on the part of solicitors or putting in place adequate control mechanisms (para 5.6 BIRW Report 1996 and ICHC Third Annual Report, page 28).’

19.43 We note, incidentally, that this was a misleading summary of what was said in the BIRW report, which was itself a subjective interpretation of Sir Louis Blom-Cooper’s report. However, the point is that these were the words contained in the Briefing Paper that the Assistant Chief Constable took with him to the meeting and it is clearly not a coincidence that the notes taken by both Alan Parra and the Chief Superintendent from Command Secretariat reflect its contents.

19.44 A copy of a witness statement from a Holding Centre detainee was attached to the Briefing Paper. It purported to give an account of the detainee’s dealings with his own solicitor in a manner which could be read to suggest that his solicitor (not Rosemary Nelson) was in fact working in accordance with instructions given by a terrorist organisation.

19.45 The Assistant Chief Constable told us that having re-examined the Briefing Paper and the notes of the meeting made by Alan Parra and the Chief Superintendent he accepted the likelihood that either he or the Chief Constable had made the remark which Alan Parra had noted regarding Sir Louis Blom-Cooper and corrupt solicitors. Similarly, he accepted that it was either he, or the Chief Constable, who made the remark that gave rise to Alan Parra’s note ‘*A nucleus work to a paramilitary agenda*’. He said:

‘I was drawing down on the references by Sir Louis Blom-Cooper that this was an issue that could not be ignored and that these were matters that needed to be examined. So what we were actually trying to do was say to Mr Kumaraswamy that it – look, you have got to keep a very open mind on the pressure that is maybe on the solicitors and others brought about by the paramilitary structures and the influence they bring, and the fact that there may be, as it were, a nucleus of people that are inclined to sort of do the bidding of the paramilitaries.’

19.46 The Chief Superintendent Command Secretariat told us that the comments had been made by the Assistant Chief Constable. He said: ‘*Well, to the best of my recollection, this is [the Assistant Chief Constable] speaking.*’

19.47 He could not remember how the comments came to be made but he said that all the notes between the phrases ‘*Sir Louis BC – some patently corrupt*’ and ‘*Large level of normal living*’ were attributable to comments made by the Assistant Chief Constable. Notes that followed concerning Pat Finucane had also been made

while the Assistant Chief Constable was speaking. This is surprising: the reference to the Assistant Chief Constable's name appears *after* the disputed comments, not before. And the suggestion that everything from the disputed comments until the end of the meeting was said by the Assistant Chief Constable does not square with the recollection of the UN Special Rapporteur, Alan Parra and the Chief Superintendent himself that Sir Ronnie Flanagan did most of the talking.

19.48 Clearly, it would make very little difference if the words were spoken by one of his senior officers or the Chief Constable himself, if Sir Ronnie Flanagan had heard them and (implicitly) endorsed them. In his oral evidence to the Inquiry, however, Sir Ronnie Flanagan denied that this was the case. Having examined the two sets of notes made of the meeting and the Briefing Paper prepared in advance of it, Sir Ronnie Flanagan accepted in his evidence to us that the comments later attributed to him by the UN Special Rapporteur, or something near them, must have been made at the meeting. He maintained, however, that they '*were not made by me and they were not made in my presence either*'.

19.49 He could not recall whether there was any discussion with the Assistant Chief Constable before the meeting but told us that ordinarily he would have what he described as '*back to back*' meetings. He did not believe that the Briefing Paper had been shown to him before the meeting. He said in evidence:

'I have seen that document in very recent days and there is material in that document that I'm certain I have seen for the first time. So it was not shared with me. I was talking in much more general terms about all of the provisions there were in relation to treatment of persons in custody. [...]

I think there is a specific reference in that briefing note to comments by some American judge, for example. [...] And I'm certain those were the first time, just at the weekend, that I've ever seen those comments.'

19.50 More particularly, he told us that he had never seen any intelligence that would indicate that a body of solicitors were unduly sympathetic to paramilitaries and that he was not aware of any intelligence regarding solicitors. With regard to the comment that a nucleus of solicitors '*worked to a paramilitary agenda*', he said:

'I would have challenged it – this meeting was in the presence of the UN Special Rapporteur, so I would have challenged it there and then to make sure that the Rapporteur did not leave with any misimpression.'

19.51 Similarly, he did not recall there being any mention of Sir Louis Blom-Cooper during the meeting and, commenting on the possibility that the Assistant Chief Constable may have drawn on the comments of Sir Louis Blom-Cooper to support the proposition that some solicitors '*were corrupt*', he said:

'If they were made by him while I was there, I would have been engaged immediately in clarification. I have never ever heard that ascribed to Sir Louis Blom-Cooper, someone I think I got to know quite well, someone whose views I think I got to know quite well. I have never, ever heard that ascribed to him. Had it been ascribed while I was in the meeting, I would have immediately raised it and I would have expected it to be an issue of some substantive discussion.'

19.52 Sir Ronnie Flanagan told us that he had not been present throughout the meeting. He said:

'My recollection is that I was not present throughout this entire meeting, so I'm not saying – from those notes, I would be pretty certain that comments were made. They certainly were not made by me and they were not made in my presence either.'

19.53 He elaborated as follows:

'My recollection is there were a number of important phone calls. Now, I have actually tried to check records to see if there is anything in the electronic diaries and I don't think it has been possible to find it. I think I was in and out several times to take important phone calls and engage in quite lengthy calls that would not have been appropriate to engage in in the presence of visitors.'

19.54 In their evidence to us, neither the Assistant Chief Constable nor the Chief Superintendent referred to Sir Ronnie Flanagan having left the room at any stage during the meeting. The UN Special Rapporteur told us that he had not done so. Alan Parra, however, recalled that the Chief Constable was not present when a presentation was given regarding the history of the Troubles in Northern Ireland. His notes in relation to this appear at the bottom of the second page of those disclosed to the Inquiry. When asked whether his notes had continued onto further pages he said:

'I don't think so, because the last – at the end of the meeting – and this is where now, having had an opportunity to read both Dato' Param's testimony and statement and Sir Ronnie Flanagan's statement, my recollection now is that he very well may have left the meeting at that point. And at that time we were given a slide presentation in which they had broken down the different paramilitary groups, and that is at the very bottom of the second page, kind of my notes from those slides that we were shown. And my recollection is that it would have been Assistant Chief Constable [Crime] who was the one presenting the slides, but I am not 100 per cent certain of that. But that is my recollection.'

19.55 The notes taken by the Chief Superintendent make no reference to the contents of the slide show – there would have been no need for him to make such a record – but they do record what appears to have been a relatively detailed discussion concerning Pat Finucane. This leaves us uncertain about the precise order of the discussion. Neither the Chief Superintendent's notes, nor Alan Parra's, nor a reconstruction of Alan Parra's full notes made subsequently by the investigative journalist John Ware (see Chapter 19.69 below) are conclusive. Nor do they make it clear who was speaking, or who was present, at each point. The evidence given to us by the various participants is conflicting (sometimes internally conflicting). Given the lapse of time, this is perhaps understandable. On balance, we think it probable that all the participants were present for most, if not all, of the discussion about defence lawyers generally; that Sir Ronnie Flanagan was absent for the slide show given by the Assistant Chief Constable; and that he returned for the discussion about Pat Finucane. We cannot state categorically when he left and when he returned.

What happened after the draft report

19.56 After receiving the draft report, Sir Ronnie Flanagan wrote two letters which were sent (evidently in breach of protocol) directly to the UN Special Rapporteur. The first was dated 13 March 1998. He wrote:

'I have had sight of an advance copy of your report which includes at paragraph 21:

“However, the Chief Constable did express the view that some solicitors may in fact be working for the paramilitaries. In this regard, he stated that this is more than a suspicion.”

At no time during our discussion did I make such a statement. I am pleased to be informed that it has been removed.’

19.57 The UN Special Rapporteur replied directly to Sir Ronnie Flanagan on 27 March 1998 quoting his earlier letter to the UK’s Ambassador to the UN in which he referred to *‘the Chief Constable’s contention that he could not remember making [the] remarks’*, stating that he had agreed to amend the paragraph *‘in the interest of the security of the defence lawyers, and not because the Chief Constable disputes having made the remarks’*.

19.58 Sir Ronnie Flanagan wrote again on 8 April 1998 reiterating that he had not made the statement and stating that it was *‘not therefore a question of me “not remembering”*. *I did not make such a statement because I have no grounds for believing it to be true.’*

19.59 We noticed that in neither of these letters, nor in any of the official messages transmitted to the UN Special Rapporteur, was the Chief Constable attributed with concern over whether or not lawyers were named in the UN Special Rapporteur’s report. We noticed in particular that, in the telex sent by the FCO to Kuala Lumpur and Geneva on 27 February 1998 referred to in footnote 8 above, safety concerns about defence lawyers named in the report were said to be those of the NIO.

19.60 Sir Ronnie Flanagan told us:

‘In relation to paragraph 16 of the draft report, I do not recall requesting that Rosemary Nelson’s name be removed from the report on the grounds that she may be at risk if her name was put in the public domain. I can see why there may have been a perception that naming defence solicitors concerned in the report may put them at risk following the murder of Pat Finucane. However, I really have no recollection of raising this issue as something that should be addressed with Mr Cumaraswamy. My concern related to words being attributed to me that I had not said.’

19.61 When pressed during questioning he allowed the possibility that it may have been an issue that was raised by the Head of Police Division at the NIO when he had first spoken to her. He said:

‘I think it may well have been. It has just been in your questioning earlier, it strikes me now that that’s something [the Head of Police Division] and I may have discussed. So if I was seeking one change, she may have said, “I have been looking at it. There are other changes I want. Do you agree?” There may have been that sort of discussion.’

19.62 The FCO forwarded a copy of the draft report to the NIO on 12 February 1998 but it was not until 20 February 1998 that the document was circulated within the department. The Head of Police Division told us that when she read the draft report she was concerned that:

‘The report mentioned Rosemary Nelson by name as a solicitor working for the defence in terrorist cases, who had been threatened, and also recorded alleged remarks by senior RUC officers to the effect that some solicitors might be working for the paramilitaries. The juxtaposition of these comments in the report was likely to attract press comment and the attention of terrorist organisations. In my view it was ill-advised of the Special Rapporteur when preparing his report to have been so specific about individuals and I was surprised by the apparent lack of appreciation of the dangers of the situation.’

I was worried about the possible adverse consequences; there were many volatile groups in Northern Ireland who needed little excuse to attack. Given Rosemary Nelson's existing public profile, and the precedent of Patrick Finucane's murder, the report could encourage terrorists to regard Mrs Nelson as a target.'

19.63 She told us that she had telephoned Command Secretariat and had spoken to the Chief Constable. He had not read the report. The Head of Police Division told us:

'He endorsed my concern about the folly of naming individuals. I considered that this confirmed my initial view that the report was unsafe and also now factually inaccurate and so it would be advisable to seek to have the comment and the names of the defence lawyers removed. Accordingly, I contacted the Foreign Office, and asked if these two elements could be amended.'

19.64 We consider that the Chief Constable could not have written to the UN Special Rapporteur in the terms of his letters of 13 March 1998 and 8 April 1998 had he read a memorandum dated 13 March 1998 prepared by the Assistant Chief Constable (Crime) and sent by fax to Command Secretariat on that day. This document is a paragraph by paragraph critique of the UN Special Rapporteur's draft report. Two passages, written in response to the suggestion in the draft report that the Chief Constable had expressed the view that some solicitors *'may be working for paramilitaries'*, were particularly illuminating. The first read as follows:

'I have no recall of this view being expressed and neither, so I understand, does the Chief Constable. Even if such a view was expressed, which I dispute, it would have been made within the strictures of a discussion held "in confidence" and should not have been repeated in a document for general publication. The fact that Mr Kumaraswamy has done so, if allowed to go unchallenged, merely repeats and compounds the circumstances which gave rise to the central theme of earlier reports; namely the murder of Pat Finucane which was attributed to the utterances of Douglas Hogg MP and which Mr Kumaraswamy repeats at para 61 of his report.'

19.65 The second read as follows:

'Mr Kumaraswamy emphasises that "he was provided with no evidence to support these serious allegations" [i.e. solicitors' involvement with paramilitaries]. This is contrary to the fact that he was referred to a statement of evidence made by a detainee in August 1992, in which the detainee specifically stated that he no longer wished his Solicitor to act on his behalf, as the Solicitor was in fact acting in the interests of PIRA and not in the detainee's interest!'

19.66 In the event, as we have noted above, the UN Special Rapporteur agreed to amend paragraph 21 of his report. He also agreed to delete the names of three solicitors which appeared in the draft report. The UN Special Rapporteur made it clear to the British High Commission in Kuala Lumpur that he did not resile from his position that the Chief Constable had made the comments.

19.67 The final version of paragraph 21 read as follows:

'The Chief Constable alluded to an agenda in which the paramilitary organizations ensured that detainees remain silent and alleged that solicitors may be involved in conveying this message to the detainees. Further, he stated that there is in fact a political divide in Northern Ireland, and part of the political agenda is to portray the RUC as part of the unionist tradition.'

19.68 However, the draft report, or sections of it, had been released to a number of bodies and individuals and news that the disputed comments had been made reached a number of ears. Jane Winter learned of them from Rosemary Nelson to whom Alan Parra had spoken on 27 February 1998. The Law Society of Northern Ireland also heard of them and wrote to Sir Ronnie Flanagan to express concern that such comments could have been made. The comments were referred to in a Channel 4 News report on 31 March 1998 made in anticipation of the forthcoming publication of the finalised version of the UN Special Rapporteur's report and comparisons were made with the comments made nine years previously by Douglas Hogg MP, who said: *'I have to state as a fact, but with great regret, that there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA.'*¹⁰

19.69 The dispute over what was said at the meeting with the UN Special Rapporteur was referred to later in a television documentary researched and presented by John Ware following the death of Rosemary Nelson. This programme was broadcast under the title *Careless Talk* on 21 June 1999. John Ware gave evidence to the Inquiry and, although he did not at any stage disclose the source of his information to the Inquiry, by the time he was interviewed by solicitors employed by the Inquiry for the purposes of making a witness statement, the Inquiry had already obtained a copy of his notes for the programme from another source. These notes detail conversations with a number of individuals including the UN Special Rapporteur and Alan Parra. They also reproduce at least some of the missing portion of Alan Parra's notes, which he told us he had dictated verbatim from the originals.

The UN Special Rapporteur's report and follow-up action

19.70 On 1 April 1998 the UN Special Rapporteur published his final report in its amended form. It referred to widespread misbehaviour by Criminal Investigation Department (CID) officers. We set out two extracts here:

'Since the inception of his mandate in 1994, the Special Rapporteur has received numerous allegations concerning the pattern of abusive remarks made against defence solicitors in Northern Ireland, particularly against those who represent individuals accused of terrorist related offences. These allegations were already the subject of a report to the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1992. They are based primarily upon instructions taken from clients by their solicitors, which reveal widespread reports of abuse of solicitors uttered by plain-clothes RUC officers during interrogations at the holding centres used to detain suspects held under emergency laws. The abuse against lawyers takes various forms ranging from mild forms of harassment (e.g., solicitor kept waiting to see client) to interference in the solicitor/client relationship (e.g., telling the detainee that the solicitor is not interested in him or her, that the solicitor's advice should be ignored, that the solicitor is representing the paramilitaries and not the client, etc.) to physical abuse and/or death threats (e.g., references to Patrick Finucane, whose murder is described below).''

'The Special Rapporteur wishes to emphasize that he spoke to a large number of solicitors and barristers who have worked in terrorist related cases representing both Loyalist paramilitaries and Republican paramilitaries. All were able to provide testimony that corroborates the reports that the Special Rapporteur has been receiving for the past four

¹⁰Douglas Hogg MP, Parliamentary Under-Secretary of State for the Home Department, Committee Stage debate on the Prevention of Terrorism (Temporary Provisions) Bill in the House of Commons on 17 January 1989. Within four weeks, Pat Finucane was murdered.

years concerning the harassment and intimidation of defence solicitors. Many referred to the harassment and intimidation as an occupational hazard that they have come to expect and accept, noting that in the absence of audio-recording there is only hearsay evidence to prove the allegations, that is, the word of the client against that of the RUC officer. Therefore, most find it futile to file a complaint, particularly in lieu of the fact that any investigation will be carried out by the RUC itself and that they had no confidence in such investigation.'

19.71 Regarding the intimidation of defence solicitors he concluded *'that the RUC has engaged in activities which constitute intimidation, hindrance, harassment or improper interference'*. He expressed concern that *'the RUC has in fact identified lawyers who represent those accused of terrorist offences with their clients or their clients' causes and further, that they have interfered in the attorney/client relationship by questioning during the course of interrogations the integrity and professionalism of solicitors'*.

19.72 The report made a number of recommendations *'concerning the harassment and intimidation of solicitors'* as follows:

- '(a) The authorities, preferably the proposed Police Ombudsman, conduct an independent and impartial investigation of all threats to legal counsel in Northern Ireland;*
- '(b) Where there is a threat to the physical integrity of a solicitor or barrister, irrespective from whom the threat emanates, the Government should provide the necessary protection and should vigorously investigate the threats and bring to justice the guilty party;*
- '(c) Both the Bar Council and the Law Society should be more vocal in their defence of solicitors who have been subjected to such harassment and intimidation and should enter into a dialogue with the RUC on how best to address the problem. In this regard, the Special Rapporteur welcomes the steps taken by the Law Society to establish a complaints procedure;*
- '(d) Lawyers themselves must lodge formal complaints with the authorities including these non-professional bodies;*
- '(e) As a matter of urgency, the RUC should organize, in conjunction with the Law Society and the Bar Council, training seminars for police officers to sensitize them on the important role that defence lawyers play in the administration of justice.'*

The Government's formal response to the report

19.73 The government's response, to which the RUC had contributed, was also published on 1 April 1998. As regards the alleged intimidation of defence lawyers it stated, *'This obviously is a matter of considerable concern. We would ask, however, to be provided with the specific details on which the allegations are made. If there is new evidence we will want to ensure that this is looked into.'* It pointed to the 'significant' powers vested in the ICPC in the existing complaints system and indicated that legislation was in draft that would introduce a new complaints system incorporating a Police Ombudsman and a possible change in the standard of proof. It stated: *'In the meantime, while change is awaited, we have been encouraging people to recognise what the Government is seeking to do and to co-operate with the system as it exists. We note that the Special Rapporteur recommends such co-operation.'* There was no reference in the government's response to the UN Special Rapporteur's suggestion that *'Where there is a threat to the physical integrity of a solicitor or barrister, irrespective from whom the threat emanates, the Government should provide the necessary protection.'*

19.74 In relation to the report's final recommendation, it is important to note that, following a meeting on 27 March 1998¹¹ with two representatives of the Law Society's Criminal Law Committee to discuss these issues, on 8 April 1998 Sir Ronnie Flanagan wrote to the Law Society of Northern Ireland to confirm that:

'We [i.e. the Law Society and the RUC] have now opened channels through which any such future allegations will be relayed to me. [...]

We [i.e. the RUC and the government] are rapidly moving to a position (which I welcome) when all interviews at the Holding Centres will be fully audio recorded. This will I hope, once and for all put an end to such allegations.

I have emphasised to my Senior Colleagues in the CID the continuing need for the sensitivity of the position of legal representatives to be fully respected.

In this regard I would be most grateful if the Society could consider how it might assist in the future training of CID officers.'

19.75 Furthermore, on 2 June 1998 representatives of the Law Society's Criminal Law Committee met an Assistant Chief Constable and the Chief Inspector in charge of RUC training to discuss the possibility that solicitors in private practice might take part in CID training.¹² This possibility had not become a reality by the time of Rosemary Nelson's death. A letter from the Law Society dated 7 December 1998 to the Chief Inspector set out the Law Society's position:

'Whilst it is of continuing concern to the Society that we provide assistance in the important matter of CID training it is not felt that participation within the role play indicated would be of substantial benefit either to ourselves or to the RUC. Rather than simply help create a more realistic setting for a mock interview the Society would like to focus on explaining the relationship that must exist between the interviewing officer and the solicitor present at interview and to foster a greater understanding on behalf of the interviewing officer of the duties and obligations of that solicitor.'

Reflections on the episode

19.76 As regards what was said at the meeting, if we give Sir Ronnie Flanagan the benefit of the doubt at every point, then:

- he was unaware, at the time he went into the meeting with the UN Special Rapporteur, that the UN Special Rapporteur had recently written about his concerns about the police treatment of Rosemary Nelson;
- he did not see the Briefing Paper prepared by the Assistant Chief Constable's staff officer;
- he did not make the comments about defence lawyers attributed to him in the UN Special Rapporteur's draft report;
- he was not present when they were made;
- he did not hold the view attributed to him;
- and his sole concern when he saw the draft report was to correct the mis-statement attributed to him.

¹¹For an earlier meeting between Sir Ronnie Flanagan and the Law Society see Chapter 26.16

¹²The Inquiry has seen correspondence indicating that proposed training materials were sent from the RUC to the Law Society, and that further meetings were to be arranged to progress an appropriate training input from the Law Society.

19.77 If we accept all of this, in some cases contrary to the recollections of the others present at the meeting, we are still left with concerns. We deal with them chronologically.

19.78 It surprises us that his office would let the Chief Constable go into a meeting with the UN Special Rapporteur, whose importance was well understood by the UK Government, without briefing him on the recent correspondence with the UN Special Rapporteur, and without conveying to him the Briefing Paper provided by the staff officer.

19.79 It is certainly possible that the disputed comments were made by the Assistant Chief Constable and not by Sir Ronnie Flanagan. It is possible that they were made in Sir Ronnie Flanagan's absence, although no other witness has suggested that this was the case. But, once he saw the draft report, the Chief Constable must have realised that someone must have made the comments at the meeting. To say that the comment *'was attributed to me, very clearly attributed to me, and I'm crystal clear it was wrong. So I saw it as a mistake, and because it wasn't said in my presence, that didn't lead me to say, "Might it have been said by others?"'* will not do. It was inconceivable that the UN Special Rapporteur and his assistant had simply made it up. In our view, he should have sought to establish how the comments came to be made. A glance at the staff officer's Briefing Paper, and a perusal of the subsequent critique by the Assistant Chief Constable (Crime) of the draft report, to which we refer at Chapter 19.64, would have shown him that the comments reflected the view of senior officers in the RUC. What was said to the UN Special Rapporteur displays a prejudicial attitude to defence solicitors prevalent in the upper echelons of the RUC.

19.80 As he told us, Sir Ronnie Flanagan's sole concern was to correct the statement that he had made the comment. It appears that the other point that was put to the UN Special Rapporteur, and the one that persuaded him to change his report, namely that to identify particular defence solicitors could endanger their lives, originated not with him but with the Head of the Police Division at the NIO.

19.81 As regards follow-up action, given that the comments conflicted with Sir Ronnie Flanagan's stated strongly held view, then he had a managerial responsibility to intervene when he became aware of the issue, to correct attitudes towards defence solicitors and to correct the attitudes and culture within his force generally. He did approach the Law Society for help in training RUC officers in the role of defence lawyers, although that approach did not bear fruit. He also instructed that training programmes should be modified to include lessons on Investigating Officers' relationships with defence lawyers. All of this is to his credit, and is in addition to the major structural changes to policing that he had initiated and to which we have referred at Chapter 19.14 to 19.22. He also told us that he was pretty sure that he had issued some sort of general statement to the force, but we found no trace of any such personal statement. We were told that he instructed one of his Detective Chief Inspectors to write to the Assistant Chief Constable (Crime) about the matter, but we have no documents to substantiate that. Our view is that, in the wake of the UN Special Rapporteur's report, he took action, but it was not followed through.

20 The Lawyers Alliance for Justice in Ireland Delegation to Northern Ireland: February 1998

20.1 In mid-February 1998 a delegation of members of the Lawyers Alliance for Justice in Ireland (LAJI) visited Northern Ireland. They had organised a full itinerary of visits and meetings. On Monday 16 February 1998, for example, they visited Milltown Cemetery and afterwards the West Belfast Citizens' Forum at Conway Mill. In the afternoon they attended a Reception at Queen's University, held a meeting with the Falls Women's Centre and afterwards with the Committee for the Administration of Justice (CAJ). On Tuesday 17 February 1998, after another busy day which included a visit to Maze Prison, they attended a dinner at the Beresford Arms Hotel in Lurgan organised by Rosemary Nelson¹. In the days that followed, delegates met the Chief Constable, Sir Ronnie Flanagan, and representatives of the Northern Ireland Office (NIO). These meetings provided LAJI members with the opportunity to raise the questions regarding police behaviour towards Rosemary Nelson, the conduct of the investigation of complaints made on her behalf and the issue of her safety, and we are satisfied that they did.

The meeting with the Chief Constable

20.2 The meeting with Sir Ronnie Flanagan took place on 19 February 1998, a few days before the Royal Ulster Constabulary (RUC) was sent a copy of The UN Special Rapporteur's draft report (see Chapter 19).

20.3 LAJI had issued a press release on 1 October 1997 announcing that it had released a comprehensive report about recent marching seasons, *'documenting violent abuse of Irish citizens by members of the British police force, the Royal Ulster Constabulary'*. The press release described the report as presenting a *'shocking picture of a security force run amok'*. It recommended, among other things, the *'Removal of the Chief Constable; Suspension of all command personnel from the level of deputy chief constable to principal officers at each RUC facility throughout Northern Ireland; Termination of the Special Branch'* and also recommended the *'Establishment of a board of review to evaluate each serving member of the Royal Ulster Constabulary'*. The review board would be *'responsible to determine whether each RUC officer should be retained in a new police force, dismissed from the service, placed on probation or provide such other relief as is appropriate [...]*'. It also said that *'the Royal Ulster Constabulary should be officially disbanded'* and *'the Diplock Court system should be dissolved'*. LAJI's Edmund Lynch personally forwarded the report entitled *'Report upon the conduct of the Royal Ulster Constabulary: case histories upon the violation of the International Covenant on Civil and Political Rights by the Royal Ulster Constabulary during the marching season of 1995, 1996 and 1997'* to selected officers in the RUC, the Chief Inspector within Complaints and Discipline Department and officials in the NIO. The report contained a number of specific allegations of police misconduct. It was highly critical of the RUC's recent policing of contentious marches stating, *'Today's Irish Catholics confronting these Loyal Orders have been beaten with batons and marked as targets for plastic baton rounds.'*

¹Also referred to at Chapter 7.3

20.4 The Chief Inspector (Complaints and Discipline) passed the covering letter and its enclosure to RUC Command Secretariat and it was the Superintendent from Command Secretariat who wrote to Edmund Lynch on 19 December 1997 on behalf of the Chief Constable:

I refer to your letter to Chief Inspector [redacted] dated 16 October 1997 and the enclosed report.

Having studied your report in considerable depth, I have come to the conclusion that it is sadly lacking in balance and displays a complete ignorance of realities in Northern Ireland. There is no attempt to assess the available evidence in any impartial fashion, nor indeed is there any effort to set out any perspective other than that which agrees with the author.

The aim of the Royal Ulster Constabulary is to provide a high quality police service for all the people of Northern Ireland. Its duty is to give all the people equal service, to enforce the law impartially at all times and in all places and to protect the rights of everyone.

The issue of marching in Northern Ireland is extremely complex and surely deserving of more objective consideration and explanation than is contained in your report. It is manifestly wrong, unfair and counter-productive to blame the police for the public disorder which can result from contentious marches. That responsibility rests with those who organise marches or protests which are likely to result in violence.

Policing in a divided society such as ours is not simple. All that we ask is that people take a long, hard look at the realities, put aside their pre-conceptions and consider the alternatives. Whatever decision is made by the police is going to incur the wrath of someone and sadly that wrath is often manifest in the form of attacks on police officers, by stones, bottles, petrol bombs, explosives or gunfire. I note that there is no mention of such attacks in your report, nor is there any other indication of the scale of violence, nor the number of police officers injured. Surely any objective assessment of events would include such important details.

For police officers in Northern Ireland there is no luxury of escaping any of the dreadful events which have occurred on our streets. While others can wring their hands in horror, we are placed in the position of exercising, what have always been, the primary objectives of policing – to protect life, to protect property, to preserve the peace and to prevent and detect crime. In public order situations and particularly in contentious marches, this means the frequent deployment of police officers between opposing factions. In efforts to prevent inter-communal conflict they often absorb violence directed at them from one faction or another and frequently from both. We have never sought to absolve ourselves from responsibility to police these events. However we are surely entitled to demand understanding of our role and responsibilities and support in the discharge of these duties on behalf of the public.

The RUC will do everything in its power to provide an absolutely impartial service. Where we do get it wrong, we will not only accept our failings, but take whatever steps are necessary to learn the lessons. Many of the incidents alluded to in your report either have been investigated as complaints or are currently being investigated. You can be assured that such investigation will be both thorough and searching. However when we are subject to criticism such as that in your report we surely have the right to expect that criticism to have a modicum of objectivity, fairness and accuracy. I feel that the content and tenor of your report and its glaring omissions, says much more about your own organisation than it does about the RUC.’

20.5 This response set out very clearly the enormous difficulties facing the RUC when attempting to control major public disorder in Northern Ireland. What the response failed to do was answer the specific issues raised in the LAJI report. In our opinion this dismissive response to LAJI on this occasion is of a piece with the RUC's responses to specific assertions relating to Rosemary Nelson's safety made by LAJI and other non-governmental organisations (NGOs) on other occasions.

20.6 On 5 January 1998 Edmund Lynch again wrote to Command Secretariat inviting the Superintendent to meet members of LAJI who would be visiting Northern Ireland in February in order to 'engage in an open discussion of the issues addressed in our report and your response to the same'. Other LAJI members, notably Gerald Lally and Walter Pollard, also responded to the Superintendent's letter and a meeting with Sir Ronnie Flanagan was proposed. The Chief Constable agreed.

20.7 At the meeting Walter Pollard, an attorney from New York, took the lead on matters relating to Rosemary Nelson. He told us:

'Although I cannot recall word for word exactly what I said to Chief Flanagan, I am certain that I told Mr Flanagan that Rosemary had explained to me that her clients had informed her that derogatory comments had been made about her during police interrogations and that, on at least two occasions, clients had told her that the RUC had made direct threats against her life. I specifically told Mr Flanagan about the occasion when a client told Rosemary that the RUC said that they needn't continue to instruct her as legal counsel because she would be dead soon and another occasion on which a client had been instructed by the RUC to go back and tell Rosemary that she would soon be dead.'

I am very clear that I told Mr Flanagan "eyeball to eyeball" about the threats that Rosemary had been receiving and that I went on to tell Mr Flanagan that Rosemary Nelson needed police protection. Mr Flanagan's initial response was something fluffy along the lines of "all allegations against the police are of course looked into". I remember being of the immediate opinion that this was not in any way a satisfactory response. Mr Flanagan did not say to me that he would look into this matter immediately and I was not satisfied with his response. I therefore directly asked Mr Flanagan "Are you telling me that you are committing to look into the allegations of threats against Rosemary Nelson?" I do not recall the specific words that Mr Flanagan then used but I certainly left the meeting of the opinion that Mr Flanagan had committed to look into the allegations of threats against Rosemary that I had brought to his attention.'

20.8 Another member of the delegation told us:

'Ronnie Flanagan was asked what the RUC were going to do to protect her. I believe that Ronnie Flanagan responded that he was not aware of any specific threats made to Rosemary. I think everybody's reaction was to be astounded at this blatant mis-statement. We were all aware of Rosemary's situation not just as a result of the dinner which I attended but as a result of the letters which Edmund Lynch had authored which dated back to 1994² and also a public report which had been written by the UN Special Rapporteur on the Independence of Judges and Lawyers, Param Cumaraswamy. The threats made to Rosemary were therefore of public record and Ronnie Flanagan should have been aware of them.'

20.9 Another said:

²We assume this date to be incorrect, the first letter written by Ed Lynch regarding Rosemary Nelson was that of 13 March 1997. See Chapter 17.4.

'Mr Pollard was very logical in terms of putting one idea in front of another and he described to Mr Flanagan what he would like to see happen. He dealt with the matter in a very low key but earnest way. He relayed to Mr Flanagan the various things that Mrs Nelson had told us during our dinner meeting on 17 February 1998. He spoke of the threats which came from RUC officers via Mrs Nelson's clients. He then put to Mr Flanagan that, under the circumstances, he should seek to get Mrs Nelson on to some type of protection programme as soon as possible. Walter Pollard said that it was the obligation of the police force to protect its citizens and, first and foremost, to protect those who it knew to be in danger. Mr Pollard was very persistent about the fact that now that Chief Constable Flanagan had this knowledge he expected him to do something about it. Mr Pollard reiterated the fact that around four or five of Mrs Nelson's clients had received threats on her life whilst in Gough Barracks and had been told to relay these on. Mr Flanagan was told that Mrs Nelson wanted to be put onto the Protected Persons Programme scheme.'

20.10 John Foley also attended this meeting as a member of the delegation. He recalled that part of the discussion took place informally when tea and biscuits were served. He said:

'Pollard asked Mr. Flanagan whether he would look further into these complaints and particularly would he consider looking at providing security for Rosemary Nelson. I have a recollection of a formal scheme being mentioned – I have been asked whether this was the Key Persons Protection Scheme but I cannot recall the name that was used. What I do recall was Attorney Pollard asked whether certain steps could be taken in relation to Rosemary's home security, such as installing motion detectors or security glass. I recall Mr. Flanagan's response to Attorney Pollard was: "She wouldn't take anything like that even if we offered it." I can recall Mr. Flanagan looked at me, seeking support, saying something to the effect: "You know her and you know what she's like." Attorney Pollard's retort was to say: "But you will never know unless you offer it, and you haven't offered anything."

20.11 It would appear from John Foley's account of the discussion that Sir Ronnie Flanagan had received some briefing about Rosemary Nelson before the meeting and this seems entirely possible. The briefing notes that were prepared for Sir Ronnie Flanagan, which describe LAJI as *'a pressure group from the USA, following an Irish republican agenda'*, made no mention of Rosemary Nelson personally but concentrated on meeting the criticisms made in the LAJI report, none of which were concerned with Rosemary Nelson or any of her clients. She was mentioned, however, in letters from both Edmund Lynch and Gerald Lally which were included in the briefing pack.

20.12 Edmund Lynch drew attention to the abusive remarks made by officers about Rosemary Nelson. In his letter he wrote:

'You mention that you have received a copy of our letter to [the Chief Inspector in Complaints and Discipline]. Perhaps you would choose to follow up directly with the Chief Inspector concerning harassment by members of the RUC of Lurgan solicitor Rosemary Nelson. This continuing abuse has been documented by numerous statements of witnesses. To date, no discipline has been imposed upon the perpetrators of this outrageous behavior.'

20.13 Gerald Lally recounted what he had seen on the Garvaghy Road on 6 July 1997:

'Another aspect of the matter that I personally viewed, also brings into question the impartiality of the RUC. On a number of occasions in those early hours, I saw and heard Rosemary Nelson, the solicitor for the residents association, approach members

of the RUC on behalf of her constituents. She was not armed, she was not acting in a violent manner, in fact she was conducting herself in a professional manner under very trying circumstances. In one of these instances, all she asked was for permission for the residents to attend their religious services at their house of worship. She was treated discourteously by your officers, pushed and shoved to the point where she had bruises on her body and generally referred to as a "Fenian Bitch". I am sorry but I cannot imagine any instance where a member of an impartial police organization would use the pejorative term "Fenian" in dealing with any member of the public much less a solicitor acting on behalf of her clients.'

20.14 Sir Ronnie Flanagan should not therefore have been taken completely by surprise when the subject of Rosemary Nelson was raised. He recalled the meeting in the following way:

'I made myself available and I was willing to listen to what they had to say. I certainly did not make any commitments in relation to offering Mrs Nelson police protection, as evidence had not been produced to me at any meeting to suggest that such a step was appropriate. In fact, I do not recall any discussion with the LAJI delegation as to whether it was necessary for Mrs Nelson to be offered protection. I did not know Rosemary Nelson and so I had no basis on which to make a judgment as to whether or not she would have accepted police protection had it been offered. However, if concerns were expressed about Mrs Nelson's safety during the meeting, I may well have mentioned the KPPS [Key Persons Protection Scheme] scheme on the basis that Mrs Nelson could apply for protection under the scheme if she felt that she was at risk (as could anyone). As far as I am concerned, this would have been the extent of the discussion about RUC protection. As I have stated, nothing had been brought to my attention in relation to any intelligence or evidence that Rosemary Nelson was at risk. At this stage the allegations did not extend beyond complaints that improper comments had been made to her clients about her. Whilst I feel that a request for protection under the KPPS scheme would not have been granted without intelligence to suggest she was specifically at risk, the KPPS scheme was ultimately one for the NIO to administer.'

20.15 He told us:

'If I had received any evidence or had been told that there was any intelligence to suggest that Mrs Nelson was at risk, I would have spoken to [redacted; the Chief Superintendent in Command Secretariat] and asked him to ensure that a threat assessment was carried out straight away (one may have been done on the receipt of such intelligence) to determine the extent to which Mrs Nelson was at risk.'

20.16 Here then was the problem in a nutshell. Threats had been made to Rosemary Nelson's life but, unless evidence of a specific threat had been received by way of intelligence by Special Branch (SB), no account would be taken of them. Neither SB nor Sir Ronnie Flanagan accepted any report of police misbehaviour as credible unless it had been proved beyond reasonable doubt by the police complaints procedure. Therefore, allegations of the threats made by police officers were disregarded.

The meeting with Northern Ireland Office officials

20.17 The LAJI delegation had met NIO officials on 18 February 1998 at Stormont. Representing the NIO were both the Head of Police Division and the Principal of the Police Complaints Branch. No written notes of this meeting were disclosed to the Inquiry by the NIO but it is clear that the issue of Rosemary Nelson's personal safety was raised. The discussions were heated. A LAJI member told us:

'I remember the meeting because during our visit we had been hearing from people from the local community that they felt that it was a waste of time lodging complaints against the police because no action would be taken. When we raised this with this Minister [i.e. the Head of Police Division] she told me that she was of the opinion that the Police Complaints Procedure was robust. I recall thinking to myself that you only had to read the papers at the time to see that the community was of the opinion that RUC discipline was an issue and I recall challenging her on the point and asking her to look me in the eyes and tell me that she was confident that the members of the nationalist community were satisfied with the Police Complaints Procedure. I recall that she was unable to do this and her eyes actually welled up when I challenged her again, she was unable to look me in the face and tell me this and instead moved the conversation on to another topic.'

20.18 The Principal of the Police Complaints Branch observed: *'I did not feel that the US lawyers were entirely objective in their approach. It was frustrating that they appeared not to accept anything that we told them.'*

Action following the Lawyers Alliance for Justice in Ireland delegation

20.19 Evidently, however, the NIO did take the LAJI representations seriously. The Principal of the Police Complaints Branch told us that he felt obliged to write to the RUC immediately afterwards. He did so on 23 February 1998 in the following terms:

'[The Head of Police Division] and I met the US Lawyers Alliance yesterday. At the meeting they recorded their deep concerns over the safety of Rosemary Nelson. We have also heard these concerns voiced by other organisations and individuals over recent months.

In case these comments were not made to the Chief Constable, or you have not picked them up elsewhere, I thought I should write to pass them on. If this has not already happened (as a result of her complaints about RUC threats etc) then in a situation where such concerns continue to be expressed, by those who have apparently met her, it might be prudent to consider whether or not she needs to be approached and given advice on her security.

I should be grateful if you could let me know if (and if so, when) Ms Nelson has been given such advice; the question will continue to be asked, and I should like to be able to respond proactively.'

20.20 Compared with the usual correspondence passing between the NIO and the RUC this was a 'strongly worded letter'. The Principal of the Police Complaints Branch told us that by making explicit reference to the Head of Police Division, by specifically suggesting that Rosemary Nelson might be approached, and by asking for details as to when advice was given to her, he was *'putting every fastening belt, piece of string on it that I could to make sure that every alarm bell, whenever they received it, rang'*. He could not recall another occasion when he had written to the police in such terms.

20.21 The Head of Police Division described the process as one of *'collective brain racking'* in order to find a solution to the problem. She told us that it was considered in Police Division that the police might find a way, at the local level, of an officer asking Rosemary Nelson if she was concerned about her safety and to provide some *'sensible things'* that could be done. This was weighed against *'the sort of technical trap, if you like, of how can the police do that if they actually have no basis on which to think that she is under threat or at risk'*.

21 The February 1998 Threat Assessment

The response of Command Secretariat to the strongly worded letter

21.1 On receipt of the letter from the Principal of the Police Complaints Branch of the Northern Ireland Office (NIO)¹ (see Chapter 20.18), the Chief Inspector in Royal Ulster Constabulary (RUC) Command Secretariat wrote to the Assistant Chief Constable (South Region). The memorandum, dated 25 February 1998, noted that the issue of death threats against Rosemary Nelson had been referred to the Lurgan Sub-Division in May 1997 and sought *'views/comments on any further action that could be taken in this matter'*.

21.2 The Chief Inspector told us that, although there was no specific request for a *'threat assessment'* (or an *'intelligence assessment'*) in this memorandum, the expectation was that one would be carried out at the local level in accordance with the Force Order.

Instructions to South Region: a threat assessment

21.3 The Assistant Chief Constable (South Region) forwarded the correspondence to the Divisional Commander J Division on or about 27 February 1998. The Deputy Divisional Commander passed it to the Lurgan Sub-Divisional Commander on 2 March 1998. The Deputy Sub-Divisional Commander wrote on 3 March 1998 to Lurgan Special Branch (SB), requesting *'your views and comments on any threat there may be against Ms Rosemary Nelson'*. The report prepared in response by a detective sergeant within SB read as follows:

'In relation to the attached enquiry I can report that there is no record of a threat against Rosemary Nelson held in this office. Mrs Nelson regularly represents Republican activists in the greater Craigavon area in her capacity as a Solicitor, and as such would be well known.

She very much came to the fore when representing Colin Duffy throughout his charge and detention for the murder of Johnny Lyness on 24 June 1993 and the murder of two RUC Officers on 16 June 1997. During this time she appeared on news items in the local media and was seen accompanying Colin Duffy on television following his releases for the above mentioned cases.

Mrs Nelson remains close to the Republican movement and attends functions/rallies etc in support of their aims and objectives. As such she would be regarded in the local Nationalist and Unionist communities as a supporter of the Republican cause.

It is therefore my assessment, in the absence of any threat, that she would be known to Loyalist paramilitaries in this area and would be at a degree of risk whilst working and residing in this area.'

21.4 This was a succinct summary of the position. The reference to *'functions/rallies'* might well have been intended to include Rosemary Nelson's involvement with the Garvaghy Road Residents' Coalition (GRRC), but that was probably well-known and local officers would have needed little prompting to appreciate

¹The path followed by this correspondence within the RUC is set out in Appendix I.

that that alone was sufficient to attract bitter resentment from extremists within the Loyalist community in Mid-Ulster and beyond. The report did not give any indication, however, that by this date intelligence was circulating within SB alleging that Rosemary Nelson was having an affair with Colin Duffy and was meeting him almost daily; that she was assisting him in creating alibis for Provisional Irish Republican Army (PIRA) members; and that she was gathering information for PIRA. In that sense it appears to us that the report greatly understated the degree to which she was at risk.

Action/inaction following the threat assessment

21.5 Although the threat assessment understated the degree to which she was at risk, it did indicate that Rosemary Nelson was at risk. In terms of the Force Order, the onus now lay on the Sub-Divisional Commander to take *'whatever action he considers necessary'*.²

21.6 In these circumstances the Force Order offered guidance:

'Where it is considered appropriate by a sub-divisional commander, after consultation with the divisional head of Special Branch, crime prevention officers will be tasked to provide those under threat with written advice/literature on their personal security and/or surveys of their homes/businesses. Written advice will be submitted via sub-divisional commanders for approval and copies retained by the crime prevention officer for future reference.'

*Service of written security advice should be by personal service, in the presence of a witness, if necessary, or where security conditions dictate by "Registered Post". Refusal to accept advice should also be noted in writing and kept by the sub-divisional commander/crime prevention officer on file. In the event of subsequent criminal attacks on the person(s) so advised the crime prevention officer will establish what recommendation or other security precautions, if any, had been taken by the aggrieved party to prevent or minimise injury or damage.'*³

21.7 In the event, it was his Deputy Sub-Divisional Commander who dealt with the matter. On 11 March 1998 he responded to the Divisional Commander in the following terms:

'I refer to the attached correspondence from the Northern Ireland Office and Superintendent, Command Secretariat.'

Police at Lurgan do not have details of any threat there may be against Rosemary Nelson, nor do they know the nature of or reasons for the deep concerns the US Lawyers Alliance have about her safety.'

The second paragraph of the correspondence from the Northern Ireland Office refers to, "her complaints about RUC threats etc," I can confirm that no such complaints have been made to Police at Lurgan but, perhaps this is a reference to comments she made to the Press.'

²Force Order 60/91

³This was superseded by Force Order 21/98 on 20 March 1998 which directed that in the event that a member of the RUC learns of a threat it should be passed to SB and thereafter to the local Sub-Divisional Commander who *'will then take steps to have the individual under threat informed. Sub-divisional commanders must ensure the informing of those under threat is done so personally by a suitable officer, bearing in mind the sensitivity of such issues.'*

If we are to advise Mrs Nelson in relation to her personal security then we need to be in possession of all the facts. At present the only reliable information is that contained in the attached threat assessment from the Detective Sergeant, Special Branch (Appendix A), and I do not consider it sufficient to base personal security advice on.

As a result of the Northern Ireland Office's concerns passed on in May 1997 and again in February 1998, Police personnel in Lurgan have been briefed as set out at Appendix B.

I recommend that the Northern Ireland Office and the US Lawyers Alliance be asked to supply precise details of any information in their possession about Mrs Nelson so that it can be properly assessed and appropriate security advice given to her if necessary.'

21.8 The Deputy Sub-Divisional Commander explained his reasoning to us as follows:

'We had no knowledge of the threat against Mrs Nelson. As such, it is impossible to provide advice on a threat which we had no knowledge of. If we had information that Mrs Nelson was to be targeted on her way to church, personal security advice might be to tell her not to go to her normal church or change the time she went to it. It should be remembered that it is a shattering experience to tell someone that they are under threat of attack. As we could not provide Mrs Nelson with any advice and because we had no knowledge of any threat against her, there was nothing that could have been said to her to give her some semblance of security.'

21.9 We do not accept this argument. It must have been obvious that Rosemary Nelson already knew of the threat – how else would the Lawyers Alliance for Justice in Ireland (LAJI) or the NIO have been in a position to pass it on? So talking to her about it would not have been a 'shattering experience'. In this respect there was a failure on the part of the RUC to take all reasonable and proportionate steps to safeguard Rosemary Nelson.

Back to South Region: 'Appendix B'

21.10 In his response to the Divisional Commander the Deputy Sub-Divisional Commander had referred to Appendix B in which were set out the terms of briefing given to police officers in Lurgan. This read as follows:

'American lawyers and pressure groups have raised concerns with the NIO in relation to the personal safety of Rosemary Nelson, Solicitor.

The gist of these concerns seems to be that they believe her to be under threat from Loyalist paramilitaries due to her high profile involvement in a number of well publicised court cases involving suspected Republican terrorists.

Although no reports have been received from any source threatening Rosemary Nelson and no intelligence exists indicating an actual threat, it is important, in view of the concerns raised with the NIO, that attention is given to Rosemary Nelson's office in William Street, Lurgan and her home address at 3 Rosemount, Lurgan.'

21.11 We were told that this information would have been entered into a Briefing Book that was kept at Lurgan police station. This was intended for use by the Duty Inspector when briefing patrols as they came on duty at the beginning of each shift. We were told that an entry in the Briefing Book was open-ended in terms of its currency, so that the information it contained could be used to inform patrols over months or even years. We question whether in practice the currency of an entry

made in the Briefing Book would extend for more than a few days after the entry was made. Regrettably and surprisingly, the Police Service of Northern Ireland (PSNI) were unable to locate the Briefing Book in question, the volume for the period 9 May 1997 to 23 April 1999 which includes the date of Rosemary Nelson's murder. So we were unable to verify whether or not an entry, in terms of Appendix B or otherwise, was made. Nor did we receive any evidence that briefings were given or that they were acted upon. But we do not, in any event, consider that this measure was at all sufficient to prevent or deter an attack upon her. The most that was offered to us in evidence was that the CCTV camera that covered Lurgan police station would also have covered Rosemary Nelson's office. As for attention being paid to her home address, any such attention would have been misdirected: the Nelsons had moved from Rosemount in 1994.

South Region to Police Headquarters

21.12 The Divisional Commander wrote to the Assistant Chief Constable (South Region) on 12 March 1998. He set out the background to the LAJI and Rosemary Nelson/Colin Duffy complaints and their investigation incorrectly stating that Rosemary Nelson had failed to cooperate. He informed the Assistant Chief Constable that *'police have received no threats in respect of Rosemary Nelson'* but that the Deputy Sub-Divisional Commander was taking precautionary measures, as outlined in Appendix B. He then communicated the suggestion that LAJI or the NIO provide any additional information in their possession to allow for proper assessment and appropriate security advice, if necessary.

21.13 The Assistant Chief Constable (South Region) forwarded the correspondence to Command Secretariat on or about 17 March 1998 with his own summary that *'No threats have been received in respect of Mrs Nelson, but because of her high profile attention is being paid to her home and business.'*

21.14 The Assistant Chief Constable told us that he was reliant on the knowledge and judgment of his officers on the ground locally and he was satisfied that the course of action taken in regard to Rosemary Nelson was reasonable and appropriate in paying attention to her properties and seeking further information.

21.15 The progress of the correspondence in both directions from the top of the command structure to the local level is illustrated in Appendix I. At no point does there seem to have been any value-added input provided or quality assurance exercised.

Back to Command Secretariat

21.16 When the response from South Region was received in Command Secretariat, the Chief Inspector noted that it did not address Police Division's suggestion of crime prevention advice being provided to Rosemary Nelson. This officer told us that they did not consider that the absence of specific threat created a bar to offering this advice. Consequently, the Chief Inspector raised this issue with the Chief Superintendent. A 'Post-it' note in the Chief Superintendent's handwriting attached to a copy of the correspondence demonstrates that this conversation took place. The note reads *'need to offer a crime prevention order?'* but ought to have read *'need to offer a crime prevention officer?'* This was simply a drafting mistake. The Chief Superintendent was of the opinion that a visit by a crime prevention officer was *'always an option in those circumstances where there wasn't a specific threat'* and was *'probably a much lower key way'* of dealing with the matter. No such visit was directed, however, and the decision was probably made by Sir Ronnie Flanagan

himself. The Chief Inspector told us that the Chief Superintendent had raised the matter with the Chief Constable. The result was noted on the response from the Assistant Chief Constable in the Chief Inspector's hand as follows: *'Discussed with CC on 1.4.98 – C/Supt [redacted] Nothing further can be done at this time.'*

21.17 The Chief Superintendent told us that he had no specific recollection of his conversation with the Chief Constable. He could not remember another instance in which the Chief Constable had been involved in discussing a threat assessment on an individual but when questioned by the Inquiry he confirmed that in this case, *'Because of the nature of this matter, we would have wanted to let Sir Ronnie Flanagan know what was going on in relation to it.'* He said: *'You know, he needed – we needed his imprimatur on it, as it were as to where we would go from here.'*

21.18 Sir Ronnie Flanagan did not recall examining this correspondence, nor specifically, the discussion with the Chief Superintendent. He said:

'I do not have a specific recollection of the discussion. What I think is more likely is that he would have described to me the reports that he had sought and received and would have dealt with the outcome that the Assistant Chief Constable believes that, because there are no specific threats, because there are no Special Branch intelligence, that what should be done is, because of her high profile, police attention to be paid to her home and business. And I would have thought that was an appropriate outcome.'

21.19 The Chief Inspector told us:

'In terms of the handwriting on the note stating "discussed with CC on 1.4.98". This is my note of a further conversation with [the Superintendent] after he had apparently spoken to the Chief Constable in relation to whether it was now appropriate to offer Rosemary Nelson crime prevention advice. The Chief Constable and [the Superintendent] had apparently agreed that no further action could be taken. Rosemary Nelson was therefore not offered any crime prevention advice to my knowledge.'

The response to the Northern Ireland Office

21.20 The Command Secretariat's response dated 1 April 1998 to the Principal of the Police Complaints Branch's 'strongly worded letter' read as follows:

'ROSEMARY NELSON – SECURITY

Thank you for your letter of 23 February 1998 concerning Rosemary Nelson.

Whilst police are aware of concerns having been expressed over the safety of Rosemary Nelson, police have received no threats in respect of Ms Nelson.

If the US Lawyers Alliance has evidence of a threat(s), such information should be provided to police in order that it can be properly assessed.

I trust this information is of assistance to you.'

21.21 Clearly this reply did not address 'deep concerns over the safety of Rosemary Nelson' referred to in the letter of 23 February 1998 and it did not provide the confirmation expressly sought by the Principal of the Police Complaints Branch that security advice had been given. The Principal of the Police Complaints Branch told us:

'It dealt with the first aspect, which is: is there a threat. And if there is a threat, then obviously subsequent or consequent steps might be required. Because they said there was

no threat, that, in a sense, meant other steps were not strictly necessary. [...] I would have naturally preferred a fuller reply from the police service, but I felt the reply, brief though it was, addressed the central point, which was on the threat.'

21.22 He said:

'It was a position that, if the police chose to take it, that was their view. As you gather from my letter of 23 February, it wasn't the position I would have liked them to have taken, but I felt it was, shall we say, defensible in their circumstances. [...] I wouldn't have written the letter I had if I was expecting such a brief response, but nonetheless I felt, looking at the response that I received, that that was the police word on the topic.'

A telephone call to Command Secretariat

21.23 The NIO's Principal of the Police Complaints Branch told us that he had nonetheless raised the matter with the Head of Police Division. She in turn recalled that she had telephoned the Chief Superintendent, Command Secretariat. She described her thinking as follows:

'Well, just, I think, because I wanted to be clear in my own mind; I wanted to talk it over and to make sure that my understanding of that letter was correct and that – I suppose I was also looking to make sure they had actually done something. You know, as I say, we didn't get the backing papers going with this letter. All we got was the letter. What I wanted to do was just check that there was something lying behind it and that it hadn't been a bargain basement, "Oh, this is another of those letters from the NIO, stick on our standard line to take"-type response. I wanted just to probe it a bit.'

21.24 She explained that the reason for her further enquiry was because *'we wanted to be sure, we wanted to make – we wanted there to be a genuine engagement between us and the police on this issue. We didn't want it to be a stock response.'*

21.25 The Head of Police Division could not remember if the RUC had considered whether Rosemary Nelson needed to be approached and given advice on her security. She told us:

'To the best of my recollection, that's all I can say, is that, yes, we did have that sort of discussion, you know, would it be possible to do that. And I think I understood the reasons why they felt that wouldn't be a terribly productive or sensible avenue, which I think I outlined yesterday. You know, the sort of discussion about, well, how do you go and tell somebody you don't think they are under threat, but you are coming to talk to them about their safety anyway. I think that was the gist of it.'

21.26 She was sure that she sought clarification as to the reference to a specific threat. She said:

'My memory of the phone call is quite concrete and specific around the threat bit of it. It is less concrete and specific around the other bits of it, and as I say, I don't want to sort of start manufacturing things that – I think that would be a dangerous thing for me to do. I have a vaguer recollection of talking about that aspect, but I am concretely sure we did talk about the threat aspect.'

21.27 Asked whether she had been satisfied with the response, she said:

'I think so, because I think, you know, there is a question of balance in here, also a question of the different constitutional positions and roles and responsibilities. You know, that was the police assessment, their understanding. They had explained it to me, I was content that they had done a thorough professional job on it, they had actually

attended to it in a serious way, it wasn't a stock response – it might have looked like it, but it wasn't – and that, therefore, I understood that. I understood where they stood, I understood where we stood. That was okay. You know, there wasn't much else I felt we could have done.'

21.28 The Head of Police Division suggested that there may have been some internal NIO discussion about whether someone within the NIO should telephone Rosemary Nelson and give words of advice of a preventative nature. She told us:

'This was one of the things we did consider and think about. I think – and I'm sorry, I hate getting into this business of hazy recollections, but I think we also thought about whether it would be possible for one of our NIO local officials to have done something similar. I mean, they didn't fall under my remit; they fell under SPOB's [Security Policy and Operations Branch] remit. We did think of those sorts of things.'

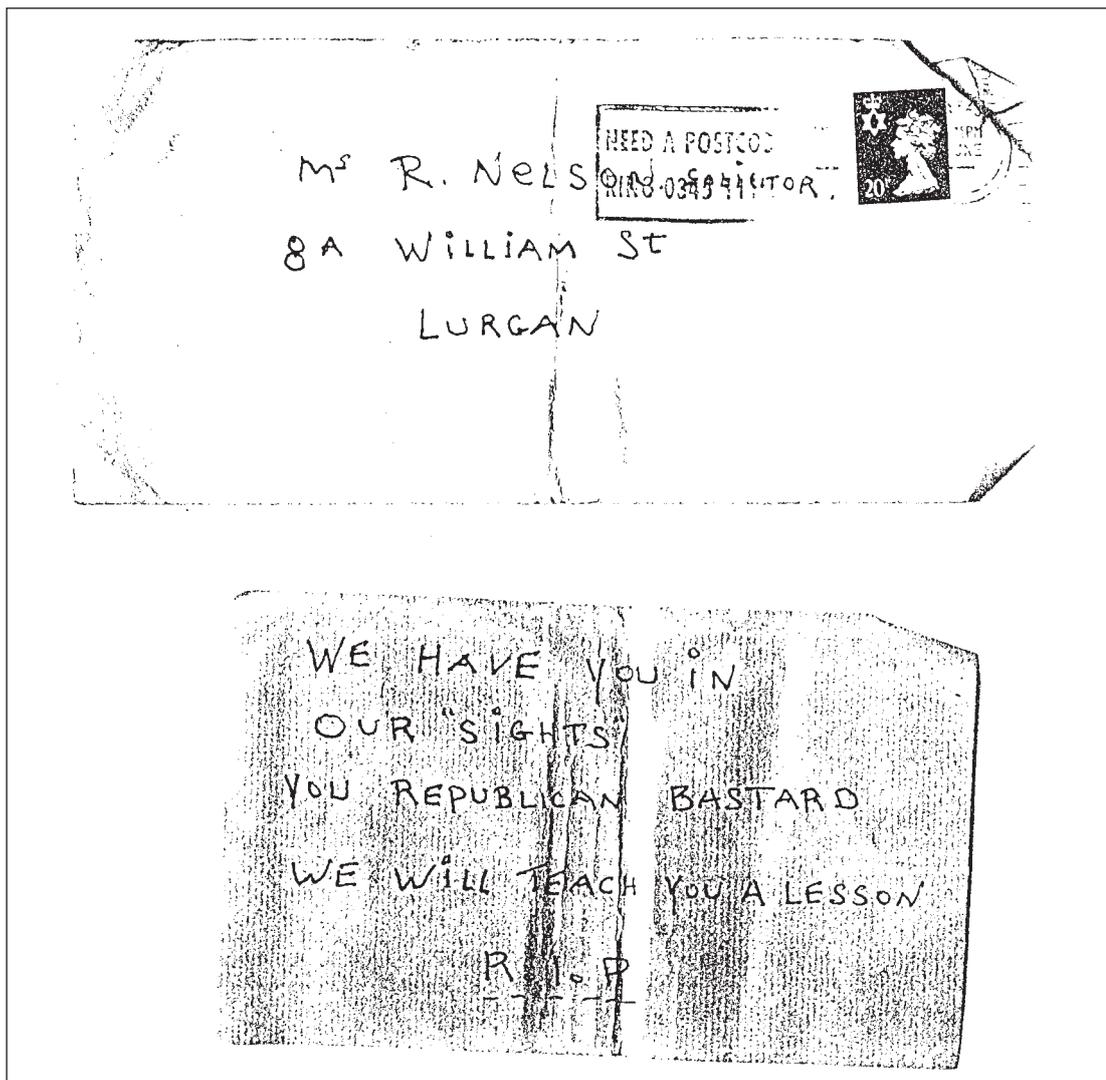
21.29 She gave two reasons for not contacting Rosemary Nelson. Firstly: *'I had doubts about whether she [i.e. Rosemary Nelson] would or she wouldn't [answer a phone call from the NIO]. I think she would have found a telephone call from the Northern Ireland Office to be unexpected.'* Secondly: *'I think it would have been pretty unusual for an official of my position, if you see what I mean – I mean geographically and in other ways – to have phoned her in that way.'*

21.30 The Principal of the Police Complaints Branch was also against the idea. He said: *'If they [i.e. the RUC] defined there was no threat in a police sense, then there wouldn't be a need to talk to her. And, indeed, you could see a situation where talking to her might be counterproductive in that if someone approaches a person who is not subject to threat and says to them, "We are just coming to talk to you about your security", you might perceive it in a different way'*. He also said: *'Mrs Nelson had not contacted us and it would not, I felt – and still feel – have been appropriate to contact her directly. And, indeed, she could have contacted us. But also, as we discussed yesterday, or as I mentioned yesterday, someone cold-calling Mrs Nelson mightn't actually have been what she would have wanted either.'*

21.31 It is unfortunate that none of the senior officers in Lurgan or in J Division or in RUC Headquarters South Region considered it advisable that contact be made with Rosemary Nelson to discuss her personal security and that the NIO, who did ask the police the right questions, did not press them harder to do so. An offer of advice might well have been rejected or it might not have been acted upon but there would now be no question as to whether local officers, by failing to make this modest gesture, discharged their duty towards a local citizen.

Death threats

22.1 In early June 1998 a secretary in Rosemary Nelson's office opened a blue envelope postmarked '3 JNE' which had arrived with the morning post. Inside was a single piece of blue paper on which was written 'WE HAVE YOU IN OUR SIGHTS YOU REPUBLICAN BASTARD, WE WILL TEACH YOU A LESSON – R.I.P.' This was by no means the first threat that Rosemary Nelson had received and it was not to be the last but there is no doubt that it frightened her. Paul Mageean of the Committee for the Administration of Justice (CAJ) recalled that she telephoned him and read the note to him over the phone. Later, he went to her office and took a copy of it. He told us: 'Rosemary was clearly concerned about the letter. It was unusual for her to receive a written threat (usually they were verbal to her or her clients) and I think that this together with the fact that it was around the time of Garvaghy Road unnerved her.' Rosemary Nelson kept the original envelope and note, which she showed to a number of people including on 1 September 1998 a Detective Sergeant of the Mulvihill Inquiry. Some time after her murder Paul Nelson handed the envelope and note to the Murder Investigation Team (MIT). One fingerprint was recovered from the envelope but was never identified.



22.2 It appears that this was one of a number of threats that Rosemary Nelson received during the summer of 1998. A solicitor who worked for Rosemary Nelson told us that there were others. He said: *'I think that she just generally threw them out without giving them much consideration.'* Another witness told us that his wife, a member of Rosemary Nelson's staff, *'actually brought the death threats home with her and showed them to me'*. He said these were contained in a *'folder or package'* and he recalled *'a blue sheet of paper with handwriting on it which indicated her death, and then another piece of paper a bit more like a – a typical death threat, bits of paper chopped together creating a very sinister message, but amateur-looking thrown piece of paper'*. He also remembered *'talk of a bullet'* that was not in the folder or package.

22.3 Rosemary Nelson received one of these other threats in early July 1998. A solicitor who met her on 4 July 1998 told us that she *'produced a letter which I think was in a white envelope addressed to her home address. Inside the envelope Rosemary Nelson showed us a note which said something like "you're going to die, you ugly Fenian bitch".'* He said that when she produced the letter she said: *'I got this this morning, I got this love letter this morning.'* He recalled that she said she had received lots of letters like that. He said: *'She was showing us just how extreme it was in that area, how nasty it was and how vicious it could get, because I think the feeling she may have had was we had come from Derry where everything was okay and she wanted to show us that it was not great down there.'* Another observer who met Rosemary Nelson at the Garvaghy Road in 1998 told us that Rosemary Nelson had shown her a *'very small'* piece of paper with the words *'you will die'* written on it, although she could not be sure if this was the same document as the death threat note received on 3 June 1998. The Irish Government official Eamonn McKee told us that he had spoken to Rosemary Nelson during the course of the proximity talks concerning the Garvaghy Road which occurred between 11 and 21 July 1998 and he remembered seeing her *'with a blue envelope, opening up the blue envelope and showing me the bullet inside'*.

22.4 A journalist who had known Rosemary Nelson since the mid-1990s, Moya St Leger, met her at a conference in London on 6 August 1998. She described how during one of the breaks Rosemary Nelson *'opened her handbag and handed me three pieces of paper. [...] One of the letters was written in pencil. I didn't have my reading glasses with me, but the writing was big enough for me to read. The letter was 4–5 lines long, but I cannot remember what it said. I do remember that it was a death threat. The hand writing was not linked up [...]. It looked like something which had been done by a junior school child. The paper was plain, not lined. There was a stamp in one of the corners at the top of the letter. [...] It may have been the Red Hand of Ulster with the initials: UFF or UVF or LVF [Ulster Freedom Fighters; Ulster Volunteer Force or Loyalist Volunteer Force]. I am not sure about seeing the Red Hand of Ulster. I am sure about seeing the letters of a loyalist group. I am not certain but I think it was UVF! [...] The next letter was on half an A4 sheet. It was made up of letters which had been cut out from a newspaper. There were some capital letters and some letters in lower case, but all of the letters had been cut out from headlines of a newspaper. I cannot recall exactly what the letter said. I do remember that it included the word "Fenian" and that it was a death threat. The third letter was in small type print. It was too small to read without my glasses.'*

22.5 The journalist Brendan Anderson told us of a conversation he had with Rosemary Nelson at some time before he left *The Irish News*, which was in September 1998, when she *'seemed to be taking the threats a lot more seriously'*. He said: *'She did say that it wasn't just coming from the police this time, and I am really sorry I can't remember the exact words but she said there was – she had heard something from a particular estate that they were going to – that there was a threat to her life.'* He told us that he thought the name of the estate might have had the word *'green'* in it and *'she did mention*

something – she connected it to the murder of the local man Adrian Lamph.¹ Another journalist, Susan McKay, told us that Rosemary Nelson had told her that she had received ‘several’ threatening letters. She said that she was not shown any of these letters but she did *‘know other journalists who said they saw notes’*.

22.6 Most of these notes never came to the attention of the Royal Ulster Constabulary (RUC) or the Northern Ireland Office (NIO), nor did the Inquiry see them. They may indeed have been thrown out by Rosemary Nelson. In August 1998, however, the death threat note of 3 June 1998 was brought to the attention of the NIO and a copy of it was sent to the RUC. At that time the RUC was already considering the question of whether Rosemary Nelson might be at risk but this note was not examined or investigated or assessed as part of this process. In our view, it should have been and the fact that it was not was due to significant failings on the part of the RUC.

‘The Man Without a Future’: concerns expressed by the Irish Government

22.7 Consideration of Rosemary Nelson’s safety was triggered in August 1998 by information conveyed to the NIO through the Anglo-Irish Secretariat. Rosemary Nelson had shown a copy of the death threat note to an Irish Government official whom she met as a result of her involvement with the Garvaghy Road Residents’ Coalition (GRRC) on 25 June 1997. She spoke again to Irish Government officials on 31 July 1998 after she came into possession of ‘The Man Without a Future’ leaflet which was being circulated in Portadown.² The document was directed principally at Breandán Mac Cionnaith but it also referred to Rosemary Nelson as a *‘former bomber’* and some versions included her business address and telephone number. Both she and Breandán Mac Cionnaith were described as members of *‘a motley crew’* which included Eamon Stack, *‘the Duffys’* (named elsewhere in the leaflet as Colin Duffy and Joe Duffy, a committee member of the GRRC who had been elected a Craigavon District Councillor on 21 May 1997), and Bobby Storey and Spike Murray who were reputed to be members of the Provisional Irish Republican Army (PIRA).

22.8 Members of Rosemary Nelson’s family were aware of the leaflet. Rosemary Nelson’s sister said: *‘I also recall that a flyer was handed out in the Portadown area around the time of one of the marching seasons. Rosemary told us about this and that it had her office address on the flyer and also that Brendan McKenna’s details were on it. We obviously all felt that this was very sinister particularly as it was obviously circulated all around the Loyalist community.’*

22.9 Irish Government officials sent a copy of the leaflet to the Irish Side at the Anglo-Irish Secretariat.³ An accompanying memorandum recorded that Rosemary Nelson had expressed *‘her extreme concern’* about the leaflet. The Irish Side were instructed to *‘express our deep concern at the circulation of such material’* and *‘request the other side to ensure that Ms. Nelson and those others mentioned on this leaflet are provided with appropriate additional security’*. The Irish Side forwarded a copy of the leaflet to the British Side on 4 August 1998. The accompanying note read as follows:

¹Adrian Lamph, killed by a suspected LVF gunman in Portadown on 21 April 1998, was the first sectarian murder victim after the signing of the Good Friday Agreement.

²A copy of this leaflet is reproduced at Chapter 13.15.

³The passage of correspondence in relation to this leaflet (and that originating from CAJ in relation to the same: See above at Chapter 16.57 and below at Chapter 22.30) is illustrated in Appendix J.

'Ms Rosemary Nelson, the Lurgan-based solicitor, has brought to the Irish side's attention an extremely disturbing leaflet which we understand to be in circulation in Portadown at present.

The leaflet, the overall tone of which is extremely menacing, makes a number of inflammatory allegations about several individuals, including Ms Nelson. It describes Ms Nelson as a "former bomber" and, alarmingly, contains her address and telephone number.

Ms Nelson is, understandably, extremely distressed by this incident, and has expressed serious concerns about the threat to her personal security posed by both the claims advanced in the leaflet, and the circulation of her address and telephone number. The Irish side fully shares these concerns, which are of an extremely serious nature.

The Irish side would be grateful to receive, as a matter of some urgency, the British side's full assurance that those mentioned in the leaflet, including Ms Nelson, will be provided with appropriate additional security given the increased risk to their personal safety. In addition, the Irish side would wish to be advised of the Police Authorities' plans to carry out an investigation into both the publication and the circulation of these dangerous and inflammatory allegations, and to receive a full report on the matter.

The Irish side also believes that this matter should be brought to the attention of Metropolitan Police Commander Mulvihill, who has been appointed to investigate previous threats against Ms Nelson.'

Action by the Northern Ireland Office: referral to the Royal Ulster Constabulary

22.10 The correspondence and leaflet were forwarded by the British Side to the Principal of the Police Complaints Branch of the Police Division of the NIO. He wrote to Command Secretariat of the RUC on 6 August 1998 enclosing a copy of the leaflet. The final paragraphs of his letter read as follows:

'The leaflet has been sent to us by the Irish side of the Secretariat, having been brought to their attention by Rosemary Nelson. We understand that Ms Nelson is extremely distressed by the leaflet and is seriously concerned about the threat to her personal security posed by the claims in the leaflet and by the circulation of her address and telephone number.

If this has not already happened, could steps please be taken to assess the background to the leaflet and any threat or increased threat to the security of the individuals named in it. I presume that if there is a threat to the safety of the individuals then the police will talk to them about this. In doing so, and while we could not prejudge the outcome, Ms Nelson, in particular, could be informed that if she needs financial assistance with any required security measures then the NIO does run a limited scheme and she could apply to this. Obviously any application would be treated on its merits.'

22.11 The Principal of the Police Complaints Branch told us that he saw this as part of 'a continuous run of correspondence and issues and concerns' about Rosemary Nelson and also that his approach, including the rather specific drafting in this paragraph, was influenced in part by the short response he had received from Command Secretariat when the issue of Rosemary Nelson's safety had been raised in February 1998 (see Chapter 21.20 to 21.22). He told us that he was, 'as with previous correspondence, trying to ensure some threat assessment was conducted and then, if that triggered further action, I wanted them to take further action'.

22.12 The British Side informed the Irish Side in a memorandum dated 10 August 1998 that:

'The RUC have been informed of the concerns raised and have been asked to investigate the background to the leaflet and to look at any threat, or increased threat, to the security of the individuals mentioned in it and take whatever action they deem appropriate insofar that they have not already done so.'

You also asked for the case to be brought to the attention of Commander Mulvihill. His investigation is into complaints about the police, and there is no suggestion that the source of the leaflet is the police, or that they have colluded in its production. Nevertheless, it has been suggested to the ICPC that they may like to draw the leaflet to the attention of Commander Mulvihill as part of his background briefing on Ms Nelson's case.'

Action within Royal Ulster Constabulary: Command Secretariat

22.13 Having received the letter from the NIO the Superintendent in RUC Command Secretariat wrote to both the Assistant Chief Constable (South Region) and to the Assistant Chief Constable who was the Head of Special Branch (HSB) enclosing a copy of the leaflet. The Superintendent told us, *'When I read the leaflet, I thought that it sounded intimidatory and so I would have wanted to get views from [Special Branch] and from South Region as to their opinion on the level of threat to Mrs Nelson, if any and to enable them to take any other investigatory action.'*

22.14 In the memorandum to both Assistant Chief Constables, however, the Superintendent asked for *'whatever information you can provide on this matter, and an assessment of whether or not you consider those named to be the subject of any threat'*. It is unfortunate that the letter from the NIO was not sent on with this memorandum, nor was specific reference made to the suggestion that those named in the leaflet could be contacted and advised that application could be made to the NIO for support with security measures. In a telling response to questioning, the Superintendent told us that this was deliberate so as not to disclose the involvement of the *'Irish Side'*, the divulgence of which *'sometimes could create bigger difficulties'*. It was assumed that contact would be made with those named if it were established that there was in fact a threat.

Action within Royal Ulster Constabulary: Special Branch Headquarters

22.15 The Superintendent's memorandum and a copy of the leaflet were passed to that section of Special Branch (SB) known as E3. This comprised a Registry, the Republican and Loyalist Desks, respectively E3A and E3B, and another section, E3C, which was responsible for the filing and storage of material held by E3 and the collation of intelligence reports for threat assessments.⁴ The memorandum was passed down the chain of command within SB to an Acting Detective Chief Inspector and then to a Sergeant whose job it was to process requests for intelligence.

22.16 The Sergeant told us that he considered his task to be to prepare an *'intelligence report'* in exactly the same manner as if the request had originated in Security Branch, that branch of the RUC that carried out threat assessments in connection with applications for admission to the NIO's Key Persons Protection Scheme (KPPS).⁵ He described the task he was asked to undertake as follows:

⁴See Appendix C

⁵See Chapter 22.43: footnote 7

'The role I had to perform was fairly "black and white" and basically involved research on the computer database of intelligence in relation to threats at RUC Headquarters. I would check the computer system and also any paper files we might hold at Headquarters to see what intelligence there was on the subject. If there was any intelligence relating to a threat, then I would include it in my report: if there was no intelligence to indicate a threat, then I would state that there was none. It was not my role to "assess" or grade the intelligence or to inform individuals of the risks to them; this was the remit of others, including Special Branch.'

22.17 He told us that he would liaise with the Regional Source Unit, and also with local SB as to any *'fresh intelligence'*. If he had considered it necessary, he would also contact the Loyalist and Republican Desks, and in due course the Dissident Desk, at Headquarters. He would then prepare a report which he would submit to the A/Detective Chief Inspector in charge of the section. In this instance the report was dated 20 August 1998. It read as follows:

'This office holds no current intelligence to indicate that a specific threat exists to Rosemary NELSON from paramilitaries.

Local Special Branch at Portadown and Lurgan are of the opinion that the leaflet was circulated by Loyalist elements to heighten tension during the Drumcree period. Research has shown that the address and telephone number given on the leaflet relates to Rosemary NELSON's offices at 8A William Street, Lurgan. This information is listed in Yellow Pages and is therefore readily accessible to anyone wishing to obtain same.'

22.18 It was forwarded, without amendment, to the Head of the Intelligence Management Group (IMG) the same day. He told us that when he received the Sergeant's report he considered that appropriate action had been taken. In his view the exercise carried out by the Sergeant was in effect one of double checking and if there had been specific intelligence indicating an attack, it would already have been acted upon.

22.19 As we have seen, the Head of IMG knew of Rosemary Nelson and believed *'that she had a very close association with terrorists in the Lurgan area and that she helped them to achieve their objectives.'* He made no mention of this, however, in passing the report, without any further comment to the HSB. On 27 August 1998 it was sent on, again without further input, to the Superintendent in Command Secretariat.

Action within Royal Ulster Constabulary: South Region

22.20 The Command Secretariat memorandum had also been sent to the Assistant Chief Constable (South Region). He told us that as *'The Man Without a Future'* leaflet had been distributed in Portadown, the documentation and the threat process would have been directed through the Divisional Commander to that Sub-Division. He added that *'Brendan McKenna did live in Portadown and since he was the main subject of the pamphlet that is probably why the process was dealt with through that area'*. The communication between the Divisional Commander and the Portadown Sub-Divisional Commander has not been disclosed to the Inquiry. The Sub-Divisional Commander's recollection was that it asked whether there was intelligence held at Portadown in relation to a threat against Rosemary Nelson. This would represent a narrowing of the Command Secretariat request concerning *'those named'* in the leaflet. The Portadown Sub-Divisional Commander stated that if it had been appropriate to involve the Lurgan Sub-Division the decision would

have been made at Divisional level, and expected also that the correspondence would have been sent down the SB chain of command to Lurgan as well as to Portadown.

22.21 The Sub-Divisional Commander forwarded the correspondence to SB in Portadown *'for urgent report by return'*. He told us that he could not recollect another instance of an alleged threat being communicated from Command Secretariat, and that Force Command's interest in the issue indicated its importance.

22.22 The assessment at Portadown SB was carried out by a Detective Constable. He also confirmed that the term *'threat assessment'* was, in reality, something of a misnomer. As we heard from the officers involved in the parallel exercise in SB Headquarters, what was undertaken was in effect an *'intelligence check'*, to ascertain whether intelligence was held locally or on record that would indicate a threat to an individual. Although he did not specifically recall contacting Lurgan SB, the Detective Constable told us that it was *'standard procedure'* to do so.

22.23 The Detective Constable told us that he had read intelligence concerning Rosemary Nelson including that which stated that she used her position as a solicitor to gather information for PIRA in Lurgan. He implied that the existence of this intelligence would not have been relevant to assessment as the originators of the leaflet would not have had access to it. He considered that Rosemary Nelson's connection with the GRRC would have raised her profile, particularly in the eyes of local militant Loyalists. Although there was no specific threat that she was being targeted, the Detective Constable did agree that this profile placed her at a level of risk commensurate with police officers or local politicians: a *'general measure of threat toward her'*. He was unable to say with certainty whether at the time of compiling his assessment he was aware that Rosemary Nelson had made complaints regarding allegations of threats emanating from interviewing officers at Gough Barracks. However, he did not view such information as intelligence to be submitted by SB nor did he consider it to have *'constituted a piece of intelligence which said that Rosemary Nelson was going to be murdered by any subversive or terrorist organisation'*.

22.24 The assessment was returned to the Sub-Divisional Commander. It read:

'During Drumcree 98, several different propaganda leaflets were distributed by loyalists in Portadown.

This particular leaflet contains information which is easily obtained and it is designed to intimidate those mentioned in it.

There is no intelligence held at this office to suggest that Rosemary Nelson is under a specific threat from loyalist paramilitaries.'

22.25 The Detective Constable's report was forwarded by the Sub-Divisional Commander to the Divisional Commander on 21 August 1998. The covering memorandum merely restated that *'There is no intelligence in Portadown that Rosemary Nelson is under specific threat from Loyalist paramilitaries'*. The Sub-Divisional Commander told us that he may have instructed a neighbourhood unit, part of the uniformed branch, to investigate the origins of the leaflet. If he did so, he acknowledged that the results were limited by investigative opportunities. No mention was made of any results in his memorandum back up the chain of command and no documents have been produced to the Inquiry to demonstrate that anything was actually done. No consideration was given to offering crime prevention advice to those named in the leaflet.

22.26 The Assistant Chief Constable (South Region) responded on 28 August 1998 to the original request from Command Secretariat. He added no comment. The Assistant Chief Constable told us that in the absence of a direct threat his role was simply to pass the results of the assessment to Command Secretariat. He saw no reason to make a judgment on the information being transmitted or to query the steps taken to assess the matter and report carefully. Indeed, he accepted that he did not possess the means of forming an opinion on this as he had no experience of conducting threat assessments and no access to ground level intelligence.⁶ He told us that he might have assumed, in addition, that a criminal investigation was undertaken.

The Command Secretariat response to the Northern Ireland Office

22.27 Both Assistant Chief Constables had now responded to the request transmitted by Command Secretariat. Although the responses were limited in scope, the Superintendent in Command Secretariat did not challenge them. The Superintendent had expected SB to *'use whatever means they had to check the threats'* and told the Inquiry: *'I would have had no idea of what checking the threat out actually involved and I did not need to know. I was reliant on the relevant Assistant Chief Constable satisfying themselves that their staff had investigated the threat thoroughly and that the response to my request for information was adequate.'* The Superintendent told the Inquiry that the appropriate knowledge was held by officers out in the divisions and *'it was not for me to put any sort of interpretation on what they had said'*. As such, the content of the incoming reports was taken to form the draft response to Police Division.

22.28 Having received the responses from South Region and SB Headquarters, the Superintendent in Command Secretariat prepared a draft response to the NIO. This was submitted for Sir Ronnie Flanagan's approval as the Superintendent was aware that the Chief Constable *'had a personal interest in this matter'*. The letter was written on 3 September 1998 but was sent eight days later after the Chief Constable's approval. It read as follows:

'I refer to your correspondence of 6 August 1998 and the subsequent fax from [an official within Police Division], dated 26 August 1998.

I am advised that during the Drumcree period several leaflets were distributed by loyalists in the Portadown area. The address and telephone number included on the leaflet refers to Ms Nelson's business. The information is listed in yellow pages and is therefore readily accessible.

Police are unaware of any specific threat against Ms Nelson.'

22.29 The reference to the *'subsequent fax'* of 26 August 1998 is of crucial significance. The fax had been sent from Police Division of the NIO to Command Secretariat of the RUC as a result of correspondence from CAJ which expressed similar concerns to those raised by the Irish Side through the Anglo-Irish Secretariat. The CAJ letter, written by Paul Mageean, had enclosed not only *'The Man Without a Future'* leaflet, but also a copy of the death threat note and its envelope which had been received by Rosemary Nelson in early June 1998. As will be seen below, the

⁶He said: *'Since there was no direct threat, I was merely in this correspondence responsible for passing on the information. I had no reason to make any sort of value judgment in respect of the information or indeed the evidence behind it.'*

death threat note had not been taken into account during the assessment process. Indeed, we believe that when Sir Ronnie Flanagan gave his approval to the letter of 3 September 1998, he would have been unaware of its existence.

The Committee for the Administration of Justice letter to Adam Ingram

22.30 Paul Mageean's concern for Rosemary Nelson was raised when CAJ members, observing events on the Garvaghy Road, came into possession of copies of 'The Man Without a Future' leaflet. He told us that he spoke to Rosemary Nelson and she agreed that he should write to the NIO raising the issue of her safety. Paul Mageean made copies of the death threat note and the leaflet which had been in public circulation in early July 1998. He explained to us:

'It was a combination of the letter and the pamphlet that led us to agree with Rosemary that something needed to be done. I can't recall what Rosemary said but I do remember that she was particularly concerned about her staff as her office address was on the pamphlet. She was worried that most of her staff sat downstairs and that they would take the brunt of anything that was thrown in.'

22.31 We have described at Chapter 16.57 how, on 10 August 1998, Paul Mageean wrote to Adam Ingram, the Minister of State responsible for security in Northern Ireland, enclosing copies of the death threat note and the leaflet. He told us that it was a deliberate decision to write directly to the Minister responsible for security. He explained his reasoning when giving evidence:

'From our perspective as a human rights organisation that was campaigning for respect for international human rights standards, the international standards bound the government, not the police. And therefore, we felt that at least in the first instance it was more appropriate for us to write to him. We knew, of course, that in all likelihood he would pass the matter on to the Chief Constable for investigation. But in so doing, we thought that that might give it a bit of an impetus and might make the police investigation a little bit more effective.'

22.32 Within the NIO the letter was directed to the Head of Police Division and she, in turn, forwarded it together with its enclosures, to the Principal of the Police Complaints Branch. The branch official who dealt with it recognised that 'The Man Without a Future' leaflet had already been sent to Command Secretariat on 6 August 1998. It was not until 26 August 1998, however, that she sent the CAJ letter and the documents enclosed with it by courier to Command Secretariat. This was done because when she had first faxed the two documents they were illegible on receipt. Her covering letter read as follows:

'We have received a further letter from the Committee on the Administration of Justice concerning Rosemary Nelson. In particular, the letter expresses concern about her safety in light of a pamphlet relating to Brendan McKenna which refers to Rosemary Nelson and a threatening note which was posted to Rosemary Nelson (copies attached).

[The Principal of the Police Complaints Branch] wrote to you on 6 August concerning the pamphlet and I would be grateful for advice as to what action has been taken.'

22.33 The Superintendent in Command Secretariat who had dealt with the previous correspondence from Police Division regarding Rosemary Nelson was on annual leave on 26 August 1998 and did not return to the office until 1 September 1998. We were told that the Superintendent's impression, which was incorrect,

was that the new letter referred only to 'The Man Without a Future' leaflet. The Superintendent told us that, despite reading the NIO letter, *'reference to a "threatening note" must have passed me by'* and that only after Rosemary Nelson's death did it come to the officer's attention that the document was on the file.

22.34 The Superintendent told the Inquiry that if the threatening note had been noticed it would have been regarded *'as a threat against Mrs Nelson that required further investigation'* and would have been acted upon *'separately and straight away'* and forwarded to the Assistant Chief Constables of South Region and SB (the HSB) in the same way as the leaflet had been. The Superintendent added that *'it would have gone to South Region as a priority because the letter had gone to her Lurgan address and to enable any investigations'*.

22.35 On 26 May 1999 an article appeared in *The Irish Times* reporting that Sir Ronnie Flanagan had told the Police Authority that prior to the murder of Rosemary Nelson the RUC *'did not have information to suggest that she [i.e. Rosemary Nelson] was the subject of a specific terrorist threat'*. The next day the newspaper reported that CAJ had responded to the article by referring to the letter and enclosures sent by Paul Mageean to Adam Ingram, Minister of State responsible for security in Northern Ireland, in August 1998 and the response that he had received from the NIO in which it was said that the letter and documents had been passed to the RUC.

22.36 For some time there was doubt about whether the death threat note had in fact been sent by the NIO with the original correspondence. The NIO official was convinced that it had; the Superintendent from Command Secretariat was convinced that it had not reached the RUC. This perhaps explains why Sir Ronnie Flanagan advised the Police Authority as he did. Members of the MIT had visited Command Secretariat on 30 March 1999 and examined the file. Although they found the NIO letter and a copy of 'The Man Without a Future' leaflet, they did not find the copy of the note containing the death threat. When CAJ challenged the report in *The Irish Times*, the file was checked again and the note was found behind the leaflet. The Superintendent told us that the discovery was *'shocking'*. The staple pattern on the documents *'was saying to me that the documents at some stage had been separate. They were not all part of the one set of papers'*. Also, the death threat note was not placed on top of the file: *'it was as if someone had put it where they thought it should go'*.

22.37 Sir Ronnie Flanagan ordered an investigation, and later the matter was examined by the Police Ombudsman for Northern Ireland (PONI). The PONI report, dated 17 September 2007, criticised the member of staff of the NIO who *'did not ensure that the copy of the anonymous threatening letter was sent to the Royal Ulster Constabulary with the fax'*. Having examined all the evidence, however, we are satisfied that a hard copy of the death threat note, together with the CAJ letter and the 'Man Without a Future' leaflet, was indeed sent by this NIO official to Command Secretariat on 26 August 1998 and was either mislaid or overlooked by the RUC. How it eventually got into the file remains a mystery.

22.38 For whatever reason, the death threat note was not brought to the attention of any of the officers who dealt with the earlier letter from the NIO which was concerned only with 'The Man Without a Future' leaflet. It should be noted that the officer who carried out the assessment in respect of Rosemary Nelson did not regard the missing note as being significant and his evidence was supported by both the A/Detective Chief Inspector and Sir Ronnie Flanagan. We observed, moreover, by comparison with a similar assessment carried out in respect of Breandán Mac Cionnaith to which we refer in Chapter 23, that the existence of this death threat note might well have carried little weight in the assessment of whether Rosemary

Nelson was in fact under threat. In our view, however, the death threat note was indeed significant, demonstrating the venom with which Rosemary Nelson was regarded by those responsible for sending it. The failure to realise the existence of and to take into account the death threat note represented a missed opportunity. Had the RUC seen the photocopy of the death threat note, enquiries should have been carried out to locate the original for forensic examination. Certainly Rosemary Nelson should have been contacted in order to find out how she came by it. Had this been done, by an officer or officers, they might have learned of the other threats that Rosemary Nelson had received and this should have prompted, as a minimum, some qualitative thought, and possibly even some discussion, about her security.

The response of the Royal Ulster Constabulary

22.39 A series of mistakes had therefore been made. The request from the NIO had not been fully conveyed by Command Secretariat to either South Region or SB and therefore the effect of the very strong hint given by NIO officials to the RUC was lost.

22.40 It was evident to us, and accepted by the SB officers from both Headquarters and Portadown who carried out the intelligence checks, that the task in which they were engaged involved little or no analysis of intelligence relevant to Rosemary Nelson's safety. Indeed the Head of IMG assumed that if there had been a known threat to Rosemary Nelson it would have been acted upon already. Nor was there any tasking of agent handlers with the object of identifying the source of 'The Man Without a Future' leaflet in order that an assessment might be made of the intent and capabilities of those who had produced and distributed it. There had been no serious attempt *'to assess the background to the leaflet'*, as the NIO requested, contrary to the assurance given to the Irish Side by the British Side's response of 10 August 1998. It was said, and we accept, that SB in Lurgan and Portadown had been consulted but it is doubtful whether officers in either office carried out any active enquiries. It would appear, moreover, that no reference was made to any material other than that which was held by SB and no account was taken of Rosemary Nelson's profile, of her supposed involvement with PIRA, of her alleged relationship with Colin Duffy or of general threat levels that prevailed at the time. We do not see how officers could have considered such work to be complete without any contact being made with Rosemary Nelson herself.

22.41 The officer in charge of E3A at SB Headquarters postulated that although the leaflet was malicious it did not represent a threat in itself. He told us that he did not consider that persons intending to carry out an attack would issue a written threat in advance. In our view, that should not have been a reason for dismissing the equally valid view that the document was designed to terrorise and signalled danger to those named in it. Any opportunity to follow up enquiries and interview Rosemary Nelson personally might have frustrated the actions of those intending to kill her and would also have given the opportunity to provide, at minimum, crime prevention or security advice. Furthermore, diligent police investigation might well have uncovered associates of the author of the document who might well have been potential terrorist murderers.

22.42 Although the RUC response to Police Division's letter went through several levels of the police hierarchy, both regionally and within SB and also centrally through Command Secretariat,⁷ it did so with a total absence of quality control or of input by senior officers. The passage down and up the chain of command amounted

⁷The document flow is illustrated at Appendix J.

to little more than a mechanised procession, serving a bureaucratic rather than a critical or contributory function. At no stage did any senior officer add any value or qualitative input to the process.

The reaction within the Northern Ireland Office to the Command Secretariat response

22.43 The response from Command Secretariat to the NIO of 3 September 1998 did not address many of the issues raised in the final paragraph of the letter of 6 August 1998: it did not comment on the other individuals who had been referred to by name in the leaflet; it did not comment on whether any of those named had been spoken to; crucially, it did not indicate whether Rosemary Nelson had been informed that the NIO ran a '*limited scheme*' under which she could apply for '*financial assistance with any required security measures*', a reference to the KPPS.⁸

22.44 In early September 1998 there was a change at the Head of Police Division. The outgoing Head of the Division told us that the response from Command Secretariat had arrived '*more or less as I was clearing the desk*'. She recalled looking up Rosemary Nelson in the Yellow Pages and confirming that her business details were listed. As a result, she felt that '*the worries in relation to her office telephone number and address appearing in the leaflet, apparently expressed on her behalf, were hard to understand*'. This fails to recognise the menacing tone of the leaflet and the anxiety that Rosemary Nelson would feel that readers of the leaflet were being encouraged to make trouble at her premises for her and her staff.

22.45 The response from Command Secretariat was examined more closely by the Principal of the Police Complaints Branch. He observed that it '*did not exactly match up to what I had requested in my letter to [the Superintendent in Command Secretariat].*'

22.46 He told us, however:

'As far as I was concerned, it dealt with the central message, which we have discussed about the two other letters as well, which was there was no specific threat. And as we have discussed yesterday, that was a hurdle which would need to be got over before other steps could come into play, such as personal protection. I accept that the reply was less than I would have hoped for, but given the previous exchanges with the police, and as I tried to explain yesterday, it was rare for us to get a detailed response. It was not atypical of the sort of response that we would have received from the police.'

22.47 He said that the letter '*satisfied us in terms of the correspondence going to the police and was then something we were able to utilise in terms of, for example, the responses to other letters, including the letters that had triggered the correspondence with the police.*' And that it was '*unequivocal in saying that they were unaware of specific threats. That is the job of the police and it wasn't for me to second guess them. And, indeed, this was the third occasion on which we had the same or similar advice.*'

22.48 In this regard the newly appointed Head of Police Division was in agreement. He told us:

⁸This was a non-statutory scheme administered by a separate branch of Police Division within the NIO. Its aim was to '*protect those whose death or injury as a result of a terrorist attack could damage or seriously undermine the democratic framework of government; the effective administration of government and/or the criminal justice system; or the maintenance of law and order*' and to provide '*an essential measure of confidence and reassurance to enable those under threat to continue with their public duties.*'

'In the advice going forward to Ministers in response to the CAJ letter, it was stated that the RUC advised that they were not aware of any specific threat against Mrs Nelson. Neither I, nor my staff, were in a position to second guess the police's advice which was based on intelligence held by them. They were the principal source of security advice and we relied on them to gather the necessary information and intelligence they needed upon which to base their assessment.'

22.49 In short, the RUC assessment of the position was accepted without question and, although the response from Command Secretariat did not address all the matters that had been raised in the letter of 6 August 1998 and made no reference to the death threat note which had been forwarded by CAJ, it was used as a basis for the response to the CAJ's letter to Adam Ingram of 10 August 1998.

22.50 The gulf between what the NIO assumed would be the police's attention to the issue of the leaflet and what actually happened is demonstrated in two respects: the understanding among relevant officials as to what was entailed in assessing the threat to an individual; and the belief of a senior NIO official that the matter was considered at a senior level within the RUC.

22.51 The Head of Police Division until September 1998 defined a 'threat assessment', carried out by SB based on *'the intelligence available to them and the broader context'* as:

'The outcome of a process of considering available intelligence and accumulated knowledge, about both an organisation's intentions and its capabilities, in respect of particular possible targets or areas of activity. It can be thought of as a capability/intent matrix, ranging from "low intent and low capability" through all the permutations to "high intent and high capability", with potentially an added time dimension: i.e. high intent and high capability and "window of opportunity".'

22.52 She told us that the evaluation of 'risk' built on the threat assessment and utilised local knowledge and operational skills. Risk assessments were carried out by Security Branch and were added to the threat assessment to produce a 'Threat/Risk Analysis' for the purposes of KPPS applications. Her successor as Head of Police Division was of the view that that assessment was *'put together in Security Branch and relied on information from Special Branch Headquarters and local Special Branch as well'*. This is not what happened in Rosemary Nelson's case.

22.53 Adam Ingram told us:

'The police would be looking at these threats against RUC officers, against prison officers, against others within the public service and against wider members of the community, councillors and whatever else. That was part of what was happening at that time. It wasn't just one case that was being dealt with by one police officer; there would be a system that was very sophisticated in dealing with this. And they would not, I would – I could say with certainty, to my own satisfaction, be dealt with on the basis of if a life was going to be forfeited on the back of not taking action, then that would sit heavily on those who had not acted promptly on the basis of it.'

His understanding was that an *'across the piece'* assessment would have been undertaken, bringing into consideration relevant factors such as the history of complaints against the RUC, the manifold expressions of concern over her safety, and the alleged assault on the Garvaghy Road.

22.54 The Senior Director Belfast from August 1998, like his colleagues, felt that that the police would have considered all aspects of Rosemary Nelson's security *'holistically'*. This was evidently not the case. The NIO, he told us, had played its part

by ensuring that information which had come to it was passed to those responsible for carrying out the assessments. The RUC, he told us, were *'the only people constitutionally in a position and equipped to assess'* whether the threats to Rosemary Nelson were *'significant or serious'* and did not believe that *'we could have or should have attempted to develop anything of an independent view'*. While understandably civil servants respected the expertise of the RUC when considering the results of assessments of the threat posed to individuals, we discerned a deference which verged on the unquestioning. Consequently, there was an unwillingness to probe the conclusions reached by the police, or at the very least an opportunity was missed to do so.

22.55 The Senior Director Belfast drew *'assurance'* from an expectation that the Chief Constable would have signed off the threat assessment. He was of this view given that Rosemary Nelson was an important individual in terms of her perception in the Nationalist community, and that Sir Ronnie Flanagan was aware of the potential damage to the reputation of the RUC should harm come to her. However, while Sir Ronnie Flanagan did in fact approve the response that was sent to the NIO, it is unlikely that he was aware of the death threat letter until some time after Rosemary Nelson's murder.

22.56 Implicit in both the NIO officials' and Adam Ingram's view of a sophisticated and thorough assessment was that the process involved Security Branch of the RUC. The correspondence, however, had not been channelled through that branch but had been sent directly by Command Secretariat to the Assistant Chief Constable (South Region) and to the Assistant Chief Constable who was the HSB. Security Branch was not involved. If the NIO had channelled the correspondence through their KPPS Branch it would have gone to RUC Security Branch. But they channelled it through the Police Complaints Branch, who sent it to their normal contact, Command Secretariat. Given the context of the NIO request, Command Secretariat should themselves have consulted RUC Security Branch, but they did not. So the branch of the RUC that might have considered matters more widely was never brought into play. As will be seen in Chapter 23, however, we are not convinced that the result would have been any different if it had been.

The response to the Committee for the Administration of Justice's letter to Adam Ingram

22.57 As the CAJ letter had referred to security measures, the NIO official dealing with the matter within Police Complaints Branch consulted the Deputy Principal of the branch of the NIO which administered the KPPS. The Deputy Principal was made aware of the concerns that had been expressed by the Irish Government about Rosemary Nelson and was under the impression that Irish officials at the Anglo-Irish Secretariat had been informed there was a limited discretionary scheme to which Rosemary Nelson might apply. His advice regarding the CAJ letter was as follows:

'In relation to the final two paragraphs of Mageean's letter I suggest you direct Ms Nelson to the police to apply for a personal protection weapon and to her local crime prevention officer in relation to security advice at her home and at her workplace. To be complete you might wish to mention that the NIO run a discretionary protection Scheme providing limited physical security at an individual's home, provided they meet the criteria for entry to the Scheme. If Ms Nelson wishes to be considered for the Scheme she should apply to Police Division. However, I would be careful about raising false hopes as on the basis of the police advice you have received she would not be eligible for entry to the Scheme.'

22.58 This advice was incorporated into the submission to Adam Ingram in a section which read as follows:

'The [CAJ] letter expresses concern about the safety of Ms Nelson and attaches a copy of a threatening note which was posted to Ms Nelson. It also attaches a copy of a pamphlet which relates to Brendan McKenna and which refers to him having received "advice from Lurgan solicitor and former bomber Rosemary Nelson" and which gives her office address and phone number (both of which are listed in the phone book). Referring to the Special Rapporteur's recommendation that where there is a threat to a solicitor or Barrister the Government should provide necessary protection, the letter requests that we contact Ms Nelson to make proposals concerning her safety and safety at her home and a personal protection firearm for Ms Nelson. The RUC have advised that they are unaware of any specific threat against Ms Nelson and therefore it is unlikely that she would be eligible for protection under the Key Person's [sic] Protection Scheme or a personal protection firearm. However, should she apply her application would be considered. It would not be appropriate to communicate details of an individual's security to a third party. The draft refers to the options which Ms Nelson might wish to pursue, without raising false expectations.'

22.59 There is no evidence that the NIO official who prepared this Submission was aware of the rumour that Rosemary Nelson was having an affair with Colin Duffy and there was no means by which she could have been privy to intelligence suggesting that this was the case. Mo Mowlam may well have known about both – she had dealt with the Indus application on 4 September 1998 and according to the newly appointed Senior Director Belfast, she had been present during the first Security Policy Meeting he attended, probably in early July 1998, when Sir Ronnie Flanagan had described Rosemary Nelson as an *'immoral woman'*.⁹ Adam Ingram told us, however, that he was not aware of the allegation – there is no evidence to suggest otherwise – and as we indicate above, he was under the impression that all relevant matters would have been taken into account in the threat assessment.

22.60 The reply to the CAJ letter was signed by Adam Ingram's Private Secretary on 24 September 1998. It read as follows:

'Thank you for your letter of 10 August to Adam Ingram, Minister of State. I have been asked to reply on his behalf. I am sorry for the delay in replying.

The Government made it clear in its [sic] response to the UN Report that it will not tolerate harassment or intimidation of lawyers and nor will the Chief Constable. Where allegations are made they are investigated and if there is sufficient evidence to substantiate such allegations the appropriate action will be taken. However, as the UN Special Rapporteur [sic] states, solicitors have failed to lodge complaints. He has, as the Government has done, encouraged them to do so.

Obviously the documents enclosed must be of concern to Ms Nelson and the others mentioned. The Minister has asked me to say that he hopes that those who produced them can be brought to justice for their threatening behaviour.

We passed the documents immediately to the Chief Constable's office for investigation. They would obviously, given the nature of the material assess the security risk against Ms Nelson.

I should mention, in case Ms Nelson is not already aware, that the Northern Ireland Office runs a limited non-statutory discretionary scheme by which security measures can be installed in homes at public expense. The scheme is by necessity limited in its

⁹This incident is described at Chapter 26.38.

scope and cannot protect everyone who may be at some degree of threat from terrorist [sic]. It's [sic] aim is to protect those whose death or injury from terrorist attack could damage or seriously undermine the democratic framework of government; the effective administration of government and/or the criminal justice system or the maintenance of law and order. Clearly a judgement has to be made about the candidacy of any individual who applies to join the scheme, and of the level of threat which they might be under. If Ms Nelson wishes to be considered for the scheme she should apply to the Northern Ireland Office, Key Persons Protection Scheme [...]. We cannot of course give any assurances as to the outcome. Any application will be dealt with on it's [sic] merits.

Any applications for a personal protection weapon should be made to the Chief Constable to consider. Application forms can be obtained from the local police station or Firearms Licencing [sic] Branch, RUC [...].

Ms Nelson may also contact her local crime prevention officer in relation to security advice at her home and at her workplace. I hope you understand that beyond these general points it would not be appropriate to comment further to a third party on the security of an individual.'

22.61 Quite apart from the fact that this letter omitted to mention that a 'threat assessment' had been carried out, this letter included a number of questionable statements. Rosemary Nelson and others on her behalf had indeed lodged complaints; no criminal investigation was being undertaken by the RUC into the source of either of the documents that had been forwarded by CAJ, one of which (the death threat note) lay buried somewhere within the RUC, and there was no prospect of anyone being prosecuted in connection with them; the RUC had not assessed the security risk against Rosemary Nelson; and as long as any application for admission to the KPPS was judged against the criteria laid down for the scheme, it was bound to fail.

22.62 In fact, before Adam Ingram wrote to CAJ on 24 September 1998, the scope of the KPPS had been tested by formal applications made by GRRC members, Breandán Mac Cionnaith and Joseph Duffy, who had applied for admission to the scheme during the proximity talks. In one respect they stood in a stronger position than Rosemary Nelson – as district councillors they clearly satisfied the occupational requirements of the scheme – and there can have been little doubt that they were the focus of militant Loyalist hatred. But in neither case were they held eligible. As will be seen in Chapter 23 they were eventually provided with a degree of security advice and protection but in circumstances which illustrate clearly that Rosemary Nelson would have had no chance of qualifying for entry to KPPS.

23 Security Measures for Two Leaders of the Garvaghy Road Residents' Coalition

The proximity talks and the issue of security

23.1 The proximity talks began at a secret location in Armagh on 11 July 1998. An issue regarding the safety of the members of the Garvaghy Road Residents' Coalition (GRRC) was raised on that day. Jonathan Powell, the Prime Minister's Chief of Staff who led the talks, told us that:

'The GRRC had requested some kind of escort home that evening because it was getting late and because the talks and their location had by then become public. Mr McKenna said that he and the GRRC members would not stay late into the evening if they didn't have an escort home. The evening of 11 July was the most dangerous time to travel at night in Northern Ireland and I agreed that they should be escorted. I think they had been offered a police escort but they went on to state that they wanted an army escort to take them following a particular route home, instead of the RUC [Royal Ulster Constabulary]. They said that they were distrustful of the RUC.'

23.2 Breandán Mac Cionnaith raised the issue of personal protection in more general terms at the next meeting that was held on 18 July 1998. He had received a number of significant threats and it was he who was identified as 'The Man Without a Future' in the leaflet which had been circulated in Portadown in July, in which comments were also made about Rosemary Nelson and another member of the GRRC, Portadown Councillor Joe Duffy. A Northern Ireland Office (NIO) official from the Political Affairs Division who had taken part in the talks recorded the subject of the Key Persons Protection Scheme (KPPS) being raised in a note to the Head of Police Division. He wrote:

'You may be interested to learn that Brendan McKenna, at the indirect contact talks last Saturday, asked if it would be possible for the RUC to meet him to discuss his personal protection. I made a call to the Armagh Duty Inspector who undertook to ensure that an RUC officer from Portadown would contact him on Sunday morning. This may eventually evolve into an application for KPPS. McKenna's status as a councillor and his political profile would satisfy the political eligibility criteria.'

The Key Persons Protection Scheme

23.3 There were two broad categories within the KPPS. The first imposed no limit on the protection and, prior to October 1998, it required no assessment of the level of threat posed to the individual. Into this scheme would be admitted '*elected representatives, senior police officers, senior prison officers, members of the judiciary and other key criminal justice personnel*'.

23.4 There was a second discretionary category, entry into which was dependent on the level of assessed risk to the individual and their occupation. Applicants for protection under the discretionary category were assessed according to two criteria: firstly their occupation; secondly the results of a threat risk assessment. Occupations covered under the discretionary category were: police officers, prison officers and governors, civil servants, Crown witnesses, district councillors, building contractors and suppliers for security forces, Assembly members and UK staff of the Anglo-Irish Secretariat.

23.5 The assessment of the risk to an individual was carried out by Security Branch of the RUC. A Special Branch (SB) intelligence check such as that which was conducted in respect of Rosemary Nelson in August 1998 (see Chapter 22.16 and 22.17; 22.22 to 22.24) formed only part of the consideration given to this assessment. In determining risk, Security Branch took into account a number of additional factors which included the applicant's background and occupation or role; previous threats or attacks on the individual and others in similar positions; the area in which the applicant lived and the location of their home; and other relevant information provided by the NIO concerning, for example, the individual's involvement in the political process.

23.6 A typical question, which would no doubt have been highly pertinent in the case of Rosemary Nelson, might have been: *'have they [i.e. the applicant] brought themselves to the attention of paramilitaries perhaps because of condemnation of paramilitary activities or because of some connection with another paramilitary organisation.'* We were also told that a broader view might be taken by Security Branch as opposed to SB when assessing whether an individual was under threat. Applications were measured according to a six-level scale. Levels 1 and 2 applied where there was *'specific intelligence'* that a candidate was to be the subject of an attack or under serious threat of such. Level 3 applied where *'general intelligence, circumstances and/or recent events indicate a significant threat to the subject'*. In each of these instances a candidate would qualify for protection. This was as opposed to the position in respect of Level 4 where there was adjudged to be *'a general threat'*, or Levels 5 and 6 in which there was either a low-level threat or none at all.

23.7 Applications adjudged at Levels 1 to 3 qualified for the KPPS discretionary scheme. The discretion whether to grant assistance, and the extent of the assistance given, lay with the Minister.¹ The consequences of admission were explained to us as follows:

'If an individual was assessed at a risk level 1 to 3, then the next stage was for the police to visit their home and assess the security needed. The police wore plain clothes when carrying out these home visits. Staff from the KPPS branch of the Police Division and a unit from the Department of Environment ("DOE") would go with the police to the individual's home. The member of staff from the KPPS branch would introduce him or herself as the individual's point of contact in relation to any questions or issues that the individual may have in relation to the scheme. They would then explain the nature and purpose of the scheme and introduce and explain the role of the other people present. Essentially, the police were there to assess the individual's home security needs and the DOE technical officer was there to assist by detailing the precise specifications of the security products needed, how they were going to be installed, and so on. There was a particular section within the police that had been set up specifically to carry out these home security assessments. They were very experienced police officers. They worked closely with the DOE to ensure that they were up to speed with the latest security measures on the market. The police and the DOE technical officer would walk around the house together making their assessment. The police would also give the individual some general, practical advice on their physical security. As terrorist threats changed, so did the advice from the police on how to deal with them.'

¹In 1998, 1,102 individuals were covered under the KPPS at a cost of around £4 million per year.

Meetings and discussions between Northern Ireland Office and Breandán Mac Cionnaith

23.8 The Deputy Principal of the branch of the NIO which administered the KPPS contacted Breandán Mac Cionnaith by telephone and arranged to visit his home on 23 July 1998. He noted in relation to his telephone conversation that:

'Mr MacCionnaith also raised personal security concerns in respect of his other coalition partners. I explained that each application to the Key Persons Protection Scheme is treated on an individual basis depending on the present or former job/occupation of the individual concerned and advice from the Chief Constable regarding the level of threat that may exist to the individual. As regards his coalition partners, I advised that, either he should encourage them to write to us outlining their concerns, including appropriate details on how they perceive that they meet the criteria for inclusion in the scheme or, alternatively, Mr MacCionnaith could provide me with the details direct. Either way, each application would be assessed on an individual basis against the criteria for inclusion in the Discretionary Category of the KPPS.'

23.9 The Deputy Principal's note also records that *'Mr MacCionnaith was content with this advice and undertook to relay this information to his coalition partners following our meeting.'*²

23.10 The meeting took place, as arranged, on 23 July 1998. Breandán Mac Cionnaith told the Deputy Principal of the KPPS Branch that he was *'concerned for his personal security and that of Councillor Duffy and his fellow Coalition partners'*. He described a number of threats that he had received which he considered to be from *'local fanatical elements rather than mainstream paramilitary organisations'* and he affirmed his belief that his Coalition partners were under a similar threat *'in view of their increasing media profile over the marching dispute'*. The Deputy Principal of the KPPS Branch recorded his advice to Breandán Mac Cionnaith as follows:

'I explained the purpose of the Key Persons Protection Scheme and the criteria which was applied in each individual application. In particular, I emphasised that councillors could be admitted to the scheme if we received advice from the Chief Constable that the individual concerned was under a significant terrorist threat. If the criteria was fulfilled then we would ask the RUC to carry out a security survey of the individual's home and make recommendations to the NIO as to the precise measures which were required to secure the home. Following receipt of the recommendations we would make arrangements for the security equipment to be installed in the home.'

[...]

In respect of his Coalition partners I advised that each application would be treated on an individual basis against the criteria for admission to the scheme. He undertook to provide me with the details we required namely: the perceived threat to each individual, their occupation and home address. Mr MacCionnaith undertook to fax the information through to me on 24 July.'

23.11 We have no doubt that Rosemary Nelson was among the individuals about whom Breandán Mac Cionnaith was concerned. An official who accompanied the Deputy Principal of the KPPS Branch to this meeting told us, *'Mr Mac Cionnaith did confirm to me that he wanted protection for himself, Mr Duffy, the rest of the GRRC and also their advisors. By advisors I took him to mean both Mrs Nelson and Ms [redacted].'*The

²An SB intelligence report concerning late July 1998 stated: *'Brendan McKENNA has been advised that members of the GRRC must make individual application for security at their homes rather than a block application for everyone. McKENNA is instructing members to carry this out'*.

official restated that, although he did not recall Rosemary Nelson being mentioned by name, *'it is likely that I assumed that she would be one of the individuals that he would make an application on behalf of.'*

23.12 On 24 July 1998 the Deputy Principal of the KPPS Branch sought a threat risk assessment on the two Councillors, Breandán Mac Cionnaith and Joe Duffy, from the Security Branch of the RUC for the purposes of their applications. His letter referred to a number of threats which, according to Breandán Mac Cionnaith, had been directed at him, including a threat from the Loyalist Volunteer Force (LVF) made anonymously to Ulster Television, a threat from the *'Protestant Action Command'* and numerous *'threatening telephone calls'*. There had also been an occasion when a known local Protestant paramilitary (who was later a suspect in the Rosemary Nelson murder investigation) had entered the Ashgrove Community Centre on the Garvaghy Road looking for him.

23.13 The talks continued during August 1998 but there is no reference to the question of security in any of the minutes of the meetings we have examined. Similarly, in a letter dated 26 August 1998 from Breandán Mac Cionnaith on behalf of the GRRC to the NIO's Associate Director of Policing and Security, which constitutes a list of issues outstanding, no reference was made to the personal security of the Coalition. No records were disclosed to us to indicate that a list of Coalition members and advisers was ever sent to the NIO or to suggest that any threat assessments were carried out on anyone other than Breandán Mac Cionnaith and Joe Duffy. It is very likely that some residents simply did not wish the RUC to be involved in the provision of any security arrangements. A member of the Coalition told us:

'I know that we all wanted security for ourselves and that none of us wanted the RUC to take care of it, which was what was suggested to us. That would have been like asking the Loyalists to do our security for us. People also knew that the RUC had always been connected to Loyalists and had set people up. This is why people did not want the RUC to help out with security as they were doing most of the hassling themselves. It would have become even more intimidating if they had been involved. We would not have felt secure in the knowledge that the RUC knew what our security was. I am sure that everyone, including Rosemary, would not have been happy if the RUC had that knowledge.'

23.14 The issue was raised, however, at a meeting on 18 September 1998. A draft note of the meeting records that the GRRC members were told by the Associate Director of Policing and Security that *'this was a matter in the first instance for the RUC and that he would raise the matter again with them'*.

Dealing with the Key Persons Protection Scheme applications of Breandán Mac Cionnaith and Joe Duffy

23.15 In late July and early August 1998 the applications for admission to the KPPS by Breandán Mac Cionnaith and Joe Duffy were considered. On 29 July 1998 Security Branch submitted a request to SB in respect of each application asking for details of *'any known past or current intelligence which would indicate a terrorist threat'*. With regard to Joe Duffy, SB in Portadown reported: *'No intelligence re any threats to subject, however as he was elected on GRRC he would be a prime target for Loyalist paramilitaries.'* As regards Breandán Mac Cionnaith it was noted: *'Threats from P.A.C. re Drumcree also in last few days a leaflet with subjects personnel [sic] details has been circulating in East Belfast.'*

23.16 The Intelligence Assessment in respect of Joe Duffy that was prepared by an Acting Detective Chief Inspector on behalf of the Detective Superintendent in SB at Police Headquarters (E3), Knock³ on 6 August 1998 reflected the comments made by SB in Portadown. It stated:

'With reference to your request dated 29 July 1998, this office holds no intelligence to indicate any specific threat exists against Councillor DUFFY from paramilitaries.

We are aware however of his position within the Garvaghy Road Residents Coalition and due to heightened tensions in the aftermath of Drumcree, it is considered that he would attract the attention of hardline Loyalists.

Despite the lack of specific intelligence to indicate an enhanced threat to Mr DUFFY it is assessed that there would be a significant level of threat to the subject from Loyalist elements.'

23.17 The report in respect of Breandán Mac Cionnaith which was dated 12 August 1998 read as follows:

'With reference to your request dated 29 July 1998, this office is aware that on 10.7.98 an anonymous letter was received at the ITV Newsroom, allegedly from the Protestant Action Force, threatening the life of Mr MacCionnaith. However, due to the anonymity of the letter it is not possible to assess its authenticity. Mr MacCionnaith, being a convicted IRA terrorist and the principal Republican protagonist in the Drumcree stand-off situation is well known throughout the province. His views would no doubt attract the attentions of Loyalist elements.

Therefore insofar as Special Branch are concerned and in the absence of intelligence to the contrary, it is assessed that we hold no intelligence to indicate a specific threat to the subject.'

23.18 The report on Joe Duffy differs significantly from that prepared in respect of Rosemary Nelson dated 20 August 1998 in that it identifies, correctly in our view, that involvement with the GRRC was a significant risk factor. No mention had been made of this in the report pertaining to Rosemary Nelson. The Rosemary Nelson report (which we deal with at Chapter 22.17) was prepared by an SB Sergeant at Police Headquarters; those relating to Joe Duffy and Breandán Mac Cionnaith by the A/Detective Chief Inspector in the same unit. All three were signed off on behalf of the Detective Superintendent by the same officer, the A/Detective Chief Inspector, within two weeks of each other.

23.19 When questioned about the differences between the various reports he said:

'I think it is obvious that the reports were written by two different people at two different times, and there is a lack of consistency, which is a result of the position that Special Branch were put in in the requests for these threat assessments, so-called threat assessments, which I think I maybe mentioned earlier, possibly mentioned earlier, was a source of continual discussion between Security Branch and Special Branch, in that – I was quite surprised to see the document [relating to Joe Duffy] saying that despite the lack of specific intelligence to indicate an enhanced threat, it is assessed that there will be a significant level, because that is possibly there because Security Branch specifically came and saw us and asked for it. I don't know because I can't remember this one, but there was always a lack of consistency in these things.'

³See Appendix C

23.20 He explained further:

'The threat to Councillor Duffy would have been significantly less than the threat to, say, the 12,000 police officers that were in the Province at the time because throughout the Troubles they were all targets for assassination at home as well as on duty. So in context, there were also a huge number of other people – prison officers, members of the Ulster Defence Regiment, top civil servants, various other people – who were all under threat. So it could be assessed that everybody who held those positions was at a high level of threat.'

23.21 He nevertheless acknowledged that as a result of Rosemary Nelson's involvement with events on the Garvaghy Road it would have been possible to conclude that there was a significant level of threat.

Threat assessments in relation to Councillors Mac Cionnaith and Duffy

23.22 On 31 August 1998, three weeks before Adam Ingram, the Minister of State responsible for security, wrote to CAJ advising that Rosemary Nelson might apply, the RUC Security Branch threat risk assessment in respect of Breandán Mac Cionnaith and Joe Duffy was sent to the KPPS branch of the NIO. It read as follows:

'A Headquarters Special Branch intelligence report shows there is no current intelligence held which would indicate a specific threat to either Councillors MacCionnaith or Duffy.'

We are aware of Councillor Duffy's position within the Garvaghy Road Residents Coalition and agree that during heightened tensions surrounding Drumcree, the Councillor could have been placed in vulnerable situations in respect of extreme Loyalist elements.

Special Branch confirm that on the 10 July 1998, any [sic] anonymous letter was received at the ITV newsroom, allegedly from a Loyalist group.

The contents of the letter purported to threaten the life of Councillor MacCionnaith, however due to the anonymity of it's [sic] author we are not in a position to assess its authenticity. Councillor MacCionnaith, being a convicted IRA terrorist and principal Republican protagonist in the Drumcree stand-off situation is well known throughout the Province. His views would no doubt attract the attentions of Loyalist elements.

Being mindful of the current political climate within the Province, in particular the respective terrorist ceasefires, it is assessed that the current level of threat to both Councillor Duffy and Councillor MacCionnaith is "Level 4". Should the ceasefire situation collapse, the level of threat, subject to review, could be assessed at "Level 3".'

23.23 On this basis, both men, as Councillors, met the occupation criterion for KPPS but did not meet the threat risk criterion.

23.24 When he received the assessment, the Deputy Principal of the KPPS Branch, sensing that the political figures engaged in the Drumcree talks were anticipating a different response, sought advice from the official in Political Affairs Division who had taken part in the proximity talks. He was told that it was not the result that those involved in the proximity talks had expected and that they wanted the threat

assessment to be thoroughly reviewed. The Deputy Principal of the KPPS Branch then contacted the Superintendent in Security Branch, both by telephone and letter to discuss the assessment.

23.25 The Deputy Principal of the KPPS Branch told us that *'I was neither seeking to challenge the police's independence in operational matters for political reasons nor asking him [i.e. the Superintendent] to change the assessment on the basis of no new information.'* In his letter, however, he relayed the point that the parades issue was *'still very much live'* and that Breandán Mac Cionnaith had raised concerns about his safety the previous week. He noted that when Breandán Mac Cionnaith was visited by NIO staff he was particularly concerned by 'The Man Without a Future' leaflet, *'which made an attack both against him and his solicitor'*. To emphasise the point he enclosed a copy of the leaflet.

23.26 The Associate Director of Policing and Security told us that he himself was involved in ensuring that reconsideration was given to the position in the light of the leaflet, and confirmed that he and his political colleagues hoped for an assessment at Level 3 as the issue had become an obstacle to progress in the talks. Security Branch responded on 13 September 1998 saying *'in the absence of intelligence to indicate a specific threat to the Councillors, we have again analysed the risk of any potential threat'*. As previously, it was noted that *'Of course Councillors MacCionnaith and Duffy will be placed in vulnerable situations, particularly with regard to Drumcree'*, adding, however, that *'no more so than that applicable to others involved in such contentious issues'*. It concluded that *'taking all matters into consideration'*, the threat risk assessment remained at Level 4.

23.27 The outcome of the assessment was discussed by the Associate Director of Policing and Security and the Head of Police Division. The result of their discussion was a decision to draft a submission to Ministers proposing that protection be offered to Breandán Mac Cionnaith and Joe Duffy *'exceptionally and outside the Scheme'*. In this way it was hoped that the integrity of the KPPS would not be compromised.

23.28 In recommending this step to Ministers, the Associate Director of Policing and Security advised that the non-provision of protection *'could be a serious complicating factor in the proximity talks we hope to organise [...] as a further (and perhaps final) attempt at reaching an accommodation'*. The submission put the case in a strongly political light. Breandán Mac Cionnaith, it noted, saw the protection issue *'as an acid test of the good faith of Government in treating the residents fairly and seeking to achieve a balanced outcome'*. The Submission warned that if *'no movement is made on these concerns, the issue might well prove a significant obstacle in the proximity talks we are hoping to organise.'*

23.29 The Associate Director of Policing and Security stated that he had spoken to an Assistant Chief Constable *'who indicated that he had consulted the Chief Constable'* and accepted that *'MacCionnaith (in particular) is the focus of considerable antagonism in loyalist and Orange circles [...] and could be at considerable risk if he found himself in a Loyalist area of Portadown.'* The Assistant Chief Constable argued, however, that *'a similar threat would apply to many others'*.

23.30 The submission proposed that Ministers agreed in principle, exceptionally, that a one-off package of security for the Councillors be provided outside of the KPPS to be activated when it became clear that proximity talks were underway.

23.31 In his evidence to us, the Associate Director of Policing and Security confirmed that the focus was on protection for the Councillors as they were the most prominent members of the Coalition and held qualifying posts. If their protection

was resolved, he thought that consideration might then be given to other GRRC members *'on their coattails'*. He confirmed also that the proposal was designed with the intention of restarting the proximity talks.

Ministerial consideration of the proposal to provide security assistance

23.32 The submission did not meet with the approval of Mo Mowlam. The response was given in a note dated 27 October 1998 from Mo Mowlam's Private Secretary:

'The Secretary of State has seen your submission of 26 October recommending that, exceptionally, Ministers should agree to Brendan MacCionnaith and Joe Duffy being given a one-off package of security measures if the proximity talks are launched as planned.'

2. *The Secretary of State is not convinced, however, that this is an appropriate step, particularly since the RUC have said there is no intelligence to suggest a significant threat to either individual. Her view is that we have, in the past, accepted RUC advice in these cases and would want more persuading before going against the RUC advice on this occasion.'*

23.33 Such persuasion was provided, we were told, by the Director of Politics and Coordination. His intercession was successful and Ministerial approval was given for the provision of security advice and assistance to both Breandán Mac Cionnaith and Joe Duffy outside of the KPPS. He described the sequence of events as follows:

'I told Mo Mowlam that I thought that the decision was ill advised and that if she refused to provide the protection suggested, any further talks would be unlikely. If she agreed to the suggestions, there was a reasonable chance that the talks would continue. Mo Mowlam said that she would think about it.'

A day or two later, Mo Mowlam indicated that she had changed her mind and was willing to agree to the provision of the protection. I subsequently learnt that Mo Mowlam had based her initial decision to refuse KPPS protection to Duffy and MacCionnaith on the advice of Adam Ingram who had indicated to her that he did not agree with the submission. Mo Mowlam had gone along with Adam Ingram's view. I understand that following my conversation with Mo Mowlam, she had a disagreement with Adam Ingram about the issue.'

23.34 Adam Ingram could not recall speaking to Mo Mowlam about this issue. He told us:

'The strong advice from officials was that we could not give the Councillors protection under the scheme for political purposes when they did not meet the entry criteria. To do so we could face a legal challenge. Others who had been assessed at a threat level 4 or lower and had been refused protection under the scheme would have had to be reconsidered if the rules of the KPPS scheme itself were not respected.'

23.35 He explained further:

'Mo Mowlam took the decision here. Decisions were based on the best advice available at the time. We would have wanted to hear from key officials first before agreeing to what was being proposed. We were always prepared to listen to our officials. We were trying to get a normalised Northern Ireland and consequently limit the use of schemes'

such as the KPPS. Widening the scope of the KPPS scheme to include more people went against that. Another issue was that many other people had been refused protection under the scheme for not meeting the threat level criteria. To give KPPS protection to Councillors Mac Cionnaith and Duffy on the grounds of political expediency, but not to other people such as serving police and army officers, may have caused difficulties with precedent. It wasn't about the money.'

23.36 The decision was recorded in a note dated 2 November 1998 from Mo Mowlam's Private Secretary to the Associate Director of Policing and Security:

'Ministers have reconsidered, after consultation with officials, your submission of 26 October, and are now content to accept the recommendations contained therein.'

23.37 It was agreed that Breandán Mac Cionnaith and Joe Duffy would receive security advice and assistance. This was to be provided outside the terms of the KPPS. It did not extend to other members of the Coalition.

Reflections on the threat assessments for Rosemary Nelson, Breandán Mac Cionnaith and Joe Duffy

23.38 We find it surprising that Security Branch did not consider there to be, in either Breandán Mac Cionnaith's or Joe Duffy's case, '*general intelligence, circumstances and/or recent events*' to indicate that they were under '*a significant threat*'.⁴

23.39 As regards Breandán Mac Cionnaith, he was a well-known and recognisable figure and, once the Parades Commission's decision was made known on 29 June 1998,⁵ it appears to us that he would have been regarded as a prime target by extremists on the Loyalist side. There was intelligence that a group known as Justice for Protestants, the members of which included individuals whom the police regarded with considerable suspicion, had discussed holding a demonstration outside a house that he was thought to own; it was he who was described as 'The Man Without a Future' in the leaflet that was circulated in Portadown in July 1998; and he had reported threats that were very similar to those which had been directed towards Rosemary Nelson. More generally, during September 1998, as will be seen at Chapter 28.5 to 28.12, the first terrorist attacks were carried out by a group calling itself the Red Hand Defenders (RHD), and senior officials were warned that a dissident group had broken away from the LVF and that attacks could be anticipated. Not very long afterwards, on 14 October 1998, another group calling itself the Orange Volunteers publicly declared war on the '*enemies of Ulster*'.

23.40 Yet none of these factors were considered sufficient to bring Breandán Mac Cionnaith within the parameters of the KPPS. We observed, moreover, that the Security Branch assessment in his case, and in the case of Joe Duffy, was little more than a recitation of the advice received from SB in Portadown. It appears that no real analysis of the risk to Breandán Mac Cionnaith or Joe Duffy was carried out;

⁴The test for Level 3 protection under the KPPS.

⁵Determination of the Parades Commission 26 June 1998. '*The Commission's determination is that the proposed 5 July 1998 Portadown District Loyal Orange Lodge No 1 parade is prohibited from entering that part of the notified parade route between the junction of High Street and Woodhouse Street and the junction of Obins Street and Charles Street, or any part of that route. The parade shall process from its point of departure at Carleton Street, turning back along High Street, Market Street, West Street and into Charles Street. It shall then process along Charles Street to the Dungannon Road-Moy Road roundabout, along the Dungannon Road to Rector's Turn, Drumcree Road to Drumcree Church. [...] The parade is also prohibited from proceeding beyond Drumcree Parish Church, Drumcree Road, or entering that part of the notified route which includes the entire length of the Garvaghy Road including Parkmount and Victoria Terrace.'*

there was no examination of information available in the public domain; and there was no attempt to anticipate how Loyalist terrorists might respond to the indefinite blocking of the march at Drumcree.

23.41 Significantly, 'The Man Without a Future' leaflet was not regarded as a threat and those threats that Breandán Mac Cionnaith himself had brought to the attention of the police were not regarded as credible since they were not corroborated by intelligence, that is to say, intelligence gathered by SB.

23.42 Regrettably, we consider it unlikely that the analysis of threats against Rosemary Nelson would have been any different if in her case the threat assessment had been carried out by Security Branch as opposed to being directed, as it was, from Command Secretariat to SB.

24 Demand for Security Measures for All Members of the Garvagh Road Residents' Coalition

24.1 Although security advice and protection were offered, exceptionally, to Breandán Mac Cionnaith and Joe Duffy (see Chapter 23.32 to 23.37), it was clear to those officials engaged in the Drumcree negotiations that Northern Ireland Office (NIO) Ministers were unlikely to agree to extend this cover to include other members of the Garvagh Road Residents' Coalition (GRRC) or their advisers. In the cases of Breandán Mac Cionnaith and Joe Duffy the provision of security measures was motivated by wider considerations. The submission to Ministers advocating protection outside the Key Persons Protection Scheme (KPPS) had presented the case in the context of the need to keep open the negotiations concerning the Garvagh Road. The officials involved told us that emphasis was placed on removing obstacles to the resumption of talks, with the GRRC's raising of the security issue being seen as one such obstacle. The officials were of the view that security was one of a number of diversionary, delaying tactics employed by the GRRC to avoid early re-engagement in the talks process.

24.2 However, the issue was not closed. When Breandán Mac Cionnaith and Joe Duffy were told that only they would be offered protection they refused to take part in further talks. Acting on his own initiative, at first without Ministerial approval, the Director of Politics and Coordination decided to investigate whether funding for security measures for other members of the GRRC and their advisers could be obtained from elsewhere.

The Joseph Rowntree Charitable Trust

24.3 The Director of Politics and Coordination had previously worked successfully with the Joseph Rowntree Charitable Trust (JRCT) and having discussed the issue with colleagues it was agreed that he would investigate whether the JRCT could help to break the impasse blocking the Drumcree negotiations. The JRCT is a charitable 'Quaker Trust, with a long-standing interest in conflict resolution'. Recipients of its funding included British Irish Rights Watch (BIRW) and the Committee for the Administration of Justice (CAJ) and it had been involved in a number of situations in Northern Ireland where the objective had been to resolve or ease conflict. When the suggestion was made to Breandán Mac Cionnaith that a third party might be asked to provide funding for security, he indicated that the issue would 'not be a showstopper'. The immediate objective – to get the negotiations going again – was achieved. The ability of the JRCT to assist was, however, dependent on the degree to which any proposed expenditure could be truly classified as 'charitable'.

24.4 The Director of Politics and Coordination spoke to the Deputy Trust Secretary at the JRCT on 13 November and again on 16 November 1998. A note written for the benefit of the trustees of the JRCT reflects the briefing that was given:

'The two leading members of the Garvagh Road Group (McKenna and Duffy) have requested security assistance, as they feel vulnerable to personal attack. The NIO has a scheme through which they can offer this, following an assessment by the RUC. The scheme is for prominent public figures – politicians, judges and the like. The RUC assessment is that the two figures are at some risk, but not sufficiently so to warrant

support under the scheme. A decision has been taken to include them anyway, and £[redacted] each has been earmarked for work on their homes.

There are some difficulties about this yet to be resolved. For instance, the scheme can only be implemented after a thorough assessment has been made by the RUC. This has been refused. [The Director of Politics and Coordination] believes that a way may be found around this problem.

The bigger problem is that McKenna and Duffy have now come back to the NIO to say that they cannot move forward on the proximity talks without similar assistance being offered to their lawyer (Rosemary Nelson) and several other members of the group. [The Director of Politics and Coordination] understands that there would be twelve people involved in all.'

24.5 Having discussed the issue in principle with the trustees, the Deputy Trust Secretary travelled to Northern Ireland on 20 November 1998 and was met at Belfast City Airport by the Director of Politics and Coordination. The Deputy Trust Secretary told us:

'[The Director of Politics and Coordination] was very open with me. [He] told me that he had talked to two colleagues in the Security Division at the NIO about what he was doing, but that he had not consulted any politician about the initiative. He also told me that there was no political backing for security for members of the GRRC under the KPPS protection scheme. [He] indicated, in confidence, that the security services had advised Mo Mowlam that they did not believe that Breandán Mac Cionnaith or Joe Duffy were at risk, but that he had personally intervened and managed to persuade Mo Mowlam to change her mind irrespective of the security services advice.'

24.6 Rosemary Nelson was not present when the Deputy Trust Secretary met members of the GRRC in Portadown. Notes of the meeting confirm, though, that Rosemary Nelson was specifically mentioned as an example of the concerns felt by the Coalition members. Reference was made to the UN Special Rapporteur's interest in her case; the 'constant harassment from the RUC'; a 'particularly vitriolic Loyalist leaflet'; and her 'very high profile' in Northern Ireland. Rosemary Nelson wanted protection but, according to the Deputy Trust Secretary's note, she 'could not accept to be part of the government's scheme'.

24.7 The Deputy Trust Secretary told the Inquiry: 'It would not be correct to say that at the meeting there was a specific request to include Rosemary Nelson in the proposed security protection, other than as one of the members of the GRRC. Neither would it be correct to say that the meeting was used as a forum to request protection for Rosemary Nelson in particular. She was considered for security consideration purposes as one of the GRRC.' He also noted, however, that her situation was different as she was not a member of the GRRC and lived outside the area but required protection as a result of her work for the Coalition. He told the Panel that 'I always understood her to be one of those to be included even though she was an adviser rather than a member.'

24.8 During the course of the earlier proximity talks the NIO had proposed that a settlement of the dispute between the Orange Order and the GRRC could result in substantial sums being made available for the purposes of 'social and economic regeneration'. It was hoped that JRCT funding might be provided to support such a project, including the essential security provisions for GRRC members, in such a way that the dominant purpose of the funding would be deemed charitable. The Deputy Trust Secretary suggested that Breandán Mac Cionnaith enlist the assistance of the West Belfast Economic Forum (WBEF), with which the JRCT had worked successfully in the past, in order to produce a combined proposal relating

to community regeneration and security measures for the Coalition members. A proposal was submitted but it did not accord with the JRCT's expectations. The Deputy Trust Secretary described how matters were left:

'The reason that the JRCT did not respond positively to Breandán Mac Cionnaith's proposals was that they were totally different from my understanding of how the meeting had ended, and what had been agreed. The costings in relation to the provision of security were roughly in line with what I had expected. However, I had in mind a figure of approximately £20k in relation to the consultancy work to be undertaken by the WBEF. Instead the proposal envisaged engaging the services of two full-time employees. Although I think Breandán Mac Cionnaith had some help in drafting the proposal, as the proposal was clearly prepared by someone with an understanding of the issues, it was immediately apparent that he had not gone to speak to anyone at the WBEF about the kind of consultancy we had discussed. Instead, his proposal asked for two full-time staff members. The cost of this was likely to be far in excess of the emergency budget limit of £50,000 when coupled together with the provision of security.'

I went back to Breandán Mac Cionnaith by telephone and indicated that I did not think the proposal was in line with what we had discussed. Breandán seemed to acknowledge this, and said that he would put together a revised draft proposal for me to review. I awaited this information, but it never appeared. I think I chased Breandán Mac Cionnaith one more time by phone. It was unusual for me to revert twice to someone on a proposal that had been submitted and to agree to consider a revised version. Usually, the Rowntree Trust assess a proposal on the basis of the documentation as submitted.'

24.9 On 26 November 1998 Breandán Mac Cionnaith had written to Jonathan Powell, the Prime Minister's Chief of Staff leading the proximity talks, indicating that *'the issue of security for members of the Coalition still has not been satisfactorily resolved'*. He noted that, although an alternative source of funding had been proposed, it was felt that the NIO was not treating the issue of personal security *'with the seriousness it deserves'* and that responsibility for it lay with the department, not with outside agencies. Nonetheless the proximity talks resumed on 16 December 1998 and the issue of the personal security of Coalition members does not appear to have been discussed in the meetings that followed. NIO officials had hoped that an agreement could be reached before the end of the year to accommodate a limited Orange Order march and thus resolve the stand-off. This was not to be, however: there was no march along the Garvaghy Road in 1998, a fact which no doubt caused considerable rancour among sections of the Loyalist community.

24.10 The principal objective of the Director of Politics and Coordination in attempting to involve the JRCT was to ensure that talks aimed at resolving the stand-off on the Garvaghy Road continued, but it appears to us that he also appreciated that GRRC members were at risk and that the concerns expressed by Breandán Mac Cionnaith about his own safety and that of his colleagues including Rosemary Nelson were genuine. The Deputy Trust Secretary of the JRCT told us:

'[The Director of Politics and Coordination] clearly understood the concerns of the GRRC regarding the issue of security. He could see that this issue was a serious and important one for the GRRC. From what I could tell, the difficulty was that every time the members of the GRRC raised the issue of security, and emphasised its importance, their concerns were never fully responded to. I think the NIO saw the issue of the security of the members of the GRRC as something of a side issue, as the real focus was on trying to solve the marching issue.'

Allegations of failure to provide protection

24.11 Allegations were made after Rosemary Nelson's death concerning the failure to provide her with protection.

24.12 On the day of Rosemary Nelson's murder, Breandán Mac Cionnaith issued a press release. It included the following text:

'The British government also bears a heavy responsibility, at the very highest levels, for Rosemary's murder. During talks between representatives of Portadown's Nationalist community and Jonathan Powell, British Prime Minister Tony Blair's Chief of Staff, and on a number of occasions since, the Garvaghy Road Resident's [sic] Coalition, in response to the very high level of threat against her, has asked that Rosemary Nelson be provided proper protection under the Key Persons Protection Scheme. The British government refused every request. If they had provided such protection, it is likely that the murder of Rosemary Nelson could have been prevented.'

24.13 Two days later, on 17 March 1999, an article in the *Daily Mail* contained the allegation that Downing Street had turned down Rosemary Nelson's request for a 'guard' just months before the attack.

24.14 Jonathan Powell had meetings with the GRRC in July and December 1998.¹ He was also present when Breandán Mac Cionnaith and other members of the GRRC and Rosemary Nelson met the Prime Minister on 18 January 1999 at 10 Downing Street.² His evidence to us was that the issue of Rosemary Nelson's safety was not raised on any of these occasions and there is no reference to it in his notes.

24.15 With regard to the meeting at No 10, a journalist, Anne Cadwallader, who accompanied the delegation but did not attend the meeting, told us that Rosemary Nelson had not indicated to her prior to the meeting with the Prime Minister that she intended to raise the issue of her own safety but she had an uncertain recollection that another GRRC member, she could not recall who, or when, had told her that the issue had been raised during the meeting. There is, however, no other evidence to support that suggestion. We note that Breandán Mac Cionnaith, who declined to make a statement to the Inquiry, did not suggest in his press statement of 15 March 1999 that Rosemary Nelson's safety was raised at the meeting with the Prime Minister.

24.16 On 9 December 1999 another newspaper, *The Irish News*, published further allegations. Anticipating a report by BIRW to be released the following day, the article claimed that the NIO had been 'wary of the "financial liability" involved in offering Mrs Nelson access to its Key Persons Protection Scheme (KPPS) – despite repeated concerns over her safety'. It stated that the forthcoming report was to note that Councillors Mac Cionnaith and Duffy were admitted to the scheme without formal application, and that protection had been urged for other Coalition members and 'specifically its legal representative, Rosemary Nelson', as detailed in correspondence and minutes of the meetings.

24.17 The BIRW report contained a number of allegations surrounding the failure to protect Rosemary Nelson. It claimed that the GRRC repeatedly attempted to obtain protection for Rosemary Nelson and the Coalition and raised the issue at several meetings with government officials following the meeting with Jonathan Powell on 21 July 1998. It specifically alleged that the security of the whole Coalition

¹ See Chapter 7.20–7.28 and Chapter 7.39–7.41

² See Chapter 7.44

'and in particular their legal representative Rosemary Nelson' was raised with Jonathan Powell, and that a specific request to place Rosemary Nelson on the KPPS was made to the Director of Politics and Coordination on 20 November 1998, but that the GRRC were told that Councillors Mac Cionnaith and Duffy alone could be admitted to the scheme.

24.18 We conclude that, although Rosemary Nelson was certainly regarded as part of the GRRC's request for security and although her situation was cited as an example of the problem facing GRRC members, she was not singled out as the subject of a specific request for security.

25 Northern Ireland Office Views of Rosemary Nelson

25.1 In her autobiography, published in 2002, Mo Mowlam made the following comment about Rosemary Nelson:

‘Although Rosemary had been pushy and difficult, I had respected her and quite liked her, but because of her combative style she was disliked by many in the establishment including civil servants, the legal profession and the police.’¹

25.2 Sir Joseph Pilling, the Permanent Under-Secretary, told us that he was not aware of Northern Ireland Office (NIO) officials having any opinion about Rosemary Nelson. He said: *‘I wasn’t aware of anybody in the Northern Ireland Office that had met her. I mean, that’s not to say there weren’t people who hadn’t met her, but I didn’t know of people. I don’t remember people discussing her personality or whether she was liked or disliked at all.’* He said: *‘She was the source of serious work and attention, but I don’t remember any sort of personal observations.’*

25.3 The Senior Director Belfast who served in the post until August 1998 told us: *‘There were those people in Northern Ireland who were anti-police and wanted to embarrass them. We were used to this to some degree. Ms Nelson was not one of those people.’* He said: *‘I did not regard Ms Nelson as a trouble maker.’* He added:

‘Well, I didn’t think she stirred things up in the newspapers. She didn’t make public statements and she didn’t really write to the office or to ministers or whatever. She was – as far as I was concerned, she was the legal adviser to the Garvaghy Road Residents’ Coalition and she represented terrorists. Now, in my background in the Prison Service, I have talked to a lot worse people than Rosemary Nelson and dealt with them in a constructive way, and that was my attitude to the Garvaghy Road Residents’ Coalition and it would have been the same to Mr Duffy if I had ever met him.’

25.4 His successor, commenting on the efforts made by the NIO to accommodate the security concerns of members of the Garvaghy Road Residents’ Coalition (GRRC) in 1998, said:

‘May I just say, if I may, in relation to this, that I think the fact that we were prepared to think outside the box and support [redacted]’s initiative in that does suggest that we were – we had no animus, as it were, against any of the people who could have been involved in that, whether it be Rosemary Nelson or anybody else. There was no mindset against Rosemary Nelson or against anybody else; otherwise, why would we have done what was never envisaged in relation to any of the other hundreds of people in the KPPS [Key Persons Protection Scheme] in my time?’

25.5 The official who, between July 1996 and September 1998, served as Principal Private Secretary to Mo Mowlam was asked if he had been aware of the sentiments recorded by the Secretary of State for Northern Ireland in her autobiography. He said:

‘I have to say the answer to that is no. You know – I mean, the bulk of my colleagues – and I can only speak for the civil servants, but the bulk of my colleagues would not have had any connection or contact or need to involve themselves with either Rosemary Nelson or the Garvaghy Road. Those who did, I can say categorically there was no question of dislike; it was an issue to be dealt with and, you know, they got on with it.’

¹Mo Mowlam, *Momentum* (Hodder & Stoughton, 2002), p.271

The operational independence of the Royal Ulster Constabulary

25.6 In their evidence to the Inquiry a number of officials emphasised, in substantive terms, that their role in relation to matters concerning Rosemary Nelson was necessarily limited. Complaints concerning police behaviour and the question of Rosemary Nelson's safety, for example, fell within the operational remit of the Royal Ulster Constabulary (RUC) and beyond the parameters of normal NIO activity. As regards police misbehaviour the role of the NIO was restricted to passing the allegation on to the RUC in order that established procedures could be engaged; any pre-emptive action pending the completion of the complaints investigation was a matter for RUC management. Insofar as a complaint raised questions about Rosemary Nelson's safety the NIO position was equally clear: the local RUC was operationally responsible for protecting the public. Even admission to the KPPS, which was administered by the NIO according to somewhat inflexible criteria, was dependent on the results of a threat assessment carried out by the RUC.

25.7 The Senior Director Belfast appointed in August 1998 described the position as follows:

'We couldn't say, gosh, Rosemary Nelson or anybody else of particular concern, let's ignore the body that Parliament has established, the ICPC [Independent Commission for Police Complaints], and bring into play, urgentissimo and by some magical process, a body that did not exist. She was dealt with by the means which Parliament had put in place to do so. That's in terms of her complaint. In terms of the threat, she was dealt with by the mechanism also that constitutionally was provided for, namely the RUC making a threat assessment, with the possibility, had a request been made, that she could have been admitted to the KPPS.'

25.8 He told us that this convention, which applied throughout the UK, was of particular importance in Northern Ireland.

*'We were, I think, a great deal more scrupulous in observing the doctrine of operational independence, for obvious reasons, than I think was the case in the rest of the UK. Why do I say for obvious reasons? One of the Nationalist criticisms of the RUC prior to – behind the civil rights movement was that the police were seen as the instrument of the Ministry of Home Affairs and the Unionist Government. One of the reforms that was introduced in the 70s was to introduce for the first time a police authority, so there was always a strand of criticism of the government being too close to the police. I think the NIO, when it was introduced – put in place in 1972 was always scrupulous in observing that distinction, and ministers – and I observed one minister, Tom King, to whom I was Principal Private Secretary at the height of the Troubles, scrupulously observing that distinction. So this is an absolutely crucial point.'*²

25.9 The Principal of the Police Complaints Branch of the Police Division at the NIO had dealt with much of the correspondence relating to Rosemary Nelson. He

²The operational independence of the RUC was by no means simply a convention. The Police Act 1970 had established a body called the Police Authority for Northern Ireland (PANI), the duty of which was to 'secure the maintenance of an adequate and efficient police force in Northern Ireland'. PANI was responsible for the appointment of the Chief Constable and other senior officers subject to the approval of the Secretary of State. Although the Secretary of State was responsible for the statutory framework under which the RUC and PANI operated, and provided the funds necessary for both to discharge their functions, it was to PANI that the Chief Constable was obliged each year to deliver his Annual Report and the power to remove a serving Chief Constable from office rested with PANI, not with the Secretary of State. This structure continued under the provisions of the Police (Northern Ireland) Act 1998 and was maintained, with modifications, in the Police (Northern Ireland) Act 2000.

explained his approach as follows: *'We had to be careful that we did not tread on police toes by straying into operational matters or that we interfered in the ICPC's role.'* He also said: *'The police would not come back to us with chapter and verse on the subject. It was not our role to interrogate the information we were given by the police. Nor was it our role to supervise their investigation of the complaint. That was the role of the ICPC. Our concern was to ensure that the complaint was being dealt with by the police and ICPC.'*

25.10 Sir Joseph Pilling also commented on this in his oral evidence to the Inquiry. He told us:

'The police, who were in the lead supported by the Army, were an organisation that the government were not accountable for. The government invested a huge importance in the operational independence of the police. [...] So there was always this tension there and it was something that everybody involved, I think, from the most senior levels to the most junior, thought about most days. And working it through [...] was always tricky and could give rise to the sort of exchange [...] with] the Chief Constable saying, "You have gone a bit too far on this".'³

25.11 A number of officials told us, however, that the relationship between the NIO and the RUC was not entirely deferential. The Senior Director Belfast (pre-August 1998) told us, for example, that in relation to the allegations reported in the UN Special Rapporteur's report concerning the intimidation of defence lawyers he would have told the Chief Constable to *'get a grip on your people and make sure it doesn't happen'*. Both Heads of Police Division, pre- and post-September 1998, foresaw circumstances in which they would challenge the RUC. When asked if she would ever have told the police that they had *'got it wrong'* with regard to a threat assessment, the Head of Police Division pre-September 1998 told us:

'Obviously, I would not have done this, quite simply because I did not have the training, knowledge, experience and specialist expertise, or the access to the intelligence upon which they were basing their assessment, to make such a judgment. I could, and when I considered it necessary I did, "challenge" assessments, in the sense of probing and seeking further explanation and a better understanding but neither I nor any other official in the NIO was in any position to substitute our view for a police assessment. If I thought it necessary, I would not hesitate to go back through Command Secretariat, and request an additional explanation.'

25.12 The Head of Police Division post-September 1998 told us:

'I think that the position of operational independence is very important and that's immutable, I think. But in Northern Ireland, policing is so wrapped up with public affairs and politics that there is bound to be a – you know, quite a considerable crossover in a lot of areas. And I haven't encountered any reticence on the part of the Northern Ireland Office to talk to the police where they felt it was necessary.'

25.13 We agree with these comments. There was an inevitable political dimension to policing in Northern Ireland during this period: policing decisions concerning sectarian violence and terrorism were inextricably linked with political initiatives striving towards ratification of the Peace Process.

25.14 We observed, however, that there were very few occasions in relation to matters concerning Rosemary Nelson when NIO officials questioned the police position. Briefings from the RUC received in response to Senator Torricelli's letter in April 1997 (see Chapter 18) and the letters from US Voice for Human Rights in Northern Ireland (previously Voice of the Innocent, USA) in July 1997 (see Chapter

³We observed one such example in relation to the appointment of Commander Mulvihill.

4.96), from Lawyers Alliance for Justice in Ireland in July 1997, and from Amnesty International in August 1997 (see Chapter 16), each of which had raised the issue of Rosemary Nelson's safety, had been accepted without demur by the NIO. The Head of Police Division pre-September 1998 told us that she had telephoned the Chief Superintendent Command Secretariat in order to query the RUC response to the 'strongly worded letter' of 23 February 1998 drafted by the Principal of the Police Complaints Branch but having done so the matter was taken no further. In early September 1998, as a result of an expression of concern from the Irish Side regarding 'The Man Without a Future' leaflet, and a letter from the Committee for the Administration of Justice (CAJ) referring to both the leaflet and a threatening letter received by Rosemary Nelson, the RUC had carried out what NIO officials assumed was a detailed threat assessment (see Chapter 22.50 to 22.54). But again the outcome was not queried. By that date, we are satisfied, both Sir Joseph Pilling and the Senior Director Belfast were aware that there was a belief within the RUC that Rosemary Nelson was conducting an affair with Colin Duffy and yet there appears to have been no discussion within the department as to whether the RUC was able to conduct an impartial assessment of Rosemary Nelson's position. This omission is ever more striking in light of the ICPC's conclusions, forcefully registered in late June 1998, that the investigation into complaints concerning Rosemary Nelson was irredeemably flawed.⁴

25.15 Sir Joseph Pilling's was perhaps the last word on this. He told us:

'The police were best placed to make judgments in this area [i.e. protection advice and assessments]. It was obviously dangerous to second guess the police and I was not surprised or displeased when Ministers held the line on KPPS and its guidelines. If I had taken part in discussions on protection for Rosemary Nelson, I would have encouraged them to accept the police's judgment.'

Other factors influencing the Northern Ireland Office

25.16 It appeared to us that there were other factors in play when matters concerning Rosemary Nelson were considered. Speaking generally, for example, in relation to allegations of misbehaviour made against police officers, Sir Joseph Pilling told us that he was *'aware that it was a common place technique in Northern Ireland to undermine bodies such as the police'*. He said, *'It would always be tricky to know the truth in such matters.'*

25.17 *'In assessing this sort of thing,'* he told us, *'one was aware of the fallibility of human beings and the possibility of people doing things wrong; on the other [hand], one couldn't be naive about it. There were examples of propaganda against the police which, you know, wouldn't have paid too much regard to whether the story was true or not in pushing the propaganda. And making sense of this mass of correspondence against that within that sort of range of possibilities was not very easy.'*

25.18 Adam Ingram, the Minister of State responsible for security in Northern Ireland, commenting on the role of non-governmental organisations (NGOs) in highlighting the allegations of police misbehaviour towards Rosemary Nelson, told us *'it was quite clear that NGOs coordinated a lot of their activities, including probably this one'*. He did not discount the possibility that the allegations themselves were fabricated. He said: *'It is not without the realms of possibility that those who were making*

⁴The Senior Director Belfast told us: *'I knew the police took a pretty dim view of [Rosemary Nelson]. I think Ronnie Flanagan probably did as well, although I do not recall him ever commenting on her to me or saying anything more to me about her than is already on public record'*.

the allegations were also organised, that actually the allegations that were being made had no substance to them whatsoever, but were part of a concerted attack on the RUC and the apparatus of the State that was trying to ensure the delivery of proper justice.'

25.19 Commenting on the way Rosemary Nelson made complaints against police officers, the Head of Police Division of the NIO pre-September 1998 said: *'They were coming to us through particular political channels, and I think it was sort of a fair enough assumption that that was a matter of her choice and reflected her mindset.'*

25.20 The Principal of the Police Complaints Branch was asked whether the correspondence coming in was seen as a campaign. He said:

'There was clearly – I'm not sure I would use the word "campaign", but certainly a number of the organisations were using similar terms. And from their evidence, they would accept that they were in contact with each other, and that was perfectly evident, I think. That didn't mean we didn't deal with them seriously and, indeed, I think we did deal with them seriously, but I think you could see through the correspondence that there were very similar phrases and terminology, and a lot of the letters which have the hallmarks of the sort of thing you were talking about.'

25.21 We detected a degree of scepticism in evidence relating to the manner in which Rosemary Nelson behaved in the face of the alleged threats. The Head of Police Division pre-September 1998, for example, said:

'It [Rosemary Nelson's threatening letter submitted to the NIO by CAJ in August 1998] was not something that Mrs Nelson took along and handed into the police, which, if it had been – I mean, she is a defence solicitor, she is educated, she is intelligent. She knows the fact that a letter like that could have forensic material on it, forensic traces. If it is actually a genuine threatening letter like that, that's useful stuff to the police to investigate. The normal thing with something like that is to treat it with kid gloves literally, take it to the police, say, "Here, I have got this, I'm worried about it." She did not do that. In those circumstances, what are we to take out of it? It was very, very difficult because it was shadow boxing, or something like that, the whole time. That's what it was, and very, very regrettable indeed that it ended – the shadow boxing ended as it did. Awful.'

25.22 She told us:

'Awareness through third parties of the thrust of her apparently eloquently stated views certainly made it more difficult for us to be able to offer her any help. Without the immediate and obvious rationale of an actual threat it seemed to me that any such approach was likely to be most unwelcome, and possibly even misinterpreted as harassment, threat or intimidation. There was, to my recollection, no indication whatsoever from any quarter that any approach from the NIO or the police would have been well received.'

25.23 We cannot rule out the possibility that both Ministers and officials within the NIO regarded issues concerning Rosemary Nelson as being overblown and politically motivated.

25.24 We are sure, however, that within the NIO there was no real appreciation of the considerable danger that she faced.

25.25 Again, in this regard the evidence of the Head of Police Division pre-September 1998 was illuminating. When asked if she considered the allegations that Rosemary Nelson feared a risk or threat to her from the RUC might be true, she said: *'I think her fear was probably quite genuine, but I think it was entirely misplaced.'*

She added, *'I'm not saying that remarks may have been made which were wrong. I think that is perfectly possible, although I don't think it has been proven. But I'm in no doubt that she did have genuine concerns, but I have no reason to believe that they were properly, objectively founded.'*

25.26 She said: *'I think we didn't have a concrete reason to be worried, but we were still concerned. [...] I wasn't unduly worried. I mean, I did not really think that she was at risk. Had I thought that [...] we would have done something. Had any of us thought that, we would have done something. But we didn't actually think that.'*

25.27 Commenting specifically on whether Rosemary Nelson was in danger she said:

'As far as I knew from my knowledge of Mrs Nelson and her likely patterns of activity, she wasn't immediately obvious to me as being a terribly high risk person, apart from the fact that she had a public profile, she was in Lurgan, which was, I think, notoriously a very deeply divided community. I mean, I have set out there what I would have seen as the risk factors.'

25.28 We observed also that her expectations regarding the capacity and objectivity of the RUC in Lurgan were somewhat unrealistic. In this regard she told us:

'I think I would have expected them [i.e. the RUC] to be keeping a pretty close eye anyway on Mrs Nelson's safety. She was quite a prominent public figure at that time anyway. I would have expected them to have had her under sort of – not quite close attention, but, you know, they would have been listening out and watching out.'

25.29 Asked if, with hindsight, the NIO should have done something to protect Rosemary Nelson, Sir Joseph Pilling said in his oral evidence to the Inquiry:

'I haven't asked myself that question in that way and it would be surprising if there was nothing that couldn't have been improved on, but I don't believe there to be a pattern or a course of events that was properly open to us then that we neglected and that would have made a difference.'

25.30 A note from an Irish official, recorded on 17 March 1999, indicates that Sir Joseph Pilling had, in fact, reflected on this point immediately after the murder. The note records:

'In a private conversation with me last night, Joe Pilling reflected that, with the benefit of hindsight, the NIO ought perhaps to have actively sought her out on this [i.e. the issue of personal protection]. However, they suspected that she would not have welcomed e.g. a RUC visit to inspect her home for this purpose. Specifically, Pilling would like to have had equipment attached to the home which would have illuminated the entire front of the house and would also have detected any interference with her vehicle.'

25.31 Very few officials in the NIO had any direct dealings with Rosemary Nelson and we found no documentary evidence to suggest that there was any conscious personal animosity towards her. We did, however, note that in the first brief that went to Ministers following Rosemary Nelson's murder, reference was made to her *'notoriety as a solicitor'*. The word was never used in any subsequent briefs but its use in the immediate aftermath does suggest a value set that would not have been endorsed by a substantial proportion of the population, and may provide some confirmation of Mo Mowlam's comment set out at Chapter 25.1 above. Mo Mowlam was working with NIO civil servants during the years 1997, 1998 and

1999 and therefore was in a better position than we are to judge whether some members of the establishment, including civil servants, felt dislike of Rosemary Nelson.

Conclusion

25.32 The attitude we saw among senior managers – deference towards the RUC; irritation caused by the volume of correspondence from the NGOs; and lack of real appreciation of the considerable danger that Rosemary Nelson faced – explains why the NIO failed to take proactive steps to deal with the threat to Rosemary Nelson’s life.

26 Awareness of Rosemary Nelson at Royal Ulster Constabulary Headquarters

26.1 This chapter deals with the extent to which senior members at Royal Ulster Constabulary (RUC) Headquarters were aware of the issues affecting Rosemary Nelson. The substance of these issues is for the most part dealt with elsewhere in the Report.

26.2 The Chief Constable of the RUC, Sir Ronnie Flanagan, knew immediately of the murder of the two constables in Lurgan in June 1997 – he had visited the victims’ families on the day of the murder and went to Lurgan either that evening or the following day. He remembered that he had been briefed that there was a good case against Colin Duffy *‘but I did not know the detail’*. He also told us that he was aware that, after Colin Duffy’s arrest for the murders, various non-governmental organisations (NGOs) had expressed interest in his case. He did not believe that their correspondence would have reached his desk. It would have been dealt with by officers within Command Secretariat.

26.3 He was aware that there was a witness who claimed to have seen Colin Duffy at the scene of the murders and that *‘there was a campaign to discredit that witness on the basis that [the witness] had psychological problems and that allegations were made in terms of [the witness’s] previous unreliability, but I was not briefed on Rosemary Nelson doing anything untoward in that regard.’*

26.4 He told us that he was not aware of intelligence reports that alleged that Rosemary Nelson was orchestrating that campaign. Nor was he aware of earlier reports which alleged in explicit terms that she had been involved in fabricating a false alibi for Colin Duffy in connection with the murder of John Lyness and that she was using her position to gather information for the Provisional Irish Republican Army (PIRA).

26.5 He had no recollection of Rosemary Nelson being involved in Drumcree in 1997; he was not aware that she had made a formal complaint alleging that she had been assaulted by police officers on the Garvaghy Road; or that she had threatened to take civil proceedings against the RUC.

26.6 He told us:

‘I am not aware of any files – paper or otherwise – that have been kept on Mrs Nelson. My impressions at that time were that Rosemary Nelson was a lawyer who was doing her job. I suspected that she was being manipulated by the GRRC [Garvaghy Road Residents’ Coalition], although, as I have stated, she was not a major figure in terms of marshalling and organising the residents. I think that the GRRC were capable of doing their own organising and they were simply using Rosemary Nelson as a legitimate front. There was nothing untoward said about her that came to my ears in any briefing I received from SB or local police on her role in representing the GRRC.’

26.7 Sir Ronnie Flanagan told us that as Chief Constable he did not have access to either the MACER or PRISM computer systems (see Chapter 12.31 to 12.41) nor had he had such access when he was the Head of Special Branch (HSB) for six months in the latter half of 1994. He was therefore dependent on senior officers within Special Branch (SB), the Assistant Chief Constable who was the HSB, and

the Chief Superintendents who were respectively the Deputy Head of SB and the Head of the Intelligence Management Group (IMG), to brief him on matters that they considered he ought to know.

26.8 The HSB from January 1998 told us that he received a daily briefing from each of the Regional Heads of SB regarding the operations that they had underway and there was what he called ‘a high level review of intelligence’ at weekly Intelligence Requirement Meetings (IRCs) which were attended by the Director and Coordinator of Intelligence and the Head of Assessments Group, both from the Security Service, and the Head of the IMG. His evidence was, however, that he was not aware of any of this intelligence regarding Rosemary Nelson. He told us:

‘Although I received regular intelligence briefings, this was essentially on the big picture. I was briefed on trends and patterns from a strategic point of view, rather than detail about specific incidents. This intelligence is unlikely to have been something that was drawn to my attention, even though it was obvious to all of us that Mrs Nelson had a high profile because of the clients that she represented. I would not have expected to hear about such things at the time – my daily briefings with the Regional Head of Special Branch were about things such as counter terrorist operations. I believed that just seeing individual bits of intelligence gave a distorted picture and so I was always adamant that I needed an overview, hence the existence of IMG and the reason why I was briefed on a big picture basis, rather than provided with individual snippets of intelligence.’

26.9 He told us that decisions as to the dissemination of intelligence within regions were also made at a local level between the Regional Heads of SB and the Regional Head of the Criminal Investigation Department (CID). In practice, intelligence was legitimately passed between SB and CID when CID was investigating serious crime.

26.10 The officer who was the Head of the IMG until May 1998 was aware of the contents of some intelligence reports about Rosemary Nelson. Of the report in April 1996 that she was ‘using her position as a Solicitor to gather information for PIRA in Lurgan’, he told us: ‘I can say with certainty that at some time I became aware of the gist of what this report says. I cannot say with certainty that it was because I read this specific report. It may be the case that someone told me about this intelligence, but I think that I may well have read it at the time.’ Of the report in August 1997 that she was using an intermediary to contact the eyewitness in the case against Colin Duffy, he said: ‘I think that this was something I did know about at the time. When I read this report I would have thought nothing other than “what were they doing about it in Portadown?” but [...] it was not in my remit to take any action or challenge those in Portadown as to what action they were taking on receipt of intelligence such as this.’ Of the report that Rosemary Nelson had taken a witness statement discrediting the character of the key witness to the murder of the two constables in Lurgan on 16 June 1997 and that she was intending to fax it ‘all over the world to prominent politicians’ he said: ‘I cannot recall reading this intelligence report at the time, but the content is not a surprise to me. It may be that I was briefed on this intelligence by another member of IMG.’

26.11 Asked whether he informed the Chief Constable, he told us: ‘I don’t recall doing anything to draw it to his attention. [...] I might have said, “He needs to see this piece of paper.” I might have spoken to him personally. I don’t recall now whether I did either of those things.’ Asked whether he had any conversations with the Chief Constable in relation to Rosemary Nelson he said, ‘I used to speak to the Chief Constable regularly, both in formal meetings and informally, but I have no recollection of ever discussing Mrs Nelson directly with the Chief Constable.’

26.12 It is inconceivable to us that Sir Ronnie Flanagan would not have been made aware of Rosemary Nelson's role in the defence of Colin Duffy in both the John Lyness case and the murders of the two Lurgan constables; and therefore we would be surprised if he was not given the gist of the intelligence about her. Both cases brought the RUC into full focus in the eyes of the media. Anyone responsible for briefing the Chief Constable should have been fully aware of the need to keep him informed, especially because at this time the public and politicians would be very concerned about a threatened breakdown of the Peace Process.

The message getting through

26.13 Even if Sir Ronnie Flanagan had been unaware of the alleged activities of Rosemary Nelson during 1997, the position was to change in 1998. In early 1998 the issue of RUC behaviour towards defence solicitors and towards Rosemary Nelson in particular received considerable attention in the media. On 14 January 1998, *The Irish Times* published a statement signed by 33 solicitors practising in Northern Ireland entitled 'Equal Protection under the Law'. Rosemary Nelson was one of the signatories. One of the grievances with which the statement was concerned was that '*no action has been taken about the continuing intimidation and abuse of solicitors by police officers via their clients in detention centres*'.¹

26.14 It was reported on 18 January 1998 in *The Sunday Business Post* that the petition, which called for a '*root and branch review of policing and the administration of justice*', was to be submitted to the Secretary of State for Northern Ireland the following day. We have already mentioned that Rosemary Nelson was involved in both the drafting of the petition and attempts to gain signatures (see Chapter 9.27). We have also noted how this petition was the subject of SB reporting and that this reporting alleged that Sinn Féin was behind the petition. It also indicated to us that SB drew little distinction between Sinn Féin and PIRA.²

26.15 Both Sir Ronnie Flanagan and Rosemary Nelson were interviewed for a Channel 4 *Dispatches* documentary broadcast on 15 January 1998 entitled 'The Force is Not With You'. The documentary focused on instances of police misbehaviour and was highly critical of the RUC. The programme contained separate interviews with Sir Ronnie Flanagan, Dato' Param Cumaraswamy the UN Special Rapporteur on the Independence of Judges and Lawyers, Diane Hamill, Rosemary Nelson and another lawyer, who claimed to have been harassed by the RUC. Rosemary Nelson and Sir Ronnie Flanagan both spoke about the Robert Hamill case. The programme referred to '*the strongest allegations against police*' namely '*that they threaten solicitors who represent clients accused of committing terrorist crimes*'. Rosemary Nelson said, '*What I do in my job, they [i.e. the RUC] take to imply that I have certain sympathies, and that's dangerous in this country, it's extremely dangerous, it's extremely worrying and completely unacceptable*.' She said that clients had told her that RUC officers had said to them: '*Rosemary's a terrorist*' and '*you're going to die when you get out; tell Rosemary she's going to die too*' and she commented on the danger inherent in the insinuation. She said that she had been worried about her safety over the past year when she had had '*quite a number of clients arrested [...] invariably they came down and relayed*

¹Other signatories who gave evidence to the Inquiry were: Patricia Coyle, Patrick Fahy, Oliver Kelly, Eamon McMenamin, Ciaran Steele, Patrick Vernon, Kevin Winters, John Fahy, Paddy McDermott and Barra McGrory.

²'PSF [Provisional Sinn Féin] were happy with the response they received from local solicitors in signing a letter of complaint about the RUC. They had approached about 43 local solicitors and got about 33 to sign this letter. The person investigating this complaint has told them if the solicitors would stick together on this they would have a good case but there is too many 'EGO's' [sic] involved.'

threats to kill [...] I became very concerned at that stage'. The UN Special Rapporteur described 'Ms Nelson's case' as a '*glaring example of such form of threats*' and said '*we were quite concerned about her safety*'.³

26.16 On 30 January 1998 a meeting took place at RUC Headquarters between the Chief Constable and the President of the Law Society of Northern Ireland and two other solicitors, one of whom was Barra McGrory. The Law Society's memorandum recorded:

'The meeting had been arranged to inform the Chief Constable that the Society had, following Dr Cumaraswamy's visit, established a system whereby solicitors would refer complaints against members of the RUC to the President.

It was indicated that the Society would like to open lines of communication with the Chief Constable direct to be able to communicate complaints of this nature which it regarded as serious and to hear the concerns of the Chief Constable on behalf of his officers. It had to be said that there was currently a lack of faith in complaints being investigated enthusiastically despite the input of the ICPC [Independent Commission for Police Complaints], which was limited due to lack of resource.

Both Barra McGrory and [redacted] detailed unpleasant experiences which they had had in the Holding Centres, arising from comments made about them by police officers to their clients and, more significantly and in more sinister fashion, to clients of other solicitors. The Chief Constable noted these and made some reference to the death of Pat Finucane, saying it illustrated the danger solicitors faced through their identification with clients.'

26.17 Further media reporting drew attention to the conflict between Rosemary Nelson and the RUC in South Region. On 19 February 1998, under the headline '*Justice group's video criticises RUC over policing of parades*', *The Irish Times* reported on Rosemary Nelson's appearance in the Committee for the Administration of Justice (CAJ) video entitled '*Policing the Police*', in which she alleged that she was physically and verbally abused by the RUC on the Garvaghy Road the previous summer.

26.18 On 7 March 1998 an article by Brendan Anderson appeared in *The Irish News* under the headline '*Lawyer appeals to UN over "threats"*'. The article referred to Rosemary Nelson as '*one of several defence solicitors who have already complained to UN legal watchdog Dato' Param Cumaraswamy after being allegedly threatened by police*'. It continued, '*Ms Nelson said the latest alleged threat came last week when an arrested client relayed a sinister message to her from his police questioners.*' The article referred to an interview with one of Rosemary Nelson's clients. It said: '*Speaking to the Irish News following his release after seven days in Castlereagh holding centre, the man said the detectives made the remarks after he gave a full account of his whereabouts on the day [redacted] was abducted from his Lurgan home and murdered. The man, who asked not to be identified, said detectives told him they had a law brought out in 1989 to deal with solicitors who helped clients to make such statements. He said he did not realise the implications of the comment until he told Ms Nelson. They also, he alleged, made a number of obscene remarks about his solicitor.*'⁴

³*Dispatches*, Channel 4, broadcast 15 January 1998

⁴Full details of the allegation made by this client are set out at Chapter 8.4c.

Sir Ronnie Flanagan's meeting with a delegation from the Lawyers Alliance for Justice in Ireland

26.19 As we have seen at Chapter 20.2 to 20.16 the issue of police behaviour towards Rosemary Nelson and the question of her security were raised in unequivocal terms by the Lawyers Alliance for Justice in Ireland (LAJI) delegation which met Sir Ronnie Flanagan on 19 February 1998, a few days before these issues were again brought to the Chief Constable's attention with the arrival of the UN Special Rapporteur's draft report. As a result of these and the media coverage which accompanied the publication of the UN Special Rapporteur's report, correspondence concerning Rosemary Nelson was not merely 'processed' by Command Secretariat – matters concerning Rosemary Nelson were recognised as sensitive and worthy of the Chief Constable's attention.

Media reporting concerning the UN Special Rapporteur's Report

26.20 We have dealt in Chapter 19 with the substance of the UN Special Rapporteur's visit to Northern Ireland and his subsequent report. It should be noted that the report dealt with the issue of RUC behaviour towards defence solicitors in general, not Rosemary Nelson in particular. Inevitably, however, the publication of this report attracted media interest and, although the names of solicitors that had been included in the draft report had been removed at the request of the Northern Ireland Office (NIO), media reports immediately linked Rosemary Nelson's case to those referred to in the text.

26.21 On 31 March 1998 *The Independent*, for example, published an article by David McKittrick under the headline '*UN damns Ulster police intimidation*'. It reported that '*Rosemary Nelson, who represents Colin Duffy, a well-known republican, alleged [in the UN Special Rapporteur's report] she had been the victim of numerous death threats. She also accused an RUC officer of spitting on her face, and another of striking her on the back of the head with a riot shield.*' Similarly, on 1 April 1998 *The Irish Times* published an article entitled '*UN report says RUC intimidated lawyers*'.

26.22 On 31 March 1998 Channel 4 News also presented an item on the forthcoming report. It was said that Rosemary Nelson believed her life was in danger as a result of police threats and reported that she was taking action against the RUC in relation to the alleged assault during the 1997 marching season. In a brief interview Rosemary Nelson described an '*ongoing, concerted series of threats being issued by police officers*'. The programme also replayed part of the interview with the UN Special Rapporteur which had been broadcast during the Channel 4 *Dispatches* programme on 15 January 1998 and made reference to the controversy that had occurred in respect of the draft report, stating that Sir Ronnie Flanagan had been '*furious*' as a result of being misquoted in it.

26.23 Within days, newspapers reported on Rosemary Nelson's departure to the USA to begin a series of lectures on human rights abuses in Northern Ireland. One article described the trip as follows: '*Ms Rosemary Nelson is helping to publicise the recent report by the UN Special Rapporteur, Mr Param Kumaraswamy, in which the RUC is accused of such intimidation [of lawyers]. She had been invited to the US by the Irish-American Labour Coalition. Ms Nelson told The Irish Times that the report accurately deals with incidents of death threats and intimidation against herself, involving the RUC. She said that as recently as two weeks ago, before the publication of the report, a detective*

at Castlereagh holding centre made derogatory remarks about her to one of her clients during an interrogation. She advised the client to make a formal complaint and when he was released he was told by the detective “Tell Rosemary we’ve been doing this for the past 30 f...ing years. We’ll do it for another 30 and she won’t stop us.” Ms Nelson has lodged numerous complaints about RUC threats and intimidation.⁵

26.24 According to Paul Mageean of CAJ, the publication of the UN Special Rapporteur’s report was ‘huge news in Northern Ireland’. He was quoted in one contemporaneous news article as saying, ‘This is probably the most critical report ever issued on the UK’s human rights record in Northern Ireland.’⁶ He told us that the fact that the UN Special Rapporteur had made such strong criticisms of the police and the criminal justice system in Northern Ireland ‘had a positive impact on our cause in terms of our fight for changes to the police system’.

26.25 Paul Mageean told us that in the context of Rosemary Nelson’s position, the publication of the UN Special Rapporteur’s report was important because ‘it significantly raised her profile in the international arena’. He said that despite the fact that she was not named in the report ‘anybody who had taken any interest in Mr Cumaraswamy’s visits to Northern Ireland (such as journalists, politicians, and the police) would have known it was her to whom he referred in the report’.

Missed opportunities

26.26 On 1 April 1998 Sir Ronnie Flanagan approved the RUC response to the strongly worded letter from the NIO of 23 February 1998. When he did so, he was fully aware of the allegations that RUC officers had made threatening comments about her. In doing so, as we have seen at Chapter 21.16 to 21.19, he rejected the suggestion that she should be offered crime prevention advice. He considered it sufficient that ‘because of her high profile police attention’ should be ‘paid to her home and business’. This was, in our view, a missed opportunity. It is possible, of course, that Rosemary Nelson might not have welcomed a visit from a crime prevention officer, nor can we say that any advice, if it had been taken by Rosemary Nelson, would have been sufficient to deter or prevent determined killers. It could, however, have had the effect of reducing Rosemary Nelson’s vulnerability.

26.27 Similarly, as we have mentioned above at Chapter 22.28 to 22.29, the Superintendent’s letter dated 3 September 1998 to NIO Police Division, following their prompting of the August 1998 threat assessment, was submitted to the Chief Constable for his approval. This approval was only given, according to an attached memorandum, on 10 September 1998, and the letter was not sent until 11 September 1998.

Dealing with the Independent Commission for Police Complaints regarding Rosemary Nelson

26.28 Meanwhile, the issue of police behaviour towards Rosemary Nelson was brought to the immediate attention of the Chief Constable as a result of the dissatisfaction of the ICPC with the manner in which investigations into the various complaints concerning or made by Rosemary Nelson were being conducted. This is addressed in more detail at Chapter 17.36 to 17.39.

⁵ *The Irish Times* 4 April 1998

⁶ *The Irish News* 1 April 1998

26.29 We mention this here, however, as it brought matters concerning Rosemary Nelson to Sir Ronnie Flanagan's attention in a way that demanded his personal and immediate intervention. We consider this episode to have marked something of a milestone in his awareness of her predicament.

26.30 Also at this time a flurry of intelligence reports was filed in Lurgan concerning Rosemary Nelson's alleged relationship with Colin Duffy. We considered whether the RUC response to the issue of her safety, both locally and at RUC Headquarters, was affected by these reports.

Intelligence reports concerning Rosemary Nelson in 1998

26.31 Intelligence reports concerning Rosemary Nelson from February 1998 onwards referred to there being 'a close intimate relationship' with Colin Duffy. Details of these reports are dealt with at Chapter 4.131 to 4.153. We believe that not only the gist of the reports concerning her alleged assistance to PIRA, but also the gist of the reports concerning her alleged affair with Colin Duffy must have reached the Chief Constable.

26.32 The HSB told us that he was aware of the alleged affair. He said:

'I suspect that my knowledge of the alleged extra marital affair between Mrs Nelson and Colin Duffy came out of a number of discussions in relation to opportunities to launch operations against Duffy. I am conscious that I have to be careful to ensure my recollections as contained within this statement are contemporaneous rather than based on things that I read after the event. However, I am fairly sure that I was aware of the alleged relationship between these two individuals at the time and I think that I became aware of it in the context of Deeny Drive and a proposed operation against Colin Duffy.'

26.33 The HSB told us that he dated his knowledge to 'September or October 1998' by reference to Operation Indus (see Chapter 14.70 to 14.78). In fact, the Secretary of State had first signed the warrant authorising Operation Indus on 4 September 1998 before which it appears there had been 'substantial discussion with the RUC'.⁷ It appears to us very likely that there would have been discussion about the possibility of attacking Deeny Drive at a much earlier date. The minutes of a Tasking and Coordination Group weekly meeting on 6 August 1998, for example, indicate that the proposal was well advanced by that date. We believe that the idea was probably mooted soon after it came to the attention of SB in Lurgan that Rosemary Nelson was purchasing the house in Deeny Drive and Colin Duffy was to live in it, and that it was probably discussed at a high level soon afterwards, that is to say, in May or June 1998.

26.34 Although when giving evidence the HSB told us that he had 'no recollection' of whether he spoke to the Chief Constable regarding the proposed application or the alleged relationship, we consider it likely that he did. It would have been important for the Chief Constable to be aware of such matters during his dealings with the ICPC.

26.35 In his evidence to the Inquiry Sir Ronnie Flanagan said that he became aware of rumours that Rosemary Nelson was having an affair as a result of his dealings with the ICPC and in particular as a result of something said by the Supervising Member during the meeting on 1 July 1998. He told us:

⁷This Security Service note of 4 September 1998 indicates that the DCI had spoken to the HSB intended to brief the Chief Constable on the matter 'in recognition of the sensitivities'.

‘[The Supervising Member] outlined the reasons for her feeling that she would not be in a position to issue what has become colloquially known as a certificate of satisfaction, but [sic] how the investigation into the complaints by or on behalf of Mrs Nelson were conducted. And she outlined, as far as I can recall, a number of reservations and she used a phrase – I’m not certain whether it was a document; I think it was much more likely to have been used verbally – that police officers in their reports were questioning the moral conduct of Mrs Nelson. It didn’t go any further than that as to what the explanation of moral conduct meant. [...] In relation to this question about the phrase of Mrs Nelson’s moral conduct, I don’t think we had any further discussion at that time about what that might mean, but I do think I started to ask questions about why would any investigating officer, or why would anyone involved in the investigation question the moral conduct of Mrs Nelson.’

26.36 He said further:

‘In the process of asking those questions – and I cannot be sure from whom or in what form or at exactly what time, but I think it was in the course of asking questions about what is this, who on earth is questioning Mrs Nelson’s moral conduct, that I think I was told of some rumours, some suggestion – no hard evidence and nothing was ever put to me in document form – that there was a relationship between Mrs Nelson and Duffy.’

26.37 It is clear, then, that Sir Ronnie Flanagan was aware of gossip concerning the alleged affair between Rosemary Nelson and Colin Duffy by mid-1998.

26.38 Furthermore, the senior NIO official, who was newly appointed to the post of Senior Director Belfast on 12 August 1998, told us that he had heard Sir Ronnie Flanagan referring to Rosemary Nelson as ‘*an immoral woman*’. From his evidence it was clear that this incident stuck in his mind. In placing the time of the comment he said:

‘What I do have an absolutely clear recollection of, crystal clear recollection of, is that about the time I started the job, I think in early July, when I was taking over de facto responsibility, I remember thinking to myself, “I must set aside what I have heard by way of allegations about Rosemary Nelson, about her relations as a solicitor with Colin Duffy and other of her clients.” I remember saying to myself I have no evidence that those allegations, those attempts to impugn her, were true because I realised that I might have to deal with this person quite frequently and I did not want to have that baggage in my mind in doing so. That I have an absolutely clear recollection of. So in a sense I’m a bit schizophrenic about it. I was aware of the allegations, but was quite clear as to the approach I wanted to take.’

26.39 With reference to the remark, he also said:

‘This was at SPM.⁸ So the remark would not have been addressed – well, it might have been addressed to me, but I don’t think it was. It would have been addressed to the Secretary of State and the meeting as a whole. In what context, the wide context must have been security force, police and Army preparations for Drumcree and us briefing the Chief Constable and GOC [General Officer Commanding] on the proximity talks process that we were about to embark on. That must have been the context, I think. But what the – what the immediate surrounding discussion was, I have no recall. Partly because I switched off to go through that mental process that I described to you. Why did I go through that mental process? Because I was conscious that there were allegations about the RUC’s attitude to defence lawyers. I didn’t know whether – I was inclined to disbelieve them, but I could not be certain that the allegations were untrue and I did not want to find myself in a position where I was approaching her in a non- –

⁸Security Policy Meeting 10 July 1998

what I would regard as a non-professional way. By which I mean her role in advising the Garvaghy Road Residents' Coalition had nothing whatsoever, in my view, to [do with] her private life.'

26.40 Sir Joseph Pilling, who was the Permanent Under-Secretary of the NIO between 1 December 1997 and 30 November 2005, also recalled an occasion when Sir Ronnie Flanagan had commented on Rosemary Nelson. He told us:

'The first person actually to tell me that Rosemary Nelson had a closer than professional relationship with one of her clients, Colin Duffy, was Ronnie Flanagan. I don't recall when he told me this (although it was before her death), or where, but I do recall that when he told me I was slightly taken aback. It was a topic that we did not return to.'

26.41 Sir Joseph Pilling's recollection was that he and Sir Ronnie Flanagan were alone when this comment was made. He told us that these meetings were rare but we noted that the two of them met in July 1998 and we think that the comment may have been made then.⁹

26.42 Sir Ronnie Flanagan told us that he treated the information regarding the affair between Rosemary Nelson and Colin Duffy as a rumour but he had no recollection of mentioning it during the Security Policy Meeting attended by the newly appointed Senior Director Belfast. Indeed he told us that it would be a '*very strange forum for such matters to be discussed*'. In relation to the evidence of Sir Joseph Pilling he told us:

'I have no recollection of having a discussion with Sir Joe Pilling about this matter. I did meet him on a weekly basis and we both attended the monthly SPM meetings with the Secretary of State, but I doubt that such a thing would have been raised at these meetings.'

26.43 We believed the evidence of both the Senior Director Belfast and Sir Joseph Pilling, both of whom were able to place in context their evidence of these remarks having been made. Furthermore, the fact that Sir Joseph Pilling believed the source of the information to have been confidential is corroborated by a Security Service note concerning a telephone call between Sir Joseph Pilling and the Head of Assessments Group on 17 March 1999. This document, which is entitled '*Subject: Rosemary Nelson and Colin Duffy*', reads as follows:

'1. PUS [the Permanent Under-Secretary] contacted me (at home) on 17 March to say that he was concerned about the possibility of the allegation that Nelson had had a sexual relationship with Colin Duffy breaking publicly. This could exacerbate the difficulties of the current situation and heap even more opprobrium on the RUC. I pointed out that there had already been some hints about the nature of the relationship in the local press.'

26.44 The Supervising Member of the ICPC also gave evidence that Sir Ronnie Flanagan had commented on the alleged relationship between Rosemary Nelson and Colin Duffy. This occurred, we were told, at a later meeting which might have taken place in January or February 1999.

26.45 She said:

'When the Chief Constable realised that I was not shifting my position in relation to the problems with the initial investigation he spoke about Mrs Nelson. He said clearly at this meeting that she was having an affair with Colin Duffy. The context was that

⁹Reference is made to a recent meeting having taken place between the Chief Constable and Sir Joseph Pilling (and the Senior Director Belfast) in a letter of 27 July 1998.

he believed the information he had received about the affair. I was appalled to have been informed of this information in my capacity as an ICPC member supervising investigations involving her. Part of me could not believe what I was hearing. I thought it was completely inappropriate. However, I did not respond to his comments.'

26.46 In her oral evidence she said:

'I personally didn't reply or say anything, but privately I was quite shocked that this matter was raised by the Chief Constable. And my own impression was that at some level he was trying to cast doubt on Rosemary's character and as an individual.'

26.47 The Chairman of ICPC did not recall Sir Ronnie Flanagan making the comment at the meeting but the Supervising Member told us that her recollection was clear and that she recalled being shocked by the fact that the Chief Constable had made it. Although Sir Ronnie Flanagan denied making the comment we consider on balance that he probably did so, and that he hoped by doing so to influence her decision as regards the Statement of Satisfaction that she was to issue in respect of the investigation carried out by Commander Mulvihill. Whether that was proper or questionable is not an issue with which we are concerned. Our interest lies in the extent to which antipathy felt towards Rosemary Nelson in South Region had permeated the upper echelons of the force and, if it had, whether it influenced decisions made in 1998 regarding the issue of Rosemary Nelson's safety and any inaction that followed.

26.48 We found no direct evidence of any hostility towards Rosemary Nelson herself on the part of the Chief Constable, although he undoubtedly felt irritated by the NGOs who were campaigning on her behalf. But there was a failure to extend the protective arm of the state to Rosemary Nelson; and indeed, in April 1998, a decision was taken not to offer her crime prevention advice (see Chapter 21.16 to 21.19). The matter might have been reconsidered when the August 1998 threat assessment was put to him but as far as we can see it was not. Sir Ronnie Flanagan told us that with hindsight he regretted not having made that offer; and we agree with that judgment. But an offer of crime prevention advice did not need the personal authorisation of a Chief Constable. During this period Sir Ronnie Flanagan had enormous issues on his plate, including the Patten Commission, with its far-reaching implications for policing in Northern Ireland and, in August and September, the aftermath of the Omagh bomb. In our view, the failure to offer Rosemary Nelson crime prevention advice was essentially a corporate failure by the RUC. That failure was no doubt partially caused by inertia, lack of imagination, and reluctance to go beyond what the rules prescribed. But we suspect that a pervasive, passive hostility may have had some part to play as well.

The 1999 Lawyers Alliance for Justice in Ireland meeting with the Chief Constable

26.49 As in the previous year (see Chapter 20), a LAJI delegation visited Northern Ireland in February 1999. On Saturday 27 February 1999, they met Sir Ronnie Flanagan and the Chief Superintendent of Command Secretariat at RUC Headquarters.

26.50 No notes of this meeting were disclosed to the Inquiry and the recollection of those who attended it differed significantly. All were agreed that the progress of Commander Mulvihill's investigation was discussed: Sir Ronnie Flanagan told us that he had earlier arranged for the delegation to meet Commander Mulvihill.

26.51 According to delegates, however, the issue of Rosemary Nelson's safety was also raised. Patrick Whalen, an Attorney at Law from Trenton, New Jersey, described it in the following terms:

'Ed Lynch was keen that Rosemary Nelson would be afforded protection. We certainly discussed the need for some sort of protection and someone, probably Ed Lynch, gave examples of other people being given protection in similar circumstances to those encountered by Rosemary Nelson. Ed Lynch specifically said that there was a need to protect Mrs Nelson. This was a very important part of us bringing up Mrs Nelson's name at the meeting. The Chief Constable was in the best position to protect her and that was why we wanted to raise the issue with him. I am not sure that the Chief Constable actually agreed to provide protection. Instead, I think that he may have simply said something along the lines of, "We will look into it."'

26.52 The delegates described how Sir Ronnie Flanagan appeared at first to be surprised by the suggestion that Rosemary Nelson had been threatened by police officers and suggested that his attitude became defensive when her case was raised. One of the delegates recalled that towards the end of the meeting Sir Ronnie Flanagan had expressed the view that Rosemary Nelson was *'not entitled to protection under the law'*.

26.53 Sir Ronnie Flanagan told us that the main thrust of the discussion *'was about progress on the investigation of the complaints by or on behalf of Mrs Nelson. They had, I think, by that time, or at least some of them, met Commander Mulvihill. So the discussion was rather more about what's happening in respect of those investigations, rather more than specifically Mrs Nelson's safety. And they expressed the view that, simply, the police officers involved in those complaints should be disciplined. They didn't seem to understand that there has to be due process, there has to be evidence derived on which police officers could be disciplined. That's my recollection of the gist of the discussion with particular respect to Mrs Nelson.'*

26.54 When asked to comment on the delegates' recollection that he had been surprised and defensive he said *'it is nonsense'* and continued: *'I had arranged the appointment of Commander Mulvihill. [...] Commander Mulvihill had met at least Mr Lynch from the delegation and maybe others. So it is absolute nonsense to suggest that I had said in such a meeting that I had no knowledge of complaints made by or on behalf of Mrs Nelson, absolute nonsense.'*

26.55 As to whether he had suggested that Rosemary Nelson was not entitled to protection under the law he said:

'Not at all. I mean, this meeting – as I recollect it, we devoted an entire Saturday morning to this meeting. When I say "we", I mean, I think [the Chief Superintendent] [...] He and I came in. We were the only people in the office. He made tea, prepared biscuits. It was a very cordial meeting. At the end, I recall them all taking out digital cameras and asking to be photographed with me, shaking hands under the RUC crest. It was a very cordial meeting. I have read some of the evidence that has been presented to this Inquiry and I'm quite astounded by some of the evidence that has been presented by them. Not at all the meeting that I recollect.'

26.56 We think that the delegation may have misunderstood what Sir Ronnie Flanagan might have meant to convey by his *'not entitled to protection under the law'*: which is that Rosemary Nelson was not eligible for protection under the terms of the KPPS. We did not consider it necessary to reconcile the differing accounts of this meeting. All were agreed that Rosemary Nelson was discussed.

Conclusion

26.57 As this chapter has shown, by February 1998 there was a high level of awareness of Rosemary Nelson at senior level at RUC Headquarters. Furthermore, by February 1999 Sir Ronnie Flanagan and his officers were aware that prominent Republicans were under threat from newly formed Loyalist groups whose terrorist resolve had been galvanised by events at Drumcree in the preceding months (see Chapter 28.13 to 28.26). Against this background, the risk to Rosemary Nelson's life should have been evident.

27 Rosemary Nelson's Evidence to US Congress

27.1 On 24 June 1997 representatives from Human Rights Watch, the Committee for the Administration of Justice (CAJ), the Lawyers Committee for Human Rights/ Human Rights First (LCHR) and Amnesty International delivered speeches at the hearing on Human Rights in Northern Ireland by the International Operations and Human Rights sub-committee of the US House of Representatives Committee on International Relations. It was the first time a congressional committee had held a hearing devoted to this subject.

27.2 Michael Posner of LCHR said in his speech:

'The legal setting in Northern Ireland all but ordains that defense lawyers suffer intimidation. [...] Far from checking this hostility, the law encourages it, often in dangerous ways. Complaints procedures, which might provide a measure of redress, remain ineffectual, prompting the skepticism solicitors accord the complaints process and contributing to their tenuous position in the system itself.

[...]

Among the Lawyers Committee's concerns about the failure of the UK government to prevent the intimidation of lawyers are these:

- *continued threats made by interrogators to detainees with the purpose of interfering with the attorney client relationship and interfering with the accused's choice of counsel;*
- *failure of the Independent Commission for the Holding Centres to address the problem of threats against solicitors occurring in detention centers;*
- *failure on the part of UK authorities to provide an effective means of investigating threats against solicitors;*
- [...]
- *failure of the UK to provide an effective means of investigating complaints of police harassment and abuse.*

[...]

Recommendations

[...]

- *United Kingdom authorities should require vigorous and independent investigation of all threats to legal counsel in Northern Ireland. Solicitors who report threats of violence should be accorded effective protection.*
- [...]
- *The government should implement the recommendations made by Maurice Hayes¹ to establish an independent ombudsman to investigate police complaints.'*

27.3 On 29 September 1998 a meeting of this sub-committee was convened to, in the words of its Chairman (Hon Christopher H Smith), *'receive and review the recent U.N. report on harassment and intimidation of defense attorneys by police officers of*

¹A Police Ombudsman for Northern Ireland? A review of the police complaints system in Northern Ireland by Dr Maurice Hayes, report published January 1997.

the Royal Ulster Constabulary – the RUC – and other violations of the right to fair trial and the right to counsel in Northern Ireland’. Rosemary Nelson was invited to give evidence to the sub-committee.

27.4 LCHR, British Irish Rights Watch (BIRW) and CAJ each played a role in persuading Rosemary Nelson to participate in the sub-committee’s proceedings. According to Michael Posner, LCHR had made arrangements for Rosemary Nelson to testify and a senior member of staff from LCHR assisted her in the preparation of her speech. He said that LCHR *‘encouraged her to testify, hoping that her prominent role in these hearings might provide protection and deter her adversaries from any violent attacks against her.’* Jane Winter of BIRW told us that *‘Rosemary was probably the lawyer most at risk that we knew of at the time and so that was why we suggested her name to talk about the issue of lawyer intimidation more generally. There were other obvious candidates but we knew that they would never be prepared to attend whereas Rosemary was.’* During the Inquiry hearings Jane Winter explained these remarks as follows: *‘Since Param Cumaraswamy’s visit, I think she [i.e. Rosemary Nelson] had, whether consciously or not, decided that she would take a high profile and this was another opportunity to raise the issue and I believe she felt that she would help other lawyers who were suffering similar abuse.’*

27.5 Martin O’Brien, the Director of the CAJ, told us in his Inquiry statement that *‘the purpose of taking Rosemary’s case to Congress was to highlight the problems [Rosemary Nelson was having]. We had attempted to engage the authorities without success and we had secured a visit to Northern Ireland by the UN Special Rapporteur who had reported in terms critical of the authorities and the system. However, Rosemary was still being threatened. Having the US Congress intervene would hopefully improve the situation. CAJ had developed a relationship with Chris Smith who chaired the Congressional Committee.’*

27.6 The UK Government received notification of the hearing on 22 September 1998. The British Embassy informed the Northern Ireland Office (NIO) that the Congressman chairing the sub-committee and his staff *‘have crusaded for years on the issue of intimidation of lawyers acting on behalf of IRA suspects. There is one lady solicitor in particular whose case worries them (from memory: Rosemary Nelson?)’*. While a list of other speakers was not available, the assumption of the author of the fax was that *‘the hearing will no doubt be sympathetic to critics of the RUC’*.

27.7 The NIO declined to send a representative to the meeting because it involved *‘issues on which, although we have a perfectly good position, for a variety of reasons anyone responding to public – presumably hostile – questioning could end up looking evasive’*. One such reason was described as *‘current court proceedings by Rosemary Nelson’*.

27.8 On 29 September 1998 Rosemary Nelson attended the meeting of the Sub-Committee together with Dato’ Param Cumaraswamy, the UN Special Rapporteur on the Independence of Judges and Lawyers whose report in April 1998 had referred to harassment of defence solicitors in Northern Ireland (see Chapter 19.70 to 19.72), Peter Madden of the Belfast-based solicitors Madden and Finucane, and Paul Mageean of CAJ.

27.9 The public sub-committee meeting was chaired by the Hon Christopher H Smith. The Chairman of the full Committee on International Relations, Benjamin A Gilman, attended and questioned Rosemary Nelson.

27.10 The UN Special Rapporteur addressed the sub-committee, followed by Peter Madden, Rosemary Nelson and Paul Mageean, who each read a prepared statement, after which they were questioned by members of the sub-committee.

27.11 The text of Rosemary Nelson's statement as delivered was as follows:

I have been a solicitor in private practice in the north of Ireland for the past 12 years. My practice includes a mixture of several areas of law, including crime, matrimonial, and personal injury cases. My clients are and always have been drawn from both sides of the community.

For the past 10 years, I have been representing suspects detained for questioning about politically motivated offenses. All of these clients have been arrested under emergency laws and held in specially designed holding centers. There are three such centers across Northern Ireland.

Since I began to represent such clients, and especially since I became involved in a very high-profile murder case, I have begun to experience some difficulties with the RUC.

These difficulties have involved RUC officers questioning my professional integrity, making allegations that I am a member of a paramilitary group and, at their most serious, making threats against my personal safety, including death threats. All of these threats have been made to my clients in my absence because lawyers in Northern Ireland are routinely and always excluded from interviews with clients in the holding centers.

This behavior on the part of RUC officers has worsened over the past 3 years² and, most particularly, since I began to represent the residents of the Garvaghy Road area in Portadone [sic]. These people objected to an Orange Order march passing through their area from the Drumcree Church. Last year I was present on the Garvaghy Road when the parade was forced through. I had been present on the road for a number of days because I had instructions from my clients to apply for emergency judicial review of any decision allowing the parade to pass through this area. When the police began to move into the area in force, in the early hours of July 5, 1997, I approached police lines, identified myself as the lawyer representing the residents. I asked to speak to the officer in charge. At that point I was physically assaulted by a number of RUC officers and subjected to sectarian verbal abuse. I sustained bruising on my arm and shoulder. The officers responsible were not wearing any identification numbers, and when I asked for their names I was told to "Fuck off." I complained about the assault and abuse, but to date there's been no satisfactory response from the RUC.

Since then my clients have reported a number of incidents — one of being abused by police officers, including several death threats against myself or my family. I have three young children at home and, obviously, that's cause for some great concern. I've also received threatening letters and telephone calls. And although I've tried to ignore these threats, inevitably, I have to take account of the possible consequences to my family and also for the staff that I have in the office.

No lawyer in Northern Ireland can forget what happened to Pat Finucane, nor can they dismiss it from their minds. The allegations of official collusion into his murder are particularly disturbing and can only be resolved by an independent inquiry into his murder, as has been recommended by this Special Rapporteur.

I would be grateful if the Subcommittee could do all in its power to bring about such an inquiry, by communicating to the United Kingdom Government its belief that an inquiry in this case would, in fact, be a boost to the peace process as it has been in the Bloody Sunday case.

²Note: In Rosemary Nelson's written statement handed to the sub-committee she had written 'last 2 years'.

I have also complained about these threats, again, without any satisfactory response from the RUC itself. Although complaints against the RUC are supervised by the Independent Commission for Police Complaints, the complaints themselves are investigated by RUC officers. Recently, a senior police officer from England has been called in to investigate my complaints in view of the RUC's apparent inability to handle any complaints [of] mine impartially. This English officer is interviewing witnesses himself and has decided not to rely on any assistance from me or the RUC.

I believe that one of the reasons that the RUC officers have been able to indulge in such systematic abuse against me and other defense lawyers is that the conditions under which they operate allow them to interview clients detained under emergency law despite any scrutiny. My access to my clients can be, and has been, deferred for up to 48 hours. I'm never allowed to be present when the clients are being interviewed. Interviews are now subject to silent video recording, but are not yet being audio recorded, although this is due to be introduced. We are not sure when.

The U.N. Special Rapporteur has made a number of recommendations which would remedy the situation, but which to date have not been implemented. And, again, I would be grateful if the Subcommittee would lend a support to what he proposes.

Another reason why RUC officers abuse me in this way is because they are unable to identify me as a professional lawyer and distinguish me from the alleged crimes and causes of my clients. This tendency to identify me with my clients has led to accusations by RUC officers that I have been involved in [paramilitary] activity and I deeply and bitterly resent this. The Special Rapporteur has recommended that RUC officers be sensitized to important roles played by defense lawyers in the criminal justice system. To date, this recommendation has not been implemented, and again, I would be grateful if this Subcommittee would ask the United Kingdom Government what steps they intend to take to act on this recommendation.

Like many others, I was pleased to see the human rights provisions included in the recently signed agreement, and in particular, I was pleased that the agreement looked to the early removal of emergency provisions legislation, which has been in place in some shape or form since the inception of the state. The existence of this legislation has seriously undermined public confidence in the rule of law and has led to numerous miscarriages of justice, some of which have involved my clients. I was very disappointed when in the wake of the horrific Omagh bombing new and Draconian legislation was introduced which further erodes suspects' due process rights. For example this legislation provides for the opinion of a senior RUC officer if someone is a member of a proscribed organization to be accepted as evidence by the courts. I and many of my colleagues fear that if these laws are used, they can only lead to further miscarriages of justice.

Although this legislation has already been passed, I hope that the Subcommittee will express its concern to the British Government that it will not be used. I believe that my role as a lawyer and defending the rights of my clients is vital. The test of a new society in Northern Ireland will be the extent to which it can recognize and respect our role and enable me to discharge [it] without proper interference. And I look forward to that day.'

27.12 Rosemary Nelson was questioned by Chairman Gilman:

'Chairman Gilman: Let me ask, Ms Nelson, you recited the fact that there have been threats against your life. Have you made any requests for security protection?'

Ms Nelson: No, I didn't make any specific requests for security, but the RUC was notified about these threats. They have continued to be notified about them. In fact, I have continued, as recently as July of this year, I had a similar threat. That complaint

was made know[n] to the RUC as well, but the question of security just hasn't been raised.

Chairman Gilman: Wouldn't it be appropriate for you under these circumstances to make such a request for security since your life has been threatened?

Ms Nelson: Possibly, but to be perfectly honest, I'm not sure I would use a firearm. I mean I have taken certain precautions around the home.

Chairman Gilman: But I'm talking about the U.N. provision that we discussed where the government has responsibility to provide you with security if your life has been threatened.

*Ms Nelson: Yes indeed. The government does have responsibility, but the procedure there is, if you request security from the RUC, your house or your premises are assessed by the RUC for these security installations. And I wouldn't have any great faith in the RUC coming to assess that.'*³

27.13 Chairman Gilman asked this question: *'And how do you feel about the RUC replacement or the reforms, Ms. Nelson?'* Rosemary Nelson replied:

'Well, I think the issue of policing is very, very fundamental to the aspirations in the agreement and is inextricably linked to justice and equality issues. And as it exists, I don't think the RUC can answer the demands posed by the agreement. I don't think downsizing is an answer. I think their ethos has to be changed. I think their entire culture has to be changed.

They are totally unacceptable, certainly, to most of my clients and I'm not very happy with them either.'

27.14 Chairman Smith also questioned Rosemary Nelson about the investigation into the death of Robert Hamill: *'Can I just ask you about the Robert Hamill case? What is the status of that investigation? Has the family pursued an inquiry through the Independent Commission for Policing?'* She replied:

'Yes. I represent the Hamill family. This is a very unfortunate case in which a 26-year-old man was kicked to death in the streets of Portadone [sic] in the presence of a police land rover which was just a number of yards away. There were four police personnel in the land rover. To date, the police investigation, again, has been much less than adequate. Forensic evidence was allowed to walk away from that scene, until some days after Robert Hamill died. Obviously, questions have been raised regarding the role of the police. They seem unwilling to answer that and, in fact, as legal representative for that family, I have had absolutely no joy in ascertaining what did happen on that night. Again, I think this reflects the ethos of the police, despite the fact that complaints have been lodged. And, yes, the family is compiling a dossier for the commission. Absolutely no inroads have been made.'

27.15 A record of these proceedings was prepared by an official of the British Embassy in Washington DC who attended. Her record was sent by the British Embassy with a covering letter, dated 30 September 1998, direct to the NIO Head of Police Division. In that record are the words:

'Ms. Nelson described her experiences with harassment and intimidation as a solicitor in private practice in Northern Ireland for the past 12 years. In her estimation, it has

³On this evidence it would seem that Rosemary Nelson would not have been prepared to allow the RUC to carry out the security assessment that would have been a necessary part of a KPPS application.

gotten worse over the past two years. Although she had clients from both Nationalist and Unionist communities, she has been called “NRA,” [sic] her professional integrity has been called into question; and she has received threats against her personal safety including death threats. She would like to ignore them but she has three small children at home. She also has been assaulted by members of the RUC during the Orange Order march on 5 July 1997.’

27.16 A copy of the record of the sub-committee’s proceedings was sent by Police Division to Command Secretariat on 12 October 1998. Despite the receipt of this record by the NIO and the RUC we have seen no evidence of any subsequent discussion within either organisation about Rosemary Nelson’s allegations. It should have prompted active reappraisal of the need to provide security measures for Rosemary Nelson.

28.1 During July, August and September 1998 there were almost nightly protests in Portadown and a great deal of civil unrest in other parts of Northern Ireland.

28.2 While most of the violence was at a low level there were glimpses of more deadly intent. *The Portadown Times* reported that shots had been fired at an Army Land Rover in the early hours of 9 July 1998¹ and, within days, a man was videoed firing shots at the police lines at Drumcree. It was inevitable that sooner or later serious injuries would be sustained among the police dealing with the demonstrations, and in early July several officers were injured by blast-bombs thrown from the crowd.² On 5 September 1998 Constable Frank O'Reilly was very badly wounded when he was struck on the head by a blast-bomb during clashes with demonstrators. He died of his wounds on 6 October 1998.

28.3 The presence of Loyalist Volunteer Force (LVF) members and others associated with one or other of the Loyalist paramilitary groups among the crowds which assembled at Drumcree had been noted. Within the Royal Ulster Constabulary (RUC) and in government there were concerns that the events might lead to a breakdown of the ceasefire, which had been declared by all the major Loyalist terror groups, including the LVF. These fears were reflected, for example, in the minutes of a Security Policy Meeting on 9 September 1998 which recorded that the '*LVF leadership remained determined to maintain its ceasefire with the clear objective of enabling its prisoners to qualify for early release (although some LVF members professed disillusionment with the group's ceasefire strategy and talked about the possibility of mounting attacks in Northern Ireland and the Republic).*' This meeting was chaired by Adam Ingram, the Minister of State responsible for security; those attending included senior officials from the Northern Ireland Office (NIO), the Director and Coordinator of Intelligence (DCI), and the Chief Constable of the RUC, Sir Ronnie Flanagan. This kind of meeting was the principal forum in which the Ministers discussed security issues with advisers. Minutes of this particular meeting reveal that Sir Ronnie Flanagan alerted those present to his view that disenchanted and dissident Loyalists, opposed to the Good Friday Agreement, remained active. They record him saying that '*there was growing evidence of another Loyalist group being formed in Portadown – separate from the LVF*'. He observed that the '*explosive devices used over the past weekend were not of the same design as LVF ones and were extremely crude but effective – an RUC officer was still in hospital, critically injured*', referring to the attack on 5 September 1998 on Constable Frank O'Reilly. The minutes also state that Sir Ronnie Flanagan reported: '*On the situation in Portadown [...] that since Drumcree, 5 July, the RUC had made 92 arrests in Portadown alone, and another 200 Province-wide for disturbances connected with the Orange wish to walk down the Garvaghy Road.*'

28.4 A number of groups appeared and disappeared during the period and were mentioned both in the media and in intelligence reporting: Justice for Protestants was one and Ulster Protestant Militia another. But it is doubtful whether either label could have been applied to a coherent group for any length of time. Two rather more enduring groups did emerge, however, during the autumn of 1998. The first of these called itself the Red Hand Defenders (RHD); the second, the Orange Volunteers. Within the upper echelons of the RUC and within the Security

¹*Portadown Times* 10 July 1998

²*Portadown Times* 17 July 1998

Service there was, in the latter part of 1998 and the early months of 1999, a growing realisation that these groups posed a deadly threat to members of the Nationalist community. As the months passed, both claimed responsibility for a series of violent attacks; both were considered sufficiently identifiable and enduring for the Secretary of State to proscribe them from midnight on 3 March 1999.

The Red Hand Defenders

28.5 The first claims made on behalf of the RHD were in September 1998 when there were a number of fire-bomb attacks on Catholic-owned businesses in Mid-Ulster. The group also claimed responsibility for the blast-bomb which killed Constable Frank O'Reilly. A Security Service Source Report dated 26 October 1998, described a *'New secret breakaway group formed by LVF members [...] to defend Loyalist communities in the event of a return to war'*. The report stated: *'There were a number of individuals within the LVF who felt that the war was not over, and that there was a requirement for a small well organised Loyalist force to maintain an armed capability to defend the Loyalist community. As a result a number of existing LVF members had now formed a new paramilitary group.'* An officer working on the Loyalist Desk in Assessments Group, Belfast, noted: *'This certainly represents a worrying development which we will monitor closely.'*

28.6 On 31 October 1998 a Catholic, Brian Service, was shot dead while walking in the Ardoyne area of Belfast. *The Irish News*, reporting on the murder said *'sources now believe that the killers, calling themselves the Red Hand Defenders, are a dissident offshoot of the Loyalist Volunteer Force'*. The newspaper stated: *'The shadowy group [...] warned that there would be more attacks to come. They said they were carrying out attacks against the "Irish Agreement" – meaning the Good Friday deal.'*³ Responsibility for the murder was claimed by a caller using a codeword which was later used in relation to a number of attacks including that upon Rosemary Nelson.

28.7 A Security Service Source Report of 6 November 1998 said: *'Red Hand Defenders consist of LVF, Ulster resistance and DUP [Democratic Unionist Party] elements'*. The report included the following detail: *'The main body of personnel within the RHD was from the LVF. There were a few people in Belfast who had joined with a number in mid-Ulster in forming the group.'* A report dated 19 November 1998 stated that *'the RHD rather than being any type of formal organisation comprised a small opportunistic group of loyalist dissidents largely based in Belfast. [Redacted] because of the nature of these individuals it was quite likely that they would carry out further attacks on members of the nationalist community.'*

The Orange Volunteers

28.8 The Orange Volunteers issued a barely noticed press statement on 14 October 1998 in which it claimed its objective was to *'protect the Reformed Faith; our Country; People and Culture from the [...] foolish conspiracy by the British and Irish Governments to unite Ulster with the Republic of Ireland'*. The statement declared *'war on the enemies of Ulster'* and claimed that the group was prepared to *'take any action deemed necessary to prevent the formation of a 32 county Irish Nationalist state'*. It was taken more seriously, however, when it claimed responsibility for attacks on Catholic-owned businesses on 30 October 1998, and for the shotgun attack on a Catholic bar in West Belfast on 31 October 1998, also claimed by the RHD.

³ *The Irish News* 2 November 1998

28.9 A Security Service Source Report of 19 November 1998 commented on *'the re-emergence of the Orange Volunteers as a well organised Province-wide group prepared to take militant action'*. The report included the following analysis: *'The group was represented in all parts of the Province and, although it remained essentially a Doomsday-type organisation, some of its members, who included former UVF [Ulster Volunteer Force] and UDA [Ulster Defence Association] activists were becoming increasingly prepared to become involved in actions such as attacks upon nationalist properties.'*

28.10 On 26 November 1998 Ulster Television reporter, Ivan Little, interviewed a group of Loyalist paramilitaries calling themselves the Orange Volunteers who were threatening murder in support of the Drumcree Orangemen. *The Irish News* of Saturday 28 November 1998 reported on the television coverage. It quoted a spokesman for the group as saying: *'We are defenders of the reformed faith. Our members are practising Protestant worshippers [...] Ordinary Catholics have nothing to fear from us. But the true enemies will be targeted.'*

28.11 On 28 November 1998 a number of individuals were arrested and, during searches, weapons of the type displayed during the earlier television coverage were seized. An article in *The Mirror* of 30 November 1998 reported that *'A Protestant pastor has been quizzed by police about an explosives cache found hidden in his mission hall.'* It stated that the pastor *'faced questioning about Russian-made grenades at his church office on Belfast's Woodvale Road [...] but was released without charge'*. According to the newspaper, six grenades and six detonators were found by the police during the search.

28.12 During the night of 16 to 17 December 1998, a grenade was thrown and shots were fired at the home of a known Republican in Castledawson, South Derry. The attack was claimed in the name of the Orange Volunteers in a telephone call to the BBC on 17 December 1998. They also claimed responsibility for an explosion at the GAA Club at Magherafelt on 6 January 1999. The caller was quoted as saying: *'The wider nationalist community have everything to fear, now the siege of Ulster continues, with the British government abandoning the loyalist people and the Irish government standing up for Republicans, the Orange Volunteers are ready to defend our people.'*⁴

Awareness of the growing menace: January to March 1999

28.13 Minutes of the Security Policy Meeting on 13 January 1999 recorded that *'the Orange Volunteers had claimed responsibility for the recent grenade attack on the GAA building in Magherafelt. Such attacks were being claimed either by the "Orange Volunteers" or "Red Hand Defenders" or "Ulster Protestant Militia" but there was nothing to indicate whether these names were anything other than labels used to claim attacks by militant loyalists on the fringe of the Justice for Protestants group.'*

28.14 On 19 January 1999, an explosion occurred at the rear of an isolated farmhouse at Loughinisland, County Down. The attack was well targeted, the householder was reported to be a senior member of Downpatrick Provisional Irish Republican Army (PIRA) and he received minor injuries in the blast. Shortly after the attack, Ulster Television received a call from the Orange Volunteers claiming responsibility and stating that the attack had been made against a *'PIRA Commander in South Down'*. The caller warned that there would be more attacks *'against the enemies of Ulster'*. The brief for the Security Policy Meeting on 9 February 1999 referred to the attack in the following terms: *'Militant loyalists have carried out further sectarian attacks, including one against a senior member of Downpatrick PIRA. Further*

⁴*The Irish News* 7 January 1999

attacks are likely.' The author commented in relation to this, *'We judge that further sectarian attacks in Northern Ireland are likely: there is no intelligence to confirm that attacks in the republic of Ireland are being planned.'*

28.15 These records show that it was understood within the RUC, the NIO and the Security Service that these groups posed a significant threat. There also appears to have been an accurate understanding of how the groups were composed. A Security Service Northern Ireland Intelligence Report (NIIR) of 19 January 1999, which was circulated widely to senior officials in the NIO, for example, reported that the membership of the Orange Volunteers comprised *'ex-paramilitaries, some with UVF and UDA connections but mainly former LVF and Ulster Resistance members.'* As regards the Red Hand Defenders, they *'were following a similar political agenda. There was some cross-over in membership between the two groups although the RHD was smaller and featured more evangelical Christians. The RHD was supported by [redacted] (the leader of "Justice for Protestants") and his associates.'*

28.16 These reports were not totally reliant on RUC sources. The Security Service ran sources in Northern Ireland and did so sometimes in conjunction with Special Branch (SB). It was explained to us that their interests differed; the Security Service being concerned predominantly with, as it was described to us, *'strategic issues'* and SB being more concerned with *'tactical'* intelligence. There appears to have been very little exchange of information between the two organisations at a working level. A desk officer who was responsible for the preparation of NIIRs during that period told us that in Assessments Group they did not have access to RUC computer systems and that if intelligence was disclosed to them it was in the form of paper reports *'possibly of the order of one or two a month'*. In his evidence he said:

'We would discuss our reporting with the Special Branch colleagues and there would be a frequent discussion and they would tell us often how they considered sort of the general trend of things to be going. But in terms of the specific reports, they were very circumspect in terms of what they gave out, and only when they considered it necessary to give something to us on paper would they do so. [...] We received from them what they were gracious enough to give us. [...] The only reason when they would see fit to provide materials to us was when they specifically intended it to go to our customers. We were the conduit to ministers and officials. Much of the RUC's material was concerned with operational activities on the ground and they considered that we were – that wasn't relevant to the line of intelligence that we were developing.'

28.17 There was, however, a regular exchange of strategic information between the organisations at a high level and this was formalised in the weekly meetings of the Intelligence Review Committee (IRC), chaired by the DCI, or by the Head of Assessments Group.

28.18 In early 1999 the Security Service and RUC Headquarters were in fact continually alive to the potential threat from the Orange Volunteers and RHD as demonstrated by the minutes and annexes thereto of IRC meetings, all of which were attended by the Head of SB (HSB) or Deputy Head of SB. The ability to gather reliable intelligence on these paramilitary groups was limited. There was, however, an appreciation of the gaps in reliable intelligence. The minutes of an IRC meeting on 13 January 1999, for example, included the following note:

‘IRC Priority Intelligence Requirements

Loyalist

There is a requirement for more background intelligence on the RHD/Orange Volunteers to put reporting on them into context. In particular, more reporting on their numbers, geographical spread and cohesiveness would be extremely useful.’

28.19 The minutes of the IRC meeting held on 20 January 1999 recorded the following:

‘Indicators and Warning Chart

There has been a step up in Orange Volunteer activity; new groupings are being set up in a number of towns and weapons distributed. The main significance of this is the increasing geographical spread of the group.

Priority Intelligence Requirements

LOYALIST

Any intentions by militant loyalists (such as the ‘Orange Volunteers’ or ‘Red Hand Defenders’) to undertake further paramilitary activity, an indication of their capability and membership; and the nature of their links to (and support from) members of established paramilitary groups.’

28.20 An Intelligence Assessment prepared for the meeting on 27 January 1999, which was sent to all committee members in advance, including the HSB, contained an explicit warning: *‘Militant loyalists have carried out a number of attacks – including two against PIRA members. Further attacks are likely.’* The following detail was given: *‘The “Orange Volunteers” (OV) and “Red Hand Defenders” (RHD) were responsible for a number of attacks during the period, including two against known PIRA members [...]. We judge that further attacks, including against known republicans, are likely.’*

28.21 The minutes of the IRC meeting held on 27 January 1999 recorded the following:

‘LOYALIST

Assessment

The ‘Orange Volunteers’ (OV) and ‘Red Hand Defenders’ (RHD) were responsible for a number of attacks during the period, including two against known PIRA members (incident list refers). We judge that further attacks, including against known republicans, are likely. There is no reporting to confirm that the OV or RHD have distinct leaderships, structures or memberships, although differences in modus operandi are beginning to emerge – the RHD have continued to attack ‘soft’ Catholic targets whilst the OV have demonstrated an ability to target PIRA members. Reporting has suggested that the OV have ‘units’ across the Province and that loyalist paramilitaries – including former LVF, UDA, UVF and Ulster Resistance members – are involved. Reporting also indicates, however, that there is a degree of overlap with the membership of the RHD.’

28.22 The minutes of the IRC meeting held on 10 February 1999 recorded the following:

'IRC Priority Intelligence Requirements

GAPS

Loyalist

There has been little reporting on [redacted]

And similarly little on the capabilities and intentions of the Orange Volunteers and Red Hand Defenders.'

28.23 The minutes of the IRC meeting held on 17 February 1999 recorded the following:

'Priority Intelligence Requirements

LOYALIST

Planning by militant loyalists (such as the 'Orange Volunteers' or 'Red Hand Defenders') to undertake further paramilitary activity; an indication of their capability and membership; and the nature of these individuals links to (and support from) members of established paramilitary groups.'

28.24 The minutes of the IRC meeting held on 24 February 1999 recorded the following:

'Prescription [sic] and Despecification

SOSNI [Secretary of State for Northern Ireland] is currently considering a package involving the proscription and specification of both the Orange Volunteers and the Red Hand Defenders, [redacted]. The Chief Constable has been consulted; he had no objections, but wanted to ensure the Red Hand Defenders would be proscribed as well as the Orange Volunteers.

LOYALIST

KEY POINTS

'Orange Volunteers' are now emerging as a separate group.

There is now a clearer picture of who is responsible for attacks claimed under the 'Red Hand Defenders' label.

Assessment

Militant loyalists have continued their campaigns of sectarian attacks against republican and Catholic targets, with the aim of increasing inter-community tension and destabilising the political process: we judge that further sectarian attacks by the 'Orange Volunteers' and militant loyalists operating under the 'Red Hand Defenders' (RHD) name are likely.

Intelligence is starting to indicate a distinction has emerged between the OV and the RHD: the OV is reported to have units across the Province which are controlled by a 5-man committee. It has demonstrated its ability to accurately target known republicans and is reported to be considering attacks in the Republic of Ireland. The group, however, has a limited supply of munitions and its procurement attempts have so far been unsuccessful. Meanwhile there appears to be two elements to the RHD; there is a small number of individuals (based in South Antrim/North Belfast area) who we assess to

be core members of the RHD but who have been inactive for several months; separately the RHD name appears to be being used as a flag of convenience by numerous militant loyalists – including members of the UDA acting without leadership sanction – to claim intimidatory attacks against Catholics.'

28.25 The minutes of the IRC meeting held on 3 March 1999 recorded the following:

'The Proscription and Specification of the OV/RHD

SOSNI has decided to proscribe and specify the Orange Volunteers and Red Hand Defenders [redacted]. The announcement of these decisions will be made today.'

28.26 The minutes of the IRC meeting held on 10 March 1999 recorded the following:

'IRC Priority Intelligence Requirements

GAPS

The following are areas where gaps in coverage were evident through the month or where more reporting would have been significant:

OVs/RHD.'

Within Special Branch: the picture at the local level

28.27 From the beginning of November 1998, the regions began to receive intelligence regarding the membership of the RHD and its links with the Orange Volunteers. Further intelligence was also received in relation to weapons held by each of the groups. This seems, however, to have been collected more because of the continuing interest in local offices in the activities of those who were engaged in the groups rather than as a result of a concerted effort to understand and focus on the groups themselves.

28.28 SB officers who were based within a local police station discussed the intelligence they collected among themselves, but they had limited knowledge of intelligence that had been gathered by officers in other police stations within their own region or from other regions. One officer based at Lurgan told us:

'Intelligence was dealt with on a "need to know" basis. Access to intelligence was therefore confined. The only intelligence I ever saw or had access to was the intelligence that the Lurgan Office submitted, or intelligence that someone outside the Lurgan area had reported into the system in relation to someone who was on our patch in Lurgan. I had no access to intelligence outside my area as I did not need to have such access. The job of sharing intelligence, having gone to Regional Source Unit and then Headquarters would ultimately be allocated by the desks at HQ who would assign intelligence to specific groupings identified by them. It was at Headquarters that all the intelligence would be read and decisions made there as to what computer entries would be made.'

28.29 In early January 1999 intelligence was received in Belfast indicating that certain individuals were members of the RHD, and that others had aligned themselves to the group. Another report indicated that a particular person who was thought to be a leading member of the RHD was associating with the LVF in Antrim and Larne. Under the system which operated within SB in the RUC those manning the 'Desks' at Police Headquarters (E3A the Republican Desk, and E3B

the Loyalist Desk)⁵ never saw original contact notes made by the officers on the ground as a result of a meeting with an agent or the use of a listening device or intercept. Intelligence would be sanitised at a local level before it was submitted to the regional Source Unit. This version might then be further sanitised before being made available to the E3A or E3B Desks in Belfast. We saw no evidence that the Desks carried out any in-depth analysis of the information that it was sent, as opposed to merely summarising it for use by the Intelligence Management Group (IMG) and beyond.

28.30 In early February SB officers in Lurgan submitted a report to the Source Unit in Portadown indicating that *'loyalist militants intend to attack a number of unknown Catholic targets within the Mid Ulster area'*. The sanitised report further stated that *'these attacks are likely to take place in isolated areas outside the main towns'*. As a result of this a 'General Threat' warning was circulated to police stations in South Region. The entry which followed in the Occurrence Book at Lurgan police station on 3 February 1999 stated: *'Loyalist paramilitaries have plans to carry out further attacks on Roman Catholic targets in the Mid Ulster area. The unpredictability of these groupings make it impossible to identify any such targets however indications are that attacks are likely to take place in isolated areas outside of main towns.'* As was usual, the sanitised report was sent to E3B, at Police Headquarters, as was a copy of the 'General Threat'. It was not at all clear to us whether these documents were circulated in the Belfast and North Regions.

28.31 Intelligence was also received in Belfast some days later: *'Members of the RHD and O/Cs [sic] intend to step up their campaign against Roman Catholics within the next two weeks. Both groups are targeting leading Republicans.'* This was circulated widely within Belfast Division and shared with E3. Yet another warning, indicating that improvised grenades were being prepared for use in *'imminent attacks'* came from Armagh. Intelligence received in Belfast in mid-February resulted in the issue by E3 of a force-wide warning which stated that *'a militant organisation intends to carry out a number of undefined attacks on persons or places which have links to the Roman Catholic Community within the next 48 hours'*. The warning directed that *'appropriate action be immediately taken to prevent such attacks, province wide, by implementing established sub-divisional VCP [Vehicle Check Point] and other related plans'*.

The response to the growing menace

28.32 For many months before the murder of Rosemary Nelson, close observation was being maintained on those who were suspected of being involved in these new groups, although some of this had been underway for some time. The LVF in Antrim had been the object of SB attention throughout 1998 and this continued into 1999. Now the Justice for Protestants group was also targeted, as well as those who were thought to comprise the Orange Volunteers. Surveillance teams were put to work in Antrim and in Belfast. In Portadown, a long-running operation known as Operation Shubr, which targeted particular members of the LVF, was activated and surveillance was maintained on key members of the LVF on a number of occasions during January, February and March 1999.

28.33 The SB Detective Inspector from Lurgan explained to us why this latter operation, which had originally been commissioned in April 1998, was re-activated during these months. He told us that *'the LVF had been implicated in a number of attacks across Lurgan and Portadown. They were causing us problems with Drumcree, were heavily involved in drug running and we believed were responsible for the murder of Adrian Lamph.'* The surveillance was conducted by a specialist Army unit from

⁵See Appendix C

Lisburn as directed by the Tasking and Coordination Group (TCG). One reason for this was concerns, echoed by a number of RUC officers, that details of the surveillance operations might be leaked to Loyalist paramilitaries by members of the 3rd Battalion of the Royal Irish Regiment (3 R IRISH) based in Portadown. An SB Detective Sergeant said: *'It was my understanding that there was concern that some of the part-time UDR members [i.e. Ulster Defence Regiment members based on Mahon Road] were directly related to or associates of Loyalist paramilitaries. We were therefore concerned about leaks that may not only compromise operations but may result in the identity of surveillance officers being leaked. For this reason, the majority of operations against the Loyalists were handled by the Army who operated out of a different location.'*

28.34 The aim of the surveillance was to identify *'Individuals Involved'* and *'Potential Targets'*. The nature of it was described to us by a Chief Inspector from South Region who said:

'It was what I would call lifestyle, pattern building, getting to know them, getting to know their associates, getting to know the vehicles that they used. On the occasions when we did get specific intelligence, we did go out with a specific operational outcome in mind. So there were times when it was specific, but we were actually running similar operations right across the region. We would have looked at dissident groups in various areas and, as I say, part of that was so that if specific intelligence came in, we weren't asking a surveillance team to go out and work on people who weren't known to them. The officers would have been out, they would have identified who the various personalities were and it actually aided them. I don't really want to say more in the open session, but there were good operational reasons for why they needed to get to know who these people were, the vehicles they used, the premises and things they frequented.'

28.35 Another officer described how the surveillance might assist in identifying potential victims. He said:

'If you carried out surveillance on a particular named target on this occasion – obviously, it is down as the Mid-Ulster LVF. If you had carried out surveillance on them, you may have been in a position to observe them carrying out some form of actions that would have led you to believe they were carrying out targeting of particular people if they routinely went in particular areas that they normally wouldn't have been associated with or whatever. Something unusual in their behaviour that would have led you to – they could have been looking at certain individuals or targeting certain individuals or properties or whatever it was at that occasion.'

28.36 We were told that particular deployments were initiated in response to intelligence. The Chief Inspector from TCG told us: *'We had to prioritise operations on a daily and hourly basis, depending on what intelligence updates we had. We discussed these with the Superintendents and [redacted] to see what operations took priority. This meant that we might do Operation Shubr one day, but not again for a few days.'* This view was supported by the Regional Head of SB South Region (RHSB(S)). He explained that Portadown was a small town, and that the people who lived there were very surveillance-aware. He described Mid-Ulster as *'a small goldfish bowl'* and stated that consequently surveillance *'had to be intelligence-driven – it is impossible to carry out surveillance 24 hours a day, 7 days a week in that area'*. He told us that continuous surveillance was impossible both because of limitations on resources and for safety reasons.

Failure to recognise the imminent threat

28.37 Having examined all the intelligence disclosed to the Inquiry by the Police Service of Northern Ireland (PSNI) it is clear to us that within SB there was information which, considered as a whole, demonstrated that individuals who could be associated with either the Orange Volunteers or the RHD intended to carry out violent attacks on *'leading Republicans'*. It was also the case that these individuals were in contact with each other and were vying with each other for recognition as defenders against the *'enemies of Ulster'*.

28.38 We were concerned to learn that SB in South Region received particular intelligence during the first three months of 1999 which, if subjected to close analysis, might well have indicated that a very local attack was imminent and that it was to be carried out by individuals who were believed to have been active members of the LVF in Portadown.

28.39 After the murder of Billy Wright on 27 December 1997 leadership of the LVF had fallen to the second-in-command, Mark Fulton. On 5 December 1998 Mark 'Swinger' Fulton was arrested in Portadown after he had threatened another man with a handgun and fired shots into the air. It was reported that he was under the influence of drink at the time. Although he subsequently claimed that he had been carrying the weapon in order to hand it in to the authorities, little credence was given to this story. On 28 January 1999 the LVF sent a statement to the NIO claiming that Mark Fulton's release *'was essential to maintain the group's ceasefire and to secure further decommissioning'*.

28.40 The position was analysed in a note prepared for the Security Policy Meeting (SPM) of 9 February 1999:

'FULTON is the key member of the LVF leadership and this statement is likely to be part of a personal initiative to engineer his release rather than a true reflection of any internal LVF tensions: there is no current intelligence to indicate that the LVF ceasefire may be jeopardised by FULTON's continued imprisonment. Indications that the group might be willing to hand over a further batch of 'surplus' weaponry will also have been partly motivated by the desire to influence FULTON's case. We judge that the LVF leadership is unlikely to risk forfeiting its continued qualification under the Sentences Act by authorising a return to violence. The involvement of individual LVF members in attacks by militant loyalists is, however, likely to continue.'

28.41 Whether the analysis of Fulton's motives was correct is not within our Terms of Reference. But we were told that during January and February 1999 a member of the LVF asked to meet a local RUC officer in order to canvass his support for Mark Fulton's release in return for an LVF promise regarding decommissioning. During the course of one of these meetings the officer was handed a small amount of an explosive. This was probably not the same type as that used in the bomb which killed Rosemary Nelson, but it was noted as a result of reports submitted by the officer that the source of the explosive was a man who was well known to SB as a Loyalist bomb-maker. The intelligence reports suggested that this man had access to *'a further small amount of explosives'*.

28.42 The bomb-maker remained in contact with the LVF in Portadown and it was learned in mid-February by SB in Portadown that he had been in contact with a particular member of the LVF in Portadown and that the bomb-maker was *'making arrangements for something to be delivered'*.⁶ Within a few days further intelligence was

⁶The MACER report is dated 19 March 1999 giving rise to the possibility that the intelligence was missed entirely.

received within Lurgan SB from another source indicating that the bomb-maker was 'in close contact' with the LVF in Portadown and was to provide members of the LVF 'with some form of munitions which are to be moved into the Portadown area in the near future'. A day or two earlier, information had been received by SB in Portadown that these individuals had arranged a meeting on a particular date. Before the end of the month intelligence reported that the bomb-maker had met the member of the LVF with whom he had earlier been in contact. It was also known that they remained in contact during the first week of March 1999.⁷

28.43 The RHSB(S) told us that there *'were a number of these reports. At the time, we were not sure what all this was about. We thought this intelligence was most likely drug related and that the package to be delivered was drugs. Both [redacted] and [redacted] were big players in the drug market. They were also active terrorists. There was a fine line between drug dealing and terrorism.'*

28.44 When questioned about this report the SB Detective Inspector in Lurgan conceded, in retrospect, that the 'munitions' referred to in the Lurgan report might well have included the bomb which killed Rosemary Nelson. He told us:

'Our suspicion at the time was that this was something to do with drugs. With the benefit of hindsight this could now have been the bomb. At the time I think there was other intelligence that we were getting which indicated that munitions were being sent down but we were not sure. If we had had [sic] known when any meeting between [redacted] and [redacted] was happening, I suspect we would have placed surveillance on them. Indeed, there may well have been surveillance in relation to a subsequent meeting between the two of them but, to my knowledge, this did not produce anything.'

28.45 We are aware that, in fact, surveillance was commissioned in response to the intelligence that a meeting was to take place between the bomb-maker and a member of the LVF on a particular date and that it was carried out on that day and on two other days in late February and early March 1999. No meeting between these two individuals was witnessed by the surveillance team.

28.46 Further intelligence received in Portadown during the first week of March 1999 indicated that the bomb-maker and the LVF member had been in contact once again.

28.47 Having examined the original notes of the intelligence received it appears to us that significant information contained in these notes was omitted in the sanitisation process. We believe that those who had access to these notes, and to the other intelligence concerning the activities of the particular individuals named in it, should have appreciated the very real likelihood that what was to be delivered were in fact two explosive devices, probably larger than blast-bombs, and that they were to be moved secretly into the Mid-Ulster area, not by those to whom the intelligence refers but by others whose identities were not disclosed, and presumably were intended for use against a target or victim within that area.

28.48 No written record of any analysis of this intelligence, nor of any discussion concerning it, was disclosed to the Inquiry and we have assumed therefore that the only information that was passed on was that which was included in the reports themselves. It appears to us in this instance that vital intelligence was neither fully understood, nor exploited by SB, and the severity of the threat was not appreciated. We believe that neither the RHSB(S) nor the Detective Inspector from Lurgan would have been willing to characterise what was going on as drug-related had

⁷It was later established that the bomb-maker had visited Mark Fulton in Maghaberry prison on 27 February 1999.

they seen the notes that we have been able to examine. In the context of what was known about the RHD and the Orange Volunteers, all the signs pointed to something altogether more sinister and we do not discount the possibility that what was missed was in fact the genesis of the plot to murder Rosemary Nelson.

28.49 We believe, however, that here the structure of SB and the very rigid interpretation of the ‘need to know’ principle that was applied within it, may well have contributed to what appears to have been a failure to recognise the intelligence value of some important details of information. We do not believe that an individual officer should carry responsibility for what was a structural and organisational weakness whereby a single officer or perhaps even a small group of officers were required to make a judgement as to the relevance of information in relative isolation. In this regard we noted the contrast between the manner in which the ‘need to know’ principle was applied within the Security Service and the manner in which the same principle was applied in the RUC. The Security Service DCI told us:

‘Available intelligence would be drawn together and analysed by the Desk officers on a continuous basis, as part of a dynamic process. Desks would frequently and routinely discuss significant intelligence with their managers and any colleagues who could provide further insight, e.g. transcribers or agent handlers, as part of a continual interchange. Queries would also be raised with external partners to establish the significance of any reporting and its implications. During investigations, judgments would be made as to the appropriate action to be taken on the basis of the context and reliability of any new reporting together with prior knowledge of the relevant target individuals and groups. This information was available within the files, but in most cases would also be known to the lead desk officer as an expert in the particular target area. Management would add context based on their expertise and judgment, as well as their broader knowledge of the subject.’

28.50 We appreciate that it might well have been very dangerous for this methodology to be used within the RUC, even within SB, bearing in mind their vulnerability. Furthermore, police officers, even SB officers, inevitably lived and mixed with the wider community and came into contact, through family, friends and informal associations, with extremist sympathisers, and there was a greater risk that information known to officers would be disclosed. Indeed, as is clear from the conclusions we have drawn elsewhere in this Report (see for example, Chapter 13.17), we believe that details of intelligence reporting concerning Rosemary Nelson were in fact disclosed to other sections of the RUC and may well have found their way into the wider community notwithstanding the strict application of the ‘need to know’ principle.

28.51 Even if there had been a better appreciation within SB of the imminent danger which existed during the second week of March 1999, it would have remained a matter of judgment as to what could or should have been done.

28.52 There were, however, well-practised procedures which might have been employed to deter an attack – indeed it is somewhat ironic, as will be seen at Chapter 29.2 to 29.4, that some of these were in place in Lurgan over the weekend before the murder of Rosemary Nelson with a view to curtailing Republican, as opposed to Loyalist, activity. We consider also that no great analysis would have been required to work out who Loyalist terrorists would have considered to be the most *‘leading Republicans’* in Mid-Ulster and therefore the likely targets for any attack – they would almost certainly have included Colin Duffy, Breandán Mac Cionnaith and Rosemary Nelson.

29 The Weekend Before Rosemary Nelson's Murder

29.1 For many people in Lurgan, the weekend of 13 and 14 March 1999 was much the same as any other weekend. Sunday 14 March was Mother's Day and on the Sunday morning there was a well-attended funeral of a highly respected headmaster at St Peter's Church. However, a number of witnesses reported that there had been an increase in security force activity in the area over the weekend, in a period when there had been few, if any, incidents requiring such an additional presence. In the aftermath of Rosemary Nelson's death this was to fuel suspicion of state involvement in her murder.

Saturday 13 March

29.2 There was undoubtedly an increased security force presence that weekend. On the morning of Saturday 13 March 1999 a 'surge' operation by the Army codenamed Operation Improvise was underway. The operation was designed to counter current Republican terrorist threats. We have read relevant intelligence reports that were received during the period warning of very serious terrorist attacks and the activation of this surge operation would appear to have been fully justified. Immediately before the weekend there were two particular reports: one which warned that '*Republican elements*' were '*planning to mount a bomb attack in the near future*'; the other that '*dissident Republican elements from North Louth/South Armagh*' were '*particularly active*' and that '*some form of terrorist attack*' could not be ruled out.

29.3 The Commanding Officer of the 3rd Battalion of the Royal Irish Regiment (3 R IRISH) which was stationed at Mahon Road in Portadown told us that '*Operation Improvise was a generic operation, designed to cover a range of possible deployments from sending a couple of patrols into a particular area over a few hours, right up to deployment of a large number of soldiers as a "surge" into an area for a longer period of time. The exact scope on a week to week basis of specific orders under the ambit of Operation Improvise would be decided at the weekly DAC and sub-DAC¹ meetings. Decisions would be made upon the basis of intelligence, on known events such as marches and general "gut feel".*'

29.4 On the morning of Saturday 13 March 1999 Operation Improvise involved a nine-vehicle patrol in Lurgan Sub-Division, containing over 30 men. The patrol took place on the orders of the battalion's Operations Officer at 3 R IRISH, based in the Operations Room at Mahon Road Barracks in Portadown, and had been initiated following liaison with the Operations Planning Sergeant at Lurgan police station. The Patrol Report for 13 March 1999 shows that each of the nine teams involved in Operation Improvise that morning had returned to barracks by 12.10. It is significant that Operation Improvise ended at 12.10 on the Saturday and Rosemary Nelson did not return home from Bundoran until 18.30 on the Sunday evening.

29.5 Later, during the afternoon, there was a routine Army patrol, using four Land Rovers, accompanied by Royal Ulster Constabulary (RUC) officers. The Patrol Log reveals that these had returned to base by 23.59.

29.6 In and around the Kilwilkie Estate, a well-known trouble spot close to the Nelsons' home, there were a number of incidents of public disorder. At 17.51, a

¹Divisional Action Committee and Sub-Divisional Action Committee

'999' call was received, which stated that a package had been left outside a house in Victoria Street. A call was also received, purportedly from the Ulster Volunteer Force (UVF), claiming that a package had been left outside a house in Lurgan. At 18.47 the occupier of the house rang the police to tell them that the package had been picked up by an unknown person. When officers went to the house in Victoria Street at 19.00, accompanied by a Mobile Support Unit in Land Rovers, they were attacked by local youths with stones, bottles and paint bombs.

Sunday 14 March

29.7 On Sunday 14 March, a routine Army patrol of four vehicles, each with three men, operated in and around Lurgan, Craigavon and Moira between 11.00 and 23.00.

29.8 During the afternoon, at about 16.30, there was a report of another suspect device, this time on Lake Street. A decision was taken not to deploy security forces that evening in response. A later report indicated that the device had been thrown on waste ground near the railway line. A military clearance operation was arranged for the next morning.

29.9 Public disorder again broke out on the Kilwilkie Estate that afternoon and continued into the evening. In particular, at around 19.00, a car was set on fire in Deeny Drive. The emergency services declined to attend as they believed it was a 'come on'. During the evening, a security guard reported youths on the roof and in the grounds of a local factory.

29.10 In addition to the reports of a general increase in security force activity on Sunday night there were two specific reports which we will deal with in more detail later in this Report (see Chapter 32). The first concerned a Vehicle Check Point (VCP) seen at about 20.00 near the junction of Ashford Grange while travelling south on the Castor Bay Road towards Lake Street in Lurgan.² The second was the sighting at the top of Victoria Street between 20.00 and 20.30 of a man in a mask getting into a police Land Rover with two RUC officers (referred to in this report as 'the balaclava incident').

29.11 During the late evening of 14 March there was also a secret Special Branch operation known as Fagotto in the area around the Kilwilkie Estate which we deal with in Chapter 34.

Helicopter activity

29.12 Many witnesses reported apparently increased levels of helicopter activity throughout the weekend. One of them told us:

'In the days leading up to 15 March 1999, when Rosemary Nelson was murdered, I was surprised by the amount of patrol and helicopter activity by both the police and Army. It really was what I would describe as exceptional. During the weekend before the murder there were helicopters flying overhead and the area was very much under observation for the entire weekend. There was a continuous Army and police presence for the whole of the weekend and then on the Sunday night it was withdrawn.'

29.13 Others specifically referred to helicopter activity over the Kilwilkie Estate area, or towards the Ashgrove area, which surprised some witnesses. Referring to Sunday 14 March, one witness said:

²See Appendix M

'The amount of violence in the area at that time had calmed down somewhat and it was not so usual to have police check points or military activity around the area in which I lived. If there was military or police activity, then it was usually centred on the Kikwilkie Estate and towards Victoria Street. For the police or military to require a helicopter or for a helicopter to be in the area, then something serious must have been happening. It was unusual for a helicopter to be in the area around that time and so to see one alerted you. [...] As I was getting ready to leave again at around 5.30pm, my mother commented on the fact that there was a military helicopter in the area and that I needed to be careful if I was going out again, especially since I would be driving my father's car. My mother also remarked that there was a lot of police or military activity in the area at that time. At around 5.30pm I left my parents house to go to Victoria Street to a shop and returned home at 6.15pm. I did not see any security force activity or anything unusual at this time. I went out again at around 7.15pm to see my boyfriend. The helicopter was still there.'

29.14 Other witnesses suggested that helicopter activity carried on throughout the day and late into the evening of 14 March and also noted the apparent height at which one helicopter was operating. One of them told us:

'On 14 March 1999, the day before Rosemary died, I noticed a helicopter circling around the area where I lived. My earlier statement indicates that I first noticed the helicopter at about 11.50am, after I had returned from Mass. I do not remember times exactly, but my recollection now is that I first noticed the helicopter before I went to Mass. This would have been at about 10.45am. I recall that my husband was in the garden at the time, cutting the grass out the back. I remember commenting to him that the helicopter was flying very, very low. I would say that it was flying just above tree level. [...] It was flying so low that my husband and I thought that the people in it must have been taking photographs. There seemed to be no other reason why it should be flying so low. I have been asked whether I can actually recall seeing someone with a camera inside the helicopter. I was not able to see anyone in the helicopter itself. I do remember seeing a red light on the helicopter though. I had seen lights on helicopters before but these were white not red. I returned to my house at about 11.45am, after Mass. [...] When I returned home the helicopter was still hovering in the area. I did not leave the house at all during the rest of the day. I remember that the helicopter was still flying around the area when I went to bed at about 11.00pm. I lived about five minutes from Rosemary's house and the helicopter was circling the area around my house and her house. It was the same height over my house as her house. I thought it was all very odd.'

29.15 As we note, although such activity as there was might be explained, for the most part, by the security forces' response to the reports that they had received and the disturbances which occurred during that weekend, not all such activity can be so readily accounted for. One flight which took place late on 14 March 1999 was of particular interest to us and we examined evidence relating to it in some detail. Our detailed considerations relating to all helicopter activity are set out later in this report at Chapter 33.

The weekend in Bundoran

29.16 Rosemary Nelson spent the weekend before her death in Bundoran in County Donegal where she and her husband Paul owned a mobile home. They left Lurgan at about 18.30 on the evening of Friday 12 March 1999. Their two sons were in France that weekend on a school trip, but Rosemary and Paul Nelson took with them their young daughter and one of her friends, and Dara O'Hagan, a close friend of Rosemary Nelson.

29.17 Dara O'Hagan, not knowing that the Nelsons' sons were on a school trip, had assumed that they would need two cars, but in the event she left her car, a blue Peugeot 106, on the driveway of the Nelsons' home that weekend and they travelled in Rosemary Nelson's BMW. Their usual route took them from Ashford Grange to the M1 motorway and then on the A4 to Ballygawley and from there to Enniskillen, to Ballyshannon and finally to Bundoran. Rosemary Nelson drove as far as the Killyhevin Hotel in Enniskillen, where they stopped for something to eat. Dara O'Hagan drove the rest of the way to Bundoran. They arrived at around 22.00.

29.18 Paul Nelson and the children went to bed not long after their arrival; a bottle of wine was opened and Rosemary Nelson and Dara O'Hagan talked into the night about their families and bringing their respective parents (their mothers had known each other since school) to Bundoran for a reunion.

29.19 By all accounts it was an enjoyable weekend and nothing out of the ordinary occurred. On Saturday afternoon, Paul Nelson and Dara O'Hagan took the children to the swimming pool at the Ballyshannon Leisure Centre. Save for this one occasion and a quick trip to the local shops, the BMW remained parked outside the mobile home. Apart from this one excursion, the group spent the rest of the day and evening at the mobile home. Rosemary Nelson, it seems, did not leave the mobile home the entire weekend.

29.20 According to Dara O'Hagan the mood was light-hearted. But she recalled that on the Saturday evening Rosemary Nelson had spoken of fears associated with her work. Dara O'Hagan told us, *'On the Saturday night before she died when we were in the caravan in Donegal, most of the time when we were in Donegal she just spoke about very light matters. It was just good to get away and not think about work, but on the Saturday night she did, again, raise the subject of the issue of collusion and she did say to me, "I know that the state could kill its citizens and in a sense get away with it." And she said, in fact, "If the decision was made to take me out, or to take you out – in other words to kill you – that could be done and there is nothing anybody could do about it." She said that on the Saturday night before she was killed.'* In a statement to the Pat Finucane Centre dated 21 April 1999, Dara O'Hagan said, *'On the weekend of 12–14 March immediately prior to her murder Rosemary told me of another two death threats that had been received at her office that week, but did not go into details about them.'*

29.21 The group left Bundoran to return to Lurgan at about 15.30 on Sunday. Dara O'Hagan drove for the entire journey, retracing the route they had taken on the preceding Friday. However, because it was Mother's Day, they did not, as was usually the case, have a meal at the mobile home before departing, but stopped for something to eat at the Glengannon Hotel in Dungannon at around 17.00, where they remained for about an hour. They arrived home, later than usual, between 18.00 and 19.00.

29.22 On their return, Dara O'Hagan reversed her car off the Nelsons' drive and Rosemary Nelson drove her BMW on to it, the car facing forwards towards the garage door. Neither Rosemary nor Paul Nelson noticed anything unusual.

29.23 The BMW was unloaded and then locked by Rosemary Nelson. According to Dara O'Hagan, comment was made with regard to a helicopter that was positioned above and near Ashford Grange. Dara O'Hagan told us that she stayed at the Nelsons' home for about 45 minutes, having a cup of coffee before leaving. When she went to bed at around 23.30 that evening, she could still hear the helicopter.

29.24 Rosemary and Paul Nelson spent the remainder of the evening watching television and answering one or two telephone calls before they retired to bed, as Paul Nelson put it, not *'terribly late'*. While he remembered hearing a helicopter, he

could not recall if he had seen one that evening. He and Rosemary Nelson became aware of some disturbances and helicopter activity not too far away from their home, but for them this was nothing out of the ordinary and did not bother them.

Part B

The Murder Investigation

Our Terms of Reference required us to report on whether the investigation of the murder of Rosemary Nelson was undertaken with due diligence or whether it was obstructed. In the following chapters, we set out our findings in relation to this. We have considered the Royal Ulster Constabulary's (RUC's) response to the murder, both as an organisation as a whole and the detailed work undertaken by the Murder Investigation Team (MIT). As regards due diligence, we examined whether there was any unwillingness on the part of the RUC to undertake a thorough and searching investigation; whether there was a commitment to ensure that all proper lines of enquiry were pursued; whether the work undertaken by the MIT was carried out to an acceptable standard; and whether the cooperation given to the MIT by other state agencies was full and effective. We examined the apparent reluctance of some RUC officers to support the investigation in order to determine whether that reluctance was indicative of some connivance in the death of Rosemary Nelson; whether it might have been due to the adverse attitude which undoubtedly existed towards her within certain sections of the RUC and the military; or whether such lack of cooperation was due to other factors, not necessarily connected with Rosemary Nelson herself.

To help us examine the work of the MIT we instructed Robert Ayling, the former Deputy Chief Constable and former Acting Chief Constable of Kent Police, to provide expert evidence to the Inquiry. His role was to advise upon what could and should have been done in the course of a murder investigation such as this, and to examine whether the quality of the work undertaken was of a professional standard. We asked him to do so by reference to the objective standards of the time. He carried out this work with the assistance of a team of former police officers and specialists with relevant experience and expertise and his findings were set out in a report which was circulated to the Full Participants of the Inquiry. We are indebted to Robert Ayling and his team for the detailed research they conducted.

In the light of Robert Ayling's report, and having regard to all the evidence gathered during the Inquiry, we decided in September 2008 to focus our attention on what we consider to be the key issues. These are discussed in Chapter 35 of our report.

30 The Early Stages of the Murder Investigation

The Royal Ulster Constabulary response to the murder

30.1 When informed of the fatal attack on Rosemary Nelson, the Chief Constable of the Royal Ulster Constabulary (RUC), Sir Ronnie Flanagan, judged correctly that allegations of collusion would follow. He was aware of Rosemary Nelson's high profile among Nationalists and of the complaints that police officers had made abusive and threatening comments about her to her clients. He was also aware of the further criticism soon to be published by the Independent Commission for Police Complaints (ICPC) regarding the complaints investigations which had been reviewed by Commander Mulvihill, and of the imminent publication of a further report by the UN Special Rapporteur on the Independence of Judges and Lawyers, in which there was to be specific although anonymous reference to the allegations. These reports were almost certain to fuel anger and suspicion among Nationalist members of the community.

30.2 Sir Ronnie Flanagan told us:

'There were immediate allegations of collusion in her murder, and I was clear that there would be public confidence issues so an external appointment was an appropriate way forward. I would like to stress that this certainly did not demonstrate a lack of confidence in my own Force's ability. My decision to appoint an external lead investigator (an Officer in Overall Control (OIOC)) was wholly about the need to address public concerns that the Murder Investigation Team [MIT] would have a degree of independence from the RUC.'

He stated:

'My priority was of course to ensure that a thorough murder investigation followed. I was aware that there would be intense international interest in the murder and I immediately made it clear that I wanted to appoint an independent investigator of the highest calibre.'

30.3 Sir Ronnie Flanagan contacted Sir Dan Crompton, HM Inspector of Constabulary, on the day of the murder, 15 March 1999, and asked for help in finding a non-RUC officer who could lead the investigation. He also approached the then Director of the Federal Bureau of Investigation (FBI), Louis Freeh, to ask if he could assign agents to the case. Sir David Phillips, the Chief Constable of Kent Police, agreed to oversee the early stages of the investigation and two of his senior officers arrived in Lurgan on the evening of 16 March 1999. Sir David Phillips arrived the following day. Soon after, they were joined by agents from the FBI.

30.4 The Kent officers and FBI agents were involved in the investigation for a limited period and their role was never clearly defined. On 29 March 1999, however, it was announced that Colin Port, the Deputy Chief Constable of Norfolk, had agreed to lead the investigation as Officer in Overall Command (OIOC). He took up this post on 6 April 1999. When he left in September 2001 to return to his duties as Deputy Chief Constable of Norfolk, his deputy on the Murder Investigation Team (MIT), Detective Chief Superintendent Arthur Provoost, took over. Arthur Provoost had been seconded to the murder investigation from the Greater Manchester Police at the end of April 1999. He remained in charge until 2009.

30.5 Sir Ronnie Flanagan's decision to appoint an outsider to lead the investigation was criticised as inadequate at the time. The Committee for the Administration of Justice (CAJ) called for an independent investigation into the murder. The Director of CAJ, Martin O'Brien, was quoted as saying, *'It is simply not tenable that the RUC should be responsible for the investigation of her death, albeit under the supervision of a senior outside officer.'*¹ Martin Finucane, brother of murdered Belfast solicitor Pat Finucane, was reported as describing the appointment of a senior English police officer to oversee the investigation as *'pathetic and inept'* and there were some who claimed that only a full, international, independent Inquiry into Rosemary Nelson's murder would be satisfactory. While we understand these sentiments, we believe that Sir Ronnie Flanagan followed the only realistic course open to him. He told us that if his external appointee *'was of the opinion that it would be possible to appoint a totally non-RUC investigation team without damaging the investigation and this was how he wanted to proceed'*, he would not oppose it. But it was clear to us that he himself regarded such a course to be impractical. He did not believe, for example, that surveillance could be carried out in Northern Ireland by outsiders, nor could they be expected to gather and handle certain types of intelligence that were likely to be of critical importance to the murder investigation. Having examined the options ourselves, in our view Sir Ronnie Flanagan's solution was the only practical solution to the problem with which he was confronted.

The appointment of a Royal Ulster Constabulary officer as Senior Investigating Officer

30.6 In any murder investigation, there is a need to take immediate steps to secure and gather information and evidence. The current edition of the Murder Investigation Manual produced on behalf of the Association of Chief Police Officers (ACPO) by the National Centre for Policing Excellence describes these early opportunities as the 'golden hour', borrowing a term from the field of medicine. This is a reference to the fact that opportunities diminish significantly within a very short time: to capture, preserve and examine vital evidence before it is lost or contaminated; to carry out forensic enquiries; and, if possible, to identify, arrest, search and interview suspects. There was no alternative other than to appoint a Senior Investigating Officer (SIO) immediately from within the RUC. This is what was done. That officer was Detective Superintendent Sam Kinkaid.

30.7 In March 1999 there were two detective superintendents attached to the RUC's South Region Criminal Investigation Department (CID). Sam Kinkaid was responsible for G and H divisions and was less familiar with Lurgan and Portadown. But he was the first senior officer to arrive at the scene and he took command of the situation. His appointment as SIO was confirmed later in the day. A Detective Chief Inspector from South Region who arrived soon afterwards was appointed his deputy. Sam Kinkaid continued as SIO until August 2000. He was replaced by his deputy, who worked on the investigation until his retirement from the RUC in 2005.

Dealing with the scene

30.8 The explosion occurred just after 12.38 on Monday 15 March 1999. The first call to the police was recorded at 12.44; at 12.52 police officers from Lurgan police station had arrived. By that time a crowd had gathered and local doctors and paramedics were engaged in the desperate struggle to save Rosemary Nelson's life. The officers set up a cordon and with the assistance of soldiers from the

¹ *The Irish Times* 17 March 1999

3rd Battalion of the Royal Irish Regiment (3 R IRISH), who had also come from Lurgan police station, they ushered the crowd away from the car and diverted traffic away from Lake Street and Castor Bay Road.

30.9 We were told that there was some anger among the gathering crowd and one or two tasteless remarks were made by soldiers on the edge of the cordon. We have no doubt that the pressure on those in attendance was immense, but high standards of behaviour are required of public servants at all times and lapses are deplorable. Having said that, those inside the cordon who were attempting to help the trapped and grievously injured Rosemary Nelson behaved with exemplary professionalism and compassion.

30.10 Sam Kinkaid arrived at 13.35, just after Rosemary Nelson had been taken to hospital. His immediate priority was the preservation of the scene. He ordered that the cordon be extended to include a number of houses and gardens in Ashford Grange, and along Lake Street and Castor Bay Road in both directions. His deputy, who arrived at 13.52, was put in charge of the collection of forensic evidence. In the hours that followed, with the assistance and guidance of Dr Gerard Murray of the Forensic Science Agency of Northern Ireland (FSANI), and a Scenes of Crime Officer, the scene was mapped, photographed and videoed, the damaged car was recovered and taken away for further examination, and fingertip searches, by officers wearing sterile suits, were conducted of the entire area.

Fragments of the bomb

30.11 Dr Gerard Murray was able to identify almost immediately important fragments of the device which had caused the explosion. These included the detonator, a mercury tilt switch, two batteries, pieces of the magnets by which the bomb had been attached to the underside of the car, and several pieces of the plastic container which had housed the explosive. Significantly, no timing device was ever found even though further searches were conducted in the following days over a wider area, and hedges and gardens were searched with metal detectors. Immediately after the explosion, a well-meaning civilian had directed a lorry through the fragment-covered area behind the car and it was considered that the timer might have become embedded in its tyres. Immediate efforts were made to identify and trace the vehicle and it was located within a few days and examined with a negative result. No fragments of a timer were found among the final sweepings that were collected from the scene and, although it remains possible that the remains of the timer were lost, it is also possible that there was no timing device on the bomb.

Initial enquiries

30.12 During the afternoon of 15 March 1999, officers began house-to-house enquiries in Ashford Grange and Lake Street hoping to capture any information about recent movements at or close to Rosemary Nelson's home. Elsewhere, carrying out such enquiries would have been a straightforward exercise, but in Lurgan in 1999, this was not the case. Officers conducting them came under attack by youths throwing petrol bombs, and uniformed and military support was brought in to assist. House-to-house enquiries were continued in the days and weeks that followed and their scope was extended. In total 306 houses were covered in the course of these enquiries. Responses were obtained from 424 individuals, while 82 households did not respond. A letter signed by Colin Port asking for assistance was delivered to each household from which no response had been received. It is evident that these enquiries were carried out with some determination: repeated attempts being made to contact some residents. One householder was finally spoken

to on the thirteenth visit. Many of those to whom the police spoke reported sightings of helicopters and security force activity over the weekend of 13–14 March. These aspects of the investigation are dealt with in Chapters 32 and 33 of this Report.

The Murder Incident Room

30.13 When Sam Kinkaid learned that Rosemary Nelson had died he directed that a Murder Incident Room (MIR) be established at Lurgan police station and that a HOLMES² account be opened. The MIR was to be based at Lurgan throughout the investigation although later some work was carried out at Stormont and some at the Police Headquarters of the Norfolk Constabulary. Almost all of the information gathered during the investigation was recorded on the HOLMES system.

30.14 HOLMES is a computerised system for managing major investigations and is designed to enable information to be captured, stored and cross-referenced systematically. Under the HOLMES system, policies determined by the SIO are realised through instructions which are issued as ‘actions’. These are allocated to officers working on the investigation and remain open until completed to the satisfaction of the SIO. All information received by the investigation, whether as a result of actions, telephone calls, witness statements, documents or other reports, is recorded and cross-referenced so that officers working on particular parts of the investigation can have easy access to evidence that has already been gathered, and an SIO can make decisions in the light of comprehensive and up-to-date information.

30.15 Use of the HOLMES system was of course dependent upon there being officers who had been trained in its operation and we were told that in Northern Ireland in 1999 there were few such officers. In other cases in Northern Ireland HOLMES operators had been shared with other investigations. This was not the case with the Rosemary Nelson investigation. It was properly, and in fact generously, resourced throughout its existence.

30.16 It was pointed out to us that MIR procedures in Northern Ireland in 1999 differed from those applied in other UK police forces and there were shortcomings in the manner in which the HOLMES system was utilised, with the result that the system’s full potential was not exploited.³ These differences were later recognised in a report presented to the Northern Ireland Policing Board in June 2003.⁴ The limited use of HOLMES represented a handicap to the officers who undertook the investigation into the murder of Rosemary Nelson but one which, in our view, they overcame.

30.17 The HOLMES system provides a comprehensive record of most of the work undertaken during the murder investigation. It also contains minutes of meetings, records of messages received in the MIR and briefing notes prepared by officers. Key decisions were recorded in Policy File entries and in the actions issued to individual officers and the reports and evidence submitted in response. The database grew progressively. We were told that by 19 December 2006 a total of 12,299 actions had been raised; 3,477 messages had been recorded on the system; 5,318 witness statements had been taken; 2,051 reports had been prepared; and 19,114 other documents were registered on the account.

²HOLMES: The Home Office Large Major Enquiries System

³The comparison was undertaken by reference to the 1993 edition of Major Incident Room Standardised Administrative Procedures Manual.

⁴Thematic Inspection of Murder Investigation in the Police Service in Northern Ireland: Report by Her Majesty’s Inspectorate of Constabulary (HMIC), paragraph 4.39 *et seq.*

Collusion as a 'line of enquiry'

30.18 One of the earliest HOLMES entries indicates that during the first hours of the investigation Sam Kinkaid became aware of the suspicion of collusion which existed among the Nationalist community. Policy File No 9 records the following: *'Due to the nature of allegations relating to collusion in media reports of the murder an investigation would be carried out into the reasons behind the Police and Military presence on Lake Street on the morning of the 15th and the presence of helicopters over the victim's house on the evening of the 14th and morning of the 15th.'* This was allocated to an officer as a 'priority', the purpose being recorded as *'to discover reasons for Police presence'*.

30.19 We have examined the work that was undertaken pursuant to this line of enquiry in some detail. We have also conducted our own enquiries in respect of a number of sightings of security force personnel on Sunday 14 March 1999 for which the MIT were, ultimately, unable to find an explanation and which appeared to us to warrant further and closer examination. We discuss these matters and the results of our investigations regarding helicopter flights in Chapters 33 and 34. Sam Kinkaid's intention at this stage of the murder investigation appears to have been to carry out preliminary enquiries. It is evident, however, that his appreciation of the importance of the issue very quickly became more acute. In recording the main lines of enquiry in Policy File Decision No 23 on 17 March 1999, he included the following: *'Investigation into the allegation of collusion by members of the Security Forces.'*

30.20 At first, this part of the investigation was managed from the MIR in Lurgan but in April 1999, following the arrival of Colin Port, a separate 'Collusion Cell' was established in Belfast under the control of Arthur Provoost. Although the results of a significant part of the investigative work undertaken by this unit were incorporated in the HOLMES database, the part that related specifically to collusion was kept separate and the unit was manned entirely by non-RUC officers.

The investigation of security force activity over the weekend of 13/14 March 1999

30.21 Work began almost immediately and within days of the murder a significant number of witness statements had been taken from key security force personnel.⁵ A decision was made to examine the period from 09.00 on Saturday 13 March 1999 to 13.40 on Monday 15 March 1999 and to account for the activities of all security force personnel on duty in the area during that time. Security force personnel were asked to volunteer details of any duties which had taken them close to the area and, at the same time, sightings that were reported by local residents and other witnesses were investigated. In due course these investigations were to cover the activities of RUC officers and civilian staff based at Lurgan, Moira and Craigavon police stations, the Traffic Unit based at Portadown police station, J2 Mobile Support Unit and a number of officers from outside the area. Military movements in the area were also examined and personnel from 3 R IRISH, Royal Military Police, Ammunition Technical Officers, Army Air Corps, Royal Air Force and Operations Company Scots Guards were covered. Many of these enquiries were as a result of movements that had resulted from disorder on and around the Kilwilkie Estate over the weekend, known as 'come-ons': that is to say, incidents which were calculated to draw security forces forward so that they could be attacked. Others were concerned with a 'surge' operation known as Operation Improvise which had been underway

⁵These statements included some to which we refer in Chapters 33 and 34 in relation to our examination of Operation Fagotto and the helicopter flight of Gazelle 6.

during Saturday 13 March 1999. This operation, it was found, had been mounted at various times for a variety of purposes. This deployment accounted for a great many of the sightings of security force personnel that were reported to the MIT by the many civilian witnesses who provided information to the police. By 14 April 1999, as part of the wider enquiry into security force activity, all military patrol commanders who were on duty that weekend had been interviewed and, in many cases, re-interviewed and witness statements were taken from them. In all, 190 police officers and 147 military personnel were interviewed and the results were subject to a detailed and comprehensive analysis, including analysis of helicopter activity over the weekend.

A report from the Pat Finucane Centre

30.22 During March 1999 the Pat Finucane Centre prepared a report entitled 'Rosemary Nelson – The Life and Death of a Human Rights Defender'. The report included a description of security force activity which had been compiled using statements from witnesses who were not willing to cooperate with the RUC. In spite of Colin Port's efforts to persuade the Pat Finucane Centre to allow his Collusion Cell access to the underlying witness statements on which the report was based, consent from the statement-makers was not forthcoming. In October 2002 an analyst was instructed to compare the contents of the report with the evidence and intelligence that was available to the MIT. The MIT was to conclude from this exercise that most if not all the sightings reported and assertions made in the Pat Finucane Centre report could be accounted for. Their analysis was itself later reviewed by a National Crime Intelligence Service analyst in March 2003 who was satisfied as to the quality of the analytical work done. During the course of our Inquiry we have had access to the witness statements taken by the Pat Finucane Centre and our view coincides with that of the MIT.

Unexplained security force activity

30.23 The MIT was, however, unable to reconcile a number of sightings that were reported by a number of witnesses. These included a sighting of a balaclava-clad police officer or soldier who was seen climbing into the back of a Land Rover in Lake Street on Sunday 14 March 1999; others concerned sightings of military personnel to the north of Ashford Grange, including that of a police and military checkpoint in Castor Bay Road during the evening of the 14 March 1999. During the course of the Inquiry we carried out further investigations into these matters ourselves and we refer to them and set out our findings in respect of them in Chapter 32. We also deal with investigations that were carried out by the MIT into the activities of a number of Special Branch (SB) officers who were engaged in a secret operation named Operation Fagotto, close to Rosemary Nelson's home on the evening of 14 March 1999. The existence of this operation was not disclosed to Sam Kinkaid by the Regional Head of SB South Region (RHSB(S)) when they met on 16 March 1999, although the latter must clearly have been aware at the time of the meeting that the operation would be of interest to the MIT, if only to eliminate any unexplained sightings of men or vehicles that might come to light as a result of the very detailed investigations that were underway. The operation was in fact disclosed to Sam Kinkaid at a meeting on 19 March 1999. We comment in more detail on the late disclosure in the section beneath entitled 'Late Disclosure of Operation Fagotto' (see Chapter 30.49 to 30.52) and on the operation itself in Chapter 34 entitled Operation Fagotto.

30.24 A limitation to the work of scrutinising security force personnel that was brought to our attention was that it was directed only at personnel who were on

duty during the period covered. Clearly, had there been collusion by members of the security forces in the murder of Rosemary Nelson, strict hours of duty were unlikely to be of significance. The immediate purpose of the work undertaken by the MIT, however, was to establish whether security force personnel who were seen in the vicinity had a legitimate purpose for being there.

Murder Investigation Team review of the Mulvihill Report

30.25 We deal at Chapter 17.36 to 17.41 with the criticism by the ICPC regarding the manner in which the formal complaints concerning the behaviour of certain officers towards clients of Rosemary Nelson were dealt with. Sir Ronnie Flanagan had appointed Commander Mulvihill of the Metropolitan Police to investigate. Commander Mulvihill was due to deliver his report at the time of Rosemary Nelson's murder. Sir David Phillips told us that he had suggested that Sam Kinkaid should obtain a copy of the report as soon as it was available and review it thoroughly in order to deal promptly with any lines of enquiry that it revealed. Arthur Provoost was tasked with reviewing the Mulvihill Report and as a result of his recommendation it was decided that no purpose would be served by conducting further interviews of the officers against whom the complaints had been made unless fresh matters casting suspicion on them came to light.

30.26 Investigations were conducted, however, into the allegations made by Trevor McKeown against two officers in 2003 (see Chapter 10.4 to 10.18). Arthur Provoost interviewed Trevor McKeown and the officers and concluded that there was insufficient evidence to support a successful prosecution of either officer. The file was submitted to the Director of Public Prosecutions for Northern Ireland who directed 'no prosecution'. Our own conclusion on this matter is set out at Chapter 10.18.

The missing death threat note

30.27 Another matter that was investigated was the apparent disappearance from RUC Command Secretariat and later reappearance of a copy of what we refer to earlier in our Report as the 'death threat note'. This had been sent to Command Secretariat by the Northern Ireland Office at the end of August 1998 together with a copy of the leaflet entitled 'The Man Without a Future'. We deal with this at Chapter 22.30 to 22.38.

Other collusion investigations by the Murder Investigation Team

30.28 The collusion line of enquiry instigated by Sam Kinkaid continued throughout the life of the investigation giving rise to a number of other discrete lines of enquiry. Enquiries were conducted in relation to individual members of 3 R IRISH, for example, whose behaviour was drawn to the attention of the MIT in the course of general enquiries. Investigations were undertaken to account for 25 enquiries concerning Rosemary Nelson's car made on the Police National Computer (PNC) by RUC employees between 13 October 1997 and 18 March 1999. Similar investigations were also undertaken regarding 11 enquiries made using her name. It was established that the majority of these enquiries had been made legitimately but that some had been made through what was described as '*idle curiosity*'.

30.29 Certain other investigations were carried out by the Collusion Cell. Enquiries were conducted in order to identify any military personnel who had links

to Loyalists and these in turn were investigated. A particular soldier, for example, was found to be related by marriage to one of the principal suspects but no evidence was found that would link him to the murder or the planning of it. Telephone records were often a key tool in these investigations and records relating to phones used by 27 individuals who were at one time or another regarded as suspects were examined. Some contact between soldiers and individuals closely associated with Loyalist paramilitary groups was observed but no evidence indicating an involvement in the murder of Rosemary Nelson was uncovered. Police telephone records were also scrutinised in order to ascertain whether there had been any contact between police personnel and these individuals.⁶

The removal of 'Mulvihill' officers from the Murder Investigation Team

30.30 One of the factors that brought the issue of collusion into focus was the fact that Commander Mulvihill of the Metropolitan Police was soon to deliver his report concerning complaints made by or on behalf of Rosemary Nelson or her clients regarding abusive or threatening remarks alleged to have been made by police officers about her. Many of these officers were based within Lurgan CID. Sam Kinkaid acted promptly when the issue was brought to his attention during the evening of 15 March 1999, and during the course of the following day all those officers who were subject to the Mulvihill investigation were excluded from the MIT, as was an inspector against whom no complaint had been made but who was responsible for the supervision of many of the named officers. This decision was clearly appropriate and commendable.

The claim of responsibility

30.31 At 20.45 on the evening of 15 March 1999, a telephone call was made to the BBC in which responsibility was claimed for the bombing on behalf of the Red Hand Defenders (RHD). This was almost immediately reported to the MIT and the routine decision was made on 17 March 1999 to obtain a witness statement from the person who took the call. A statement was taken the following day. The statement-maker reported: *'The caller stated: "This is the RHD. This is a coded claim, are you listening? Old code [Codeword 1], new code [Codeword 2]. The RHD claim responsibility for the car bomb/murder today. More to follow."'* The BBC had been reluctant, in the past, to disclose the codewords used during such calls and this initial statement did not include them. Later, Colin Port persuaded the BBC management to allow the codewords used to be disclosed and a further statement was obtained which recorded the details. One of Sam Kinkaid's early priorities was to identify where the call had been made from. Had it been possible to identify the source of the call, it might well have been possible to identify the caller and, perhaps, establish if the claim was made by someone close to the killers. An action was raised: *'Establish if they [the BBC] tape incoming calls and if they have a caller identifier on their system.'*

30.32 We were led through the various lines of enquiry that were pursued in order to identify the place from which this call was made. It suffices to record here that, in keeping with standards generally achieved by the MIT, the work done was thorough

⁶ These enquiries revealed that a telephone landline in the name of one RUC officer had been used in April 1999 to call a person who in turn had made and received calls to and from a line associated with a suspected LVF member. The officer could not have made the calls as he was on duty on that particular day at the time the calls were made. It was considered likely that the telephone calls were in fact made and received by children.

and enterprising. In due course it was established that the call could not be traced through the BBC's telephone equipment or by other mechanical or investigative means, so this line of enquiry proved inconclusive.

30.33 During the course of our Inquiry it became evident that a particular line of enquiry with regard to this issue was missed, through no fault of the MIT. Relevant intelligence regarding this telephone call was in the possession of SB and was not disclosed to the MIT. Had it been so it might well have been possible for well-directed enquiries to be made. We discuss failures on the part of SB to disclose intelligence to the MIT below in Chapter 31.

The Murder Investigation Team's access to intelligence

30.34 It was evident to us that there was mistrust between SB and other parts of the RUC. The Chief Superintendent who was the Head of E4⁷ and who had been an RUC Divisional Commander before transferring to SB as Head of the South West section of South Region, told us that his move into SB after a long career in uniform was *'not the big culture shock'* he was expecting. He recalled that while in CID there was a suspicion that SB did not provide investigators with all that they could. In his evidence to us he told us that when he had transferred to SB he had been able to assess in relation to one specific instance that very little information had been withheld from him as Divisional Commander. He told us that *'in reality, they were giving me damn near everything they did know, bar the name of the source where the intelligence had come from'*.

30.35 Sam Kinkaid had a different experience. He had been involved in earlier cases when, as an SIO, he had not been given all relevant intelligence by SB. There had been recent incidents involving South Region, and one incident in particular involving the murder of a police officer, from which it was evident that the motive for withholding intelligence was source protection.

30.36 On 16 March 1999 Sam Kinkaid and his deputy met the RHSB(S) and the Detective Inspector from SB who was based in Lurgan. The purpose of the meeting was principally to discuss intelligence. Even at this very early stage of the investigation Sam Kinkaid had formed the view that access to intelligence was going to be crucial to solving the murder of Rosemary Nelson and he did not intend to accept conventional restrictions which limited the disclosure to that which SB officers considered to be appropriate. The outcome of the meeting was recorded:

'DECISION: The SIO and the Deputy SIO held a meeting with the Regional Head of SB and D/Insp [redacted]. The following taskings were given:

- 1. SB will provide the SIO with details of SB and Military Undercover Operations in the Lurgan area on Friday + Saturday.*
- 2. SB will provide Intelligence on threats to Mrs Nelson and actions taken.*
- 3. SB will provide intelligence on Red Hand Defenders suspects.*
- 4. SB will provide Intelligence on Loyalist bomb makers in Northern Ireland.*
- 5. SB will provide Intelligence if obtained on those suspected of involvement in the murder.*
- 6. SB will provide D/I [redacted] as Liaison Officer to the Inquiry.*

⁷See Appendix C

REASONS: To ensure that the most efficient use is made of Intelligence and that all such Intelligence is made available to the Inquiry Team.'

30.37 Given the suspicion of collusion that existed in the Nationalist community and the importance of catching and prosecuting the killers of Rosemary Nelson, it was essential, as Sir Ronnie Flanagan himself had recognised, that no obstacle or hindrance was placed in the way of the murder investigation. On the contrary, it was vital that the RUC, as a whole, committed itself to the task in hand. Whatever the intentions, in practice cooperation with the MIT was less than complete.

Special Branch: practice regarding the disclosure of intelligence

30.38 The potential importance of intelligence to the murder investigation was evident to the Assistant Chief Constable who was the Head of SB (HSB). He told us that on the day of the murder he *'was immediately directing resources and staff to double-check and analyse any intelligence that had been received over previous months to see if we had anything at all that we could pass on to help guide the investigators, or to see if anything had been missed'*.

30.39 He said:

'Intelligence checks would have been done at Headquarters by the Head of IMG [Intelligence Management Group] and at a regional level. [...] It was important to us to check our intelligence straight away to see if there was anything that we could pass on to uniform or CID. [...] If there are obvious suspects that are not tracked down in the first hour, it is common that vehicles are destroyed, clothes are burned and key forensic opportunities are lost. We refer to the first hour after the murder as "the golden hour".'

30.40 Further good intentions were expressed in the days that followed. On 18 March 1999 the Kent officers met the HSB and the RHSB(S) and it was agreed that the *'Monitoring Team'*, that is to say the Kent officers and the FBI agents, *'would be made privy to all relevant SB intelligence in relation to the NELSON Investigation'*.⁸ Detective Chief Inspector Gutsell of Kent Police, who had undergone developed vetting,⁹ was to act at this early stage as liaison officer on behalf of the MIT; but it was agreed that all intelligence would be made available to the SIO, Sam Kinkaid, who at that stage was not develop-vetted. It is evident from the record of this meeting that thought was also being given to the use of surveillance resources and other intrusive methods which, in the RUC, were controlled by SB.

30.41 It was clear to us, however, that in spite of these expressions of good intent there were officers within SB who were less than comfortable with the demands placed on them by the MIT. Before Rosemary Nelson's murder, SB in Northern Ireland had little to do with the investigation and prosecution of crime. Its priority was the preservation of life. Intelligence was gathered, principally, in order to learn of and thwart terrorist operations and thus save lives without jeopardising those who provided information.

30.42 The distance between SB and the other branches of the RUC was reinforced by the structure of the RUC at the time. SB and other branches of the RUC existed in what were, in effect, parallel worlds, each with its separate command structure.

⁸ The Cornwall Log was a running log kept by the Kent officers monitoring the MIT. See also Chapter 30.85 to 30.86.

⁹ 'Developed vetting' is a very high level of security clearance; people with this level of clearance are known as 'develop-vetted' or 'DV cleared'.

30.43 Sam Kinkaid said:

'Special Branch in the RUC was not, in March 1999, in the same position as Special Branch in a force such as Kent. Effectively, the direct comparable would be MI5 operating on the mainland and I have no doubt that if one examined the disclosure rules for MI5 and the way that they disseminated material in 1999, it would not have been dissimilar to that of Special Branch in the RUC.'

30.44 Colin Port told us:

'At the time of this investigation Special Branch was a separate entity in Northern Ireland. They had a very close relationship with the Security Service and the military. Their approach was completely new to me and very different from my experiences of working with Special Branch in other parts of the UK at that time. The analogy I draw is with UK Special Branches in the 1980s. However, this was at the end of the 1990s in the RUC.'

30.45 He also commented on the effect of the difference:

'I had been used to being supplied with the whole intelligence picture, whereas in Northern Ireland I soon learned that this was not the case. Special Branch decided on whether material was relevant to a murder investigation. In the rest of the UK, the Senior SIO was given the whole intelligence picture; an Intelligence Cell working directly for the SIO was tasked by the SIO to produce intelligence and information. In Northern Ireland it was very different. Whilst the SIO ran the investigation, the intelligence was provided by Special Branch. They only provided summaries of the intelligence product. The SIO needs to understand the provenance and reliability of intelligence. In other parts of the UK this can be easily achieved through the Intelligence Cell. However, it was more difficult in Northern Ireland. Special Branch in Northern Ireland acted like the Intelligence Cell. They were the holders of the intelligence and in this respect were all powerful.'

30.46 Prior to the murder of Rosemary Nelson, SB intelligence was disseminated on a 'need to know' basis – as determined by SB itself. CID and uniformed officers did not have access to the system but when it was deemed appropriate to share intelligence with them a further sanitised Briefing Sheet would be prepared on which the gist of the intelligence would be summarised.

30.47 If intelligence was received which identified an offender it would invariably be passed to the SIO of a murder investigation in a manner that did not disclose any information about the source. The SIO would not know how the information had been collected or from whom it had been obtained, so he would not be in a position to disclose inadvertently the identity of the source. Equally he would not be in a position to assess the reliability of the information against his own knowledge of the case. We were told by the Deputy SIO of the MIT that indications might be given informally as to the nature of the source and the reliability of the information in what were described as '*corridor conversations*'. But the extent to which this was done appears to have been dependent upon how well the SIO was known to the SB officers dealing with the information and how much trust existed between them.

30.48 The need for caution was understandable. There had been instances when inadvertent disclosure of information had resulted in the deaths of informants. Sam Kinkaid told us that over 40 informants had been executed during the Troubles.

The late disclosure of Operation Fagotto

30.49 The confidence of the MIT in expressions of good intent was shaken when, on 19 March 1999, the RHSB(S) disclosed to Sam Kinkaid that on the evening of Sunday 14 March 1999 SB conducted a secret operation, codenamed Operation Fagotto, when SB officers had been working in the area close to Rosemary Nelson's home and that at least one officer had driven into Ashford Grange. We discuss the details of this operation in Chapter 34. However, we must comment here on what, at first sight, appears to have been an extraordinary failure on the part of those who knew of the operation to alert Sam Kinkaid to the fact that it had taken place during the very hours when the bomb might well have been placed under Rosemary Nelson's parked car. The RHSB(S) had himself authorised this operation over the telephone on Sunday 14 March 1999, and on Monday 15 March 1999, the day of the murder, he had been told that it had taken place. He chose not to mention it to Sam Kinkaid at their meeting on 16 March 1999, or at the meeting on 18 March 1999 attended by the HSB and the Kent officers. The RHSB(S) explained to us that he did not go to work on Wednesday 17 March 1999, and that it took the following two days to check with the military and the Security Service as to whether they also had any operations in the area; he told us that he had asked the Tasking and Coordination Group (TCG) to make these enquiries for him. In his statement to our Inquiry he said:

'There is nothing to read into the slight delay between me being asked for the information and me providing it. There was no reason for me not to tell Detective Superintendent Kinkaid about Operation Fagotto. I was just making sure that when I gave him an answer, it was complete. I didn't tell the Murder Investigation Team about the operation prior to receiving the action sheet as I did not think it was relevant to the murder, and the Murder Investigation Team were not DV cleared.'

30.50 This account did not sit easily with the explanations of other SB officers. The Detective Chief Superintendent who was the Head of E4 told us that he did not believe it was obvious, immediately after the murder, that the detail of the operation needed to be disclosed, because the surveillance officers had nothing to report. He also told us that there was no reluctance to disclose information about the operation; rather there was cautiousness about how to manage the disclosure. Another officer, whose account we believe is somewhat nearer the truth, told us that he was not aware of the operation until after Rosemary Nelson's murder but he recalled that there was a concern that it might be misinterpreted in the context of the allegations of collusion.

30.51 We do not accept that the fact that members of the MIT were not 'DV cleared' had any relevance to the issue of whether the presence of SB officers at or near the scene of a murder should have been disclosed. It was in fact disclosed, but very late. Moreover, Detective Chief Inspector Gutsell had been DV cleared and, had this been a relevant factor, he at least could have been informed.

30.52 And in terms of the 'golden hour' referred to by the HSB in his evidence to us, this was not a 'slight delay'.¹⁰ It should have been apparent to any police officer, whether CID trained or not, that the movements of anyone in the vicinity of Rosemary Nelson's house during the evening prior to the murder had to be examined by the MIT, not least so that any sightings reported during the house-to-house enquiries could be recognised, and precious time and resources not lost in tracing them. We were less than satisfied therefore with the explanation given to us for this delay. We learned, in addition, that the HSB was made aware of the operation on 18 March 1999 and that he had noted in his journal that he had informed the

¹⁰See Chapter 30.49 above

Chief Constable about it on that day. We suspect therefore that consideration had been given to the question of whether the existence of the operation should be disclosed to the MIT at all. We believe that, so far as the early relations between SB and the MIT are concerned, Sam Kinkaid's scepticism regarding some members of SB was justified.

Early friction

30.53 Relations between SB and the MIT were not helped when, during a conference in the evening of 19 March 1999 (the day when Operation Fagotto was divulged to him), Sam Kinkaid made a comment which was taken, by a detective constable from SB who was present, to imply that SB had something to hide. The comment, as reported to the SB Liaison Inspector who in turn reported it to the RHSB(S), was as follows: *'Sam Kinkaid said "nobody had anything to worry about apart from the boys down the corridor" by which he meant Special Branch.'*

30.54 The RHSB(S) telephoned Sam Kinkaid and arranged a meeting for the following day when they spoke about the matter. Sam Kinkaid told us that he had merely wished to emphasise the need for full disclosure of all relevant information and that, if he had made a comment directed at SB, it was made in this context rather than implying that SB had been involved in anything more sinister. And both Sam Kinkaid and the RHSB(S) sought to persuade us that this incident had no impact on the progress of the murder investigation. The incident was not without effect, however, and exacerbated the existing lack of trust. The SB Liaison Inspector told us that he was immediately concerned about the comment because he was unsure what was meant by it and he was also concerned about the morale of his staff. The Detective Chief Inspector SB who was appointed within South Region SB a week later to oversee the disclosure of intelligence to the MIT told us that he was briefed about it by the RHSB(S) on his appointment, and both officers told us that they were concerned that the MIT were looking to lay the blame for any failures in the investigation at the door of SB.

The disclosure of the early intelligence

30.55 In spite of what were, no doubt, genuine concerns and misgivings of officers within SB, important intelligence was disclosed to the MIT. The actions issued by Sam Kinkaid on 16 March 1999 following his meeting with the RHSB(S) were dealt with. His request for a list of those suspected to be members of the Red Hand Defenders was answered promptly. As regards threats against Rosemary Nelson a report returned on 25 March 1999 indicated that *'Enquiries carried out at both Headquarter and Regional level, indicates [sic] that there is no Special Branch intelligence on record that indicated a threat to Rosemary NELSON.'* This report also enclosed a copy of 'The Man Without a Future' leaflet which had been circulated at Drumcree in 1998 and drew attention to the fact that Command Secretariat held documents relating to the complaints made by or on behalf of Rosemary Nelson. In response to the request for details of known Loyalist bomb-makers a list was provided. Also provided, as requested, were copies of SB 'Action Sheets'¹¹ regarding terrorist activity between 1 January 1999 and 15 March 1999. These latter documents revealed that intelligence had been received during that period which indicated that: on the Republican side, the Provisional Irish Republican Army (PIRA) might be targeting a policeman and dissident Republicans were planning to explode a car bomb and carry out a shooting; and on the Loyalist side, dissident Loyalists were

¹¹These Action Sheets were generated by SB for their own use and should not be confused with MIT 'Actions' described at Chapter 30.14 above.

'obtaining improvised grenades for use in imminent attacks on Roman Catholic targets'. In all, 73 items of intelligence were received by the MIT from South Region and eight from Belfast.

30.56 In response to Sam Kinkaid's request for intelligence on those suspected of involvement in the murder, intelligence was disclosed which was to have considerable influence on the direction of the investigation. One SB Briefing Form purported to identify the person who had made the bomb used to kill Rosemary Nelson; another purported to identify two individuals as being directly involved in her murder.

Validation of the early intelligence

30.57 The early intelligence was not the only information which supported the MIT's conviction that the murder had been carried out by Loyalists. Advice from FSANI supported the view that the bomb was of Loyalist manufacture – a tilt switch had been used in the construction of at least three earlier Loyalist devices. Later intelligence indicated that the named bomb-maker favoured the use of a tilt switch and was a customer of a retail store in Belfast at which precisely the same type of tilt switch could be bought. Enquiries by the MIT established, moreover, that a tilt switch of the type used in the Rosemary Nelson bomb had been sold in early March 1999 although the customer could not be identified.¹²

30.58 There was also intelligence from other sources which pointed to the involvement of a particular bomb-maker and to his contact with named members of the Loyalist Volunteer Force (LVF) in the early months of 1999 and in particular in the four-week period immediately before the murder. This contact was in fact corroborated by evidence gathered during the MIT's detailed investigation of telephone traffic.

30.59 Most significantly perhaps, notes made by the Superintendent (SB) indicate that on 29 April 1999 Colin Port had been given access to some, at least, of the original intelligence notes to which we have referred at Chapter 28.47 above. We are satisfied that in the light of these Colin Port would have regarded the MIT's suspicions of LVF involvement as well-founded and he would have been entirely justified in doing so.

Further early investigative work

30.60 The early work undertaken by the MIT was largely concerned with establishing and recording the events immediately before and after the murder; with obtaining information regarding Rosemary Nelson's recent movements; and with consolidating the work undertaken at the scene. Some lines of enquiry were pursued merely to eliminate matters from consideration. For example, enquiries were undertaken to identify the origin of a pair of gloves found in a dustbin near the scene. Other enquiries were more focused: one was concerned with comparing the bomb which had killed Rosemary Nelson with other devices; another with

¹²A witness remembered the transaction and considered it strange – he provided a description of the customer. CCTV within the store had been recorded over.

tracing sources of the various components of the bomb.¹³ Another line of enquiry concerned the working of the alarm on Rosemary Nelson's car, which had gone off when she was leaving her house on 15 March 1999. In due course, an expert was instructed to examine the system in order to establish whether this might have been of any significance to the murder.

30.61 The investigators quickly established that Rosemary Nelson and her husband had spent the weekend in Bundoran, in County Donegal, and that they had returned to Lurgan at about 18.30 on Sunday 14 March 1999 (see Chapter 29.21). It appeared likely therefore that the bomb had been placed on the underside of her car when parked on the driveway of the Nelson home in Ashford Grange, either late on Sunday 14 March 1999 or during the early hours of Monday 15 March 1999. Accordingly, efforts were made to identify people who might have been in the area during those hours. During the course of the evening of 15 March 1999 Sam Kinkaid appeared on television and appealed for anyone who had seen anything suspicious to come forward. A week after the murder, a checkpoint was established at the junction of Ashford Grange and Castor Bay Road in an attempt to identify people who might have habitually passed that way on a Sunday evening or a Monday morning. The checkpoint was established at 18.00 on Sunday 21 March 1999 and continued until 08.00 on Monday 22 March 1999. During that relatively short period approximately 340 vehicles were stopped and in excess of 100 short questionnaires completed.

30.62 CCTV was gathered from main roads and filling stations and various other locations in and around Lurgan. Further footage was secured from other locations in order to pursue particular lines of enquiry. We were told that, in all, 44 tapes were seized and that these were viewed by a team of officers. The first 18 tapes, which were those identified as being the most important, involved 787 hours of viewing and while this work continued the team was fed intelligence and information from other sections of the MIT. Journey logs from local taxi firms and from other businesses which carried out deliveries in the area were obtained and these were examined in order to identify potential witnesses.¹⁴ Some of these enquiries were difficult to pursue: some local businesses and many potential witnesses were reluctant to help, or reluctant to be seen to be helping the RUC, and in some instances it was a very long time before the MIT received important and useful information.

30.63 Sightings of vehicles at or near Ashford Grange in the hours before the murder were of particular interest to the MIT. Few people would have been walking in that part of Lurgan on a Sunday evening but many might have passed along Lake Street and Castor Bay Road in vehicles, intending to by-pass the town centre en route to or from the M1. Indeed, it was reasonable to suppose that those involved in the murder had themselves travelled to and from the scene in a vehicle using that route. It was possible to identify many of the vehicles that were seen, to interview the vehicle owners and either take from them a witness statement or eliminate them from further enquiries. There were, however, 129 sightings of vehicles which

¹³It was established that between August 1998 and 14 April 1999 a UK manufacturer had supplied 620 mercury tilt switches to a retailer in Belfast. Several thousand were supplied to retailers in England and the Republic of Ireland. Enquiries in relation to the source of the detonator did not begin until October 1999, it being believed that detonators were 'commonly available'. The type and likely manufacturer of the explosive, a commercial slurry type explosive, were also identified. It was very quickly established that the magnets used to secure the bomb to the underside of Rosemary Nelson's car were identical to magnets in use at Harland and Wolff shipyard in Belfast. By 13 May 1999 the MIT had established that three such magnets were missing from a piece of the shipyard's equipment.

¹⁴Over 120 taxi drivers were identified, of whom at least 30 made witness statements.

could not be traced, and these remained classified on the HOLMES system as 'Unidentified Vehicles' or 'UVs'. Two of these were particularly significant: UV 19, 'a small white hatchback', and UV 29, a 'blue Nova'.

UV 19 – the small white hatchback

30.64 On 16 March 1999 a witness provided a statement in which he described seeing a vehicle 'at approximately 6.30 p.m. or so' on Sunday 14 March 1999 as he walked from the Woodville Arms on Lake Street, north towards Ashford Grange. He described the sighting as follows:

'As I reached an area mid-way between Ashgrove Drive and Ashford Grange I became aware of a small white hatchback car come slowly past me. I wasn't aware of any other traffic on Lake Street at that time. The car I would describe as 'Ford Fiesta' in size but I couldn't say what make it was. A young lad in the back passenger side seat turned almost right around to look at me. [...] I didn't get a look at the other occupants although I am satisfied there were four in total in the vehicle. The car wasn't fresh and sat well down on the back springs. The car was being driven at a speed which only just took it past me walking. I felt concerned and noticed that the car stopped for maybe two or three seconds directly at the end of the Ashford Grange Junction with Lake Street. I'm happy no-one got out of the car. It just drove slowly off out the Castor Bay Road.'

30.65 Clearly, in the light of what happened the following day, the events described by this witness were suspicious. Those who had placed the bomb under Rosemary Nelson's car might well have reconnoitred the area before returning later, perhaps in another vehicle. But the description of the vehicle was very broad and did not lend itself to further investigation and by 1 April 1999 the conventional lines of enquiry that could be pursued in respect of this vehicle were exhausted. The information clearly had an intelligence value but on its own it was of little use. If it had been possible to link it with other sightings it might well have acquired greater significance. In the event this was not possible. This white hatchback was never eliminated from the investigation.¹⁵

UV 29 – the blue Vauxhall Nova

30.66 The MIT was able to carry out a great many more enquiries as a result of the sighting of a blue Vauxhall Nova which was seen by a witness in Castor Bay Road at about 23.30 on 14 March 1999. Again, the vehicle was brought to the attention of the MIT by a witness who came forward early in the investigation. In a witness statement dated 2 April 1999 he said:

'On Sunday 14th March 1999 I was travelling along the Castor Bay Road making my way to work in Dungannon. This was at approximately 2320 hours. As I was passing Ashford Grange I had to slow down to under thirty miles per hour as a blue, old style Vauxhall Nova saloon car was being driven very slowly in front of me. I noticed that the back window was obscured by something white and this prevented me from seeing clearly into the car. However I had the impression that there was a front seat passenger. I was behind this car for approximately five minutes. As I approached a place I call the Mile House I took [a] left heading towards Annesborough. From my recollection this blue nova must have driven straight on as I was able to drive at my normal speed.'

¹⁵An intelligence report was received from a 'casual contact' on 29 November 1999 that a named individual had driven one of the main MIT suspects and the bomb to the murder scene in a white Ford Fiesta. The named individual owned a white Ford Fiesta, but the registration given did not identify that particular car but another identical car. Both vehicles were searched by the MIT and forensic tests carried out which proved negative.

30.67 Three further statements were taken from this witness during the next three years to get more details of the sighting.

30.68 In a statement dated 29 June 1999 he said:

'The Nova was "flat blue" in colour. [...] It was an old style saloon car in that the vehicle was booted and not a "Hatch Back". In relation to the white item I could see in the rear window I would describe its demention [sic] as 1½ feet wide its top was about 6 inches below the top edge of the rear windscreen. [...] The driver was a heavy set male wearing a flat cap. I am 90% certain that there was a passenger in the vehicle who was also male I believe he was younger than [sic] the driver and of a lighter build [...] wearing a baseball cap. [...] I am of the belief that it was a two door as opposed to a four door.'

30.69 In a statement dated 25 January 2001 he said:

'In respect of my observations of a blue Nova car that I saw on 14th March 1999 [...]. There is street lighting along there and I can recollect that both occupants had headgear on, the driver a baseball cap and the passenger I believe a flat cap.'

30.70 In a statement dated 18 June 2002 he said:

'Regarding my observations of a blue Nova two or four door saloon car [...] I have been asked by D/Constable [redacted] if the object I saw in the rear window of the vehicle may have been an emblem of some sort. I can only say that the object appeared three dimensional [...]. It was not a sticker in the back window [...]. I've already stated I cannot say whether it was a two or four [door] car that I saw.'

30.71 In contrast to the information regarding the white hatchback it was possible to conduct extensive enquiries as a consequence of this sighting.¹⁶ An action was raised to identify all such vehicles in J Division¹⁷ and for these to be checked for links with known suspects. It was quickly established that in J Division, for example, there were 513 blue Vauxhall Novas and that one of these was owned by a close relative of one of the key suspects. Enquiries within the RUC established that another blue Nova (hatchback) was owned by a suspected member of the LVF in Belfast and had recently been seen parked outside the Belfast home of a man who was suspected of close links with the Orange Volunteers and to be in contact with those who were suspected members of the RHD.

30.72 Enquiries were conducted to establish whether either vehicle had been seen in or near Lurgan by checking, for example, Army checkpoint records, fixed penalty tickets, speed enforcement cameras and other observational devices that were in use at the time, but none of these enquiries proved positive. It was established, moreover, that neither vehicle was, as the witness had described 'booted and not a "Hatch Back"' and, although it would have been unwise to place too much reliance on this detail, it was a contra-indication against each of the suspect-linked vehicles. Nonetheless, the possible involvement of the two vehicles was examined as closely as possible. In respect of the local vehicle, authority was obtained under the Police Act 1997 to carry out a covert examination to test for explosive residues and this was done in August 1999 with a negative result. It is perhaps regrettable that this was not done in respect of the Belfast vehicle. Had there been more effective cooperation between SB and the MIT, such a course might have been possible and would certainly have been regarded as essential if it had been known (to the MIT, as it was to SB) that the owner of the Belfast vehicle had been employed in the

¹⁶A witness later reported seeing an 'insignificant looking vehicle'.

¹⁷See Appendices B and L

shipyard area of Belfast (see Chapter 30.60). As it was, PNC enquiries indicated that this Belfast vehicle was sold for scrap in June 1999 and no further enquiries were made in respect of it.

30.73 The sighting of the blue Nova was regarded as even more significant with the receipt of information in October 1999 capable of corroborating the earlier report. A witness who lived and worked locally reported that on his way to work in the late evening of Sunday 14 March 1999 he saw *'as I approached the layby at the Primary School I noticed what I would describe as a nondescript vehicle with two people in the front, I believe male, one wearing a base ball cap. I am unsure of the number of persons in the rear but there was at least one rear passenger. This car did not move and faced towards the Castor Bay Road.'* The witness could not recall whether he would have begun work at 22.00 that evening or at midnight but said his walk would have been shortly before one or the other time.

30.74 Attempts to identify UV 29, the blue Vauxhall Nova, continued and the MIT's interest in this car was later referred to by Colin Port when he appeared on a Crime Call television programme on 19 September 1999. Following this broadcast the MIT received two anonymous telephone calls. The first, received on 20 September 1999, purported to identify the makers of the bomb, and stated that a *'blue Nova'* had been used to transport it. The second call, received on 25 September 1999 but not transcribed until January 2000, identified a different group of bomb-makers and the owner of a *'Vauxhall car'* which was said to have been used to transport the device. From this information a blue, two-door Vauxhall Nova was identified. It was established that the vehicle had been reported stolen by its owner on 5 April 1999 and it was found in Belfast, burnt out, a short time afterwards. Attempts were made to verify the claim of theft and although the MIT was not able to dismiss the possibility that it was false, the line of enquiry was considered exhausted by 19 April 2001. A week later, following a review of all that had been done in respect of it, the decision was made to conduct no further investigative work in respect of UV 29, a decision considered by Robert Ayling to have been understandable, and which we endorse.

Stolen vehicles

30.75 During the course of the investigation, a great deal of work was carried out to eliminate a very large number of vehicles which were stolen in the period before the murder in order to identify a vehicle that might have been used by the killer or killers. At first, enquiries were made in respect of vehicles stolen between 12 March 1999 and 18 March 1999, but these were later extended to cover those reported stolen between 28 February 1999 and 31 March 1999. In total, 103 reports were examined without, in the end, any evidence relevant to the murder being found.

Sightings reported in *The Irish News* and to the Pat Finucane Centre

30.76 Measures taken in respect of two reported sightings of vehicles seen close to Ashford Grange in the late evening of 14 March 1999 illustrate the efforts made

by Colin Port's team to overcome the reluctance of some locals to assist with the investigation. These sightings were reported in an article written by the journalist Anne Cadwallader published in *The Irish News* on 21 March 1999.¹⁸ The journalist would not disclose the names of the witnesses to whom she referred in the article but in response to this and similar instances Colin Port made an appeal for assistance through the same newspaper and appeared on television on 20 September 1999.

30.77 One of the witnesses who spoke to Anne Cadwallader was persuaded to provide information but did so anonymously, via a member of Rosemary Nelson's family.¹⁹

30.78 All employees of the local company in which the two witnesses worked were invited to complete questionnaires with the result that 60 who had worked a night-shift on 14/15 March 1999 did so. A further 62, whose names were obtained by the MIT, declined to assist.

Telephone analysis

30.79 During the course of the murder investigation a great deal of telephone data was collected and analysed. Information regarding 632 individual telephone numbers within Northern Ireland was obtained.²⁰ In respect of mobile telephones this included, in some instances, data indicating the general area from which individual telephone calls were made as well as data showing all calls made from a particular location.²¹

30.80 The first action regarding telephones was raised on 16 March 1999. A note in the Cornwall Log²² for 19 March 1999 indicates that '*telephone analysis in hand*'. Requests for telephone information were submitted through the Telephone Liaison Unit of the RUC which provided considerable support to the MIT during the first year of the investigation. An officer from the Financial Crime Services Unit assisted with analysis of the data received during the early stages of the investigation. Later the MIT employed a trained analyst who worked on telephone data and other matters.

30.81 We were told that a database was compiled by the Telephone Liaison Unit which contained 21,290 telephone numbers and details of 140,037 calls. A concentrated effort was made in relation to the period immediately before and after the murder. Initially, the analysis covered the period between 23.00 on 9 February 1999 to 23.00 on 23 March 1999 – later adjusted to 1 February 1999 to 20 March 1999. In due course the database developed by the MIT analyst covered the period 11 October 1996 to 1 January 2002 and contained records of 145,750 calls. The MIT received advice from an RUC officer who had carried out similar work in respect of the Omagh bombing investigation.

¹⁸ The same two witnesses appeared anonymously in an RTE Primetime television programme and in a BBC *Panorama* programme, the latter of which was broadcast on 10 June 1999.

¹⁹ We believe that statements by each of the two witnesses referred to in the newspaper and television coverage were provided to the Pat Finucane Centre and were made available to the Inquiry. In all 53 witness statements were given to the Pat Finucane Centre. Some of these were included in redacted form in the Inquiry Bundle (some were attachments to Inquiry statements made by witnesses) but there remain some to which the MIT has never had access.

²⁰ Information was requested in respect of some lines on more than one occasion. In total, 913 requests for data were made.

²¹ Not all data requested by the MIT was supplied. One of the three mobile phone companies did not supply the data requested.

²² The running log of the Kent officers monitoring the MIT

30.82 In his report to this Inquiry Robert Ayling suggested that an opportunity to capture important information may have been missed as a result of the decision of the MIT not to investigate every phone line operated by Rosemary Nelson herself. Data was obtained in respect of her home and general office landlines for the period 12 to 15 March 1999. Calls to and from a private landline in her office were also examined for the period 8 March to 12 March 1999. On 19 May 1999 a decision was taken to extend the period of analysis but no further information was obtained as at that time the service provider would only provide data from the previous 30 days. A decision was taken not to enquire into the use made of two mobile phones that Rosemary Nelson was believed to operate and in this respect it is possible that useful information might have been lost as a result (See also Victimology section at Chapter 35.9 to 35.12).

30.83 The MIT concentrated a great deal of effort on telephones used by those whom they regarded as suspects and using the data recovered in respect of these telephone numbers the MIT postulated a credible theory as to how and when the bomb had been brought to Mid-Ulster. This is an impressive piece of analysis carried out without the benefit of access to the original intelligence notes that were made available to the Inquiry which corroborate it significantly.

30.84 Some key patterns were observed also. Two suspects had made what appeared to be significant calls to foreign telephones and an effort was made to obtain information in relation to them with limited success. It was observed that there was a significant reduction in telephone activity between some of the suspects in the period immediately before the murder.

The Kent officers' assessment of the early investigative work

30.85 Sir David Phillips could not travel to Northern Ireland immediately but his Head of CID, Detective Chief Superintendent Ian Humphreys, was able to do so. Realising that there would be a need to liaise with SB, Detective Chief Superintendent Humphreys asked Detective Chief Inspector Gutsell who, as the HSB at Kent Police had undergone developed vetting, to accompany him. They arrived in Belfast during the late afternoon of 16 March 1999 and were met at the airport by Sam Kinkaid. He had preserved the murder scene so that they could inspect it and he took them there straight away. In the daylight that was left the Kent officers spent about 20 minutes at the scene and afterwards visited the MIR at Lurgan police station where they examined the actions that had been recorded during the first two days of the investigation. Detective Chief Superintendent Humphreys told us that it appeared to him that the scene had been dealt with professionally and he was impressed by Sam Kinkaid who was working under considerable pressure. He observed that a number of actions had already been raised requiring information to be provided by SB, one of which concerned information regarding operations that might have been underway over the weekend, and that Sam Kinkaid had already given thought to the need to demonstrate that the suspicion of collusion was being taken seriously and addressed. Detective Chief Superintendent Humphreys told us that he approved of the major lines of enquiry identified by Sam Kinkaid and suggested some further lines which Sam Kinkaid accepted and added to the list.

30.86 Within a day or so, Sir David Phillips had joined his colleagues in Lurgan and for the next two weeks these officers, together with agents from the FBI, worked closely with Sam Kinkaid and the Deputy SIO. The discussions that took place between them involved both strategy and detail. They referred to themselves collectively as the '*Monitoring Team*' and compiled a single record from their combined notes which became known as the Cornwall Log. This was disclosed to the Inquiry and is a useful and detailed record of the early discussions and decisions.

30.87 However, while recording these discussions in the Cornwall Log, Detective Chief Inspector Gutsell was also aware that underlying reservations existed. In his evidence to this Inquiry he said:

'I was aware that they [i.e. SB in Northern Ireland] were working in a completely different environment, to the one that I was used to. They were involved in life and death operations and my impression was that because of this their position was very different to Special Branch based in Kent. In Kent if I dealt with a similar case I would expect Special Branch to reveal all relevant information to the Head of the CID. My impression is that the situation in Northern Ireland was different. Clearly working in Northern Ireland there could be circumstances when information was withheld, probably for good reason. It is not a stance that I would ever criticise; it was just a different way of life.'

30.88 After the meeting with the HSB, the monitoring team reviewed the current state of the investigation with Sam Kinkaid and a detailed note of the discussion was recorded in the Cornwall Log. From this it is evident that Sir David Phillips acknowledged that the advice received from Dr Gerard Murray, namely that the bomb which fatally injured Rosemary Nelson had the characteristics of a Loyalist bomb, was of the utmost importance and should 'provide the main focus for the inquiry'. However, he was equally concerned that other possibilities should be investigated if only to be discounted. We regard the following note as being of particular significance: 'We discussed the desirability of a fuller victimology and the need to speak to those people who Rosemary Nelson might have spoken to in the last week. SIO pointed out the immediate difficulties but agreed in principle.' We return to the issue of victimology in Chapter 35.9 to 35.12, but we record here that the issue was raised at a very early stage.

30.89 The presence of the Kent officers during the first days of the investigation was evidently welcomed by Sam Kinkaid and we believe it was of considerable benefit to the murder investigation. Given their background and experience, this is hardly surprising. Sir David Phillips was the Chairman of the Association of Chief Police Officers (ACPO) Crime Committee whose function it was to formulate policy in relation to criminal investigations, including murder investigations, and, together with Detective Chief Superintendent Humphreys, he had written the first edition of what was to become known as the Murder Investigation Manual. Moreover, their presence and that of the FBI, and the latitude given to them by Sir Ronnie Flanagan, helped to demonstrate that there was a commitment on the part of the Chief Constable to ensure that the murder of Rosemary Nelson was investigated properly and thoroughly. The involvement of Sir David Phillips and the FBI, although a stop-gap measure, was effective. Sam Kinkaid received essential support during the vital early days of the investigation, impartial oversight was provided and important progress was made against a background of sectarian distrust.

30.90 However, while Sir Ronnie Flanagan was seeking to appoint an outsider to lead throughout the investigation, that was not a commitment that Sir David Phillips was able to fulfil. As Chief Constable of Kent Police he had his own responsibilities which could not be neglected and it was evident that he had reservations as to whether or not an outside appointee could produce the best results. He expressed his view most clearly in a confidential letter to Sir Dan Crompton of 26 March 1999, in which he described the situation at that date and commented as follows:

'The nub of the matter is that from a presentational and political point of view it may be attractive to say that this enquiry should be led by someone independent of the RUC. For the reasons I shall state I believe this to be professionally unsupportable and that anyone put into that position as supervisor or senior investigator, would be placed precariously and invidiously. I take no exception to anyone taking a different view and

if someone is prepared to lead this enquiry from an independent position I would make sure that everything we have done would be properly handed over.'

30.91 Further in the same letter he wrote:

'All these considerations lead me to the firm view, whatever the political aspirations, that my professional input can go no further than what it is at present. Working with the FBI we have sought to bring some new ideas to the investigation, to monitor it's [sic] thoroughness and hopefully to provide a record which will be of value if the matter is reviewed in the future. As I have indicated earlier those who call for an independent investigation of whatever kind, and however seductive it may be politically, underestimate the practical realities. I stand by my professional judgement, this enquiry can only be conducted by the RUC and other presentations would be disingenuous.'

30.92 We believe that this was a fair reflection of the difficulties of the task that would await Colin Port, who was prevailed upon to take on the role desired by Sir Ronnie Flanagan. The Kent officers, however, as promised by Sir David Phillips, remained in Northern Ireland until his arrival on 6 April 1999 and they maintained contact for a time afterwards. Before he left, Sir David Phillips met Colin Port with Sir Ronnie Flanagan. He expressed his satisfaction with the way the investigation had been conducted and he also impressed upon Sir Ronnie Flanagan that Colin Port would need, within the context of Northern Ireland, unparalleled access to un-sanitised intelligence. His note of these discussions records Sir Ronnie Flanagan's response: *'At 4.00 p.m. we had a meeting with Sir Ronnie Flanagan and generally outlined our (myself, Ian HUMPHREYS and [redacted]) satisfaction with the conduct of the investigation to date and the general view that Mr. PORT would need the sort of intelligence access discussed. Sir Ronnie was emphatic that Mr. PORT will be given every access to support he required.'* We believe that Sir Ronnie Flanagan intended to make good these words. We also believe that there were some officers within the RUC who doubted their wisdom and were less inclined to provide such ready access to un-sanitised intelligence.

31 The Murder Investigation Continues

The appointment, arrival and impact of Colin Port

31.1 Colin Port had spent the better part of his career investigating crime as a Detective Constable, Sergeant, Inspector and Chief Inspector with the Greater Manchester Police; as a Detective Superintendent in charge of Crime Operations and later as a Detective Chief Superintendent, the Head of the Criminal Investigation Department (CID) with the Warwickshire Constabulary. In 1994 he had been appointed Investigations Coordinator to the UN International Criminal Tribunal for the former Yugoslavia and in the following year Director of Investigations to the UN International Criminal Tribunal in Rwanda. In 1996 he became Head of the South East Regional Crime Squad. He then became Deputy Chief Constable of Norfolk. He went to Northern Ireland with a great deal of experience, particularly in relation to the targeting of serious and organised crime, using informants, surveillance, undercover officers and intrusive techniques.

31.2 He met Sir Ronnie Flanagan, the Chief Constable of the Royal Ulster Constabulary (RUC), on 29 March 1999 in Belfast and they had discussed the case and the terms of his appointment. During their discussion Sir Ronnie Flanagan described the importance of the murder and the need to carry out a thorough and impartial investigation. Sir Ronnie Flanagan also briefed Colin Port about Rosemary Nelson's background: he told him that she had represented Nationalist and Republican clients. He spoke about the similarities between the allegations that were being made in respect of the murder of Rosemary Nelson and those which had been made in respect of Pat Finucane who had been murdered in 1989. Sir Ronnie Flanagan told us that as far as he was concerned, he wanted Colin Port to have 'hands-on' control and complete oversight of the whole investigation with no financial constraints. In his evidence to us Colin Port said: *'When I asked him for the budget for the investigation, he said 750 million, which was the budget of the Royal Ulster Constabulary at that time. It is the first time for a long, long time I have run an operation where I did not have a restraint on budget, other than my good management.'*

31.3 On this first visit to Northern Ireland Colin Port went to the Murder Incident Room (MIR) and met Sir David Phillips, the Senior Investigating Officer (SIO) Sam Kinkaid and his deputy. We believe therefore that when he returned the following week to take over the reins, he had been well briefed on the investigation and on the difficulties which confronted it. He was also alerted to some of the special features associated with policing in Northern Ireland, particularly those concerning liaison with Special Branch (SB) and access to intelligence. The Cornwall Log was handed over to the Port team on 8 April 1999.¹

Colin Port's Terms of Reference

31.4 At Sir Ronnie Flanagan's request, Colin Port prepared draft Terms of Reference under which he was to be engaged. It is a significant document and in our view demonstrates that both Colin Port and Sir Ronnie Flanagan were of the same opinion as Sir David Phillips – the Murder Investigation Team (MIT) was to have access to all relevant intelligence. The terms of the document, which was signed by

¹The Cornwall Log was a running log compiled by the Kent officers monitoring the murder investigation.

Sir Ronnie Flanagan, we feel also reflect the Chief Constable's commitment and his wish to ensure that a thorough investigation was carried out. The full terms were as follows:

1. *It will be your responsibility to direct, control and supervise all aspects (including media handling) of the investigation into the murder of Mrs Rosemary Nelson.*
2. *Your objective will be to identify and prosecute the person or persons responsible for the murder of Mrs Nelson, or for any associated offence revealed through the process of the inquiry.*
3. *You may thus absorb into your investigation any matter elicited during its progress which appears to you to be linked or otherwise connected to it.*
4. *Should any further matter arise in the course of your enquiries which in your view requires separate or independent investigation or which you feel should be investigated by another officer, you will draw this to my immediate attention.*
5. *No limit or constraint will be placed upon you in the discharge of your function.*
6. *You will have the fullest co-operation from the Royal Ulster Constabulary in this matter.*
7. *You will have unlimited access to all intelligence and information available to, and all files held by, the RUC.*
8. *The composition of the investigative team either from within or from outside the RUC will be a matter for you.*
9. *It will be my responsibility to ensure that whatever level and nature of resources you require are provided.*
10. *You will keep me regularly briefed on then [sic] progress of the investigation or any significant developments as they occur.'*

Paragraph 7 of these Terms of Reference was to lead to trouble, as will be seen below. Colin Port interpreted the paragraph literally: he would have '*unlimited access to all [emphasis added] intelligence and information available to, and all files held by, the RUC*'. SB read two qualifications into the paragraph: the material had to be relevant (and it would be for SB to decide relevance), and it would be subject to source protection and national security. The person who would have to adjudicate between these conflicting interpretations was Sir Ronnie Flanagan.

The involvement of Royal Ulster Constabulary officers in the Murder Investigation Team: Colin Port's view

31.5 Colin Port told us that one of the first questions that he considered was whether the investigation team should include RUC officers, a matter which Sir Ronnie Flanagan would have been content to leave to his judgment.² It was not a matter he dwelt upon for very long – the Senior Investigating Officer (SIO) and Deputy SIO had already assembled a team which had covered a great deal of ground and he told us: '*These officers knew the local geography, local community and areas of sectarian tensions. They also knew the individuals who were likely to be of interest to the investigation.*' This was an issue of judgment and one which could only be made by Colin Port. There would no doubt have been difficulties in replacing the established team with officers from outside Northern Ireland, or indeed from outside the UK,

²Sir Ronnie Flanagan told us that he did not believe that a murder investigation could have been undertaken in Northern Ireland without the involvement of local officers.

not least in terms of security and acclimatisation, and the attendant difficulties and uncertainties would have weighed very heavily against any advantages that might have been gained. Moreover, it does not appear to us that there would have been any prospect of an entirely independent team receiving any greater cooperation from the community than that which was given – and perhaps more significantly, they would have been at an equal disadvantage in their dealings with SB.

31.6 In addition to appointing an outsider, Detective Chief Superintendent Arthur Provoost, as his deputy, Colin Port recruited in the ensuing months a significant number of outside officers, some of whom were to be based in Northern Ireland, others elsewhere. During the course of the investigation, over 100 non-RUC/Police Service of Northern Ireland (PSNI) officers and other personnel were engaged on the investigation, in addition to some 72 officers from within the RUC/PSNI.

31.7 Colin Port told us that he recognised an immediate need for a small team of experienced and, as he put it, ‘*completely reliable officers*’ from outside the RUC to support him and fulfil key roles within the investigation. They were to work within two separate units which he established in secure offices away from Lurgan which were to be manned entirely by non-RUC officers. The first of these was called the Collusion Cell and was to undertake all the work pursuant to Sam Kinkaid’s Policy File No 23.³ The second unit was an Intelligence Cell, the purpose of which was to receive and manage intelligence relating to the murder so that it could be sanitised and made available to the other members of the MIT as required. Colin Port recruited a Detective Chief Inspector who had undergone developed vetting to lead this unit and at least two Detective Constables from SB to work within it. These measures did little, however, to allay the fears of certain SB officers who continued to express concerns about the degree of access to information demanded by Colin Port. During the course of the murder investigation, the work of the Intelligence Cell was to expand significantly. It was to manage a significant number of proactive intelligence and undercover operations which targeted a particular group of suspects who were, according to early intelligence, involved in the murder. We refer to this in more detail below when we describe the work carried out under the heading Operation George (see Chapter 31.122 to 31.135). Before we do so, we consider whether the work of the MIT was supported wholeheartedly by SB.

Access to intelligence: a contentious issue

31.8 Colin Port at first assumed that the reference to ‘you’ in paragraph 7 of his Terms of Reference meant that the MIT as a whole would have access to relevant intelligence, but we consider it doubtful whether Sir Ronnie Flanagan could have made such a commitment without it being implied that this was subject to those receiving the intelligence undergoing a process of security clearance. Colin Port had himself undergone developed vetting and there should have been no difficulty therefore in him receiving un-sanitised intelligence if he required it, subject only to satisfactory security arrangements for transfer and storage being made. Indeed, it appears he was immediately made privy to a great deal of secret information. But little thought appears to have been given to the implications of this at the beginning of the investigation and, as will be seen below, the demands made by the MIT caused an increasing degree of anxiety to SB officers.

31.9 In comparison to previous investigations in Northern Ireland, however, the latitude given to Colin Port by his terms of reference, on any interpretation, placed the Rosemary Nelson murder investigation in an unprecedented position, and during the course of the investigation Colin Port was given access to SB intelligence and

³See Chapter 30.20

resources that had not previously been available in any other case. The relationship, as will be seen below, was not without its difficulties and some particular SB officers were uncomfortable with Colin Port's Terms of Reference. It was also the case that some pieces of information, and some resources, were withheld from Colin Port and his team.

The importance of the early intelligence

31.10 Within days of the murder, SB had disclosed information to the MIT which purported to identify a number of individuals who were said to have been involved in it. One of the earliest reports from Lurgan SB named a Belfast man, long thought to have been involved in Loyalist terrorism, who was believed to have experience with explosives, a connection with a known bomb-maker and recent links with the Red Hand Defenders (RHD). A report from Belfast identified another man, believed to be a central figure in the RHD. Reports from Lurgan SB identified two individuals, both from Portadown and both members of the Loyalist Volunteer Force (LVF), who were said to have been in contact with another man, who was said to have made and supplied the bomb.

31.11 There is no doubt that this intelligence influenced the direction of the murder investigation. It confirmed Sam Kinkaid's first impression that this was a Loyalist attack and it focused the attention of the murder investigation on particular groups of individuals. Colin Port was briefed about the material by Sam Kinkaid soon after he arrived and he told us that within two weeks of his appointment in Northern Ireland he had spoken about it to the SB Liaison Inspector, the SB Liaison Chief Inspector and the Regional Head of SB South Region (RHSB(S)).⁴

31.12 The form in which this intelligence had been given to the MIT was of little use. Sam Kinkaid had warned Colin Port that, in keeping with most intelligence that was disclosed by SB, it was graded at a generic level and it was therefore difficult to assess how reliable it was. Colin Port was also concerned about the apparent lack of analysis that had been applied to it. It appears to us, moreover, that, in the absence of evidence which linked the named individuals to the murder, the investigation was no further along. It would have been possible to arrest and interview the suspects named and to carry out searches of their homes and motor vehicles – and this option was considered – but Colin Port and his senior colleagues judged, correctly in our view, that this would have served little purpose. Experience showed that hardened terrorists were aware of the need for decontamination and left very little forensic evidence at the scene. There was very little prospect of any information being offered during an interview of a suspect. The practice in Northern Ireland at the time was to conduct several interviews under caution over several days but the detainee routinely refused to make any comment. Colin Port needed access to information and intelligence in its original form, to determine how to gather admissible evidence against the suspects.

Colin Port's first meeting with Special Branch

31.13 Therefore, on 8 April 1999, together with Sam Kinkaid, Colin Port met the Head of SB (HSB), the Assistant Chief Constable (Crime) and the Heads of SB South Region, SB Belfast and E3B.⁵ He asked for further information to be provided. This included information regarding the grading of the intelligence which had already been supplied to the MIT, access to surveillance logs over the previous

⁴According to records maintained by the Detective Superintendent SB Colin Port examined the underlying February and March intelligence from Portadown on 29 April 1999.

⁵See Appendices A and C

six months and access to intelligence product relating to the MIT's suspects. Sam Kinkaid's Secret Policy File No 13 records that: *'No objections were raised at the meeting, although ACC 'E' [HSB] did ask that the accepted protocols for handling such material be followed.'*

Special Branch concerns

31.14 The notes of an SB meeting on 12 April 1999 indicate that, in fact, the senior members of SB were concerned about some of the demands which had been made by Sam Kinkaid and Colin Port. This meeting was no routine affair. It was attended by the HSB, the Deputy Head of SB, the Regional Heads of SB from South Region and Belfast, the Head of E4, a Detective Superintendent from IMG Research, Detective Chief Inspectors from E3B, E4, E9D and a Detective Inspector from E1 Disclosure.⁶ It began at 17.35 and ended at 22.30. We found that the following extracts from the notes of the discussions show that SB did not regard the commitment to provide access to the intelligence as unconditional.

31.15 In respect of Sam Kinkaid's earlier request for intelligence relating to the key suspects:

'Pen pictures of the relevant persons were to include short general descriptions and then any relevant intelligence on CAISTER, PRISM and Registry. If the relevant material had not been SIR'd or put on SB50 eg if it is on PRISM only, then the respective REGION will be consulted and consideration should be given as to whether the material can be used. In the event that any such material is used then it should be SIR'd.'

Each pen-picture should be accompanied by caveats to the effect:

- (a) This is a summary of the intelligence held by RUC SB which is assessed to be relevant to the investigation. Other intelligence is held which indicates this person's involvement with serious terrorist crimes including murder etc. Such material is held on record at RUC SB HQ Brooklyn and all material on the relevant file is available to be read by the Senior Investigating Officer; and*
- (b) Before any use or further dissemination is made of this material, Regional Head of South Region MUST be consulted. If the intelligence refers to Belfast or North Region then RHSB South will consult his counterpart in that Region who will then consult with the Enquiry team.'*

31.16 In relation to surveillance logs:

'Concern was expressed that study of certain surveillance logs could reveal the location and nature of particularly sensitive and important SB operations. It was suggested that in such cases the identification of such operations should be treated in the same fashion as the identification of SB agents ie such information should be given to DCC Port only. If TCGs [Tasking and Coordination Group] were asked by the Enquiry [sic] Team Int Cell to produce any such log, the Team member would be told that such information would be provided to DCC Port only.'

31.17 The note records that *'ACC 'E' [HSB] undertook to speak to brief DCC Port in relation to these issues'*.

⁶See Appendix C

31.18 The composition of the Intelligence Cell was also a concern. The note records that *'ACC E [HSB] undertook to speak to DCC Port with a view to having the Int Cell staffed by SB Officers only'*.

31.19 The terms in which this discussion was recorded indicate that, notwithstanding the Chief Constable's agreement with Colin Port, there might be circumstances when relevant intelligence would be withheld.

31.20 Moreover, the selection of intelligence to be disclosed and the use to which that intelligence was put was to be controlled by SB. If additional material to that disclosed was to be viewed, it was to be restricted to the *'Senior Investigating Officer'*.

31.21 The reference to the SIO was, we believe, a reference to Colin Port, not to Sam Kinkaid. Sam Kinkaid had not undergone developed vetting, as Colin Port had done, and it was clear to us that this was regarded by Senior SB officers as an essential prerequisite for access to material classified as SECRET and above. The HSB and the RHSB(S) told us that they would have preferred Detective Chief Inspector Gutsell who was leaving, to be replaced with another SB officer of equivalent rank. The HSB told us: *'It would have been reassuring to the DCI⁷ that his warrantry responsibilities were going to be honoured in relation to the handling of the [redacted] material if there had been someone in the nature of DCI Gutsell responsible for this element of the work.'*

31.22 An entry in the journal of the HSB for 13 April 1999 indicates that he raised these matters with Colin Port. The note reads as follows: *'Advised him re availability of E4 logs, Source details + [redacted] material subject to statements + procedural safeguards – he was very satisfied.'*

31.23 Colin Port expressed a rather different view to us. He rejected the suggestion that another officer should have been brought in to replace Detective Chief Inspector Gutsell. He told us:

'The system had changed. I had, for want of a better word, carte blanche. There was no appeal as far as I could see. I didn't need a Special Branch officer because I had another officer who was extremely experienced in terrorist investigations who was my head of intelligence, who had a good relationship with Special Branch, Security Service and, indeed, with investigations. So I think I went one better. It wasn't just a Special Branch officer, it was an anti-terrorist officer. Having said that, there were Special Branch officers seconded from other police services in the Intelligence Cell.'

31.24 Records disclosed by the Security Service reveal that meanwhile, the HSB raised the matter with the Director and Coordinator of Intelligence, the most senior member of the Security Service in Northern Ireland, and sought to enlist his support. A Loose Minute from the DCI dated 21 April 1999 records the following:

'HSB has been seeking my support in the approach he is proposing to take in relation to access by Colin Port Norfolk DCC (who is now leading the investigation) to intelligence material.'

Special Branch have long established arrangements for hand[ling] the exploitation of intelligence operationally through TCG, and for filtering intelligence to officers conducting criminal enquiries. In the latter case the intelligence is normally passed in the form of a limited summary, and no access given to raw material. One of the subtexts of the Nelson investigation is the allegation of RUC collusion. RUC SB

⁷DCI is the Director and Coordinator of Intelligence: the most senior member of the Security Service in Northern Ireland.

therefore wish to give Port (or his nominee) sufficient access to potentially relevant material to allow him to form his own opinion with confidence. In respect of IOCA [Interception of Communications Act 1985] material this is essentially a matter for the RUC themselves. HSB is seized of the need both to allow Port access and to protect sources, methods and intelligence. The approach he is planning to take is similar to the model followed by T Branch in GB (we were grateful for the briefing DCI Rep Knock [the DCI's representative at the RUC] was able to get from T Branch) Port (or a DV'd nominee) will be shown material under controlled conditions and reminded of the strictures of IOCA, and its inadmissibility in evidence.'

31.25 The Loose Minute later records: *'Port seems content with this approach. I supported HSB in his line on the back of discussions with [redacted] and LA [Legal Adviser]. I encouraged the idea that Port's nominee should ideally have an SB background.'* It appears to us that this view was not reached as a result of any contact with Colin Port himself and we doubt whether the procedure agreed within SB was properly articulated and agreed between the HSB and Colin Port. Some matters were clearly understood by both – access to source identities, for example, was to be restricted to Colin Port. IOCA material was to be handled by officers who had undergone a process of being 'signed on' to the legislative requirements – but other matters, it appears to us, lay unresolved. Whereas Colin Port believed he would be supplied with all relevant material, there remained some material that he would only get if he asked for it specifically.

A clash of personalities

31.26 It was evident to us that the mutual lack of trust between SB and the MIT was exacerbated by the acrimonious relationship which existed between the RHSB(S) and Sam Kinkaid. In their evidence to us, both, we felt, sought to minimise the significance of this mutual lack of trust but the antipathy between them was captured by a member of the Security Service who, as a result of a request by Colin Port to the DCI, visited Northern Ireland on 19 and 20 May 1999 to review the security arrangements that had been put in place by the Intelligence Cell. Before visiting the Intelligence Cell, he met the HSB and afterwards the RHSB(S) and his Detective Chief Inspector. Later he met Sam Kinkaid.

31.27 In his report to the DCI, under the heading 'Key Issues' and the subheading 'Relationships', he made the following observations:

'7. A key issue which quickly emerged during my visit was the acrimonious state of relations between SB and the remainder of the enquiry team. The relationship between RHSB(S) and the SIO is particularly hostile. I had to listen to over an hour of vitriol from both about each other during my separate discussions before we could even begin to address the more substantive items of business.

8. In summary, the RUC(S) perception of the situation is as follows:

- The enquiry team is not capable of handling securely their intelligence product: the Intelligence Cell only has two staff with DV clearance; it leaks intelligence to the enquiry team; and it lacks the expertise to use convert [sic] intelligence into evidence.*
- Officers from the Mainland fail to appreciate the local operational environment and are too willing to jeopardise sensitive intelligence gathering techniques in pursuit of the enquiry's short term goals.*
- That members of the enquiry team treat RUC(S) with suspicion. [The RHSB(S)] is aware of the perception that Southern Region is holding back intelligence and*

strongly resents the emphasis being placed on investigating the allegations of SB collusion in the murder.

- *That Port was receiving biased advice from Kinkaid (SIO) who has a grudge against the SB and is keen to set precedents regarding the use of intelligence and intelligence-gathering resources during this investigation to undermine the SB's position in relation to CID.*
- 9. *To a large extent, these perceptions were mirrored by those held by the Head of the Intelligence Cell and the SIO. They are both very frustrated with what they perceive as the SB's overly protective approach towards the use of intelligence. It is also clear that the SIO sees this murder enquiry (which unhelpfully he refers to as a "collusion enquiry") as a possible blueprint for future criminal investigations in the Province. From my discussions with him, it was apparent that RUC(S)'s perceptions of Kinkaid are well founded.*
- 10. *Comment: From my observations, I am persuaded that the RUC(SB) is being unusually open with the intelligence, if only because it is aware that it cannot be seen to be anything less than 100% cooperative! Much of the SB's caution over the handling of the intelligence is understandable at this stage, given that the Intelligence Cell has not yet been properly established (as evidenced by only two of its staff having DV status) and intelligence handling procedures between the Cell and the SIO have only just been agreed (26 May). From my visit it was clear that personal relationships at the management level between RUC(S) and the remainder of the enquiry team are pretty abysmal.'*

31.28 The author of this report recorded that he had given Colin Port 'a very frank assessment of the situation' and that Colin Port was 'surprised to learn of the degree of antagonism' that existed between SB and the MIT. We believe, however, that Colin Port did understand the situation. It appears to us that he was more concerned with finding practical solutions to the issue of how to gain access to intelligence, hence his request for the Security Service to intervene. In his report, the Security Service representative made some constructive suggestions which Colin Port accepted: the Intelligence Cell should be strengthened by the assignment to it of an SB officer at the rank of Detective Sergeant; a standardised procedure should be adopted for the tasking of SB; and meetings should be organised between the SIO, the Intelligence Cell and SB to 'agree procedures to prevent improper leakage of intelligence from the Cell to the Enquiry team'. On 28 May 1999 Colin Port visited the Headquarters of the Security Service, in order to discuss 'the protection of long term technical assets in the Province and sensitive methodologies'.

The decision to use proactive techniques

31.29 Colin Port was not the first to suggest that the best hope of developing a case against those named in the early intelligence lay in pursuing a proactive investigation which could include both human and technical surveillance. The Assistant Chief Constable (Crime) had referred to it as a possibility at the meeting on 26 March 1999, when, together with the Kent officers, the Federal Bureau of Investigation (FBI) agents and senior SB officers, there had been a discussion regarding 'technical issues and possible opportunities' and a 'general discussion about intelligence versus evidence difficulties and the need to protect intelligence gathering tactics whilst exploring every opportunity to secure evidence in this very important case'. It was clear to Sam Kinkaid that SB had some reservations about such a course.

31.30 With the arrival of Colin Port the suggestion that proactive techniques might be used acquired a new impetus. He had experience in the use of surveillance and he was aware of the powers given to the police by the Police Act 1997 which enabled

police officers and customs officers to enter or interfere with dwellings, offices or hotel bedrooms when it was considered necessary to do so on the grounds that it was likely to be of substantial value in the prevention or detection of serious crime, and the object for doing so could not reasonably be achieved by other means.⁸

31.31 In 1999 authority to use these powers could be given in Northern Ireland by the Chief Constable, the Deputy Chief Constable or, in their absence, an Assistant Chief Constable and, although certain applications also required the approval of one of the Surveillance Commissioners appointed under the Act, the use of the powers was not limited to intelligence-gathering. In England and Wales at that time, they were being used to collect evidence but this was not the case in Northern Ireland in 1999. Here, the use of these new powers was the preserve of SB. Surveillance was carried out by teams managed by the TCG, while technical intrusion, if carried out by the police, was done by officers from a separate branch. The RUC had little experience of using intrusive surveillance for the purposes of collecting evidence. Their activities were restricted to gathering intelligence, the priority for SB.

31.32 Towards the end of May 1999, it seems that the MIT's requirements had moved on. On 25 May 1999, Sam Kinkaid met a number of SB officers to discuss the strategy that the MIT wished to pursue. Following the meeting he wrote a memorandum addressed to the RHSB(S) in which he summarised the MIT's needs. These were listed under two headings. The first, under the heading '*Surveillance for Evidential Purposes*', was to be informed of any contact which had been observed between the suspects who had been named in the early intelligence; the second, under the heading '*Early Notification of Intelligence*', asked that the MIT be advised of any intelligence indicating that it might be possible to arrest one of their (the MIT's) suspects. In summary, the MIT were looking for evidence linking the suspects together and opportunities when they might place surveillance devices in their homes and vehicles. An arrest, with its attendant searches, would be such an opportunity and Sam Kinkaid was aware that in Northern Ireland at that time no terrorist arrests could be carried out by CID without SB approval.

The failure to advise the Murder Investigation Team of arrests in connection with the murder of Elizabeth O'Neill

31.33 The willingness of SB to support the MIT's strategy was put to the test within a few days of Sam Kinkaid's meeting with SB on 25 May 1999. Intelligence was received by SB during the first week of June indicating that members of the Mid-Ulster LVF, who were among those suspected of involvement in the murder of Rosemary Nelson, were planning an imminent attack.

31.34 On Friday 4 June 1999, the RHSB(S) contacted Colin Port by telephone. He told us:

I rang DCC Port personally and told him Special Branch was mounting a surveillance operation to counter it. I spoke in guarded terms as we were on the telephone. I told him that if we saw anything that warranted it, we would do arrests. We could not stand by and allow someone to be killed. DCC Port understood this and did not raise any objections. A briefing was done as per usual in the morning and the operation swung into action. We had got some surveillance people down from Belfast to help us. I attended a wedding that day and met Detective Superintendent [redacted] that evening, who told me that they had had to abort the surveillance operation because it had been compromised [...] and so we had to pull our surveillance teams out.'

⁸Police Act 1997 Part III

31.35 In the early hours of 5 June 1999, an attack took place on the home of John and Elizabeth O'Neill in Corcraun Drive on the Westland Estate in Portadown. A piece of concrete was thrown through the living room window and, immediately afterwards, a pipe bomb. John O'Neill had gone to bed but Elizabeth O'Neill was watching television in the living room. The explosion killed her. Shortly afterwards, another house on the Westland Estate was attacked with a similar bomb, although no-one was injured as a result. During the hours that followed, a decision was made to arrest two of the suspects in whom the MIT had expressed a specific interest. Neither Colin Port nor any member of his team was informed of the decision and by the time they learned of it the opportunity to deploy surveillance equipment had been lost.

31.36 Colin Port had returned to England on 4 June 1999 and he was told of the arrests in the O'Neill case, we believe, by Sir Ronnie Flanagan himself, in a telephone conversation on Saturday 5 June 1999. Colin Port returned to Northern Ireland the next day, somewhat annoyed, and met the RHSB(S) to find out what had happened. He told us:

'I was informed about this [later on] that Saturday morning and I flew to Northern Ireland and attended a meeting with [the RHSB(S)] and others the following day and sought an explanation as to why we had not been informed of the arrests. I was told that there had been a breakdown in communications. I made it clear that this issue would not go away. What I had agreed with [the RHSB(S)] was that in life-threatening situations or in circumstances where they needed to secure evidence then obviously the necessary arrests should be made. Neither appeared to be the case here. Although I continued to press for an explanation, when it eventually arrived it was not convincing and they simply said it was an administration problem.'

31.37 Sam Kinkaid was 'annoyed and very disappointed' when he heard about the arrests. He said that he 'had made it clear at the original meeting on 25 May at which a lot of Special Branch personnel were in attendance, though I cannot recall who [...], that we had wanted to use such opportunities and it was therefore perfectly clear what I was looking to do as SIO. Having made my position clear on 25 May, I can see no logical reason why the MIT was not told of these arrests, whatever "administrative problem" there may have been.'

31.38 The RHSB(S) told us:

'DCC Port had supplied a list of names and requested that he be notified if anyone on that list was to be arrested, for him to clear it first. [...] The letter communicating this was given to one of our officers liaising with the murder inquiry team and asked to deliver it to Mahon Road. Our officer was not told that the letter was urgent and the letter was therefore unfortunately put to one side and left for a number of days before it was delivered. The result was that I did not get the letter until a few days after the arrests [...]. This was purely an administrative oversight.'

31.39 Colin Port raised the issue when he spoke to the HSB on Monday 7 June 1999, and again when they met the following day 8 June 1999. In his personal notebook, the HSB wrote: 'Mr Port [...] made reference to me "doing him a favour" by getting him details of why he had not been contacted sooner following the murder of Mrs O'Neill on 5/6/99.' His notebook refers to a second meeting with Colin Port later and records that 'the decision to arrest was a CID matter after a briefing by the local SB D/Sgt. He then explained that he needed the matter covered in writing to satisfy any future public inquiry. I undertook to examine the issue for him even though it had not been a TCG operation + the arrests were not preplanned by us.'

31.40 In his evidence to our Inquiry the HSB said as follows:

'I was contacted again by Colin Port on 8 June 1999 and my notes in relation to the day's events appear at pages 52 to 54 of my Journal. Colin Port had wanted to be contacted about house searches following the Elizabeth O'Neill murder – although I do not recall which property this related to. He also raised the question that he had not been contacted soon enough following Mrs O'Neill's murder on 5 June 1999. He wanted me to find out what had happened. We arranged to meet later in the day and in the interim, I spoke to the Chief Constable and briefed him on the fact that Mr Port had raised this as an issue. The Chief Constable took the view that this was not a Special Branch task. Apparently the Chief Constable had telephoned Colin Port at home on the weekend of the murder as a result of which he had come back on the Sunday.'

31.41 In due course, a written explanation was provided. The RHSB(S) produced a report of this incident dated 24 August 1999. The essence of the report is contained in the following paragraph:

'Unfortunately no contact was made by those executing the arrests with Deputy Chief Constable Port or members of his senior management team. This course of action had been requested in a minute forwarded by the SIO a week before the murder. This minute was given to a member of SB to hand-deliver to Mahon Road. Unfortunately this did not occur due to an administrative problem and its contents were not brought to the attention of the Special Branch Office advising the senior officers who planned the arrest operation.'

31.42 We are left with a sense of unease about this incident and the explanations given in respect of it. We are inclined to the view that the initial error was an isolated occurrence and to accept that the failure to warn the MIT of the arrests in the early hours of 5 June 1999 was due to incompetence rather than deliberate omission. The delay in passing Sam Kinkaid's memorandum to the RHSB(S) was, however, quite irrelevant – the RHSB(S) was aware of Colin Port's requirements when they spoke on 4 June 1999, as was the Detective Superintendent. It would appear, moreover, that the SB Liaison Inspector was also aware of the MIT's requirement. His description of the events was as follows:

'My recollection is that the MIT had previously asked to be involved in the arrest of any of the key suspects. The murder of Elizabeth O'Neill was an intense incident that occurred with a lot of activity prior to it. I believe I was telephoned about the murder in the early hours of the morning by [the Detective Sergeant]. I told [him] to attend the CID briefing and brief them fully. [He] went in around 3am on the Saturday morning. Also present during this briefing would have been the Head of CID, Chief Superintendent [redacted] and the Divisional Commander, as well as other CID officers. I am confident that Chief Superintendent [redacted] would have known that the MIT wanted to be involved in the arrest of the key suspects. [the Detective Sergeant] may not have known of the request by the Rosemary Nelson Murder Investigation Team. At the briefing a decision was made to arrest the main suspects and search their houses and unfortunately the Rosemary Nelson Murder Investigation Team were not informed. This was a mistake, as simple as that, due to the follow up work being done very quickly.'

31.43 However, all of these SB officers were present at a meeting which took place on 5 June 1999 with the Chief Constable: the HSB, the RHSB(S), the Regional Head of CID, a Detective Constable 'J' and a Detective Chief Inspector and a Detective Inspector from SB J Division. It seems inconceivable to us that the reaction of Colin Port to the news of the arrests was not discussed at this meeting. Indeed, it appears to have been the reason why, immediately after the meeting, Sir Ronnie Flanagan telephoned Colin Port to tell him of the murder and to advise him, according to an entry in the notebook of the HSB, to return to Northern Ireland *'when convenient'*.

This being so, it is difficult to conclude that the HSB would not have been fully aware of the reasons why the MIT had not been alerted to the arrests when he first spoke to Colin Port on 7 June 1999 and when they met the following day.

The failure to disclose relevant surveillance

31.44 The above was not the only incident in which SB disclosure to the MIT was less than full. In particular, regarding one matter, which we shall now discuss, the failure of SB to disclose fully was of substantial importance to the MIT.

31.45 The issue of surveillance had been raised at a very early stage of the investigation by Sam Kinkaid, and Colin Port had requested access to surveillance logs at the meeting with SB officers on 8 April 1999. Sam Kinkaid's memorandum of 26 May 1999 explicitly sought disclosure of any surveillance of meetings between those who had been identified in the early intelligence. Sam Kinkaid's memorandum specifically referred to the person who had been named as the bomb-maker and to members of the Mid-Ulster LVF. If observations had been kept on any of those named in the period prior to the murder of Rosemary Nelson, they would clearly have been of interest to the MIT and should have been disclosed by SB. The MIT would certainly have wished to consider the evidential value of what had been seen and it is possible that they would have required those engaged in the surveillance to make witness statements – as with Operation Fagotto. Any evidence that the known suspects had been in contact with each other would have been of potential relevance, and information about the movements and habits of the suspects would no doubt have helped the MIT in the planning and development of the investigation. It might also have provided useful corroboration of the early intelligence.

31.46 During the course of our Inquiry, documents were disclosed, first by the Ministry of Defence and later by the PSNI, which indicated that surveillance on those persons who had been named in the early intelligence, or on persons linked to them, had in fact taken place. Some surveillance was carried out on suspected members of the Red Hand Defenders; some on members of the Justice for Protestants group. Most significantly, under the codename Operation Shubr, surveillance had been carried out, both before and after the murder of Rosemary Nelson, on those regarded by the MIT as the principal murder suspects. This surveillance and the records which were compiled as a result of it came to the attention of the MIT only as a result of the disclosure made during the course of our Inquiry.

Operation Shubr

31.47 Operation Shubr had begun in April 1998 following the receipt of intelligence that *'Mid Ulster LVF have some form of terrorist activity planned for the near future'*. It was resurrected from time to time in the months that followed and continued intermittently until November 1999. Its purpose was described to us in the following terms:

'The LVF had been implicated in a number of attacks across Lurgan and Portadown. They were causing us problems with Drumcree, were heavily involved in drug running and we believed were responsible for the murder of Adrian Lamph. The real danger of the LVF was that they were so volatile. They did not sit down and plan attacks like the Republicans. They were spontaneous. [Redacted]. They were a lethal force. They murdered a lot of people, particularly in east Tyrone and the Armagh area. This was the background in the surveillance operation.'

31.48 Another SB officer commented on the purpose of the surveillance as follows:

'Op Shubr was just an operational name for the ability for us to deploy surveillance when it was available, primarily on getting to know the LVF targets that surveillance were working on. It was what I would call lifestyle, pattern building, getting to know them, getting to know their associates, getting to know the vehicles that they used. On the occasions when we did get specific intelligence, we did go out with a specific operational outcome in mind. So there were times when it was specific, but we were actually running similar operations right across the region. We would have looked at dissident groups in various areas and, as I say, part of that was so that if specific intelligence came in, we weren't asking a surveillance team to go out and work on people who weren't known to them. The officers would have been out, they would have identified who the various personalities were and it actually aided them.'

31.49 The Army Captain in charge of the unit involved in the surveillance told us:

'Operation SHUBR was against Mark "Swinger" Fulton whom we knew to be the OC [Officer Commanding] Portadown LVF. He had been Billy Wright's right-hand man. [...] The LVF were thought to be involved in terrorist activity in the Portadown area. We were asked to gather information on them. An example would be the report obtained on 2nd April 1998.'

31.50 As part of this operation, surveillance was conducted on two of the MIT's principal suspects. Of particular relevance was the fact that they were seen together on 25 February 1999, when they were followed from Portadown to Belfast, where it was believed they were to attend a meeting. Further observation was kept on 4 March and 5 March 1999, again as it was believed that they were to attend a meeting in Belfast. Observations continued periodically throughout the months that followed. We noted that surveillance did not take place in the days immediately before Rosemary Nelson's murder, but resumed on 19 March 1999. We examined the times and occasions when Operation Shubr was undertaken. We are satisfied that the absence of any Shubr operation in the days immediately before Rosemary Nelson's murder has no sinister connotation.

31.51 It was not disputed by any of the SB officers who were questioned about Operation Shubr that the surveillance was relevant to the murder investigation. We were told by the RHSB(S) that Colin Port had in fact been told about it: *'I myself briefed Mr Port that there was ongoing surveillance on those suspects when he arrived, and that we would probably have to continue doing it but would keep him apprised.'*

31.52 In respect of the surveillance logs he said:

'We thought the intelligence at this time on the LVF was that their activity was drug related. Nothing was picked up on this surveillance to indicate that the LVF [...] were about to be involved in a murder. I am told that the Port team claim to have been unaware of this surveillance operation, despite having requested access to surveillance logs for a six-month period prior to the murder. I think this is incorrect. As I have said, my instructions were to allow access to all such material. Indeed, the logs were at Mahon Road, and I recall Mr Provoost speaking to [a Chief Inspector] at TCG with a view to accessing material there. It is possible that the Port team somehow missed the material; as I have said, it did not reveal anything of great value. The logs would have been inputted to PRISM and may have been picked up there, if so requested. There was certainly no reason not to provide the logs to the Port team, or to not tell them about the surveillance operation that had taken place.'

31.53 The HSB said that, in his view, the MIT was always aware that the LVF was in SB's 'sights'.

'If it is the fact that the surveillance logs were not shown to the Murder Investigation Team (and I cannot comment on whether or not that is the case), there was no reason for us to have withheld any such material, assuming it had any relevance. It is possible that material not showing relevance would not have been specifically passed over; in this regard, I repeat the comments that I have made above that it would have to be Special Branch's decision as to whether something could have relevance or not.'

31.54 The Detective Superintendent SB told us that he believed that Colin Port had been told about Operation Shubr. His response to being told that Operation Shubr had not been disclosed was as follows:

'I find that quite strange. I certainly remember discussions we had in relation to Op Shubr, where Mr Port had asked us if we were carrying out any arrests of any Loyalists, could we inform him before we carried out such arrests. And I distinctly remember a discussion where we said to him, as you know, we have an operation where we look at them periodically as resources were available and that if, during the course [of that] operation, we saw them preparing to carry out a terrorist incident or we saw them moving weapons or something, that we would be obliged to take a reaction without contacting them. And the purpose for that discussion was obviously we didn't want to do something without Mr Port understanding what our motivation had been for it. So I find it quite extraordinary that they didn't know that we had been looking because we had been looking at all organisations across South Region periodically with surveillance for many years.'

31.55 The SB Liaison Inspector was also under the impression that the MIT had been informed about Operation Shubr. In his evidence to us he said he 'would be very confident' that he had discussed 'surveillance operations with Colin Port and probably other members of the [Murder Investigation Team]'. He said 'it may not have been known [as] Operation Shubr [...] but I certainly have recollections of discussions in relation to this'. He could not, however, recall disclosing the surveillance logs.

31.56 At the meeting with the HSB and the RHSB(S) on 26 March 1999 Sam Kinkaid had specifically requested, 'if not already done', surveillance on the '3 main suspects' and their 'key associates'. The request was made in writing. A written response to this and other requests was received. In response to the request concerning surveillance the reply was: 'Surveillance is ongoing in accordance with future requirements.'⁹ He reminded us that the issue had been raised by Colin Port at the meeting on 8 April 1999 when a specific request for surveillance logs for the previous six months in relation to the key suspects had been made. He told us that the 'request we made was very clear and, in my view, was not open to misinterpretation. I would have expected the surveillance log to have been provided and delivered to us. The impression that I got from Special Branch was that there was no surveillance.'

31.57 The Deputy SIO was also unaware of the surveillance, in spite of the very good relationship he had with the SB Liaison Inspector. He told us that the news of Operation Shubr came as a 'huge surprise' to him and that it would have been useful to know about it at the time, although it was difficult to assess what its impact would have been on the investigation.

31.58 Colin Port told us that he had not seen the tasking sheets and PRISM documents relating to the operation. He said that he could 'think of no reason why

⁹It was at this meeting that Sam Kinkaid had asked SB to consider the use of surveillance for evidential purposes. The written response directed him, in that regard, to CID resources.

we did not receive surveillance logs for Operation Shubr. We plainly asked for them if not by operational name. I can only assume that this goes back to the unsatisfactory position of Special Branch deciding whether something is relevant to the Murder Investigation Team or not.' He said:

'It stands to reason, it seems to me, that we would have been very interested in any surveillance operation that related to our targets. And, again, through that surveillance operation, we could have seen opportunities to have advanced the investigation. So we would not only have wanted to know what was being recorded in respect of that operation, but how we might use it, how we might, if I can put it this way, piggy-back on it to advance the investigation or investigative opportunity.'

31.59 The relevance and importance of the Operation Shubr surveillance logs, particularly those relating to the activities of the suspects in February and March 1999, was such that we consider it unlikely that they could have been 'missed' by the MIT as suggested by the RHSB(S). Moreover, had they been shown to Arthur Provoost or any of the other senior members of the MIT, we are sure that they would have regarded them as being of considerable significance.

Intelligence reports relating to Operation Shubr

31.60 The surveillance in February and March 1999 was triggered by the receipt of intelligence that meetings were to take place between two of the suspects and the bomb-maker. If these intelligence reports had been disclosed, as they were to us, we consider it likely that the MIT would have realised that surveillance had been undertaken. One of the PRISM printouts in fact indicates that the intelligence was sent to TCG. The MIT were made aware by means of SB 'Briefing Forms' of the possibility that these individuals had been in contact with one another and had met 'during the past three months' and that the purpose of the meeting was to discuss 'the move of munitions into the Portadown area'. But these briefings did not include the dates when the meetings had taken place nor that surveillance had been conducted on the suspects on those dates. One of the Briefing Forms was endorsed by the SB Liaison Inspector: 'There is no further intelligence on this matter', which was incorrect.

31.61 Reference was also made to the contact between the suspects and the bomb-maker in what we consider to be a carefully drafted 'pen picture' of one of the main suspects. SB had been asked to supply pen pictures of the key suspects by Sam Kinkaid on 16 March 1999. When Colin Port arrived they had not been provided but the request was renewed at the meeting on 8 April 1999. A number of these pen pictures concerning individuals including the main suspects were supplied to the MIT on or after 19 April 1999. In these documents, the vital meetings were covered in the following sentences:

'In February [the suspects] were reported to be in close contact with [the bomb-maker] in connection with the further supply of unspecified munitions. In early March [the suspects] were attempting to set up a further meeting with [the bomb-maker] or an emissary of [the bomb-maker]; in the event their arrangements for a meeting at a neutral venue did not work out, so [one of the suspects] travelled to [the bomb-maker's home] on 7 March to transact their business.'

31.62 As can be seen these documents included references to dates, but, in accordance with the policy decided by SB at their meeting on 12 April 1999 following their initial encounter with Colin Port, the pen picture included the caveats which we set out at paragraph 31.15 above. The effect of this manner of disclosure in the light of the approach adopted by SB to surveillance logs was that, unless a specific

log was asked for, none would be disclosed and, if asked for by a member of the Intelligence Cell, the response would have been that only Colin Port was permitted to see it.

General anxieties within Special Branch regarding surveillance operations by the Murder Investigation Team

31.63 The MIT's plans to undertake surveillance were of evident concern to the Detective Chief Superintendent in charge of E4, who, theoretically at least, controlled the specialist resources necessary to put them into action. He reported his dissatisfaction with the MIT to the HSB on 6 June 1999. He described them to us in the following terms:

'I would ask the Murder Inquiry Team what they wanted from the surveillance, but they couldn't give me any priorities. I needed to know what their priorities were. If TCG South came to me with three operations, two in Belfast and one in the North, I may not have had sufficient resources to conduct all three of them. I had to decide which ones to prioritise. I couldn't do that unless I knew what the priorities were. The Murder Inquiry Team simply wanted me to dedicate a team to them. I couldn't do this. That was my frustration.'

[...] I remember there were multiple targets and that it required a lot of commitment from my team. I didn't have the resources for this. In addition, they wanted to bypass TCG and the system. They were using me because of my uniform background and I was the Head of E4. They saw E4 as my resource to deploy, and didn't understand that whilst they were my resources, I couldn't task them. They were tasked by TCG and the regions.'

[...] DCC Port mentioned the names to me. [...] I asked him which ones he wanted me to prioritise and he said he wanted everything. I couldn't give him everything and there were channels he needed to go through. I don't remember meeting with DCC Port about this, but I did meet Chief Superintendent Provoost, Detective Chief Inspector [the Deputy SIO] and Detective Superintendent Kinkaid about it. Detective Superintendent Kinkaid was quite demanding and less practical than Detective Chief Inspector [the Deputy SIO]. I was conscious that they were asking for something and that I would have to provide them with a good explanation as to why we couldn't do what they wanted, without being seen as obstructive. I knew that if they had no success in getting what they wanted, they would want someone to blame.'

31.64 For their part, the MIT were equally frustrated. During June and July, a number of surveillance operations requested by the MIT were authorised by the Chief Constable and did not proceed as they were judged to be 'not feasible' or they were short-lived and unsuccessful. Colin Port commented on the Head of E4's responsibility for technical assets operated by the RUC in his evidence to us. He stated: *'He was, in my view, a fairly conservative individual who was fairly new to his post. He saw himself as the gatekeeper to the Surveillance Commissioner.'*

31.65 Arthur Provoost also described the Head of E4 as having a "gatekeeper" mentality'. *'[The Head of E4] was very protective of and loyal to the Chief Constable and I think he saw the best means of protecting him as being strict adherence to process and systems. I think that this gave [the Head of E4] a "gatekeeper" mentality where the Chief Constable was concerned. I am not particularly critical of that, given [his] role, but I do wonder whether on occasions other important considerations were made subordinate to the objective of protecting the Chief Constable.'*

31.66 We appreciate that the Head of E4 had proper gatekeeper responsibilities to comply with legislation overseen by the Surveillance Commissioner. We have not examined the reasons why each of the surveillance proposals which had been authorised by the Chief Constable could not proceed, but the Head of E4 referred to some of the difficulties in general terms and there was evident force in some of what he said. He told us, for example, *'It must also be remembered that [...] we could not even do surveillance in Portadown because people were so switched on there. There were so many RIR [Royal Irish Regiment] patrols and police who knew our vehicles. It was seen as a game to them to try and spy one of our cars out on surveillance.'*

31.67 However, we have found some of the decisions which prevented authorised surveillance operations from proceeding to be over-cautious and also found it incomprehensible that these decisions could not be fully explained to Colin Port.

Further items of intelligence not disclosed to the Murder Investigation Team

31.68 During the course of our Inquiry, it became evident that SB had been in possession of further intelligence which the MIT would have considered both relevant and useful had it been disclosed. It included the following (the dates indicate the approximate date when the intelligence was obtained by SB, although the date of reporting might have been shortly afterwards):

- *February 1997*

'A "bombmaker" from Belfast has expressed his full support for the Loyalist Volunteer Force. [Redacted] this person will be making an incendiary device and another form of explosive device for the LVF. [redacted] attempt to identify the bomb-maker'

- *August 1997*

'Mark "Swinger" Fulton, O/C LVF, [...] developed a UCBT [Under Car Booby Trap], that he tried and test-fired successfully and would intend to use them in attacks in the South.'

- *January 1999*

'[Redacted] has been associating closely with [redacted] (LVF) over the past number of weeks. [Redacted] is strongly suspected of being involved with the Red Hand Defenders along with [redacted].'

'[Redacted] is continually associating with members of the LVF in the Antrim and Larne areas. [Redacted] is strongly suspected of being a leading member of the newly formed terrorist organisation known as the Red Hand Defenders.'

- *March 1999*

'LVF members from the Portadown area are currently targetting [sic] Colin DUFFY from Lurgan with the intentions [sic] of mounting some form of attack against him. [...] TCG Op mounted on [redacted] March 1999.'

'The UFF [Ulster Freedom Fighters] [redacted] have voiced concerns over the fact that their organisation cannot, now account for one of their bombs. Although they have denied any UFF involvement in the murder of ROSEMARY NELSON they are aware that their "missing bomb" may or may not have been the one under NELSON's car.'

'The RHD were responsible for the murder of ROSEMARY NELSON believing her to be a member of PIRA, who held an important role as one of the "legal brains" of the organisation.'

'They [RHD] have access to Ulster Resistance weaponry and a quantity of explosives and detonators with the expertise to create explosive devices.'

- *April 1999*

'[Redacted] and [redacted] are expecting to be arrested and questioned over the murder of ROSEMARY NELSON.'

'A number of RIR members in the Portadown area are believed to be assisting the RHD. The assistance may be in the form of passing details re RUC searches etc.'

'The phone call by the Red Hand Defenders claiming responsibility for the death of ROSEMARY NELSON was made from a Public Phone Box.'

31.69 Each of these items was relevant to the work of the MIT and should have been disclosed. In some instances it would have provided support for information that was already known; in others, it would have indicated good lines of enquiry. The receipt of some would no doubt have prompted the MIT to make further requests for additional information concerning from whom it was obtained, or how and in what circumstances. By any measure, the failure to disclose these items of intelligence to the MIT was, to say the least, unfortunate. We therefore sought explanation from senior SB officers as to how it might have occurred. In his witness statement to our Inquiry, the RHSB(S) said that if intelligence was 'missing' then this was because of 'a few pieces of intelligence slipping through the cracks. There was never a deliberate omission.' During his oral evidence he told us:

'Could I just clarify it too slightly by saying that we got hundreds of actions from the Port team and those actions had to be passed to E3 to basically provide the answers, and that was a huge job in itself. And we were dealing with it at a time when some intelligence was actually in hard copy format, on files, and there was electronic intelligence also, with the beginning of an IT system coming in. And I think if anything was missed, it could have been caught somewhere between the two.'

31.70 The HSB was also of the view that intelligence would not have been deliberately withheld by SB officers.

'First of all, I would be confident in the extreme that no intelligence would have been deliberately withheld, suppressed or concealed from the investigation team. I have no difficulty in saying that to this Inquiry in terms of my knowledge and my experience, and my confidence of the staff under my command. I would, of course, be disturbed, perturbed, if any highly relevant or critical pieces of intelligence were overlooked or in any way missed in the process which went on over a considerable number of years, which involved hundreds, I see, of documents. Now, I think that's important.'

31.71 It appeared to us that the system put in place to ensure that intelligence was disclosed to the MIT was somewhat haphazard. Ironically, given the concerns universally expressed by SB regarding disclosure, no comprehensive record was maintained by SB of the information that was handed over. It was not until May 1999 that a request was made by a Detective Inspector that copies of all records disclosed to the MIT should be sent to Headquarters. In the very early days of the investigation most of the intelligence received by the MIT was passed over in the form of sanitised Briefing Sheets which were approved by the RHSB(S) himself. We were told also that some intelligence was disclosed to the MIT orally at weekly

Strategic Intelligence Meetings; and some was passed in informal conversations between members of the MIT and SB. Arthur Provoost told us that there *'was not one, unchanging route by which Special Branch intelligence was disseminated to the Murder Investigation Team. The best way I can describe the manner in which intelligence was disseminated was that we had a layered approach and there was a hierarchy to those layers.'*

31.72 The SB Liaison Inspector described the process by which intelligence was disseminated to the MIT as follows:

'Past intelligence was provided to the Murder Investigation Team via E3B at headquarters. They would have received intelligence briefings on anyone he was interested in which would have included summaries of what had been going on and pen pictures of certain individuals. I had no role in the selection of past intelligence. If there was fresh intelligence which came into our area, then it was sent by me or a member of my time [sic] by way of Briefing Sheet. I would then have been asked to put the "meat on the bones". [...] If a different region located intelligence which was relevant to the murder investigation, this would probably be passed to the Mahon Road source unit who would then pass it to the Murder Investigation Team. If they did not, it would go to E3 and they would pass it on to the Murder Investigation Team if they thought it was relevant.'

31.73 Another difficulty that was impressed upon us by members of the MIT was that the selection of intelligence was done by officers who were not familiar with the details of the murder investigation. The Deputy SIO told us:

'In an ideal world, it would have been extremely useful if I could have had access to the intelligence held on the "MACER" database at the outset of the investigation, but the caveats and systems in place at that time did not provide for such an eventuality. An SIO does not have that recourse even today. Neither Mr Kinkaid as SIO, nor I were develop-vetted until a few weeks into the investigation and it was therefore not an option for us to do that. I believe Mr Port and Mr Provoost would not have been familiar with 'MACER' and suggest that they would accept that a good degree of local knowledge would be necessary to contextualise the information and intelligence contained on that database.'

31.74 We believe, however, that it would have been difficult for the relevance of these items of intelligence to have been missed by anyone charged with the responsibility of disclosing information to the MIT. Nor do we consider it likely that they were in fact missed. Much of the information was current and some of it fell directly within the ambit of the very first requests for assistance issued by Sam Kinkaid. Some of it, moreover, names Rosemary Nelson herself and should have come to light using the free-text word search facility on the MACER and PRISM computer systems¹⁰ from which these items have since been recovered.

31.75 In respect of two of the items there are additional reasons why we suspect that they were withheld. The first of these is that which indicated that the LVF were targeting Colin Duffy in March 1999. Had it been disclosed to the MIT, it would no doubt have led to a request for access to the surveillance logs kept during the resulting TCG operation which was mounted and which is referred to in the intelligence report. We have set out above the basis of our belief that SB officers were acutely aware of the sensitivity of this type of intelligence and we regard this as a further example of over-caution.

¹⁰ The free-text word search facility enables a user to input the name 'Rosemary Nelson' and every reference held on the database is disclosed.

31.76 The second item is that which relates to the telephone box from which the claim of responsibility was made on behalf of the RHD. This was, undoubtedly, an important piece of intelligence and had it been disclosed in a timely manner there would have been the potential for extensive enquiries to be conducted in order to identify the location from which the call was made and to identify the caller.

31.77 It was suggested that this particular piece of intelligence had in fact been disclosed. The SB Liaison Inspector told us:

'I thought that that was handed over and my recollection is it was handed across. I may be wrong. If it wasn't handed across, it was purely overlooked or mistaken. But I think it was. I have a recollection in the back of my mind of having some discussions because it was relevant, as you say. The phone box – we knew there had been a phone call made and that was relevant. And I don't see why we wouldn't have handed that over, and I believe that we did. If there is no record of it, then I still have at the back of my mind a recollection that I had some discussions with them on it.'

31.78 We believe the SB Liaison Inspector was mistaken. The MIT have no record of it and, such was the reaction of the senior MIT officers when it was disclosed to them during our oral hearings, that we are sure it would have been acted upon if they had been given the opportunity. Moreover, the location from which the telephone call was made was a matter which the MIT raised on a number of occasions during case conferences when either the SB Liaison Inspector or the Detective Sergeant who assisted him were present. The case conference minutes indicate that the issue of the location from which the call was made remained unknown to the MIT and further enquiries were being initiated in order to track it down.

31.79 The only existing SB record of the material that was passed to the MIT tends to indicate that this particular piece of information was not disclosed. During the later stages of our Inquiry's oral hearings, our attention was drawn to a personal file of papers which had been kept by the Detective Superintendent SB. This contained drafts and copies of Briefing Sheets, requests for intelligence from MIT officers, and other documents generally to do with the murder investigation and, significantly, it contained this item of intelligence. The Detective Superintendent told us: *'I would not expect the box to contain a complete record of all the information that was passed to the Port team. It was a personal file which I compiled and kept in my office at Mahon Road and if I was not there for any reason (as I was not from time to time) I would not necessarily have kept it up to date. I would have tried to do so for my own purposes but as I say, it was not intended to be a definitive record.'* He explained, however, that: *'I would have expected the Port team to have been provided with all of the relevant intelligence information that was contained in them.'*

31.80 Although the box file contained the item of intelligence, there was no corresponding draft or completed Briefing Sheet to indicate that it had been passed on to the MIT, nor a receipt, as there was in respect of the other items of intelligence that were passed to the MIT. If it had been disclosed, we are confident that Colin Port and Sam Kinkaid would have pursued enquiries in respect of the telephone box in the way that they described to us in evidence. We strongly suspect that SB feared that it might have compromised the identity of a source. However, in our opinion this piece of information was so crucial to the investigation that the failure to disclose it was wholly unjustified.

31.81 The Inquiry received evidence concerning further intelligence that was deliberately withheld from Colin Port. It was gathered by the Security Service. A report dated 30 March 2000 indicated that in the event of a breakdown in the ceasefire the Ulster Defence Association (UDA) could consult a named bomb-maker *'who was a former Red Hand Commando member, thrown out of the organisation*

for being too militant and uncontrollable. [Redacted] served a prison term in the early 1980's [sic] for explosive offences and more recently was believed to have primed/prepared the device that killed Rosemary NELSON.' A further report of the same date indicated that the Orange Volunteers' 'targeting was aided by information provided by members of the Security Forces' and that this assistance 'took the form of information on movements and the types of protection that potential targets employed'. A further report indicated that there had been an aborted attempt to murder Breandán Mac Cionnaith.

31.82 Intelligence gathered at roughly the same time was summarised for the purposes of the Inquiry as follows:

'In early 2000 the Orange Volunteers (OV) were reported to be considering attacks against prominent republicans in advance of Drumcree. One such target was believed to be Brendan McKenna, Chairman of the Garvaghy Road Residents Coalition, and another was Dara O'Hagan of Sinn Fein. The OV believed that these attacks would find favour within unionist circles because individuals concerned were believed to be unpopular. The OV considered that an example of a similar attack which had attracted considerable publicity and unionist support was the murder of Rosemary Nelson.'

31.83 This intelligence was disclosed to the RUC and action was taken to warn Breandán Mac Cionnaith and Dara O'Hagan. Those warnings were apparently issued by uniformed officers and it would appear that this raised concerns within the Security Service. A Security Service note dated 4 April 2000 records the details of a conversation between the Assistant Director Counter-Terrorism of the Security Service and the Deputy Head of SB concerning this. According to this the Deputy Head of SB explained the action that had been taken as follows:

'The RUC had no alternative but to take immediate action to warn the alleged targets. Post-FINUCANE and Rosemary NELSON, the RUC could not afford to be accused of taking risks with people's lives. We agreed that in future, should any similar situation arise, it would be appropriate for senior managers to hold prompt discussions about the best way to proceed before pushing out the reports. [Redacted] accepted, of course, that there was no question of suppressing unwelcome intelligence.'

31.84 The Assistant Director Counter-Terrorism was also informed that the RHSB(S) had suggested that this intelligence should be disclosed to Colin Port. His note of the conversation with the Deputy Head of SB records the discussion as follows:

'It seemed [the RHSB(S)] believed that, because they contained some colour of suspicion of collusion between the Security Forces and Loyalists, it might be wise for the relevant [redacted] reports to be shown to Colin Port. [The Deputy Head of SB] told me that he was highly sceptical that the reports had any relevance to Port and had been surprised when [redacted] commented that, whilst of course his management would need to agree, if the [redacted] information was to be passed to Port then it might be best to do it verbally. [The Deputy Head of SB] told me that in his judgement speaking to Port in the way proposed, assuming it was necessary at all, was absolutely the wrong approach. It would merely encourage Port to come hammering at the Service's door demanding to see our information, interview the source and to investigate what else we might have to offer! I responded that [redacted] had been instructed to tell South Region that nothing should be said to Port until the Top Management of the Service had considered the issues and signalled its concurrence. [The Deputy Head of SB] was happy with this line. He said that he was minded to write to me about the matter. He thought it was not for the RUC to determine whether the material was relevant to Port and that, as the originators and owners of the intelligence, we should consider if it was relevant.'

31.85 A note records further discussion between the Assistant Director Counter-Terrorism and the Deputy Head of SB the following day:

'At 0900 on 5 April 2000 I was telephoned on [redacted] by RUC D/HSB [redacted] about the issue of whether some recent reporting [redacted] was of relevance to the Port Enquiry. [The Deputy Head of SB] said that he had spoken with ACC (HSB) [the HSB] who took the firm view, whatever [the RHSB(S)] and [redacted] might think, that the [redacted] reporting was of no relevance to the Port Enquiry and Port should not be briefed on it. I told [the Deputy Head of SB] that I was perfectly content with this line and was inclined to agree with it.'

31.86 It was evident to us that the Assistant Director Counter-Terrorism had supported the position taken by the Deputy Head of SB and the HSB with regard to the withholding of these reports. He explained his position in his evidence to our Inquiry. He said:

'I didn't think they were relevant. From what the Deputy Head of Special Branch had said to me, he was saying that he thought that the Head of South Region wanted to show them to Colin Port not because he thought they were relevant, but because he wanted to avoid any suggestion that anything that indicated collusion wasn't being shared, if you see what I mean.'

31.87 He told us that if he had thought that the material was relevant he *'would have been pressing for it to be passed to the Port Inquiry'*. He said:

'If the RUC had pressed us – if the Deputy Head of Special Branch and the Head of Special Branch had pressed us to pass this information to Colin Port's inquiry team, I would have gone to my director and we would almost certainly have consulted our legal advisers and we would have undoubtedly, I would say, in conclusion have agreed to pass it – even though we didn't believe it was relevant – if the senior Head of Special Branch had pressed us to do so.'

31.88 The detailed intelligence set out at Chapter 31.82 above was clearly relevant to the investigation of Rosemary Nelson's murder on any reasonable and objective assessment. It would, in fact, have been of considerable value to the MIT, those associated with the Orange Volunteers being very much within the focus of their investigation. Moreover, some of the information had already been disclosed to uniformed members of the RUC and the presumed intended targets.

31.89 We consider that the HSB should not have been the person to determine relevance. It should have been for the Officer in Overall Command (OIOC) and the SIO to determine. The Security Service erred in supporting the SB line.

31.90 The continuing lack of trust felt by senior SB officers towards Colin Port and the MIT, and their discomfort with the terms of reference agreed between Colin Port and Sir Ronnie Flanagan, was evident from our examination of certain demands made by Colin Port during 2000 when the murder investigation had been underway for over a year. The first concerned access to certain telephone records; the second, a request for direct access to an SB Covert Human Intelligence Source (CHIS); the third, a request for the disclosure of CHIS identities.

The request for telephone records

31.91 As we have indicated above, the MIT carried out extensive enquiries into the use made of telephones by a number of individuals in Mid-Ulster, both before and after the murder. In a memorandum dated 22 August 2000 the MIT sought

from SB an explanation for a number of calls that had been received in Lurgan police station in the month after the murder. The memorandum was delivered by hand to the SB Liaison Inspector who passed the request for information to the Detective Superintendent on 7 September 2000.

31.92 The Detective Superintendent told us:

'I was concerned that the answer to the questions that were being made had been obtained from somewhere else and that he no longer needed an answer to the request that he had made because they had obtained the information, as I say, from another source. [...] If there had been – any of the telephone lines had been intercepted, he would have had access to that sort of information.'

31.93 The Detective Superintendent's suspicion was that SB telephone calls had been intercepted and that as a consequence the identities of informants had been disclosed. This was not in fact true.

31.94 The RHSB(S) told us that when he heard of the request he was anxious to find out exactly what was behind it because there were serious health and safety and security concerns. He discussed the issue with both the Detective Superintendent and the HSB. He told us that *'it was not a matter of obstruction or being uncooperative on our part. We did not know if DCC Port's team were tapping our phones or just conducting analysis on the line. Either way, I make no apology for what we did. Carrying out phone analysis on the billing was equally dangerous as it could identify a CHIS.'*

31.95 Meanwhile, the SB Liaison Inspector had given Sam Kinkaid the information he needed but the Detective Superintendent nonetheless sought disclosure from the MIT of the information that had formed the basis of the request, and of any similar information, *'in order to carry out appropriate risk assessments'*.

31.96 Colin Port responded by letter to the HSB on 18 September 2000. He wrote:

'I find the tenor of the letter disappointing and its contents naive. The letter could be used by others to demonstrate that the RUC and particularly 'E' Department are attempting to obstruct this investigation. You and I both know this is not the case.

There are no security implications for your staff [redacted] in relation to Chief Superintendent KINKAID's cancelled request to Detective Inspector [the Liaison Inspector]. [...]

I do not intend to respond to [the Detective Superintendent]'s letter which seems to be a manifestation of paranoia.'

31.97 His reply caused offence to the Detective Superintendent to whom the HSB disclosed the letter. Both Colin Port and the Detective Superintendent sought to play down the significance of this exchange, with Colin Port agreeing it was a *'storm in a tea cup'*. But it appears to us that just as the terms of Colin Port's letter reflected the frustration of the MIT at what was perceived by them to be less than full cooperation from SB, the Detective Superintendent's response to the memorandum of 22 August 2000 reflected the distrust felt towards the MIT within SB. We note in passing that even if the MIT had decided to enquire into all telephone calls to and from Lurgan Police Station (which they did not) this would not have been an unreasonable line of enquiry. SB sensitivities on this matter would not have been justified. At the heart of this issue, however, was the security of CHIS identities and the methods by which SB protected them.

Access to a Special Branch Covert Human Intelligence Source

31.98 The identity of a particular SB CHIS had been disclosed to Colin Port at an early stage of the investigation and Colin Port had, as a matter of judgment, disclosed the identity to Arthur Provoost, his immediate deputy. SB management regarded this disclosure as a breach of trust. During the summer of 2000 it appears that the possibility of the CHIS being interviewed by members of the MIT was raised. This was not a course with which senior SB officers felt comfortable.

The request for Covert Human Intelligence Source identities

31.99 On 16 August 2000 Arthur Provoost wrote to the RHSB(S) in the following terms:

'Deputy Chief Constable Port has instructed me to enquire of 'E' Department (all regions) what human intelligence sources they manage or have available to them who have, or have had, association with/or are providing information concerning; the Loyalist Volunteer Force, Red Hand Defenders, Orange Volunteers or similar affiliated groups. Please provide details of all such persons dating back to the formation of the LVF (1996) up to the present time. The list should include sources/agents who are no longer active.'

31.100 The letter included an assurance that the information would be treated in strictest confidence and would not be incorporated into HOLMES. A similar request was made in respect of CID informants. It was delivered to the RHSB(S) that day. He told us that this was *'totally unprecedented'* and agreed that as far as he was concerned it was a *'bolt from the blue'*. He immediately passed a copy of it to the HSB.

31.101 Arthur Provoost's letter had asked for a response by Friday 18 August 2000. When the deadline was not met Colin Port arranged a meeting with the HSB. It is evident from Colin Port's note of this meeting that the HSB was reluctant to release the information. He was concerned, for example, that it might later be *'disclosed at a Public Inquiry'*. The two men spoke about the matter again on the telephone on 29 August 2000. Colin Port noted the conversation as follows:

'[The HSB] contacted me regarding the proposition of meeting with himself and [Assistant Chief Constable (Crime)] this week. [The HSB] said that he had discussed the issue with the Chief Constable on Friday of last week and that at this time he had no authority to release the information requested and did I still feel the need for a meeting. The conversation lasted for approximately 40 minutes and can be summarised as follows:-

- 1. [The HSB] felt eventually that there was merit for having a meeting with himself and [Assistant Chief Constable (Crime)] in order to discuss the issues – this was against a backdrop of me explaining my frustration and that if the meeting was not going to be productive I saw little point in having it.*
- 2. [The HSB] felt that perhaps there was another way to get the information other than the way I had asked and could not understand why we were asking for the information. [...] I emphasised that I did not want to be coming back here in 10 years time and being told that there was information that had not been passed to me, in the same way that it had happened to John STEVENS.¹¹*

¹¹John Stevens headed an investigation into alleged collusion surrounding the murder of Pat Finucane.

I emphasised that it was important for my relationship with the family and others, to work within my Terms of Reference ie that I would be allowed access to all intelligence and all files held within the RUC and if the Chief Constable wanted to alter those Terms of Reference, then clearly it was a matter for him.

3. *[The HSB] said that he did not see the relevance of a source in [redacted] being highlighted to me and I said the question of relevance was a matter for me as these were matters that the RUC were not aware of.*
4. *I emphasised that I did not want this information because clearly the more people who knew such information then there was a possibility of danger to those individuals and any security review would necessarily involve myself, however, I felt for reasons of ethicacy [sic] that it was important that I pursued this issue and if necessary would meet with the Chief Constable to discuss it.'*

31.102 Sir Ronnie Flanagan described his attitude to this issue in his evidence to the Inquiry. He told us:

'There would undoubtedly have been tensions when requests for information on CHIS were made by the Port team to Special Branch, particularly if the information related to identification of CHIS, as the most important thing for the SB officers was to protect their sources. However, I wanted to make it clear that the investigation team was to have access to whatever they needed, including CHIS names if it was deemed necessary for the investigation. I am aware that at one stage Colin Port said that he wanted access to the identity of [redacted] Loyalist sources, and it was my view that he must have whatever he needed. I cannot think of any situation where Mr Port would not have been allowed access to SB information if it was his view that he needed it for the benefit of the investigation.'

31.103 A record of a conversation between the RHSB(S) and a Security Service Assistant Director on 30 August 2000 suggests that the RHSB(S) had anticipated Sir Ronnie Flanagan's position and was concerned about it. The relevant parts of the note are as follows:

'Mid AM on Wednesday 30 August I was called on my mobile by RHSB(S). He asked we meet as soon as possible as he had an urgent matter to discuss. We agreed to meet.

2. *When we met RHSB(S) said that he wanted to warn me of something that might affect [redacted] of our agents and to enlist the Service's support for a proposed RUC line of action. He said that he had just received a letter from ACC Port (head of the enquiry team investigating the murder of Republican lawyer Rosemary Nelson) asking for the identities of all RUC agents who reported on dissident (loyalist) organisations.*

RHSB(S) commented that it was not at all clear why Port wanted these details and the RUC did not want to hand over such a list. Port gave no indication as to how he might handle such a delicate document and RHSB(S) said that he knew, from his own sensitive sources, that other intelligence passed to Port had leaked out. RUC(S) were therefore most reluctant to compile and hand over such a list.

3. *RHSB(S) said that HSB and the Head of CID in the RUC were due to meet Port AM on Thursday 31 August. At that meeting, the HSB intended to say that he would need to consult the Chief Constable on this matter. However, the Chief was on leave until 4 September. RHSB(S) said that, in his opinion, the Chief might need to have a discussion with someone in top Management of the Service (eg DDG [Deputy Director General]) to encourage him to resist Port's request. RHSB(S) considered that there were serious National Security issues at stake which both Port*

and to a lesser extent the Chief did not fully understand. RHSB(S) urged me to brief upwards as necessary. I said that I would.'

31.104 Colin Port met the HSB on 31 August 2000. The Assistant Chief Constable (Crime) was also present. The HSB's note of the meeting records, *'I again raised relevance, security RIPA [Regulation of Investigatory Powers Act 2000], civil litigation, etc + offered to deal on a case by case basis (as heretofore) in accordance with established practice + endorsed by [redacted] report.'*

31.105 An entry in the HSB's notebook regarding a meeting with Sir Ronnie Flanagan on 8 September 2000 indicates that the Chief Constable maintained his view that Colin Port should have access to the information; the only issue for the Chief Constable was the means by which the information should be conveyed. The HSB's note stated that *'matters explained to CC at length who stated that no written list of agents was [to] be supplied'*.

31.106 Sir Ronnie Flanagan had, in fact, taken advice from the Information Commissioner. He told us:

'The advice was not whether Mr Port should get the access he was requesting, but in what manner. And based on the advice I was given, we arranged, with Mr Port's complete agreement, that he would have access to everything that he wanted. He would not remove the material, he would not record the material unless there was some need that the investigation indicated he should do that, and if there would be follow-up action, that he would clear that with me in the first instance. So I think those were steps to reassure people that if they thought this information was going to be bandied about, that actually it would be very sensitively handled and very confidentially handled.'

31.107 This was evidently not to the liking of SB. Once again, a note of a conversation made by the Assistant Director Counter-Terrorism provides, we consider, an accurate reflection of the sentiments felt at the time, with regard to all these issues. His Loose Minute of 18 September 2000 records the following:

'1. Speaking in confidence to [the Assistant Director] during the evening of 14 September 2000 RUC RHSB(S), [redacted] intimated that he felt pretty desperate about the Port Enquiry and requested [the Assistant Director]'s advice and help. [The RHSB(S)] made the following assertions/allegations:

(i) Port had persuaded a non-SB RUC superintendent, without consultation with SB management, secretly to authorise requests for itemised billing on the operational telephones of certain South Region SB officers. [The RHSB(S)] said he had evidence to back up this claim. ([The RHSB(S)] commented that this action had followed [his] rebuffing of an attempt by Port to extract from him, by means of a letter, the identities of all South Region agents targetted [sic] against Loyalist dissidents. [The RHSB(S)] said that the Chief Constable had promised to support South Region's stand. Privately, [the RHSB(S) said] that he was worried the Chief Constable might waver);

(ii) He suspected Port had obtained warrants on the operational telephones of some South Region SB officers. ([The RHSB(S)] said that, if this was so the intelligence justification to the IOCA Commissioner was fundamentally flawed and contravened Article 8 of ECHR [European Convention on Human Rights]);

(iii) Port had abused information given to him in strict confidence by [the RHSB(S)]. Early in the course of the enquiry in an attempt to be as helpful as possible while protecting sources, [the RHSB(S)] had informed Port on a personal basis of the identity of [redacted] and passed him intelligence about the murder of Rosemary Nelson that [redacted] obtained after the event. [The RHSB(S)] had discovered

subsequently from unimpeachable sources that Port had briefed members of his investigative team on the sensitive material [the RHSB(S)] had given him. Worse, he had later leaked to the press some of this material in an attempt to stir up the dissident Loyalists in a way that might afford the enquiry more leads. [Redacted sentence.]

- (iv) Port told [the RHSB(S)] that he intended to arrest [redacted] and interrogate [redacted]. He backed off only when advised that new RUC rules promulgated at Chief Officer level would require that have [redacted] lawyer with him. Port next demanded that South Region persuade [redacted] to attend voluntarily an interview with the enquiry team.
2. [The RHSB(S)] said he believed that Port had invested considerable resources and much of his credibility, in an undercover operation on the British mainland against [redacted] which he had hoped would lead to prosecutions for the murder of Nelson. The scheme had failed and Port now seemed determined to find a way to blame the RUC for the “failure” of his enquiry. [The RHSB(S)] believed Port had started from the premise that the RUC was implicated in Nelson’s murder. [The RHSB(S)] expostulated about the unfairness of all this and insisted that the RUC was completely innocent of any collusion in the murder of Rosemary Nelson.
 3. [The RHSB(S)] asked [the Assistant Director] if he thought South Region should go along with Port’s demands regarding an interview with [redacted]. Perhaps, he continued, South Region might lay down strict ground rules for such an interview - SB to ask the questions, no tape recorders and no evidential notes. [The Assistant Director] responded that in [the RHSB(S)]’s position he would simply invite Port to take whatever action against [redacted] he deemed appropriate. [Redacted sentence.] [The RHSB(S)] took note. He commented that the Port and Stephens [sic]¹² teams talked together every day.
 4. Returning to the theme of the political pressure on the Chief Constable and his anxiety that Flanagan might not hold the line, [the RHSB(S)] said that if South Region was let down then they would be minded to “pay off” all their Loyalist agents. [Redacted sentence.] He added that if matters continued in this way the RUC SB would become paralysed.
 5. In conclusion [the RHSB(S)] repeated his request for help and advice. He urged [the Assistant Director] to think hard about RUC South’s predicament vis-a-vis Port. He said that on his return from a holiday in Canada he would speak with [the Assistant Director] again.
 6. Comment: [The RHSB(S)] appeared to [the Assistant Director] to be overwrought and extremely tired. [The Assistant Director] attempted to be sympathetic but without committing himself or the Service to anything specific.’

31.108 In his evidence to the Inquiry the RHSB(S) told us that this memorandum did not fairly represent the conversation which had taken place. He told us that the Chief Constable had not promised ‘to support South Region’s stand’ which, based on legal advice from the Security Service, was that disclosure of CHIS identities should be approached on a case-by case basis; he did not know what Colin Port’s attitude to the RUC was and denied suggesting that ‘Port now seemed determined to find a way to blame the RUC for the “failure” of his enquiry’; he had not expressed the anxiety that the Chief Constable ‘might waver’ and he denied saying that ‘if South Region was let down then they would be minded to “pay off” all their Loyalist agents’. We believe, however, that the Assistant Director Counter-Terrorism’s contemporaneous note was probably an accurate reflection of the overall sentiment expressed by the RHSB(S).

¹²A reference to John Stevens: See footnote 11 above

31.109 A Security Service note of a meeting in London on 17 October 2000 indicates that the RHSB(S), together with the Detective Superintendent SB, did later consult the Legal Advisory Branch of the Security Service. A record of the meeting was contained in a note dated 18 October 2000 made by the Assistant Director Counter-Terrorism. It records that the two RUC officers *‘visited [redacted] for a meeting with LA [Legal Adviser] and [the Assistant Director] about aspects of the Port Enquiry that are causing South Region anxiety’*. We have no doubt that they would have preferred to receive advice that they were not at liberty to fulfil the MIT’s request but this was not in fact the position. The Security Service advised that the RUC might ensure that a number of formalities were observed prior to disclosure being made but in the event these were not insisted upon and would have served little purpose. At this meeting, Colin Port’s request to interview a particular CHIS was also discussed (see Chapter 31.115 to 31.117 below).

31.110 Sir Ronnie Flanagan explained his decision to the DCI at a routine meeting on 21 January 2001 and may have been surprised to discover that the Security Service accepted his decision. In his note of the meeting the DCI recorded: *‘The Chief Constable appreciated Service support. He implied that HSB had been saying the Service was opposed to his decision. I clarified this.’*

31.111 The response of South Region was reflected in a Loose Minute dated 10 January 2001 recorded by the Assistant Director Counter-Terrorism:

‘At 0920 this morning I was contacted on [redacted] by an agitated RHSB(S) [redacted] who said that HSB [redacted] had just told him that Chief Constable Ronnie Flanagan had decided to release to the Port Inquiry the names of all RUC Loyalists agents. [The RHSB(S)]’s views on this matter may be imagined. [The RHSB(S)] mentioned that he planned to be in [redacted] on Thursday 11 January on other business. He said that as a matter of urgency he wished to meet me with LA and [redacted], hopefully between 1000-1100 in order to discuss what protocols the RUC could apply to Port in order to tie him down firmly in the context of source protection. I promised to do what I could. [The RHSB(S)] appealed on behalf of the RUC for all the help we could offer.’

31.112 A list of CHIS identities was shown to Colin Port alone in mid-January 2001 under strictly controlled conditions, four months after it had been requested in writing. Although we understand the anxiety this request caused to the HSB and the RHSB(S), and believe that their motives for seeking to restrict Colin Port’s access to the information were genuinely based on security concerns, their stance impeded the progress of the murder investigation. However, when a further and much more wide-ranging request was made for all Loyalist CHIS identities in Northern Ireland to be disclosed to the MIT in July 2001, a prompt and positive response was received.

31.113 There remains one aspect of this episode on which we should comment. On 31 December 2000 articles appeared in two newspapers disclosing that Colin Port had requested details of CHIS identities. It was suggested that the source of this leak was within the MIT. We found no evidence to support this suggestion. Very few officers within the MIT knew that this request had been made and in fact Colin Port had been assured before Christmas 2000 that the information would be provided. It would not have served the MIT’s purpose to disclose information about this request to the press and we do not believe that anyone within the MIT did so.

31.114 In our view, the problems and friction arising from the delayed disclosure of CHIS identities should never have occurred. Sir Ronnie Flanagan, having received Colin Port’s draft terms of reference, should at once have consulted the

HSB, and should have appreciated that the wide terms of paragraph 7 of the terms of reference required a clear protocol to ensure full compliance by SB together with minimum risk to sources and to intelligence-gathering. SB should not have been left to devise a unilateral protocol. Similarly, as soon as problems arose, Colin Port should have discussed them immediately with Sir Ronnie Flanagan, and Sir Ronnie Flanagan should have resolved them at once. As it was, the issue was allowed to fester for too long.

Requests to interview a Covert Human Intelligence Source

31.115 In his discussion with the Assistant Director Counter-Terrorism on 14 September 2000, the RHSB(S) had also expressed disquiet over Colin Port's request to interview a CHIS. We were told that such a course would not be regarded as unusual elsewhere in the UK and was a recognised step in the process of validating intelligence, but this was not the case in Northern Ireland. Sam Kinkaid described the difficulties confronting an SIO in Northern Ireland as follows:

'As the RUC in 1999 provided the same function as the Security Services in England, it is not surprising that the validation of intelligence was difficult. An SIO in England could go through his entire career and never receive a piece of Security Service intelligence. In contrast, in Northern Ireland in the 1990's [sic], intelligence on murders, bombings, shootings and many robberies was going to come mainly from national security sources. RUC SIO's [sic] could not do their everyday job professionally without such intelligence. All the material was normally marked the same grade after it had been sanitised by SB – [redacted] – which caused CID major problems if it conflicted with other intelligence. There clearly were situations that further questions could be asked if the type of source was known (e.g. debriefing a surveillance officer, reading the full transcript) and such questions could have helped the SIO. Unfortunately, such a system did not exist in 1999.'

31.116 Colin Port's request for direct access to a CHIS evidently caused consternation within SB. The Security Service note of 18 October 2000 (see Chapter 31.109 above) indicates that the RHSB(S) and the Detective Superintendent SB voiced their concerns about his request and sought Security Service advice as to how to deal with the issue. The following extract from a minute of the meeting indicates that it was not a straightforward matter:

- '1. On Tuesday 17 October 2000 RUC RHSB(S) Chief Supt [redacted] and Supt [redacted] visited [redacted] for a meeting with LA [Legal Adviser] and [the Assistant Director Counter-Terrorism] about aspects of the Port Enquiry that are causing South Region anxiety. [The RHSB(S)] began by rehearsing the background, (my Loose Minute of 18 September refers) and expressed concern about the potential security risks to the agent and also that South Region might be accused of obstruction by Port.*
- 2. There followed a lengthy but constructive discussion at the end of which [the RHSB(S)] and [the Superintendent SB] agreed that they would:*
 - meet Port and listen to what he had to say;*
 - offer to pass to [the CHIS] either verbally or in writing a message from Port requesting an interview, (preferably setting out what the Port team wished to discuss);*
 - inform [the CHIS] that it was [his/her] decision whether to agree to a meeting;*

- *if [the CHIS] did agree to meet the Port team, South Region would not counsel [him/her] how [he/she] should respond to questioning but would recommend that [he/she] consider whether [he/she] wished to be legally represented; and*
- *in any event, South Region would put in hand action to identify a trustworthy lawyer to act for [the CHIS], who they would brief confidentially about the case, and pass his name and telephone number to [the CHIS]. This would have the advantage that if [the CHIS] declined to meet the Port team voluntarily and was subsequently arrested, [the CHIS] would be in a position to instruct a lawyer who knew the full background to represent [the CHIS].'*

31.117 In the event, the CHIS declined to meet officers from the MIT. The CHIS did agree, however, to answer written questions submitted by the MIT via SB.

31.118 In 2004 Arthur Provoost undertook a review of the intelligence received by the MIT from SB. Having done so, he once again asked to speak to the CHIS directly. Once again the CHIS declined such a meeting but agreed to answer written questions submitted by SB. Arthur Provoost prepared a list of 81 pertinent and searching questions which were submitted through the CHIS's handlers. One or two of the answers given to these questions appeared to qualify the earlier intelligence, but that was not surprising, given the time which had elapsed since the murder and the lack of detailed knowledge of the murder investigation on the part of those asking the questions: they were not able to probe the CHIS in the same way that an officer with Arthur Provoost's background knowledge could have done. In our view, it would have been better if arrangements could have been made to allow members of the MIT to speak directly to the CHIS when this was first requested in 1999 and again following the request in 2004.

Some words of appreciation from the Murder Investigation Team concerning the support received from Special Branch

31.119 Not all the views of SB expressed by members of the MIT were negative. Sam Kinkaid said:

'I have to say this in Special Branch's favour: when I asked for stuff and I was given stuff, it was some of the best stuff I ever got from Special Branch. Some of the reports, [...] and other stuff, were truly brilliant in helping us, for example, to understand – corroborate some of the forensic stuff that we were getting from the charts. The difficulty – there was clearly stuff I wasn't given when I did ask for it too, but where stuff came down from [the Liaison Inspector], it was done professionally.'

31.120 The Deputy SIO told us that, in his view, all of the SB officers were as keen as the MIT to apprehend the culprits for the murder of Rosemary Nelson. He told us that the MIT received more cooperation from SB in this case than in any other investigation he had worked on in the previous 25 years. He said that he believed that the presence of the Liaison Inspector at MIT conferences worked well and identified this as one of the key reasons for this improvement. He said:

'In all of the investigations that I had carried out as a senior officer, I had probably never received greater assistance from Special Branch than I did in the investigation of Mrs Nelson's murder. When we asked for information on specific suspects and on other people of interest, we got a very good service and were provided with many profiles containing a wide range of information. Any reports submitted to validate or query any aspect of intelligence were always responded to.'

When reviewing specific areas of intelligence we were provided with clear answers to our queries. A lot of this work would have been conducted by E3 and forwarded to us via DI [the Liaison Inspector]. My impression was that as Special Branch gained in confidence with us in relation to the way we handled intelligence, we developed a better relationship. There were a few issues and tensions along the way. As investigators we always wanted more intelligence and information than we received, but the overall relationship was good.'

31.121 Arthur Provoost also commented favourably on the level of cooperation. He considered that he and the other members of the senior management team *'enjoyed a generally good working relationship with the RUC Special Branch (SB). There were, as the evidence will show, a number of tension points that arose during the course of what was a very long and difficult investigation but I believe they resulted from a combination of complex factors and that in the main, both sides were able to adopt a professional attitude ensuring that these difficulties did not have a detrimental effect on the investigation.'*

Operation George

31.122 In spite of the Head of E4's resistance to the ideas and plans put forward by the MIT, a number of covert operations were undertaken on the MIT's behalf by SB in Northern Ireland in the second half of 1999. These did not yield significant results in terms of identifying the killers of Rosemary Nelson. A number of officers who gave evidence to the Inquiry remarked on the degree to which terrorist offenders in Northern Ireland were alert to the possibility that surveillance was being conducted on them. It is clear from the evidence that we gathered, for example, that there was a widespread assumption within terrorist groups that telephone calls were routinely intercepted.

31.123 In the latter half of 1999, however, very significant opportunities arose which enabled the MIT to initiate surveillance, without the assistance of SB, using techniques that were less familiar to those targeted and at times and in places when they were almost certainly less watchful. These opportunities arose when two of the suspects left Northern Ireland. In September 1999 one of them, William James ('Jim') Fulton, travelled to the USA; another, Muriel Landry (nee Gibson), moved from Portadown to Cornwall in England. When Jim Fulton returned from the USA to Northern Ireland he was warned that a threat had been made against his life and so he moved to Cornwall, where he resided temporarily with Muriel Gibson before finding accommodation of his own. From time to time during the following months both Jim Fulton and Muriel Gibson were visited by others whom the MIT regarded as suspects.

31.124 Initially, surveillance was conducted under the Police Act 1997 and later under the Regulation of Investigatory Powers Act 2000 (RIPA). Not all the surveillance fell within the ambit of these statutory powers; some was carried out under non-statutory guidelines. These were either guidelines issued by the Home Office which applied until 1 January 2000, or guidelines issued by the Association of Chief Police Officers (ACPO), which applied from 1 January 2000 until 25 September 2000 when Section 26(8) of RIPA came into force.

31.125 The surveillance that was carried out in England was authorised not by Sir Ronnie Flanagan but by the Chief Constable of Devon and Cornwall, or by senior officers within his force.

31.126 The scope of the surveillance and evidence-gathering operations that were carried out by the MIT against these targets was later described by Mr Justice Hart,

who presided as trial Judge when the two were prosecuted for a variety of terrorist offences brought on the basis of evidence gathered during the MIT's operations. He described the surveillance carried out against Jim Fulton in the following extracts from his Judgment:¹³

*'The charges against the defendants depend upon the inferences to be drawn from accounts they are alleged to have given in conversations recorded during police surveillance carried out whilst Fulton and Gibson were living in Devon and Cornwall. For the sake of brevity I shall refer to these as "the admissions". The surveillance was put in place in the summer of 1999 when Gibson left Northern Ireland and came to live in the west of England, initially in bed and breakfast accommodation in Plymouth, and ultimately in a dwelling house at 19 Clos Trevithick, Cambourne, Cornwall. From time to time her daughters [redacted] lived with her at that address, and [redacted] were also placed under surveillance. In March 2000 Fulton returned to the United Kingdom from the United States of America and went to live in the west country. He was also placed under police surveillance, and the surveillance of Fulton, Gibson, [redacted] and [redacted] continued until all four were arrested in June 2001.'*¹⁴

*'The surveillance was put in place because inquiries were continuing into serious crime in Northern Ireland. At an early stage of the proceedings it was elicited via the defence, initially by [Counsel for Fulton] in his cross-examination of Detective Chief Superintendent [redacted], that the investigation related to the murder of Rosemary Nelson. It was also elicited by [Counsel for Fulton] that prior to Fulton going to Plymouth in March 2000 he had spent time in the United States, and during that period he was in custody for some months at the end of 1999 and January 2000. Whilst Fulton was in custody in the United States he was covertly recorded, and in conversations with a fellow prisoner denied involvement in the murder of Rosemary Nelson. [...] Although a transcript relating to those prison denials was disclosed to the defence, it was not put in evidence, and the contents were not described, other than by [Counsel for Fulton]'s reference to them as containing denials by Fulton that he was involved in Rosemary Nelson's murder, or in LVF activities, and that he blamed the British Government and the security forces for her murder.'*¹⁵

*'In the present case the surveillance took a number of forms. Devices were placed in cars or premises which picked up conversations and transmitted them to a listening centre where police officers were listening and where the conversations were recorded. These devices were referred to as "probes" during the case. The other means adopted was that undercover police officers carried recording devices on their person which recorded conversations with the accused on tape. The tapes were later handed by the undercover officer to colleagues who listened to the conversation on the tapes. Whichever means was used, the resulting recording was referred to as "product" when it was deemed worthy of further consideration. As a result of this process many tens of thousands of hours [of] recordings were made. Not all consisted of conversation, as there were long periods of silence, or the conversation was of a social or other nature which was thought to have no bearing on any criminal matters. When an officer listened to the tape that officer then prepared a summary of the contents of the tape, referred to as the "typed tape summaries", or TTS for short. It ultimately emerged that there are some 4,068 TTS.'*¹⁶

'In Fulton's case the subterfuge used was that the undercover officers pretended to [be] members of a criminal gang or "firm" who appeared to be engaged in stealing lorries, although no violence was involved. Fulton was employed by them as a driver, and most of the conversations occurred as he was driving one or other of the firm to and from

¹³Judgment of Justice Hart in R v William James Fulton and Muriel Gibson [2006] NICC 35

¹⁴Judgment of Justice Hart paragraph 5

¹⁵Judgment of Justice Hart paragraph 6

¹⁶Judgment of Justice Hart paragraph 12

London, or other places such as Bristol, as required. For these services he was paid, and it was accepted by the undercover officers and their superiors that he was allowed to believe that he might be able to gain some advancement in this firm. The undercover officers involved with Fulton were known to him, and were permitted to be referred to in court, as Neil, Robbie, Max, David, Gary, Dave and Liz. There was little contact between the group of undercover officers who dealt with Fulton, and those who dealt with Gibson.¹⁷

31.127 The Judge described the work undertaken against Muriel Gibson as follows:

‘A different group of undercover officers were in contact with Gibson. Whilst Gibson was living in bed and breakfast accommodation, Liz, who was also living in the same accommodation, struck up an acquaintanceship with her and, as Liz said on 13 March 2006 at page 44 of the transcript of her cross-examination, her job was to befriend her and see if Gibson would talk to her about things. What Liz did, and how she did it, will be referred to later, but it is sufficient to say at this stage that she dropped out of the picture so far as the evidential tapes are concerned after 16 March 2000 having been involved with Gibson since October 1999. Two other undercover officers then became friendly with Gibson, namely Sam (a female officer) and Dave S. Sam only features in B74 and B75 but it would seem that Dave S had much more contact with Gibson over the period between early June and late August 2000 when he and Sam were involved with her, at least so far as the evidential tapes were concerned. Dave S purported to run a market stall where Gibson helped out on occasions, for which she was paid, and David S also did various DIY building jobs at Gibson’s house, such as putting down paving on her patio. It will be necessary to refer to the activities of Liz, Sam and Dave S in greater detail later. Gibson was also provided by them with cigarettes and alcohol at low prices for resale, the impression being given that these had been come by illegally, or at least in dubious circumstances.’¹⁸

31.128 While the undercover operation against Jim Fulton was underway, the undercover officers encouraged him to invite other suspects to join him in England, and in May 2001 Jim Fulton’s brother, Mark Fulton, visited and conversations between the two were recorded. Another key suspect, to whom such an invitation was extended, did not respond although he himself was targeted by operations conducted under the umbrella of Operation George.

31.129 Colin Port told us that some 50,000 hours of recordings had been made in the course of the work covered by Operation George. We were told that over 70 separately authorised covert exercises were employed during the operation, some of which lasted for many months. In relation to Jim Fulton alone there were 2,600 tapes and 8,184 hours of recording.¹⁹ It is significant that during these many hours of recorded conversation Jim Fulton said nothing to indicate that he had been involved in the murder of Rosemary Nelson. He was heard to say, on more than one occasion, that she had been murdered by the UK Government but said nothing which indicated that he possessed any more knowledge of the murder than that which had been available through the media.

¹⁷Judgment of Justice Hart paragraph 18

¹⁸Judgment of Justice Hart paragraph 19

¹⁹R v William James Fulton No. [2009] NICA 39

Arrests made by the Murder Investigation Team and prosecutions resulting from Operation George

Jim Fulton, Muriel Gibson and Mark Fulton

31.130 Jim Fulton was arrested on 12 June 2001 in Plymouth.²⁰ Muriel Gibson and two others were arrested on 19 June 2001. Mark Fulton was arrested on 3 December 2001. Jim Fulton, Mark Fulton and Muriel Gibson were each questioned about the murder of Rosemary Nelson but none made any admissions. They were also questioned about their involvement in other offences in relation to which the MIT had gathered evidence during Operation George.

31.131 Jim Fulton was in due course prosecuted in relation to 64 offences. Muriel Gibson was prosecuted in relation to 10 offences. Two other defendants were charged alongside them but the charges against them were dismissed before the case came to trial. As a result of applications made on behalf of Jim Fulton and Muriel Gibson before and during the trial, at the close of the prosecution case they were each found not guilty on two of the counts they each faced. At the close of the trial, neither defendant having given evidence, on 7 December 2006 Jim Fulton was found guilty of 48 offences; Muriel Gibson was found guilty of six offences.²¹

31.132 The offences for which Jim Fulton was convicted included a number of incidents on 4 and 5 June 1999 including the murder of Mary Elizabeth O'Neill; the attempted murder of Joseph Murnin; the attempted murder of John Barr, Jason McBrien, James Harkness and William Devine (all police officers who were injured by a blast-bomb at Drumcree on 9 July 1998); an attempted robbery on 25 October 1996 using a firearm or imitation firearm; three offences of wounding with intent to cause serious bodily harm on 3 January 1997 and possession of a 9mm Browning pistol used in the punishment shootings of his three victims; wounding William Fletcher with intent to cause serious bodily harm on 6 January 1997; possession, in 1995 and 1996, of a Star .22 pistol (later used in the murders of Michael McGoldrick and Bernadette Martin); membership of the LVF and various other offences.²² Four other offences for which he was convicted at trial were quashed on appeal.²³ Jim Fulton was sentenced to life imprisonment on 26 January 2007 for the murder of Elizabeth O'Neill. Other sentences were concurrent. The Judge recommended that he serve a minimum period of 25 years.

31.133 The offences for which Muriel Gibson was convicted included withholding information about the shooting of William Fletcher on 6 January 1997; possession of a handgun with intent to endanger life; impeding the prosecution of the murder of Adrian Lamph (murdered on 21 April 1998); possession of detonators with intent to endanger life; possession of pipe bombs with intent to endanger life; and possession of firearms with intent to endanger life; each of which offence was alleged to have been committed between 1 January 1995 and 1 September 1999. Muriel Gibson was also convicted of membership of the LVF.²⁴ She was sentenced to eight years' imprisonment.

²⁰R v William James Fulton and Muriel Gibson [2006] NICC 35

²¹R v William James Fulton and Muriel Gibson [2006] NICC 35

²²R v William James Fulton No. [2009] NICA 39

²³These were: aiding, abetting, counselling or procuring the attempted murder of Janelle Woods and Steven Black between 3 June and 6 June 1999; the attempted murder of Mark Thomas Murphy; and the attempt to cause grievous bodily harm to Mark Thomas Murphy on 4 June 1999. R v William James Fulton No. [2009] NICA 39

²⁴R v William James Fulton and Muriel Gibson [2006] NICC 35

31.134 Mark Fulton was arrested on 3 December 2001 and on the basis of evidence gathered by Operation George he was charged with the offence of conspiracy to murder. He was remanded in custody and committed suicide in Maghaberry prison on 10 June 2002.

31.135 As the operations continued we were told that they generated a great deal of information concerning terrorist and criminal activities, information which was undoubtedly of vital importance to the work of the RUC in Northern Ireland and which, but for the innovative work undertaken by the MIT, would have remained beyond the reach of SB. We note that Robert Ayling suggested that Operation George resulted in a diversion of resources from the main lines of enquiry into Rosemary Nelson's murder. The MIT explained to us that all other lines of enquiry were nearing completion at the time Operation George was launched, and that there was a reasonable expectation that Operation George would open up potentially fruitful lines of enquiry into the murder. We were satisfied that Operation George was an integral part of the mainstream enquiry and at any time could have resulted in information leading to the murderers of Rosemary Nelson.

Other arrests made by the Murder Investigation Team

31.136 During the course of the investigation, 32 arrests were carried out by the MIT. Other than the ones described above, the most important was the arrest of William Ian Thompson.

William Ian Thompson

31.137 On 4 April 2001 William Ian Thompson was convicted at Belfast Crown Court of possessing an Uzi sub-machine gun, a shotgun and 25 shotgun cartridges with intent to endanger life. He was also sentenced to three years' imprisonment for possession of the component parts of a pipe bomb with intent to endanger life or cause serious injury to property. He was sentenced to a total of nine years' imprisonment.

31.138 William Ian Thompson had been arrested by the MIT on 9 March 2000 and his home was searched. The weapons and bomb-making components were found among his possessions.

31.139 At the time of the murder of Rosemary Nelson he had been a serving member of the 3rd Battalion of the Royal Irish Regiment (3 R IRISH). He had not been on duty on the weekend of her murder but had been detailed to perform Quick Reaction Force duties at Rathfield at 08.00 on 15 March 1999. He was known to be connected with the LVF in Portadown: indeed his wife was related to one of the key suspects in the murder investigation. During the search of his home evidence was found that confirmed his interest in the group. Ulster Volunteer Force (UVF) and LVF literature and a picture, bearing the signatures of Billy Wright and Mark Fulton, of a presentation of the Ulster Defence Regiment (UDR) colours to Queen Elizabeth II, were found. Also, an article that had been published in the magazine of a group known as Combat 18.²⁵ The trial Judge, Mr Justice McLoughlin, referred to the documentation and particularly the article stating that there was '*some material in these depositions that would make the blood run cold. There are remarks made about Rosemary Nelson which have no place in any decent society.*'²⁶

31.140 One of the reasons why the MIT had been interested in William Ian Thompson was the fact that he owned a white Ford Fiesta motor car similar to that

²⁵A neo-fascist group

²⁶*The Guardian* 19 May 2001

which had been seen passing Ashford Grange during the evening prior to Rosemary Nelson's death. At the time of his arrest William Ian Thompson had disposed of the vehicle but it was traced by the MIT and forensic tests were carried out on it. These proved negative. A number of other enquiries followed including analysis of telephone data with a view to connecting William Ian Thompson with other suspects and other members of 3 R IRISH. These came to nothing. In short, no evidential link to the murder of Rosemary Nelson was ever established.

32 Unexplained Security Force Activity

32.1 The Murder Investigation Team (MIT) were unable to reconcile every reported sighting of security force activity in the area with information gathered from the police and Army personnel. There were in particular a number of reports made by civilian witnesses concerning activity on the evening of Sunday 14 March 1999 which remain unexplained. We examined the evidence in relation to these in some detail and we set out our conclusions in relation to them in the passages which follow.

The Vehicle Check Point on Castor Bay Road

32.2 During the course of house-to-house enquiries carried out by the police in Lurgan soon after the murder, information was received that there had been a Vehicle Check Point (VCP) on Castor Bay Road during the evening of 14 March 1999. A couple who had been travelling home from Derrymacash that evening provided information that was recorded on the HOLMES J404 Account as follows: *'It was around 7 pm they passed through a uniform police and RIR [Royal Irish Regiment] check point countryside of Ashford Grange on the Castor Bay Rd.'*

32.3 The police took witness statements from the couple. They said that they had been to their daughter's house at Derrymacash for lunch, which, because of a funeral earlier in the day, had been taken after 16.00. They travelled back to Lurgan along a route that was well known to them; through Annesborough, along Tannaghmore North Road then Castor Bay Road/Lake Street. In their statements the couple both said that they had returned at about 20.00. One of them described what they had seen as follows:

'As we drove back along the Castor Bay Road travelling towards North Circular we came upon a joint Military Police Checkpoint at a spot known locally as Bellow Byrnes Hill. This is just a hundred yards or so on the country side of Ashford Grange. We were not stopped we were waved through by the men with the red light.'

32.4 The witnesses recalled that there had been two soldiers in the middle of the road stopping vehicles and two others at the side and perhaps two or three vehicles in the queue.

32.5 The couple were accompanied by a close relation who was a retired police superintendent having served in the Hong Kong Police. He made a statement on 8 June 1999 and gave a similar description of the journey back from Derrymacash.

32.6 All three witnesses provided further details of the VCP in their evidence to the Inquiry, one of whom described it as follows:

'I think the check point was between the school and the turning for Ashgrove Grange. There were Land Rovers and a military presence here. I believed the officers to be British military as they were wearing navy caps.¹ As I have said, there was a large man who I took to be a corporal standing in the middle of the road and stopping vehicles. I do not recall what his accent was but it was not from Northern Ireland. I would hazard a guess that he had served abroad at some point as he had quite tanned skin. I think he may also have been holding a light.'

¹In his oral evidence to the Inquiry the witness described the caps worn by the soldiers as berets 'A la France'.

32.7 There were minor differences in the accounts given by these witnesses to the police and to the Inquiry. Their evidence to the Inquiry differed, for example, as to which of them was driving the car on the return journey from Derrymacash. As regards the VCP in Castor Bay Road, however, their accounts were consistent and, in our view, reliable.

32.8 Two other witnesses gave evidence concerning a VCP in Castor Bay Road on the evening of 14 March 1999. They also had a family lunch on Mothers' Day and had returned to Lurgan along Annesborough Road, Tannaghmore North Road and Castor Bay Road. One of them told us:

'As we came to the Smurfit factory I could see two sets of two Land Rovers parked on different corners of the road. Two Land Rovers were parked heading away from Lurgan and parallel to the Smurfit factory. The other two Land Rovers were lower down where the Ulster Meats factory used to be. It was not unusual to see Land Rovers in themselves, but we did wonder what was happening. What was unusual was when, later, we saw more Land Rovers in other positions. It was also strange that there seemed to be too many soldiers for the number of vehicles that we saw there. I recall 30 to 40 soldiers being present.'

32.9 The same witness reported:

'As we drove on and turned right at the Mile House and on to Castor Bay Road, we saw in a hollow more Land Rovers and soldiers. I cannot recall how many Land Rovers there were, but probably no more than 4 or 5 maximum. There were at least 30 or 40 soldiers there though. They were lined along the hedgerows and they were chatting and I recall that they had English accents. One guy waved us through a checkpoint and he was English. There was also a black soldier at that particular checkpoint. Some of the soldiers had big rucksacks as if they had been there for a while or were going to be.'

32.10 The second witness who travelled with the first put these sightings a little later. In her evidence to the Inquiry she said:

'I remember that Sunday because it was Mother's Day and I had spent it at my daughter's house. I came home by car with my son at around 9:30 pm – along the Annesborough Road and onto the Tannaghmore North Road. There is a paper factory there and I recall that there was a checkpoint with a large number of police and army personnel present. I continued to drive up the Tannaghmore North Road onto the Castor Bay Road. There is a hollow in the road and I recall that there was another check point and a lot more security force personnel present there. The second checkpoint was quite close to Rosemary Nelson's home although I would not be able to say exactly how far it was away from it.'

32.11 A local man who gave a witness statement to the Pat Finucane Centre very soon after the murder recorded that he had noticed two RUC Land Rovers *'on the Lough Road at approx 8 pm on Sunday'*.

32.12 We took evidence from four witnesses who had been questioned by the police at a VCP set up by the MIT along the route on 21 March 1999 with a view to identifying people who had travelled the route on the previous Sunday. A witness who had travelled from his home in the other direction along Castor Bay Road onto Tannaghmore North Road at about 21.00 that evening had observed no police or military presence in the area. Another witness, who regularly visited his parents in Lurgan on Sunday afternoons and who typically returned to his home in Belfast between 19.00 and 21.00 told us that he had travelled that way at about 19.00 or 20.00 on the evening of 14 March 1999. He had noticed a car parked opposite Tannaghmore Primary School but had not been stopped at a military check point.

Another witness who saw nothing had probably travelled the route at about 18.00 and then again at 22.00 when she went from Lurgan to a public house at Cargallan where both she and her husband worked. A witness who parked his car outside the Nelson house in Ashford Grange that evening while visiting a friend, arriving probably between 21.00 and 21.45 and leaving between 23.00 and 23.45, did not see anything suspicious.

32.13 None of these latter accounts, however, is wholly inconsistent with the evidence of those who saw military personnel in the area that evening and we are satisfied that men in military uniform were seen in Castor Bay Road on the evening of 14 March 1999. Their identity remains a mystery. The MIT were unable to identify who they might have been and no information has been passed to the Inquiry from which this question could be resolved. As no explanation had ever been offered either to the MIT or to us as to their presence we cannot rule out the possibility that it was in some way connected to the murder of Rosemary Nelson. We consider it unlikely, but, in the absence of an explanation, we cannot eliminate the possibility.

Land Rovers in Lake Street

32.14 A number of witnesses had seen police and possibly Army Land Rovers in the area earlier in the evening.

32.15 A deliveryman for a local Chinese takeaway restaurant had been working in the area over the weekend. In a statement to the police dated 17 May 1999 he described what he saw:

‘At approximately 7.30 pm I was delivering meals into Lurgantarry and as I returned to Victoria Street I noticed about 5 landrovers parked on Lake Street, at the junction of Levin Road. I noticed that one of the landrovers was down Victoria Street near 171-179 and an officer was speaking to the householder. The other landrovers had their spotlights pointed down Levin Road and I noticed that there was rubble around the landrovers and a crowd of youths further down Levin Road.’

32.16 His girlfriend was also a delivery driver and she too had been working in the area that weekend and she too recalled seeing ‘4 Landrovers at Lake Street/Victoria Street’. She told the police: ‘I remember going past the Landrovers and seeing a further Landrover in Victoria Street. There were no crowds by this vehicle and I cannot remember seeing any Police officers out of the vehicles.’

32.17 Both witnesses gave evidence to us in person and we also had the benefit of reading statements they had made to the Pat Finucane Centre on 24 March 1999. The descriptions given in these earlier statements were as follows:

32.18 He said:

‘About 7pm when it was just getting dark we were doing another delivery. We were coming along Victoria St to the junction with Lake Street and we saw a police landrover on the left hand side of Lake St and one on the right. The spotlight on top of the landrovers were shining down Levin Road. We did the delivery – I think it was in Lurgan Tarry – & came back up & they were still there. A few children were throwing bricks at them. When we went back down into Victoria Street we saw a 5th [?] police landrover at a house on the left – about 171 – 175. There was one uniformed police officer and some other people standing talking at a door.’

32.19 She said:

'At about 7.30 pm I returned to the Kilkilke [sic] area. There were four RUC jeeps parked on the Lake Street location. It was beginning to get dark at this time. Another jeep, a fifth, was outside a house in Victoria Street. One of the four jeeps had large lights shining down into the estate. Some kids were throwing paint and stones.'

32.20 We refer at Chapter 29.6 to an incident in Victoria Street on Saturday 13 March 1999 when youths had thrown stones and paint at police Land Rovers and we considered whether the incident described by these witnesses might, in fact, have been that incident on the Saturday evening. This possibility was suggested to them when they gave their evidence, but both were firm in their recollection that the sighting took place on Sunday 14 March 1999. In each of their earlier statements, moreover, they had described seeing thick black smoke rising in the area of North Circular Road (consistent with the fact that a car had been set alight on Deeny Drive that evening) and they both noted that a helicopter was flying overhead. There were no helicopter flights close to the area on the Saturday evening; there was, however, a helicopter in the area on Sunday evening between 18.07 hours and 18.49 hours and again between 19.25 hours and 20.01 hours (see Chapter 33).

32.21 Another witness who described seeing Land Rovers on Sunday evening also reported hearing a helicopter. In a statement made on 20 April 1999 he said:

'During the evening of Sunday the 14.3.99 I made several deliveries to most of the streets in the vicinity of where Rosemary Nelson lived but I didn't actually make a delivery in her road. Sometime between maybe 7 pm and 8 pm I saw a number of Land Rovers. They were parked in Lake Street. I saw the searchlight on at least one of the Land Rovers being used. On Sunday evening I was not stopped at a vehicle check point by either the military or the police. In addition to the Land Rovers I could hear a helicopter. It appeared to be making more noise than usual.'

32.22 Two other witnesses corroborated these sightings. One of them commented on the presence of the helicopter. She said:

'It was flying quite low and it was a green Army helicopter. It was not the fact that it was there that was unusual, but rather the length of time it was there.'

32.23 She told us that she also saw Land Rovers:

'I also saw around 5 Army Land Rovers on that day which was unusual because it was a Sunday and especially because it was Mothers' Day. I see from my [Pat Finucane Centre witness statement] that I recalled at the time that I saw these Land Rovers at around 5.30pm. I am not sure where I had been, possibly to the shops, but I was not going out that much at that time after the divorce. I returned home down Lake Street. The Land Rovers were coming towards me from the direction of Rosemary's house and they turned down Victoria Street. Then I turned right into Levin Road. It was very unusual for that number of Land Rovers to be in the area, especially on a Sunday.'

32.24 Another witness who gave evidence to us in person, and who also made a witness statement to the Pat Finucane Centre soon after the murder, also saw Land Rovers in Lake Street on the evening of Sunday 14 March 1999. In his statement he said:

'I got in my car and went to Tannaghmore – along Lake Street from Levin at about 6.45 pm. There was a police Land Rover just before the school, just past Ashford Park and North Circular Rd. I turned right into North Circular Rd and saw 2 RIR Land

Rovers close to Lake St. There was no check point just the vehicles with soldiers and police sitting in them.'

32.25 In his evidence to us he was questioned about the sighting. He said:

'I went out to look for my son, because whenever there was any trouble in the estate I wanted him in, indoors. The helicopter was over Tannaghmore School direction and I went up that direction. I turned off Lake Street into North Circular Road. There was a police Land Rover just at the junction of Lake Street and North Circular Road. On North Circular Road and at the back of the school, outside the gates there was two Army Land Rovers. There was no checkpoints, there was no personnel on the road, these vehicles were just sitting. I went back home.'

32.26 The MIT could not reconcile any of these sightings with information gathered from the police or Army. A Mobile Support Unit (J2 MSU) had been called to Victoria Street at 19.00 on Saturday 13 March 1999 and local youths had pelted it with stones and paint, and the conclusion was drawn that the witnesses were mistaken as to the day upon which these sightings were made. We do not consider this to be an unreasonable conclusion but are inclined to accept that the sightings were made, as reported by the witnesses, on Sunday 14 March as opposed to Saturday 13 March 1999. As with the VCP on Castor Bay Road we consider it unlikely that such activity had anything to do with Rosemary Nelson's murder but we have not eliminated that possibility completely.

The balaclava incident

32.27 Two people, who were questioned at a VCP set up by the MIT on Sunday 20 and Monday 21 March 1999, provided information that they had been in the area on the evening of Sunday 14 March 1999. Notes made at the VCP recorded that one or other or both of them had seen a '*masked person getting into police landrover at top Victoria St – 2 RUC personnel putting him in*'. The time given was noted as Sunday evening about '8–8.30ish'. One of the witnesses made a statement to the police on 24 March 1999. In it he described the incident as follows:

'On Sunday the 14th March 1999 myself and my girlfriend [redacted] were on our way home having spent the evening in Belfast. I was driving my own vehicle a white coloured Ford Fiesta Van with the registration — . [My girlfriend] was front seat passenger. I came through the town from the motorway, Lough Road, left into Victoria Street. I turned left onto the Shore Road and as I did so [my girlfriend] said, "look there". I did look and saw a man or fella dressed in dark clothing from top to bottom wearing what I would describe as a dark coloured ski mask. It was not a homemade type balaclava hood with single eyeholes more like one you would buy. The man was getting into the back of a police landrover which was parked on my left about twenty yards from the junction I had just come round close to the phone box. I noticed there were two policemen directly behind the man in black they were distinct as policemen and both wore green uniforms. I had passed the police landrover before I could see if the two policemen got into it or not.'

32.28 In a further witness statement made on 4 May 1999 this witness said:

'Further to a statement I have already made to the police on the 24th March 1999 concerning my observations at Shore Road, Lurgan on the 14th March 1999 in or around 2245 hrs having today Tuesday the 4th May 1999 again spoken to Detectives [redacted] and [redacted] I would like to state the following; on the 14th March 1999 whilst at the concert in Belfast I parked my vehicle — in the small car park to the rear of the multi-storey park on the Dublin Road. I remained in the concert at

the Ulster Hall until approximately 2230 hours on that evening. Having re-discussed my observations on the way home I honestly can not be 100% sure if it was in fact that Sunday night – the 14th March 1999 or maybe the evening prior Saturday the 13th March 1999.’

32.29 Although this later statement appeared to raise doubt about the sighting, the couple had in fact been returning from a concert by the pop group Kula Shaker, held at the Ulster Hall in Belfast. Inquiries by the MIT later established that this had taken place on the evening of Sunday 14 March 1999 and that it been for ‘one night only’. It began at 20.00 and finished between 22.30 and 22.45. This significant information corroborated the timing given in the statement of 24 March 1999 and indicated another unexplained movement by security forces in the late evening before the murder.

32.30 The witness told us:

‘In terms of the date that this happened, I do not know if it was the night before Rosemary Nelson was killed, or the night before that. I have a funny feeling that it was Sunday night, but I am not positive. However, you can check when the concert was. In terms of the timeframe, the incident I am referring to happened close to 11:00 o’clock at night. It could have been ten minutes before or ten minutes after. We left Belfast just after 10:30 pm. We had parked close to the Ulster Hall. It was about half an hour drive back to Lurgan. I was driving. I did not check the time because I never thought anything about it.’

32.31 The witness described the sighting as follows:

‘We drove up Lough Road and went up Victoria Street. We had turned left at the junction between Victoria Street and Kilwilkie onto Lake Street. We then proceeded towards mum’s house. As I turned left into the road there was a phone box on the left hand side of the street and about fifty or seventy five yards down the road I saw a dark police Land Rover parked with people getting into the back of it. The Land Rover was grey, which was the colour of police Land Rovers at the time, whereas now they are white and green. I said to [redacted] something like “that’s a bit funny”. We saw some men in dark gear that looked like combat gear. It may have been one man, but I think it was a couple of them. I cannot be sure now. Whatever they were wearing it was dark and they wore what looked like ski masks.’

32.32 His girlfriend, whom he had subsequently married, described what she saw of the incident as follows:

‘[Redacted] and I were coming home to our house in Lurgan one night after having been to a Kula Shaker concert at the Kings Hall in Belfast. We were collecting our baby son from his granny’s house. At the top of Lake Street, a bit further along from the top of the Kilwilkie Estate, [redacted] said to me something like “Did you see that there, did you see that man getting into that van?” [Redacted] told me that there had been a man in a ski mask getting into a van. However, by the time he had said that and I turned my head, we had gone past it. I did not see it.’

32.33 The witnesses indicated on a map where the sighting had taken place. It was on Lake Street, near the junction with Victoria Street.

32.34 The MIT enquiries covered movements by J2 MSU. It was established that at about 19.00 on the Saturday, an officer in that unit had got out of a Land Rover at the junction of Lake Street with Victoria Street; he had been dressed in full riot gear wearing a flame retardant balaclava. In his police statement he explained that he had dismounted and stood near the front of the Land Rover. A few minutes later

he took his helmet off and got back into the vehicle. The MIT formed the view that this sighting was accounted for by the presence of police personnel on the Saturday evening. In a report an officer attached to the MIT wrote:

'Having regard to the first account offered by [redacted], that the incident was at 20.00hrs-20.30hrs, was in Victoria Street and was witnessed on return from his mother-in-law's, it ties in almost perfectly with the actual deployments shown above. There is less than an hour's difference in the times and it was a day earlier, on the 13th but the salient facts surrounding the J2 deployment fit the incident witnessed by [redacted]. That taken together with [redacted]'s movements on the 14th, being at the concert in Belfast and the fact that he is himself unsure of which day he saw the masked man, I am confident that this incident has now been satisfactorily and legitimately explained.'

32.35 We consider that this conclusion, although reasonable in the circumstances, was probably incorrect. There were indeed movements of uniformed police personnel in the vicinity in the late evening of 14 March 1999. These movements were not disclosed to the MIT and were brought to our attention some considerable time after we had concluded our hearings. We consider it likely that the sighting of police personnel was made late on Sunday evening and that the personnel were linked to Operation Fagotto, which is dealt with in Chapter 34.

33 Helicopter Activity

33.1 A number of witnesses from whom the Murder Investigation Team (MIT) took statements in the days and weeks that followed the murder referred to what they considered to be increased helicopter activity over Lurgan, and over the Kilwilkie Estate and Ashgrove area in particular, during the weekend of 13/14 March 1999. These statements are referred to at Chapter 30.12.

33.2 As we note below, such activity as there was is explicable for the most part by the security forces' response to the reports that they had received and the disturbances which occurred during that weekend, as was the case in relation to a helicopter operating over the area between 18.07 and 20.01 on Sunday 14 March 1999. However, a later flight, which took place between 23.15 and 00.30, was unscheduled and unusual. We examined evidence relating to each of these helicopter flights in detail.

The use, deployment and control of helicopters in Northern Ireland in 1999

33.3 Gazelle and Lynx helicopters formed part of the air support provided to ground forces by the Army Air Corps (AAC) and the Royal Air Force (RAF). They were used for observation, reconnaissance and VIP transport duties and were operated by the AAC from RAF Aldergrove with a forward satellite base at Bessbrook in south Armagh. Medium to large helicopters, such as Puma, Wessex and Chinook helicopters, were used primarily for troop transport and logistic support and were operated by the RAF.

33.4 In March 1999 there were seven Gazelle helicopters based at Aldergrove. One of the pilots told us that each had a different function. Gazelles 1 and 2 were designated as VIP transport; Gazelle 3 was detailed to Belfast; Gazelle 4 was on '*quick reaction duty*' and was detailed to Bessbrook; Gazelle 5 was detailed to Omagh, Dungannon or Enniskillen; Gazelle 6 was the night-time helicopter for the whole of the province; Gazelle 7 undertook a similar role during daylight hours. Gazelles 3, 4, 5 and 6 were equipped with a video camera and thermal imaging equipment.

33.5 Helicopters were often used to support ground operations undertaken by the Royal Ulster Constabulary (RUC) and the Army. In South Region their deployment and use were agreed at Tasking Meetings attended by RUC Sergeants from Portadown, Lurgan and Banbridge. Some operations might be agreed up to a fortnight in advance and listed in a 'Tasks Forecast' with priorities agreed through the Joint Aviation Tasking and Operations Cell (JATOC). Others could be initiated at short notice through the Operations Room at Mahon Road, Portadown from which in South Region all military resources were managed.

33.6 It was the role of the Operations Officer of the 3rd Battalion of the Royal Irish Regiment (3 R IRISH) based at Mahon Road to task troops within his Tactical Area of Responsibility (TAOR) and to coordinate the work of those companies of the battalion which operated in support of the RUC's J division. The Operations Officer was based in the Operations Room with a staff of about 20, including watchkeepers. It was the responsibility of this team to oversee operations, keep map boards updated, task patrols on the ground and send communications. An Assistant Operations Officer worked to the Operations Officer. The Assistant Operations Officer was responsible for controlling the watchkeepers and signallers, monitoring their duties and Task Sheets, and controlling confidential and sensitive documents.

The Assistant Operations Officer also deputised for the Operations Officer in his absence. We were told that a request for support from the police would sometimes include a request for helicopter support but it would be the Operations Officer who decided whether a helicopter should be deployed. In such instances he would contact the brigade Watchkeeper who would be aware if a helicopter was available.

33.7 It was the Watchkeeper's responsibility to complete the operations log, detailing any particular action that had been carried out or incidents that had occurred, and also to ensure that any movements by vehicles or aircraft were reported correctly. The Signaller's role was to record radio and telephone traffic into and out of the Operations Room. The data used to inform the Watchkeeper's entries would be from telephone calls, radio traffic or the decision of the Watchkeeper, for example on re-tasking a helicopter. Radio traffic came into the room either via a loud speaker or headphones. We were told that the compilation and accuracy of the log was viewed very seriously.

33.8 A Liaison Officer, usually a member of the Intelligence Cell or a Quick Reaction Force (QRF) commander, was deployed aboard the helicopter where possible. It was his function to liaise between the Operations Room and the Flight Commander or pilot. He would relay information to the Operations Officer who in turn would relay that information to the troops on the ground. Liaison officers were selected if they had a good knowledge of the local area and were of at least the rank of corporal.

33.9 Gazelle helicopters were crewed by a pilot and a Flight Commander. The pilot's primary task was to fly the helicopter. The Flight Commander, who could also pilot the helicopter if required, had responsibility for briefing the pilot as regards the operation to be undertaken, ensuring that the pilot did his job in flying the aircraft safely and acting as an additional pair of eyes for the Liaison Officer. He also had responsibility for operating the on-board camera.

The investigation of helicopter activity by the Murder Investigation Team

33.10 The MIT undertook detailed investigations to account for the helicopter activity that had been observed over Lurgan during the weekend before the murder. As the investigation continued, an officer was recruited from the Norfolk Constabulary who had experience of civil aviation to listen to and help to transcribe the air traffic control recordings from that weekend covering both military and commercial flights. A comprehensive analysis was undertaken comparing civilian reports with evidence gathered from the police and Army. We took the evidence collected by the MIT and the work of the MIT analyst as a starting point for our own investigation of helicopter activity.

The Murder Investigation Team's findings

33.11 The MIT established that on Saturday 13 March 1999 there were two helicopters operating in the area. There had been a pre-scheduled flight of a Gazelle helicopter (Gazelle 7), from 07.00 to 09.15, the purpose of which had been to check mortar base plate sites in Portadown, Craigavon and Lurgan. A second flight had been undertaken by a Puma helicopter (PU04) to observe the local area for signs of disorder, following reports of a suspect package in Victoria Street. PU04 was deployed at 19.00 and remained in the area for 45 minutes before continuing on to the Dungannon area to perform other scheduled duties.

33.12 With regard to Sunday 14 March 1999, the MIT identified that two helicopters, namely Gazelle 4 and Gazelle 6, had been active. Gazelle 4 had undertaken one sortie during the early to mid-evening and Gazelle 6 one during the same period and one later on in the evening. Flights by each of these were examined in some detail. As will be seen below, a full account of the flight undertaken by Gazelle 4 was soon obtained. It was not until quite late in the murder investigation, however, that an account of the flight undertaken by Gazelle 6 in the late evening of 14 March 1999 was discovered and examined.

33.13 There were other helicopter flights on Saturday 13 March and Sunday 14 March which passed within one or two miles of Lurgan and these may have been audible to residents. Details of all such flights were gathered and noted by the MIT and made available to us. None of these, in our view, warranted closer scrutiny. We are sure that none of the helicopters that flew over or near Lurgan on Friday 12 March or Saturday 13 March could have had anything to do with Rosemary Nelson's murder. We set out below the details of the two flights that we examined in close detail.

Sunday 14 March 1999: Gazelle 4

33.14 At approximately 17.00 on 14 March 1999 Gazelle 4 was tasked to proceed to Mahon Road Barracks, Portadown, to collect a Liaison Officer from 3 R IRISH's QRF. The Operations Officer, based at Mahon Road Barracks' Operations Room, had requested the helicopter via the RAF.

33.15 The Liaison Officer was briefed by the Operations Officer to go to Lake Street where a suspect device had been reported. He was to relay information to the Operations Officer who in turn would relay that information to the troops on the ground.

33.16 Once the Liaison Officer was on board, Gazelle 4 flew in along the Castor Bay Road and circled around the area of the graveyard and Levin Road for approximately one hour, during which time, according to the Flight Commander on board, while maintaining contact with the Operations Room, they filmed a number of events, including public disorder and gatherings of youths. They left the area at 18.49 to refuel at Aldergrove before returning for another 45 minutes, and finally returning to Mahon Road at 20.01.

33.17 Gazelle 4 reported a large number of people milling about on the Kilwilkie Estate, as well as a number of incidents of public disorder. In the opinion of the Liaison Officer, these incidents were orchestrated and designed to draw security forces into the area.

33.18 Once the police notified the Operations Room at Mahon Road that the suspect device had been disposed of by the local resident, Gazelle 4 was withdrawn. It returned to Mahon Road Portadown and dropped the Liaison Officer off at 20.01, before returning to Bessbrook at 20.45.

33.19 Although the MIT attempted to establish whether any video recordings had been made by helicopters operating over Lurgan that weekend, they were unable to recover those made by Gazelle 4 before the tape was re-used. It is possible that a tape, recording events in and around the Kilwilkie Estate on the evening of 14 March 1999, would have been useful to the MIT, for example in relation to an unidentified parked white car, assuming that the tape had not been re-used. We deal later with the MIT's efforts to account for any missing video footage.

Sunday 14 March 1999: Gazelle 6

33.20 Gazelle 6's first sortie during the evening of 14 March 1999 began at 19.25. It was tasked to provide 'top cover' in the Dungannon area. Having carried out this task it returned to Aldergrove.

33.21 Gazelle 6 had originally been tasked to undertake a second flight that evening. Between 23.30 and 00.30 it was scheduled to check mortar base plate sites at police stations at Banbridge and Rathfriland and to pay attention to Banbridge town centre. This was a routine tasking, planned some weeks before as a result of consultation between the Assistant Operations Officer at Mahon Road Barracks and RUC operational planning sergeants at Lurgan, Portadown and Banbridge. The flight did not take place as planned. Instead, the crew of Gazelle 6 were diverted to fly to Portadown to pick up the Liaison Officer who had accompanied Gazelle 4 earlier that day. The helicopter left Aldergrove for Portadown at 23.15.

33.22 At 23.25, the Flight Commander of Gazelle 6 reported to Air Traffic Control (ATC) Aldergrove that it had just 'lifted' from Portadown with three people on board and made a request to operate in the Lurgan area. At 23.37, he confirmed that Gazelle 6 was operating over Lurgan. At 23.53, the Flight Commander of Gazelle 6 advised ATC that only two people were now on board, the Liaison Officer seemingly having been dropped off at Portadown during its return flight to Aldergrove. The sortie over Lurgan was estimated to have lasted between 13 and 15 minutes.

33.23 In the course of their enquiries the MIT interviewed all those who were directly or indirectly involved with the sorties undertaken by both Gazelles 4 and 6 on Sunday 14 March 1999 and took witness statements from each of them, including the Operations Officer, the Assistant Operations Officer and the Watchkeeper who were based at Mahon Road and the crews of both aircraft. None of them, however, volunteered information regarding the second flight of Gazelle 6. As will be seen below, it was not until many months had passed and each witness had made at least one witness statement that accounts were obtained of the second Gazelle 6 flight from those who had been involved in it.

The course of the investigation

33.24 The Senior Investigating Officer (SIO) of the MIT immediately recognised the importance of investigating helicopter activity '*over the victim's house on the evening of the 14th and morning of 15th*'. At 21.34 on the day of the murder, a Detective Sergeant in the MIT was instructed to '*obtain details of all military taskings Lurgan area for period 120399 to 150399. Also to include helicopter taskings and result of any sightings obtained.*'

33.25 The Detective Sergeant told us that personnel in the Operations Room were busy directing military personnel providing cover for police at the scene of the murder when he arrived at Mahon Road but a member of the Intelligence Cell provided him with information about the helicopters operating in the Lurgan area.

33.26 Significantly, his contemporaneous note listing the various flights that were disclosed on his visit to Mahon Road included the following entry:

SUNDAY

14 3 99 2330-0030 GAZELLE (Camera/infrared)

POSSIBLE TASKING TO LURGAN BEING QUERIED

33.27 The flight which had been struck out was the second flight originally scheduled for the helicopter Gazelle 6. Its first flight had been over Dungannon to which it had been sent to provide 'top cover' in accordance with earlier agreed tasking. Had its second flight gone ahead according to this schedule, between 23.30 and 00.30 it would have flown over Banbridge and Rathfriland to check mortar base plate sites. However, this second flight did not go ahead as originally planned. It had been re-tasked. The 'POSSIBLE TASKING TO LURGAN' had in fact taken place with the result that the helicopter had flown close to Ashford Grange during the late evening of 14 March 1999. Clearly, this information was of importance to the MIT and it is surprising that those involved in the flight did not bring it to the attention of investigating officers as soon as the murder was reported.

Gazelle 4

33.28 The MIT Detective Sergeant who visited Mahon Road in Portadown on the late evening of 15 March 1999 was initially told that no video footage of Lurgan on Sunday 14 March 1999 had been recorded from any helicopter.

33.29 This was incorrect. On 24 April 1999 a police witness statement was taken from the Flight Commander of the Gazelle 4 flight. He said as follows:

'Our helicopter was fitted with an airborne surveillance camera with day/thermal recording facilities. It has a night sun which has an infra red capability and at the time we were wearing night vision goggles. On Sunday 14th March 1999 at approximately 1700 hrs I was tasked from Bessbrook to proceed to Portadown and there pick up a member of 3 Royal Irish and then proceed to the Kilwilke [sic] estate where there was a disturbance. I sat in the left hand seat and operated the thermal image camera. We entered the area via the Castor Bay Road passing over the graveyard. We sat over the graveyard and from there we observed a group of youths outside a skip type of yard and gangs of youths around the street corner and from my experience they were waiting on members of the security forces to cover the area. As I looked up the Levin Road I saw approximately thirty youths. These youths proceeded to torch a parked car which was in a field between Donnelly Gdns & Desmond Ave. We proceeded to circle around this area and I at the time was operating the camera recording the events. As this was going on I was in contact with the Ops Room at Portadown keeping them apprised of the situation. We stayed in this area for approximately an hour and then flew back to Portadown where we dropped off the Royal Irish member. We then flew back to Bessbrook.'

33.30 This statement included a hint of what may well have happened to the video recording made during the evening of 14 March 1999. It continued as follows:

'En route the following day back to Aldergrove we were tasked to observe the Craigavon estate where a bus had been burnt and a transit van. This was approx 1600 hrs. [...] I recorded this incident on both modes visual and thermal. We were there for about twenty minutes and then flew onto base at Aldergrove.'

33.31 In a witness statement given to the MIT on 27 April 1999 the Flight Commander stated that when he dropped the Liaison Officer at Mahon Road on 14 March 1999 he asked him 'if he wished to have the tape. He declined the offer.' In a later statement the Flight Commander added: 'It is standard operational procedure to offer recordings of disorder to the Operations Room for which ever area you are in.'

33.32 A somewhat different account was given by the Liaison Officer in a witness statement taken on 25 February 2000. His statement recorded the following:

'I can say that I was not offered the tapes by either pilot on that evening.¹ I am not authorised to receive the tapes. The correct procedure if a tape is required is that a request is made by either the Ops Officer or the Intelligence Officer. The request is generally made by a phone call to Aldergrove. They in turn will copy the tape and label it. The copy tape is then given a unique reference number. The person making the request will then make arrangements for the tape to be picked up, signed for and brought to Mahon Road. A note is made of the reference number and the tape will be signed for each and every time it is used. Usage is restricted and controlled.'

33.33 As regards what became of the video tape, in a statement made on 27 July 1999 the Flight Commander said:

'The tape remained in the helicopter Gazelle 4 and was used again to tape disturbances on 15th March 99 over the Craigavon area. [Returning] to Aldergrove on finishing my tour of duty I mentioned to Trooper [the Intelligence Officer] that there was some good footage in the cab and if he wanted it he could take it. This is normal procedure and Trooper [redacted] is our Int Rep [Intelligence Officer] and would use our tapes if there is anything of interest to make presentations at briefings to show the capabilities of helicopters. It is standard procedure prior to commencement of a twenty four hour duty to test the video equipment and rewind the tape. The tape would remain in that particular Gazelle on this occasion Gazelle 04.'

33.34 When this witness statement was taken the Flight Commander was shown a video recording on which crowd disturbances had been recorded. He purported to identify this recording as being that which he had made on 15 March 1999. He said:

'On 18th May 1999 I viewed a video tape marked [exhibit reference] accompanied by [an officer from the MIT]. I can say that this is the same tape which was in Gazelle 04 on 14th, 15th March 99. From viewing the footage I am in a position to say that the material which was videoed on the tape covering the 14th March was taped over. I can identify the tape because the material near the end of the tape is what I videoed on 15th March 99.'

33.35 The video recording had been handed to an MIT officer on 4 May 1999 by the Intelligence Officer who had examined a number of tapes in his possession and identified this one as containing a recording made in mid-March 1999. At the beginning of the tape there is what appeared to be a recording of a car-jacking. A car can be seen approaching a barricade which is on fire. The driver is pulled from the car and the car driven away by rioters. Afterwards, there is footage of a 'transit type van and a single story bus' both of which have been set alight.

33.36 In a witness statement recorded by the MIT on 21 March 2000 the Intelligence Officer had said:

'Part of my duties involves the recording equipment which is kept in the various helicopters. My involvement with respect to them would be that if after a particular sortie a crew member ie the pilot/co-pilot or if there is an Army Liaison Officer on board and they have been involved in a particular incident which has been videoed. Then it may well be that one of them would give the video to me. This could be for training or intelligence purposes – to be used either by the Military or the Police. If given a particular video by a crew member I would take possession of it and place it in a room with the Intelligence Section. It is not booked in or recorded.'

¹The Liaison Officer also flew later with Gazelle 6: see Chapter 33.52 to 33.56; 33.58; 33.79 to 33.80.

33.37 He recalled a specific occasion when he had received a tape from the Flight Commander in the following terms:

'Between 24th April – 2nd May 1999 I was on home leave. I was contacted by my supervisor [sic] back at Aldergrove. Enquiries were being made by the Police with regard to the video footage that had taken place on the evening of Sunday 14th March 1999. [The supervisor] asked me if I recalled either being given a video or taking a video from a helicopter around this time from [the Flight Commander]. I do recall taking a video cassette off [the Flight Commander] around this time. I briefly recall [the Flight Commander] saying that the footage may or may not be of some use to me.'

33.38 He made a further statement on 5 April 2000 in which he said:

'In my previous statement I referred to receiving a video cassette off [the Flight Commander]. [The Flight Commander] would have landed in a helicopter which was Gazelle 4 on the 15th of March. It is standard practice for the helicopter crews to report to the Operations Room at the conclusion of their tour of duty. The crews hand in their post mission statements and radios. [The Flight Commander] told me that there was good film footage in the helicopter's cab that could be used for briefing purposes to show the capabilities of the aircraft. I recall going to where the aircraft was situated on the dispersal. The helicopter was being moved at that time into the hanger. I then remember attempting to remove the video tape from within the aircraft of Gazelle 4 whilst it was in the hanger. I was able to identify the helicopter as [the Flight Commander]'s aircraft Gazelle Four due to its tail number which is ZA774. As I was experiencing difficulties in removing the cassette tape, [the Flight Commander] walked past the aircraft and I asked him to show me how to do it. I then removed the cassette from the recording device in the aircraft and placed the video cassette on a number of other cassettes in a secure storage cupboard. The cassettes that were already in the room were on a shelf in an upright vertical position. I placed the cassette from Gazelle 4 on the top of these other cassettes in a horizontal position. This was the only cassette that was out of place on the shelf, the rest were neatly stored in the manner that I have identified.'

33.39 The issue of the 'lost' video footage was reviewed on a number of occasions by MIT officers and we have considered the issue in the light of the work undertaken in the course of these reviews.

33.40 Research carried out by the MIT amongst 3 R IRISH signal logs revealed that an incident matching the description of the car-jacking referred to by the Flight Commander had taken place on 18 March 1999 in Armagh; an incident involving a burning Ulsterbus and a Mercedes van were reported on 19 March 1999 in the area of Meadowbrook/Drumbeg/Tullygally East in Craigavon. No car-jacking and no incident involving a burning bus and van were reported as having taken place on 15 March 1999.

33.41 The MIT took a further witness statement from the Flight Commander on 24 September 2001. In this he said:

'I state in one of my previous statements that the video I viewed with [an MIT officer] in [redacted] was of disturbances on 14th/15th March 1999. However I am now told that after a Police investigation of the video tapes in conjunction with recorded incidents in Armagh and Craigavon matches incidents that took place on the 18th and 19th March 1999 in exact detail.

It is quite likely that after filming on the 14th March 1999 if after [sic] offering the tape to the LO and the Air Trooper back at Aldergrove. If either [sic] of these took

the tape then it would have been rewound. Quite simply video recording takes place frequently. If no one wants the recording then simply the tape is left in the aircraft and would be rewound by the person taking the next sortie.

One incident of disorder looks very much like another each of course having 1/2 distinguishing features. In view of the Police investigation into the tape a Gazelle 4 [sic] I am quite satisfied that events are of the 18th and 19th March 1999 and I was mistaken as to the dates I previously mentioned.'

33.42 The MIT established that the helicopter being flown under the call sign 'Gazelle 4' that day was not ZA774 but was in fact an entirely different aircraft, namely, ZB674.

33.43 This admitted error on the part of the Flight Commander is significant. First, as regards what became of the footage recorded during the afternoon and early evening of 14 March 1999 it would appear entirely likely that it remained in the helicopter that flew that day under the call sign Gazelle 4 (ZA774) so that when MIT officers began their enquiries on 15 March 1999 any recording made the previous day had already been lost. Secondly (and as the Flight Commander declined to take part in the Inquiry we were not able to pursue this matter with him), as regards the question of whether or not the Liaison Officer was offered the tape on 14 March 1999 and declined to take it, we cannot discount the possibility that the Flight Commander was recalling an offer made on a different day, in a different helicopter and to a different Liaison Officer. In this regard the Liaison Officer who flew on Gazelle 4 on 14 March 1999 gave evidence before us and was adamant. He said: 'No Sir, I can categorically deny now that I was offered no tape as I do not have authority to take a tape from an air frame.' He was further questioned as follows:

'Q. Why now as opposed to any time?'

A. Because – I can say at any time that I would not receive a tape from an aircraft because I do not have the authority to remove tape from an aircraft.

Q. Right. On this occasion, therefore, you say you did not?'

A. No.

Q. And in fact you would have been surprised if you had been offered it?'

A. I would have been very, very surprised.

Q. Do you have any recollection of any discussion once you had landed about the tape?'

A. No, no recollection whatsoever, sir.'

33.44 Our conclusion is that the tape in Gazelle 4 recording events in Lurgan between 18.00 and 20.00 on 14 March 1999 was re-used in the same Gazelle 4 to record events in Lurgan immediately after the explosion of the UVIED (Under-Vehicle Improvised Explosive Device) which fatally injured Rosemary Nelson. When the Detective Sergeant asked about video footage shortly before midnight on 15 March, the recording of events on 14 March had already been expunged by the re-use of the tape earlier on 15 March. We are satisfied that the re-use of the tape had nothing to do with Rosemary Nelson's murder.

Gazelle 6

33.45 We describe below the various occasions when personnel who were involved in or knew (or should have known) of this flight failed to disclose details of it to investigating officers and later we report on our own investigations, our questioning of these witnesses and our conclusions. Before doing so, it is important to record that there was another early occasion when the possibility of there having been a second flight by Gazelle 6 was brought to the attention of the MIT. This occurred on 25 March 1999 when a list of flights was compiled from information from ‘*H.Q. N.I. JATOC and RAF Aldergrove*’. This work was undertaken as a result of the many helicopter sightings that were reported to the police during house-to-house enquiries immediately after the murder and at the Vehicle Check Point (VCP) that was set up in Castor Bay Road on 21 March 1999. The list that was compiled by the officer included brief descriptions of 14 flights including, in some instances, details of the crew involved. The details recorded in respect of this second flight of Gazelle 6 were as follows ‘*14 March 99 Gazelle 06 23.30 hrs*’. Crew members’ names were not recorded.

Statements to the Murder Investigation Team

The Operations Officer

33.46 Within days of the murder, the SIO issued instructions to ‘*TST [take statements] pilots and crew helicopters Lurgan area 120399 – 150399*’ and to ‘*interview observers*’. An instruction or ‘*action*’ was also issued to obtain ‘*video film from Army footage shot from helicopters over-flying Kilwilkie on 130399 & 140399*’ and to ‘*have same properly exhibited*’. A later action instructed officers to ‘*ID who tasked flight and interview*’.

33.47 One of the flights covered by this exercise was that undertaken by a Puma helicopter (PU04) on Saturday 13 March 1999. This had been requested as a result of reports of a suspect device in Victoria Street. The action sheet for this particular task specifically required the officer to identify and take a statement from the Operations Officer on duty on the Saturday, who had dealt with the issue of the suspect device. On 18 March 1999, only three days after the murder, a witness statement was obtained from the Operations Officer who had been on duty at Mahon Road Barracks on both 13 and 14 March 1999. In this, the first of three statements that he was to provide to the MIT, he confirmed that at his request a Puma helicopter (PU04) was deployed by the RAF in order to observe the local area for signs of disorder following reports of a suspect device in Victoria Street. His statement also dealt with the incident on Sunday 14 March 1999 when there was a separate report of a suspect device in Lake Street. His statement continued as follows:

‘On Sunday 14th March 1999, I commenced duty in the Ops Room at Mahon Road, at 1730 hrs. The watchkeeper Colour Sergeant [redacted] had just received a telephone call from Police in Lurgan. The watchkeeper briefed me to the effect that a suspect device had been reported in the area of 5 Lake Street, Lurgan. It was at the request of the Police because it was still daylight that a helicopter be deployed. The reason for this was to attempt to ascertain if there was in fact a device without having to deploy resources to an area which had seen public disorder in the past when responding to similar type calls. I deployed a helicopter via the RAF and am aware that a Gazelle was deployed. I am not aware of what facilities are on board a Gazelle. I spoke to the crew of the Gazelle helicopter and they advised that the Kilwilke [sic] area was extremely busy for a Sunday evening with approximately two hundred persons milling around the estate in general. They advised that there was what appeared to be a car on fire at Community Centre. They advised of youths on the roof of a builders yard at Victoria

Street, Lurgan, adjacent to where the device had been reported the previous evening. I subsequently received a telephone call from [a police officer] advising me that one of the residents of Lake Street had disposed of the device in an area of waste ground to the rear of 5 Lake Street, Lurgan. Because of security implications it was decided that a search would not be carried out until the following day. Details of this incident would also be logged by the watchkeeper. I finished duty just after midnight and I have been on planned leave since. I can say the helicopter deployed to this incident was withdrawn from the area of Kilwilke [sic] at 2000 hrs on 14 March 1999.'

The Flight Commander and the pilot

33.48 On 23 March 1999 Sam Kinkaid gave instructions to two MIT officers to identify and take statements from the pilots and crew of those helicopters which operated over the Lurgan area between 12 and 15 March 1999. The action sheet in which these instructions were recorded included a list of all known flights over the relevant period and referred to Gazelle 6's pre-planned flight for 23.30 on the Sunday evening. Over the next few days, the officers assigned to this task made arrangements to interview the relevant witnesses. The first interviews took place on 27 March 1999.

33.49 On 12 April 1999, the Flight Commander of Gazelle 6 and the pilot made witness statements. The Flight Commander described, in very brief terms, the earlier flight of Gazelle 6 to Dungannon. Of the later flight he said: *'I went into Portadown at 23.30 and operated to the west for approx half an hour before returning to Aldergrove. I had nothing to report during this flight.'* This information was clearly wrong. The flight had taken the helicopter to the east of Portadown. The error was compounded by the statement taken from the pilot. He said: *'We carried out our task in the Dungannon area and later at 2330 hrs we patrolled the Portadown area checking for suspicious vehicles and possible attacks on security bases. There was nothing suspicious to report and we returned to Aldergrove.'*

33.50 Significantly, the pilot's statement of 12 April 1999 included a description of his duties for 15 March 1999. On that day Gazelle 6 was tasked *'to support 3 Royal Irish Regiment at Mahon Road Portadown'*. His statement continued, *'We flew off from Aldergrove at approximately 1820 hours. On arrival at Mahon Road we were briefed in relation to the bomb explosion which had occurred earlier that day.'* It would be remarkable if, during this briefing, it did not occur to the pilot that he had flown almost directly above the scene of the explosion less than 24 hours earlier.

33.51 The pilot made two further statements on 27 July and 1 October 1999. In that of 27 July 1999 he provided further details of the flights undertaken on Sunday 14 March 1999. His description read as follows: *'Our duties over Dungannon on 14 March 1999 covered the military base in Dungannon, specifically the landing pad. The other area covering the Portadown area was the RUC station in Edward Street, Portadown and Mahon Road Joint RUC Military Base.'* The statement of 1 October 1999 dealt with flights undertaken on 13 March 1999.

The Liaison Officer

33.52 Neither the Flight Commander nor the pilot named or even mentioned the Liaison Officer who had accompanied them on the second flight of Gazelle 6 on 14 March 1999. This officer provided a witness statement to the MIT on 22 April 1999. In it he gave an account of the flight he had undertaken on Gazelle 4 early on Sunday evening and stated that Gazelle 4 had flown over the area where Rosemary Nelson lived on numerous occasions that night. He made no mention of the flight of Gazelle 6.

33.53 On 30 April 1999 a further action was raised by the MIT in respect of the Liaison Officer, instructing officers to obtain a further statement from him regarding his other duties on Sunday 14 March 1999. In a statement made on 19 May 1999 he said: *'My other duties for the day were all in the Portadown area on duty as the Quick Reaction Force. We commenced at 15.30 hrs on 14.3.99 and terminated duty at 09.00 on 15.3.99.'* Again, he did not mention his flight on Gazelle 6.

33.54 We found his omission to mention his flight on Gazelle 6 very puzzling. In his oral evidence to the Inquiry, when asked how he was able to give such precise timings to his earlier flight on Gazelle 4, he replied:

'When you are being tasked, you always check your time. It is something a soldier does when he's going to a helicopter, he checks times. When he is called to do something, he looks at the time. [...] I'm near sure I wrote it down in my notebook.'

This suggests that he also should have written in his notebook the timings of his later flight on Gazelle 6. He told us that the notebook was in existence on 22 April 1999 when he provided his witness statement to the MIT. Its number corresponded to the number on his rifle. It was used until full and *'then you were issued with another one and the first was archived'*.

33.55 We sought disclosure from the Ministry of Defence (MoD) of the Liaison Officer's notebook but were informed that it was likely that it had been destroyed in accordance with MoD policy *'at the time'*. *'The Northern Ireland (NI) Patrol Notebooks were introduced in 1991 following recommendations contained in a report from the Deputy Chief Constable of Cambridgeshire (John Stevens). The report stated that the use of unofficial notebooks should be prohibited. The resulting NI Patrol notebooks were accountable documents, the control of which was outlined in an Headquarters Northern Ireland Instruction.'* Attached to the letter was a copy of the Instruction. The relevant portions are as follows:

'8. Action on Filling a Patrol Notebook. When a patrol notebook is full, it is to be handed in to the sub-unit Chief Clerk, who is to take the following action:

- 1. The serial number of the full book is to be booked in, and a new book is to be issued on signature.*
- 2. The full book is to be passed to the QM [Quarter-Master], who is to reflect completion in his central register by deleting the appropriate serial number. He is then to destroy the notebook in accordance with Paragraph 11 below.'*

*'11. Destruction. Notebooks are to be shredded. Destruction is to be supervised by an officer, or a SNCO [senior non-commissioned officer] not below the rank of Sgt.'*²

33.56 In our judgment, in view of the immediate allegations of collusion and the ongoing investigation into Rosemary Nelson's murder, and especially because of the MIT's enquiries about helicopter flights, the destruction of the Liaison Officer's notebook was negligent on the part of the Army. The Army should have issued and enforced an order that all relevant records including patrol notebooks should be securely preserved.

The Operations Officer again

33.57 The Operations Officer made a further statement on 26 August 1999. This concerned searches and covert operations in the Ashgrove area of Lurgan and,

²Headquarters Northern Ireland Instruction 9300 G2 dated 13 February 1991, Security of Information: Patrol Notebooks

specifically, the suggestion that troops had been seen ‘digging in’ near Rosemary Nelson’s home in the weeks immediately before her murder. The issue of helicopter activity was not addressed but there is no indication to suggest that the subject of helicopter flights during the weekend of 13/14 March 1999 was raised by the interviewing officer.

The Liaison Officer again

33.58 On 17 May 1999 instructions were issued that the Liaison Officer was to be contacted in order to clarify why he considered the white van seen on Lake Street on the Sunday evening during his flight on Gazelle 4 in the early evening of 14 March 1999 was ‘out of place’. It was not until 23 September 1999 that the Liaison Officer made a further statement. Again, no mention was made of his later flight on Gazelle 6.

The second flight of Gazelle 6 is identified

33.59 In August 1999, the officer from the Norfolk Constabulary who was experienced in civil aviation began to study and analyse the 66 hours of ATC recordings concerning aircraft movements in and around Aldergrove Airport. During the course of this work three radio messages from Gazelle 6 to Aldergrove, at 23.25, 23.37 and 23.53 respectively, were identified. These not only indicated that Gazelle 6 had operated over Lurgan late on Sunday night but also that, for at least part of the flight, three people had been on board the helicopter. As a result, in late 1999 and early 2000 a train of enquiries began which led to the re-interview of the Liaison Officer, the Flight Commander and pilot of Gazelle 6, and the Operations Officer. A witness statement was also taken from the Watchkeeper who had been on duty in the Operations Room on Sunday 14 March 1999. It had been his responsibility to maintain a log of events in the Area of Responsibility (AOR) and this flight had taken place directly within it. The log contained no reference to the second flight of Gazelle 6.

33.60 On 7 February 2000, having been given the opportunity to read the ATC transcript, the Liaison Officer made a further statement. In this statement, he said that on seeing the transcript, he ‘immediately’ realised that, very late on Sunday 14 March 1999, as a result of a telephone call received from the Operations Officer, he had been required to join a crew and check the Lurgan area with regard to earlier incidents. In his statement he said: *‘I now recall that I was in the QRF Room attached to the Guardroom when a phone call was received from the 3 RIR [i.e. 3 R IRISH] Operations Room. The effect of the telephone call was that I was required to join a helicopter crew and to check the Lurgan area to see what was happening with regard to earlier incidents.’*

33.61 He recalled that he directed Gazelle 6 to fly over the Kilwilkie Estate, Flush Place, Banbridge Road and Gilford Road. He explained that his failure to mention this before was ‘just an oversight’ on his part and, in any event, he had only been on board for about 20 minutes. He added that he had reported straight to the Watchkeeper upon his return.

33.62 On 23 February 2000, the Flight Commander of Gazelle 6 made a further statement in which, having had the opportunity to see the relevant ATC transcript, he said that his earlier account had been incorrect. He said :

‘I accept that the transmissions recorded on Document D2447, the ATC Approach Radar transcripts, relate to the flight that I was the commander of on the night of 14 March 1999. Gazelle 6 had a thermal image recording video camera; the commander

would have operated this. In addition there would have been image-stabilized binoculars, on board, which would have been available to the Liaison Officer for his use. I can not recall in detail the activities of that tasking except that Gazelle 6 went into Portadown approximately 2330 that day (140399) and we would have operated for approximately 30 minutes before having to return to Portadown. The weight of the aircraft and the lack of refuelling at Portadown would have been the limiting factors on the flight time. At the time of my original statement I attempted to find Gazelle 6's tasking sheet for that date (140399), however I was informed the tasking sheet had been destroyed. Prior to flying from Portadown Gazelle 6 had been deployed to Dungannon. I can only think that when I said we had been operating to the west of Portadown I had been thinking about the task at Dungannon.'

33.63 The Flight Commander made a further statement on 25 September 2001, for the purposes of which it appears that he had been given details of the Liaison Officer's account of events on the Sunday night and his references to specific areas. The Flight Commander said that he had no recollection of any of the areas visited or the incidents referred to, but acknowledged that the Liaison Officer, who was responsible for directing the aircraft, would have made a more detailed report of the incidents on the ground.

33.64 A witness statement was taken from the Watchkeeper on 29 February 2000. In his statement he referred to the log for which he had been responsible on the evening of 14 March 1999. Having described the earlier tasking of Gazelle 4 and the reports provided by the Liaison Officer the statement continued as follows:

'My last entry in the log for 140399 was at 2200 hrs. However I recall a later overflight of the Lurgan area by a helicopter. This helicopter's tasking would have been a continuation of the Gazelle 4's previous tasking. I cannot recall how the aircraft was tasked but I believe it would have been either through telephone calls between 3 Brigade Operations and JATOC or a direct request from Captain [redacted], the Operations Officer, to continue the original tasking. As far as I remember there was nothing to report from that overfly. There was no reason for me not to have put an entry in the log regarding the tasking of the overflight. The reason for me not making an entry in the log could have been an oversight. Because of the lack of activity in Lurgan and the tasking of the helicopter occurring at that time of night when I have to prepare reports to be sent to 3 Brigade Watchkeeper I forgot to make an entry.'

33.65 The pilot was re-interviewed on 23 May 2000. In his statement he said that at 23.15 he had flown Gazelle 6 to Portadown military base and picked up a colour sergeant from 3 R IRISH, who acted as observer. He could not remember any details of the flight, but maintained that he had flown to Dungannon and, thereafter, returned to Portadown to drop his passenger off, after which he would have returned to Aldergrove. He added that he would only have flown over Lurgan when travelling to and from these destinations. They were in the air for no longer than an hour and had never landed. He said that he had not mentioned these details before because he had not been asked.

33.66 It was not until his fifth statement of 24 September 2001 that he noted from the ATC transcript that the Flight Commander had asked him to operate in the Lurgan area, which he had not previously mentioned. He said:

'In my statement dated 270799 I make reference to covering the RUC Station in Edward St, Portadown and the joint RUC/Military Base in Mahon Rd, Portadown. I did not make any reference to the Lurgan area. From looking at a Police document 2447 I note that Hawk 364 asks to operate in the Lurgan area. From a Pilot's concept operating in the Lurgan area can refer to either Lurgan, Craigavon or Portadown. Lurgan is just on the edge of Aldergrove airspace and this would be letting them know

our position with the general areas of Lurgan. I am informed by the Police that the Liaison Officer, [redacted], makes specific reference to the Kilwilke [sic], Flush Place, Banbridge Rd & the Gilford Rd. Again I am satisfied that the LO would be more likely to account for any movements of the aircraft whilst I concentrated in [sic] flying it. I understand that it was a quiet night, one of many which I participated in. That's why I made no reference to it.'

33.67 On 7 April 2000 an officer from the MIT was instructed to take a third statement from the Operations Officer regarding the later tasking of Gazelle 6. By that time the Operations Officer had transferred to another full-time post in England and MIT officers interviewed him on 14 April 2000 in his office in Surrey. A report from the interviewing officer records that the Operations Officer *'was unable to recall that individual flight, however he believed it might have been a pre-planned flight as a result of a regular tasking meeting'*. He made a witness statement but in it he provided no further details of the later flight of Gazelle 6.

Poor record-keeping

33.68 The significance of the later flight of Gazelle 6 might well have been identified earlier if it had been fully documented. It appears that no written record was either made or retained of the flight being re-tasked or of its movement over Lurgan, or of any report being provided by it.

33.69 The Operational Tasks Forecast for 14 March 1999, that is to say the document in which every non-secret military deployment for that day was set out, recorded only the original tasking for Gazelle 6 which had been agreed at an earlier Joint Tasking Meeting. It read: *'AVN: FINCH, 23.30-00.30: MBP STATIONS/RFL/BANTC.'*

33.70 In his evidence to us, the Operations Officer explained that *'AVN'* stood for *'Aviation'* (meaning either a Gazelle or a Puma helicopter) and that *'FINCH'* was a thermal imaging camera that was attached to a Gazelle. *'RFL'* meant Rathfriland and *'BANTC'* Banbridge town centre. In summary, the task allocated was to check mortar base plate sites in these locations.

33.71 The Watchkeeper's log should have included some mention of the late flight of Gazelle 6 but it was not the only contemporaneous log that was maintained. A similar log was also maintained at Mahon Road, but at brigade level. This contained no reference to the second flight of Gazelle 6 although it erroneously attributed the second part of the earlier flight of Gazelle 4 to Gazelle 6.

33.72 A radio log was also maintained in the Operations Room but to the uninitiated this was uninformative. It contained three entries in respect of Gazelle 6 as follows:

'1944 hrs Entry made "E-W L/W"'

1949 hrs Gazelle 6 reported it was "Flicking"'

2351 hrs Gazelle 6 reported it was "Flicking"'

We were told that the expression *'flicking'* indicated that the helicopter was passing from one sector to another at which point the pilot would change the radio frequency.

33.73 Records maintained by the crew of Gazelle 6 would probably have been of no greater assistance to the police, even if they had been made available. Those which we were able to examine contained no details of the later flight.

The Air Traffic Control recordings

33.74 It is to the credit of the Norfolk Constabulary officer who listened to the Air Traffic Control (ATC) recordings made over the weekend of 13/14 March 1999 that he was able to identify the flight. He did so from the following exchange:

Tape Counter Times	Person Speaking	Text
23.24	Hawk 364	"Aldergrove approach, Hawk three six four."
23.25	Approach	"Hawk three six four, approach."
23.25	Hawk 364	"Hawk three six four, a Gazelle, three persons on board just lifted from Portadown, I'd like to operate in the Lurgan area, not above two thousand feet, with a flight information service."
23.25	Approach	"All copied. QNH one zero two one, report complete."
23.25	Hawk 364	"One zero two one, and call complete, three six four."
23.37	Hawk 364	"Hawk three six four is complete over Lurgan and changing to, en route."
23.37	Approach	"Hawk three six four, roger, goodnight."
23.37	Hawk 364	"Goodnight, Hawk three six four."
23.53	Hawk 364	"Aldergrove approach, Hawk three six four with 'foxtrot'."
23.53	Approach	"Three six four."
23.53	Hawk 364	"Three six four, a Gazelle, now two persons on board just to the north of Lurgan, requesting clearance into the zone, special VFR, from the south west."
23.53	Approach	"Three six four, roger, cleared inboard south west high special VFR the QNH is one zero two one, report the airfield in sight."

33.75 '*Hawk 364*' was the personal call sign of the Flight Commander; '*QNH*' was a reference to air pressure; '*with foxtrot*' a reference to radio frequency and '*VFR*' to '*visual flight rules*'. According to the pilot of Gazelle 4 the expression '*complete over Lurgan*' would have indicated that the flight over Lurgan was finished.

33.76 The MIT was unable to establish at whose request the second flight of Gazelle 6 was re-directed. The Duty Inspector at Lurgan police station made a detailed witness statement regarding her activities on Sunday 14 March 1999 and made no mention of it. The possibility that a helicopter flight may have been undertaken at the request of Special Branch (SB) was also considered. On 26 April 1999 a member of the MIT met with a Superintendent from SB to ask if '*SB had*

tasked any overflights by plane or helicopter during the period 12-15 March 1999' and on 5 May 1999 the Superintendent informed the MIT that no such flights had been requested by SB.³

33.77 It was evident to us that the MIT also considered the possibility that someone who had been involved in the flight might have passed the word that the coast was clear to those waiting to plant a device under Rosemary Nelson's car. We were made aware of a number of discreet yet searching enquiries that were carried out to explore this possibility. No evidence was found to suggest that any such message had been passed on.

Evidence to the Inquiry

33.78 In view of the timing of the second flight of Gazelle 6 on 14 March 1999, its proximity to the scene of the murder and the tardiness of its disclosure to the MIT, we examined all the evidence gathered by the MIT with great care. We considered the possibility that the flight could have been tasked in order to provide cover for those who placed the bomb under Rosemary Nelson's car. We considered as an alternative whether someone involved in the flight, or someone who was in contact with the flight, might have passed such a message to the murderers. We asked a number of witnesses to provide further details of the flight, how it was tasked, why it was not disclosed to the police immediately and whether it would have been possible for someone engaged in it to have collaborated in the murder of Rosemary Nelson.

The Liaison Officer's evidence

33.79 The Liaison Officer told us that when he had first spoken to the police he had forgotten that he had taken part in a second flight on Sunday 14 March 1999. He said: *'I flew sometimes 2 to 3 times a day and so did forget some flights. I did not intentionally leave it out of my original statement. However, the second flight was simply to have a look at the Kilkilke [sic] Estate to check on the state of the earlier trouble and we flew over Flush Place and Banbridge Road. We saw a burnt out car showing as white in colour on the thermal imaging camera.'* He told us that he had been tasked by the Operations Officer to accompany Gazelle 6. He said that he believed that this was an additional flight, tasked to check the area he had observed earlier that evening while on board Gazelle 4, and that the request had come from Lurgan police station. He said, *'I had been on the earlier flight and had seen what was going on. [...] So he sent me up because I knew exactly what was going on in the area. Plus I was an LO for that day.'* He told us that the Operations Officer said it was *'an additional flight'* and that he was *'just to go and check that the area was quiet'*.

33.80 He was asked whether he was surprised to receive these instructions. He said: *'Yes, in a certain way, yes, sir, but in a certain way, no. We had to go back and look to see what was happening after we left.'* He continued: *'Personally myself I would have just left it because they would have burnt themselves out and I would have went [sic] to my bed, but the police dictated that we had to go back and look at it to see what the activity was.'*

³ This information was recorded on the J404 account of the HOLMES database. A document prepared by the Superintendent dated 26 April 1999 was identified by Inquiry staff in a search of a word processing unit of the Police Service of Northern Ireland (PSNI) computer system on which PRISM was maintained. The document also advised that no QRF had been deployed in support of Operation Fagotto on 14 March 1999. No hard copy of this document was disclosed to the Inquiry by the PSNI.

The Operations Officer's evidence

33.81 The Operations Officer was questioned about the tasking of helicopters generally and about the flights which took place on 14 March 1999. He told us that his primary role was to *'plan and coordinate the work of the companies of 3 Royal Irish, who operated in support of RUC J Division, which policed the areas of Banbridge, Lurgan and Portadown.'* It was he who agreed the Operational Tasks Forecast with the Deputy Divisional Commander and senior officers from each sub-division. He explained how the plan might be changed at short notice. He said:

'Although the planning meetings with the RUC were scheduled for every two weeks, there was some flexibility in terms of amendments to the agreed Tasks Forecast. For example, the police might call and say that they were concerned about a disturbance on a particular estate. On receipt of such information, we would amend the tasking sheet and deploy troops to the estate. The tasking sheet was commonly amended in response to something that was happening on the ground to enable us to support the RUC to investigate the situation. Equally, if we became aware that something was happening on the ground, such as if we received a bomb warning, we would amend the tasking sheet and respond as appropriate. I would not phone the police to inform them that I was amending the tasking that had previously been agreed at an Ops meeting. I would decide on the appropriate action to take in response to the threat and send out the new tasking orders to the troops on the ground immediately.'

33.82 As to that Sunday, he recalled receiving notification of a suspect device. He explained the usual procedure in these circumstances, as follows:

'We were usually notified about potential devices by the police. We would normally get a call from the duty officer at the local RUC station. Notification of a suspect device would be given to the Watchkeeper who would then inform me. In terms of deciding how we dealt with the suspected device, I would decide which troops would be tasked to investigate the device, when they would go in and what they would be tasked to do when they got to the device. It would also be my call as to whether a helicopter should be tasked to observe the area over the device. Sometimes the police would specifically ask us to task a helicopter but, in reality, in most cases it was standard for us to task a helicopter in such circumstances anyway. [...] If I decided that it was appropriate to task a helicopter, I would phone the Brigade Watchkeeper, who would have an overall picture of what resources were available. A helicopter would be dispatched from one of the airports at Bessbrook or Aldergrove. It didn't matter to us which airport they came from, it was just a case of availability of resources.'

33.83 The Operations Officer also gave a description of how records were made in the Operations Room. He told us with regard to the Watchkeeper's log that *'the data would come from a phone call or from radio traffic or quite simply would be a way of formalising a decision that the Watchkeeper had made. For example, if he had re-tasked a helicopter or if he had sent a request for an agency, he would log that. The data that was recorded on the signaller's log would have been exclusively phone or radio traffic.'*

33.84 He told us also that the accuracy and content of the Watchkeeper's log was *'looked at and kept very seriously'*. He said: *'I checked it. If I was away – if I was at home for the evening, for example, I would look at it first thing when I came in, along with any other messages that were there. The Watchkeeper would often maybe ask for five or ten minutes and go and sit quietly if the desk was busy and write everything up so that he was sure that all the details were recorded.'*

33.85 As regards helicopter support, the Operations Officer told us that requests might be submitted as much as a fortnight in advance of the date when operations were intended to take place but that air crew would not be surprised if they were re-deployed at short notice.

33.86 He explained that the final say as to whether a helicopter could be re-deployed lay with the Aviation Liaison Officer who was based at Aldergrove. He told us that the Aviation Liaison Officer was not only aware of all helicopter assignments within Northern Ireland, as opposed to within J Division alone, he was also aware of the number of hours that each crew had flown and which of them therefore had spare capacity. If, however, a helicopter was tasked in support of operations the Operations Room would have to be informed. The Operations Officer accepted, however, that in some circumstances the approval of the Aviation Liaison Officer would not be needed where, as was the case with Gazelle 6 on the late evening of 14 March 1999, a helicopter had been assigned to a task within his control. In those circumstances the Operations Officer told us *'if I was in the ops room I might have said, "We have got that Finch tonight. I'm going to send it over Lurgan." It just would have been my decision at the time. It may not have been logged.'*

33.87 He could not recall briefing the Liaison Officer with regard to the flights of either Gazelle 4 or Gazelle 6. In relation to the tasking of the later flight he said:

'I have been asked if there were any flights tasked later in the evening on 14 March. No flights were tasked by me between 8pm and 12am (when I came off duty). I have been asked if I would generally have been aware if other flights took place over my area that were not authorised by me. If pilots were over flying our area, they would usually radio in their call signs to tell us they were in the area. There may also be training flights taking place in the area and I would probably have been told about these. However, if the helicopters were being used by covert/special users, I would not have been told about the flights.'

33.88 The Operations Officer told us that he was aware that Gazelle 6 had been tasked as the pre-planned flight appeared on the Operational Tasks Forecast. When he gave oral evidence to us, however, he could not recall details of the later flight or its tasking. He said:

'I honestly do not remember whether that flight was re-tasked to Lurgan for definite. It is entirely possible and I would perhaps even say likely that given what had happened earlier on the day of the 14th, that the helicopter was re-tasked to have a look at Lurgan to ascertain that it was quiet. If we had the – and it was then possible within an hour that it could have conducted the other tasks in Banbridge and Rathfriland, although there wouldn't have been any loiter time or capability at those two occasions.'

33.89 He told us that he did not task Gazelle 6, or any other aircraft in response to the disturbances reported by Gazelle 4 earlier that day, but he did not discount the possibility that Gazelle 6's second sortie was a re-tasking of the pre-planned flight. He added that it would have made sense to re-task the flight in response to a change in circumstances. He did not consider it out of the ordinary that a second helicopter had been sent out that night, as opposed to the following morning when things had calmed down. He said:

'What we like in these situations whenever you are going through a sort of planning process is to try and be drip fed information, to try and have the most up-to-date information as you can. As someone who plans operations, it wouldn't make any sense to me to plan an operation for 9 o'clock the following morning based on information I had at 7 o'clock the previous evening. I would like to have up-to-date information if I could.'

33.90 Initially he did not recall briefing the Liaison Officer, but accepted that he might have done, adding that, in light of what had happened earlier in the day, he would have wanted to speak either to the Liaison Officer or at least hold a face-to-face briefing with the pilots. As to how the helicopter crew had been briefed on the change in plan, the Operations Officer told us that it was more likely that the briefing had taken place after they had taken off from Aldergrove and had in fact been conducted at Portadown either by himself or the Liaison Officer.

33.91 We were concerned to establish why the Operations Officer had given three statements to the MIT between 18 March 1999 and 14 April 2000 and had made no mention of the second flight undertaken by Gazelle 6. The statement of 18 March 1999, for example, gave a particularly detailed account of the comings and goings of Gazelle 4. His explanation was as follows:

‘Well, to the best of my knowledge or my recollection, that statement was given simply following questions that I was asked by the police detective at the time. I think as well that the incident had really – whilst it was due to be continued, so to speak, on Monday morning, more or less it had petered out itself by about 8 o’clock. And as I have said, if you are going to plan something, you like to be drip fed information. The helicopter was there as an opportunity to update our information, but the incident or the public order certainly wasn’t ongoing at that time and, indeed, Lurgan had quietened down towards the latter part of Sunday evening. So perhaps I didn’t sort of link specifically what had happened before with the helicopter later.’

33.92 He was also asked to explain why there was no mention of the flight in the Watchkeeper’s log. In relation to this he said:

‘Well, I think that we don’t see anything in the Watchkeeper’s log pertaining to any of the routinely planned patrol activity. It is all pertaining to that particular specific incident, which, you know, at around 8 o’clock it had quietened down and we decided we were going to leave it until the next day. The Gazelle 6 was pre-planned. Okay, there is a degree of flexibility in how we task it and, you know, as I have explained, you know, it was a busy sort of fluid place, so maybe the change in tasking just went on ahead without being logged.’

33.93 He told us that a re-tasking was not, on a day-to-day basis, a significant event and he could not recall whether he had mentioned it when he was first interviewed by the MIT.

The Watchkeeper’s evidence

33.94 Also on duty in the Operations Room on Sunday evening, from 18.00 to 07.00 the next morning was the Watchkeeper. It was his responsibility to complete the operations log (see Chapter 33.7 above). In that time he made no entries in respect of the second flight of Gazelle 6; indeed his last entry was made at 22.00. This was despite having recorded the earlier activities of, and messages from Gazelle 4 concerning its sortie over the Kilwilkie Estate. In addition, he failed to close and reopen the log, as was standard practice, to reflect the change of date from 14 March to 15 March. The log was subsequently closed and reopened by the next Watchkeeper who came on duty at 07.00.

33.95 In his statement to the MIT on 29 February 2000 the Watchkeeper had suggested that his failure to make a record of the flight Gazelle 6 might simply have been an oversight on his part.

33.96 In his written statement to the Inquiry he put forward another possibility, namely that he had regarded the flight as a continuation of the earlier detailing of Gazelle 4. He said:

'I believe that the reason why I did not record this later flight in the Watchkeeper's log was that the GAZ4 was continuing with an ongoing task from earlier in the evening while under operational control of 3 RIR. [...] The helicopter was most probably on continuous tasking which did not require an entry to be made. If the helicopter was in flight and had nothing to report, I would not have needed to make an additional entry in the Watchkeeper's log.'

33.97 In his oral evidence he said:

'I simply believe that the events that were reported by that Gazelle helicopter overflight later in the evening, they didn't report any activity at all and stated that it was quiet. There was no requirement for me at that time to put anything into the log, although clearly for the purpose of an end state of a continuation of the report into clearly state that what had occurred, it would have been better to see that it was quiet and that an end to all of that incident that had occurred earlier in the evening. It would have made for a better record of events. But there is no absolute requirement to state in there that that helicopter reported it being quiet or a helicopter was on task over the area.'

33.98 He accepted, however, that, had a 'situation normal' communication been received from Gazelle 6, he should have entered that into the log. He accepted that he had not 'closed' the log for 14 March 1999. This had been done by the officer who came on duty at 07.00 the following morning, raising in our mind the possibility that both he and perhaps the Operations Officer as well had left the Operations Room early. He told us that he had never done that while with 3 R IRISH. As regards his failure to close the log he said, *'I have no explanation for it. It was a dereliction of my duty as the Watchkeeper in the ops room at the time.'*

Radio and other communications to and from a Gazelle helicopter

33.99 We asked a number of witnesses about the radio communications to and from a Gazelle helicopter. We had in mind the possibility that a message might have been sent surreptitiously from Gazelle 6 to someone on the ground.

33.100 We were told that there were three radios on board a Gazelle: the ATC radio, a UHF radio for inter-aircraft communications and a UHF radio for talking to the military on the ground or in operations. The pilot of Gazelle 4 told us that the Liaison Officer could flick a switch and isolate his conversation so that it was not overheard by the pilot. He said:

'I could listen in on general radio transmissions made by the Liaison Officer to form a general idea of what was happening. Normally very little information was picked up in this way. This was partly because there was a switch in the back of the helicopter which allowed the Liaison Officer to transmit in a manner so that I could not hear what he was saying. This was used on a regular basis. The switch was quite normal and in my experience fitted to all Gazelles. You would hear a click and then nothing else. In terms of instructions which I would receive from the Liaison Officer in the air, these would be limited to the position of the helicopter — move forwards, backwards, left or right, for example.'

33.101 He told us that the Liaison Officer had done this when he had accompanied his earlier flight over Lurgan in Gazelle 4. He told us:

'I recall that the Liaison Officer we picked up was in his civies [sic] but I cannot remember his name. As soon as he was on board, he was virtually straight onto the radio. However, he had flicked the switch which I mention above so that I could not hear what he was saying. I think he spoke to the Aircraft Commander telling us where he wanted to go and that is where I took him. I would not have known road or street names in Lurgan and so the Liaison Officer would have had to direct me to the particular area he wanted to fly over.'

33.102 The reference to the Liaison Officer being in 'civies' is curious. We very much doubt that this could be correct as the Liaison Officer later performed duties on the ground in Lurgan as part of the QRF and almost certainly would not have been in civilian clothes. Moreover, the Liaison Officer did not appear to be aware of the facility to exclude the pilot and Flight Commander from conversations. He told us:

'You could talk to troops on the ground and the co-pilot and the pilot will be – because if you have said something wrong, the co-pilot can come in over the top of you and say, "That's wrong" because everybody hears everybody talking on the ground and everybody can talk to everybody on the ground.'

33.103 When asked the direct question whether it was possible to talk to anyone on the military or security force net on the ground without the Flight Commander or pilot hearing it he said, *'No, sir, definitely not.'*

33.104 The pilot of Gazelle 4 told us that in order to communicate with the ground troops the radios would have to have been identical, namely military VHF radios (which could be carried by a patrol), and on the same frequency as the helicopter.

33.105 We also considered the possibility that Gazelle 6 might have landed during its flight over Lurgan. The Liaison Officer told us that, while in theory the aircraft could have dropped a passenger on the ground, it was not something that was ever done because of the attendant risks. Those risks were explained by the pilot of Gazelle 4. He told us that the crew of a Gazelle helicopter would not have wanted to land in a potentially hostile area, because the aircraft was not armed. Moreover, a landing at night would have involved obtaining a precise grid reference because of the dangers of landing on unknown terrain. In any event, authorisation would have been required before undertaking such a landing and throughout its flight, the aircraft would have been tracked, by radar, by ATC, who would have been aware of, and would have recorded any unauthorised landing.

Our conclusions regarding Gazelle 6

33.106 The timing of the second flight of Gazelle 6 on 14 March 1999, its proximity to the scene of the murder, the paucity of relevant records, the conflict of evidence between the Flight Commander, the pilot and the Liaison Officer, and the tardiness of its disclosure to the MIT are all factors which raise serious questions.

33.107 There had been incidents on the Kilwilkie Estate earlier in the day and a helicopter, Gazelle 4, had flown over the area with a Liaison Officer from 3 R IRISH to assess whether police officers and military support should be deployed to deal with them. Had evidence been presented to us that it was considered prudent to divert a helicopter later in the evening from its pre-planned task in order to check that the crowds of youths seen earlier had dispersed and that the car that had been set alight no longer represented a danger to members of the public, we should not have considered that to be unexceptional or suspicious.

33.108 Similarly, we would not have been surprised if we had been told that the flight had taken place in order to check whether the way was clear for officers engaged in Operation Fagotto to undertake a second sortie into the heart of the Kilwilkie Estate that evening. We would have regarded that as being a sensible precaution and indeed one of the officers engaged in Operation Fagotto told us that he thought that a helicopter had been deployed in support. Had this explanation been put forward it would have been necessary for us to enquire why the MIT was told on 26 April 1999 that SB had commissioned no helicopter flights over the weekend of 13/14 March 1999 but given that the MIT were also told that no Mobile Support Unit was deployed in support of Operation Fagotto, when it clearly was, that alone would not have cast doubt on the explanation (see Chapter 34).

33.109 Either of these explanations might have accounted for the second flight of Gazelle 6. In fact, no coherent explanation was put forward as to why the helicopter was re-tasked, what information was gathered by it and to whom such information was passed.

33.110 The Operations Officer told us that *'no flights were tasked by me between 8pm and 12am (when I came off duty)'*. It is possible that, despite his denials, he was mistaken and was involved in the re-tasking. The Liaison Officer told us that this was so and although the Operations Officer could not recall whether he had been, we consider it more than likely that he was as there was no other ordinary mechanism by which the Liaison Officer could have received instructions. Although the Liaison Officer told us that he believed the request had come from the Duty Inspector in Lurgan we cannot be sure that that was in fact the case. There are no records to support that suggestion (none were produced from Lurgan police station and there was no note of such a request in the Watchkeeper's log in the Operations Room).

33.111 The poor state of both the battalion and the brigade Watchkeepers' logs is inexplicable. We can only speculate as to why the final entry in the battalion Watchkeepers' log was made at 22.00 and why there is no reference to the flight of Gazelle 6 over Lurgan at all. The Watchkeeper told us that in his case it was due to a *'dereliction of my duty'*.

33.112 The MIT investigated helicopter flights over Lurgan during the weekend of 13/14 March 1999 and found tasking records *'not detailed'*. Detective Chief Superintendent Arthur Provoost told us:

'The absence of specific, recorded flight tasking for Gazelle 6 needs to be seen in the light of the number of unspecified flights by the military that our enquiries revealed. Within our set parameters we identified seven helicopter sorties that involved helicopters hovering over Lurgan. [...] Of the seven 'Lurgan' sorties, when we enquired into these we found that the tasking records were not detailed.'

Therefore, the absence of any reference to the second flight of Gazelle 6 in the logs was not atypical.

33.113 On the wider issue of whether or not the movements of Gazelle 6 were in some way linked to the death of Rosemary Nelson, we consider this unlikely. We are, of course, influenced in drawing this conclusion by knowledge, with a reasonable degree of certainty, as to the group of individuals who were involved in the conspiracy. But it appears to us that the presence of a helicopter at or near the scene would have been of no practical assistance to those engaged in the murder. It would not have been possible for a message to have been passed from the helicopter

to the ground without it being overheard, perhaps even recorded. We are satisfied that no mobile phone call was made from Gazelle 6: that was confirmed by enquiries made by the MIT.

34 Operation Fagotto

34.1 On 19 March 1999, four days after the murder of Rosemary Nelson, the Regional Head of Special Branch South Region (RHSB(S)) disclosed to Sam Kinkaid, the Senior Investigating Officer (SIO) on the murder investigation, that officers under his command had been working close to Rosemary Nelson's home late in the evening of 14 March and early in the morning of 15 March 1999. Given the proximity to the scene of her murder, and in view of the delay in disclosing these significant manoeuvres, we examined the events, and the accounts given to the Murder Investigation Team (MIT) by the officers concerned, in some detail.

34.2 Sam Kinkaid's response to the disclosure, as the RHSB(S) no doubt anticipated, was to investigate the movements of Special Branch (SB) officers involved in the operation. His decision was recorded on Secret Policy File No 1. His instruction was to '*investigate those officers on undercover work in Lurgan on 140399*'. The reasons given were:

'To provide clear evidence that this was a professional, valid operation that had no bearings on the murder under investigation;

To ensure that no person in the operation colluded with those who carried out the bomb attack;

To see if those on the operation witnessed anything that would be relevant to the investigation.'

34.3 Sam Kinkaid directed that those interviewed would include undercover officers, communications staff and Tasking and Coordination Group (TCG) operational controllers on duty that evening. He also directed that previous operations, if any, should be examined. A second policy entry recorded on 20 March 1999 records that it had been resolved that the Deputy SIO should seize '*paperwork relating to the undercover operation*'.

34.4 It was not until 29 March 1999, however, that the officers who had been involved in the operation were interviewed. The interviews were conducted by the Deputy SIO. Detective Chief Inspector David Gutsell was present for some of the interviews. The Head of E4¹ sat in on all of them.

Statements made to the Murder Investigation Team

34.5 Witness statements were taken from each of the SB officers who were actively engaged in the operation that evening. These included the Detective Chief Inspector from TCG who was in charge of the operation, the officers who visited Lurgan, and the log-keeper who recorded significant radio messages received from the officers while the operation was underway. For the purposes of statement-taking the officers involved were allocated a letter of the alphabet: they were thus described as D, E, F, G, H, J, K, L, M, N and O² and we refer to them here in that manner.³

¹See Appendix C

²The letters A, B and C had already been allocated by the MIT to SB officers who had previously made witness statements explaining why they had made Police National Computer (PNC) enquiries in relation to Rosemary Nelson's car: see Chapter 30.28.

³See also Chapter 30.18 to 30.20

34.6 The first officer from whom a witness statement was taken was Officer D. He was, in fact, the Detective Chief Inspector within TCG who, on 6 January 1999, *'tasked other police officers to monitor the movements of a Provisional Irish Republican Army suspect in the Lurgan area'*. His statement disclosed that officers had monitored the movements of the suspect on a number of occasions since January 1999 and that on Sunday 14 March 1999, he directed officers to do so again that day. The purpose of the tasking on 14 March was *'to monitor the (suspect's) movements, movements of his vehicle and at his home in the Kilwilke [sic] area of Lurgan'*. Supervision of the operation was carried out by Officer E.

34.7 Officer E received his instructions from Officer D on Sunday 14 March 1999. At 12.30 Officer E instructed Officer F to carry out the operation and, at about 21.00, briefed Officer F.

34.8 Officer F then briefed Officers G, H, J, K, L and M at Mahon Road, Portadown about the operation. During the operation he and Officer L remained in the Operations Room while the other officers *'were deployed from 22.00 hours'*. Within a short time he received a radio message that the suspect's vehicle had been located and he instructed all the officers to return to base. There was a short debrief, and at 23.30 four officers, J, K, N and O, were sent out on a second sortie. Officer F monitored the radio communications and instructed the officers to return to base at 00.20 when he debriefed them. He said the operation was terminated at 01.00.

34.9 Officers G and J left Portadown on the first sortie at about 22.00 and travelled to Lurgan together in Vehicle 1, with Officer G driving the car. Once in Lurgan, they travelled to the Kilwilkie Estate, along Antrim Road and left into North Circular Road.⁴ According to Officer G's witness statement they turned into Soye Crescent at 22.09 and Officer J got out of the car, returning to it two minutes later, while Officer G waited in the car in Sperrin Drive. As the officers drove away, Officer J reported what he had seen on the radio. They drove out of Sperrin Drive, along Soye Crescent and left onto North Circular Road, turning left at the junction with Lake Street, then right into Victoria Street and onto Lough Road. They returned to Portadown via the M1. In his witness statement Officer G said that he did not return to Lurgan and that he terminated his duty at 01.00. Officer J did return to Lurgan, just before midnight, on this occasion alone, in Vehicle 2. He drove along Antrim Road and left into North Circular Road, left into Soye Crescent, once again turning in the cul-de-sac at the top of Sperrin Drive. He then left the area, without stopping, turning left at the junction of Soye Crescent and North Circular Road, left into Lake Street, right into Victoria Street and right onto Lough Road. He returned to Portadown via the M1. According to their witness statements, neither Officer G nor Officer J observed anything of a suspicious nature.

34.10 Officer H had driven to Lurgan at 22.00 in Vehicle 3. He had driven along North Street and continued into Antrim Road. He had turned left into North Circular Road and had driven to the junction with Lake Street, at which he turned left. He travelled along Lake Street until the junction with North Street and turned right. He then left Lurgan via Edward Street and returned to Portadown via Craigavon. He made one radio transmission on the journey to report that everything was quiet and he was back in Portadown at 22.30.

34.11 Officer K drove Vehicle 4 that evening. He arrived at Lurgan at 22.00 and drove along Antrim Road and left into the North Circular Road. At the junction with Lake Street he turned right and drove along Lake Street and onto Castor Bay Road. He had thus passed very close to Rosemary Nelson's home before continuing

⁴For a map of the area, see Appendix M

to Tannaghmore North Road and along Annesborough Road to Lough Road and then back to Portadown. According to his witness statement, he arrived at Mahon Road at 22.30. He had radioed in his arrival in Lurgan and his departure.

34.12 At about 23.45 Officer K returned in the same vehicle, on this occasion travelling up Lough Road, left into Brownlow Terrace and Ulster Street to North Street. Once again he travelled along North Street and turned left into North Circular Road, then right at the junction with Lake Street. On this occasion, however, he turned left into Ashgrove Drive and followed the 'U' round to Ashford Grange. According to his statement, as he drove along Ashford Grange he noticed Rosemary Nelson's car. His statement to the deputy SIO reads as follows:

'I noted Rosemary Nelson's car parked in the driveway of her home. It was parked with its nose in against the garage door. There was nothing unusual about her car that I noted. It was a silver coloured BMW car. I do not recall the number but I knew it from carrying out duty and seeing it in the Lurgan area on previous occasions. On some of those occasions I saw Rosemary Nelson driving it. Other times I noted it at her house or parked at other locations around Lurgan.'

34.13 He said he saw no pedestrians or anything else that might have been suspicious that night. He turned right into Lake Street then left into North Circular Road and back into the centre of Lurgan along Antrim Road and North Street. As he left Lurgan he was stopped outside the police station by a Royal Irish Regiment patrol and reported this by radio to Officer F. His statement ends, *'I terminated duty at 01.00 hours. Rosemary Nelson's house is situated at 5 Ashford Grange, Lurgan. I knew her house from seeing the car parked at it.'*

34.14 On 27 April 1999 Sam Kinkaid raised a further action requiring Officer K to be re-interviewed, and a further witness statement was taken on 10 May 1999. In it the officer explained why Rosemary Nelson and her car were known to him. He said in the past he had seen her driving the vehicle while he had been on duty monitoring other individuals. She had been on television and he had noted her on news programmes. He had heard her vehicle mentioned when monitoring Republican and Provisional Irish Republican Army (PIRA) suspects and had heard her name mentioned on police radio transmissions in the past. He also said that he had seen her in the company of Colin Duffy.

34.15 Officer M drove Vehicle 5. He took part in the first sortie only. He had driven to Lurgan, then along North Street and Antrim Road, left into North Circular Road, left at the junction with Lake Street and then right into Victoria Street. At the end of Victoria Street he turned left into Lough Road and left again into Brownlow Terrace and into North Street again via Kilmaine Street. He continued onto Antrim Road but then turned left at the junction with Lake Street and right into North Circular Road. From North Circular Road he turned right into Portland Manor, a cul-de-sac, and drove out again turning left into North Circular Road, then right at the junction with Lake Street and into Castor Bay Road, Tannaghmore North Road, Annesborough Road, Lough Road and returning to Portadown via the M1. In his statement he said that he had kept in radio communication with Officer F but did not see anything unusual.

34.16 Officers N and O did not take part in the first sortie and were not briefed until 22.30. They then travelled together in Vehicle 6 to Lurgan along the M1 from Portadown, along Lough Road and left into Annesborough Road. They then travelled along Tannaghmore North Road, right into Castor Bay Road and along Lake Street, turning left into North Circular Road. They turned left into Tarry Lane and parked at the entrance to the cemetery for 15 minutes. They then returned to Portadown the way they had come.

34.17 Officer L remained in the control room. He listened to radio transmissions and noted any significant comment. He noted the comments made by Officers J, G and M and said that *'there was nothing else significant'*. According to his statement the first part of the operation had concluded at 22.16 and the officers had returned to Portadown at 22.30. At around 23.45 Officers J, K, N and O had returned to Lurgan. Officer L recorded no radio transmissions during the second sortie because, he said, there was nothing of significance.

Examination of vehicles used in Operation Fagotto

34.18 In April 1999, the MIT obtained details of all the vehicles used by the officers engaged in Operation Fagotto. There were six different vehicles in total: four were used during the first sortie and three during the second. Towards the end of June, Colin Port decided that they should be forensically examined. The decision was recorded in the Secret Policy File on 30 June 1999 but it is evident that this step had been planned earlier. The purpose recorded was *'to check that none of these vehicles were involved in the crime under investigation'*. In our view, this was not a controversial decision. It was a necessary and sensible line of enquiry to pursue and, in the event, the results demonstrated the extreme unlikelihood that any of the vehicles used during the operation had carried the bomb used to kill Rosemary Nelson.

34.19 It is evident, however, that the decision was not viewed in the same light by officers within SB and the decision was to fuel further ill will between the MIT and SB. The Head of E4 explained that he was concerned because the vehicles were not new and would have been used by a number of officers and perhaps military personnel some of whom would have had contact with weapons and explosives so that the risk of contamination was high. He said:

'I was not concerned that we were under suspicion. The concern was that if traces of explosives were found, the wrong conclusions might be drawn and my surveillance team might be seen as suspects as having some sort of involvement in the murder. I had no faith that we could rely on the Murder Inquiry Team to defend us if traces of explosives were found. I had no concern that any of my officers were rogue officers.'

34.20 We consider that his attitude reflected the degree of mistrust that already existed between the MIT and SB. In his evidence to the Inquiry the Head of E4 said:

'My concern was if they had found residue in the backs of the vehicles that they would defend my team and protect them and recognise the fact that they – there may well be residue there that would cause concern. That was my concern. Their focus was the investigation. I'm not so sure that they cared who it was so long as they found evidence to convict the murderer of Rosemary Nelson.'

34.21 These anxieties were reported to the Chief Constable, Sir Ronnie Flanagan. Colin Port told us: *'I recall that Sir Ronnie Flanagan made me justify my position before authorising me to proceed. I then explained my position to ACC [Assistant Chief Constable who was the Head of SB] separately, probably the next morning. The feedback that I got was that the officers had complained that this made it feel like they were under suspicion. I expected this from the junior officers but did not expect such an adverse reaction from [the RHSB(S)] and [the Head of E4]. I was surprised by this and expected senior officers to understand my position and communicate it down the chain of command.'*

34.22 Detective Chief Superintendent Arthur Provoost said:

'The decision taken by Mr Port, and supported by myself, to undertake forensic examination of the vehicle was something that cut very deep with SB. I say this because the issue never really went away as far as SB were concerned. It was a rubbing point for them and they would refer back to it when areas of tension arose between us. [...] In the first eighteen months of the Investigation, I felt as if these issues and issues like them were being sorted, grated [sic] and stored for later use by SB as evidence that they were the real focus of our Investigation. [...] This was an issue that might lie dormant for a while but would be readily recalled by SB at times of disagreement between us.'

34.23 Colin Port's meeting with Sir Ronnie Flanagan took place on 1 July 1999. Immediately afterwards he met the Head of SB (HSB) and the Head of E4 and there was yet further discussion during which the Head of E4 expressed his concerns about what was being done. When Colin Port arrived the RHSB(S) was present but walked out of the room without acknowledging him. Colin Port noted the slight in his journal and also commented on the Head of E4's resistance to what was proposed. He recorded that he *'went through in detail concerns of whole team re. [The Head of E4]. Agreed to look at matter – told him that no further obstruction would be acceptable.'*

34.24 During his evidence, the RHSB(S) was asked about the meeting on 1 July 1999. He had no recollection of the incident nor had he ever heard it suggested that Colin Port was saying he was *'being obstructed'*. He said he was surprised that Colin Port had held such a view as he had given the HSB assurances on a number of occasions that he had no complaints to make about the investigation. It was evident to us, however, that he was at least aware of his colleagues' views regarding the forensic testing of the vehicles. Almost a year later he and his deputy met a member of the Security Service who noted their discussion so far as it related to the murder investigation. This note records that the RHSB(S) *'mentioned the Port Enquiry saying that it was likely to run on for another year. [His deputy] chimed in with expostulations about Port's outrageous behaviour, in the course of the enquiry, (mainly the old complaint about the Port team making forensic tests on police cars).'*

34.25 The examination of the vehicles was undertaken by officers of the Metropolitan Police on 1 June 1999 and the samples taken from them were submitted to the Forensic Explosives Laboratory of the Defence Evaluation and Research Agency (DERA) the following day. The initial results were available by 7 July 1999 and they were confirmed in statements dated 28 July 1999. They revealed that minute traces of organic explosives, nitroglycerine, PETN and RDX, had been detected in amounts that were not significant but no traces of inorganic explosives were found.⁵ The results regarding organic explosives were as follows:

⁵According to Dr Gerard Murray of Forensic Science Agency of Northern Ireland (FSANI), an inorganic explosive was used in the device used to kill Rosemary Nelson. Traces of RDX were found in her car but in such minute quantities that it was thought that the presence of this compound was due to contamination while it was held at the FSANI.

Vehicle	Occupants	Substance	Amount	Location
1	G & J	RDX	6ng	Rear nearside seat
2	J	NG	6ng	Driver's seat
		NG	6ng	Front nearside seat and door panel
		NG	54ng	Rear seat area and door panel
		RDX	12ng	
		NG	21ng	Rear offside seat area and door
		PETN	8ng	
3	H	NG	119ng	Boot of the vehicle
4	K	NG	429ng	Rear nearside seat
			53ng	Boot area
5	M		5ng	Boot of the vehicle
6	N & O		4ng	

34.26 In a statement made to the MIT, a scientist from the Forensic Explosives Laboratory of DERA commented on the findings as follows:

'I have given the mass of high explosives I detected in units of nanogrammes (ng) which are extremely small masses and often difficult to imagine. It may be useful to consider that in order to obtain approximately one half of a nanogramme (0.5ng) of sugar one should take a one pound (approximately 0.5kg) bag of granulated sugar and divide it up one million times. This will leave a grain of sugar weighing one half of a milligramme (0.5mg). The single grain of sugar will then need to be divided a further one million times to arrive at an invisible quantity of sugar weighing 0.5ng.'

NG is man-made high explosive that does not occur naturally in the environment. I am aware of only one other use, apart from explosives, for NG, which is its use in medicines used to treat heart-related conditions. It can be seen, therefore, that NG will only be found in contexts that include the use of explosives and/or related medicine. Examples of some of the groups of people who might come into contact with NG are those who are in the Army, those who fire rifles, pistols or shotguns (NG is often part of the propellant), those who work in explosives factories, terrorists involved in bombings, scientists working with explosives and so on. Any of these groups may, once contaminated themselves go on to contaminate their local environments (offices, cars, etc) with NG.'

34.27 Members of the Metropolitan Fingerprint Branch were also asked to examine the vehicles and a number of fingerprints were lifted for comparison with those of the MIT's main suspects. No matches were found.

Arthur Provoost's 2000 review of Operation Fagotto

34.28 Later, Arthur Provoost carried out a review of this aspect of the investigation and we have seen a copy of his report dated 17 September 2000. He also compared the evidence concerning Operation Fagotto with information gathered by the MIT concerning 'unidentified vehicles at/near the scene'. In his report the purpose of the operation is accurately described and he stated that he had seen the intelligence which triggered the operation on 14 March 1999 and that he was satisfied 'as to its veracity'. Certain additional details regarding events on Sunday 14 March 1999 are

recorded in this document. For example, the Liaison Inspector was telephoned at his home at about 12.00 that day and told of the intelligence. He in turn contacted the RHSB(S) who spoke to Officer D. They agreed that something had to be done and other officers, all of whom were off duty, were contacted and told to report for duty that evening. Arthur Provoost's report noted that a 'QRF' [Quick Reaction Force], noted in manuscript, 'HMSU' [Headquarters Mobile Support Unit] 'was deployed at Mahon Road but was not utilised during this operation'. It is evident that he also examined the surveillance log for that evening and the debrief document in respect of the operation. There had been no tasking sheet and there was no entry in the 'Out of Bounds' book for the 14/15 March 1999 (see Chapter 34.49 to 34.57 below).

34.29 Arthur Provoost ascertained that three of the six vehicles used on the operation had been recorded as having passed Lurgan police station during the evening and although, in his view, these sightings were not inconsistent with the accounts of the movements given by each of the officers in their witness statements, we observed anomalies which indicate the approximate nature of the timings given by some of the officers, or possibly the sightings. The vehicle driven by Officer G (who was accompanied by Officer J) and that driven by Officer K were both sighted passing Lurgan police station at 22.20 and 22.21 respectively. A sighting of the vehicle driven by Officer H was consistent with his account, and the fact that no sightings were made of the vehicles driven by Officer M on the first sortie and by Officer J on the second sortie was also consistent with the accounts they gave. Officer K's account of his second sortie was corroborated, to some extent, by members of the Vehicle Check Point (VCP) which had been set up in Church Place in the late evening of 14 March 1999. Although they had made no record of his vehicle being stopped they later made witness statements from which it might be ascertained that they were in Church Place for a period of 45 minutes until 00.21. Officer K's vehicle was seen passing Lurgan police station at 00.17.

34.30 Arthur Provoost had spoken to scientists from DERA who had reported findings in respect of the SB vehicles. He reported the outcome of these discussions saying, '*they place no significance upon the minute quantities of organic explosive (Nitro-glycerine, RDX, PETN) they discovered in the vehicles. The findings of nitro-glycerine were consistent with the levels of contamination one would expect to find if the vehicles were used by persons who had handled firearms or ammunition.*'

34.31 Arthur Provoost set out his conclusions as follows:

'I believe the sequence of events that commenced with the receipt of intelligence regarding [redacted] is crucial. In essence, there was little time for the Special Branch to react to this development; therefore, hypothetically, there was little time for any Branch operative(s) who may have been engaged in collusion to have instigated the chain of events that led to the murder of Mrs Nelson.

None of the vehicles used during the operation match the description of outstanding unidentified motor vehicles linked to the scene or surrounding area. There are no known sightings of the E Department officers acting suspiciously. There are no known reports of their vehicles being seen in suspicious circumstances.

Fifteen months on from the murder, nothing has come to the attention of this investigation to suggest the involvement of any of these officers or the vehicles they were using in any facet of this murder. Nothing has emerged which would challenge the officers' accounts of their movements on the evening of 14/15 March or question their integrity or that of this operation. Having reviewed these documents there is nothing to suggest Operation (Fagotto) had/has any significance to the Rosemary Nelson murder investigation.'

34.32 The MIT never took witness statements from or questioned the members of the QRF/HMSU referred to by Arthur Provoost in his report. The HMSU was a uniformed, rapid-response unit, typically deployed at close hand during a covert operation to act if anyone involved in it was in danger. But whereas Arthur Provoost, and no doubt Colin Port, had been under the impression that the unit had remained at its station in Mahon Road, Portadown, the officers' notebooks disclosed to the Inquiry in January 2010, reveal that this was not the case – they were in fact in Lurgan: they went on duty at 21.30 and off duty at 01.30. The notebooks contain no indication of the exact location at which they waited while the evening's operation was underway, or its relation to Rosemary Nelson's house. It is doubtful whether, ten years after the event, any of these officers would have an independent recollection of their movements and precise location during the late evening and very early morning of the 14/15 March 1999. This information should have been provided to the MIT in March 1999 so that witness statements could have been taken from members of the HMSU when the events were fresh in their minds. These notebooks should have been disclosed to us at the outset of our Inquiry. They were not disclosed to us until January 2010, six months after we had concluded our public hearings.

34.33 This apart, we are satisfied that a thorough investigation into the background and conduct of the operation was carried out by the MIT and we limited the extent of our own enquiries regarding the evening's events to what we considered the essential matters. We set out below the additional evidence that emerged from our doing so and the conclusions that we have drawn from all the evidence available to us.

Additional evidence given to the Inquiry

34.34 Our enquiries confirmed that Operation Fagotto was a surveillance operation which began in January 1999, the object of which was to gather information about a leading PIRA suspect.

34.35 The RHSB(S) explained to us why it was revived at short notice on 14 March 1999. He told us that he had been telephoned at home by the Detective Inspector from Lurgan, who passed on some intelligence which had been received that morning. The RHSB(S) decided that something needed to be done and it was he who contacted the Detective Chief Inspector from TCG (Officer D) and gave instructions to activate the operation.

34.36 SB surveillance teams operated within the section known as E4, but their deployment was managed by a TCG. In South Region this was based at Mahon Road, as was the surveillance team allocated to Operation Fagotto. We were told that surveillance teams did not always operate in the region in which they were based, but once a team was allocated to a long-running operation they would generally remain with it as they would become familiar with the target and his associates. The role of the TCG was to coordinate any surveillance operations that were underway and to ensure that no blue-on-blue situations occurred (where the police or military were accidentally encountered during surveillance; see the section entitled 'The "Out of Bounds" area' at Chapter 34.49 *et seq.* below). For that reason, CID and military surveillance teams also operated through the TCGs which included both police officers and liaison officers from the Army. Officer D, who was Acting Superintendent in March 1999, was in charge of South Region TCG. Officer D told us that he was contacted at home by telephone by the RHSB(S) during the afternoon of 14 March 1999 and he then contacted the Detective Sergeant who was on duty that weekend (Officer E) and instructed him to organise the deployment of officers. Officer D told us that he would have instructed Officer E to mobilise

a QRF from within HMSU. Officer D described it as a routine operation. Unless something untoward occurred during the course of the operation he did not expect to hear any more of it until the following day and he told us that this was precisely what happened.

34.37 Officer E confirmed that it was he who contacted members of the team from Mahon Road and told them to assemble that evening. He did not provide the surveillance team with any details of what was planned over the telephone and this was confirmed by Officer K who recalled being telephoned on a Sunday evening by Officer E. He confirmed that Officer E was *'always very security conscious and used codes on the phone'*.

34.38 We did not consider it necessary to take witness statements from all the surveillance officers as we were satisfied from the documents disclosed to the Inquiry by the MIT that they had accurately described their movements during the late evening and early morning of the 14/15 March 1999. We invited Officer K to do so, however, as he had driven past the Nelson home. We also heard evidence from him in person. His evidence to the Inquiry had some important anomalies to which we have given careful consideration.

34.39 In his witness statement to the Inquiry, Officer K said that he had returned to Lurgan on the second sortie after 23.45 that evening and, as in the statement taken by the Deputy SIO, he confirmed that he had driven past the Nelsons' house. In his Inquiry witness statement, however, he also said that he had radioed in this detail:

'Her [Rosemary Nelson's] car was in the driveway facing towards the garage. I radioed this in. The reason I radioed this in is that Colin Duffy was a surveillance subject. I was led to believe that Colin Duffy was out of the jurisdiction (as far as I recall in the Republic) with Rosemary Nelson on this night. So I was surprised to see her car in the driveway. If Rosemary Nelson was back at her house it probably meant Colin Duffy was back and it was entirely possible that we may have been mounting a [redacted]. I cannot recall who briefed me on the fact that they were out of the jurisdiction, but it was probably Detective Sergeant [Officer F] just before this operation. By my putting it on the radio everyone on the operation would have known about it and the log keeper would have entered it into the log if he thought it relevant.'

34.40 He offered some further explanation when he was questioned about this during his oral evidence. He said that he had radioed in the presence of Rosemary Nelson's vehicle on the driveway because *'that would have been impinging on another operation that the team was currently undergoing'*. When asked when the briefing had been given, he said:

'It was some time prior. There had been occasions, numerous occasions, that we were told that she was out of the jurisdiction with Colin Duffy [...]. There was at least three occasions that I can recall being informed that she was out of the jurisdiction with Colin Duffy. The exact timeframe of when I was told that prior to this deployment, I can't recall. But there was three instances where I was told that she was out of the jurisdiction.'

34.41 In his witness statement to the Inquiry, Officer F said:

'The route past Rosemary Nelson's house was a through route. Officer K was an officer in the [redacted] Team and so he had been involved in numerous operations in the area. He would have been fully aware of who Rosemary Nelson was and where she lived. As they drove around they would inevitably drive past the houses of significant figures, and they would frequently make announcements over the radio, such as [redacted]

out, Rosemary Nelson at home etc, so that all of the call signs knew if there was anyone they had to look out for (and who may be looking out for them) and who was out of the area. Therefore, Officer K may well have driven past Mrs Nelson's house and announced that Mrs Nelson's car was at home because he knew who she was. This would have been standard procedure. However, I certainly do not specifically recall if this did happen or not.'

34.42 When answering questions during his oral evidence, however, Officer F was rather more definite. The questions and answers were as follows:

'Q. I understand. And what you go on to say there in your statement is that the officer was very experienced in operations in this area. Do you see that, about ten lines down? And that this route, the route past the house in Ashford Grange, was a through route?

A. Yes, that's correct.

Q. Now, I don't want to ask you any more details in this open session about specific routes. I think that's something we should pick up, if we may, in the closed session. But I would like to ask you about the next comments you make because you go on in relation to the same officer to say, about six lines from the end of this paragraph, that the team would frequently make announcements over the radio. Then you give an example there: "Rosemary Nelson at home [et cetera] so that all of the call signs knew if there was anyone they had to look out for and who may be looking out for them, and who is out of the area." And a little earlier, do you see in the same paragraph, you refer to them driving round so they would inevitably drive past the houses of significant figures. Do you see that?

A. Yes.

Q. And so are you saying that your recollection is that such an announcement was made about Rosemary Nelson on this evening?

A. That's correct.

Q. And was it to the effect that her car was at home?

A. I believe so.

Q. Yes. And, again, as far as you can recollect, that was something radioed in by Officer K, was it?

A. That's correct.

Q. Yes. Now, can I take it from that evidence that she, Rosemary Nelson, was regarded by you and your team as a significant figure?

A. That's correct.

Q. Why do you say that, please?

A. Because of her close association with Colin Duffy.

Q. So she came into the group, did she, of individuals who you and your team had to look out for or who may be looking out for them?

A. That's correct.'

34.43 We do not think that a radio message concerning the presence of Rosemary Nelson's car was, in fact, broadcast that evening. There is no mention of it in the statements made by Officer K and Officer F on 29 March 1999. Officer K did mention two other radio messages in his statement: the first, announcing his arrival at Lurgan; the second, his interception by the VCP as he was leaving. Moreover, if such a message had been broadcast, it would have been heard by all the officers engaged in the operation, whether in their cars, or in the control room at Mahon Road in Portadown. There is no mention of it in the surveillance log and none of the officers refers to such a message in the witness statements taken by the Deputy SIO a fortnight after the murder.

34.44 Officer K's evidence to the Inquiry contained a further significant anomaly which casts doubt on his recollection of the second sortie. In his witness statement he said the purpose of it was to drop an officer close to the target so that he might carry out observations on foot. He told us that he dropped Officer J in North Circular Road and carried on to the junction with Lake Street at which he turned right. In his oral evidence to the Inquiry, when asked why he had then looped round, driving into Ashgrove Drive, Melrose Park and Ashford Grange, he said:

'I had a passenger in the vehicle with me who was dropped off at the circle. He was on foot and this was my way of providing natural cover for him in case he had to be extracted quickly. So I was going – rather than do a U-turn in the road, this was my way of naturally using the topography to come back round upon myself again.'

34.45 According to all the other accounts of the evening's operation, however, Officer J, whom Officer K told us he had dropped off during the second sortie, was the driver of a separate vehicle during the second sortie. Officer J had in fact been dropped off during the first sortie, having been driven to Lurgan by Officer G, and this was corroborated by the surveillance log.

34.46 Moreover, in the light of the intelligence we examined regarding the alleged relationship between Rosemary Nelson and Colin Duffy in the later months of 1998, we regard it as unlikely that Officer K would have been briefed that Rosemary Nelson and Colin Duffy had travelled away from Lurgan together that weekend. It might have been true of an earlier weekend and we suspect that in his witness statement to the Inquiry, and in his oral evidence, Officer K was recalling details of one or earlier operations when such a briefing might have taken place and a radio message might have been sent.⁶

34.47 The timings given by the various officers in their witness statements do not accord precisely with sightings of the movements of their vehicles recorded in Lurgan during the course of the evening. We do not, however, regard this as sinister but rather a consequence of the late disclosure of Operation Fagotto to the MIT and the fact that the officers involved in the manoeuvres were not interviewed until 29 March 1999. In the absence of detailed records regarding the operation, the timings given by the officers were necessarily approximate – and it would not have been possible to check whether the timings of the sightings of the vehicles were themselves recorded precisely. It appears to us, moreover, that the sightings are capable, in rough terms, of corroborating the accounts given to the MIT by Officers K, G and J and they do not cause us to doubt the broad accuracy of the descriptions given by each of the officers of the journeys made that evening.

⁶This recollection does, however, support our belief that talk about the alleged affair between Rosemary Nelson and Colin Duffy was rife. A further indication of this was given to us by Officer F who told us in his witness statement that '*Deeny Drive was nicknamed "the Love Nest".' He said that he heard all sorts of reports about this relationship.*

34.48 The witness statements taken from the officers did not include details of the vehicles they had driven but recited that those details were known to the Deputy SIO. This was intended, no doubt, to prevent inadvertent disclosure of the details of the vehicles that were being used by the surveillance team. We note also, however, that the witness statements taken from these officers by the MIT did not describe the specific object of their task on the evening of 14/15 March, understandably because of its sensitivity.

The 'Out of Bounds' area

34.49 We were told that very often during the course of a covert operation the area in which the covert team was operating would be declared 'out of bounds'. Members of the police and the military would be notified of this so that they might avoid entering an area in which operations were active thus reducing the risk of there being a 'blue-on-blue' situation. The RHSB(S) told us that this was a '*routine issue*' decided by TCG. Whether or not there was an 'Out of Bounds' area on this occasion is significant because the area would remain sterile for a period after the conclusion of Operation Fagotto when no police or Army would be expected to be present. This, in theory, would have provided an opportunity to place the bomb.

34.50 The Chief Inspector of TCG South Region explained to us that each TCG unit kept an 'Out of Bounds' book which recorded the date, name of operation and grid references for any areas marked as such. Invariably, the area declared would extend beyond that in which an operation was active and beyond the time when it was to be underway. We were informed by the Police Service of Northern Ireland (PSNI) that the 'Out of Bounds' book from South Region TCG could not be located.

34.51 The procedure was that, ordinarily, TCG should have contacted the local police station and the military and told them what areas were out of bounds for that evening. Each police station maintained an Occurrence Book in which the duty officer was supposed to record the 'Out of Bounds' area. The control room at the police station would plot the 'Out of Bounds' area on a map and each officer coming on duty was briefed as to the 'Out of Bounds' areas operating. The military would likewise be told and a similar record kept of it. Once the 'Out of Bounds' area was lifted it was the responsibility of TCG to notify the control room and duty officer at the police station and the military.

34.52 We examined the Occurrence Book from Lurgan police station covering the weekend prior to the murder. There is no reference to there having been an 'Out of Bounds' area in operation on the night of 14/15 March 1999.

34.53 It appears that although an 'Out of Bounds' area should in most cases have been declared this was not always done. Officer F, for example, told us that he decided the area which might be declared out of bounds, in agreement with TCG. He said that '*a routine everyday bread and butter-type surveillance operation*' involving operatives in cars would not usually call for an 'Out of Bounds' order. Accordingly no order would exist at all. Similarly, '*if it was a busy city centre or town centre and it was a bread and butter operation*' involving operatives on foot then it would not routinely require an 'Out of Bounds' order. This was supported by an officer who was a detective inspector in TCG at the time of the murder. He said that '*it would depend on the nature of the operation as to whether out of bounds was required*'.

34.54 The Chief Inspector of the TCG South Region, who was not personally involved in the issue of whether an 'Out of Bounds' order was made or not, nor the extent of it, told us that it was not routine for every surveillance team going out

to require an 'Out of Bounds' area but if surveillance personnel were on foot in a hostile area, then those areas would have been put out of bounds on such occasions. This was close to the view expressed by the Head of E4. He told us that a 'walk by' would not necessarily require an 'Out of Bounds' area to be set up; that would be a judgment call that would be influenced by the fact that the operation was of short duration: *'in those cases, more often than not an out of bounds area would not be set up'*.

34.55 This may well have been the position in respect of the evening of 14 March 1999. Officer F told us:

'I assume that I asked for the usual area to be declared OOB but I have no specific recollection of making the call to request this. Even though it was an ongoing operation and the OOB had been agreed with TCG, it would have been an omission on my part not to have double checked the OOB order had been issued. I cannot recall now if I double checked it or not. However, my recollection is that the Kilwilke [sic] estate was constantly classified as OOB anyway due to the high level of threat against police and security personnel who entered the estate. I think that it was standard procedure for police not to enter the estate without prior clearance from Lurgan station as it was such a dangerous area.'

34.56 We were told that the 'Out of Bounds' book kept by TCG had disappeared. It should have been kept securely and disclosed to us. However, in his report of 17 September 2000, Arthur Provoost recorded that he had examined the book. He observed two entries relating to Operation Fagotto; the first on 16 February 1999; the second on 2 March 1999. Significantly, the area set on those occasions did not include Rosemary Nelson's house. There was no entry for either 14 or 15 March 1999.

34.57 Nevertheless, having regard to the extreme sensitivity of Operation Fagotto at the time, we would be surprised if no 'Out of Bounds' area was in place.

Conclusions regarding Operation Fagotto

34.58 We have no doubt that the deployment of officers as part of Operation Fagotto on the evening of 14 March and during the very early hours of 15 March 1999 was for genuine operational reasons. We examined intelligence documents relating to the operation dating back to January 1999, in addition to those which gave rise to the manoeuvres on the evening of Sunday 14 March 1999. We were told of the origin of that intelligence and how it came to the attention of SB officers on Sunday 14 March 1999. We were also told why officers N and O, who had a specific role during the evening of 14 March 1999, were brought from Belfast to perform it. We are satisfied that the decision to activate Operation Fagotto on the evening of 14 March was a result of the receipt of specific intelligence on that day and that the emergency required, as a matter of judgment, immediate attention. Both we, and the MIT, were able to examine records which identified each of the officers and each of the cars that were engaged in the operation. The route into and out of Lurgan taken by the officers on each of the sorties was such that it was inevitable that notes were made of the vehicle registration numbers as they entered the town. Generally, the deployment was too elaborate and involved far too many individuals for it to be a cover for a murderous plot.

34.59 In our view Officer K wished to assist our investigation as best he could but we are satisfied that he was mistaken about some of the details he gave us, particularly as regards telling us that he had broadcast a radio message to the effect that Rosemary Nelson was at home as he passed the house that evening. In this respect we believe his evidence was honest, but mistaken. But if he had been

involved in a plot, or suspected any of his colleagues might have been, he would have had no need to offer any more detail than that given to the MIT in his witness statements made in March and April 1999.

34.60 We cannot rule out the possibility that a 'rogue' police officer or member of the military who became aware of the operation might have given a tip-off to others that the coast was clear after the operation was concluded. We do not believe however, that the operation was conceived and arranged as cover for a plot to kill Rosemary Nelson. The RHSB(S) might well have questioned the need to reveal the existence of this sensitive operation to the MIT; that could explain the delay in its disclosure. Nevertheless, if either he or any of the officers had intended to conceal involvement in the murder, a great deal more ingenuity would have been involved.

35 Conclusions on the Issue of Due Diligence

35.1 We were satisfied that the investigation of the murder of Rosemary Nelson was carried out with due diligence. The Chief Constable, Sir Ronnie Flanagan, immediately recognised the need for it to be so and his determination that it should be was evidenced, quite clearly, by his seeking the assistance first of Sir David Phillips, the author of the Murder Investigation Manual, and thereafter Colin Port, on whose authority he placed no limit or fetter. The Terms of Reference under which Colin Port was appointed were designed to ensure that he would have access to all the resources that he required and all relevant intelligence. Almost uniquely, no financial constraints were placed on the investigation.

35.2 We received evidence and considered submissions regarding the overall position of the Royal Ulster Constabulary (RUC) at that time. Although well resourced in some departments, the burden borne by the RUC, even in 1999, far exceeded that of any other force within the UK. We were told that in 1998 and 1999 there were 44 killings (29 as a result of the Omagh bomb on August 1998). In that period there were 187 shooting incidents and 123 bombings. In total 441 people were charged with terrorist offences or offences relating to serious public disorder including 13 people who were charged with offences of murder or attempted murder.

35.3 Although represented on National Working Groups and aware of national developments in major crime investigation, at the time of Rosemary Nelson's death, the RUC was yet to embrace and take on board many of the changes that were in the process of being implemented elsewhere. This applied particularly to the Association of Chief Police Officers (ACPO) Murder Investigation Manual and the ACPO Major Incident Room Standardised Administrative Procedures Manual. As far as we can judge, this was not due to any resistance to change but rather to the resource difficulties confronting the RUC; as a result, the practical obstacles that had to be overcome when change was introduced were far more significant in Northern Ireland than in other parts of the UK. The training of officers in the use of HOLMES, for example, would have necessarily involved the removal of staff, senior and junior, from front line duties for significant periods.

35.4 We became aware, moreover, during the course of the Inquiry that investigating a murder in a divided community gives rise to particular difficulties, again not experienced by police officers elsewhere in the UK. In short, the Murder Investigation Team (MIT) were confronted with many difficulties that were peculiar to Northern Ireland. In our view, however, they did not permit these to impede the progress of the investigation to a significant degree.

35.5 With the assistance of his team, Robert Ayling carried out a thorough review of the work of the MIT and we were able to determine from his report, and from the written evidence to our Inquiry of Colin Port and his team and submissions on their behalf, that the work undertaken by the MIT was generally of a high standard and well in keeping with the standards prevailing in the rest of the UK.

35.6 Robert Ayling considered in particular that the standard of due diligence had been met in relation to the setting up of the Murder Incident Room (MIR); the management of the murder scene; the investigation of security force activity; the investigation into the threats allegedly made to Rosemary Nelson; the investigation of specific public allegations of collusion; the investigation of covert operations undertaken by Special Branch (SB); the communications and media strategy; and (with some reservations) the analysis of telephone activity. In addition, in the light

of the written submissions and oral evidence we received, we were satisfied that the standard of due diligence had been met in relation to forensic analysis; family liaison; lines of enquiry; and the claim of responsibility.

35.7 Accordingly the Inquiry Solicitor wrote to all Full Participants to the Inquiry on 12 January 2009 in the following terms:

'In the light of this material, the Panel are of the view that it is unnecessary for every issue raised in Mr Ayling's report to be debated in evidence in order to fulfil the Inquiry's Terms of Reference.

The Panel have given careful consideration to those aspects of the murder investigation in respect of which they wish to hear oral evidence from both members of the SMT [Senior Management Team] and Mr Ayling.

They are as follows: –

- a) The early intelligence received as to suspects, reliance on the same and its validation;*
- b) The hypothesis that RN was murdered by members of the mid-Ulster LVF and the MIT's focus on certain individuals;*
- c) The scrutiny of other suspects;*
- d) Victimology;*
- e) Operation George, with particular reference to the use of resources.*

These are the matters which, in the Panel's view, bear on the question of whether or not the murder investigation was conducted with due diligence. Whereas it may be necessary to explore other matters in the light of the evidence that emerges, it is on these matters that the Panel wish to concentrate their attention.'

35.8 We have dealt with some of these issues already in our Report. We have, for example, commented on the validation of intelligence at Chapter 30.57 to 30.59 above and we have set out our views regarding Operation George at Chapter 31.122 to 31.135. We consider below two remaining issues to which we referred in our letter of 12 January 2009.

Victimology

35.9 Best practice in 1999 elsewhere in the UK would have been to initiate a line of enquiry that focused specifically on the victim – 'victimology' as it was referred to in the 1998 Murder Investigation Manual (in later editions referred to as 'Victim Studies'). It was described there as follows: *'Victimology is the total assessment of the circumstances of a victim with the aim of establishing the reason for their death and the likely identity of the offender.'*

35.10 The underlying importance of this work was described in the 1998 edition of the Murder Investigation Manual as follows:

'SIOs [Senior Investigating Officers] should at all times be aware of the dangers of either making assumptions themselves or believing that assumptions made by other members of the investigation team are indeed fact. This highlights the need for continued analysis of information and testing of inferences.'

35.11 Robert Ayling identified specific instances in which attention to Rosemary Nelson's life would have been beneficial to the investigation. Personal information such as her diary and mobile telephones might well have produced fruitful lines of enquiry. For example, data from her telephone might have helped to reconstruct Rosemary Nelson's movements in the weeks before the murder as well as to establish with whom she was in contact. Rosemary Nelson may well have spoken to others of her plans (and those of her family) and that information might have been unwittingly passed to individuals who were ill-disposed towards her. We agree.

35.12 We do not consider, however, that the limited nature of the victimology study invalidates our overall finding that the investigation was carried out with due diligence.

Hypotheses

35.13 Assumptions were made immediately about the murder of Rosemary Nelson. Within the RUC there was some debate about exactly which Loyalist terrorist group was responsible. In the Nationalist community there were many who believed that the murderers had had assistance from the security forces. But the near-universal belief was that this was a Loyalist murder. This view was shared by the MIT, and they gave us convincing reasons why they remained of this view: the obvious motive; the nature of the bomb; the intelligence received.

35.14 There is no written evidence that they considered alternative hypotheses. We were assured by the MIT that they kept an open mind throughout the investigation; and we have no doubt that if they had had any specific intelligence that suggested an alternative hypothesis they would have explored it. We can also well understand that, in the absence of such intelligence, to have openly explored alternative hypotheses would have resulted in outrage, and possible withdrawal of all cooperation on the part of the family and the community.

35.15 We consider that it would have been desirable for the deductive process that took place during the course of the investigation, which the MIT explained to us in oral evidence, to have been systematically recorded in a Secret Policy File. Nevertheless, having ourselves considered every alternative hypothesis, however implausible, we have come to the clear conclusion that the focus of the MIT on certain Loyalist paramilitary groups and their associates was, in all probability, correct.

35.16 Despite the thorough investigation undertaken by the MIT, the murder of Rosemary Nelson remains unsolved. This was not for want of commitment and effort over many years, and Colin Port and members of the MIT expressed their disappointment at not being able to bring the murderer(s) of Rosemary Nelson to justice. Enquiries were hampered by several factors:

- interference with and possible destruction of forensic evidence at the scene of the murder;
- a lack of cooperation and difficulty in obtaining relevant information in some instances;
- likelihood of intimidation felt by potential witnesses, and;
- very relevant to this Inquiry, the legal position which prevented intelligence obtained by telephone intercept from being used in evidence.

We are assured, however, that an unsolved murder enquiry is never 'closed' and at any time in the future, the person(s) responsible for Rosemary Nelson's murder may be identified and if possible tried before a court.

Part C

Afterword

Since the events of the late 1990s, there have been fundamental changes to the organisations that we have been examining, and to the context in which they work.

Justice and policing are now devolved to the Northern Ireland Assembly (NIA), so the Northern Ireland Office (NIO) no longer has the policy responsibility for these areas. It would not now, for example, be involved in the issues relating to complaints about the police.

The Army is no longer on the streets of Northern Ireland.

In 2007 the Security Service took over from the Police Service of Northern Ireland (PSNI) the lead responsibility for national security intelligence work in Northern Ireland. The arrangement is now similar to that operating in other parts of the UK.

After the murder of Rosemary Nelson, the Key Persons Protection Scheme (KPPS) was amended: defence solicitors were included among those who could qualify for the scheme.

Some of the greatest changes have been to policing. The main changes relevant to our Inquiry have been:

- The Royal Ulster Constabulary (RUC) has now been replaced by the PSNI, on the lines envisaged by the Patten Commission. Many of the reforms were first proposed, and subsequently implemented, by Sir Ronnie Flanagan.
- Since 1 January 1999, there has been audio recording, as well as video recording, of interviews with terrorist suspects. This has effectively brought an end to unresolvable conflicts about what was or was not said in the course of an interview.
- Complaints against the police are now investigated by the independent Police Ombudsman for Northern Ireland (PONI), so the PSNI is not in the position of having to investigate complaints about its own officers.
- Special Branch (SB) is now integrated into the main structure of the PSNI. It is no longer a 'separate entity' as described to us.
- In a murder investigation, whereas previously it was SB which decided which pieces of intelligence were relevant to the investigation, now the Senior Investigating Officer (SIO) receives the intelligence unfiltered and decides relevance.

Sam Kinkaid helpfully produced for us a memorandum, 'Improvements in PSNI Procedures for Murder Investigations since 1999' (See Appendix P).

We consider that these changes effectively deal with the systemic problems that we saw in the way that the organisations operated.

Systems will, however, depend for their effectiveness on the people working within them. There will always be a need for sensitivity and imagination in dealing with the person who may be seen as 'awkward', may not be easy to approach and may not be cooperative once approached. There is nothing that any organisation can do that will infallibly prevent a murder. What can be reasonably looked for is a reduction in the risk.

Overall Conclusions

Our Terms of Reference required us ‘*To inquire into the death of Rosemary Nelson with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary, Northern Ireland Office, Army or other state agency facilitated her death or obstructed the investigation of it; whether any such act was intentional or negligent; whether the investigation of her death was carried out with due diligence; and to make recommendations.*’

We have taken as our starting point the UN’s ‘Basic Principles on the Role of Lawyers’, adopted in 1990. They include: ‘*Where the security of lawyers is threatened as a result of discharging their functions, they shall be safeguarded by the authorities.*’

The context in which all the state agencies were operating was extraordinarily difficult. We do not underestimate the problems and personal danger faced by the individuals whose work we have been examining.

There is no evidence of any act by or within any of the state agencies we have examined (the Royal Ulster Constabulary (RUC), the Northern Ireland Office (NIO), the Army or the Security Service) which directly facilitated Rosemary Nelson’s murder. But we cannot exclude the possibility of a rogue member or members of the RUC or the Army in some way assisting the murderers to target Rosemary Nelson. In addition:

- We are sure that some members of the RUC publicly abused and assaulted Rosemary Nelson on the Garvaghy Road in Portadown in 1997, having the effect of legitimising her as a target.
- We believe that there was some leakage of intelligence which we believe found its way outside the RUC. Whether the intelligence was correct or not, the leakage increased the danger to Rosemary Nelson’s life.
- We believe that some members of the RUC made abusive and/or threatening remarks about Rosemary Nelson to her clients. This became publicly known and would have had the subsequent effect of legitimising her as a target in the eyes of Loyalist terrorists.

There were omissions by state agencies, which rendered her more at risk and more vulnerable. The two agencies of the state that had ample knowledge of Rosemary Nelson were the RUC and the NIO.

The Royal Ulster Constabulary

In assessing whether or not Rosemary Nelson’s life was at risk, RUC Special Branch (SB) failed to take into account all the intelligence and the open information available to them:

- She was closely associated with Colin Duffy, and had played a significant role in his successful appeal against conviction for the murder of John Lyness and in the later decision by the Director of Public Prosecutions for Northern Ireland (DPPNI) not to prosecute in the case of the murders of the two police constables.

- She was a prominent figure advising the Garvaghy Road Residents' Coalition (GRRC).
- She was advising the Hamill family.
- She defended various suspected Republican terrorists.
- Above all, she was a very public figure, and hence an obvious trophy target.

Any reasonably thorough and objective assessment could only have reached the conclusion that general intelligence, circumstances and recent events indicated that Rosemary Nelson was at significant risk. In addition:

- RUC management negligently failed to intervene to prevent their officers from uttering abuse and threats to defence solicitors, including Rosemary Nelson.
- Local RUC management failed to follow through promised action to pay special attention to Rosemary Nelson's office and home addresses.
- There was no analysis or evaluation of intelligence relevant to Rosemary Nelson.
- There was a corporate failure by the RUC to warn Rosemary Nelson of her vulnerability and offer her security advice.

The Northern Ireland Office

Omissions on the part of the NIO were:

- The NIO did not press the RUC hard enough for full replies to their questions concerning Rosemary Nelson's personal security.
- Given the extent of concern that was expressed from disparate sources about Rosemary Nelson's safety and the fact this conflicted with the RUC threat assessment, the NIO should have proactively questioned the RUC as to what factors were considered in producing a threat assessment. Such questioning would have led the NIO to appreciate that a threat assessment amounted to no more than a check for specific intelligence of an actual threat.
- The NIO dealt in a mechanistic way with correspondence from non-governmental organisations (NGOs) raising concerns about Rosemary Nelson's safety. There is no evidence of any internal policy discussion about the treatment of defence lawyers in general, or of Rosemary Nelson in particular.

The combined effect of these omissions by the RUC and the NIO was that the state failed to take reasonable and proportionate steps to safeguard the life of Rosemary Nelson. If Rosemary Nelson had been given advice about her safety and offered security measures, then assuming that she had accepted such advice and security measures, the risk to her life and her vulnerability would have been reduced.

Obstruction

There is no evidence of any deliberate attempt by any of the organs of the state corporately to obstruct the investigation of the murder.

- The Chief Constable called in a senior police officer from outside Northern Ireland to lead the investigation, gave it wide Terms of Reference and resourced it generously.
- SB gave levels of information unprecedented in the history of the RUC to the Murder Investigation Team (MIT).

SB's cooperation, however, was incomplete:

- SB, in their concern to protect source identities and intelligence-gathering methodology, were over-possessive about their intelligence.
 - SB were also unjustifiably resentful and defensive about any enquiry which they interpreted as treating them as potential suspects.
 - SB omitted to disclose all items of relevant intelligence, on one occasion supported by the Security Service, due to incorrect judgment or error.
-

Murder Investigation

The murder investigation was exhaustive, energetic and enterprising. It was not perfect in every respect:

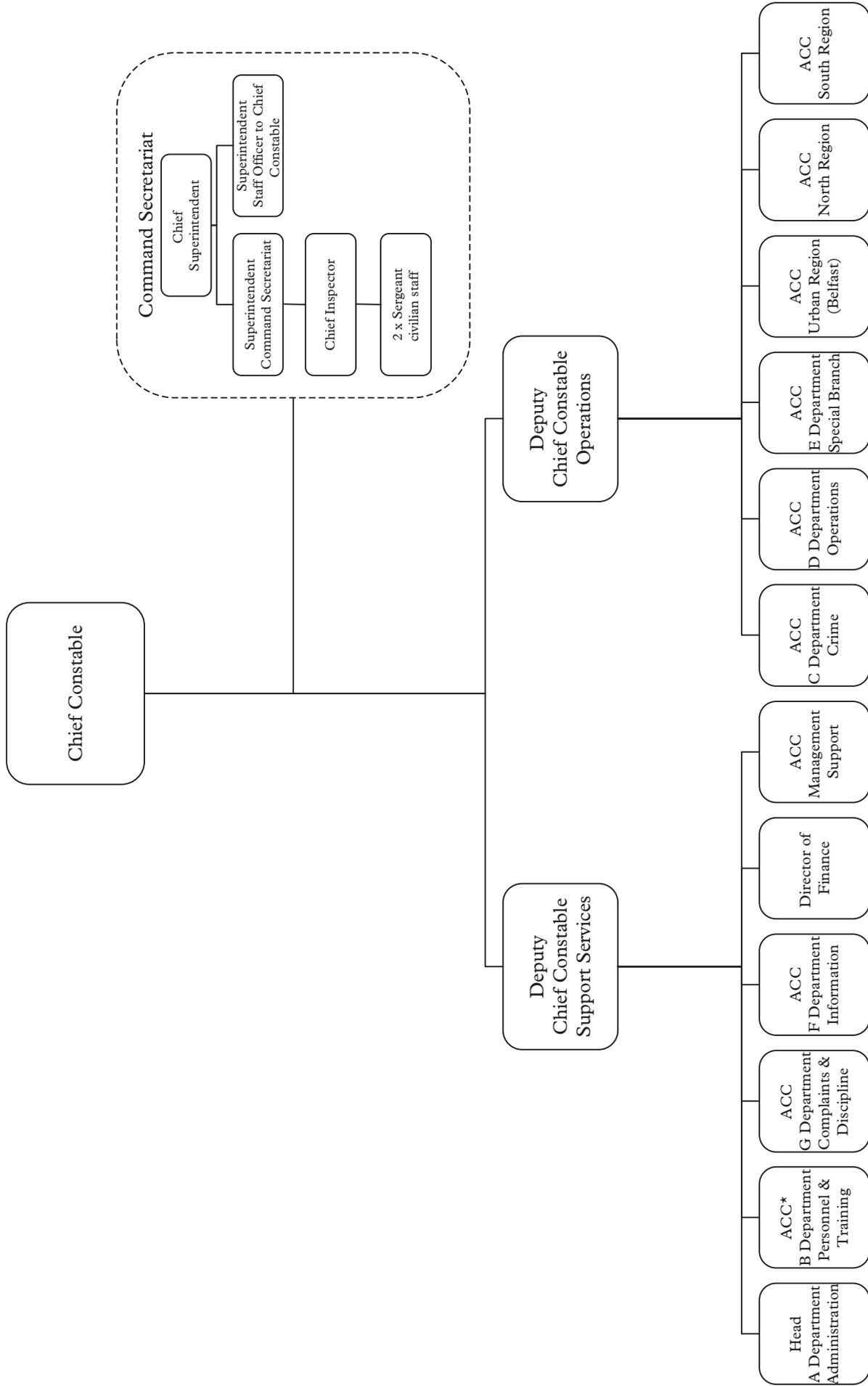
- The MIT should have made more detailed enquiries into Rosemary Nelson's contacts in the last few weeks of her life.
- The MIT should have documented their thinking about hypotheses other than the obvious one, namely that this was a Loyalist terrorist murder.

However, in the main, the investigation was carried out to a high standard, in very difficult conditions.

Overall, the investigation of the murder was carried out with due diligence.

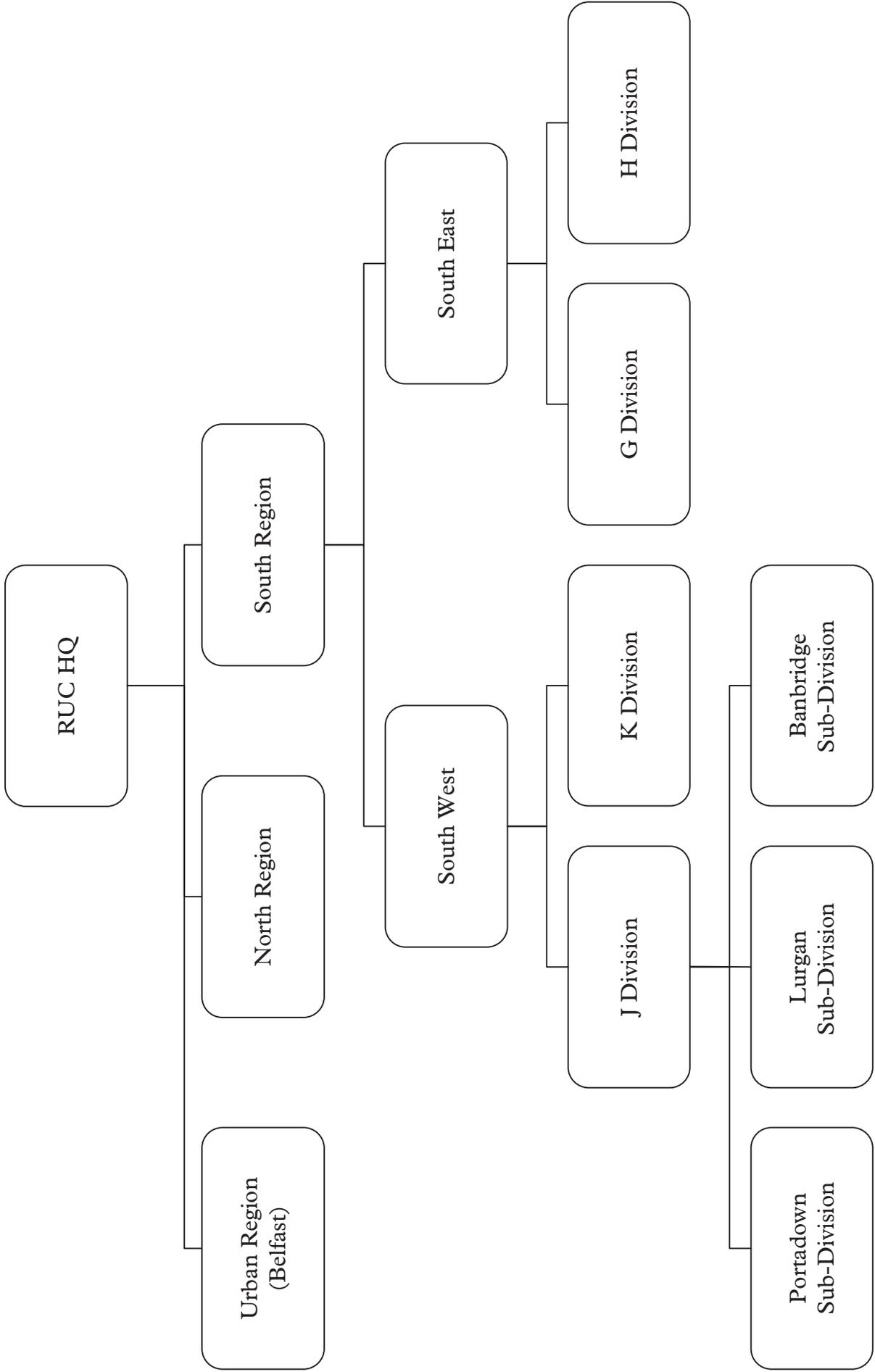
Appendices

Royal Ulster Constabulary Command Structure

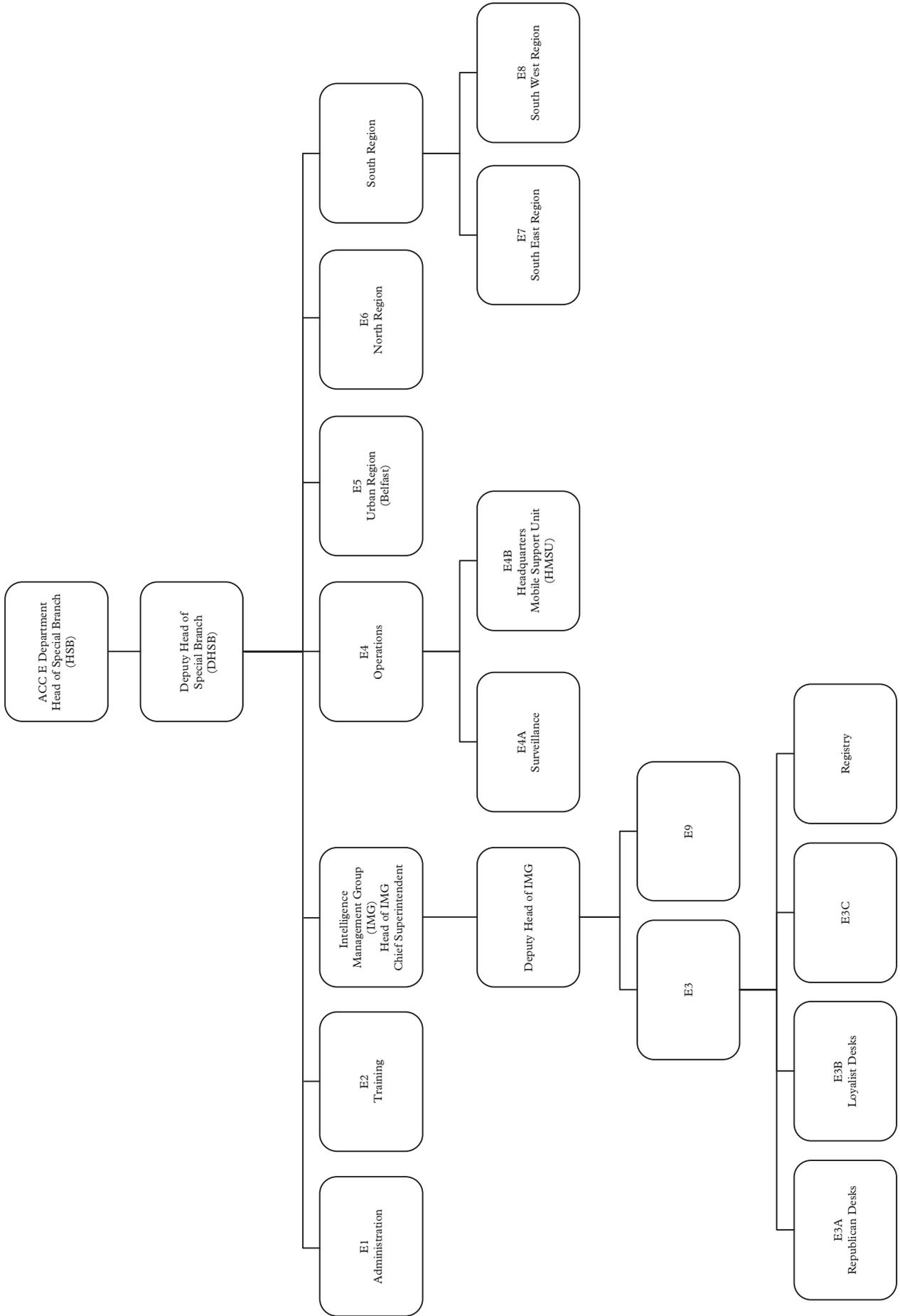


* Assistant Chief Constable (ACC)

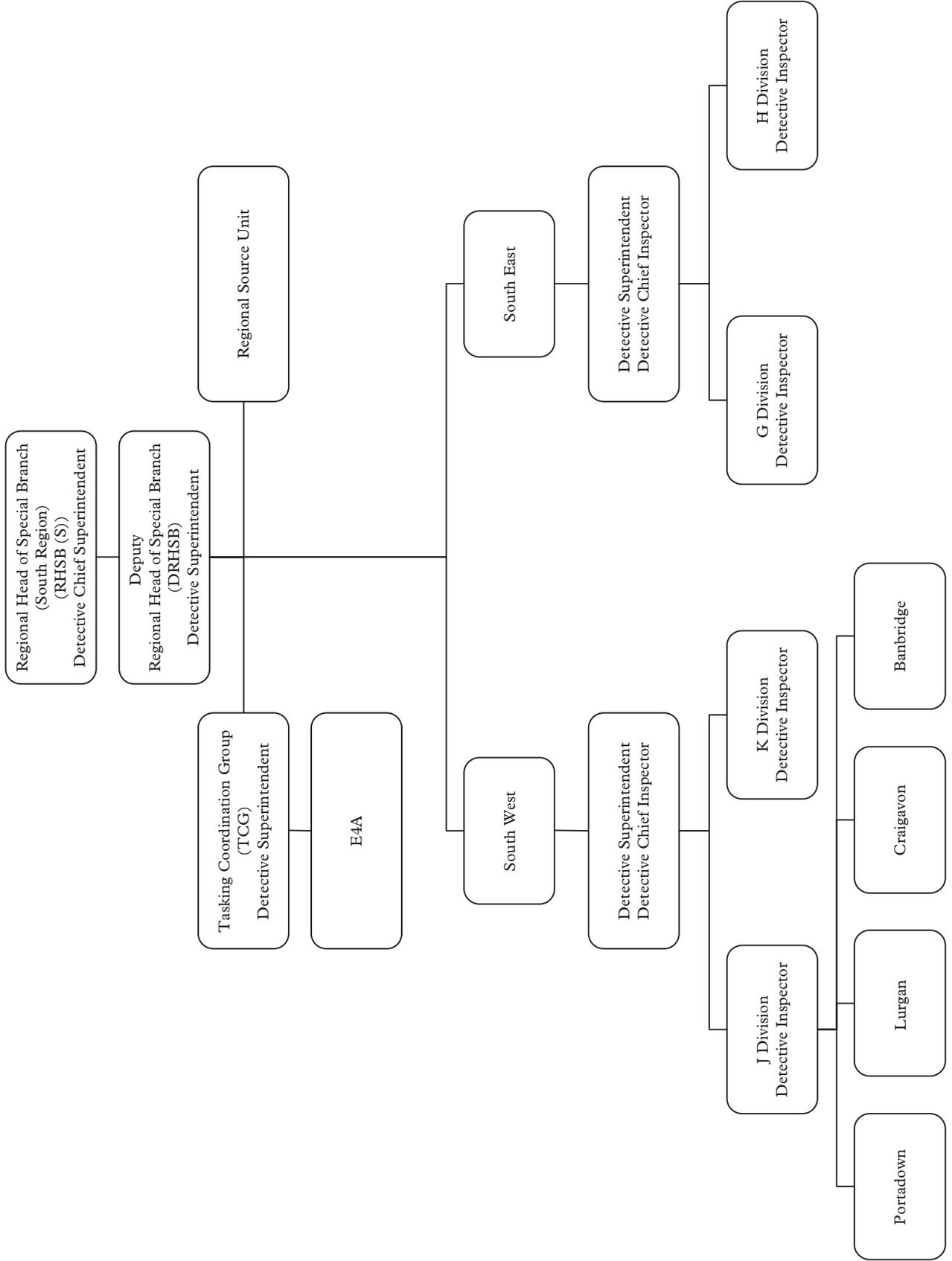
Royal Ulster Constabulary Regional Structure



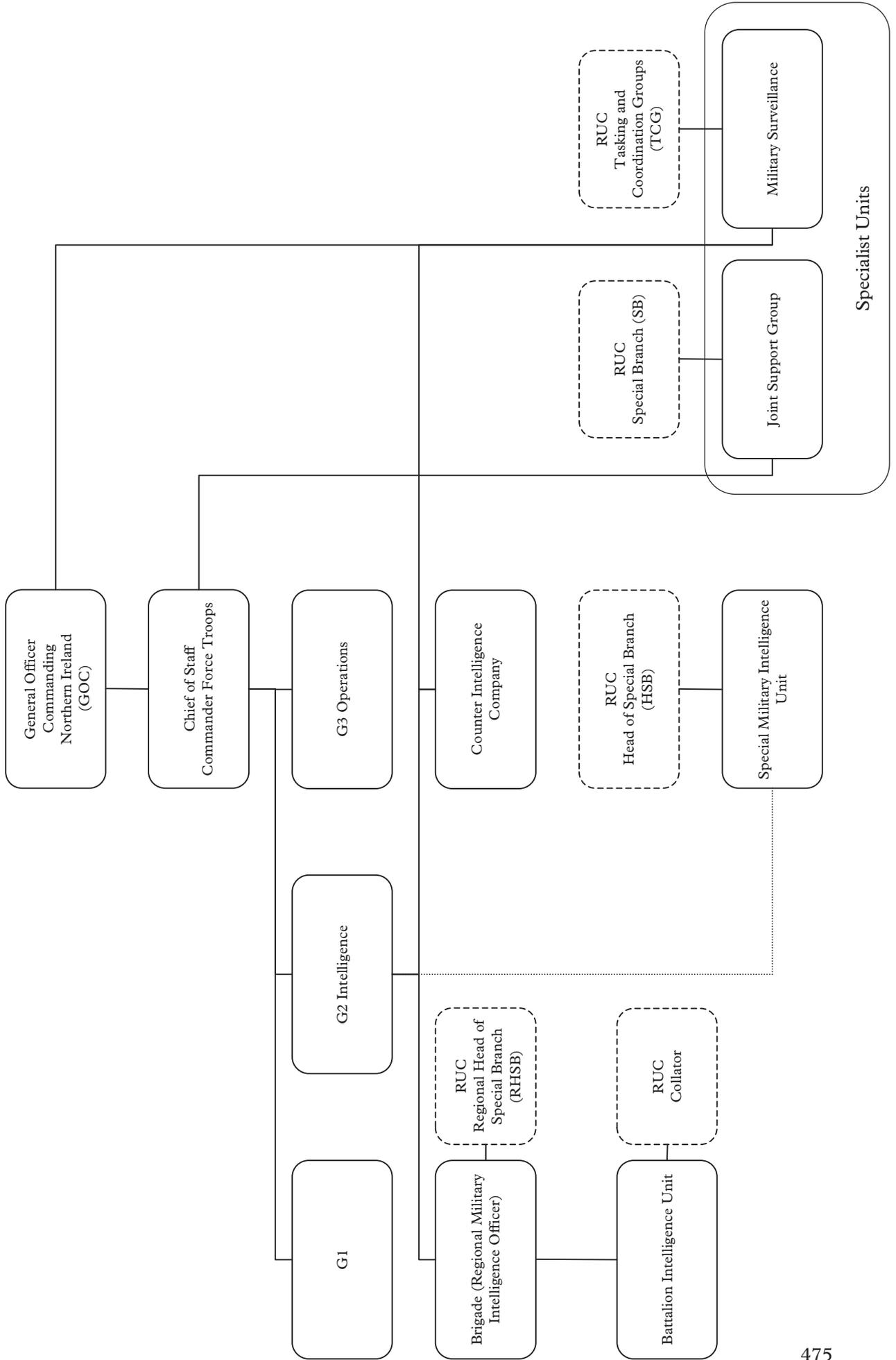
Special Branch Headquarters (1996 onwards)



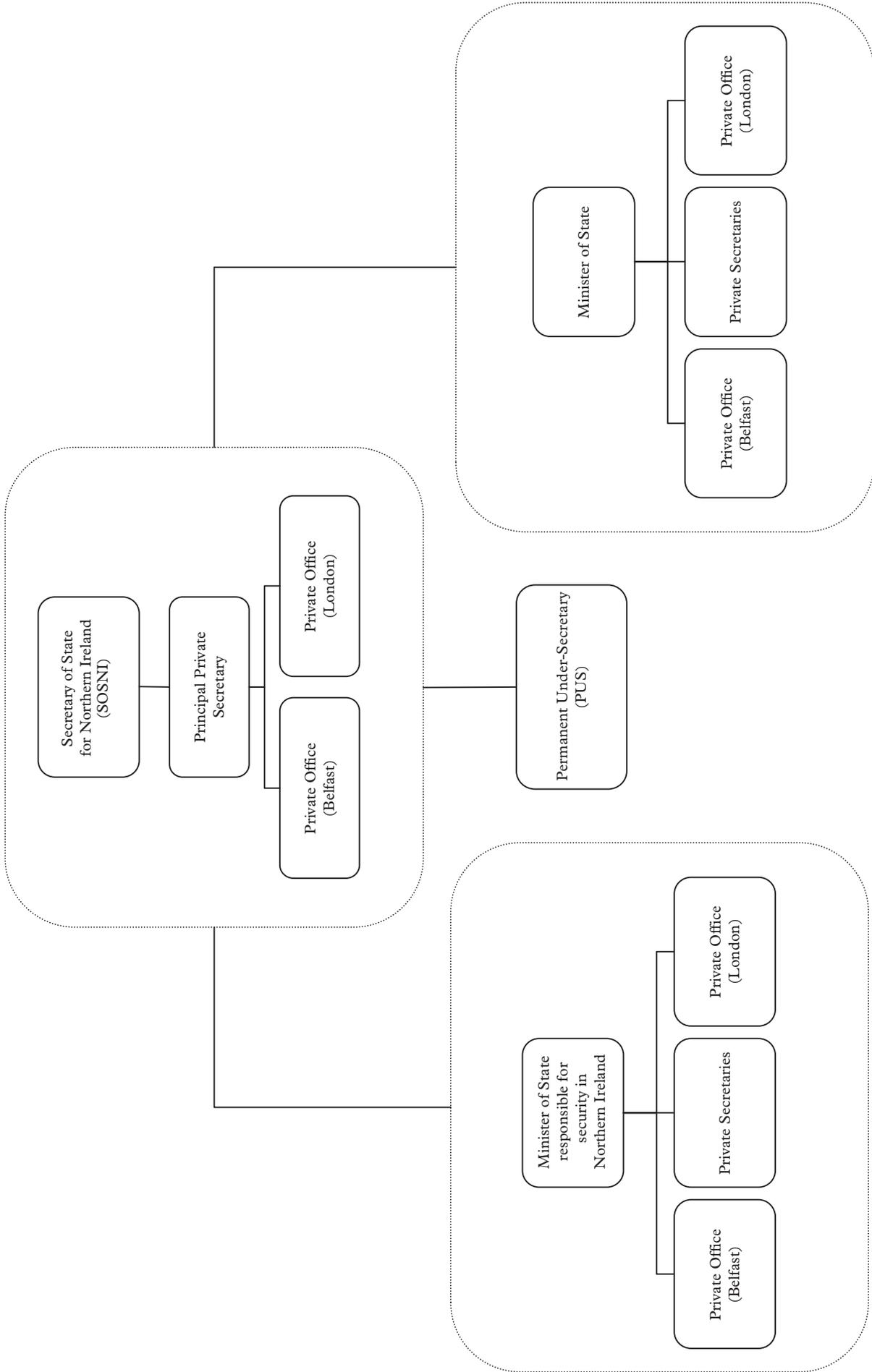
Special Branch South Region



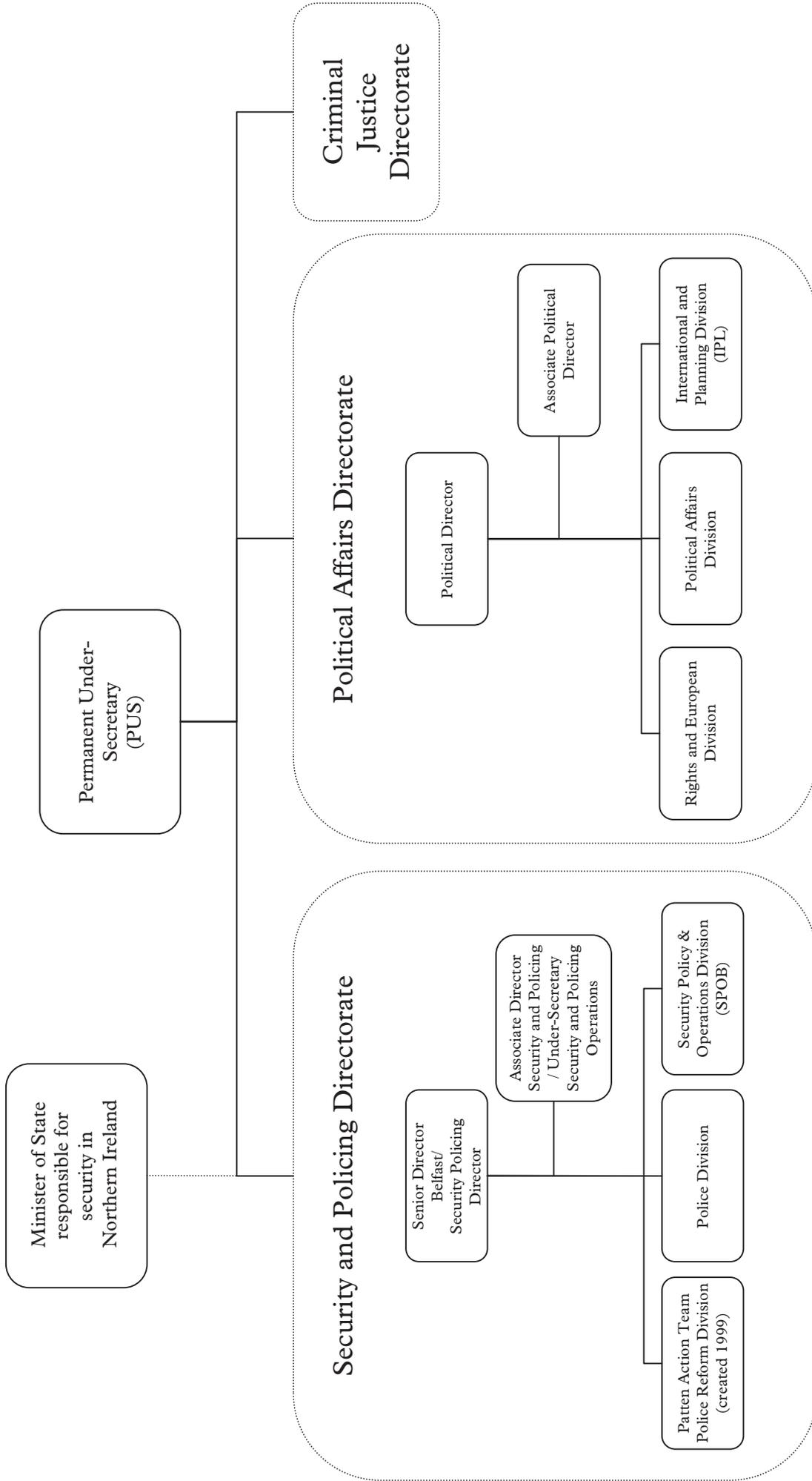
Army Intelligence Northern Ireland



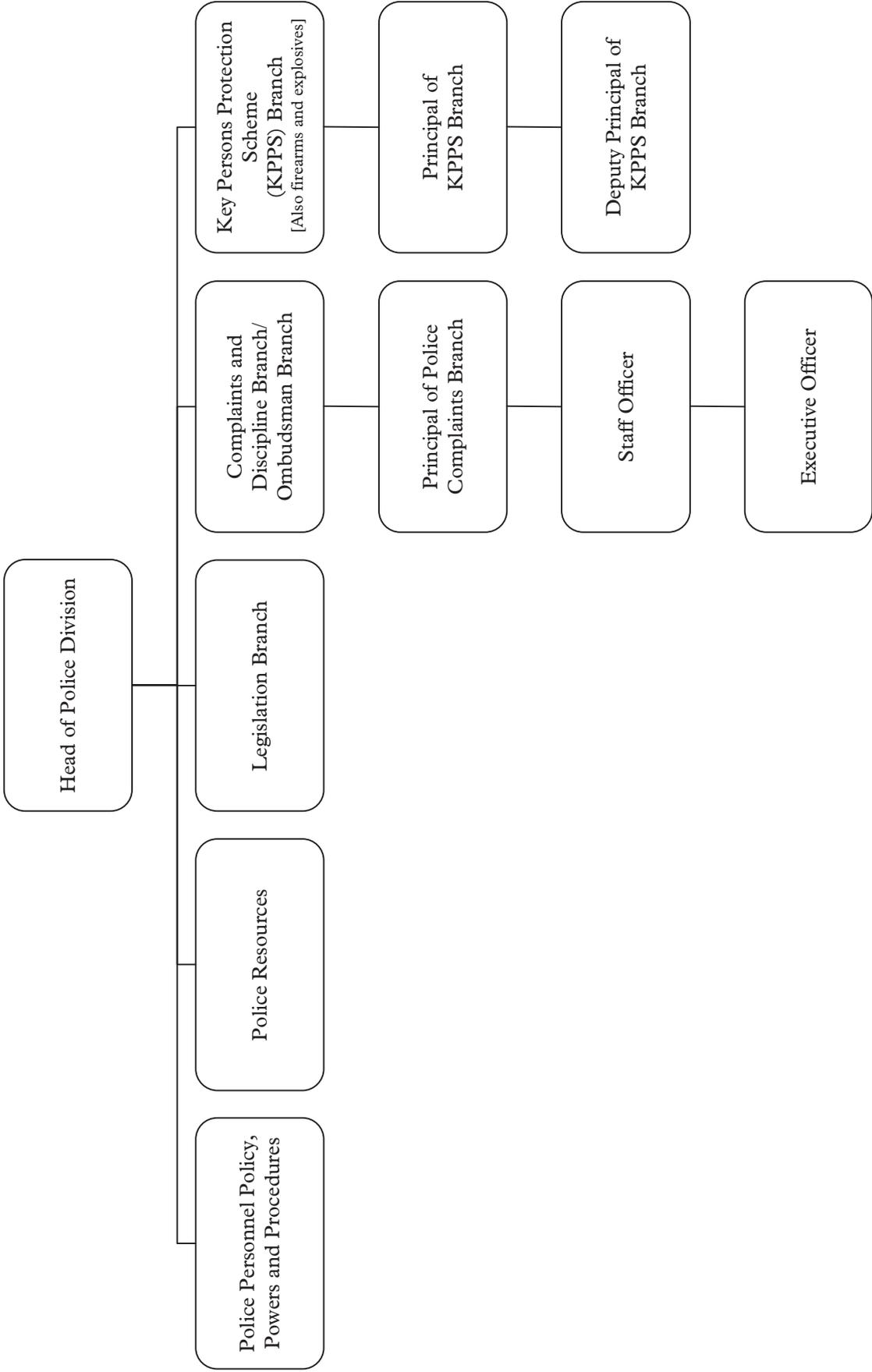
Northern Ireland Office – Senior Structure



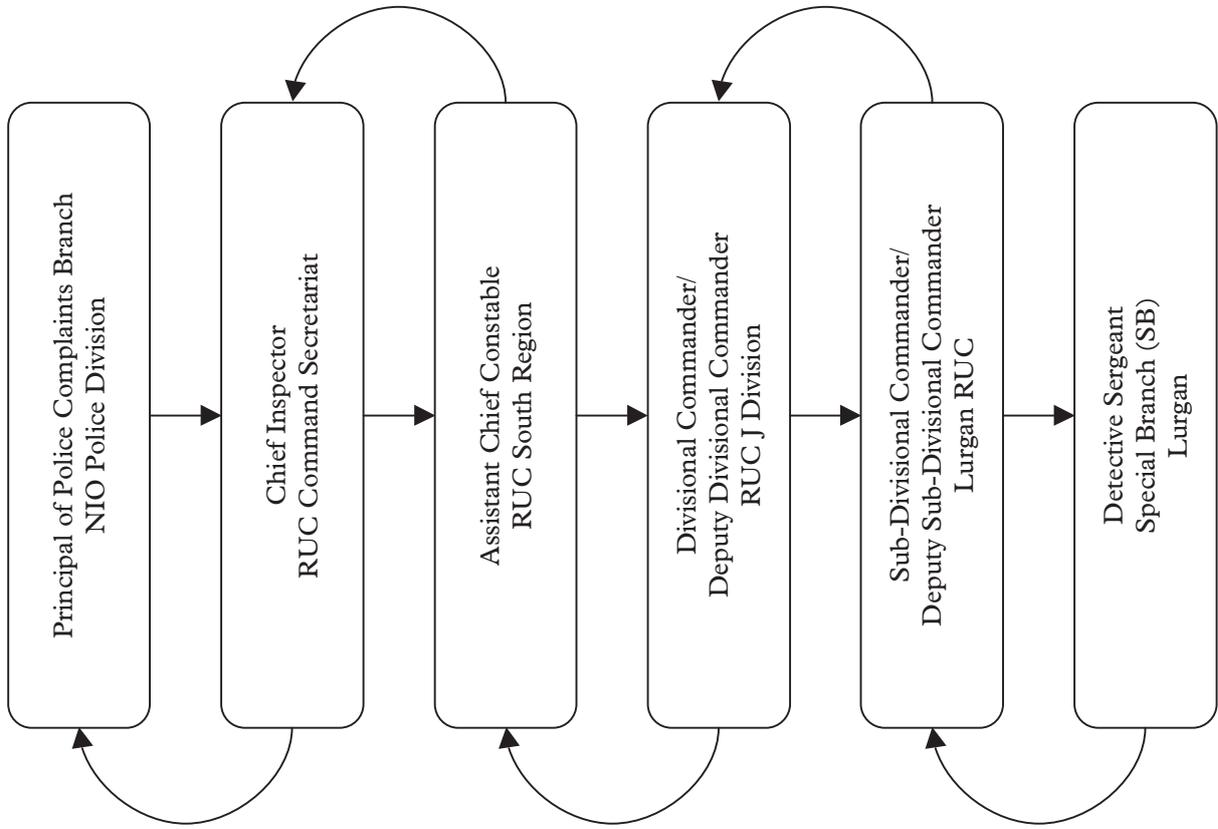
Northern Ireland Office – Security and Policing, and Political Affairs Directorates



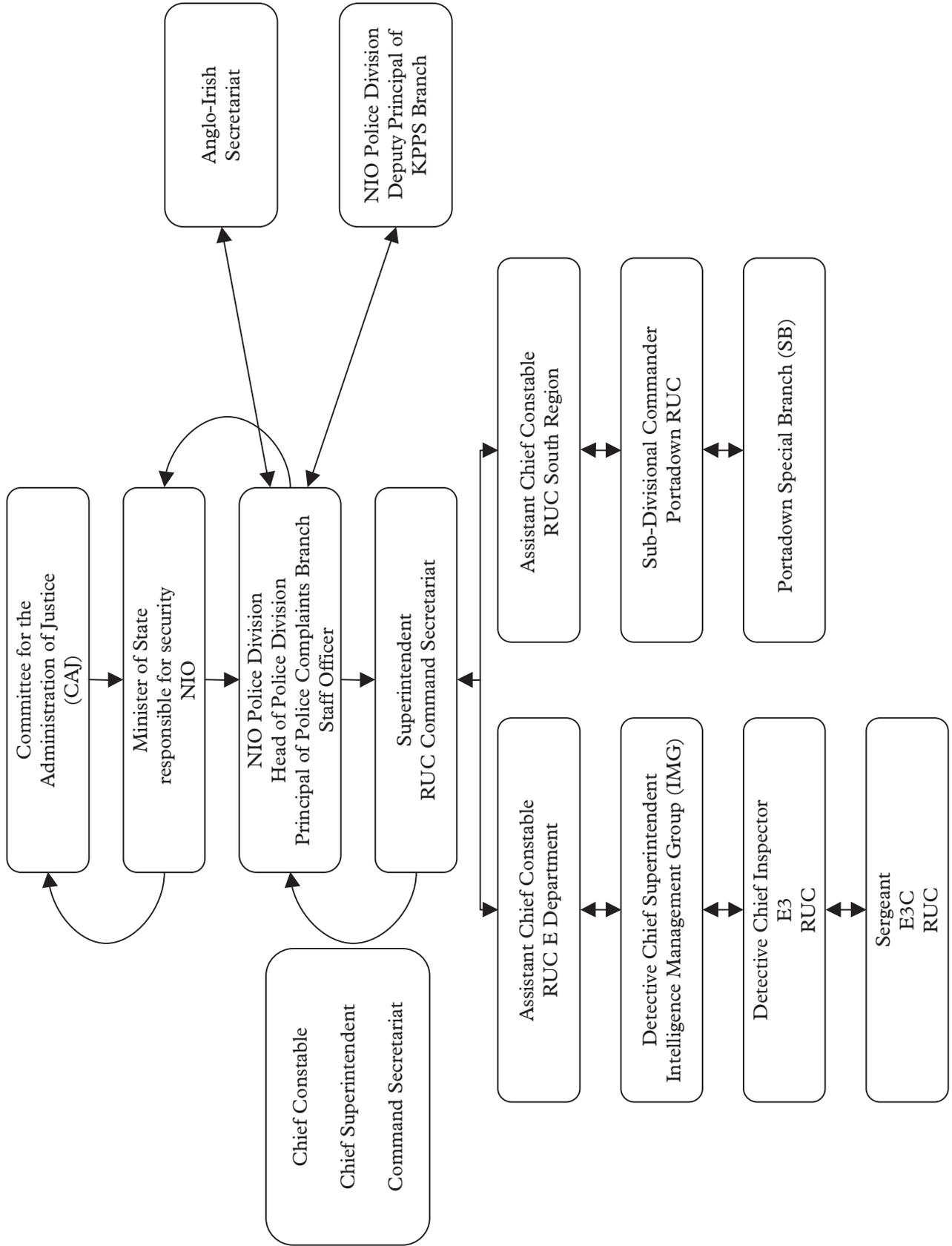
Northern Ireland Office – Police Division



Document Flow – The February 1998 Threat Assessment



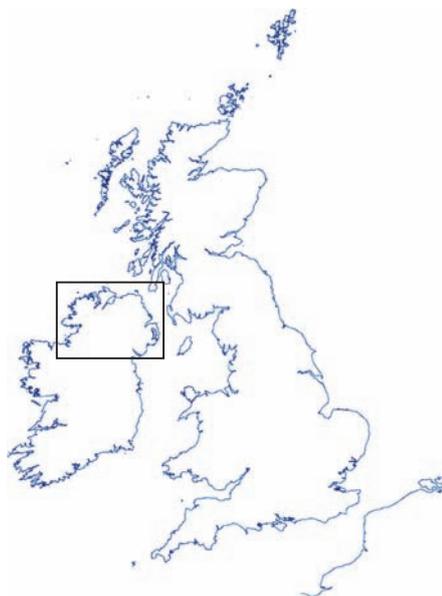
Document Flow – The August 1998 Threat Assessment



Northern Ireland – Small Scale



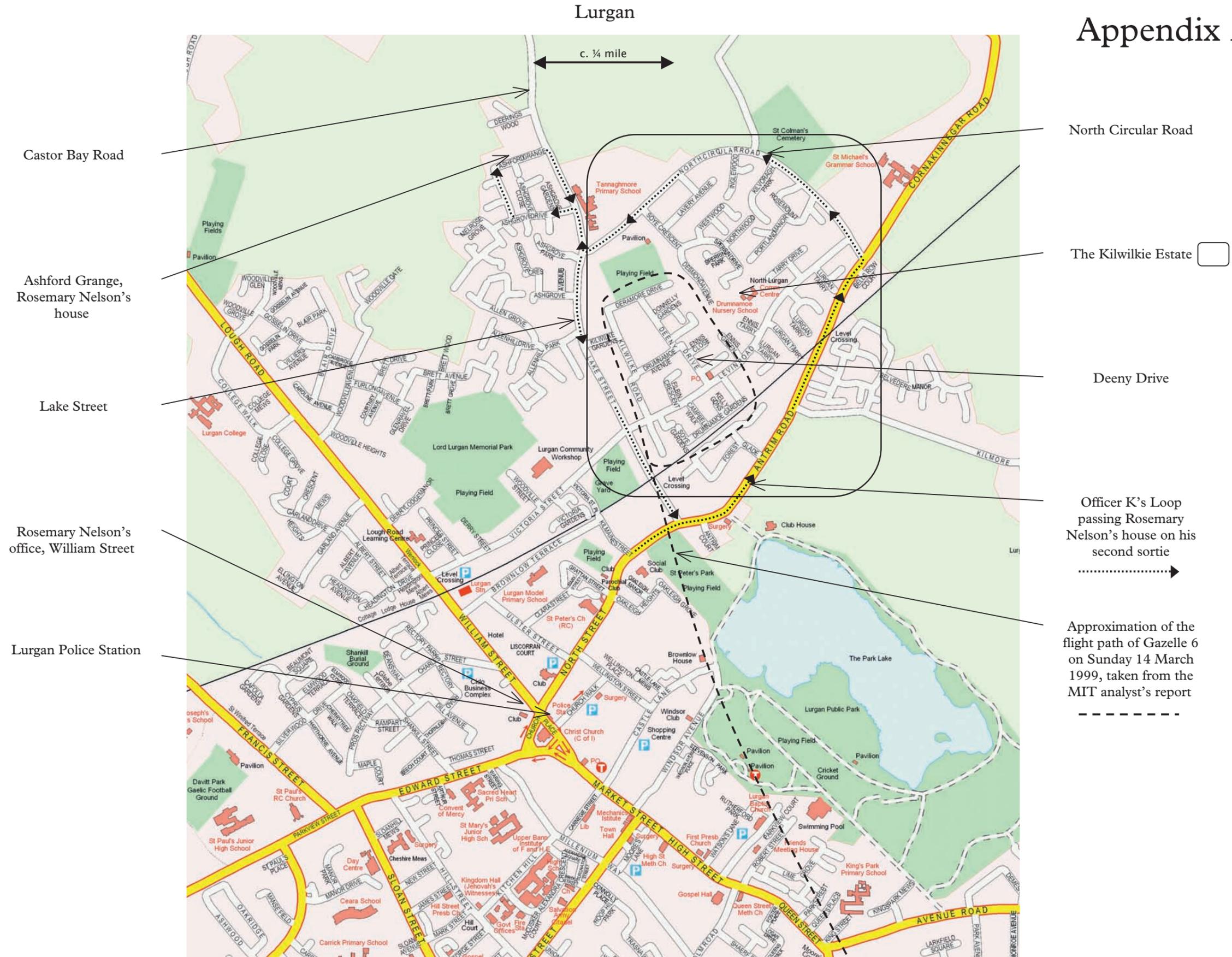
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Royal Ulster Constabulary Divisional and Sub-Divisional Boundaries



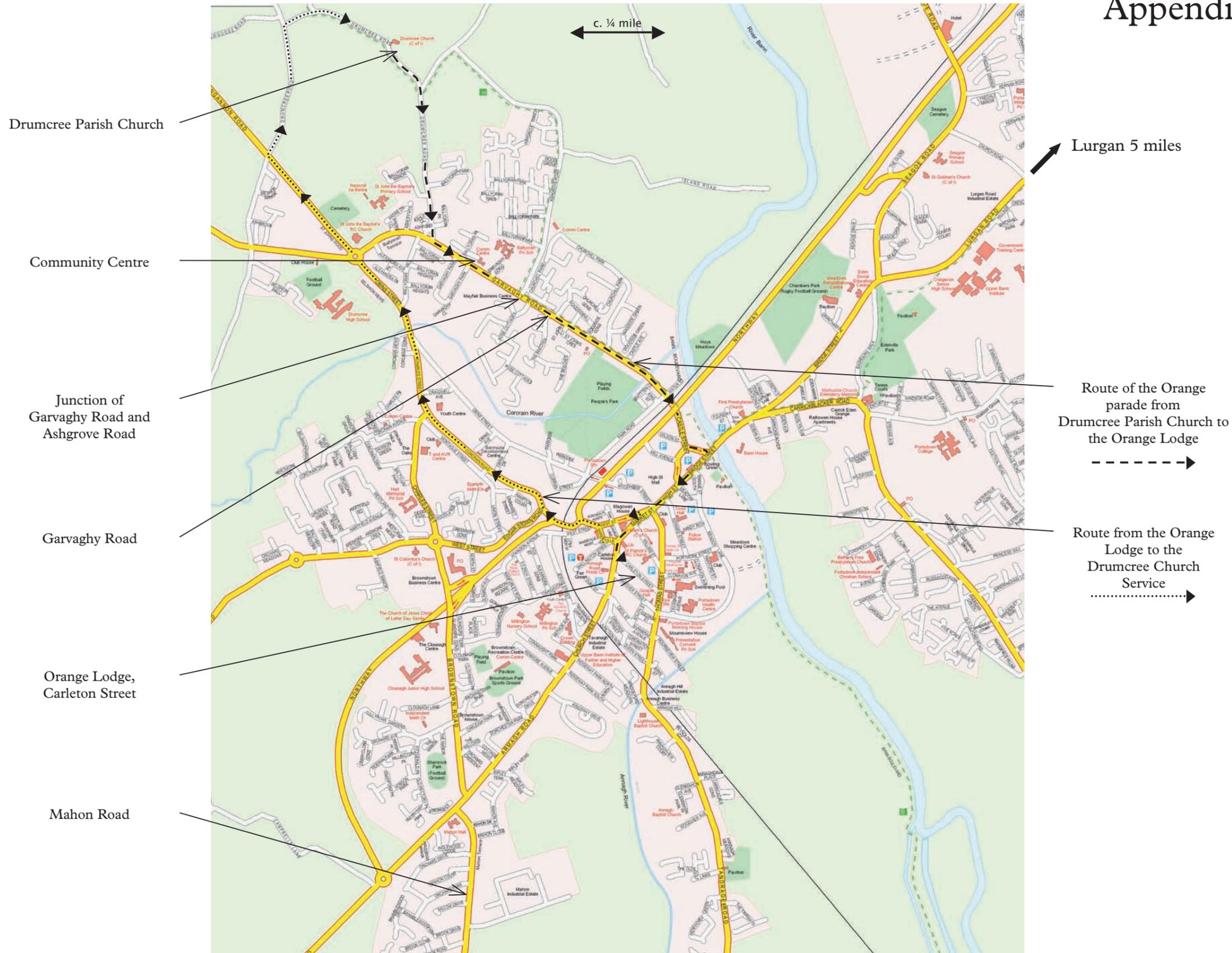
Appendix M



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Portadown

Appendix N



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Appendix O – Complaints Investigations; Summary of the Regulations

1. The disciplinary regime in force in the Royal Ulster Constabulary (RUC) in 1997 was that which had been established by Statutory Instruments created under the Police (Northern Ireland) Act 1970.
2. The Police (Northern Ireland) Order 1987 established the Independent Commission for Police Complaints (ICPC) and laid out the framework by which complaints and other disciplinary matters were to be dealt. It divided between the Chief Constable (or in the case of senior officers above the rank of Chief Superintendent, the Police Authority) and the ICPC the responsibility for carrying out an investigation (which remained with the Chief Constable and the RUC) and the responsibility for supervising the investigation (which was given to the ICPC). Also, the responsibility for deciding, in the first instance, whether disciplinary charges should be brought at the conclusion of the investigation (which remained with the Chief Constable) and the responsibility for reviewing and, if necessary, correcting that decision (which was given to the ICPC).
3. This Order also set out the mechanism by which disciplinary offences were to be adjudicated. Schedule 4 of the RUC (Discipline and Disciplinary Appeals) Regulations 1988 prescribed and defined disciplinary offences. These regulations were made pursuant to sections 25 and 26 of the Police (Northern Ireland) Act 1970 and Articles 14(3), (4) and (5) and (6) of the Police (Northern Ireland) Order 1987. The following offences are relevant to this Inquiry:
 - *Discreditable conduct*, which offence is committed where a member acts in a disorderly manner prejudicial to discipline or reasonably likely to bring discredit on the reputation of the police service.
 - *Abuse of authority*, which offence is committed where a member treats any person with whom he may be brought into contact in the execution of his duty in an oppressive manner and without prejudice to the foregoing, in particular where he:
 - a. without good and sufficient cause conducts a search, or requires a person to submit to any test or procedure, or makes an arrest; or
 - b. uses any unnecessary violence towards any prisoner or any other person with whom he may be brought into contact in the execution of his duty or improperly threatens any such person with violence; or
 - c. is abusive or uncivil to any member of the public.
 - *Discriminatory behaviour*, which offence is committed without prejudice to the commission of any other offence where a member:
 - a. while on duty, on the grounds of another person's colour, race, nationality or religious belief, acts towards that person in any such way as is mentioned in paragraph 9 (abuse of authority); or
 - b. in any other way, on any of those grounds, treats improperly a person with whom he may be brought into contact while on duty.
 - *Criminal conduct*, which offence is committed where a member has been found guilty by a court of law of a criminal offence.

- *Being an accessory to a disciplinary offence*, which offence is committed where a member incites, connives at or is knowingly an accessory to any offence against discipline.
4. In respect of a complaint against an officer of the rank of chief superintendent and below the provisions of the Police (Northern Ireland) Order 1987 required the Chief Constable to consider whether the complaint was suitable for informal resolution. If not, or if informal resolution failed, he was obliged to appoint a member of the force, or a member of another police force to investigate it.¹ He was then obliged to refer the complaint to the ICPC.² In respect of serious matters, or in exceptional circumstances, he might also refer a matter to the ICPC when no complaint had been made if he was of the view that a criminal or disciplinary offence had been committed.³ There was also provision for the Secretary of State for Northern Ireland to do so if he was of such a view and it was considered desirable in the public interest.⁴
 5. The ICPC was obliged to supervise any investigation where it was alleged that the conduct of a member of the police force had resulted in death or serious injury to some other person and was obliged to supervise any matter referred to it by the Secretary of State. It was given discretion to supervise any other investigation if it considered supervision to be in the public interest.⁵ In a case in which a decision was made to supervise the investigation, the ICPC was empowered to authorise or veto the appointment of any investigator nominated by the Chief Constable.⁶
 6. At the conclusion of an investigation the investigating officer was required to submit a report to the ICPC and send a copy of the report to the Chief Constable.⁷ The ICPC was then obliged to submit a Statement to the Chief Constable indicating whether, in its view, the investigation had been conducted satisfactorily, and if not, to specify the particulars of any respect in which it was not so conducted.⁸ There was also power to submit separate statements in respect of disciplinary and criminal aspects of the investigation.⁹
 7. Having received a copy of the investigator's report it was the duty of the Chief Constable to determine whether the report indicated that a criminal offence had been committed and whether a charge, or charges, should be brought, in which event he was obliged to send the report to the Director of Public Prosecutions for Northern Ireland (DPPNI).¹⁰
 8. Under the Regulations the Chief Constable was not obliged to bring charges even if he was of the view that the report disclosed the commission of a criminal offence or offences. If in those circumstances he considered that no criminal charges should be brought but, for example, disciplinary charges should be brought instead, he was obliged to inform the ICPC.¹¹ In such a case the ICPC was empowered to direct the Chief Constable to send the report to the

¹Article 5

²Article 7

³Article 8(1)

⁴Article 9(2)

⁵Article 9(3)

⁶Article 9(5)

⁷Article 9(7)

⁸Article 9(8)

⁹Article 9(11)

¹⁰Article 10(3) and (4)

¹¹Article 10(6)

DPPNI.¹² The ICPC was also empowered to direct the Chief Constable to prefer disciplinary charges in a case in which the Chief Constable chose not to do so.¹³

9. In a case in which the ICPC had directed the Chief Constable to bring charges, or in other cases in which it was considered appropriate by the ICPC, the regulations provided that the charges were to be heard by a disciplinary tribunal comprising the Chief Constable (or the Chief Constable of another force) and two members of the ICPC who had not been involved in the case.¹⁴
10. In all other cases the charges were to be heard and adjudicated upon by the Chief Constable himself or a disciplinary board comprising two officers of the rank of assistant chief constable or above. In cases in which the accused was of the rank of inspector, an assistant chief constable might preside in place of the Chief Constable and in the case of sergeants and constables an officer of no less rank than superintendent might preside in his place.
11. The RUC (Discipline and Disciplinary Appeals) Regulations 1988 also contained provisions governing procedure during investigations and during any disciplinary proceedings which followed. The investigating officer was obliged, as soon as practicable (without prejudicing his or any other investigation of the matter) to inform the officer under investigation of the complaint and caution him in a prescribed manner.¹⁵ At the conclusion of an investigation any charges to be brought were to be given to the accused officer in writing, as soon as possible.¹⁶ The accused was to be supplied with the investigating officer's report and any supporting statements not less than 21 days in advance of the disciplinary hearing. Documents that had not been so served could only be adduced at the hearing with the consent of the accused.¹⁷
12. Hearings were to be conducted in private.¹⁸ Both the prosecution and the accused officer were entitled to be represented by Counsel, a solicitor or another member of the force.¹⁹ Save where the evidence was concerned with matters which, in the public interest, ought not to be disclosed to a member of the public, a complainant might be permitted to attend during the questioning of witnesses.²⁰ Issues of evidential admissibility were to be determined by the officer conducting the hearing. The Regulations permitted majority decisions in cases in which the tribunal included members of the ICPC.²¹ Decisions of the disciplinary board, however, had to be unanimous.²²
13. If a charge was not proved it was to be dismissed. A charge could only be found proved if the accused admitted it, or if the case was proved '*beyond reasonable doubt*'.²³

¹²Article 12(1) and (2)

¹³Article 13(1)

¹⁴Article 14(3)

¹⁵RUC (Discipline and Disciplinary Appeals) Regulations 1988 Article 6

¹⁶Article 7(2)

¹⁷Article 9(4)

¹⁸Article 17(2)

¹⁹Article 10(2)

²⁰Article 21(1), (2) and (3)

²¹Article 17(9)

²²Article 17(10)

²³Article 22(2)

14. The Regulations also contained provisions allowing the Chief Constable to suspend a member of the force from duty while a complaint was received and while the investigation was underway.²⁴
15. The RUC (Complaints etc.) Regulations 1988 included provisions enabling the ICPC to require the Chief Constable to provide it with information and documents relating to referred complaints;²⁵ to issue directions in relation to investigations of those complaints; and to include, in statements issued at the conclusion of an investigation, information relating to the conduct of the investigation which it considered ought to be drawn to the attention of the Chief Constable or the complainant or *'dealt with in the public interest'*.²⁶
16. Finally, it is these regulations that include provisions to allow the Chief Constable to apply to the ICPC for a dispensation from the requirement that an investigation be carried out on grounds that it, the ICPC, was of the view that it was *'not reasonably practicable to complete the investigation of a complaint'* as a consequence of *'a refusal or failure on the part of the complainant to make a statement or afford other reasonable assistance for the purposes of the investigation or a refusal or failure on the part of an injured person other than the complainant to support the complaint by a refusal to make a statement or afford other reasonable assistance for the purposes of the investigation'*.²⁷

²⁴Article 26

²⁵RUC (Complaints etc) Regulations 1988 Article 6

²⁶Article 10

²⁷Article 17(1) and Schedule

Appendix P – A Memorandum by Sam Kinkaid

Improvements in PSNI Procedures for Murder Investigations since 1999

Introduction

1. Issue 28 before the Rosemary Nelson Inquiry concerns,

“Whether any improvements in PSNI police procedures for murder investigations should be implemented in the light of the experience of Rosemary Nelson’s murder investigation.”

Considerable changes have been made in the PSNI procedures for murder investigations, particularly since 2003 and the Inquiry might find it useful to have sight of such changes before making any recommendations in relation to issue 28.

2. The contextual document I have produced in relation to the Rosemary Nelson Murder Investigation Team highlights a number of the operational difficulties and problems that were faced by the RUC when investigating crimes of murder in the 1990s. These could be summarised as follows: –
 - A. The number of murders, both live and “cold case”, were such that enormous pressure was put on both CID and HOLMES resources. This was shown by the fact that the normal experience in 1999 was for multiple investigations to be run from a single HOLMES room. Detectives could rarely spend an extended time on a single investigation. It should also be remembered that the levels of other serious crime associated with the Troubles e.g. attempted murder, explosive offences and firearm offences were all considerably higher than that experienced by any other UK police service and put additional strain on CID resources.
 - B. The RUC did have more personnel than any comparable police service – certainly if the number of police officers per 1000 of the population is considered. However many of these additional resources were full time Reserve officers on station security, specialist public order officers or staff attached to Special Branch.
 - C. The existence of different ACCs for Regions, Crime and Special Branch. The RUC had to introduce three Regional ACCs to manage the level of security and public order problems it faced. In my view this had negative consequences for the management of murder investigations. ACC Crime, for example, was responsible for setting policy for murder investigations, Regional ACCs were responsible for the investigation of the majority of murders (regional CID officers were under their control) and ACC Special Branch had responsibility for the gathering of intelligence on murder and other serious terrorist crimes. There was therefore a lack of a single police officer with responsibility for all aspects of murder investigations in the 1990s. It was only after 2003, for example, that the use of an ACPO Gold Commander for critical incident murders was introduced.
 - D. There was no system for reviewing murder investigations. Lack of detectives meant that no review team existed to carry out 28-day reviews of current

murders. There were also no CID resources available to carry out cold case reviews on the thousands of unsolved murders associated with the Troubles.

- E. The high level of serious crime throughout the Troubles did create a considerable amount of exhibits. These were held locally in CID offices. No central murder exhibit store existed. Although there were clear service directions on the handling of exhibits the RUC had been unable to appoint full time exhibit officers.
 - F. The relationship between Special Branch and CID was at times difficult. Special Branch officers performed in Northern Ireland the National Security role performed by MI5 in Great Britain. The dissemination of intelligence to senior investigators was decided by Special Branch officers, few of whom had any investigative experience. It is now clear that a key factor in their decision was the protection of sources. Surveillance and eavesdropping was largely for intelligence not evidential purposes and no system existed for carrying out an annual risk audit of CHIS. As Senior Investigating Officers were not Developed Vetted there were strict limitations on the type of material they could see. The advice of Senior CID officers was rarely sought in advance of pro-active operations run by Special Branch.
3. The Rosemary Nelson [Murder] Inquiry was set up in a manner that protected it from some of these problems. It had a dedicated HOLMES room, was resourced to a generous level and had a single Chief Officer in Colin Port, although it seems that he did not get full access to all intelligence. The investigation also eventually managed to introduce the first technical evidential operation to national standards in Northern Ireland. The 28-day review carried out by Arthur Provoost was the first such review in the history of the RUC. Members of the senior management team were also eventually Developed Vetted. However, the Rosemary Nelson investigation was unique and speaking from personal experience was definitely not the normal experience of an RUC Senior Investigating Officer in the 1990s.

Pressures for change

4. There were a number of key factors from 2002 onwards that encouraged changes in the PSNI approach to murder investigations. These included internal pressure from certain police officers to have the approach to murder investigation radically changed and the fall-out from the review of the first Omagh murder investigation conducted by the Police Ombudsman. The newly formed Policing board, for example, asked two HM Inspectors of Constabulary to inspect intelligence and murder investigations as a result of their examination of the Ombudsman's report. The inspection of intelligence was carried out by HMI Crompton whilst the inspection of murder investigation was carried out by HMI Blakey.
5. Another factor was the report of Sir John Stevens into his third investigation into matters of collusion which has become known as Stevens 3. This was presented in April 2003. As could be expected there was duplication and in some cases conflict between the various recommendations in the Crompton, Blakey and Stevens 3 reports. Furthermore not all the recommendations related to the issue of murder investigations. The following sections seek to highlight the relevant recommendations.

Crompton Report

6. The main focus of the inspection carried out by Sir Dan Crompton was the management of intelligence. The recommendations in the report relevant to murder investigations are as follows:

<i>Recommendation 1 (CR1)</i>	<i>A review of detective and intelligence training should be undertaken.</i>
<i>Recommendation 3 (CR3)</i>	<i>Regional Crime advisors should be developed vetted.</i>
<i>Recommendations 6 & 7 (CR6, CR7)</i>	<i>The 5 x 5 x 5 system should be used on disseminated intelligence.</i>
<i>Recommendation 8 (CR8)</i>	<i>There should be consultation with a senior CID officer where SB pro-active operations are likely to lead to an arrest.</i>
<i>Recommendation 9 (CR9)</i>	<i>Greater use should be made of professional analysis within both SB and CID.</i>
<i>Recommendation 10 (CR10)</i>	<i>The National Intelligence Model should be implemented as a priority within the PSNI.</i>

Blakey Report

7. There were considerably more relevant recommendations in this report as its focus was on murder investigation. In addition to specific recommendations it included a number of key suggestions within the text of the final document. Relevant recommendations included the following:

<i>Recommendation 1 (BR1)</i>	<i>The ownership of murder investigation should be clarified.</i>
<i>Recommendation 4 (BR4)</i>	<i>That the PSNI adhere to ACPO guidelines in relation to Family Liaison officers.</i>
<i>Recommendation 5 (BR5)</i>	<i>That the PSNI review its implementation of HOLMES II to ensure it is properly introduced.</i>
<i>Recommendation 6 (BR6)</i>	<i>That the storage and management of exhibits be improved.</i>
<i>Recommendation 7 (BR7)</i>	<i>That a review of the role of scenes of crime officers be conducted.</i>
<i>Recommendation 9 (BR9)</i>	<i>That all DCU commanders and Senior Investigating Officers attend critical incident training.</i>
<i>Recommendation 10 (BR10)</i>	<i>That a PSNI Review Team should take responsibility for all murder reviews.</i>

8. As stated earlier the Blakey Report contained a number of suggestions that were not specific recommendations. Some of them were particularly significant to murder investigations and were treated as a recommendation. Attention is drawn in particular to:

Paragraph 3.20 The investigation found that staffing levels and expertise in murder investigations consistently fell short of requirements.

Paragraph 4.8 Greater use should be made of Crime Scene Managers.

Paragraph 4.19 PSNI SIOs were not following the investigative decision making process of the Murder Investigations Manual which had been introduced to CID training by 2002/2003.

Paragraph 4.23 The PSNI should follow National Guidelines in relation to the completion of decision logs.

Paragraph 4.50 The Inspection Team was concerned at the cramped working conditions and the numerous murder investigations being managed from HOLMES rooms.

Paragraph 4.73 Better training was required of exhibits staff in murder investigations.

Paragraph 4.120 Little use was being made of long term pro-active methods of gathering evidence i.e. the use of technical equipment.

Stevens 3

9. The report of Sir John Stevens covered both intelligence and murder investigations and included additional recommendations on the general issue of terrorist investigations. A considerable number of the recommendations related to the investigation of murder. These included:

Recommendation 1 (SR1) The National Intelligence Model should be introduced by the PSNI. This was identical to recommendation CR10 highlighted earlier.

Recommendation 2 (SR2) A dedicated unit should be set up for terrorist investigations

Recommendation 5 (SR5) SIOs in murder investigations should receive full co-operation and relevant intelligence from Special Branch, particularly where CHIS are suspects for murder or other serious crime.

Recommendation 6 (SR6) Any conflict between the investigation of crime and the protection of agents should be managed by a process overseen by an ACC.

Recommendation 9 (SR9) A pre-requisite for selection to Special Branch should be evidence of investigative experience.

Recommendation 10 (SR10) Guidelines on the use of CHIS in countering terrorism should be completed in light of the Regulation of Investigating Powers Act 2000.

- Recommendation 11 (SR11) An internal strategic review should be undertaken to ensure that CHIS are only employed to achieve a proportionate coverage of terrorist threat.*
- Recommendation 12 (SR12) A full review of training for agent handlers should be introduced, including integrity issues and the keeping of records.*
- Recommendation 17 (SR17) The investigation of murder should be carried out in accordance with the ACPO guidelines on Homicide investigation. This is similar to para 4.19 of the Blakey Report highlighted earlier.*
- Recommendations 18 (SR18) SIOs should attend the nationally accredited SIO course and receive critical incident training on scenarios relevant to Northern Ireland. This is similar to Recommendation 9 (BR9) of the Blakey Report.*
- Recommendation 19 (SRI 9) The PSNI should review their exhibit handling processes. This is similar to Recommendation 6 (BR6) of the Blakey Report.*
- Recommendation 20 (SR20) Gold groups should be created at the outset of any major investigation to ensure effective intelligence sharing and to respond to community concerns.*
- Recommendation 21 (SR21) All SIOs dealing terrorist murders must be adequately vetted to ensure they can deal with any sensitive intelligence. Similar to Recommendation 3 (CR3) of the Crompton Report.*

Implementation process

10. The implementation of these various recommendations in 2003 presented a whole series of challenges to the PSNI and the Policing Board. At a time when the actual number of police officers was reducing and many senior detectives were leaving under the Patten redundancy scheme it was particularly difficult to introduce changes that would also improve crime investigation. Any implementation process had also to guarantee confidence in the integrity of the process, particularly as the PSNI had, of necessity, to be closely involved in the process. It had to involve some outside elements and expertise.
11. The approach taken had three strands. The first was a major re-organisation of the senior command of the PSNI. The Chief Constable created a new Crime Operations department with responsibility for all murder investigations, all terrorist investigations, all organised crime investigations and crucially all responsibilities for intelligence. I performed the role of ACC Crime Operations between 2003 to 2006. The creation of this new department made the implementation of the many recommendations listed earlier much easier. It also gave clear ownership of murder investigations (Blakey Recommendation 1) and allowed an ACC to manage Gold groups as required by the Stevens 3 Report (Stevens Recommendation 20).
12. The second feature of the implementation was a major overhaul of intelligence. This included increasing the number of CID officers in Special Branch,

introducing a new crime investigation course for all Special Branch officers, ensuring that surveillance priorities were not set solely by Special Branch and training surveillance officers to an evidential standard. Equipment and processes were introduced to ensure pro-active evidential operations could be run. All Senior Investigating Officers were Developed Vetted.

13. A key aspect of this overhaul of intelligence was an extensive review of all existing CHIS to ensure that those retained were absolutely necessary, were properly managed and did not present a major community or corporate risk. The Terms of Reference for the review gave due regard to Recommendation 11 of the Stevens 3 Report. A number of CHIS were de-registered during this process. The risk assessment is now formally run on an annual basis. In 2004 a PSNI manual for the management of CHIS was introduced that complimented the advice and contents of the relevant ACPO manual. A new unit was also created to centrally manage and authorise all CHIS and other intrusive surveillance authorisations. In 2005 a new generic risk assessment to be applied before recruitment was introduced and relevant training provided to handlers. This was complemented by new procedures for the management of CHIS finance. These changes to the intelligence process successfully implemented many important recommendations such as Crompton R1, R3, and R6 and Stevens Recommendations 10, 11, 12, 20 and 21.
14. A key problem addressed by all three reports had been the difficulties experienced by CID getting full dissemination of intelligence from Special Branch. A comprehensive intelligence dissemination policy was introduced by the PSNI. This laid down specifically what type of intelligence would be provided to Senior Investigating Officers, who would decide on relevance and ensured an ACC had a role as arbiter. These changes implemented Recommendations 5 and 6 of Stevens 3. The dissemination policy had clear rules on the involvement of CID officers before pro-active operations were run against terrorists. This implemented Recommendation 8 of the Crompton Report.
15. These changes in the management of intelligence were not just restricted to specialised intelligence officers. The PSNI also introduced the National Intelligence Model which changed the way CID and uniformed officers gathered and managed intelligence on crime and public order. This included new rules on the handling of casual CHIS. The introduction of the National Intelligence Model fully implemented Recommendation 10 of Crompton and Recommendation 1 of Stevens 3.
16. 2003 and 2004 saw major changes introduced into the teams actually investigating murders. These included:-
 - A. A new branch of Crime Operations called Serious Crime (C2) was given specific responsibility for the investigation of murder. 12 new Murder Investigation Teams (MITs) were created. They were co-located with dedicated HOLMES staff in a number of new HOLMES rooms. HOLMES II was introduced into all the HOLMES rooms.
 - B. At a time when the total number of police officers was reducing, the number of detectives actually increased.
 - C. Dedicated Family Liaison Officers were introduced into C2.
 - D. A complete overhaul was made of the way exhibits were handled in murder investigations. This included the introduction of dedicated exhibit officers and, at considerable cost, a new central exhibits store.

- E. The introduction of a dedicated murder review to independently review current murder investigations.
- F. In co-operation with the government the resourcing of a specialised team (Historical Enquiries Team) to review unsolved murders from the Troubles.

These changes implemented Blakey Recommendations 4, 5, 6, 10 and many of the suggestions contained in his wider report. As C2 also investigated all serious terrorist incidents its creation implemented Stevens 3 Recommendation 2.

- 17. An important recommendation in the Crompton Report relates to the introduction of professional analysts (Recommendation 9 refers). In 2003 and 2004 a considerable new intake of such analysts was recruited and trained. They were allocated to MITs, Organised Crime and crucially Intelligence Branch (formerly Special Branch).
- 18. All three reports made specific recommendations about the training of detectives. Crompton Recommendation 1, Blakey Recommendation 9 and Stevens Recommendation 18 are examples. Many other recommendations were so far reaching that new training was necessary to ensure they were properly implemented. Examples of the current courses that are relevant to the investigation of murder are,
 - A course, unique to the PSNI, introduced for all intelligence and surveillance officers. This was designed to enable such officers to understand how a professional and objective investigation was managed.
 - A variety of courses for the new full time HOLMES staff. These include courses for HOLMES office managers, disclosure officers and exhibits officers.
 - An extensive course for Detective Sergeants on the management of serious crime.
 - A two week development course for Senior Investigating Officers and a further five day management of serious crime course for such officers.
 - Scenario-based critical incident training. The scenario nearly always involves a murder.
- 19. The final strand of the implementation process introduced independent oversight of the whole process. A combined implementation plan was drawn up by ACC Crime Operations in late 2003 which was inspected by the HMI on a regular basis. In order to do so the HMI created a small team made up of officers from Great Britain who had worked for the original inspection teams that had produced the Blakey and Crompton reports. The HMI used a traffic light grading system i.e. green = implemented, amber = evidence of progress and red = limited evidence of progress, to show the progress made against the specific recommendations in the three reports.
- 20. The HMI presented an interim report to the Northern Ireland Policing Board in October 2004. ACC Crime Operations also briefed the Board on progress. This was followed in February 2005 by a further site visit by HMI Williams and three members of the original inspection and Stevens 3 teams. Two regional HMIC staff officers also assisted in the inspection. One particular focus of the February 2005 visit was to conduct reality checks with operational level staff. This ensured that any changes were not merely cosmetic but real.

21. In November 2005 the HMI's team visited again and continued to assess the progress in implementing the combined implementation plan. Again feedback was provided to representatives of the Policing Board. An identical approach was followed in May 2006 and later in 2007.

Implementation results

22. In his October 2004 report to the Chief Constable and the Policing Board on the progress made on implementing the recommendations of the three reports the HMI concluded,

“HMI is encouraged by the progress that has been made against the combined implementation plan since the previous visit in January 2004. The momentum which had developed at that time has been maintained and HMI has been able to evidence a number of significant and tangible advances on the previous position. The lead role played by ACC Crime Operations remains a fundamental feature of the progress, and HMI is pleased to note the continued drive and support provided by the Chief Constable.”

In his February 2007 report the HMI concluded,

“HMI continues to be encouraged by the progress made by the PSNI towards full implementation of the outstanding recommendations.”

23. The HMI reported in August 2007 to the Northern Ireland Policing Board that all the recommendations of the Crompton Report had been implemented. Two of Stevens 24 recommendations remained at amber, with the remainder implemented. Recommendation 9 could not be fully implemented because of the difficulties filling detective vacancies. The HMI was satisfied there was no resistance to the recommendation. Recommendation 19 of Stevens 3 had been overtaken by events i.e. the Criminal Justice Inspectorate Review of Scientific Support. Two recommendations of the Blakey Report also remained at amber with the remainder implemented. Recommendations 6 and 8 of Blakey had also been overtaken by the Criminal Justice Inspection of Scientific Support Services. Again this was not a case of resistance to the recommendations.
24. Other organisations and individuals have commented on the extent and quality of these changes. The reports of the office of Surveillance Commissioners have praised the new systems introduced for the management of intelligence – particularly in their 2005 report. Keir Starmer, who was appointed by the Northern Ireland Policing Board to annually review Human Rights compliance by the PSNI stated in his 2005 report,

“The adoption by the PSNI of a manual for the management of covert human intelligence sources, a procedure for the dissemination of intelligence to serious crime investigations, and a procedure for handling confidential information supplied by members of the public is an important initiative. All three documents are extremely clear and comprehensive. As the Chief Surveillance Commissioner observed, they should result in even higher standards of compliance with the requirements of RIPA. They should also result in even higher standards of compliance with the Human Rights Act.”

Keir Starmer has recently been appointed as the new Director of Public Prosecutions for England and Wales.

New National Security arrangements

25. In October 2006 the United Kingdom government, the government of the Republic of Ireland and representatives of the main Northern Ireland political parties met at St Andrews to discuss the arrangements necessary for a successful power sharing government in Northern Ireland. As it was intended that any local assembly would eventually have responsibility for policing, the unique national security role of the PSNI had to be addressed. National Security is not an issue that the United Kingdom government devolves to local assemblies.
26. The solution was to give the Security Service (MI5) the strategic role in the gathering of national security intelligence. However a number of the political parties wanted the new arrangements introduced via Blakey, Stevens and Crompton to be protected. The agreement therefore had an Annex E, titled "Future National Security Arrangements", this led out in detail how such intelligence would be managed in Northern Ireland. As National Security intelligence in Northern Ireland is often about murders, or concerns persons in paramilitary organisations capable of committing murder, the matters agreed on this topic at St Andrews are relevant to the subject matter of this appendix.
27. Annex E states that a key driver behind the practical arrangements is the unique interface in Northern Ireland between national security and serious/organised crime. It also states that the new arrangements would preserve and build upon the Patten reforms and were designed precisely for the purpose of ensuring that intelligence is "*shared and properly directed within the PSNI*". The new integrated working relationship, under which PSNI officers are co-located with Security Service personnel, is the first time such an approach has been taken in the UK. The Annex states that such integration is an essential protection against concerns that some intelligence would not be visible to the PSNI.
28. The Chief Constable of the PSNI identified five key principles as crucial to the effective operation of the new arrangements. The UK government accepted these and confirmed that they would be given effect. The five key principles are:-
 - A. *All Security Service intelligence relating to terrorism in Northern Ireland will be visible to the PSNI.*
 - B. *PSNI will be informed of all Security Service counter terrorist investigations and operations relating to Northern Ireland.*
 - C. *Security Service intelligence will be disseminated within the PSNI according to current PSNI dissemination policy, and using police procedures.*
 - D. *The great majority of national security CHIS in Northern Ireland will continue to be run by PSNI officers using existing police handling protocols.*
 - E. *There will be no dissemination of the PSNI's ability to comply with the Human Rights Act or the Policing Board's ability to monitor such compliance.*
29. Clearly the arrangements in Northern Ireland for handling National Security intelligence continue to be different from those existing in the rest of the UK. In addition to the five key principles the annex also introduced a unique inspection process. It was agreed that:

"The Policing Board's Human Rights advisers should have a role in human rights proofing the relevant protocols that will underpin the Chief Constable's five key

principles and also in confirming that satisfactory arrangements are in place to implement the principles.”

30. I have been informed by the current ACC Crime Operations that the HMI will also be examining how well the new arrangements are working. This assessment will include the dissemination of intelligence to officers leading murder investigations.
31. A copy of Annex E of the St Andrews Agreement is attached.
32. The combined recommendations of the Blakey, Crompton and Stevens 3 covered all the aspects of murder investigation and intelligence gathering. The HMI has independently reported to the Northern Ireland Policing Board that all but four of the recommendations have been implemented. Progress has been made in the four, full implementation being denied by issues outside the control of the PSNI. The result is an operational approach to murder investigation that is markedly different from that which existed in the late 1990s, in terms of resourcing, training, expertise and access to intelligence.

Sam Kinkaid

8 October 2008

Annex E of the St Andrews Agreement

Building on the useful discussions that have already taken place with the parties on the issue, this paper outlines the arrangements that are being put in place for the handling of national security intelligence in Northern Ireland and the accountability measures that will be in place, once lead responsibility passes to the Security Service in late 2007.

The change will bring Northern Ireland into line with the rest of the UK, to provide a consistent and co-ordinated response to the threat from terrorism, including from international terrorist groups such as Al Qaeda. It also, since national security is an excepted matter, prepares the way for devolution.

The British Government is confident the new arrangements will bring real benefits to both the Security Service and the PSNI. A key driver behind the practical arrangements currently being devised and tested is the unique interface in NI between national security and serious/organised crime. The new arrangements preserve and build upon the Patten reforms: that is a fundamental principle of these changes.

New integrated working arrangements – the first such approach in the UK – will strengthen the PSNI's criminal intelligence capability. This is because PSNI officers will be co-located with Security Service personnel and will work in a variety of roles including as intelligence analysts/advisors and for the purpose of translating intelligence into executive action. These arrangements are designed precisely for the purpose of ensuring that intelligence is shared and properly directed within the PSNI. Integration of personnel in this way is an essential protection against concerns that some intelligence would not be visible to the PSNI.

The Security Service has no executive policing responsibilities, even in countering threats to national security. While the Security Service will provide the strategic direction, the PSNI's contribution to countering terrorism will remain absolutely central. In all circumstances, including where the interest is national security related it will be the role of the PSNI to mount executive policing operations, make arrests and take forward prosecutions under the direction of the Public Prosecution Service.

There will be no diminution in police accountability. The role and responsibilities of the Policing Board and the Police Ombudsman vis a vis the Police will not change. Police officers working with the Security Service in whatever capacity will remain accountable to the Chief Constable and under the oversight of the Police Ombudsman. The Security Service and the Ombudsman's office have been working together to agree arrangements for the Ombudsman's access to sensitive information held by the Service, where this becomes necessary for the discharge of the Ombudsman's statutory duties. The Service has already disclosed sensitive information to the Ombudsman's office in a number of cases. It is important to ensure that comprehensive accountability mechanisms are in place for all aspects of policing in Northern Ireland, and we will continue to discuss these matters with the parties.

The Government will publish in due course high level versions of the MoUs currently being developed between the Security Service and the PSNI and others, as appropriate.

The great majority of national security agents will be run by the PSNI, under the strategic direction of the Service, mirroring the arrangements the Service has with the police in GB. This makes sense in NI in particular because of the interface between serious crime and national security; the police also have the advantage of local knowledge. The Security Service will continue to run directly a small number of agents who are authorised to obtain information in the interests of national security as distinct from countering criminality, where the circumstances make that appropriate. The principles observed by the PSNI and the Security Service in running agents are the same, and are enshrined in the Regulation of Investigatory Powers Act 2000.

The Policing Board will, as now, have the power to require the Chief Constable to report on any issue pertaining to his functions or those of the police service. All aspects of policing will continue to be subject to the same scrutiny as now. To ensure the Chief Constable can be fully accountable for the PSNI's policing operations, the Security Service will participate in briefings to closed sessions of the Policing Board to provide appropriate intelligence background about national security related policing operations.

On policing that touches on national security the Chief Constable's main accountability will be to the Secretary of State, as it is now. The Security Service is fully accountable through existing statutory arrangements and the due processes of Parliament. In addition, three separate Commissioners oversee different elements of covert work in NI: the Intelligence Services Commissioner; the Interception of Communications Commissioner; and the Surveillance Commissioner. Relevant complaints relating to the actions of the intelligence agencies are investigated by the Investigatory Powers Tribunal, a panel comprising senior members of the legal profession. There is also the Parliamentary Intelligence and Security Committee whose remit is to examine the expenditure, administration and policy of the security and intelligence agencies and whose reports are placed before Parliament; the Government has already indicated that it is prepared to consider how the Northern Ireland focus of the Committee might be strengthened.

In summary, a whole range of safeguards will continue in place: the Policing Board's continuing role in ensuring efficient policing; the safeguards embodied in Regulation of Investigatory Powers Act (RIPA); the Ombudsman's role in investigating complaints against police officers; Parliament's scrutiny of intelligence matters through the Intelligence and Security Committee; the various Commissioners' oversight of particular types of covert operations; and the Investigatory Powers Tribunal's remit to deal with complaints. Not only are these arrangements comprehensive, they are as transparent as the sensitivity of the issues allows.

Further to reinforce this comprehensive set of safeguards, the Government confirms that it accepts and will ensure that effect is given to the five key principles which the Chief Constable has identified as crucial to the effective operation of the new arrangements, viz:

- a. All Security Service intelligence relating to terrorism in Northern Ireland will be visible to the PSNI.
- b. PSNI will be informed of all Security Service counter terrorist investigations and operations relating to Northern Ireland.
- c. Security Service intelligence will be disseminated within PSNI according to the current PSNI dissemination policy, and using police procedures.

- d. The great majority of national security CHISs in Northern Ireland will continue to be run by PSNI officers under existing police handling protocols.
- e. There will be no diminution of the PSNI's ability to comply with the HRA or the Policing Board's ability to monitor said compliance.

In that connection, the Government believes that the Policing Board's Human Rights advisers should have a role in human rights proofing the relevant protocols that will underpin the Chief Constable's five key principles, and also in confirming that satisfactory arrangements are in place to implement the principles. The detailed operation of this safeguard will require further consideration.

As far as the employment of former police officers by the Security Service under these new arrangements is concerned, there will be no bar on former officers serving in the new organisation, but for operational reasons there will be a need for such individuals to have working experience of the arrangements under which the PSNI currently operate. The same rigorous vetting procedures will apply to them as they do to all new staff joining the service.