



Northern  
Ireland  
Office

**UK Government response to judgment of the  
Supreme Court of the United Kingdom in the matter  
of an application by Geraldine Finucane for Judicial  
Review (Northern Ireland) [2019] UKSC 7**

**30<sup>th</sup> November 2020**

## A. Introduction

1. Patrick Finucane, a practising lawyer, was murdered in his home in North Belfast on the evening of Sunday 12 February 1989. He was shot 14 times. The attack was carried out by gunmen from a loyalist paramilitary group as he sat down for dinner with his wife, Geraldine, and their three young children. Geraldine Finucane was injured by a ricocheting bullet which struck her on the ankle.
2. A number of investigations and reviews have taken place into Mr Finucane's murder including a criminal investigation led by a senior police investigator (Stevens III); 2 independent reviews led by legal professionals (Judge Peter Cory in 2004 and Sir Desmond de Silva in 2012) and subsequent independent reports and a further internal review by the PSNI in 2015. Cumulatively, over 12,000 witness statements, 32,000 documents and, in all, over a million pages of material have been collected by senior police using full police powers. Material, including original intelligence material, has been declassified and published as part of the most recent reviews. The investigations identified two members of the Ulster Defence Association (UDA) who also acted as State agents, Brian Nelson and William Stobie, as playing "key roles". A third UDA member, Kenneth Barrett, pleaded guilty to the murder.
3. The findings of these investigations are clear: there was State collusion in the murder of Patrick Finucane. The murder of Patrick Finucane was an appalling crime, part of the period known as the Troubles where over 3,500 people lost their lives. The former UK Prime Minister David Cameron apologised to the family for the "shocking levels of collusion" which were identified, setting out the Government's determination that such collusion would never happen again.
4. Following a judicial review, brought by Geraldine Finucane, the Supreme Court made a declaration in February 2019 that there had not been an Article 2 compliant inquiry into Mr Finucane's death. At §153 Lord Kerr (for the Court) stated:

*"I would therefore make a declaration that there has not been an Art.2 compliant inquiry into the death of Patrick Finucane. It does not follow that a public inquiry of the type which the Appellant seeks must be ordered. It is for the state to decide, in light of the incapacity of Sir Desmond de Silva's review and the inquiries which preceded it to meet the procedural requirement of Art.2, what form of investigation, if indeed any is now feasible, is required in order to meet that requirement"*.
5. This document sets out the steps taken and the assessment made by the UK Government in light of that declaration. It also seeks to set out further information on the steps taken in previous investigations not previously in the public domain or the focus of litigation.

## B. The Supreme Court Ruling

6. In reaching its conclusion that there has yet to be a Article 2 ECHR-compliant investigation into the death of Mr Finucane, the Supreme Court identified a number of issues with the investigations to date:
  - i) There had been no identification of the officers within the RUC, Security Service and Secret Intelligence Service who failed to warn Patrick Finucane of known threats to his life in 1981 and 1985, together with the circumstances in which these failures occurred (at §131 of the judgment).
  - ii) There had been no identification of the RUC officers who “*probably did propose*” Mr Finucane as a target for loyalist terrorists in December 1988. The extent of investigation into this issue was unclear (at §132 of the judgment).
  - iii) There had been no identification of the police source who provided intelligence about Patrick Finucane to Ken Barrett. The circumstances of these events and investigation into the individual also remain unclear (at §133 of the judgment).
7. The Supreme Court also noted that, for procedural reasons, Mrs Finucane “was stopped from providing evidence in respect of threats to her husband’s life which, it is claimed, had been made to some of his clients by police officers who were interviewing them at Castlereagh Holding Centre, a police detention centre where suspects were interviewed.”
8. The Court also identified what it regarded as key failings of process:
  - i) The de Silva Review lacked powers of compulsion to secure the attendance of witnesses or to challenge the veracity of their testimony. By way of example, one potentially crucial witness had been excused attendance without formal medical verification (at §134 of the judgment).
  - ii) It was unclear whether the authorities had “*taken the reasonable steps available to them to secure the evidence concerning the incident.*” The result was the three substantive failings identified by the Court. Hence it was unclear whether they had done all that was reasonably possible to find the facts and to identify the perpetrators (at §69 of the judgment).
  - iii) The Court appears to have concluded there had not been a “*sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory*” (at §71 of the judgment).

### Steps taken following the Supreme Court judgment

9. An independent review of previous investigations was commissioned by the then Secretary of State for Northern Ireland, the Rt Hon Karen Bradley, on 20 June 2019. The purpose of this review was to gain a clear understanding of the identities of all

individuals whose conduct may give rise to concerns and also the investigations and decisions which have already been undertaken in relation to those individuals, including with particular regard to the issues set out at Paragraphs 131 – 134 of the Supreme Court's decision.

10. The intention was for this information to assist the Secretary of State in forming a view as to what steps to take to address the Supreme Court judgment in this case.
11. Independent Counsel from Northern Ireland were engaged to perform this review. In addition to carrying out a review of the previous investigations and inquiries, they were also tasked to review additional work which had been undertaken by the Police Service of Northern Ireland (PSNI) and the Public Prosecution Service Northern Ireland (PPSNI) following publication of the de Silva report.
12. The review by Counsel into the scope and methodology followed in previous investigations was a legally essential but complex process: relevant investigative materials were held in multiple locations by multiple bodies; they were not catalogued in a manner which permitted easy access and some of them were accessible only in a secure environment.
13. The review was completed in September 2019, with an addendum containing further information relating to the PSNI referrals to the PPSNI added in March 2020. Ministers were able to access the report in June 2020 following the easing of restrictions in light of the coronavirus pandemic.
14. As part of his consideration of the judgment the Secretary of State, the Rt Hon Brandon Lewis (appointed on 13 February 2020), considered the review and also met the Finucane family to hear their representations on 21 February 2020.

### **C. Recent and ongoing investigations**

15. Following an independent review of the case conducted by Sir Desmond de Silva in 2012, the PSNI reviewed the findings of the de Silva report in 2015 ("the PSNI review") and, in 2016, made a number of referrals to the Office of the Police Ombudsman for Northern Ireland (OPONI). A number of those OPONI investigations remain open and these are set out where relevant, alongside other actions taken in response to issues identified by the Supreme Court, later in this document.
16. In 2018, the PSNI wrote to the Finucane family to confirm the outcome of their review. No immediate opportunities were identified to bring the perpetrators of the murder of Patrick Finucane to justice although, as noted above, a number of matters were referred to OPONI.
17. The PSNI also made contact with those responsible for the conduct of the de Silva review regarding the material described by de Silva as "new and significant". Following extensive review it was concluded that this material, which related to security service propaganda initiatives identified in chapter 15 of the report, did not provide credible opportunities to pursue criminal investigations into offences either directly or indirectly related to Mr Finucane's murder.

18. Where the PSNI review contains information which is new and relevant this has been reflected in this document.
19. The Legacy Investigation Branch of the PSNI was formed in January 2015 as a component part of the Chief Constable's response to his statutory responsibilities regarding the past and continues to review a significant number of deaths arising from the Northern Ireland Troubles. On 2 November 2020, the PSNI informed the Northern Ireland Office that a process of review into the Patrick Finucane case is due to commence early in 2021 in accordance with the priorities in their case sequencing model.

**D. Response to Supreme Court judgment and publication of further information**

20. Having carefully considered the facts of this case; the Supreme Court judgment; the outcome of the independent counsel review and the United Kingdom's obligations under Article 2 of the European Convention of Human Rights, the Secretary of State for Northern Ireland has concluded that it is right and appropriate to determine what further steps are appropriate and necessary should any obligations under the ECHR remain outstanding when assessed in light of the police and OPONI processes.
21. The UK Government recognises the importance of public accountability and transparency in ensuring that the confidence of its citizens in the State is maintained. Previous reports by Judge Peter Cory and Sir Desmond de Silva have put a significant amount of information into the public domain. It is also the case that in considering what steps had been taken in respect of previous investigations, the Court focused on the most recent review by Sir Desmond de Silva and did not have in evidence before it (other than to the extent referenced in the de Silva report) the detail of the issues considered in previous investigations, most notably the police investigation by Sir John Stevens (Stevens III). In particular, other than as referenced in the de Silva report, the Supreme Court was unaware of the detail of the investigative methodology followed. In addition to the upcoming police review process and ongoing OPONI investigations, the Government has therefore set out below further detail not previously in the public domain of the investigative steps taken in respect of the issues identified by the Supreme Court and the independent report.
  - (i) **No identification of the officers within the RUC, Security Service and Secret Intelligence Service who failed to warn Patrick Finucane of known threats to his life in 1981 and 1985, together with the circumstances in which these failures occurred.**
22. In his report Sir Desmond de Silva concluded that the RUC, the security service and the secret intelligence service failed to warn Patrick Finucane of known and imminent threats to his life in 1981 and 1985. The Supreme Court expressed concerns that the processes to date had not been capable of taking the necessary steps to seek to identify the individuals concerned and explain the circumstances in which they failed in their duty.

23. The PSNI review touched upon the general approach to intelligence relating to threats to life, without specifically dealing with this particular issue. The contents of the report identify that Stevens interviewed a number of officers from the RUC and the Army's Force Research Unit; and that Stevens accepted that there was no direct breach of policy by any individual officer at the time.
24. The final report recommended that the PSNI '*consider an analysis of the wider intelligence picture and the pattern of activity in relation to threats to life to enable comparison between and give full context to criticised cases such as T/27 and Patrick Finucane*' (recommendation 1).<sup>1</sup> The report acknowledged that '*criticism that the RUC failed to act on exploitable intelligence...presents a considerable challenge in terms of public perception within the field of legacy policing*'. The report also recommended that the PSNI '*consider sampling their current response to threats to life to confirm that their policy was 'being applied in a consistent manner*' (recommendation 5).<sup>2</sup>
25. While the report did not deal specifically with the threats made to Pat Finucane in 1981 and 1985, it did discuss de Silva's conclusion that the RUC's mindset '*led them to be predisposed against solicitors representing republican paramilitaries*' and acknowledged that this, along with other factors '*projects a detrimental image of the RUC*'.<sup>3</sup> The PSNI report recommended that the PSNI therefore consider '*conducting analysis of incidents of murder which occurred between 1987 and 1989, where the victim was affiliated with republicanism, the responsibility was believed to be a loyalist paramilitary group and where threat intelligence existed but was not acted upon*' (recommendation 10).<sup>4</sup>
- (ii) No identification of the RUC officers who "probably did propose" Mr Finucane as a target for loyalist terrorists in December 1988.**
26. The Supreme Court expressed concern that, whilst the de Silva review concluded that one or more officers in the RUC probably did propose Mr Finucane as a target for loyalist terrorists in December 1988, it failed to identify these officers and it was unclear whether any steps had been taken to do so despite the seriousness of the alleged offence.
27. The PSNI's review in fact specifically dealt with allegations that RUC officers encouraged the murder.
28. In its review the PSNI looked at de Silva's conclusion that '*it is likely that an RUC officer or officers did propose Patrick Finucane, along with at least one other individual, (T/05), ... as a target when speaking to L/03 in RUC Castlereagh on 8 or 9 December 1988*'<sup>5</sup>.

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<sup>1</sup> PSNI review of de Silva report, 3 November 2015, page 12

<sup>2</sup> PSNI review of de Silva report, 3 November 2015, page 21

<sup>3</sup> PSNI review of de Silva report, 3 November 2015, page 30

<sup>4</sup> PSNI review of de Silva report, 3 November 2015, page 30

<sup>5</sup> De Silva report, Chapter 18, para 18.69, page 341

29. The PSNI review<sup>6</sup> noted the following:

*“13.1.2 De Silva’s examination looked at ‘every UDA member suspected of involvement in, or awareness of the conspiracy to murder Patrick Finucane’ and detained in custody at holding centres in the ‘period during which the conspiracy to murder Mr Finucane was formulated and developed’85 (December 1988 – February 1989).*

*13.1.3 The results show that L/03 was the only UDA member suspected of involvement in the murder recorded as having been detained in a holding centre over the period in question. L/03 was ‘a prominent military figure in the UDA’s ‘A’ Company at the time’.*

*13.1.4 It should be noted that neither the De Silva review nor the Stevens enquiries were able to find or present evidence to a criminal standard of proof against any individual RUC officer.”*

30. Having further considered the available evidence the PSNI report made the following recommendations:

*Recommendation 11*

*The PSNI could consider whether de Silva’s assertions relating to the proposal of Patrick Finucane and T/05 as targets, creates a potential investigative opportunity.*

*Recommendation 12 The PSNI could consider making a request for Patrick Finucane’s personal records of threat and intimidation.*

*Recommendation 13 The PSNI could consider referring to the Office of the Police Ombudsman for Northern Ireland (OPONI) the suggestion that RUC officers proposed Patrick Finucane as a target to L/03.*

31. The PSNI have confirmed that, whilst the terms of any review are yet to be set, that recommendation 11 will be considered as part of the review process. With respect to recommendation 12, the PSNI have confirmed that they wrote to Patrick Finucane’s business partner seeking the material identified in this recommendation in 2016 and did not receive a reply. Recommendation 13 was referred to OPONI and is the subject of an open investigation.

**(iii) No identification of the police source who provided intelligence about Patrick Finucane to Ken Barrett**

32. The de Silva review concluded that Kenneth Barrett (who was convicted of the murder of Patrick Finucane) had received intelligence about Patrick Finucane from a police source. The Supreme Court expressed concerns that it did not appear that steps had been taken to identify that police source or to hold that person (or persons) to account.

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<sup>6</sup> PSNI review of de Silva report 3 November 2015 page 33

33. The PSNI review notes<sup>7</sup>:

5.4.1. *“The RUC SB and the FRU initiated joint operations to identify leaks. De Silva outlines that operational tactics involved deliberately providing Nelson with information of targeting value to the Ulster Defence Association (UDA).”*

5.4.2. *“De Silva suggested that this ‘could only have been justified if the FRU or the RUC SB were sure they could exercise sufficient control over the information to prevent it being subsequently used for terrorist purposes’ De Silva believed that these leak operations led to the information being used by the UDA for targeting purposes.”*

5.4.5. *“Of the 21 targeted individuals, the only three who were known to be targeted but no attempt was ultimately made on their lives, were the three republicans whose registration numbers were provided to Nelson as part of the joint operations to identify leaks.”*

5.4.6. *“This could indicate that some control and protection measures were put in place. It appears that this is not directly noted by De Silva in chapter seven of his report and remains an outstanding proposition which may require attention.”*

34. De Silva<sup>8</sup> also states that *‘the flow and analysis of intelligence did tend to support the theory that a high-level RUC ‘contact’ was assisting loyalists’*. He suggests that whilst *‘the individual officer concerned could not be confidently identified... the documentary records suggest that it is likely that a high level RUC contact assisted loyalist paramilitaries to an extent in their efforts to procure arms’*.<sup>9</sup>

35. The PSNI review subsequently notes that:

8.1.9. *“The upshot is that in 2014, there remains a lack of clarity about the issue of RUC officers leaking information to terrorists between 1985 and 1989 as described by De Silva.”*<sup>10</sup>

36. Recommendation 4 in the PSNI report was for the PSNI to consider referring to OPONI, the conduct of the police officers engaged in ‘leak operations’ and the issue of whether such operations put the public at undue risk. Recommendation 6 was for the PSNI to consider referring to OPONI the potential leakage of information by unidentified RUC officers to loyalist paramilitaries between 1985 and 1989. Recommendation 18 was for the PSNI to consider referring to OPONI, the implied RUC leak, which was reported by Nelson as having precipitated the switch in UDA targeting from T/21 to Patrick Finucane. A referral on the basis of all three recommendations was made to OPONI in 2016.

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<sup>7</sup> PSNI review of De Silva report 3 November 2015 page 18

<sup>8</sup> de Silva report, Chapter 11, para 11.40, page 258

<sup>9</sup> de Silva Report, Chapter 11, para 11.42, page 258

<sup>10</sup> PSNI review of de Silva report 3 November 2015 page 23



**(iv) No identification of the RUC officers who threatened Finucane and other solicitors**

37. The Supreme Court highlighted that the officers who had allegedly proposed the names of solicitors - including Patrick Finucane - as targets to individuals detained at Castlereagh Holding Centre had not been identified and that Mrs Finucane was not permitted to provide evidence to the inquest on the alleged threats as the Coroner ruled it was out of scope.
38. Research carried out by independent counsel has, however, confirmed that this issue was thoroughly investigated by the Stevens' team. The Stevens Team interviewed 14 solicitors who were named in a newspaper article of May 1987 by journalist Helen Shaw as individuals who reported harassment by the RUC of solicitors acting on behalf of clients detained at Castlereagh Holding Centre.
39. Out of 14 solicitors, three categorically denied that they had authorised the use of their names in the article and threatened legal action against the publishing paper. Two said that they could not remember the article or giving their consent to their names being used. None of the solicitors indicated that they had been subject to direct threats, but they were 'unanimous in their accusation that the use of intimidation was ubiquitous amongst interrogating officers at the Holding Centres' (Stevens Report). Three solicitors indicated that they could name the officers involved but declined to do so; the remaining solicitors claimed that the officers' identities were never made known to them.
40. Three of the solicitors indicated that they knew of previous clients who had received and relayed threats to them but were unsure whether or not they would be willing to provide information to Stevens. The identity of one of these clients was made known to Stevens but he refused to co-operate when they sought to obtain information from him.

**(v) The de Silva Review lacked powers of compulsion to secure the attendance of witnesses or to challenge the veracity of their testimony.**

41. The Supreme Court criticised the de Silva Review's lack of powers of compulsion to secure the attendance of witnesses, or to challenge or probe the truthfulness and accuracy of their evidence.
42. Particular reference to 'one potentially crucial witness [who] had been excused attendance without formal medical verification'. This witness, referred to as A/13 in the de Silva report, was a former handler of Brian Nelson. Research by independent counsel has confirmed that, in fact, this individual was interviewed nine times under caution by Stevens in the course of the Stevens III investigation. The witness exercised their right to silence and gave no comment answers consistent with the privilege against self-incrimination each time.

**(vi) It was unclear whether the authorities had “taken the reasonable steps available to them to secure the evidence concerning the incident.” The result was the three substantive failings identified by the Court.**

43. The Supreme Court noted at paragraph 118 that further investigation into the precise role played by State agents in the murder of Patrick Finucane was required and that the “strands of involvement by elements of the state” needed to be recognised and explained.”

44. The role played by State agents will be the subject of further review as set out above.

**(vii) The Court raised concerns about the level of public scrutiny of the investigations and their results.**

45. Notwithstanding the significant amount of investigation in this case and the material published, in particular, by Sir Desmond de Silva, the Supreme Court noted that the publicly available material in this case remained limited and that the necessary elements of public scrutiny and access by the family of Mr Finucane to information about the circumstances in which he came to be killed were therefore absent.

46. As set out above the UK Government recognises the importance of public accountability and transparency in this case and has sought to provide further detail pertaining to this case within this report.

47. Additionally the PSNI have published a report setting out their assessment of potential investigative opportunities arising from the De Silva report and recommended next steps. This includes referrals to OPONI on a number of issues previously identified as areas of concern by the review and the Supreme Court and which have been outlined above.

48. Further reports are expected to be produced following the PSNI review process and OPONI investigations setting out further findings and conclusions.

49. Following the de Silva review the UK Government undertook and published a ‘lessons learned’ exercise<sup>11</sup> setting out the action taken in response to the review and how their internal processes have been changed in respect of the following themes:

i. The need for coherence between the bodies involved in intelligence gathering in Northern Ireland;

ii. The need for a rigorous framework in which intelligence activity takes place, including an appropriate statutory framework, with the training, guidance and culture to underpin these;

iii. The need for adequate oversight and accountability of intelligence gathering;

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- iv. The need for clear structures and guidelines to ensure accountability for the use and dissemination of intelligence and to ensure intelligence is not exploited illegally;
  - v. An account of the measures taken to address the conduct of specific individuals within Government departments and agencies;
  - vi. Cooperation with the criminal justice process;
  - vii. Use of propaganda.
50. It is worth noting the further developments that have taken place since the time of that lessons learned report. De Silva concluded that “successive governments knew that agents were being run by the intelligence agencies in Northern Ireland without recourse to any effective guidance or a proper legal framework” and that, despite the improvements made through the introduction of a clear legal framework for authorising and managing Covert Human Intelligence Sources (CHIS) within the UK (via the Regulation of Investigatory Powers Act (RIPA) 2000), there was still insufficient guidance as to the limits of the activities of CHIS.
51. Since de Silva’s report, additional CHIS oversight has been put in place, including reinforcement of the RIPA framework. Additional legislation (the Covert Human Intelligence Sources (Criminal Conduct) Bill) is currently before Parliament to further reinforce and clarify these powers and demonstrates the seriousness with which this Government takes this issue. The CHIS (Criminal Conduct) Bill for the first time provides an express legislative framework for the authorisation of criminal conduct by CHIS. The Bill confirms robust independent oversight of all authorisations by the Investigatory Powers Commissioner and is underpinned by a statutory Code of Practice providing detailed guidance on processes, internal oversight and considerations which must be taken into account by public authorities deploying CHIS. The Bill also sets out a requirement for all authorisations to be necessary, proportionate and compliant with the Human Rights Act 1998 to act in a way that is compatible with the rights protected by the European Convention of Human Rights.
52. The lessons learned report also confirmed the steps that had been taken to assess whether any disciplinary proceedings were appropriate in light of the findings of previous investigations. The report concluded:
- “Turning to the individuals identified by de Silva, the military officers criticised in the de Silva report have all now left military service and the MOD is restricted in the options available to them to take further action. The Director for Public Prosecutions for Northern Ireland decided in 2007, after a full police investigation, that no prosecutions should be brought against members or former members of the armed forces over these events. Forfeiture of pension rights for military personnel requires conviction for treason, an offence under the Official Secrets Act leading to a sentence of at least ten years, or an offence gravely injurious to the defence, security, or other interests of the state. None of the individuals has been convicted of any of these offences so this option is not available. As de Silva says, the context in which these actions took place was a lack of adequate oversight from successive governments, which this government acknowledged and regrets. De Silva refers to one MOD civilian employee who relied on misleading data on the value of Nelson’s intelligence in preparing advice for the*

*Secretary of State. This officer was junior at the time and was wholly dependent on information provided by others; therefore the Government does not believe that it would be appropriate to take further action against him now.*

*Whilst de Silva does not make direct criticism of the conduct of individual Security Service officers, he does make serious criticisms of the arrangements that the Security Service had in place at the time. The two officers de Silva identified he would have wished to have spoken to further to illuminate the issues are now deceased. In the absence of criticism of individuals and having given the matter careful attention, the Security Service has concluded that it would not be appropriate to attribute specific responsibility for institutional failings 25 years ago to individuals who cannot answer for themselves and so cannot take further action in that regard. The Security Service does, however, acknowledge at a corporate level that it did not have in place at the time adequate policies, guidance, oversight structures or means of supporting staff. This contributed to a number of failings identified by de Silva. These weaknesses have been addressed by the very substantial range of statutory, organisational and systemic changes that have been implemented in the intervening 25 years, as reflected in this response.”*

53. Consideration of whether any disciplinary action against RUC officers is appropriate will be further considered by OPONI in its investigations.
54. The 'lessons learned' report noted the fundamental changes in the legal and policy framework within which intelligence gathering operations are carried out compared to the time of Mr Finucane's murder, including a far more rigorous system of independent oversight and control. As the report concluded, *“compliance with human rights and other legal obligations has a fundamental place at the centre of activities by the police and intelligence services with the principles of necessity and proportionality now firmly embedded in the culture and systems they apply in their work.”* Such changes are a demonstration of the commitment to doing everything possible to ensure that the collusion in this case can never happen again.