

THE ICPC

1. The Panel may consider why the ICPC did not supervise the allegation into the alleged tip-off by Robert Atkinson to Allister Hanvey, and whether its failure to do so displayed a lack of due diligence within the terms of reference.

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

Please see sections 5, 6 and 8 below.

Submissions by Elliott-Trainor Partnership (Greg Mullan)

The powers of the ICPC were limited by statute. Under the Police (Northern Ireland) Order 1987 the ICPC had no powers to self refer and was therefore limited to investigate issues referred to it by the 'appropriate authority' The complaint in relation to the incident of the 27th April 1997 was referred to the ICPC under Article 7 of the Order, as referenced previously. Mr Mullan believes that the reference to an Article 8 referral is in error, see Para 5 of his statement.

The ICPC advised the Police that this matter was being supervised under Art 9 (1)(a) of the Order and whilst during the course of this investigation the ICPC became aware of the allegation against Atkinson/Hanvey, it was not part of their original investigation and due to the limitations on the ICPC these could not be incorporated into the original investigation or self referred and investigated by them of the ICPC's own volition.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

The terms of reference to the Robert Hamill Inquiry are as follows

“to inquire into the death of Robert Hamill with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary facilitated his death or obstructed the investigation of it, or whether attempts were made to do so; whether such act or omission was intentional or negligent; whether the investigation of his death was carried out with due diligence; and to make recommendations.”

The primary role of the Inquiry is to make findings relevant to its terms of reference, so in considering Sir Ronnie Flanagan's position relevant to this chapter the Inquiry panel should address the questions of whether he was guilty of any act or omission which obstructed the investigation of Robert Hamill's death, or whether he attempted to do so, and whether any such act or omission was intentional or negligent, or whether the investigation into his death was not carried out with due diligence due in some way to an act or omission of Sir Ronnie Flanagan. We are confident that the answer will be negative. There is simply no evidence upon which such a finding can be made. Furthermore there is no evidence that Sir Ronnie Flanagan obstructed the

investigation of the murder or failed to act with due diligence in relation to the investigation of the murder.

The murder of Robert Hamill was a tragedy felt not just by his family and friends but within the wider community in Northern Ireland. In approaching the evidence relating to Sir Ronnie Flanagan it is important to contextualise his position in and around 1997 and onwards. He had in 1996 been appointed as the Chief Constable to one of the largest police forces in the world. The number of serving officers was in the order of 15,000. This was a police force which by necessity had become quasi militarised by virtue of its position as the frontline defence against terrorism. Despite the peace process in Northern Ireland it remained a deeply divided country and a very dangerous place. The risk to both sides of the community remained high. This was only too well illustrated by the Omagh bomb which killed 29 people on 15th August 1998. There had been a General Election in May 1997 and the Drumcree parade tension had commenced. The IRA ceasefire broke down in February 1996 and Constables xxx and xxxx were murdered as they walked the beat in Lurgan in July 1997.

One of Sir Ronnie Flanagan's stated priorities on being appointed as Chief Constable was to rebuild trust and confidence particularly between the nationalist community and the RUC. However, he continued to have to deal with national and province wide issues not least the threat of terrorism generally and the peace process.

It is clear that at all times Sir Ronnie Flanagan acted as a conscientious and professional Chief Constable. His actions can in no way be viewed as having facilitated the death of Robert Hamill, in fact he took all necessary and appropriate steps required of him in the exercise of his duty. At all times when it was necessary for him to become directly involved he responded in a manner designed to enable a transparent, rigorous and comprehensive investigation. The evidence confirms that Sir Ronnie Flanagan was a man who was open to and innovative in recommending and embracing change at all levels within and to the RUC. Whilst he was proud of the organisation that he led the evidence nonetheless suggests that he would act without hesitation and be unswerving in the investigation and prosecution of any alleged offender within the ranks of the RUC.

Whilst any administrative process is subject to normal human frailties and thereby open to criticism, the panel must be careful not to apply a counsel of perfection to the acts of Sir Ronnie Flanagan. They must view his acts in the context of the situation as it pertained at the time and be careful to not fall foul of the danger of hindsight. The Inquiry by design rightly concentrates on Robert Hamill and all of the issues relating to him. It is an often appealing but ultimately misguided exercise to look back and retrospectively see things as obvious without taking account of context and the voluminous issues being dealt with by Sir Ronnie Flanagan on a daily basis at that time.

Sir Ronnie has only been given limited representation in issues dealing with the ICPC; however it is clear that there had been a referral to the ICPC pursuant to Article 8 of the Police (Northern Ireland) Order 1987.

The evidence supporting this is inter alia

- The statement of Mr Reel indicates that there was an original referral by the RUC.
- Document 15273.
- Mr Paul Donnelly, Chairman of the ICPC, gave evidence that the matter had been initially referred to the ICPC by the RUC under Article 8 (p.123) as was his consistent position (p. 136).
- The memo from ACC Hays dated 27th June 1997 refers to a RUC referral prior to the formal complaint (44407).
- Sir Ronnie Flanagan's evidence.

There was no necessity for the ICPC to accept this referral under Article 8 as they were obliged to supervise it. It was Sir Ronnie Flanagan's policy as Chief Constable to refer any matter of public interest to the ICPC automatically. This position is confirmed by Mr Paul Donnelly, Chairman of the ICPC, who states in evidence that Sir Ronnie Flanagan was on every occasion prepared to refer matters to the ICPC (p. 136). There were no restrictions upon the terms of this referral and Sir Ronnie Flanagan would have been surprised if this proposition had been suggested. The lack of documentation outlining the terms of the referral does not support a proposition that there was no Article 8 referral; the circumstances of the referral in June 2000 are analogous.

Even if the terms of the initial Article 8 referral were unclear, the telephone call of ACC Hall to Mr Murnaghan could have left the ICPC in no doubt that the tipping off allegation was included in its terms of reference. There is no evidence that ACC Hall was ever informed that the ICPC had in effect changed its position in this regard. Sir Ronnie Flanagan was not made aware of the position taken by the ICPC in September 1997.

There was de facto supervision of the allegations until at least September 1997 and Mr Mullan accepts that he in fact dealt with the tipping off allegation in his synopsis/recommendations. This would suggest to a reader of the document that the ICPC were in fact supervising the allegation. It is difficult to disaggregate the tipping off allegation from the neglect of duty allegation. The extent to which Reserve Constable Atkinson knew one of the alleged assailants at the scene and his subsequent behaviour is clearly relevant to any neglect of duty complaint and is a material factor that should be taken into account.

The ICPC had a practice whereby they would make requests of the Chief Constable to exercise his power under Article 8 (See Paul Donnelly p. 135).

Mr Donnelly suggests that the RUC would not have resisted any extended investigation by the ICPC.

Given the comments of Mr Mullan in his report namely “I have my suspicions. The prospect of proving those allegations, even if additional lines of enquiry were pursued, is...remote” (14757) it is respectfully suggested that it is not clear whether any failure to ensure that the ICPC were in fact supervising the tipping off allegation is likely to have made any appreciable difference in terms of due diligence.

There is no evidence to suggest that the acts and omissions of Sir Ronnie Flanagan were anything other than a reasonable response by a Chief Constable. He was not aware of nor was he on notice that the ICPC were not supervising the tipping off allegations. Whilst Sir Ronnie has no personal recollection of any briefing by ACC Hall on the 12th May 1997 it is clear from ACC Hall’s evidence that the information he provided included that the ICPC were supervising the issue (p. 32). ACC Hall was at that stage aware that there was to be a major strategy meeting between the investigating officers and ICPC later that afternoon. As the senior Regional Officer was content that the ICPC were investigating the tipping off allegation there would be no reason for the matter to be brought to the attention of the Chief Constable for his personal attention.

Mr Paul Donnelly in his second statement to the Inquiry deals with the practice and procedure of the ICPC. He indicates that once the tip off allegation was identified it should have come within the ambit of the complaint investigation (Para 3). He goes on to suggest that “It was reasonable on the senior police officers behalf to have expected the linking of the Atkinson allegation because the practice was quite normal” (Para 3). It is therefore clear that even if the Inquiry were to conclude that the Article 8 referral had not been effective, it would have been reasonable for senior officers to assume that the allegation was being investigated. In light of this evidence it would not be reasonable to conclude that Sir Ronnie Flanagan ought to have taken any additional steps to ensure that the ICPC were investigating the tipping off allegation.

2. The materials are to this effect:
 - 2.1 12/5/97 Greg Mullan, ICPC, made a file note commissioning Mr Murnaghan following the referral of the complaint from Rosemary Nelson on behalf of the Hamill family (14824).
 - 2.2 12/1/98 The ICPC commented adversely on the actions of Con Alan Neill and Res Con **P40**. The ICPC endorsed the recommendations of DCS McBurney (14799).
 - 2.3 16/1/98 The ICPC issued a certificate of satisfaction in respect of the neglect investigation (15162).

- 2.4 11/11/99 A letter was sent from the Complaints and Discipline Department to CID South Region stating that, as the criminal aspect of DCS Maynard McBurney's complaint investigation had been completed, Supt Anderson and CI Richard Bradley were to finalise the discipline aspects under ICPC supervision. The letter suggested that DI Michael Irwin's requests to identify anything in the Complaint and Discipline [C&D] files capable of advancing the murder investigation could be best addressed by him meeting the Complaints and Discipline investigating officers. The letter also noted the requirement for confidentiality in communications between C&D and external parties (15297).
- 2.5 30/3/2000 A certificate of satisfaction with the investigation into the complaint was issued. 14987 & 14988.
- 2.6 30/3/2000 The ICPC notified Diane Hamill by letter that a certificate had been issued and stated that, whilst the ICPC was satisfied that the investigation had been carried out properly, its role in the matter did not end there. The letter recorded that there was a second stage at which the ICPC would examine the details of the case again and decide whether or not to accept the Assistant Chief Constable's findings on the disciplinary aspects. The ICPC stated that Diane Hamill would be advised of this decision in due course (14989).
- 2.7 20/4/2000 A file note was made regarding the report of [REDACTED] ICPC, considering the aspects of the complaint. It noted that ICPC found prima facie evidence that the police inaction amounted to neglect of duty in failing to anticipate an attack, in the delayed dismount from the Land Rover and in the failure to administer first aid (14711-14712).
- 2.8 5/5/2000 The ICPC directed the Chief Constable to charge Con Alan Neill for neglect of duty and recommended his suspension (10839). However, the recommendation was withdrawn on 22/4/02 on the ground that, having reviewed the material, a disciplinary hearing was not appropriate (14425).
- 2.9 4/9/2000 A meeting was held between [REDACTED] and Gregory Mullan (ICPC) with DCI K, DI Michael Irwin and DCS Maynard McBurney. DCS Maynard McBurney contacted Supt [REDACTED] (SO to Chief Constable) regarding the meeting with ICPC. (14691).
- 2.10 6/11/2000 The ICPC was replaced by PONI.
- 2.11 21/06/01 ICPC met with the Chief Constable. The ICPC was appointed to supervise the investigation into Res Con Robert Atkinson (26873 at 26876).
- 2.12 30/4/02 David Wood, PONI, wrote to the acting Chief Constable, endorsing the recommendations of DCS Karen Kennedy in respect of informal disciplinary action against Insp Alan McCrum and Con A. He also endorsed her recommendations relating to police and procedure (44851).

Submissions by Elliott-Trainor Partnership (Greg Mullan)

The Panel is referred to Mr Mullan's role within the ICPC, as outlined at Para 3 of his statement. Mr Mullan was an administrator and whilst he had an advisor role and was involved in the decision making process the ultimate decisions of the ICPC were not his.

Mr Mullan notes that the ICPC did not 'endorse' the recommendation of DCS McBurney, indeed whilst it was his recommendation that no disciplinary action be directed against any officer in the land rover the ICPC recommended that Con Alan Neill face disciplinary action in respect of his failure in his duty. However this recommendation was withdrawn as noted above, by PONI (Police Ombudsman's Office for Northern Ireland).

It is Mr Mullan's recollection that the meeting with the Chief Constable noted at Para 2.11 above took place in 2000, not 2001.

Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)

Any submissions in relation to police activity on the night of 26/27 April are dealt with in response to Parts 5 and 6.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

See previous submission above.

3. Witnesses dealt with this issue, as follows:

Raymond White

Oral Evidence

- 3.1 It would be a matter for the Chief Constable and the head of G Department to advise him in relation to referring cases to ICPC (p.99).

Blair Wallace

Statement

- 3.2 Para. 20: He would have thought that, as the ICPC was supervising the neglect complaint, the referral of the tip-off allegation would have been automatic.

Oral Evidence

- 3.3 The ICPC could ask the Chief Constable to refer the matter to them if they thought it was appropriate (p.20). They would have expected the ICPC to ask the Chief Constable if they were told about the tip-off allegation on the 12th or 13th May. If the circumstances had become known to the SIO he would be the trigger for referral. At the time the SIO thought it was most advantageous to the investigation he would make a recommendation to the ACC in charge of C&D that there was a man who should be suspended as he was suspected of

committing a serious criminal offence (p.21). The ACC in charge of C&D would then notify ICPC (p.22).

- 3.4 In his time of service, the ICPC were not informed of the tip-off allegation (p.29). They should have known of the allegation through supervising the original complaint (p.30). It would negate the ICPC's role if they did not actively supervise (p.31).

Fred Hall

Statement

- 3.5 Para. 61: Some time shortly after he became aware of the allegation against Res Con Atkinson he telephoned Mr Murnaghan to confirm that he was aware of the allegation and that it would be included in his remit of supervision. He cannot remember the date of the call. He does not recall if Mr Murnaghan knew of the allegation but he said "you never know what comes up in investigation, we will see what the evidence is".

Francis Reel

Statement

- 3.6 Para. 2: He joined the RUC in 1959. In 1997 he was the Superintendent with responsibility for informal resolutions in G Department, which was Complaints and Discipline. He retired on 19th December 1997.
- 3.7 Para. 3: In 1997 he kept a daily journal. These were destroyed when he retired.
- 3.8 Para. 5: When cases were referred to the Complaints and Discipline Department, the Superintendent New Complaints would complete a form. On it he would indicate whether the matter was to be referred to the RUC C&D or fell within the terms of referring to the ICPC. He would tick the necessary boxes. The civil servant staff would pick that up from the superintendent's office and take it down to their circuit registry, and it would be sent from there. If it was urgent, it may have been taken by hand or perhaps faxed. He cannot say for sure if any forms were faxed.
- 3.9 Para. 7: Rosemary Nelson wrote a letter of complaint on behalf of the Hamill family which was received by Mr Anderson at Gough Barracks on 7 May 1997. It was then routed back to G Department arriving on 9th May 1997. In this time Robert Hamill had died. The paperwork with the letter from Ms Nelson was referred under Article 7 but the initial complaint was referred under Article 8.
- 3.10 Para. 8: An Article 7 referral is where the Chief Constable refers cases to the ICPC as a standard procedure and it would be up to the ICPC whether they

wished to supervise or not. An Article 8 referral is where the Chief Constable could, because of circumstances, refer it to the ICPC and they must then supervise it. The earlier complaint was an Article 8 referral from the Deputy Chief Constable.

- 3.11 Para. 9: Pages 63695 and 63701 is a form 17.2 in relation to the complaint made by Rosemary Nelson on behalf of the Hamill family. He can confirm that the writing on it is his handwriting and his signature. The typing on the form would have been done by the typing pool following Superintendent Macauley's instructions. Supt Macauley received the complaint, which means that he received Ms Nelson's letter containing the information. He would have filled in a blank form and sent it down to typing. It would have been typed up and sent back to Supt Macauley to attach the other documentation to the front of it.
- 3.12 Para. 12: He filled in a pro forma on 9 May 1997 referring the complaint to the ICPC which also went to the investigating officer. At point 2, which is 'Previous References to Commission', he wrote 'Article 8 referral of incident'. That meant it had already been sent out in relation to the incident. At point 3 he ticked the box for an Article 7 referral.
- 3.13 Para. 13: He had a recollection of something being said, probably by Supt Macauley, to the extent that the DCC had directed that the whole matter be investigated by the Detective Chief Superintendent. He completed the form on behalf of Supt Macauley because it was urgent for the Detective Chief Superintendent to commence his investigation. If Supt Macauley was going to be out of the office later that day, then he would have arranged for Supt Reel to sign the form and send it on.
- 3.14 Para. 15: The Deputy Chief Constable has the ultimate responsibility for discipline within the force. There was also an ACC in charge of the Complaints and Discipline files. The Chief Constable could refer matters under Article 8, if he wished to do so, but he delegated his responsibility either to the ACC of G Department or the Deputy Chief Constable as far as discipline was concerned.
- 3.15 Para. 16: The Deputy Chief Constable in 1997 was Blair Wallace. Sir Ronnie Flanagan was the Chief Constable, but he had not held that position for long. He did not recall having any conversations with DCC Wallace, ACC Hays or Supt Anderson about this matter. Any conversations he had were with Supt Macauley.
- 3.16 Para. 17: He had nothing to do with the appointment of DCS McBurney as the investigating officer. He thinks he was told about it, by Supt Macauley, and he wrote it on the form. DCS McBurney was also the senior investigating officer on the murder investigation.
- 3.17 Para. 18: He did not hear anything said at this time regarding a Reserve Constable having assisted an offender or having advised that he should get rid of his clothing. If such an allegation had been made, it should have been

reported to C&D Department so that an investigating officer would be appointed, in this case DCS McBurney.

- 3.18 Para. 19: As DCS McBurney was the senior investigating officer on the murder investigation, he should have had the information about such an allegation. If so, he should have routed it to the head of G Department. If any officer made a complaint or referred something that was improper conduct to another officer, it would be sent off to G Department. That would be recorded as an internal discipline matter and an investigating officer would be appointed.
- 3.19 Para. 20: If the investigating officer believed that the internal discipline matter impacted on another matter that the ICPC were supervising, then C&D would make them aware of it. If there was a serious criminal allegation against one of the officers in the Land Rover, about which the ICPC were supervising a complaint investigation, then the allegation should have been referred to the ICPC under Article 7.
- 3.20 Para. 21: The Deputy Chief Constable would be advised of the allegations and it would be up to him to decide whether or not it should result in suspension of an officer.

Archibald Hays

Statement

- 3.21 Para. 16: The DPP and the ICPC had major roles to play in relation to complaints from the public.
- 3.22 Para. 22: He remembered that the ICPC could “call in” any matter in the public interest.
- 3.23 Para. 24: He believed that the Chief Constable referred the question of neglect to the ICPC under Article 8.

Oral Evidence

- 3.24 Complaints were referred to the ICPC if an allegation was made by a member of the public and it was sufficiently serious not to be dealt with by way of informal resolution. If it was serious, the ICPC supervised the complaint. If it was not so serious, then the ICPC “may” have decided to supervise. Alternatively, if no complaint had been made then any matter the Chief Constable thought ought to go to the ICPC could be referred by him (Article 8 p6). In addition, the ICPC could pick up on something they considered to be in the public interest (p.2), referred to his statement (Para. 22, 81808), for example if they read something of interest in the newspaper. However, it was very seldom that this happened (pp.2-3). He does not have a direct recollection of that happening. It could be that the ICPC asked the Chief Constable to refer something that was “in the public interest” (p.4).

Greg Mullan

Statement

- 3.25 Para. 3: He was Deputy Principal and was responsible for the supervision aspect of the ICPC's work.
- 3.26 Para. 4: The Chief Constable could refer a complaint under Article 7 of the Police (NI) Order 1987 or matters which were not the subject of complaint under Article 8. Inevitably those would be supervised.
- 3.27 Para. 7: The neglect complaint was regarded as an Article 7 referral.
- 3.28 Para. 18: He first became aware of the tip-off allegation on 12th May 1997.
- 3.29 Para. 20: That matter was not formally referred and so it was not under the ICPC's supervision. ACC Hall's speaking to Mr Murnaghan did not constitute a referral.
- 3.30 Paras. 22-23: The ICPC could have asked for a referral.
- 3.31 Para. 46: A statement of satisfaction was issued by the ICPC on 16th January 1998.
- 3.32 Para. 54: On 29th March 2000 the ICPC issued a discipline statement recommending disciplinary charges against Con Neill.
- 3.33 Paras 68-69: On 21 June 2000 the Chief Executive agreed to take supervision of the Atkinson allegation, which was effectively an Article 8 referral. There were no letters.
- 3.34 Para. 68: He was not entirely sure of the date but around September 1999 the DPP wrote formally to advise the ICPC that there would be no prosecution of any member of Land Rover crew. Following the statement that Andrea McKee gave on 26 June 2000 the Chief Constable came to see the ICPC and it supervised the investigation. It met DCS McBurney and had a consultation with the DPP.
- 3.35 Para. 68: In relation to the ICPC's role regarding the DPP and the progress of the Atkinson allegation in 2000 he stated that he attended a meeting which took place on 27 June 2000 between Mr ██████, DCS McBurney, DI Irwin, Raymond Kitson at the DPP offices. This is in file note 214. Since Mr ██████ agreed to supervise the investigation, the ICPC attended in a supervisory capacity.
- 3.36 Para. 70: Apart from Andrea McKee's evidence, he was not aware of any other reason why the Atkinson investigation was resurrected (p50).
- 3.37 Para. 75: The ICPC was replaced by PONI on 6 November 2000. There was no real handover with Mr Chris Mahaffey.

Oral Evidence

- 3.38 He was the head of the supervisory function of the ICPC (p.11).
- 3.39 Para. 8 81389: “I have been referred to the letter at [15265] which was signed by myself on behalf of supervisor ██████ to confirm that the ICPC was supervising the complaint. The letter makes it clear ICPC ‘must supervise in these circumstances’.” 15265 states that the “Commission has decided to supervise the investigation” (p.2) “It is a requirement that I be kept abreast of all significant developments...I would remind you my approval must be obtained prior to your investigation report being referred to the Commission under Article 9(7)” Mr Mullan stated in his letter to the ACC the ICPC would have made it clear that it was supervising under 9(1)(a). 15265 is a standard letter. He thought ‘shall’ was put to him. Where the complaint was a less serious matter the ICPC had discretion to supervise a complaint (p.3). When he was pressed on whether 81387 was true about the word ‘must’, Mr Mullan stated that he did not know if it was he who said it at interview (p.4).
- 3.40 The ICPC could not self-refer (p.10). They supervised if there was a referral (p.36). They did not “opt out” on 19 September as, if a complaint was not referred, they could not “opt in” (p.37). Per Para. 22 81393: Had the ICPC been minded to, he supposed that it would have been possible for the ICPC to have contacted the Chief Constable and asked him to refer the Reserve Constable Atkinson allegations. Mr Mullan stated that it was a decision for the supervising member. He could not remember it ever happening (p.43).
- 3.41 Per 60549: DCS McBurney recommended that no criminal or disciplinary proceedings be taken against the Land Rover crew. The last four pages discuss the allegations made against Res Con Atkinson but he found no evidence to substantiate the allegations. He recommended ‘no prosecution’. Mr Mullan stated that the report would have gone to the DPP (p.13) so it was nothing to do with him. Per 14757: “I have my suspicions [about the Atkinson allegation]. The prospect of proving those allegations, even if additional lines of enquiry were pursued, is...remote” (p.14). He does not know why he wrote that. He says he probably should not have written it (p.15). He says “it is a throwaway passage at the end of a report. It meant nothing” (p.16).
- 3.42 Per 44407: He believed this matter was referred to the ICPC under Art 8(1) Police (NI) Order 1987 by the Chief Constable. The referral was made prior to the receipt of a formal complaint, which was received on 7th May 1997. Mr Mullan stated that he had no knowledge of that (p.20). The first documentation the ICPC got was form 17(2). He was not aware of an Article 8 referral (p.21). All they had was the complaint (p.24).
- 3.43 Per 27209: “I advised that this aspect [the Atkinson allegation] was outside the Commission’s remit” (p.26). This was his and his supervisor’s belief (p.27).
- 3.44 He does not recall any meeting where Andrea McKee was present (p.48).

- 3.45 The meeting on 27 June 2000 came about due to the Chief Constable meeting the ICPC Chief Executive. Mr Mullan was not aware of a letter actually being sent but he referred to a minute which recorded that a letter should have been sent (p.52).

Richard Bradley

Statement

- 3.46 Para. 14: He became aware in the early stages of the investigation that Res Con Atkinson had warned a suspect to dispose of his clothing. This was a criminal matter and he was not involved in that part of the investigation and therefore he did not see any statements supporting the allegation until he received a copy of DCS McBurney's DPP file in December 1997.

Oral Evidence

- 3.47 He was familiar with the circumstances in which the ICPC would become involved. It was usually the more serious allegations (p113). He thinks the Chief Constable chose to refer an incident to the ICPC under Article 8 Police (NI) Order 1987 when the public did not know about something that had happened (p.114). This was not a common occurrence (p.117). The ICPC did not have the power to call in the Atkinson investigation unless the matter was referred by the police. As neither the family of the victim or the public were aware of tip-off allegation it could not be the subject of a complaint, only a police referral (p.118).
- 3.48 As only the Murder and Neglect files were sent to the DPP he would expect the allegations against Atkinson to be in the Neglect file (p.62). He would expect the DPP to take its course on the criminal side of the neglect complaint then start a C&D investigation (p.63). He would have expected the ICPC to have supervised the tip off allegation. When a complaint was made it was referred to the ICPC. They appointed a supervising officer who would supervise the whole investigation against that officer including any criminal aspect. The ICPC would have no part in a criminal investigation against civilians (p.65).
- 3.49 He would have expected the ICPC, upon reading Tracey Clarke's statement to ask the Chief Constable to let them supervise the investigation into the tip-off allegation.
- 3.50 Supt Bradley said he should have asked the Chief Constable to let the ICPC supervise the investigation into the tip-off allegation after he had read Tracey Clarke's statement (p.75). He did not know when he became aware of the allegation against Atkinson (p76).

Sir Ronnie Flanagan

Statement

- 3.51 Para. 7: It was important that public allegations of police inactivity were supervised by the ICPC and he therefore referred the matter to them.
- 3.52 Para. 13: He assumed the ICPC would have supervised every aspect of the investigation including the allegation of an officer assisting offenders.

Second Statement

- 3.53 Para. 17: He cannot understand why the Atkinson allegation was not supervised by the ICPC. He would also have expected C&D to make a suitable record of conscious decisions about how to deal with the officer.

Oral Evidence

- 3.54 Sir Ronnie Flanagan believed the ICPC were supervising the Atkinson allegation (p.194). With regards to 39624 he clarified that in his experience Mr Murnaghan was a very competent member and a most competent member, but that was not a reflection on the other supervising members within the organisation.
- 3.55 The ICPC were in charge of police complaints until PONI took over in late 2000 (p.204) The aim of PONI was to increase public confidence and also police confidence as police groups advocated independent investigations (p.206) Sir Ronnie Flanagan determined that any incident of public interest would automatically be referred to PONI by him (p.207)
- 3.56 There were no restrictions on the ICPC once a referral had been made, nor could there be (p.272) Sir Ronnie Flanagan could not understand why the ICPC felt disabled (p.273).

Paul Donnelly

Statement

- 3.57 Para. 4: All complaints were directed to the police for recording. The ICPC would then make a decision on whether to supervise them or not.
- 3.58 Para. 5: The ICPC has to be looked at in terms of the members individually rather than as a collective.. Each member would jealously safeguard their territory. By not discussing cases they could preserve their integrity.
- 3.59 Para. 7: The ICPC was able to “direct” investigations as well as “supervise” them. The organisation was provided with powers to be much more robust in

its direction and control of investigations than the concept of supervision allowed.

- 3.60 Para. 10: His first impression of the organisation was that it was deferential to the point of being sycophantic towards the RUC. Some newer members were more robust. The powers of authority that were vested in the organisation were not energetically exercised.
- 3.61 Para. 11: The Atkinson allegation could and should have been pursued within the complaints context.
- 3.62 Para. 18: A meeting took place between the ICPC, DPP and DCS McBurney on 22 June 2000. This was then a supervised case.
- 3.63 Para. 19: He recalled advising officials to tread water so that the Ombudsman could exercise a more robust intervention in some cases. He does not recall doing so in the Hamill case.
- 3.64 Para. 25: The ICPC supervision was ineffective in relation to the supervision of Atkinson.

Second Statement

- 3.65 Para 2: He was not informed in 1997 that Mr. Murnaghan and Mr. Mullan did not share the view that the complaint made by Ms Nelson should encompass the Atkinson and that they did not supervise the Atkinson allegation
- 3.66 Para 3: My sense is that as soon as this tip-off was identified then it should have automatically come under the ambit of the complaint investigation
- 3.67 Para 4a: Had the supervising Commission member said that they were going to take this into the investigation and there was no objection then it would have just run as that. It would have been seen as the normal way to proceed in the absence of any objection from the police service.
- 3.68 Para 4d: Should Mr. Murnaghan have done nothing until the RUC came to him with a referral? In statutory terms it probably was but in terms of ethical consideration I don't think it was the right option. There was almost a tacit invitation from the police to supervise the allegation. If I had known that we were not supervising the Atkinson allegation I would have gone to the Chief Constable to impress upon him the public interest benefit of extending the referral. If he did not share that view I could have gone to the Secretary of State as once we did with a previous Chief Constable and moved towards a Judicial Review. All that being said, I am convinced that the Commission supervising and directing an "extended" investigation would have met with no resistance from the police.
- 3.69 Para 6: My direct involvement in referrals was mainly in reviewing cases and those referred directly to me for advice.

- 3.70 Para 7: What I am able to say from my knowledge of the referral process is that there was flexibility in the way cases were treated, sometimes the threshold for supervision was low and not consistent with the prima facie evidence presented in the complaint. Certainly the trigger always had to be a referral from the police. There was also flexibility in merging investigations where two closely linked concerns were dealt with as two parts of the one piece.
- 3.71 Para 9: When supervising a complaint allegations would come through during the investigation process it would therefore be in everyone's interest that closely linked concerns were dealt with together. Issues that came up which were not focused on the same matters would not be linked to the supervision.
- 3.72 Para 14: I am bemused why there is no paper record of the Article 8 referral.
- 3.73 Para 15: The Chief Constable would have been correct to have referred under Article 8(1) where a death or serious injury had occurred; police officers were present and there had been public concern.
- 3.74 Para 17: From my own experience as Chairman of the Commission I would have said that it was very unusual in the extreme for there not to be a written communication from the police in a standard format before a case was formally supervised by the Commission

Oral Evidence

- 3.75 The ICPC first became involved in the Hamill investigation from a self-referral by the RUC (p.132).
- 3.76 The ICPC should have been involved in supervising the tip-off allegation and it did not surprise Mr Donnelly that it was not involved because it would have been counter-cultural to have done so (p.132).
- 3.77 Case officers did not discuss cases amongst each other and rigidly kept cases to themselves. This was because if the case was to go to a disciplinary tribunal two supervising members had to sit with the Chief Constable (p.133).
- 3.78 Mr Murnaghan was a man of integrity who would pursue something if he thought it should be pursued (p.135). He was suffering from a terminal illness at the time of the investigation (p.155).
- 3.79 Para. 6 82079: He clarified the wording in his statement that, "the police were generally astute enough to make referrals themselves," there would have been occasionally times when the police would have been less than happy to have made a referral, but because of some of the representations that might have been made to them by the Chief Executive, they would invariably agree to process the complaint (p.136). Sir Ronnie Flanagan was on every occasion prepared to refer. His predecessor would have taken a different view (p.137).

- 3.80 Per Para. 9: Mr Donnelly recalled having more than one conversation with Mr Mullan. He was concerned about aspects of the case, particularly the second piece of information that came to light later. He was also very interested to know what motivated the police officers in the vehicle (p.138). He believed the conversation with Greg Mullan took place close to Mr Murnaghan leaving (p.139).
- 3.81 Per Para. 10: He considered that some of the older supervising members would have acquiesced if a police officer said that they did not need to look at an area (p.139). He was concerned that many of his colleagues saw their job as helping the police (p140).
- 3.82 Per Para 12: He would have been compelled to ask Mo Mowlam to refer a matter if the police had not done so, even in the face of his colleagues taking a different view (p.140). Politically it was a difficult situation (p.144).
- 3.83 Had Mr Donnelly been aware of the tip off allegation, he would have asked the Chief Constable to refer it to him on the grounds that the alleged criminality was linked to Atkinson's status as a sworn constable (p.142). The ICPC would have claimed they had supervisory jurisdiction (p.143).
- 3.84 Per Para 14: Mr Donnelly cannot answer why Mr Murnaghan and Mr Mullan decided not to supervise the tip-off allegation. He believed it was symptomatic of the conflict and risk adverse nature of the organisation (p.145).
- 3.85 Para. 23: The ICPC were under pressure as the officers had considerable local connections. He felt the police did not wish to harm community relations. He provided the opinion that had the investigating officer decided the allegation was worthy of pursuit within the complaint, it would have widened the enquiry (p.146).
- 3.86 If it had been necessary to ask the Chief Constable to refer, he would have done that (p.146).
- 3.87 Para. 24: He speculated that Mr Atkinson was a community activist as he thought that he had called someone about the murder. He clarified that he would define a community activist as being someone who is known and respected in the community. It was not a derogatory remark (p.148). It would be commendable for Res Con Atkinson to have been living in Mahon Road during Drumcree (p.150). The reference to community activist is a neutrally expressed statement (p.152).
- 3.88 The ICPC was an organisation lacking in moral fibre. The implication of what he was saying was that part-time commissioners did not serve with integrity and without fear or favour. That did not apply to Mr Murnaghan (p.152).
- 3.89 Per Para. 15: the ICPC had only once refused to issue a statement of satisfaction (p.154).

Colin Murray

Second Report

- 3.90 Para 3.51: Mr Mullan references again the Atkinson allegation in 27199. That memo does not read as if recommending the issuing of a statement of satisfaction with regard to alleged criminal conduct on Res Con Atkinson's part; nor should it do so as the ICPC were not supervising that part of investigation.
- 3.91 Para 3.63: The Atkinson allegation was not supervised by the ICPC. It should be noted that the allegation was openly discussed by DCS McBurney with members of the ICPC. Mr Mullan did not ask why that had not been referred. The reason for this is difficult to determine.
- 3.92 Para. 5.19: Mr Murray believed the Atkinson allegation should have been referred to ICPC under Art 8(1).
- 3.93 Para. 7.14: "G" Department should have been notified under the RUC Code in connection with the Atkinson allegation. It should be noted that Supt Anderson, a team leader from "G" Department, was present at the meeting with Greg Mullan when the Atkinson allegation was discussed. The allegation should have been immediately brought to the attention of the head of C&D. The Deputy Chief Constable should have been briefed since consideration should have been given to suspending the officer concerned. The allegation should have been properly recorded in C&D and a 17(3) should have been prepared. Once action was taken to secure evidence, the 17(3) should have been served on Res Con Atkinson. Mr Murray believed the Atkinson allegation should have been referred to, and supervised by, the ICPC. There is no suggestion that DSC McBurney concealed the Atkinson allegation from the ICPC. On the contrary, the allegation was discussed in the presence of ICPC members.

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

The Panel may wish to consider the fact that Mr. Anderson, a senior officer from C&D, was not present at any of the primary interviews of those in the Land Rover. It is stated by Mr. Hayes that CID took precedence in a criminal investigation. However, the Panel may wish to consider if having a member from C&D at these interviews would have affected the tenor of the interviews, thus enabling more information to be gleaned.

The Panel may also wish to consider why the ICPC attended only one of the two follow-up interviews but did not attend the interview which focused mainly on the Billing records. The Panel may wish to assess whether the ICPC performed an adequate supervisory role in this regard.

Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)

The significance of the fact that DCS McBurney did not conceal the Atkinson allegation from the ICPC and indeed discussed the allegation in the presence of ICPC members will be referred to in Chapter 16. The tip-off allegation was also noted in the Policy File on the instructions of DCS McBurney.

Submissions by Elliott-Trainor Partnership (Greg Mullan)

There is no weight to the assertion that the ICPC had the power to 'direct' an investigation, as alleged by Mr Donnelly. As stated previously, whether an incident was referred to the ICPC under Article 7 or 8 is irrelevant to the clear intention and spirit of the empowering statute which enabled the ICPC to investigate matters referred to it by the appropriate authority. The definition of 'appropriate authority' is clearly defined.

Mr Hays was misguided in terms of his understanding of the powers available to the ICPC as outlined at Paras 3.22 and 3.24.

It should be noted that the Chief Constable states at Para 3.52 that he assumed that the ICPC would 'supervise every aspect of the investigation'. In his oral evidence at Para 3.54 he goes further and states specifically that he 'believed' that they were investigating the Atkinson allegation. It is noteworthy that the Chief Constable gives no reason nor explanation as to how or why he had this assumption or belief, in order that an objective observer could enquire as to the reasonableness or otherwise of his position.

Mr Mullan in his statement and in his oral evidence has stated that he had no knowledge of any Article 8 referral. As far as Mr Mullan was aware the initiating documentation was the letter of solicitor R Nelson which was received by the Police and referred to the ICPC under Article 7, Mr Mullan was not aware of any other documentation purportedly received prior to this letter of complaint.

In relation to the contents of Para 3.29 Mr Mullan is not aware of any conversation between ACC Hall and Mr Murnaghan, and has never seen a record on file of any such conversation.

With regard to the contents of Para 3.91 Mr Mullan states that Mr Murnaghan and he understood that the matter of the 'Atkinson allegation' was integral to DCS McBurney's murder investigation, the issue was openly discussed, however given that it was an integral part of the murder investigation it was neither envisaged nor suggested that this issue was being or should be pursued by the ICPC.

It should be noted that at Para 3.92 Mr Murray asserts that the Atkinson allegation 'should' have been referred to the ICPC under Article 8 (1), which is consistent with Mr Mullan's interpretation of the appropriate referral procedure and the ambit and limitations of the original complaint.

Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)

Note, at no time is it alleged herein that DSC McBurney concealed the Atkinson allegation to the ICPC

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

See previous submission above.

Comment

4. The ICPC plainly had no power to self-refer. It could ask the RUC to make a referral to it of a matter that was not the subject of a complaint. The evidence shows that it did indeed take that course on occasion, and that the RUC would duly make referrals. The evidence also shows that such referrals could be informal.

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

Once the ICPC became aware of the allegations concerning RC Atkinson, two courses of action were open to them. They could either have regarded it as part of the original complaint made by Rosemary Nelson on behalf of the family of Robert Hamill, or they could have asked the Chief Constable to refer the matter to them. In fact, they did neither. Paul Donnelly, at the time the Chair of the ICPC, clearly did not wish to speak ill of the dead, so he expected Mr Murnaghan, from his description of the ICPC, to be “deferential to the point of being sycophantic towards the RUC” (3.60). He also said it would have been “counter cultural” for the ICPC to have acted proactively in relation to the Atkinson complaint (3.76) and described the ICPC as “risk averse” (3.84). We believe that his view vindicates the comments concerning the ICPC that we have made at paragraph 7 of module 16.

Given the ICPC’s lack of independence and rigour, the Panel may wish to consider whether the Chief Constable should not have used his powers under Article 5(3) or (5) or 6(3) of the Police NI Order 1987 to appoint a member of another police force in the UK to investigate the complaint/allegation, rather than tolerating DCS McBurney’s acting as SIO in both the Atkinson allegation and the murder allegation.

We find ACC Fred Hall’s evidence (3.5), that he orally referred the Atkinson complaint to the ICPC, puzzling. In the first place, there appears to be no record of this event. One might have expected an Assistant Chief Constable referring an allegation that one of his officers colluded with a suspect would have been of sufficient significance that he would have made a note of it – indeed, he ought to have notified C&D department. Equally, one would have expected Mr Murnaghan to have made a note of it on his file. Even if neither of them recorded it, one would definitely have expected ACC Hall to have been informed of the ICPC’s decision that the complaint fell outside their remit (3.43).

Submissions by Elliott-Trainor Partnership (Greg Mullan)

Mr Mullan accepts, as at Para 22 of his statement, that the ICPC could potentially have contacted the Chief Constable and asked that the Atkinson/Hanvey matter be referred. However he cannot recall any specific instance where this informal request for a referral has occurred.

Mr Mullan has explained that Mr Murnaghan considered the “tip off ” allegation to be integral to the murder investigation being conducted by DCS McBurney and that the issue would be properly investigated as part of same.

Mr Mullan would not have been the decision maker in relation to these matters; he did not have the authority to undertake such discussions and states that this decision would have been undertaken by a supervisor within the ICPC.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

The evidence suggests that had the ICPC asked the RUC to make a referral then he would have done so. Mr Donnelly confirms Sir Ronnie Flanagan was prepared to refer on every occasion a view not shared by his predecessor (p. 137). This is consistent with Sir Ronnie Flanagan’s stated policy to refer all matters of public interest to the ICPC.

Submissions by the Police Service of Northern Ireland

The PSNI agree with this position.

5. The consensus appears to be that the tip-off allegation could and should have been supervised by the ICPC. ACC Hall put the ICPC on notice that it should take steps to supervise the allegation. Had it done so it seems likely that DCS McBurney’s investigation of the allegation would have been the subject of some greater scrutiny.

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

The Panel may wish to consider why the family of Robert Hamill was not informed of the Atkinson allegation. This was a significant development flowing directly from their complaint and could have been relayed by way of a liaison officer. There does not seem to have been a liaison officer in respect of the complaint they made. This matter was highlighted by Mr McGrory QC when Assistant Chief Constable Hays gave evidence to the Inquiry (day 52). Mr Hays said that there usually was a close relationship between those who have lodged a complaint and the police and he expressed surprise that the Hamill family had not been informed of the Atkinson allegation (day 52, pg 31, line 7).

Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)

We agree that the tip-off allegation could and should have been supervised by the ICPC, and ACC Hall's actions were the correct ones to have done in the circumstances. It was therefore reasonable for ACC Hall and others to assume that the tip-off allegation was in fact being supervised by the ICPC, and in particular by Mr Murnaghan who was known for his professional integrity and independence.

Submissions by Elliott-Trainor Partnership (Greg Mullan)

Mr Mullan cannot comment on what would have happened had the ICPC had the issue of Atkinson/Hanvey referred to it for supervision.

If, with the benefit of hindsight, it appears that the tip-off allegation should have been referred to the ICPC it is submitted that individuals working within the office at that time cannot be held responsible. It is submitted that Mr Donnelly's critical observations of the individuals working within the ICPC at the material time are self-serving, prejudicial and unhelpful to the issues being considered by the Inquiry, and should be disregarded.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

The tipping off allegation could and should have been supervised by the ICPC. It is however not clear that supervision by the ICPC would have made any appreciable difference to the progress or outcome of the investigation.

Submissions by the Police Service of Northern Ireland

The PSNI agree with this position.

6. The nature and outcome of the self-referral which was apparently made prior to the referral of the Rosemary Nelson complaint are not clear. It is possible that it was made after Mr Hamill's death. If so, the nature of it may have been to supervise the investigation into that death. In that event the ICPC would have been bound to supervise, so the absence of acceptance of the referral would make no difference. The Panel may wish to consider whether those were the circumstances and whether if so, the ICPC was therefore seized of the tip-off allegation.

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

In our opinion, there can be no doubt that the ICPC was seized of the Atkinson complaint. DCS McBurney himself told the ICPC about it on 12th May 1997 (paragraph 3.249, module 16 and 3.28 above). His aim was to obtain the ICPC's agreement that he should supervise both the Atkinson complaint and the murder investigation, which also came under the purview of the ICPC. He met no objection from the ICPC, but senior officers in the RUC, including DCC Blair Wallace, who was responsible for discipline, and the Chief

Constable were somehow under the misapprehension that the ICPC was supervising both aspects of the case.

The panel may wish to consider why Mr. Anderson did not inform the Deputy Chief Constable of the Atkinson allegation as soon he became aware of it. The Panel may also wish to consider why it took the RUC under the auspices of the ICPC some four months to suspend the officer in question.

Submissions by Elliott-Trainor Partnership (Greg Mullan)

There is no material evidence, and certainly Mr Mullan has no knowledge of, any referral to ICPC prior to receipt of the letter of complaint from Rosemary Nelson on behalf the Hamill family. Had the ICPC been invited by way of an Art 8 referral to supervise the investigation into the "circumstances surrounding the death of Robert Hamill" then it would have done so and the supervision would have undoubtedly incorporated the Atkinson allegation. However, the only referral recorded by ICPC was the specific complaint referred by R. Nelson and as a result the ICPC could only supervise the neglect allegations as detailed in the solicitor's correspondence.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

There was an Article 8 referral made prior to the letter of complaint on behalf of Diane Hamill. This did not require the ICPC to accept the referral. The terms of the complaint were not limited to any particular aspect of the death of Mr Hamill and the referral was designed to and allowed the ICPC to investigate all aspects of Robert Hamill's death. Had the ICPC had any concerns about the extent of the terms of reference they should have raised it as an issue with Complaints and Discipline or Command Secretariat. The evidence is that there would have been no resistance by the RUC to the tipping off allegation being included in the investigation (see Para 3.68 herein).

Submissions by the Police Service of Northern Ireland

It is submitted on behalf of the PSNI that it was certainly the belief of the RUC's senior command that the ICPC was seized of the tip-off allegation. The views of Mr. Donnelly must be considered in this context. The Inquiry is referred to the submissions which have been made in this respect in Chapter 14 (section 9).

7. A further question which has emerged from the evidence is whether the terms of the referral of the Rosemary Nelson complaint could have been regarded, as a matter of practice, as sufficiently broad to encompass any allegation which arose during the course of the investigation of that complaint. On the face of the 1987 Order and the letter of complaint the legal position appears to be that such a practice should not have arisen. Nonetheless, if it had done then the ICPC may have been under an obligation to make it plain to the Chief Constable that the practice was not being followed in this instance.

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

Rosemary Nelson's letter of complaint of 6th May 2009 was in the following terms, "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 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." It clearly related to the alleged failure of the Land Rover crew to intervene promptly enough. However, neither Rosemary Nelson nor the Hamill family knew about the Atkinson allegation at the time, and had they done so they would undoubtedly have included it in the complaint. The allegation could only have compounded their complaint. The ICPC clearly did not feel fettered by the narrow terms of the letter of complaint, because they made prima facie findings that police inaction amounted to neglect of duty in failing to anticipate the attack, in the delayed dismount from the Land Rover, and in the failure to administer First Aid (2.7). Thus, the ICPC could have extended their investigation to include the Atkinson allegation had they wished to, but they lacked the will to do so.

Submissions by Elliott-Trainor Partnership (Greg Mullan)

The practice of ICPC was to supervise what was referred to it. In this case it was the allegation contained in R. Nelson's letter of complaint. The absence of any referral from police in respect of the Aitkinson allegation resulted in this aspect not being subject to supervision. In correspondence to the police the ICPC made it clear what aspect (neglect) it was supervising. At no stage, prior to 2000, did police query this or contact ICPC enquiring about the Aitkinson allegation.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

The evidence of Mr Paul Donnelly, ACC Archibald Hays and DCC Wallace suggests that the ICPC in practice did make requests of the RUC that matters should be referred to it. Mr Donnelly at paragraph 13 of his first statement suggests "...I am certain that the Chief Constable would have "jumped" rather than have to be "pushed"." This was consistent with Sir Ronnie Flanagan's desire to ensure the trust and confidence of both communities within Northern Ireland.

Submissions by the Police Service of Northern Ireland

The PSNI agree with this comment.

8. It appears to be common ground that the tip-off allegation was intimately connected with the murder, and should have been treated as an integral part of the murder investigation. It follows that the Panel may find that a failure of an organisation to exercise due diligence in relation to the tip-off can be viewed

as falling within the terms of reference. The question to be addressed therefore is whether the ICPC exercised due diligence when it failed to ask for a referral and failed to treat the actual referral as encompassing the tip-off allegation, in the light of what it knew of it and in the light of what ACC Hall told Mr Murnaghan.

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

The ICPC failed to exercise due diligence not only in that they failed to seek a referral of the Atkinson complaint or to treat it as part of the original complaint, but they deliberately ruled the complaint to be outside their remit. Two reasons have been advanced for their doing so. The first is that, because it was alleged that RC Atkinson had committed a criminal offence, the criminal investigation had to take priority over the conduct investigation. This is patently nonsense, as the ICPC did in fact take over the supervision of the murder investigation. The second reason was that no-one had referred the complaint to the ICPC, but, as already discussed, the ICPC had only to ask for it to be referred to them, but they did not choose to do so.

Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)

This question does arise, but we do not agree that the tip-off allegation should necessarily have been treated as an integral part of the murder investigation. We suggest that it could have been so treated, but the question arises as to what the effect of that would have been?

As we have stated before, the practical effect would have been to alert at an early stage Atkinson and Hanvey, and consequentially more sinister people potentially at this early stage of the identity of Tracey Clarke. It will be remembered that all those charged with the murder of Robert Hamill elected to go into the LVF and UVF wings of the Maze Prison.

Submissions by Elliott-Trainor Partnership (Greg Mullan)

As stated above the ICPC has no record of any conversation between ACC Hall and Mr Murnaghan. It is Mr Mullan's recollection that Mr Murnaghan was normally diligent in recording file notes and such a conversation would have been recorded.

R. Nelson's letter of complaint made a specific allegation that police failed to intervene as promptly as they should have. This was the specific aspect that was being supervised as no other aspect was referred for supervision.

When ICPC was made aware of the Atkinson allegation it considered that this aspect was integral to the murder investigation being conducted by DCS McBurney rather than intrinsically linked to the neglect allegation being supervised by ICPC. In consequence, in the absence of a police referral, no consideration was given to supervising an issue which was considered part of the ongoing murder investigation

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

It is submitted that the terms of the Article 8 referral allowed the ICPC to investigate the tip off allegation. In any event the actions of ACC Hall in telephoning Mr Murnaghan to ensure that he was aware of the allegation and supervising it were sufficient to expand the terms of reference if necessary. That the tipping off and murder investigations were difficult to disaggregate is evidenced by the reference in the synopsis to Mr Mullan's report to the tipping off allegations. The circumstances of the relationship between Reserve Constable Atkinson and an alleged assailant are directly relevant to both investigations. Mr Donnelly indicates that he cannot answer why the decision was taken not to supervise the tip off allegations; the correct question is why Mr Murnaghan and Mr Mullan having considered that the tipping off allegation was outside the terms of reference failed to have regard to the practice of the ICPC and either treat the referral as encompassing the tip off allegation or ask for it to be referred.

The issues surrounding the extent of the terms of reference were not communicated to the Chief Constable. The ICPC had previously and did make requests of the RUC for referral if they felt that there was an issue which need to be addressed. The senior officers within the RUC, including the relevant Regional ACC understood the ICPC to be supervising the tipping off allegation. It is submitted in such circumstances it is unreasonable that the Chief Constable personally should ensure that the ICPC were supervising the investigation into the tipping off allegation. He had no reason to believe that the command structure within the RUC or the relationship between the Complaints and Discipline Department was not working effectively.

Mr Paul Donnelly in his second statement to the Inquiry deals with the practice and procedure of the ICPC. He indicates that once the tip off allegation was identified it should have come within the ambit of the complaint investigation (Para 3). He goes on to suggest that "It was reasonable on the senior police officers behalf to have expected the linking of the Atkinson allegation because the practice was quite normal" (Para 3). It is therefore clear that even if the Inquiry were to conclude that the Article 8 referral had not been effective, it would have been reasonable for senior officers to assume that the allegation was being investigated. In light of this evidence it would not be reasonable to conclude that Sir Ronnie Flanagan ought to have taken any additional steps to ensure that the ICPC were investigating the tipping off allegation.

Submissions by the Police Service of Northern Ireland

The position of the PSNI has been set out above and in Chapter 14. If the stance of the PSNI is correct it is submitted that the Inquiry will be entitled to consider whether the ICPC failed to exercise due diligence. The PSNI express no opinion on whether such a charge would be made out.

9. However, the Panel may also consider whether, even on the basis of the limited referral by which Messrs Mullan and Murnaghan regarded themselves

as being bound, a reasonable supervisor was bound to take a much closer interest in the investigation into the tip-off allegation.

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

It is a pity that neither Mr Murnaghan nor DCS McBurney are alive to explain their actions or reasons, but it seems to us that DCS McBurney took advantage of what was a cultural pliability on the part of the ICPC by appearing to act properly by drawing the Atkinson allegation to the ICPC's attention, while neglecting to go through the proper internal RUC procedures which would have led to a procedurally correct referral (3.18, 3.20). As a result, everyone in authority, whether within the RUC or the ICPC assumed that the ICPC was supervising the Atkinson complaint, when in fact they were not. What is difficult to capture from the documents or the testimony is the reality, of which, informed by our experience of the Hamill and many other cases, we are morally certain, that it suited both the RUC and the ICPC to let DCS McBurney "hoodwink" them; the RUC because the last thing they needed at such a politically sensitive time was a revelation of collusion in the ranks; and the ICPC because of the RUC-friendly culture so vividly described by its own Chair, Paul Donnelly.

Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)

We agree this question arises

Submissions by Elliott-Trainor Partnership (Greg Mullan)

It is submitted that Mr Murnaghan and Mr Mullan acted in a reasonable manner within the confines of ICPC's statutory responsibilities. Mr Murnaghan was a well respected and experienced member of ICPC and was Deputy Chairman at this time. He was the ultimate decision maker and would have made his decisions following careful consideration of all the facts. Mr Mullan was not empowered of his own volition, or as a staff member of ICPC, to treat the Atkinson allegations as part of the supervised investigation. In addition, although an advisor to Mr Murnaghan, Mr Mullan, in the final analysis, could not have ensured that the Atkinson allegation was subject to supervision given that the Supervising Member, Mr Murnaghan, was aware of all the facts and was content with the situation.

Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)

The evidence was that Mr Murnaghan took a close interest in the investigation into the alleged tip-off allegation. See pages 133-134 Day 68, Cross-examination of Mr Donnelly by Mr Adair. Refer also to the cross-examination of Mr Donnelly by Ms. Dinsmore starting at page 147. In particular reference is made to the question put to Mr Donnelly regarding Mr Murnaghan - " a man who took the stance through his life and even joining the ICPC and working as he did in your lifetime, have you come across as

many men who have as much integrity and quiet determination as the late great Kevin Murnaghan? Have you met many people like that in your life?" to which the response was "I have met precious few."

Properly this section makes no potential criticism or draws any adverse inference against Reserve Constable Atkinson.,

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

Any suggestion Reserve Constable Atkinson had a close personal relationship with one of the alleged assailants is relevant to the tipping off allegation, his actions at the scene of the murder and to the veracity of his witness evidence. It is respectfully suggested that to effectively supervise the investigation into the neglect of duty allegation and murder allegations full account ought to have been taken of the tipping off allegation. It would be impossible to take this into account adequately without investigating the allegation.

In conclusion we are confident that the Inquiry Panel will conclude that there is no evidence upon which to conclude that Sir Ronnie Flanagan failed in his duty as a Chief Constable in failing to ensure that the ICPC was supervising the investigation into the tip off allegations.

Submissions by P J McGrory Solicitors (Family of Robert Hamill)

THE INDEPENDENT COMMISSION FOR POLICE COMPLAINTS

1. The Independent Commission for Police Complaints was a statutory body set up under the Police Northern Ireland Order 1987. (Hereinafter referred to as the Order) The purpose of the body was to ensure some degree of independent supervision of complaints against police. The investigation of complaints was to remain with the existing Complaints and Discipline branch of the RUC.
2. The construction of the legislation envisages complaints first being communicated to the Chief Constable whose first duty it was to take desirable steps to obtain or preserve evidence. The next step was the determination of "the appropriate authority". In this case that authority was the Chief Constable himself as the complaint did not concern the conduct of a senior officer.
3. Once it is determined that the Chief Constable is the appropriate authority he is obliged by the terms of Article 5 to consider whether the matter can be resolved informally. If that cannot be done then he must appoint a member of the police force or some other force to investigate the complaint.
4. Under Article 7 all complaints being formally investigated must be referred to the Commission. The Chief Constable may also refer other matters not already the subject of a complaint to the Commission under Article 8 by reason of their gravity or exceptional circumstances. Article 8(2) grants the power to the Secretary of State to make referrals to the Commission, "in the public interest" and if he does Art 9(1)(b) makes supervision by the

Commission mandatory. Article 9(1)(a) makes it mandatory for the Commission to supervise if the alleged conduct resulted in the death or serious injury to another person. Otherwise, under Article 9(3) the Commission may choose to supervise if the Commission considers it “desirable in the public interest” to do so.

5. The evidence in the case of Robert Hamill has revealed that there was both a referral from the Chief Constable and a complaint made on behalf of the family through a solicitor. In the latter case, the Chief Constable made a referral under Article 8(1) but there does not appear to be any formal referral actually received. (1) Rosemary Nelson did write a formal letter of complaint saying that there was a serious assault on her client’s bother and that, “certain police officers witnessed this assault and did not intervene as promptly as possible” This letter is dated 6th May and is date stamped by RUC Complaints and Discipline on May 7th(2) .

6. There is further confusion as to the precise basis on which the Commission came to supervise the investigation of this complaint. On the one hand, a letter from Mr Murnaghan, who was appointed as the Commission member to DCS Mc Burney, dated 13th May suggests the Commission exercised its discretion to supervise but it does not spell out the precise Article of the Order. A discretionary supervision would have been under Article 9(3) whereas a mandatory supervision on the basis that the complaint concerned death or serious injury as a result of the conduct would have been under Article 9(1). Mr Greg Mullan, an official in the ICPC gave evidence on May 15th and was asked about this by Mr Underwood QC who was understandably puzzled by the use of the term “must supervise” in Mr Mullan’s signed statement, which appeared to conflict with language of the letter implying a discretionary supervision. Mr Mullan explained the letter was a standard letter that he accepted could be improved. It is perhaps worth noting that the purpose of this letter was to inform DCS Mc Burney that he was under an obligation to submit his report to the supervisor and not to establish the basis of the Commission’s engagement. We submit that it was certainly open to the Commission to take the view that this was a mandatory supervision under Article 9(1)(a) on the basis that the alleged failure to intervene caused Mr Hamill to become seriously injured. In saying that the wording of 9(1)(a) may only envisage a situation where police officers were accused of causing the death or serious injury by, for example, the reckless discharge of a firearm or by reckless driving.

7. In view of the fact that the Commission did supervise this complaint it is unlikely that anything turns on this. A more important question, we submit is whether the Commission should have involved itself in the supervision of the specific allegation brought to the attention of the police by Tracy Clarke that Reserve Constable Atkinson had been colluding with Alastair Hanvey. In order to address this question we need to consider whether or not the information provided by Tracy Clarke should have been considered a complaint in itself or if it was simply evidence that was relevant to the existing complaint.

8. The Interpretation clause in the Order is to be found at Article 2. It defines “complaint” as “a complaint about the conduct of a member of the police force, which is submitted by, or on behalf of, a member of the public”. As the ordinary meaning of the word “complaint” is an expression of dissatisfaction, we do not feel we can submit that the information coming from Tracy Clarke, as a matter of fact, could have been considered as a standalone complaint. Viewed entirely separately from the existing complaint then as a matter of law it did not fall to be supervised by the Commission.

9. However, the question of whether or not it should have been supervised as part of the complaint submitted by Rosemary Nelson is another matter altogether. It is our submission that this information was powerful and cogent evidence going to the very heart of the existing complaint. Mr McBurney clearly thought so when he spoke to Mr Murnaghan and Mr Mullan of the ICPC at Portadown police station at 8.30 pm on the evening of Monday 12th May 1997. The two page file note of this meeting prepared by Mr Mullan shows that Mr McBurney introduced this information in the context of the investigation of the complaint into the alleged inactivity of the police in the land Rover.(3) For some reason or other however, he does not appear to have furnished the ICPC with the statement of Tracy Clarke but he certainly did bring it to their attention.(4) ACC Hall clearly thought so for we heard evidence from him that he specifically phoned Mr Murnaghan following the Monday meeting of senior police to make sure that this information was being factored into the investigation of the complaint.(5)

10. Of very great significance, we submit, is the supplementary statement of Mr Paul Donnelly, former Chairman of the ICPC following his evidence on the last day of the evidential hearings. So important is this statement to this part of our argument that we would ask the Inquiry to read it in its entirety.(6) In particular, we highlight the following paragraphs.

11. 3. When a referral of a complaint is made even through a solicitor, the complaint is from a citizen saying “something bad has happened and I want you to look at it”. Not many people would know the difference between, for example, incivility and abuse of authority or the difference between the disciplinary concept of neglect and the criminal concept of neglect of duty in public office. So my sense is that as soon as this tip-off was identified it should have automatically come under the ambit of the complaint investigation. I can understand why senior police officers were of the view that the Atkinson allegation was linked to the original complaint referred to the Commission and that they thought it was being supervised. It was reasonable on the senior police officers behalf to have expected the linking of the Atkinson allegation because the practice was quite normal.

12. 7. What I am able to say from my knowledge of the referral process is that there was flexibility in the way cases were treated, sometimes the threshold for supervision was low and not consistent with the prima facie evidence presented in the complaint. Certainly the trigger always had to be a referral from the police. There was also flexibility in merging investigations

where two closely linked concerns were dealt with as two parts of the one piece.

13. 8. I recall the case of Rosemary Nelson allegations as being a prime example but there were others. When the Metropolitan Police took over the Rosemary Nelson Inquiry we did agree to add associate complaints to that investigation. Sometimes a referral makes one allegation against a police officer or police officers, you carry out the investigation and you discover that there are other infringements of discipline or criminality that have been unearthed in the course of the inquiry on matters which the citizen has not complained. Therefore informal additions to an initial public complaint were not rare and as I have explained would be taken into the initial investigation as a matter of practice.

14. This evidence of Mr Donnelly clearly shows that there was plenty of scope within the practices of the ICPC to regard the information of Tracy Clarke as being germane to the existing complaint. We believe that a close examination of the early approach to this case by Mr Murnaghan would suggest that he too initially took this view.

15. The Land Rover police were not interviewed until the following autumn. Mr Murnaghan supervised all of those interviews and attended the first of two interviews of Reserve Constable Atkinson on 9th September 1997.(7) It is worth noting that Reserve Constable Atkinson was the only one of the four to be cautioned for the offences of “assisting offenders and withholding information”. Mr Murnaghan therefore must have considered himself to be supervising this aspect of the alleged criminal conduct of RC Atkinson. The transcript of the interview runs to some 63 pages, the last 15 pages of which is taken up with questions about the relationship between this policeman and Hanvey. Indeed, it was Inspector Irwin’s understanding that the “tipping off” aspect was to be very much part of that interview.(8) We are of course very critical elsewhere of the failure of DCS McBurney to take this opportunity to confront Atkinson with the actual evidence of the phone calls and believe that his failure to do so was either a critical strategic mistake or evidence of an attempt to give Atkinson a chance to produce an explanation. What is not in doubt, we submit, is that this interview was part of the investigation into the collusion of this policeman with one of the murderers of Robert Hamill.

16. What followed next was the effective removal by the ICPC of itself from its supervision of the investigation of this aspect of the complaint. The next interview of the Reserve Constable was scheduled to take place in October but in an ICPC file note Mr Mullan confirmed the following to Mr Murnaghan, “On your behalf, I advised that this aspect was outside the Commission’s remit”(9) . Mr Murnaghan then did not attend the October interview of Atkinson and did not continue to supervise Mr McBurney in the conduct of this aspect of the investigation.

17. What Mr Mullan said in evidence was that they just didn’t see the relevance of this to the investigation in which they were involved.(10) He said

that the supervisor did not raise any concern about it with him and the police did not ask them to supervise it. What Mr Mullan did do however was make an observation on the Mc Burney neglect report that he had his suspicions about the purpose of the phone calls from the Atkinson home to the Hanvey home but that Atkinson had supplied witnesses to explain them, therefore there was little prospect of proving any allegation. Mr Underwood QC established that the ICPC were unaware of the results of the request for phone records, of the fact that Inspector Irwin had received the intelligence of the phone calls from Andrea McKee or even that a silver jacket belonging to Hanvey appeared to be missing. Mr Underwood QC put to Mr Mullan that the effect of his comment gave the false impression that the ICPC had indeed supervised this. We whole heartedly agree with Counsel to the Inquiry in this. Indeed Mr Mullan accepted to the Chairman that he had made a comment on a file that had gone to an issue over which he had no concern.

18. This rather astonishing evidence must be seen in the context of the later evidence of Mr Donnelly to the Inquiry on September 22nd that the ICPC simply was not an organisation that was fit for purpose. He had made it clear in his statement that the attitude of some of the supervisors was almost sycophantic towards the police. Although he did not say this of Mr Murnaghan, he did reveal that he was undergoing treatment for terminal cancer at the time and that this investigation came not long before he ceased had to stop work as a result of his illness.

19. We are a loss to understand why Mr Murnaghan chose to remove himself from this part of the investigation. He can only have taken this decision between the September and October interviews of Atkinson. Had he formed a view earlier that he should not supervise this aspect of the complaint then he would not have allowed police to caution Atkinson in his presence and question him about offences, which would then have been well outside his remit. Perhaps some representation was made to him from somebody involved that he should not continue with his supervision and perhaps his judgement was clouded because of his illness. Only he and Mr McBurney could have shed some light on this but regrettably that will not now be possible.

20. As for Mr Mullan, his conduct of this complaint simply beggars belief. It is a great pity that we had not the material from Mr Donnelly before Mr Mullan gave his evidence for he could then have been better challenged on his evidence that this allegation was plainly outside the scope of the existing complaint and that was the end of the matter. As it is, we submit that the ICPC was in clear breach of its statutory duty to supervise the investigation of this aspect of the death of Robert Hamill. The failure to do so had profound consequences adverse to the future conduct of the murder investigation. A diligent and thorough supervisor should have been in a position to challenge, first the investigative strategy and second the recommendations of Detective Chief Superintendent McBurney in the submission of the neglect file. If DCS McBurney was on the lookout for an opportunity to protect Reserve Constable Atkinson he was handed it on a plate by those within the Independent Commission for Police Complaints who had responsibility for the supervision of this case.

The Independent Commission for Police Complaints (References)

- (1) See page 44407, which is a memo from the ACC of complaints to Command Secretariat complaining about this oversight once it was revealed following an enquiry by and NGO
- (2) 15272
- (3) Bottom of 27269 into top of 27270
- (4) Questions of Mr Underwood QC of Greg Mullan, May 15th
- (5) September 2nd pages 37 and 37
- (6) 82230 - 82235
- (7) The transcript is to be found at 61223 to 61286
- (8) September 9th page 128 line 15 - page 129 line 13
- (9) 27209
- (10) May 15 the pages 8 and 9

Potential criticisms or adverse inferences

Robert Anderson

- Failed to bring to the attention of the ACC for C & D the tip-off allegation against Res Con Atkinson

Sir Ronnie Flanagan

- Failed to ensure that the ICPC was supervising the investigation into the tip-off allegation Res Con Atkinson.

Allister Hanvey

- Participated in the attack on Robert Hamill
- Provided the RUC with a false account of his movements and his clothes
- Destroyed the clothing that he was wearing at the time of the attack

Maynard McBurney

- Failed to ensure that the investigation into the murder of Robert Hamill was conducted with due diligence and/or conducted the investigation so as to protect Allister Hanvey and Robert Atkinson.

Greg Mullan

- Failed to treat the Atkinson allegation as part of the supervised investigation
- Failed to ensure that the Atkinson allegation was part of the supervised investigation.